

## ISLAM AND RELIGIOUS ARBITRATION IN ONTARIO

CONSTRUCTIONS OF ISLAM  
IN THE CONTROVERSY OF RELIGIOUS ARBITRATION:  
A CONSIDERATION OF THE “*SHARI’A* DEBATE”  
IN ONTARIO, CANADA

By  
ALEXANDRA BROWN, B.A.

A Thesis  
Submitted to the School of Graduate Studies  
in Partial Fulfillment of the Requirements  
for the Degree  
Master of Arts

McMaster University

© Copyright by Alexandra Brown, July 2007

MASTER OF ARTS (2007)

McMaster University

(Religious Studies)

Hamilton, Ontario

TITLE: Constructions of Islam in the Controversy of Religious Arbitration: A

Consideration of the “*Shari’a* Debate” in Ontario, Canada

AUTHOR: Alexandra Brown, B.A. (University of Calgary)

SUPERVISOR: Professor Celia Rothenberg

NUMBER OF PAGES: v, 100

### Abstract

In 2003 Ontario, Canada became the focus of heated national and international debate when it engaged citizens in a debate over the use of religious, and specifically Islamic, law in private arbitration disputes. A government commission which canvassed Ontarians for their perspective on the issue lies at the center of the debate. Marion Boyd's 2004 report, "Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion" describes and analyzes the results. A government document aimed at presenting the findings and recommendations of the commission to a wider public, this report encapsulates many of the ideas and attitudes prevalent among Ontarians on the issue of religious, and specifically Muslim, arbitration practices.

The Boyd report is a valuable indication of some of the most fundamental and uncritically considered assumptions about Islam at work in government policy and public opinion. In this thesis I uncover two primary models of Islam that Boyd's report constructs, and relate these constructions to their larger contexts. The first treats religion as a static entity distinct from culture, while the second expands religious identity to the point that it becomes a culture itself. After outlining each, I suggest that these definitions are the product of the two overlapping contexts in which the report is embedded. The first is a Canadian public space defining Islam in terms of popular notions of multiculturalism, and the second a transnational and globalizing space constructing Islam as a neo-ethnicity. The definitions of Islam contained in the report draw on these two frameworks and maintain familiar conceptual categories which render Islam and Muslim identity more easily understood and accepted by the public.

### Acknowledgements

First and foremost, I would like to thank my advisor, Dr. Celia Rothenberg, for her guidance over the past two years. Not only have I benefited from Dr. Rothenberg's considerable knowledge and encouragement, but with her supervision I have become a better thinker and writer. She has both challenged and supported me, and I am grateful to have had the opportunity to work with her.

I am also indebted to the other members of my supervisory committee, Dr. Ellen Badone and Dr. Jeremy Stolow. I have had the opportunity to learn from them during courses and while writing this thesis. Their care and support in all areas of my academic life has been invaluable.

The assistance I have received from the Social Sciences and Humanities Research Council, and from the department of Religious Studies at McMaster has been crucial to the completion of this thesis.

Finally, I would like to thank my past teachers and professors, who have prepared me for this experience, and my family and friends, who have supported me throughout.

## Table of Contents

Introduction	...1
Chapter 1: Religious Constructions of Islam	...18
Chapter 2: Constructions of Islam as a Culture	...40
Chapter 3: Frameworks Contributing to Constructions of Islam	...70
Conclusions	...87
Bibliography	...93

### **Introduction**

In 2003 Ontario, Canada became the focus of heated national and international debate when media sources reported that the government would establish *shari'a* law in the province. While media reports greatly skewed the actual nature of the legal systems in question, intense debate sparked by the issue revealed considerable public anxiety over the presence of Islam in Canada. The debate, generated by the announcement of a Muslim organization that it would establish a *shari'a* court in Ontario, centered on the use of religious law in private dispute arbitration. While religious communities had been legally arbitrating disputes in the province since 1991, it was the increasing prominence of the use of Islamic law in a Canadian context which drew public attention and furor. Members of the general public, the media, and numerous non-governmental organizations engaged vociferously in the debate. The discussion over religious arbitration in a secular legal system touched on broader issues about the relationship of church and state, and the regulation of private disputes solved outside of the courtroom, yet it focused heavily on the use of Islamic law in particular. Thus the debate exemplifies the acute anxiety felt by many Ontarians over issues of multiculturalism, pluralism, and the limits of religious tolerance.

The government appointed commission headed by Marion Boyd, which canvassed Muslim and non-Muslim Ontarians for their perspective on the issue, lies at the center of the debate. Boyd's 2004 report, "Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion" recommends the continued use of religious arbitration, though with some safeguards in place. A government document aimed at presenting the findings and

recommendations of the commission to a wider public, this report encapsulates many of the ideas and attitudes prevalent among Ontarians on the issue of religious, and specifically Muslim, arbitration practices. Boyd's report is not an academic study but a public document which contains popular assumptions about religion, Islam, and Muslims. The report is thus a valuable indication of some of the most fundamental and uncritically considered assumptions about Islam currently at work in government policy and public opinion, both among non-Muslim and Muslim Ontarians.

My project in this thesis is to uncover the primary models of Islam that Boyd's report constructs, and relate these constructions to their larger contexts. A critical reading of the report reveals two constructions of Islam which at first appear contradictory. The first treats religion as a static entity distinct from culture, while the second expands religious identity to the point that it becomes a culture itself. After outlining each, I suggest that these definitions are the product of the two overlapping contexts in which the report is embedded. The first context is a Canadian public space, and the second a transnational and globalizing space.

The first definition of Islam, which I explore in chapter 1, is a narrow construction which treats Islam exclusively as a religion. In doing so the report presents Islam as an essential and unchanging set of rules and beliefs, and does not account for the heterogeneity of "islams"<sup>1</sup> cited in anthropological work. Such a normative construction strictly separates a static and universal religion from the shifting local manifestations of

---

<sup>1</sup> The scholarly "islams" model will be explored in more detail in chapter 1. I use it here to signify the diversity, not just of Muslim experience, but of multiple formations of Islam.



culture.<sup>2</sup> This definition of Islam as contained in the report is primarily identifiable in terms of what the report fails to include: key trends in scholarship and thinking about Islam and important nuances.

The second and more complex construction of Islam, which I investigate in chapter 2, treats religious identity as a marker of cultural difference. As opposed to the first formulation, that presents a certain understanding of Islam in its failure to attend to key concepts, this formulation actively constructs Muslims as immigrant and other-than-Canadian<sup>3</sup>, and as opposed to both Canada and the West. In this model religious identity replaces all other dimensions of identity, notably ethnicity, despite the fact that ethnographic work on Muslims in Canada stresses multitudinous and competing components of identity. This tendency is particularly potent in the construction of the vulnerable Muslim woman. When Islam becomes a marker for national, ethnic, and linguistic difference, religious identity becomes identified with cultural identity.

In chapter 3 I suggest that these two definitions of Islam are consistent with their contexts. I draw parallels between each of the two definitions of Islam, and each of the contexts in which the report is embedded- Canadian and transnational. The definitions of Islam contained in the report draw on these two frameworks and maintain familiar conceptual categories which render Islam and Muslim identity more easily understood

---

<sup>2</sup> Throughout this document I will refer to “normative” studies of Islam, based on Asad’s usage of the term (Talal Asad, *The Idea of an Anthropology of Islam*, Washington, D.C.: Georgetown University Center for Contemporary Arab Studies: 1986). This term indicates the construction within the literature of an essentialized view of Islam that does not account for variation beyond the non-orthodox ideal.

<sup>3</sup> I use the term ‘other than Canadian’ throughout this document to signal the exclusion of Muslims from the Canadian narrative. This term is intended to indicate the ways that the report constructs Muslims as not fully members of the country in which they live, and the mutual exclusivity of the national identity “Canadian” from the religious identity “Muslim”.

and accepted by the public. The first framework I outline is the construction of Islam in a local Canadian context, and in particular popular narratives of religion and multiculturalism.<sup>4</sup> The normative construction of Islam in the report, which treats Islam as an abstract and universal entity, corresponds to the popular conception of religion in Canada. The second construction of Islam as an all- encompassing ethnic, linguistic and cultural identity treats Islam as one culture in a multicultural context. The clear fit between the two constructions of Islam and the Canadian categories of religion and multiculturalism suggests that the report draws on familiar Canadian conceptualizations in its presentation of Islam, in order to render it more easily understood by the Canadian public. Boyd's construction of Islam maps onto Canadian conceptions of multiculturalism, and thus Islam becomes a cultural identifier in its construction as a static and all encompassing identity.

The second framework is a globalizing, transnational context which casts Islam as neo-ethnic identity. Olivier Roy (2004) describes the ethnicisation of Islam through globalization, in which religious identity becomes ethnic and cultural identity. The process of ethnicisation involves abstracting a pure religion devoid of cultural markers, which corresponds to Boyd's first normative construction of Islam. This abstracted, essentialized religion is then stretched into ethnic marker by applying a common Muslim culture to all people of Muslim background (Roy 2004:126). Ethnicisation in this form

---

<sup>4</sup> Although the report and the debate on religious arbitration are localized in the province of Ontario, the representation of Islam that I investigate here can apply to a larger Canadian context. I deal with popular conceptions such as religion and multiculturalism which apply to the Canadian situation as a whole. Similarly, many people, in their contributions to the Boyd report, speak as Canadians as opposed to Ontarians. Thus, throughout my investigation I speak at times about the debate in Ontario, but more widely about the construction of Islam in Canada.

corresponds to the second construction of Islam which conflates religious, ethnic, and cultural identity. The close correlation between the two constructions of Islam, and the two step process reveals that, in addition to drawing on a Canadian framework, Boyd's report is also embedded in a transnational framework of ethnicisation.

Thus I conclude that the two constructions of Islam the report constructs are not in conflict, but are a product of their respective contexts. Boyd's report constructs Islam in such a way as to draw on local Canadian categories while also engaging in the transnational discourses. These contexts are not merely the backdrops for a discussion of religious arbitration, but deeply affect the way Canadians understand and engage in this debate, and which contribute to the construction of Islam as a neo-ethnicity. In my concluding section I briefly draw attention to the work that these constructions of Islam do in perpetuating Canadian and transnational frameworks, and the possibilities for thinking beyond them.

Before turning to an analysis of the construction of Islam in Boyd's report, I will situate it in the larger debate over religious arbitration, and consider its usefulness, as a public government document, in this academic discussion.

#### Alternate Dispute Resolution and the Religious Arbitration Debate

Since 1991,<sup>5</sup> the Arbitration Act of Ontario has allowed for private personal law disputes to be arbitrated according to religious law. Arbitration officially involves the appointment

---

<sup>5</sup> Before 1991 parties were also allowed to choose their own arbitrator, however the system was standardized in the 1991 Arbitration Act (Marion Boyd, "Religious Arbitration and Family Law in Ontario" [Religion and Citizenship Public Lecture Series. Munk Centre for International Studies, University of Toronto, Toronto, ON. 10 February 2006]).

of a neutral third party to determine the outcome of a dispute between two parties. The Arbitration Act of Ontario, a provincial expression of the federal Uniform Arbitration Act, ensures that in cases when two parties agree to have their dispute arbitrated, they are legally held to the decision of that arbitration (Boyd 2004:11). The involved parties commit to an arbitrator and contract that they will abide by the decisions of this arbitrator regardless of the final decision. Thus, in arbitration parties agree “on a process, not on a result” (Boyd 2004:9). Arbitration thus avoids the formal court system, which often benefits disputants by reducing costs and ensuring privacy (2004:10). This formalized method of resolving disputes outside of the formal court system is known as Alternate Dispute Resolution (ADR).

As a process, arbitration maintains a unique position straddling civil society and government. Under the Arbitration Act, disputants can appoint any person as a third party arbitrator, so long as that person is considered neutral (Boyd 2004:12). Furthermore, the disputants can ask that the arbitrator reach a decision based on any legal system, so long as both parties agree to this system at the outset of arbitration (2004:12). Although this provision was originally intended to allow for flexibility in arbitration using provincial laws from outside of Ontario, it has been used to justify the use of religious law in the arbitration process (2004:12-13). In this sense the process of arbitration is entirely private and situated in civil society. However, the government is also involved in arbitration insofar as the Arbitration Act supports the process of arbitration by providing court appointed arbitrators when requested, and provides rules for the arbitration process (2004:10). Most importantly, the government allows for arbitral awards to be enforced

through civil courts (2004:10). That is, if one party does not fulfill an arbitral award, the other disputants can appeal to civil courts on the basis of contract violation (2004:13) to force the payment of the award. This occurs with the provision that the nature of the award falls under Canadian law, as “parties cannot lawfully agree to break the law” (2004:13). Thus arbitration, and the fulfillment of arbitral awards, also lies very much within the realm of governmental and legal systems.

The Arbitration Act depends on the agency of citizens to activate it; the law operates when parties bring a grievance to the courts. Arbitration applies to civil, private matters, not to criminal cases. Thus, “the state does not have agents going throughout society looking for wrongs to set right” (Boyd 2004:9) but depends on citizens activating justice systems on their own behalf.

Arbitration applies in private, civil disputes between two parties. The government cannot be a disputant in the arbitration as in criminal cases. As a provincial act, the Arbitration Act cannot apply to legal issues that are under federal jurisdiction, such as civil marriage. Similarly, arbitration cannot bind parties that are not legally capable of entering into a contract, such as children (Boyd 2004:14). Other kinds of arbitration, such as internal commercial disagreements and labour disputes, are also excluded by the Arbitration Act (2004:12). Yet the Act applies to all cases which it does not exclude, and is thus largely applicable beyond these major exceptions (2004:12).

Given this system, religious law has entered the arbitration system because parties have elected to use religious officials as their neutral third party arbitrators, and to have them decide on cases in light of religious law. Christian, Jewish and Muslim groups have

thus utilized the Arbitration Act, usually to decide on cases of religious marriage / divorce and inheritance.

The province of Ontario adopted the Arbitration Act in 1991, and Christian, Jewish, and Muslim groups used it to arbitrate private disputes according to religious laws with little public debate. However the Act and the issue of religious alternate dispute resolution became the focus of significant public attention in 2003 when the Islamic Institute of Civil Justice (IICJ) announced that it would offer these religious arbitration services in the form of a “*sharia* court” that, according to the founder, “good Muslims” would be obligated to use (Boyd 2004:3).

The IICJ is a project spearheaded by Syed Mumtaz Ali, President of the Canadian Society of Muslims. Ali, a lawyer in Canada since 1962, stresses his lifelong education in both Western and Islamic law as the foundation for his work with the IICJ. Ali formed the IICJ to advocate for Muslim religious law in Canada, which it has been doing since the adoption of the Arbitration Act in 1991 (S. Ali “Why?”: 1). The IICJ appeals to the Canadian Charter of Rights and Freedoms on the grounds of religious freedom and multiculturalism, as well as on the Arbitration Act, to support its bid for a Muslim court of arbitration (“Why?”:1). The court is necessary, claims Ali, because “one cannot consider oneself a Muslim... unless one adheres to the guidelines, counsels, principles, beliefs and practices that are related to human beings through the Qur’an and the Prophet Muhammad” (“Why?”:2). Thus Ali stresses the court as a way for Muslim Canadians to fulfill their religious obligations under secular legal provisions.

Two brief points of clarification are necessary at this point regarding the IICJ's claim to be a '*shari'a* court'. The first is the nature of the court as an arbitrator according to '*shari'a* law'. The second is the nature of the court itself.

The IICJ claims that arbitration would occur under *shari'a* law. Conventional understandings of *shari'a* treat it as a legal code that is "the expression of the will of Allah manifested in his guidance of Muhammad and preserved by the community in their scripture, the Qur'an" (Waines 1995:63). Historically, religious scholars derived the law from sacred sources, the Qur'an and the Prophet's deeds and sayings, through a process of exegesis and collective discussion (1995:63-64). By the medieval Islamic period the process of jurisprudence gave rise to the four main legal schools in the Sunni tradition (Hanafi, Maliki, Shafi'i, Hanbali), while other branches maintained their own versions of *shari'a*. Even at this most conventional level, the existence of several legal schools complicates any conception of a single, standardized Islamic law.

Beyond differences between the various legal schools, *shari'a* is implemented in a variety of ways. While some suggest that interpretation of Islamic law ended in the 10<sup>th</sup> century (J.N.D. Anderson 1959:14), social historians have demonstrated that interpretation has continued to maintain *shari'a* as an open and flexible legal system, especially in its relation to women's affairs (Tucker 1998). Tucker asserts that to understand *sharia* is to understand the rulings "of muftis in local, specific, concrete contexts with flexibility and independence of judgment" (Tucker 1998:184). Looking at the specifics of each court case reveals that the *shar'ia* as an abstract legal body is not completely representative of what may have happened in a specific time or place. Some

historians explicitly state their focus on the practiced forms of law as opposed to the theoretical, suggesting that laws and their interpretation during the Ottoman Empire were not as standardized as may first appear (Sonbol 1996:10-11). These studies demonstrate that *shari'a* is a fluid concept that is interpreted in widely varying ways.

This dynamic, contested nature of *shari'a* is clearly visible in the Canadian debate over religious arbitration. Nowhere in the debate is the term '*shari'a*' sufficiently defined, and the participants in the discussion use it without specifying the meaning of the term. Thus public commentators, individual citizens, respondents to the commission, and Boyd herself all speak about *shari'a* in varying ways, without acknowledging the discrepancies between them. Boyd does provide a brief overview of the term '*shari'a*' in the report, noting its metaphoric meaning as "the path to water", and the confusion that the term generated during the review (2004:10). Yet the report ultimately fails both to convey the variety of interpretation possible in understanding *shari'a*, and to provide a general definition of the term which guides her analysis and recommendations.

The failure to standardize exactly what the IICJ, Boyd's report, and media sources meant in debating the use of '*shari'a*' law contributed greatly to public confusion about the nature of the arbitration courts. Yet while the different interpretations of *shari'a* affected the ways parties understood and discussed religious arbitration, a standard definition of *shari'a* is not necessary for the implementation of the IICJ. The IICJ built a case for *shari'a* law on the legal allowance for parties to decide what guidelines would be employed in arbitrating a dispute. Thus, the issue is less about standardizing a specific



form of *shari'a* law in a court system than about allowing parties to choose to adhere to the IICJ's version of *shari'a* when participating in its arbitration services.

A second issue in the formation of the IICJ is its nature as a court. Public perception of the IICJ envisioned a religious court parallel to the existing Canadian legal system (Boyd 2006). However, in point of fact, the IICJ more closely resembles a business (Boyd 2006). First of all, the IICJ would deal with arbitration of disputes on a voluntary basis, not as a provincial judiciary court. As a for profit organization, the IICJ would allow Muslims to buy memberships to the court which would then motivate them to use the court to arbitrate future disputes (Boyd 2004:3). While the IICJ used the language of a religious court to market itself, it would have acted as a business organization that simply expanded the already existing practice of arbitration, and would not have formed a separate court system, nor have legally coerced Muslims to participate in it.<sup>6</sup>

The announcements of the IICJ caused the Arbitration Act generally, and the use of Muslim personal law in religious arbitration specifically, to become subjects of intense Canadian public debate. Many Muslim and non-Muslim Canadians objected vociferously to the use of Muslim legal practices, especially regarding the perceived harm that could be done to women under this system (Bakht 2005, Mallick 2004, Namazie 2004). A media frenzy, often involving gross misunderstandings and misconceptions about the scope and nature of religious arbitration, ensued (Boyd 2006). Citizens of Ontario and

---

<sup>6</sup> This is not to say that Muslims might not have felt pressured to make use of the court; indeed, the primary objection to religious arbitration, especially raised by feminist organizations concerned about women's free choice in accessing the courts, was that Muslims may have felt obligated to use the courts on religious, moral, or social grounds (Boyd 2006, see also discussion of women in chapter 3).

Canada began “contacting their local MPPs, the Attorney General and the Minister Responsible for Women’s Issues” (Boyd 2004:5). The Premier of Ontario asked Attorney General Michael Bryant and Minister Responsible for Women’s Issues Sandra Pupatello to investigate the issue (2004:5). Bryant and Pupatello appointed Marion Boyd to canvas Ontarians for their concerns and feelings about religious arbitration. Following the commission, Boyd recommended in favour of the continued use of religious arbitration, though she suggested some safeguards be put in place.

Following Boyd’s recommendation that religious arbitration continue, public furor increased. In 2005 Ontario Premier Dalton McGuinty struck down the Arbitration Act, discontinuing any allowances for religious law, and declaring “one law for all Ontarians” (Ministry of the Attorney General 2005a). On February 15, 2006, the Ontario Government passed the Family Statute Law Amendment Act, on the grounds of “protecting those who choose to arbitrate their family law matters” and “to ensure that the rights of all women are protected” (Ministry of the Attorney General 2006:1). The Amendment integrates the private arbitrations into the Family Affairs Act, and under this “legislation resolutions based on other laws and principles- including religious principles- will have no legal effect and will not be enforceable by the court” (Ministry of the Attorney General 2006:1). This has effectively ended the official debate about religious arbitration in Ontario, at least for the present.

Marion Boyd's Commission and Report

I focus on the report written by Marion Boyd based on her consultations with Ontario citizens regarding religious arbitration. Written by a non-Muslim government official, the report presents the results of extensive consultation on the issue of religious, and primarily Muslim, arbitration in family law disputes. As a document intended for the public, the report is a powerful example of the way Ontario represents itself to its citizens, and indicates a crystallization of many prevailing constructions of Islam in Canadian public space.

Boyd has participated extensively in the Canadian government as a Member of Provincial Parliament representing the Ontario New Democratic Party and is well known for her work with women's issues. She served as the Minister for Education (1990) and was also responsible for Women's Issues (1991). Boyd became the first woman and first non-lawyer to hold the position of Attorney General in 1993. Since leaving government Boyd has worked as a business consultant and mediator. Her qualifications for investigating the use of religious arbitration thus lie in her extensive experience with women's issues, the variety and depth of her familiarity with provincial government processes, and her personal experiences as a mediator.

Boyd began her review in the summer of 2004, opening the call to Ontarians to provide their thoughts and opinions on arbitration and the possible effects on vulnerable people. During the review Boyd:

Spoke with close to 50 groups, and spoke with numerous individuals, both in person and by phone... [she] met with representatives from a variety of women's organizations including immigrant organizations and groups dealing with domestic violence, representatives and organizations from the Muslim, Jewish and

evangelical Christian communities, legal organizations and family lawyers, public legal education organizers, scholars, religious leaders, and private individuals... [and] received countless letters and submissions from concerned citizens across Ontario. (2004:5)

Based on these consultations, Boyd wrote “Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion” a 191 page document which reviews the consultations and the relevant aspects of Canadian law and ultimately recommends the continued allowance of religious arbitration. Boyd intends for the document to be a summary of the review process and the factors which led to her recommendation. The tone of the report is formal, but it clearly aims at a public audience, providing basic and straightforward overviews of key concepts, and limiting the use of legal or governmental jargon. In the report Boyd is justifying and explaining to the people she consulted with, and to Ontarians in general, her support for religious arbitration.

The report includes an overview of legal practices under the Arbitration Act (section 2), a summary of the basic forms of family and inheritance law (section 3), and a discussion of “constitutional considerations” (section 5). It includes a summary of consultations, which integrates and thematizes the main issues that consultants raised about arbitration (section 4). Boyd identifies key themes raised by her contributors, including objection to arbitration in family law disputes, objection to religious and particularly Islamic law, and support for religious family law. These broad themes organize the collection of quotations that Boyd presents from the written submissions from and conversations that she has had with Ontarians. In her analysis (section 6) of the issue, Boyd considers factors such as political identity, national history, domestic

violence policy, and the impoverishment of women and children in terms of how they relate to issues of religious arbitration and to the consultations conducted by the review.

Several key figures are featured in the report. These organizations and individuals have taken the strongest, and most fully articulated, position on religious arbitration. Those speaking in favour of Muslim arbitration include, first of all, Mumtaz Sayed Ali and the IICJ, along with sister organization Dar-Ul-Qada, whose advocacy for Muslim religious courts sparked the public debate. Also important are several feminist organizations speaking out vociferously against the use of religious, especially Muslim, law. These include: the International Campaign Against Shari'a Court in Canada, headed up by Homa Arjomand, and their submission of a "Petition Against Sharia"; the National Association Of Women and the Law, and the submission "Family Arbitration Using Sharia Law: Examining Ontario's *Arbitration Act* and Its Impact on Women"; and the more moderately positioned Canadian Council of Muslim Women who submitted "Review of the Ontario Arbitration Act and Arbitration Processes, Specifically in Matters of Family Law Applicability of Sharia/Muslim Law in Western Liberal States" (Boyd 2004: 154-156).<sup>7</sup> The report quotes numerous organizations and individuals throughout, and this brief list is certainly not an indication of the scope of the review. However these major contributors provide extensive responses to the issue of religious arbitration, and Boyd cites them frequently and at length.

---

<sup>7</sup> Note that not all Muslim reaction against arbitration is from a feminist standpoint; the Muslim Canadian Congress also opposes religious alternate dispute resolution, on the grounds that it segregates the Muslim community from the larger public (Boyd 2006).

Based on the consultations and the analysis, Boyd ultimately allows for the use of religious arbitration. However, she outlines forty-six strong recommendations which she feels will safeguard the process against many of the dangers her consultations revealed. In doing so Boyd addresses the concerns of those opposed to religious arbitration in eight key areas: legislative, involving issues of proper consent to arbitration (2004:133); regulatory, to ensure that parties properly understand the nature of arbitration (2004:135); mandatory legal advice (2004:137), public legal education (2004:138), community development (2004:141) and training for professionals (2004:139) to ensure that all participants are as educated as possible about the process; and oversight of arbitrations (2004:140), to ensure that vulnerable people are protected. Throughout, as the title indicates, Boyd stresses that her purpose in coming to a conclusion has been to ensure that vulnerable populations are protected within the legal framework while allowing a reasonable degree of individual freedom (Boyd 2006).

The structure and content of the review as a government report make it a fruitful ground for academic inquiry. The report, at 191 pages, is unable to provide a complete and nuanced exploration of every relevant aspect of the issue of religious arbitration. In fact its purpose is to simplify and make digestible for a wider public the esoteric legal concepts, complex government policy, and extensive consultation data that played into Boyd's recommendation. It is necessarily a simplification, and as such it can be useful to scholars. As a simplification the report boils complex concepts and categories down to their most basic form, building from an assumed foundation of shared knowledge. The report presents categories such as 'religion' in their most basic and most widely

understandable form; scholars can thus explore these constructed categories to uncover the shared assumptions underlying them.

Furthermore, the content of the report provides a glimpse at the ways Ontarians are representing themselves to their provincial public, in particular on the issue of religion, and Islam, in public space. The report consists of a variety of organizations and individuals responding to the issue of religious arbitration. Participants intended their comments as contributions to a public government document and debate. Thus they constitute not just a range of perspectives on the issue at hand, but a collection of the multiple ways that Ontarians are (re)presenting Islam. This is one means through which the imagined community of Ontario constructs and represents itself. Such representation is particularly interesting in terms of the ways the report constructs Islam, as the public struggles to understand and situate what is alternatively construed in the report as a religion, a culture, and an ethnic identity. Because Boyd's report is a public document, and not an academic study, it provides powerful crystallization of prevailing ideas about Islam at work in Ontario today, and an example of the ways in which Muslims and non-Muslims are (re)presenting Islam to a diverse Canadian public.

In this introduction I have contextualized Boyd's report and considered its usefulness as an academic source. In the following chapters I will lay out the two constructions of Islam present in this report, and relate them to Canadian and transnational frameworks. I begin with the normative construction of Islam as a religion.

### **Chapter 1: Religious Constructions of Islam**

The first distinct construction of Islam in Boyd's report is a normative and narrow definition of Islam as a religion. This construction does not recognize geographically or historically specific forms of Islam. While the report accounts for individual variations among *Muslims*, this does not extend to recognizing variation within *Islam*. Instead, a normative view emphasizes a static and dehistoricized version of Islam as an abstract religion. Such an abstraction constructs Islam as distinct from the lives and particularities of its adherents, and downplays the effect of identifying characteristics such as language, gender, and ethnicity on religion. In this chapter I will present Boyd's construction of Islam alongside current anthropological literature on the subject in order to emphasize the normative and exclusive nature of Boyd's construction. I suggest that Boyd's presentation of Islam is monolithic and abstract. Citing variation on an individual level, as differences among Muslims, instead of addressing its effect on the religion itself, does not respond to recent scholarly models which propose multitudinous islams. Finally, by referring to the muddy category of culture, Boyd excludes specific and local practice from her understanding of Islam, directly contradicting anthropological work which seeks to blur the line between religion and culture and thus recognize local and fluid forms of Islam.

#### **Normative Constructions of Islam in Boyd's Report**

Recent theory in anthropology has worked against normative constructions of Islam. This body of work is diverse and composed of multiple viewpoints and approaches. However it is cohesive in its recent response to models casting Islam as a discrete entity separate



from its manifestation in the lives of adherents. Talal Asad cites early work on Islam by scholars such as Ernst Gellner as representative of the approach of many “anthropologists, Orientalists, political scientists, and journalists” (1986:2). Gellner, like the genre of scholarship his work represents, constructs an essentialized Islam located in and synonymous with the Middle East (Asad 1986:3) that expresses “a scriptural state of mind” (Asad 1986:20). This literature, like the Boyd report, constructs Islam as a single monolithic whole, based entirely on the Qur’an and the theological principles and practices derived from it. Recent anthropological studies of Islam work against normative constructions in varying ways. Primarily, this anthropological work turns to fieldwork and an analysis of lived experience as a way of challenging universalist understandings of Islam.<sup>8</sup>

The normative construction of Islam in Boyd’s report is largely a result of exclusion and omission. Boyd simply does not account for the role of Islam as changing, fluid, or heterogeneous. The report repeatedly addresses Islam in normative terms, generalizing one particular version of Islam as if it is a universal experience shared by all Muslims. That is, the report, insofar as it refers to Islamic belief or practice, tends to universalize and generalize Islam across time and space. Thus, while different Muslims may interpret the Quran in various ways, according to Boyd Islam remains made up of “universal principles compelled in civil laws” for Muslims (2004:66). Similarly, despite

---

<sup>8</sup> This response generates normative assumptions and patterns of its own. Lila Abu-Lughod notes the new ‘prestige zones’ of anthropology, Morocco and North Yemen (“Zones of Theory in the Anthropology of the Arab World,” *American Review of Anthropology* 18 (1989): 279), and Arjun Appadurai questions the anthropological focus on the small over “the complex, literary, and historically deep” (“Theory in Anthropology: Center and Periphery,” *Comparative Study of Social History* 28 (1986): 357).

the fact that there are numerous and overlapping understandings of what *shari'a* is, Boyd suggests that Muslims are as a group obligated to follow it (2004:62). Not only does this suggest that there is a universal message contained in Islamic scripture and practice, it places emphasis on text as determinant for legal questions, as well as a very inflexible conception of what Muslims are and are not allowed to do. As for the situation of Islam in Ontario, Boyd explicitly mentions that “there appears to be little tolerance in many [Muslim communities] for religious heterodoxy or differences of opinion” (2004:93). Such an opinion emphasizes the construction of Islam as monolithic and static.

Boyd’s report constructs a normative definition of Islam by presenting a monolithic Islam existing above and beyond the role of religion in every day life. The report does not address the ways that Islam, as a product of a specific community, is shaped by and responds to the particularities of that community. Thus, while Boyd acknowledges forms of difference that exist among Muslims, such as questions of authority or individual experience, this does not extend to recognizing different islams. Boyd’s report represents a number of voices from within and outside of the Muslim community in Canada, who hold a vast array of positions regarding the debate over religious arbitration. However despite this multiplicity of voices, what is startling about the report is the extent to which diversity is downplayed when it comes to considering the construction and experience of Islam as a religion.

The report does recognize difference on two separate levels: the various formal differences between major Muslim schools; and the variety of positions Muslims hold

regarding religious arbitration. In these instances, it is not Islam which differs depending on the individuals who make it up, but only their identifying characteristics as Muslims.

The report acknowledges differences between the separate branches of Islam practiced in Canada and around the world. One section of the report, which includes a discussion of the Ismaili Conciliation and Arbitration Boards, gives a fairly detailed account of the different branches of Islam. Boyd writes that “unlike the Sunni Muslims, who hold that each individual is responsible for his or her own interpretation of the will of Allah, the Shia recognize the authority of hereditary Imams” (2004:57), drawing a distinction between the two major branches of Islam. Furthermore, “the Ismailis recognize the authority and the hereditary succession of His Highness Prince Karim Aga Khan, the 49th Imam in a direct lineal descent from the Prophet Muhammad through his daughter Fatima and son-in-law Ali” (Boyd 2004:57). With this description, Boyd is not only differentiating between Sunni and Shia branches of Islam, but referring to the smaller Ismaili tradition. Yet the description remains based on a difference in recognizing authority and leadership between the branches. The report’s discussion of the various legal practices of Islam maintains the distinction, differentiating between “the six canonical books of *hadith* of the *Sunni* rite, and the four canonical books a century later of the *Shi’ia* rite” (Behiery in Boyd 2004:42). In this instance, as in other relevant places, Boyd’s report is careful to acknowledge the existence of branches and distinctions within Islam, though only in the most cursory fashion.

Beyond explicitly differentiating between the various branches of Islam, the report makes an effort to represent a diversity of Muslim voices. Indeed, the nature of the

project is to survey numerous viewpoints existing in Ontario on the issue of religious arbitration. This includes the various positions of Muslims in Ontario. Submissions from Muslim organizations and individuals emphasize that there is no one position within the Muslim Canadian community regarding religious arbitration. One extreme end of the spectrum of opinions is represented by the Muslims of the IICJ, whose '*shari'a* court' sparked the recent debate. The other position is represented by groups such as the No *Shari'a* Coalition, headed by Homa Arjomand and in concert with such high profile Muslim Canadians as Irshad Manji. Even this voice that speaks on behalf of Muslim women is varied by the submission of the Canadian Council of Muslim Women, which takes a more moderate approach to the debate. The Muslim Canadian Congress provides a viewpoint based on issues of multiculturalism as opposed to gender. Other voices include formal religious leaders represented by the Islamic Council of Imams- Canada. All of these organizations represent varied identities and subsequently varied positions in the debate over religious arbitration, and the report presents them all as valid representations of the Muslims in Canada.

In these instances, the report goes to considerable lengths to explore and represent the different branches of Islam and the diversity of voices within the Muslim Canadian community. However, while the Boyd report is careful to consider the diversity of the Muslim Canadian community in some ways, it altogether ignores the effects of important issues of ethnic and linguistic heritage on Islam.

While the report recognizes the basic branches of Islam, it does so in a way which still allows normative conceptions of Islam to be predominant. The report treats the

differences between Shia, Sunni, and Ismaili Islam, as noted above, as the result of different forms of leadership internal to each community. This is certainly one of the fundamental differences between the branches. However the report fails to recognize that differences between branches can run much deeper than a question of leadership; the varying branches of Islam maintain different legal schools, practice different rituals, and form religious communities separate from one another. Thus the branches of Islam are not only structurally distinct but involve differences in practice and experience. The report notably does not identify the different experiences that would arise out of the various branches of Islam in terms of dealing with religious arbitration, or even consider how a Sunni Muslim might respond to the use of arbitration in a way that is different to a Shia Muslim. Indeed, the Ismaili case study outlined previously functions as a representative example of 'Muslim Arbitration', and while the report provides background on the Ismaili tradition, it does not acknowledge that being Ismaili limits the ability to generalize about Muslim ADR as a whole. Thus according to the report, while there are numerous mosques in Ontario associated with different branches of Islam, and even operating in "total independence from one another", they remain linked by basic beliefs (Shaikh in Boyd 2004:43). This perspective implies that while there are indeed different branches of Islam, they differ only in the structural terms of how they define legitimate leadership.

Furthermore, while the report does go to great length to recognize that there are different opinions held by members of the Muslim Canadian community, there is virtually no discussion of the main factor of difference within the community and how it affects religious life. While academic literature about Muslim Canadians stresses ethnicity as the

greatest factor affecting the identity and experience of Muslims in Canada, there is literally no mention of it in Boyd's report, and certainly no acknowledgment of the ways different ethnic groups might experience, practice, or construct Islam.<sup>9</sup>

Boyd's construction of Islam can be situated in the anthropological literature, where the issue of defining 'Islam' has long been a matter of debate. Much of this academic literature is characterized by an attempt to understand the relationship between the local and various islams described by ethnographic work and the overarching tradition of Islam which they claim to share. Early, normative studies of Islam treat it solely as a text based religion that spans the world in a generally continuous form (see Smith 1963, in Bowen 1992:656). These studies concentrate on the search for an Islamic "essence" (Eickelman 1981:252) which would describe what it is that various manifestations of Islam share and which can be distilled as the real form of the religion. The model positing an essential Islam casts those local or variant aspects of the religion which do not conform to the definition as corruptions, and does not view them as viable manifestations of the tradition.

Robert Redfield's (1956) model of the Great and Little Traditions takes strides towards acknowledging the validity of local religious traditions. Redfield recognizes in major world traditions the continued presence of a Great Tradition defined by orthodox and scholastic standard, and distinct from the Little Traditions, those local practices of the masses (1956:26). Redfield describes the dialectic between the two forms of religion, with the Great Tradition affecting the Little through the process of parochialization, and

---

<sup>9</sup> I return to this assertion in chapter 2. See pages 54-58.

the local Little Traditions the overarching Great Tradition through universalization (1956:31). Applied to the case of Islam, this model is helpful because it recognizes the importance of the scriptural, orthodox forms of Islam in shaping local variances of the tradition without condemning those Little Traditions as corruptions of a true Islam. This is already distinct from Boyd's report, which does not acknowledge a series of various Little Traditions affected by an overarching form of Islam, but addresses only the Great Tradition of Islam and assigns local practices to culture.

Early anthropological work stressing the diversity of Islam uses this Great/ Little tradition model. Clifford Geertz' Islam Observed juxtaposes Islam as it manifests in the tribal, rigid atmosphere of Morocco with the syncretic Indonesian form (1968:7-12). Geertz' work provides a foundation for the anthropological literature by showing that 'Islam' in two places means two different things, linked only by the identification as Islam (1968:54) and not necessarily by reference to a specific set of texts, rituals, or even beliefs. Yet at the same time as he works against a monolithic concept of Islam, Geertz presents the religions of Indonesia and Morocco as variations on a static core. For Geertz this core is scripturalism, an increasingly dominant "scholastic, legalistic, and doctrinal" Islam (1968: 62). In Geertz' formulation scripturalism is that Great Tradition which is exerting an increasingly strong influence over local, Little Traditions. Indeed, the increasingly powerful influence of scripturalism is, for Geertz, blurring the lines between local forms of Islam as they lose "their sense that their dominance is complete and their position is secure" (1968: 60). Scripturalism is important in this model because it stresses the role that the Great Tradition plays in shaping local forms of Islam.

Despite its important contributions, the Great/Little Tradition model does perpetuate some of the problems it seeks to solve. Some recent scholarship critiques this model for the way it dichotomizes religious practices and values elitist, textual approaches while downplaying lived experience (see Lukens-Bull 1999:6-8). These critiques can also apply to the normative constructions of Islam in Boyd's report. Recent anthropological literature responds to this Great/Little model with an increasing exploration of the diversity within Islam itself, not just its local manifestations. Studies using these models recognize that supposedly essential aspects of Islam, such as the five pillars, are not universally practiced (Eickelman 1982:18). One extreme aspect of this response is conceptualizing Islam as a collection of islams, in which all culture is local (1982:9). Abdul Hamid el-Zein's work exemplifies this approach, (1977, see also Gilsenan 1982), and advocates for a model in which all culture is local and each form of Islam is as legitimate as another (Lukens-Bull 1999:8).

Several scholars recognize the limitations of the islams model (see Eickelman and Piscatori 1990:19, Kazmi 2004:253). They point out that while it is beneficial for emphasizing the diversity of Muslim experience, it can fail to properly consider what it is that Muslims, or islams, share (Lukens-Bull 1999:10). This is a classic problem of extreme particularism as a response to universalism. The islams model emphasizes difference, but what is to stop further fragmentation of 'islams' from various heterogeneous traditions practiced in different places, to the different islams practiced by women, or by different social classes? Only by studying what islams share can this kind of fragmentation be avoided. In other words, "if the essence of 'Islam' cannot be captured



wholesale, who is to capture the meaning of it at all?" (Kazmi 2004:253). As Lukens-Bull points out, this model's weakness lies in its inability to reconcile the gaps between popular practices and the main shared theological tenets of Islam, such as monotheism (1999:10). Conceptualizing a number of different islams downplays the shared aspects of the faith. It also neglects the dimensions of authority and domination operating across different 'islams' (Eickelman 1981:254). Despite these valid criticisms, throughout my analysis I will refer to the islams model in order to contrast the report's refusal to see beyond the abstracted model of Islam's Great Tradition. I do so to emphasize the differences between local forms of Islam.

The strength of recent anthropological work lies in its challenge to a model focusing on the belief based, scriptural, abstract tradition. Whether working with a Great/Little Tradition or an islams model, the literature considers local manifestations as valid and inseparable from their historical, geographical, and experiential contexts. While scholars debate over specific approaches most move away from essentializing models, towards that end of the spectrum which integrates religion and culture most fully. The academic literature thus provides a powerful critique of Boyd's normative construction of Islam.

#### Religion and Culture in Boyd's Report

The result of the normative and exclusive construction of Islam in the report is a strict separation between religion and culture. Boyd's report is able to maintain an abstract,

universal understanding of religion only by distilling it from the local manifestations of Islam present in Canada and elsewhere, which the report relegates to the realm of culture. Before exploring in more detail the report's treatment of culture, I will draw a distinction between the academic and popular uses of this contested term. The public, media, and participants in the review, and the report itself utilize 'culture' and the related concept 'ethnicity' without critically assessing their meanings. This allows for potential confusion over this key idea, whose use in public and academic discourse overlap but are not identical.

Culture is a uniquely confused and contested concept in academia, referring to groups and to meanings, defended by communities yet denied by academics. The first source of analytical confusion is the multiple and overlapping definitions of culture, and the variety of ways it is recognized and demarcated in anthropology. William Sewell draws attention to an important distinction in the academic use of the concept culture between its use to signify a cohesive community and its reference to the total system of meaning in a society (1999:39). Similarly, Ira Bashkow notes that a distinction must be made when considering a "culture" as a group with some shared identity, between how this group defines its own cultural boundaries and how an anthropologist defines them (2004:445). Such understandings of culture as a shared identity are, Raymond Williams argues, inherently modern, when culture has stretched in its most colloquial understanding from intellectual or artistic accomplishment to mean "an entire way of life- the common way of life of a whole people" (Williams in Asad 1993:249). These

important distinctions help to distinguish between an analytical, academic understanding of culture and an ‘on the ground’ popular meaning.

Given this confusion over the various levels of meaning of culture, some anthropologists have turned away from the term, viewing it as too strictly bounded to capture the fragmented, fluid nature of systems of meaning. Thus Arjun Appadurai suggests an “adjectival” construct of culture, stressing its “comparative dimensions, and [orienting] us to the idea of culture as difference, especially difference in the realm of group identity” (1996:13). Such an understanding of culture, insofar as it is a recognition of differences “mobilized to articulate the boundary of difference”, overlaps with ethnicity, “the idea of a naturalized group identity” (1996:13).<sup>10</sup> This imaginative construction links the two concepts, though culture reaches beyond ethnicity in that it “does not depend on the extension of primordial sentiments to larger and larger units in some sort of unidirectional process” (1996:14).

Appadurai cleanly synthesizes the similar uses of culture and ethnicity for constructs of group identity in his formulation of the ethnoscape. Key characteristics of ethnoscaping include that it is often deterritorialized (1996:33-34, 47), as shared identity does not correspond to a geographic space, and that it is perspectival (1996:33, 46), differently bounded from different perspectives. Linked to Benedict Anderson’s (1983) imagined communities and extended to an imagined world, ethnoscaping are not real communities defined by their similarities and easily discernible from other ethnoscaping

---

<sup>10</sup> As with ‘culture’, various overlapping popular and academic understandings of ‘ethnicity’ exist. Because ‘culture’ plays a greater role in the popular discourse surrounding arbitration, I focus on it here. However a similar analysis of the term ethnicity could be fruitful.

(Appadurai 1996:33). They are formed on the basis of perceived, imagined community or culture. This characteristic of imagination is what allows the ethnoscape to be drawn differently by different people, depending on how they imagine the shared identity within the confines of their social context. Nonetheless, as with both culture and ethnicity, the formulation is focused on the ways groups define themselves against one another. Appadurai's formulation of the ethnoscape is useful to my discussion of Boyd's report, because it addresses the overlap in culture and ethnicity, terms which are used interchangeably in this popular context.

As an extension of this tendency to view differences in Islam as a function of the identity of Muslims, as opposed to as variations of Islam, the report assigns difference in practice to culture. This dichotomizes religion and culture. Most recognized variation in religious practice or belief among Muslims is assigned to cultural as opposed to religious differences. This includes discourse surrounding *shari'a*. Boyd notes that often Imams making decisions in Islamic law are based on "cultural traditions and may be in direct contravention of Ontario and Canadian law" (2004:61). Assigning the responsibility for *shari'a* decisions to "cultural traditions" suggests two things. First, that *shari'a* and Islam are assumed to be universal and constant, and variation from this constant Islam is a result of the incursion of culture into the religious realm. Thus the characteristics and identity of individual Muslims are confined to 'culture' and divorced from the effect they have on shaping religion. Second, there is a sense in which culture, though it remains unexplored and undefined, retains a perjorative connotation. It is cultural traditions which are in contravention of Canadian law. Here the report constructs cultural traditions and

Canadian law as mutually exclusive opposing categories, the first associated with an other-than-Canadian, stereotyped Muslim community, and the second with real Canadian practices, codified not in culture but in law.

This tendency to blame culture for the negative consequences of *shari'a* extends beyond an assessment of variation between Muslim practices and into assigning responsibility to culture for any negative aspects of *shari'a* to the position taken by the Dar-Ul-Qada, who support the IICJ, and insist that,

part of the social mandate of the Organization includes taking steps to address the cultural oppression of women, children, and any other kind of social injustice. Our position is that the Organization is committed to addressing the cultural issues of social injustice which led to the misapplication of the *Shari'a* in the past. (Boyd 2004:63)

Here, it is not only variations in the application of *shari'a* which are assigned to culture, but specifically negative applications that are perceived as “misapplications” based on culture. Similarly, Wahida Valiente states,

Over the centuries, the plight of the Muslim family and, in particular Muslim women, in most Muslim countries, is not due to any deficiency in Islamic intellectual, philosophical or ideological thought. On the contrary, the deficiency is in the implementation of basic Islamic principles of equality and justice...To continue to perpetuate these traditionalist views on gender relationships harbors the potential for even greater physical, psychological and emotional harm. (Boyd 2004: 98-99)

This statement reflects the themes elaborated above, first that harmful views on issues such as gender are an outcome of local traditionalism as opposed to religious tenets. Furthermore, the statement reinforces the normative and universal construction of Islam as based in “intellectual, philosophical and ideological thought”, and as opposed to practice or experience, standard across time and space. Consequently the statement

privileges a formulation of Islam as an abstract set of standardized “basic Islamic principles” over local practices.

Despite the efforts to recognize a diverse array of viewpoints within the Muslim community, Boyd’s report implicitly perpetuates normative constructions of Islam. This is not to say that Islam in Canada is unaffected by powerful scripturalist or orthodox forms of Islam. Local forms of Islam are of course shaped, and even largely determined, by prevailing religious structures. Yet by failing to acknowledge the effects local forms of diversity have on Islam, and looking only to cultural variation among Muslims, the report constructs Islam as a static and abstract formation. The result is that the report ultimately employs a vision of Islam as distinct from its surrounding cultural context and devoid of the variety and diversity that occurs on a cultural level.

Scholarly literature treats the trend towards abstracting an essential Islam as very problematic. In fact, much recent anthropological work actively challenges these assumptions and strives to blur the lines between religion and culture, and to localize and particularize Islam in key ways. Most recent scholarship challenges normative assumptions by emphasizing Islam’s specific historical and geographical manifestations and the importance of looking beyond texts to understand them.

Recent anthropological work on Islam challenges the notion that the essential tradition has remained unchanged since its inception almost 1500 years ago, or that a universal and static form of Islam exists independently of the various communities that practice it. Recent work challenges dehistoricization in ethnographies that take care to chart the changes and continuities in Islam over time and note the effects that historical,

geographical, and cultural factors have in shaping religion. Lila Abu-Lughod's fieldwork among the Awlad 'Ali Bedouin suggests that changing forms of women's resistance indicate changes in power structures (1990). Abu-Lughod charts how resistance around issues of wedding rituals (1990:51) or women's mobility (1990:48-49), is "backing [women] into wider and different sets of authority structures" that remain historically specific (1990:52). Furthermore the role and form of Islam in the community is entirely historically dependent, representing "a kind of double resistance to two conflicting sets of demands- the demands of their elders and the system of face to face kin-based authority they represent, on the one hand, and on the other the demands of the national Westernized and capitalist state" (1990:52). Only in a specific, post-colonial and globalizing context could this particular system become manifest, and Abu-Lughod's work emphasizes the crucial role that historical context plays in forming tradition.

M.E. Combs-Shilling provides a similarly historically bounded analysis of Islam in Morocco. Combs-Shilling suggests that in Morocco patriarchy, monarchy, and religious ideology intertwine and support one another. This interdependence is a result of the economic and political crisis of the sixteenth century when the monarchy formed around "cultural basics", including religious ideology, allowing it to serve as a central element of Moroccan collective identity (Combs-Shilling 1989:131). Far from conceptualizing Islam as a dehistoricized constant, Combs-Shilling links crucial religious rituals to specific political purposes. For instance, the King solidifies his political power through local ritual celebrations of Muhammad's birthday, which establish the meaningful category of 'ruler' (1989:168). Here, cultural meaning buttresses political

reality. This understanding and practice of Islam is only relevant because of its specific historical context.

By exploring the historical context of a particular expression of Islam, anthropologists look beyond the religious tradition and into other social institutions and actions of the time. Abu-Lughod and Combs-Schilling challenge the dehistoricized perspective of Islam in favour of an exploration of historically bounded and contextualized religious expressions. These ethnographies seek to explore the complex relationships that determine the shape of Islam within a given context, not to define an abstract religion that exists beyond it.

Abstracted and essentializing understandings of Islam do not in fact portray a common or universal form of the religion. Instead, they describe the practices of a specific time and place as normative and applicable to the entire Muslim world. Privileging the practice of Islam in the Middle East as the legitimate and universal form of Islam establishes a centre/periphery model which casts Islam elsewhere as mere regional variation. As Asad notes, this geographic essentialism also suggests an implicit comparison of an essentialized Muslim Middle East with Christian Europe (1986:2-3).

Recent anthropological work recognizes local, non- Middle Eastern forms of Islam as equally legitimate practices. Muna Ali's (2007) work on the Muslim community of Phoenix, Arizona emphasizes the claims of the community to a distinct and authentic tradition of Islam, although the United States exists on the periphery of the Muslim world. Ali's informants emphasize the legitimacy of Islam as it is practiced in the United States, among immigrants and their children from a variety of ethnic and cultural backgrounds



(2007). Thus, although America is geographically distant from the dominant Middle Eastern formulation of Islam, one young woman notes that “basically the real Islam is in the United States” (M. Ali 2007).<sup>11</sup> In this instance, Ali’s scholarly project is to acknowledge and explore formations of Islam that exist far from the dominant geographic Muslim world. In addition to the scholarly project, Ali’s informants are themselves emphasizing the validity of their religion over and above the forms of Islam that are practiced in other parts of the world. Thus both anthropologist and informants are working to recognize the ways Islam in the United States is affected by both the local context and by dominant understandings of Islam.

Recent anthropological literature on Islam also challenges the conceptualization of Islam as based entirely and solely on the authority of the Qur’an and recorded *hadith*. In the study of Islam historically “there has been the almost unquestioned assumption that written texts are more central than oral traditions or other forms of authority” (Eickelman 1990:14). This emphasis on text affects scholarly interpretations of Muslim theology and accounts of Islam as a whole. Such accounts base their analysis “largely on scripture and on a relatively narrow range of Middle Eastern social forms. These forms are assumed to play out, more or less accurately, a single, scripturally embodied Islamic culture.” (Bowen 1992:656). Thus, all aspects of the tradition, including social formations, institutions, and ritual are seen through a textual lens.

---

<sup>11</sup> Ali’s informants particularly value what they perceive as a separation of what is “truly Islamic” from cultural variation, one aspect of the process of ethnicisation which I investigate further in chapter 3. (Muna Ali, “Authoring Self in Post 9/11 Muslim American Identity” [Panel Presentation, Society for the Anthropology of Religion, Phoenix Arizona, 15 April 2007]).

Richard Antoun's work on modesty in Arab villages (1968) exemplifies this textual approach. Antoun explores the way that Islam, "exclusive, reforming, absolute in its ideals" (1968:694) constructs ideals of modesty. Antoun derives his understanding of modesty from Quranic quotations, and compares it to the local "cultural" construction of modesty within the village. In this formulation, local cultural formations "accommodate" the essential Islam encapsulated in text (1968:680-687). As Nadia Abu-Zahra points out, Antoun selects Quranic texts and legal provisions without any attention to the contexts in which they apply (1970:1080). Furthermore, she charges that it is "methodologically misleading to try to understand the code of modesty in illiterate Arab Muslim villages by dubious interpretation of Quranic verses or archaic literary Arabic words" (1970:1079). Antoun's construction restricts Islam to its textual form, whereas Abu-Zahra's critique suggests that even when a text is central to a tradition, it remains a part of a complex social context. This does not ignore the importance of text, but reframes its role in the community, and draws attention to the importance of context.

John Bowen questions the assumption that scripture and text are indicative of how religion is actually practiced. In his comparison of ritual in Muslim communities of Sumatra and Morocco, Bowen demonstrates that the shared textual base of these two communities does not translate into similar ritual practice or experience. Bowen challenges not only classic Islamicists such as W.C. Smith but contemporary scholars for their assumption that ritual is a "generic realization of a single scriptural voice" (1992:657). While the Gayo of Indonesia focus the social aspect of the Feast of Sacrifice on transmitting benefit to deceased relatives (1992:660), Moroccans focus on reinforcing

the legitimacy of a political regime (1992:668). These rituals are thus far from simple enactments of Qur'anic myth (1992:667), and Bowen demonstrates that text, and its role in determining religious action, is far from static across different manifestations of Islam.

Recent scholarship challenges the purely textual approach with the recognition that texts, as part of a community, are affected by social contexts outside of religion. Eickelman explores the relationship between text, manifested in literacy and ability to read scripture, and other social factors (1992). He suggests that increasing access to texts affects the power elite religious practitioners hold within a community, the level of objectification on the part of practitioners and their concern with orthodoxy, and the commitment of the local community to a larger sense of *ummah* (1992). Such anthropological work blends ethnography and theory to create a literature that challenges prevailing normative models of Islam to promote instead a model integrating religion and local culture. Thus, the literature challenges the dehistoricized, textually focused construction of Islam in favour of a localized multiplicity of islams. These may be influenced by and related to other forms of Islam, but are also products of the contexts and communities in which they develop. By challenging normative studies and embracing a model of multitudinous islams, this anthropological work blurs the line between religion and culture. The scholarship construes various differences in religion as forms of diverse islams, and not as local cultural manifestation of a universal religion.

The tension between religion and culture which anthropological literature tries to address is also visible within the Muslim community. "What is new in Western Islam is the crisis of the cultural reference in itself. Practising Muslims are embroiled in a struggle

less to promote a minority culture against a dominant one than to define their own relationship with the very concept of culture” (Roy 2004:121). As religious communities are increasingly concerned in modernity with religiosity, the ways in which they are religious, the distinction between religion and local culture, or the negotiation of a pure religion uniting different cultures, becomes increasingly important. The Boyd report is consistent with this theory, as Islam is constructed as universal and essential not only by Boyd’s outsider voice, but in the comments presented from Muslim individuals. This is perhaps most strikingly evident in the position of the Dar-UI-Qada outlined above, where the very organization that is leading the drive for Muslim religious arbitration constructs Islam in universal and essentialist terms.

Boyd’s report draws a strict line between culture and religion, and in associating experience and practice to the realm of culture, Islam remains normatively associated with abstractions of belief, philosophy, and intellectual work. The report clearly marks the line between Islam as religion and as culture throughout, consistently holding culture responsible for the variation and negative consequences of religious practices. Importantly, the separation of religion and culture in Boyd’s report directly opposes recent anthropological literature. Where recent anthropological work stresses the integration and inseparability of Islam and the way it is practiced in any given historical and geographical context, Boyd’s report emphasizes an essential Islam existing above and beyond local manifestation. Thus Islam in the Boyd report takes on very particular constructions as a religion distinct from its cultural manifestations. A contrasting construction of Islam explored in the following chapter presents a very different vision,

conflating religious, ethnic, and linguistic identities and equating Islam as a religion with a Muslim cultural identification.

## **Chapter 2: Constructions of Islam as a Culture**

A second formulation of Islam in Boyd's report drastically expands religious affiliation beyond conventional definitions of religion. Whereas chapter 1 deals with a narrow and abstract conception of Islam, this second formulation explores the exaggerated importance given to Muslim religious identity in Boyd's report, and the related conflation of religious, ethnic, and cultural affiliations. The report stretches religion into an all-encompassing identity by defining Muslims as other than Canadian. Although ethnographic literature stresses the ambivalent nature of Muslim Canadian identity, Boyd's report repeatedly constructs Muslims as immigrants, and goes on to juxtapose Muslim with Western identity. This construction depends on an assumption that Muslim religious identity defines an individual as not Canadian, ignoring and subverting other key aspects of identity, such as ethnicity. The exclusion of ethnicity, and the insistence on Muslims as immigrants, is most clearly evident in the report's construction of Muslim women.

### **The Muslim Community in Canada**

Muslims have had a presence in Canada since the end of the nineteenth century, when young men from farming communities in Lebanon, Syria, Morocco, Albania and Turkey journeyed to North America in search of work (Haddad 1994:71). The growing Muslim community in Ontario specifically, and in Canada more generally, is closely tied to the history of immigration in the region, as many Muslims have immigrated to Canada or are second or third generation Canadian. Three waves of immigration brought Muslims to

Canada, increasing the size and makeup of the Muslim Canadian community. The first “pioneer” generation refers to those who immigrated to Canada before the Second World War, generally the young, unskilled males noted above who arrived in search of employment opportunities (S. Abu-Laban 1991:14). The period from the end of the Second World War until 1967 brought “transitional families” to Canada, a cohort comprised largely of educated, multilingual men and their families (1991:18). The transitional cohort, the first to place as highly visible leaders in the Canadian Muslim communities, tended to socialize by class rather than religion (1991:20). This cohort primarily consisted of Palestinian, Egyptian, Iraqi and Syrian Muslims (S. Abu-Laban 1989:52). Finally, since the 1967 liberalization of immigration laws, “differentiated families” have come to Canada, and make up the largest portion of Muslims in Canada and the United States (S. Abu-Laban 1991:23). With the opening of immigration laws, the cohort is comprised of Muslims from all over the world. This largest cohort is characterized by expanded support from religious institutions in Canada (1991:23) and an increasing tendency to differentiate on the basis of religious, rather than ethnic or class, identity (1991:21). The Muslim Canadian community is also made up of many Canadian-born Muslims, both the children of these cohorts and converts.

According to the 2001 Federal Census, 2.0% of the Canadian population identifies as Muslim. The 580,000 Muslims in Canada have a median age of 28 years old, a young community that will see a major increase through birth in the near future. Over half of the Canadian Muslim population resides in Ontario (Statistics Canada 2001). The Muslim community in Ontario today consists of over 350,000 people, of a total provincial

population of just over 11,000,000 (Statistics Canada 2001). Nearly a quarter of the community was born in Canada, while about half arrived in Canada in the last 15 years. Muslims are now the largest religious minority in Ontario, outnumbering Jewish, Buddhist, Hindu, and Sikh populations (Statistics Canada 2001).

This large community, made up of Canadian born individuals and those with a rich history of immigration from various parts of the world, is extremely diverse and complex. Muslims in Ontario have a wide variety of ethnicities, and gender, class and educational affiliations (see B. Abu-Laban 1995, Gibb and Rothenberg 2000, Hamdani 1983), factors which shape the experiences of Muslim Ontarians.

Although Boyd attempts to take into account the vast differences in terms of citizenship, gender dynamics, and diversity, the text and the quotations provided from contributing organizations, reveal quite a different trend. Overall, there appears to be a latent tendency to construct Muslims as excluded and in opposition to Canada, as a unique and bounded ethnic and cultural, as well as religious, group.

#### Constructions of Muslims as Other Than Canadian

The report constructs Muslims as other than Canadian in two related ways, by conflating the categories Muslim and immigrant throughout the report, and by creating the mutually exclusive categories Islam and the West. These constructions occur frequently in the report, in both the body of the text written by Boyd and in the comments from Muslim and non-Muslim respondents whom she quotes. Interestingly, both the arguments in support of and in opposition to Muslim religious arbitration assume to some extent that



Muslims are not wholly Canadian, or that they necessarily retain an attachment to a culture of origin. Thus the report implicitly plays off of a construction of Muslims as both present in Canada and separate from it, emphasizing the distinction and distance between Canadians and Muslims.

The construction of Muslims as other than Canadian has parallels to academic work on Islam in the West. The negotiation of otherness and belonging as it manifests in a Canadian context is similar to Asad's exploration of the simultaneous absence and presence of Muslims in Europe (2003:159). According to Asad, Europe constructs a discourse of tolerance around Muslims which rests on the assumption that they are necessarily excluded from European identity, as something or someone essentially different from the mainstream can be tolerated. Muslims, as they have not shared in the European historical narrative of Christianity, are not considered to be European (2003:166). Thus, Asad concludes that according to European discourse, "Bosnian Muslims may be *in* Europe but are not *of* Europe- and it is for precisely this reason that they should be accorded toleration." (2003:176). As a minority, European Muslims are both part of the European system in which they participate, and separate from it. The designation of European identity excludes Muslims and in so doing establishes a boundary around what is considered a crucial aspect of European identity- Christianity. Furthermore, constructing Muslims as simultaneously part of and different from Europeans allows for greater cohesion on the part of accepted Europeans, allowing them to subvert their own differences in favour of excluding the more radical difference of European Muslims. It is beyond the scope of this paper to argue that Asad's model for the

absence and presence of European Muslims is directly applicable to a Canadian context. However the model is useful for identifying possible resonances between Canada and Europe, the tension between being a part of and different from the mainstream culture. These resonances include the ways non-Muslim majorities conceptualize minority Muslim communities in terms of the tension between presence and absence.

The report acknowledges the Muslim perspective throughout, but consistently constructs it as other than Canadian. This construction is primarily implicit, and is visible in the assumptions that the report makes about Muslims as immigrants. The report constructs Muslim Canadians as immigrants by explicitly assuming that Muslims are new to Canada, and by assuming the need to address citizenship issues in the case of religious arbitration (Boyd 2004:82). Parties both in support of and in opposition to religious arbitration construct Muslims as other than Canadian. I will address each of these aspects of the construction of Muslims as immigrant.

Throughout the report, Boyd refers explicitly to the position of those “immigrating to Canada from around the world [who] come from countries where personal laws, based on religion and custom, were accommodated by the colonizers...” (2004:79). The report employs discourse about immigrants to Canada or new Canadians exclusively in discussion of Muslim religious arbitration, and never in connection with Christian or Jewish arbitration. Indeed, wherever it addresses the issue of Muslim religious law, the report includes language about immigration. Within one page, the report implicitly refers to Muslims as “individuals who come to this country from other lands” (2004:46) and those who “come to Canada to escape personal laws” (2004:46).

Similarly, it is only in the Muslim context that Boyd suggests that we pay attention to the practices of the “country of origin” for Muslims (2004:46). Potential problems the report addresses in specific regard to Muslim religious arbitration include difficulty arbitrating marriages contracted in recent immigrants’ countries of origin (2004:50), and the fear that custody battles may end with children being taken back to the country of origin (2004:101) as a result of arbitration. When Boyd’s report addresses case studies of religious ADR in other countries, she specifically focuses on the situation of Muslims in France and Germany, who are not subject to the laws of these countries unless they are citizens (2004:82). By looking to instances in which the functioning of religious law is dependent on citizenship, the report draws parallels a situation in which the markers “Muslim” and “immigrant” are conflated.

The construction of Muslims as immigrant extends into the positions taken by those both opposed to and in support of the religious arbitration. The position in support of religious arbitration appeals to Canada’s multicultural ethos to support it. This perspective softens the direct conflation of Muslim and immigrant somewhat to refer not to a ‘country of origin’ which suggests being born in a country other than Canada, but a ‘culture of origin’, which suggests identifying with a culture that is not Canadian. The argument for arbitration in the report’s section on ‘multiculturalism’ appeals to the multicultural support on the grounds that “in Canada our identities are formed by the dialogue between our cultures of origin and the cultural influences that surround us” (Boyd 2004:90). The report qualifies this by suggesting that “this will be the case whether we are newcomers to Canada or not” (2004:90), but it remains clear that the distinction is

meant for Muslims, the only religious group identified in the five page discussion of multiculturalism (2004:89-94). This is related to the tendency for the report to classify Muslims as an “ethnic minority” (2004:81, 87), suggesting that the religious identifier is actually ethnic and cultural. Similarly, the IICJ bases its validity on the premise of multiculturalism in Canada. This is not to suggest that Muslims do not make up a legitimate religious minority in Canada, but that the category of religious and cultural minority are completely conflated here, and moreover that an identification of Muslim is presumed to involve an affiliation with a culture ‘of origin’, suggesting immigrant status.

One position opposes arbitration on the grounds of the threat it poses to women’s rights, constructing Muslim women as recent arrivals to Canada. Boyd repeatedly refers to statements, such as those by Homa Arjomand’s “No Sharia” coalition, describing the personal experiences of Muslim women who immigrated to Canada after suffering mistreatment in predominantly Muslim countries. Arjomand argues that these women have ‘escaped’ to Canada to avoid continued gender-based persecution under Islamic law, and that they have a right to protection from the Canadian secular state. Here again, this perspective constructs Canadian Muslims as coming to Canada from elsewhere, in this case to escape the political climate of their home countries. The argument in opposition to religious arbitration is founded on this assumption, that Canadian Muslims are not wholly Canadian, but are attempting to become so in an effort to escape the repercussions of membership in another ethnic or cultural group.

What is remarkable here is not that the report addresses issues of arbitration among new Canadians; of course these issues are relevant to a discussion of arbitration,

and most Muslims are indeed from other countries. What is remarkable is that the conflation is so complete, that there is no discussion anywhere in the report of issues of immigration as they may apply to other religious communities, no explicit acknowledgement of Canadian Muslims whose families have been in Canada for generations, and no questioning of categories such as 'Muslim' and 'immigrant'. The conflation of the two in the report is natural and unquestioned.

The conflation of 'Muslim' and 'immigrant' is more than a case of politically incorrect terminology. While it is true that most Muslims in Canada are immigrants, Boyd's report refuses to acknowledge Muslims in Canada who are not immigrants, or immigrants who are not Muslim. The outcome of such complete conflation is that the experiences of a large number of Muslims and non-Muslims are excluded from the discussion. But more than this, the conflation of these categories draws attention to those Muslims in Canada who can be singled out as different, as not wholly Canadian, and as potential threats to 'real' Canadians. Those Muslims who assimilate completely into mainstream Canadian habits remain invisible both as immigrants and as Muslims. Boyd's report constructs Muslims as immigrant based on their challenge to a dominant Canadian model. Those who assimilate remain invisible and excluded from this understanding of 'Muslim' and from this report.

The construction of Muslims as other than Canadian extends beyond conflating the categories 'Muslim' and 'immigrant' and into a more general perception of difference between Islam and the West. These dichotomizing categories of Muslim and Western are hardly unique to Boyd's document, the arbitraton debate, or Canadian public discourse. A

clash of civilizations model dominates much of the discussion about Islam, setting it up as exclusive from and antithetical to the West and modernity, in both public and academic discourse (see Huntington 1993, Lewis 2002). Such divisions falsely construct the categories of Islam and the West as though they are monolithic and stereotypical wholes, and as though they are two objects of the same kind, which necessarily conflict with one another. These scholars ignore interactions between the two categories on a positive level, the fluidity of the boundaries between them, and the many incongruous exceptions to such a division (such as a Canadian Muslim community, both Western and Islamic).

Boyd's report picks up on the same dichotomy between Islam and the West, although it does attempt to avoid a model that necessitates conflict between the two entities. The division occurs in terms of discourse on Islamic law which the report presents as completely opposed to Western law, characterized by values of freedom and equality. In Arjomand's submission, the practices of a *shari'a* tribunal are established as denying "the Canadian values of equality and gender equity" (in Boyd 2004:47), as well as suggesting that Muslims who use them are "deprived of the many rights people in the west managed to gain" (2004:49). Again, the report does not limit the dichotomization to the non-Muslim perspective, and extends beyond an opposition between *shari'a* and Western law into Muslim and Western categories. In the submission from the Masjid El Noor mosque, Mubin Sheikh is explicit in separating Muslim and Western interests, suggesting that the action the government takes in regards to this issue will determine the path that the relationship between these two parties will take, "a clash of civilizations or an embrace" (in Boyd 2004:65). Here, the division between the Muslim community and

the West is assumed and implicit; all that remains is to determine the character that relations between the two communities will take. A submission from a self-identified “secular humanist” suggests that “Islamic” concepts of personal freedom are “the complete opposite of contemporary western thought.” (Boyd 2004:84). In each of these instances the distance between Muslim and Western thought are constructed and emphasized. Doing so perpetuates the perception of Muslims as immigrant or as not wholly Canadian, for they cannot claim membership in both Islam and the West when the categories are mutually exclusive.

To continually and exclusively construct the Muslim community as an immigrant community is to create and emphasize a difference between Muslims and Canadians or the West, and to treat the religious identity of Muslims as in conflict with their national identity as Canadian citizens. Ethnographic literature on the Muslim Canadian community in Canada addresses these themes, but challenges the assumption that Muslims are somehow not a part of Canadian society. This literature provides a much more nuanced perspective that stresses the ambivalent position of Muslim Canadians who are both Muslim and Canadian, and not exclusively one or the other. Ethnographic work addresses two key themes, the issue of cultural transmission and the feeling of living in two worlds, which encapsulate this tension between being Muslim and being Canadian. Unlike Boyd’s report, which widens the gulf between these identities, ethnographic literature describes the experience of Muslim Canadians who seek to balance the two.

Ethnographic work makes clear that Muslim Canadians struggle with the issues of cultural transmission. Often, this theme of cultural transmission shapes these accounts,

and is a key feature of Muslim experience recognized by both researchers and their participants (S. Abu-Laban 1991, Barazangi 1989, Yousif 1994). This is most clear among participants who claim to be “uncertain” about how to transmit their religious and cultural heritage to their own children (Barazangi 1989:65). This issue is particularly prevalent in earlier literature on Muslim Canadian communities, produced during the 1980s, perhaps a result of the explosive growth in the number of Muslims among immigrants immediately before and during this decade (S. Abu-Laban 1991:23).

Ethnographies often frame cultural transmission as one of the “problems” that immigrant families face on arrival in Canada (B. Abu Laban 1983:84). Studies respond to informants’ claims that in a Canadian context it is more difficult for Muslim families to pass on to children certain crucial aspects of their identity. Much of the literature thus focuses on teenagers born in Canada to immigrant parents, and their experiences in the Canadian educational system (see Zine 2001). Participants identify tangible factors as material for cultural transmission, including a willingness to abide by religious and social customs (such as women’s dress (Barazangi 1989:72-77)), or facility in languages spoken in the home (Barazangi 1990:381). Researchers build on this data to identify a difference between social assimilation, which allows for functioning in the Canadian public, and cultural integration, which precludes the retention of culture from the homeland (Barazangi 1989). This emphasizes the concern that identity transmission among the first generations of Canadian Muslims will be reduced to “socio-religious customs”, leaving behind more meaningful cultural characteristics (Barazangi 1989:67). The result is a widening “cultural” gap between parents and their children (B. Abu Laban 1983:84),



which is only closed via various “mechanisms for preservation” of the original culture (Husaini 1990:17). Muslim Canadians, and ethnographies, return repeatedly to the struggle to maintain a cultural identity through first to third generations, and beyond.

Ironically, although ethnographies regularly analyze affiliations such as religion, ethnicity, class, and gender, the concept of culture as it is used here needs to be clarified. The literature does not critically address the term concept of culture, and although ethnographic, its uses tend to align more closely with the popular uses of the term outlined in the preceding chapter. Within literature on first and second generation Muslim Canadians, the issue of cultural transmission refers variously to the issue of passing on religious beliefs and/or customs, as well as the language, traditions, gender roles and systems of meaning from the country or region of origin. Thus, the issue is not limited to the transmission of religion, but is tangled up with the practices and meanings of other social identifiers. In this sense, the ethnographic literature is similar to the theoretical anthropological literature which sees religion and culture as highly integrated and interdependent, although in this case there is less focus on theoretically defining culture. In these formulations, the respondents’ culture is tied up with their religious identity.

In another sense, ethnographies employ a popular definition of culture. A perspective closely relating religion and culture is at times problematic. The popular use of the term contains a blanket assumption that a number of discrete cultures exist and stand in opposition to one another, and are adopted by children in various forms. By extension, there is a difference between the culture of mainstream Canada and that of the new Canadian families, whether it is religious or ethnic, and an implied struggle over

which of these cultures will be absorbed by children results. The language ethnographies employ in describing the issue of cultural transmission also hints at an implied struggle- the 'cultural gap' and 'mechanisms for preservation' seem to suggest opposition and an ongoing attempt to gain back, and hold on to, ground lost to another culture.

The struggle for cultural transmission links directly to the issue of discrepancy between different spheres of life. As Muslim Canadians struggle to maintain their own cultural identifiers in the face of the Canadian mainstream, their existence becomes split into a number of spheres. Muslims in Canada negotiate their cultural identity differently in each sphere, leading to a discourse about the ambivalent feeling of living in two worlds within Canada.

Ethnographic works detailing the experiences of Muslim Canadians draw distinctions between the social assimilation that occurs in the public realm, and the cultural integration that involves full scale assimilation with mainstream Canadian practices (Barazangi 1989:69). Because families and individuals become integrated only at the level of public social assimilation, they live in 'two worlds' between their home life and public life. Most ethnographies point out the existence of two or three 'spheres' of cultural existence for Muslim Canadians (see Barazangi 1989:69, Quick 1990:121, Moghissi 2003:115). The first is usually the home, the inside sphere in which the culture that a given family identifies with is practiced to the largest possible extent. This may include religious observances, but may also involve ethnic or national customs Muslim Canadians choose to practice, and languages other than English or French may predominate. The opposing outside sphere is that of public life, where Canadian Muslims

participate in non-Muslim mainstream Canadian institutions. Often this sphere includes the place of work. Some scholars include a third, intermediate sphere in this model, that of the community (Barazangi 1989). As an intermediate space, this is a sphere in which families share some cultural identifiers with one another, but not all. For instance, the Muslim community of Canada itself might represent such a sphere, where families gather and share religious affiliation, but perhaps not ethnic identity. The specific character of this intermediate sphere differs depending on the context: for some it includes an ethnic dimension, such as that of the Muslim Arab community (Barazangi 1989:69), and for others it is the broader *ummah* (Waugh et.al. 1983:145-46).

Ethnographic literature treats the ‘two worlds’ model as a challenge. Like the issue of cultural transmission, the tendency to feel like one is living in two worlds opposes the ‘home’ culture of Canadian Muslims and mainstream Canadian practice, suggesting that the two cannot be blended in a satisfactory manner. Private life is radically offset against public life, and again the image of a ‘gap’ between cultures or worldviews applies.

While most ethnographies draw on the model of living in two worlds, the distinction is in many ways problematic. A distinction between home and private life is helpful for distinguishing differences in topical social identifiers such as dress and language. However the literature itself proves that there are many more factors at work in determining identity and belonging beyond ethnic and religious affiliation. Class, gender, sexual orientation, all of these factors affect the ‘worlds’ or spheres a person might inhabit, and their ability to enter or exit each. No person can move between these so

called worlds without bringing the experiences of one into another. Thus, children educated largely in the public realm may develop different conceptual underpinnings than other family members, which will affect their perception of the home life. Other differences also skew how an individual will experience the distinction between these realms. Louise Calkins notes that women are particularly embedded in the private realm, and the disjunction between the private and public spheres is heightened (1991:289-90). Different members of a community will experience the various worlds differently, and this divide is at times fluid and porous, at times a wide gulf.

As with the issue of cultural transmission, both researchers and informants refer to these tensions. Religious leaders such as Imam Abdullah Quick note the difficulty of living in two worlds, going so far as to suggest that the tension creates a feeling of “split personality” among Muslim Canadians (1990:121). These themes, while both prevalent in the scholarly literature, are not abstract models that have been developed to explain Muslim Canadian experience. They are indications of the experience and concerns of both Muslim Canadians and the scholars writing ethnographies.

These ethnographies are marked by an overarching tension between exclusion and belonging. Ethnographic literature focuses heavily on the challenges of Muslim Canadians as people who are both part of and apart from Canadian society. There is a negotiation here between to what extent one is Muslim, and to what extent Canadian. Even the term ‘Muslim Canadian’ implies a tension between two identities, and provides the major narrative along which Muslim Canadian experience is formed and articulated in ethnography.

### Muslims as an Ethnic Group

The tension between Muslim and Canadian identity extends to the assumption that Muslims are other than Canadian. That is, it is by virtue of their “Muslimness” that an individual is considered Canadian or other than Canadian, Western or non-Western. Religious identity is exaggerated in this formulation to extend across all aspects of identity, and as a result other forms of identity, notably ethnicity, are subverted. The Boyd report collapses all forms of difference existing in Canada’s Muslim community under the totalizing category of religious identity. Thus, while the report clearly constructs Muslims as immigrants, it does so on the grounds of religious, and not ethnic or national identity. It thus conflates religious, ethnic, and cultural identity.

Despite the fact that ethnographic work recognizes an ambivalence in Muslim Canadian experience, it does not conflate religious and cultural identity. This work is generally extremely aware of the multidimensional nature of Muslim Canadian identity, and is careful to take into account identifying characteristics such as gender and ethnicity. In fact, an internal debate within ethnographic work deals with whether religious or ethnic identity tends to take precedence in a Canadian context. The debate operates on several levels, between scholars who privilege ethnicity and those who privilege religious identity, and also among Muslim Canadians who emphasize one or the other of their characteristics. Regardless of the position that ethnographers and their informants take on the issue, the fact that the debate exists indicates that all are very aware of the importance of both religion and ethnicity in shaping identity. Such a conflation is certainly not present in ethnographic literature on Muslims in Canada. Indeed, one of the primary

themes in this literature is the discussion of whether religious or ethnic identity takes primacy among Canadian Muslims. While there are ethnographies supporting either side of the debate, what is key is that every ethnography addresses and explores the complex relationship between religious, ethnic, and cultural identity, whereas the Boyd report does not.

Much ethnographic literature is based on case studies that deal with multidimensional characteristics in a Muslim Canadian community, such as “Arab Muslims” (S. Abu-Laban 1989,1991; Barazangi 1989,1990), “Palestinian-American Muslim Women” (Cainkar 1991), or “Muslims in Metropolitan Toronto” (Azmi 1997). Due to the narrow scope, this body of work draws conclusions localized by gender, class, or generation. A second aspect of this literature tracks the growth of the Muslim community in Canada through immigration, conversion and birth (see B. Abu-Laban 1969, 1980, 1983; Haddad 1994; Hamdani 1983) and analyzes the community on the basis of a number of social indicators such as economic position, education, and employment. The work on Muslims in Canada forms a part of a larger field of study geared towards the study of Muslim communities in Western countries, including research on Muslim communities in Britain and the United States (see Gilliat-Ray 1998, Pessar 1995). An attempt to account for the complex, multidimensional identity thus characterizes ethnographic work.

Ethnographic literature describes and analyzes the lived experiences of Muslim Canadians. Instead of theorizing about Islam on a grand scale, this literature is written by or engages with actual Muslims and addresses the issues and concerns of particular

communities. The ethnographic literature tends to focus on the specific experiences of Muslim Canadians, always as members of a community with a specific ethnic heritage. Identity and experience are thus dealt with in highly contextual terms, as dependent on all of the various factors that define the subject of study. Because of this focus on a specific and local experience, the ethnographic literature is more likely to account for variations among Muslim Canadians that cause them to experience the tension between various facets of identity in different ways. That is, in the ethnographic literature identity is treated as complex and investigated as a multi-layered phenomenon. In whatever manner, the effort to untangle religious and ethnic identity is a crucial and recurring aspect of this literature, as it distinguishes between the multiple layers of identity at work for Muslim Canadians, and the diversity within the community.

Some scholarship stresses religion as a unifying factor operating beyond ethnic differences. As Camilla Gibb and Celia Rothenberg assert, “what it means to be Muslim is being transformed from a culturally specific understanding revolving around highly localized practices to a more homogenized, globalized tradition of standardized practices reinforced by other Muslims in Canada” (2000:243). Their work among Harari and Palestinian women in Toronto stresses the solidarity that women in both groups find across national and ethnic ties through their religious identification (2000:243), a condition amplified by the increasing influence of normative forms of Islam in Toronto (2000:254). Similarly, Barbara Metcalf cites religion as primary due to the Muslim conception of the *ummah* which transcends ethnic and national affiliations (1996:10) and Azmi asserts that it is the “religious loyalty” of the Muslim community which unites it

beyond ethnic ties (1997:153).<sup>12</sup> These scholars do not ignore the importance of ethnicity for their informants, but regard religious affiliation as the primary factor in determining identity.

On the other hand, scholars such as Daood Hamdani suggest that ethnic and linguistic similarities “often take precedence over religious bonds” in determining socialization patterns among Muslim Canadians (Hamdani 1983:12). Murray Hogben suggests in his overview of socio-religious behaviour of Muslims in Canada that while religious loyalty may operate within small groups, “language, customs, and views on Islamic matters may clash when there are larger numbers or one predominant group. This has often led previously mixed and mutually tolerant communities to fall apart...” (1994:119).

The relation of ethnic and religious identity is also conceptualized as fluid. Yvonne Haddad suggests that historical context affects identification, with ethnic affiliation paralleling the rise of Arab nationalism in reaction to Ottoman rule (1994:75), and eventually giving way to religious affiliation after the 1973 war with Israel (1994:77). Similarly, for Sharon Abu-Laban, the predominance of ethnic over religious identity fluctuates based on generation (first, second, third, or more generation Canadian) and cohort (the historical period of immigration) (1989).<sup>13</sup> While the predominance of religious or ethnic identity is variable among scholars and their informants, the discussion remains an important issue in most writing about Muslims in Canada.

---

<sup>12</sup> See Haideh Moghissi, “Diaspora of Islamic Cultures: Continuity and Change” *Refuge* 21.2 (2003): 117 for a direct challenge to this concept.

<sup>13</sup> For a similar approach to this issue regarding Muslim Americans, see Mohammad A. Chaichain, “First Generation Iranian Immigrants and the Question of Cultural Identity: The Case of Iowa” *International Migration Review* 31 (1997): 614.



This body of literature not only deals with the issue of ethnicity alongside religion, which I discuss above as a pervasive theme, but recognizes the ways that they can overlap and affect one another, the competing influences of each. Because the ethnographic literature deals with smaller case studies, instead of treating Muslim Canadians as a monolithic group, the conclusions apply in much more specific ways. They prove that, even if religion is considered to be a primary identifier, “Islam is not a meta-culture bounding all immigrants from Islamic societies together” (Moghissi 2003:117). These ethnographies focus not only on the religious identity of the subjects, as Muslim Canadians, but on their ethnic background, gender, age, whether they are immigrants or have lived in Canada for generations, where the community is located in Canada, and how established Muslim and other applicable communities are within the area. In other words, informants express the tension between exclusion and belonging as a result of a number of competing identities that are coming into play at different times and in different situations, sometimes causing a discrepancy between them. Religious identity is just one important aspect of these multivalent identities.

#### Muslims as a Vulnerable Group

Boyd’s report constructs the Muslim community as a vulnerable group, which magnifies the difference between “Muslims” and “Canadians”. This construction is particularly visible in the treatment of Muslim women in the report, where they are continually presented as in need of protection and guidance on the basis of both their religious and assumed immigrant identities, which are conflated in the report. Such a paternalist

construction contradicts the enormous body of literature on the subject, which views Muslim women as agents.

The issue of women's rights has been the most central aspect of the public discussion of religious arbitration. Much discourse surrounding arbitration hinges on issues of gender. This is the case for those involved formally in the debate, as many Muslim and non-Muslim feminist groups entered the discussion specifically to consider how arbitration would affect women (such as the National Association of Women and the Law, and the No Sharia Coalition). It is also characteristic of general public interest and discussion about the issue, as represented in mainstream media (see Mallick 2004). Boyd recognizes from the outset of the report that the issue of gender forms the "single most major objection" to arbitration (2004:48). Correspondingly, the majority of the analysis section of the review focuses on issues of gender (2004:94-108). Throughout the report there is a tension between Boyd's recognition of the agency of Muslim women and the paternalism inherent in treating them as an especially helpless group in need of protection, the repeated and blatant construction of 'the Muslim woman' as vulnerable.

Before considering the mechanics of the construction of Muslim women, I emphasize that the report does not set out only to consider the position of Muslim women. While Boyd states that the issue of gender has been the focus of the report, and while it is clear that Muslim women are the real center of the discussion, the report frames it as a discussion of gender in general. That is, the report claims to explore how religious arbitration might affect women, or religious women, as a whole. The construction of Muslim women specifically is more implicit, based largely in the fact that it is the Muslim

case that is continually cited and explored; the report rarely considers Jewish and Christian women, and other religious traditions are never cited at all. Overall, Boyd's report presents the issue of gender as universally applicable, not based in other identifiers such as religious or ethnic identity. For instance, a section entitled "Impoverishment of Women and Children" considers the ramifications of religious arbitration for women and children without specifying that it is concerned specifically with Muslim women (Boyd 2004:102-103). The section begins with an overview of legal precedent in Canada regarding protection of women and children as those "unable to provide for themselves" (2004:102), and Muslim women are not initially singled out as vulnerable. However, characteristic of the report, after a general overview of the condition of all women, the section considers the position of Muslim women as a specific group (2004:103). Again characteristically, there is no corresponding discussion of Christian or Jewish scenarios. Although the report notes that over half of Canadian women experience violence (2004:95), only Muslim women are singled out as a distinct group.

This construction of Muslim women in Canada as helpless and in need of protection hinges on two assumptions. Each of these assumptions reveals an aspect of how Islam is constructed in a Canadian context. The first assumption is that Muslim women are vulnerable, or more vulnerable, because they are Muslim. This assumption rests on a construction of Islam as an inherently patriarchal religion. The second is that Muslim women are vulnerable because they are immigrant. This assumption is based on a construction of Muslims as other-than-Canadian (as discussed in the preceding section). I do not suggest that there are not Muslim women who fit this description, or that the

quality of life of Muslim women in particular is to be ignored. But by constructing and maintaining this single image of the immigrant, oppressed Muslim woman, the report is perpetuating a stereotype that is applied to all Muslim women.

It is somewhat redundant to note that Muslim women are considered vulnerable because they are Muslim. The stereotype of a Muslim woman as an oppressed and powerless object, whose oppression is manifested in veiling, is at work throughout the report. Under *shari'a*, “young [Muslim] girls are forced to cover themselves from head to foot and are segregated from boys”, and “marriage... is based on a contract... there is little emphasis on an attraction between the two parties” (Boyd 2004:49). Moreover, Muslim women are unaware of their oppression because under *shari'a*, “the harms women suffer not only go unpunished but also go unrecognized as *harms*” (Boyd 2004:98). This is a clear construction of Muslim women as veiled, controlled, and worse, ignorant of their own oppression. Although Boyd’s report insists that it works against paternalist constructions of Muslim women, it maintains that “the Review heard repeatedly that the social and familial context within which Muslim women live, increases their vulnerability and makes it difficult for them to take action to keep themselves and their children safe” (2004:97). In Muslim societies “domestic relationships are legitimately (i.e. naturally and/or divinely) hierarchical... this belief is both derived from and reinforced by *shari'a*... thus gender inequality is acknowledged and justified in religious terms” (Hajjar in Boyd 2004:97). In all of these cases, it is the religious identity of women that makes them particularly vulnerable to harm under religious arbitration.

This focus on the religious identity of Muslim women as causing harm rests on the assumption that Islam is a patriarchal religion. In fact, Islam is referred to explicitly as patriarchal. Poor conditions for women are tied to the Muslim religious tradition “based on a patriarchal model of community and of the family” (CCMW in Boyd 2004:48). Furthermore, “the issue of choice [of legal systems] for women, given the patriarchal nature of Muslim society, is essential to the argument of those opposed to [ADR]” (2004:50). In treating the patriarchal roots of Islam as a matter of course, the report denies the agency of Muslim women.

A number of aspects of the treatment of gender in the report are problematic when placed in conversation with scholarly literature. Certainly, there is strong academic evidence to support the view that Islam is a patriarchal religion (Combs-Shilling 1989). At the same time, many scholars identify the problem of casting Muslim women as lacking agency. Saba Mahmood in particular provides a strong argument that both acknowledges the patriarchal characteristics of Islam and seeks to understand Muslim women as active subjects (2005). Whereas the Boyd report presents the oppression of Muslim women as a patriarchal religious community, Mahmood suggests that the patriarchal nature of Islam does not necessarily mean that women lack the capacity to act for themselves, and that we must delink ideas of patriarchy and agency (2005: chapter 1).

The second aspect of the stereotyping of Muslim women as vulnerable depends on their construction as immigrants. This overlaps with the assumption that Muslims in Canada are other than Canadian. However, it is the intersection of vulnerability as female and as immigrants that the report stresses for Muslim women. As is the case when the

report conflates religious and ethnic identity of Muslims in Canada, the report does not specifically identify Muslim women as immigrant. Instead, whenever it considers the situation of Muslim women, there is a corresponding discussion of the particular threats that are faced by immigrants. Thus, the report assumes that Muslim women “have no way to know what Canadian law is and no idea of the consequences of choosing religious law instead of going through the courts” (Boyd 2004:52). This is because Muslim women have “often” lived under a *shari’a* regime (2004:52). The report makes oblique references about women whose vulnerability is heightened when their parents are from another country, a vulnerability exacerbated because “Muslim countries of origin require a husband’s permission for a wife or children to obtain a visa” (2004:101). In the discussion of impoverishment risks for women and children, Boyd notes that “many people who have immigrated to Canada find themselves here without immediate or even extended families and may not have the familial support that was expected when Muslim laws were formulated” (2004:103), and Muslim women are hindered in their access to legal recourse by “linguistic” barriers (2004:105). In all of these instances what is striking is the ease with which the report presents Muslim women as new immigrants to Canada who are unaware of their legal rights, isolated in a patriarchal immigrant community, and perhaps unable to speak English. While this is undoubtedly characteristic of the status of some Muslim women, it is also undoubtedly characteristic of the status of women from many different religions, including Christianity and Judaism. Yet it is exclusively and repeatedly Muslim women who are singled out as vulnerable on the basis of ethnic or linguistic differences. Boyd claims to explore the use of religious law in

private alternative dispute resolution (2004:5), not only the use of Islamic law, yet time and again the discussion refers exclusively to the case of Muslims, and in particular Muslim women. As discussed in the preceding section, the assumption that Muslims, and by extension Muslim women, are necessarily immigrants is problematic. It ignores the experiences of many Muslim Canadians women who were born in Canada, as well as perpetuating a discourse of difference surrounding Muslim Canadians.

Despite the frequent portrayal of a stereotypical image of Muslim women as oppressed immigrants, there is some recognition of agency and diversity of experience in the report. The report provides a case study of an Ismaili Conciliation and Arbitration Board in Ontario. The membership of the board is gender balanced (Boyd 2004:58), and the services of the board have been accessed by men and women equally over the period of 1998-2003 (2004:59). This example portrays Muslim women as agents who are active in the religious arbitration processes within their communities, both in terms of access and decision making. Similarly, Boyd cites the NAWL position that increasingly, “Muslim feminists and Islamic reformers are asserting that the Qur’an and the example of the prophet provide much support for the idea of expanded rights for women” (2004:99), and the “cultural stereotypes that Muslim women are uniquely or exceptionally vulnerable” by stressing the role of the state in the execution of *shari’a* law (NAWL in Boyd 2004:100). These are important instances because they work against the frequent portrayal of Muslim women as vulnerable and lacking agency. At the same time, their presence reinforces the dramatic focus brought to the identity of Muslim women in the report. In these few instances, the comments serve to make the image of Muslim women

more diverse and complex, and to fight against stereotypical portrayals, but they still involve a singling out of Muslim women as particularly important to a discussion of religious arbitration. As with the normative and stereotypical portrayals of Muslim women, the report does not balance more nuanced constructions with a similar discussion of the position of Christian and Jewish women, let alone women of other traditions, or secular ‘mainstream’ Canadian women. The perception of the Muslim woman as an exception, as a vulnerable case that differs from the invisible mainstream case of ‘women’ in general, is manifest even in these comments.

Muslim women are, as I have shown, routinely assumed to be vulnerable, and are treated as an inevitably vulnerable population not only on the basis of their gender, but more so because they are Muslim and, in this formulation, immigrants. At the same time, the report bases attempts to avoid a paternalistic perspective which assumes that Muslim women, and more generally the Muslim community in Canada, are unable to determine their own affairs and must fall under the protection of those secular forces which are more attuned to “universal human rights”. Thus even while the report attempts to avoid the normative portrayal of Muslim women, and indeed Boyd cites it as a primary reason for her recommendations to allow ADR, the report as a whole reinforces the stereotype of the vulnerable Muslim woman.

In fact, the Boyd report is similar to early anthropological literature that Abu-Lughod classifies as ‘harem theory’ (1989). This theory focuses on women, and indeed is valuable for the efforts it makes to explore the often ignored lives of women. However while harem theory “takes women seriously”, Abu-Lughod critiques it for lack of



theoretical sophistication in arguing against a “vague but unchanging stereotype” of the Arab woman (1989:290). Unfortunately, in the conflation of Muslim and immigrant identities the Boyd report constructs Muslim women as helpless, minority women in need of protection, and in doing so perpetuates the stereotypes associated with harem theory.

Anthropological literature has advanced far beyond such stereotypes. In fact much of the contemporary anthropological literature on Islam seeks to account for gender, and often to challenge traditional constructions of women’s religious experience. In seeking to account for gender, these scholars move beyond harem theory. More recent work in this zone explores women’s agency exercised through resistance (see Abu-Lughod 1986), also noting that too much focus on resistance can obscure a real exploration of power (Abu-Lughod 1990). Recent scholarship challenges harem theory in several ways.

For example, Mahmood’s work among women in *da’wa* movements in Cairo, Egypt, seeks to find new ways of approaching the religious lives of Muslim women (2005). Mahmood challenges not only traditional literature on Islam, and more recent interpretations of Muslim women’s resistance, but widespread Western assumptions about the nature of personhood and agency. She suggests that the embodied religiosity of Muslim women can be determined by forms of agency which involve submission to patriarchal systems. Mahmood disconnects the notion of agency from the practice of resistance, as doing so “presupposes that there is a natural disjuncture between a person’s ‘true’ desires and those that are socially prescribed” (2005:149). She suggests that women demonstrate agency in willing their own submission to socially prescribed norms.

Mahmood does not suggest that abstract aspects of Islam, such as belief, codes of conduct, or scripture are irrelevant, but that they are bound up in the concrete physicality of ritual, of dress, and of ways of being in the world. Mahmood's theory is therefore challenging traditional approaches to understanding gender in Islam on several levels.

In a more extreme example, Unni Wikan challenges assumptions about gender identities in her analysis of transsexualism in Oman (1977). Wikan is moving beyond harem theory by looking to different conceptualizations of gender, femaleness, and maleness. She explores the position of the transsexual, an identity that includes acting in some stereotypically female ways, at other times in stereotypically male ways. Wikan suggests that the social acceptance of the transsexual identity both proves that it is behaviour, and not anatomy, which forms the basis for gender identity (1977:309), and emphasizes the expectations of the female gender identity in accordance with "Islamic ideals" or purity and virtue (1977:318). In this manner Wikan not only challenges constructions of women, but deals with larger constructions of gender.

Wikan's work, like Mahmood's, represents the tendency of anthropological work to question and explore issues of gender in terms of construction, embodiment, and agency. All of this anthropological and ethnographic work is in service of reforming the stereotypes and inaccuracies of harem theory. Unfortunately, the Boyd report, in viewing Muslim women as powerless and in need of protection, remains closer in perspective to harem theory.

In each of these cases the report constructs Muslims as other than completely Canadian, not quite members of the societies in which they participate. In other words, it

consistently portrays Muslims as immigrants and outsiders, and the assumption that Muslims are immigrants, and that they are somehow separate from 'the West' or Canada, is pervasive. Such distinctions conceptualize Islam as monolithic, cohesive, and unchanging over time and space (see chapter 1). Beyond this problematic conceptualization of Islam, such a model casts the positions of Muslims in Canada as paradoxical; by this logic one cannot be both Muslim and Western. Thus a Muslim in Canada is both Canadian, by citizenship, often by birth, perhaps by patriotic affiliation, and other-than Canadian, as a member of a group that is understood as exclusive of the West.

I argue that more than just treating Muslims as non-Canadian, this report subverts ethnic differences in order to construct a monolithic vision of Islam and Muslims. Decisions about the inclusion and exclusion of Muslims in the Canadian sphere or Western sphere are based on this expanded religious identity. The report unquestioningly constructs Muslims as immigrant because "Muslim" becomes an all encompassing marker which separates them from non-Muslim Canadians in religious, cultural, and ethnic dimensions. In this sense Boyd's report opposes the more nuanced ethnographic literature on Muslims in Canada which stresses the multivalent, complex nature of identity.

### **Chapter 3: Frameworks Contributing to Constructions of Islam**

I have demonstrated in the preceding chapters that Boyd's report simultaneously constructs two distinct models of Islam. One, a strict definition of Islam as a religion, presents a normative vision of Islam which strictly separates religion and culture. The second, a totalizing definition of the Muslim community as a vulnerable group, conflates religious and ethnic identities to ultimately define Muslims, and in particular Muslim women, as other-than-Canadian. In neither of these cases does the Boyd report attend to scholarly thought on Islam, or to ethnographic literature on Muslims in Canada. I suggest that far from indicating an inconsistency in the constructions of Islam in Canada, the two definitions of Islam contained in the report are a product of the context in which the document is situated. The ways that the report constructs Islam indicate the larger frameworks in which the report is embedded, in a Canadian and a global context.

The report is a product of a certain time and place, and is influenced by its context. That the report draws on available frameworks and systems of thought is to be expected. I argue here that the definitions of Islam I have described in the preceding chapters, although they appear contradictory, are in fact evidence of the two main intellectual frameworks influencing Boyd's report. The first, local framework is a Canadian system of thought. From this framework, Boyd's report draws on familiar conceptual categories prevalent in popular discourse- religion and multiculturalism- to present Islam in a way which is understandable to those who share the Canadian context. The second and much broader framework is that of a globalizing world and a perspective which frames Islam as a neo-ethnicity.

### Canadian Framework

The first framework on which the Boyd report draws is popular Canadian discourse. The report's construction of Islam draws on familiar Canadian categories of religion and multiculturalism. This conceptual heritage is best revealed in the two understandings of Islam which I have discussed in the preceding chapters: a narrow and normative construction of Islam as strictly religious, and an expansive, all-encompassing ethnic, linguistic, and cultural marker. These different constructions correspond directly with the popular categories religion and multiculturalism. Note that the parallel is not between the report and scholarly explorations of these categories, but between popular constructions of Islam in the Boyd report and understandings of religion and multiculturalism at work on the ground in Canada. I will distinguish carefully between popular and academic definitions of religion and multiculturalism, because it is crucial to recognize that as a public document the report is drawing on uncritical and popular understandings of these concepts.

Religion is a particularly slippery concept in both academic and popular discourse. Understanding and constructing the category of 'religion' has long been the project of scholars, and there is certainly no consensus on the issue in academic circles today.<sup>14</sup> While religious studies constitutes a field of inquiry, religion is defined differently between and among the different disciplinary approaches to this field. Within the anthropology of religion, even now major disagreements exist between regarding religion

---

<sup>14</sup> For a comprehensive discussion of the development of the term 'religion' and its study in the West, see Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam*, [Baltimore: Johns Hopkins University Press, 1993].

as a question of meaning or as a system of power. The classic discussion between Clifford Geertz and Asad regarding religion and its relationship to culture encapsulates this debate. In his foundational essay “Religion as a Cultural System”, Geertz suggests that religion is a system of symbols that functions to solve humanity’s “problem of meaning” (1973: 104). Such a conception aligns clearly with a construction of culture as “an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate and develop their knowledge about and attitudes toward life” (1973:89). As one such pattern (1973:99), or one “perspective” from which an individual can relate to the world (1973:110), religion relates to culture through key ideas of meaning and symbol.

Asad critiques Geertz’s conceptions of religion and culture, calling for a perspective which does not privilege meaning and instead looks to discourses of power. He criticizes Geertz for insisting “on the primacy of meaning without regard to the processes by which meanings are constructed” (Asad 1993:43), namely processes of power by which certain factors are included and excluded in the construction of meaning (1993:35). Furthermore the search for an essence of religion existing separately from other institutions or social systems “invites us to separate it conceptually from the domain of power” (1993:29). Religion, and religious symbols, must not be treated as distinct systems of meaning separate from discourses of power in social, political, and economic institutions: “the authoritative status of representations/discourses is dependent on the appropriate production of other representations/discourses; the two are intrinsically and

not just temporally connected” (1993:31-32). Thus for Asad the relationship between religion and any other form of social discourse is one of embedded relations of power. Just as constructions of culture and religion have multiple reference points, we perceive the relationship between religion and culture in a variety of ways. At the academic level, the contrast between the models Geertz and Asad provide for religion / culture illustrates the wide variety of possibly analytical approaches to these constructs.

While the academic debate over the conception of ‘religion’ continues, popular constructions of the term in Canada exist alongside it. Paul Bramadat accuses Canadians of a widespread “religious illiteracy” (2005:5) because they give little sustained thought or analysis to the concept of religion. Bramadat suggests that this illiteracy is the result of four key factors existing in Canada in the last fifty years: the decreasing prominence of the Catholic Church after Quebec’s Quiet Revolution; the increasing awareness of atrocities committed by clergy and religious officials towards the aboriginal population and associated mistrust; the expanding tendency for individuals to meet their religious and spiritual needs outside of institutions; and most importantly, the multicultural ethos which does not privilege any particular religion in a public context (2005:4). These factors have ensured that while no particular religion enjoys prominence in the Canadian public sphere, Canadians have not had the opportunity for exposure and reflection on religion in any comprehensive manner. Yet, as Reginald Bibby’s studies have shown, over 80% of Canadians continue to identify as Christian (2002:85). The result is that popular “meta-narratives” about religion in Canada exclude non-Christian religious formulations (Bramadat 2005:5). Such an unreflective popular understanding of religion

among most Canadians means that Christian worldviews and assumptions heavily influence the concepts. Popular understandings relegate religion to the private sphere and are inflected with Christian notions of belief, premised on the church as a religious institution. Boyd's report, in its construction of Islam, draws primarily on this unreflective popular understanding of religion.

The Canadian concept of multiculturalism relates to constructions of culture, which plays a major role in the discussion about religious arbitration and in the report itself. Unlike culture, multiculturalism is a somewhat more tangible and concrete concept, linked to government policy and national identities. However the concept is far from straightforward and multiculturalism also has multiple meanings and referents on an academic and a popular level.

In Canada, multiculturalism is a contested category beset with "conceptual ambiguity" (Li 2003:148). In his comprehensive overview of Canadian multiculturalism, Peter Li identifies the use of the term to refer to a "Canadian demographic reality" of heterogeneous ethnic and racial composition, the social changes resulting from this diverse population, including privileges granted to minority groups, in academic discourse, the "cultural pluralism" which opposes cultural hegemony and universalism, and the "vague government policy" enshrined in the Constitution of 1982 (2003:149-150). This multilayered construction of multiculturalism, Li notes, means that in any discussion of multiculturalism different parties may be operating with different assumptions about the subject of debate (2003:150).



Canada introduced its official multiculturalism policy in Canada in 1971 under then Prime Minister Pierre Trudeau. The move to multiculturalism destabilized the claim of French Canadians to a bilingual and bicultural national narrative, as expressed in the 1963 Royal Commission on Bilingualism and Biculturalism (Li 2003:151). The move was largely symbolic and referred to a celebration of private cultural diversity “wherein members of ethnic groups would be expected to conform to Canada’s official languages in public institutions, but would be encouraged to pursue an ethnic culture and lifestyle of choice in their private life” (Li 2003:151). In the 1980s discourse and policy on multiculturalism shifted from cultural retention to combating racial inequity (Li 2003:154). The Multiculturalism Act of 1982 officially enshrined multiculturalism as “a fundamental characteristic of Canadian society, ...[involving] the government promoting both cultural retention and social equality” (in Li 2003:156). During the rise of multicultural national identities, proponents of the policy suggested that the “‘other’ ethnic groups” in Canada, those outside of English and French heritage, oppose the bicultural narrative of the nation and support multiculturalism (B. Abu-Laban 1969:20). They advocated against the bicultural narrative in favour of a policy “for the preservation of ethnic and linguistic identification and for the creation of a delicate balance between the values and interests of various ethnic groups” (1969:20). Since 1982, the Multiculturalism Act and the wider project of official multiculturalism have remained ambiguous, as the government promotes the concept as a narrative base for the country, but does not clearly outline the substantive aspects of the policy (Li 2003:158).

Despite this ambiguity at a governmental policy level, multiculturalism is an important aspect of Canadian identity. Canadians view multiculturalism as a “social value” (Li 2003:159) championing racial and ethnic pluralism. Canadians, in a popular context, contrast their perceived pluralist society with the “assimilationist” view of the United States (2003:149). Eva Mackey identifies multiculturalism as a key factor in the imagined community of Canada. Imaginings “of tolerance of diversity, imaginings which consider cultural and racial heterogeneity an integral part of national identity” are a critical part of the self identity of Canadians (Mackey 1995:408). The increasing diversity of Canadian society since the 1970s has brought the issue of multiculturalism to the forefront of the national narrative and self identification, and it remains an important popular concept.

Although multiculturalism exists primarily as government policy and popular construct, it also has an academic interpretation. Asad, in his explorations of multiculturalism in Britain, asserts that opposition to multiculturalism lies not in the perception that it “freezes cultural differences...or that it sanctions oppressive customs. It lies in the problematic connection between learning about difference and learning to become different; and, as in all learning, that connection is fraught with issues of power and authority” (1993:262). Asad questions who controls discourses of multiculturalism, who is included in such discourses, and who is excluded. Ghassan Hage takes this line of questioning one step further in arguing that multiculturalism is simply another manifestation of power by the dominant, white, majority (1998). Hage notes that in Australia “certain cultural forms of White-ethnic power relations remained omnipresent

in a multicultural society, and were reproduced by the very ideologies of cultural pluralism and tolerance that were supposed to transcend them” (Hage 1998:15). For Hage (1998), multicultural narrative and policy does not alter fundamental power relations in a society, but simply shifts the form of discourse from ‘bad racism’ to ‘good multiculturalism’, while allowing a white majority to continue exerting power. Both “‘racists’ and the ‘multiculturalists’ shared in the conviction that they were, in one way or another, masters of national space, and that it was up to them to decide who stayed in and who out to be kept out of that space” (Hage 1998:17). Clearly, there is a wide gulf between popular and academic formulations of multiculturalism.

The two constructions of Islam I have described in the preceding chapters correspond to these two key themes in Canadian popular discourse. The close correlation between the definitions and these concepts suggests that Boyd’s report draws on these categories in its construction of Islam, and seeks to understand the Muslim community in a way which is consistent within the already existing Canadian framework.

On the one hand, the normative understanding of Islam I have outlined in chapter 1 aligns with popular understandings of religion existing in Canada. This overlap is unsurprising and is evident in the report itself, when it refers to the Supreme Court ruling on freedom of religious expression as “worship, practice, teaching and dissemination” (Boyd 2004:74). In this model, ‘religion’ is one aspect of identity which is centered around issues of belief or worship, and practice. This corresponds to the construction of Islam as a set of beliefs to be adhered to – the “universal principles” that the report cites (Boyd 2004:66)- and practices to conduct – such as adherence to *shari’a* law. As such the

report constructs Islam in ways that fit easily into familiar, popular constructions of religion in Canada. Emphasizing Islam as a system of belief and prescriptive action, and downplaying the interaction of religious identity reinscribes popular conceptions of religion which relegate it to the private or at least personal sphere.

On the other hand, the second definition of Islam expands far beyond the strict boundaries of 'religion' as popularly understood, expanding it to include all aspects of identity. In this way Islam maps onto Canadian understandings of multiculturalism. Multiculturalism generally refers to a "social value" recognizing ethnic and racial pluralism in Canadian society (Li 2003:159). The Boyd report identifies Muslim dispute resolution as a multicultural issue, juxtaposing identity in a "cultural or religious" community with "citizenship in a state" (2003:92). What is interesting about Boyd's construction of Islam is that it is made to map onto this definition, as Islam becomes a representative term assuming ethnic, and linguistic as well as religious identity. Thus Islam becomes a cultural identifier in the sense that it sees Islam as a static and all encompassing identity.

Boyd's report, then, draws on a popular Canadian framework in its constructions of Islam. By doing so the report constructs Islam in a way that is palatable to Canadians, as both a definable religion, and as one culture in a multicultural country, as an ethnic or linguistic or political minority as well as a religious one. Understanding Boyd's construction of Islam in this manner means that the discrepancies between the versions of Islam contained in the report are not incompatible, but consistent in light of an already existing popular framework. Therefore Boyd's report is not creating new conceptual

categories in its construction of Islam, but fitting it into an existing framework which the public can accept as familiar and understandable.

### Ethnicisation

The second major framework influencing the Boyd report is much broader and more nebulous than Canadian popular discourse. Unlike the relationship between Boyd's report and the Canadian framework, which involves drawing on already established popular categories, here the Boyd report engages in an active process. I refer to this framework as transnational to indicate that it is largely global and exists beyond national and political boundaries. In this sense the framework is not discourse concentrated in a particular geographic location, but a current trend in the way Islam is perceived globally. Roy's (2004) theory of ethnicisation is one aspect of his larger theory on the ways Muslim communities react to and participate in a globalizing world. Roy situates this ethnicizing process in the practices of dominant cultures in Western countries containing Muslim minorities, and points out that the model is then spontaneously appropriated by Muslim communities (2004:126, 133). In this sense the model is transnational, accounting for the ways ideas and constructions are connected, transferred, and transformed in complex ways around the world. This specific aspect of the theory refers to how the Muslim community is conceptualized by both Muslims and non-Muslims.

According to Roy, Islam has come to refer to a 'neo-ethnicity' in which "Islam" is indicative not only of a religious identity but a cultural and ethnic marker. When "speaking of neo-ethnicity, 'neo' means that the culture of origin is no longer really

relevant, and ‘ethnicity’ that religion is not seen as a faith but as a set of cultural patterns that are inherited and not related to a person’s spiritual life” (2004:124). Non-Muslims, and especially Western populations that include Muslim minority communities, increasingly formulate Islam in these terms.

Before exploring the ways Boyd’s report engages in ethnicizing Islam, I will situate this approach in current anthropological theory. I see Roy’s theory of ethnicisation as one dimension of work on modern Islam. Recent scholarship identifies a particular form of “objectified” Islam that developed in modernity. The objectification of Islam has promoted awareness of religious identity. Much anthropological work investigates how this objectification plays out within particular Muslim communities. Roy’s work extends the work of these scholars to determine how predominantly non-Muslim countries perpetuate such objectification. Both deal with the increasing tendency to look to religion as the determining factor for identity.

The primary theoretical framework for studies of modern Islam is the objectification of religion, and Roy’s work grows directly from it. While scholars nuance their understandings of objectification in various ways, as “religious mindedness” or “ideologization” (Kazmi 2004:254), the models share a fundamental concern with the increasing self consciousness of religious practice.

Geertz’s foundational study of Islam provides an initial investigation into the modern phenomenon of “religious mindedness” (1968). In his analysis of religion in Indonesia and Morocco Geertz identifies a religious change in modern times caused by increased exposure to different and competing forms of Islamic piety, and an increased

pressure from scripturalist forms of Islam. This has changed the sense that the local practice's "dominance is complete and their position is secure... Piety remains, but assurance does not" (1968:60). The advent of doubt forces religious individuals to consider not what they believe, but how they are to believe it, and leads to religious mindedness, "celebrating belief rather than what belief asserts" (1968:61).

Eickelman extends the model of religious mindedness in his discussion of the objectification of Islam. Here, Eickelman formulates objectification in terms of questions such as "What is my religion? ... and How do my beliefs guide my conduct?" (1992:643). He argues that "these explicit and 'objective' questions are distinctively modern ones that increasingly shape the discourse and practice of all Muslims, even as some legitimate their practices and beliefs by asserting a return to authentic established traditions." (1992: 643) These models of objectification characterize modern Islam by an increasing self consciousness about religious practice and belief. This includes an awareness of what constitutes Islam and how it is to be conducted properly, and what are appropriate and inappropriate modes of believing.<sup>15</sup>

Jonah Blank (2001) provides an ethnography of one such objectified transnational community. In his analysis of the Daudi Bohra community in India, Blank investigates the ways in which the traditionalist Bohra community picks up and utilizes modern technologies, ideas, and practices as it situates itself in the world. This is a community of individuals who utilize modern resources as tools for positioning themselves in the world,

---

<sup>15</sup> Such a discussion is not without its critiques. Saba Mahmood criticizes the objectification model for suggesting that religious self-consciousness is a novel phenomenon; as she points out, even an act as simple and (universal) as teaching a child to pray involves reflective self awareness and consciousness about 'how' one is to be religious, and is hardly a uniquely modern practice (*Politics of Piety: The Islamic Revival and the Feminist Subject*, [Princeton: Princeton University Press, 2005: 54]).

for strengthening and broadening, as well as setting boundaries around, their community. Blank continually emphasizes the way the community unifies itself through the use of modern technology. The community uses technology to define itself through videocassette tapes that play religious sermons to Bohras all over the world (Blank 2001:85), and to establish orthopractic standards with the system of colour coded identification cards (2001:180). But at the same time, this use of modern technology involves an engagement with communities outside of its own, networking with the companies in Switzerland and Scandinavia (2001:221) that provide state of the art technology systems. The Bohras provide an instructive example of modern Islam. The transnational and modern characteristics of the community are evident in the extensive use of technology, and the interaction this technology promotes with companies in several countries. The community exemplifies the process of objectification in the sense that these individuals use technology to solidify and perpetuate a traditional religious identity. The Bohra's maintain strict boundaries around their community, which is defined along religious lines. Their use of technology to establish orthopractic standards indicates a concern not just with what to believe, but in how to do so, and an effort to maintain authentic or traditional standards of belief as a modern community. Blank's work draws attention to just one Muslim community that is increasingly objectified, a uniquely modern form of Islam.

Roy's work deals with an objectified modern Islam from the perspective of the dominant, largely non-Muslim West. He argues that these countries perceive modern forms of Islam not as religious communities but as one neo-ethnic group sharing a



common culture. While he locates this ethnicisation in the perspectives of the non-Muslim West, he does suggest that it is then appropriated by Muslim communities who begin to structure themselves within a neo-ethnic framework (Roy 2004:126, 133). The transnational and global character of the process is evident here, too, where ethnicisation is a complex process that affects the formation of Muslim communities, which will exert an influence in turn.

Roy outlines three dimensions in the definition of neo-ethnicity:

1. Every person of Muslim background is supposed to share a common Muslim culture, whatever his or her real culture of origin... which means that religion is seen as the main component of these cultures, a component that can be isolated and erected as a culture itself.
2. This culture is attributed to everybody with a Muslim origin, whatever his or her religious practice or level of faith (that is, without any linking to religiosity). In this sense, one could speak of “non-believing Muslims”.
3. This culture differentiates a ‘Muslim’ from an ‘other’, who, in the West, is defined as a member never of a religious community, of a pseudo-ethnic group..., reproducing patterns of colonial history. (2004:126)

Thus, the identity ‘Muslim’ makes no reference to religious practice but to a broader and modern ethnic identity which transcends the local cultural manifestations of Islam.

The modern ethnicisation of Islam is the result of two interrelated processes. The first is the abstraction of an essentialized Islam from its cultural variants. This process constitutes local religious traditions as corruptions of a single, universal Islam. It associates variations from this universal Islam with cultural differences. Thus, this process is related to objectification, because it involves an increasing consciousness and

awareness of religious practice, and its labeling as religious distinct from cultural.<sup>16</sup> In the second process, this essentialized Islam applies to all aspects of identity, when the religion is “erected as a culture in itself” (Roy 2004:126). Neo-ethnic models gloss over differences in culture or ethnicity in favour of the common religious identity. In this way, Muslims of many ethnic backgrounds are all identified with the common ethnicity “Muslim”.

Roy’s theory builds from the work in modern Islam dealing with objectification and the increasing awareness of religion and religious identity. Only when religion becomes a conscious factor, one which for Roy consciously separates religion and ethnicity or culture, can it be reified into an essentialized, universal ethnic marker. I argue that Boyd’s review engages in both of these processes, constructing and perpetuating common models of Muslims as an ethnic identity.

Treating Islam as an essential entity distinct from culture coincides with first process at work in the ethnicising of Islam. As Roy outlines ethnicisation, before ‘Islam’ can be treated as an ethnic or culture indicator of its own, the religion must first be abstracted from the local cultural forms that it is intertwined with. Roy relates this separation to a distinctly modern setting, as what is new “in the current wave of globalization is that the making of Muslim minorities is carried out through a process of deculturation, in which none of the previous cultural markers is retained” (2004:108). Such a process, which echoes the Great/Little Tradition model, is clearly visible in the

---

<sup>16</sup> Some scholars suggest that the conscious separation of religion and culture is a common feature of religion in diaspora or minority religion (Steven Vertovec, *The Hindu Diaspora: Comparative Patterns*, [London: Routledge, 2000]).

Boyd report. Despite the efforts to recognize a diverse array of viewpoints within the Muslim community, Boyd's report implicitly perpetuates a normative construction of Islam and separates it from local manifestations. The report employs a vision of Islam as completely divorced from the surrounding cultural context, recalling both the Great/Little Tradition model and Roy's ethnicisation model.

The relationship between religion and cultural identity outlined in chapter 2 corresponds to the second process in the ethnicisation of Islam. Although both the ethnographic literature and Boyd's report recognize the interconnection of religion and culture, in the ethnographic literature there is an additional consideration of ethnicity. In this case, religion is localized through culture. However, for Boyd, religion is universalized to become a culture, and as Roy notes, a neo-ethnicity. As a neo-ethnicity, the report's treatment of Muslims fulfills the requirements of: treating each person of Muslim background as if they share a common Muslim culture (Roy 2004:126), in this case one which must be transmitted generationally despite contact with non-Muslim Canadians, and which is antithetical to the West (Roy 2004:126). Secondly, the report assumes this culture applies to everybody with a Muslim origin, regardless of faith; for example, Muslim women are assumed to be endangered by a patriarchal religious system regardless of their level of faith commitment to this system.

Furthermore, the report reifies the religious community as a cultural entity of its own, collapsing differences of ethnicity and faith commitment within it. It constructs Muslims, and especially Muslim women, as an immigrant cultural group who are vulnerable and in need of protection or special consideration. Each of these practices

essentializes and universalizes Islam and constructs Muslims as a cultural and ethnic group, different from Canadians based on their Muslimness.

Boyd's report is actively, if unknowingly, engaged in the ethnicisation of Islam. The two constructions of Islam which I have parsed in the preceding chapters correspond to the two processes involved in ethnicizing Islam. Boyd's report draws on current transnational trends which conceptualize Islam as a neo-ethnicity, which perceives modern, objectified forms of Islam as one discrete ethnic and cultural group.

Boyd's report is very much a product of both its Canadian and its wider transnational context. It draws on local categories to formulate Islam in a way that is understandable in a Canadian context, but it also engages in larger global processes which construct an understanding of Islam as a discrete neo-ethnic group.

### **Conclusions**

I have suggested in this thesis that Boyd's report on the use of religious arbitration in Canada constructs Islam in two distinct ways. These constructions are a product of the overlapping frameworks in which the report is embedded, the popular Canadian and the transnational context. That the report is a product of its context is not surprising, but it is important. The report is valuable to scholars because of, and not despite, its non-academic nature. It raises a series of questions about the popular construction of Islam, and the work these constructions do. Finally, the report allows us to question the consequences of constructing Islam in this manner.

Neither of the constructions of Islam that Boyd's report offers attend, in any recognizable way, to the current anthropological literature on Islam. This is true of the case of the essentializing, abstract definition of Islam which disregards the work of anthropological literature challenging normative definitions of religion and blurring boundary between religion and culture. It is also true of the definition of Islam as a neo-ethnic group whose identity is defined through religion, contrary to ethnographic material which stresses multivalent and complex identities.

The academic literature that the report fails to attend to is diverse and contains numerous distinct bodies of work within itself. The most relevant aspects of the literature are anthropological theory about the nature of Islam, and ethnographic work on Muslims in Canada, two distinct and often divergent bodies of work on Islam. The differences between these bodies of work emphasize the broad range of literature available on Islam, and the extent of the scope of academic work that the Boyd report disregards.

Perhaps the biggest difference between the theoretical and ethnographic literature is that the ethnographies on Muslim Canadians do not focus very much on 'Islam'. Work on Muslim Canadians focuses instead on the very particular issues of identity, and the religious, and non-religious, experiences of Muslim Canadians in their every day lives in Canada. In this instance, the 'Muslim-ness' of the subjects is important not for what it says about Islam as a religious tradition, but as just one factor influencing the identities of the informants. This emphasis on experience and identity partially explains why there is so much discourse about culture in the literature on Muslim Canadians. Use of the concept of culture allows anthropologists to describe the myriad of identifying forces which they are exploring, without having to isolate each one.

In fact, this difference could lead one to perceive the work on Canadian Muslims as following a model of normative Islam. These ethnographies often frame Canadian Muslims as living in diaspora communities (Moghissi 2003). In doing so there is some flavour of the centre/periphery model at work. That is, ethnographic work presents Canadian Muslims as living away from the real centers of their faith, and struggling to retain and perpetuate what religious identity they can hang on to. It constructs Canada as the peripheral space in which religion is in danger of corruption or loss, with the center located in the countries of heritage or origin. This explains why the theme of cultural transmission is so prominent in the literature.

Distinct from this perspective is the theoretical work challenging normative Islam and the center/periphery model even if it means also challenging the perspectives of informants. Literature on Canadian Muslims at least appears, for the most part, to be

describing a common experience articulated by a number of informants within the community. However, the theoretical literature engages in a more symbolic or interpretive analysis that draws sophisticated conclusions but challenges the perspectives of 'real' Muslims. This methodological difference, and the difference between analyzing the lives of Muslim Canadians and Islam, leads to some large gaps between the two perspectives.

The gulf between theoretical work and ethnographic data extends when considered in conjunction with Boyd's report. Scholarly work on Islam, as I demonstrate in chapter 1, tends to emphasize the variety and diversity among forms of Islam. The literature treats Islam as heavily related to and even inseparable from its given cultural context. Indeed, the literature works directly against earlier normative models of Islam which treated it as static and universal. The Boyd report, however, presents a monolithic construction of Islam which turns away from a model of 'islams' and towards a monolithic, universal Islam. Thus the Boyd report is not appropriately responsive to the issues and themes present in current anthropological literature on Islam.

I demonstrate in chapter 2 that despite the ethnographic material which emphasizes the importance of ethnicity, both Boyd's report and the ethnographic literature establish a constant tension between otherness and belonging, between being a part of a larger community and yet remaining separate from it on account of certain characteristics of identity. In the ethnographic literature this tension manifests as a concern with the intergenerational transmission of culture among Muslim Canadians, and a common sense of dislocation between private and public life. In Boyd's report, the

tension arises between the continued construction of Canadian Muslims as immigrants and the recognition of their Canadian identity. Despite these similarities, Boyd's report ultimately fails to account for the complexity and diversity of her subject matter; it presents the Muslim community as monolithic, and the designation of 'Muslim' refers not only to religious identification but to an all-encompassing, normative, ethnic, immigrant identity.

I argue that the discontinuity between Boyd's report and the scholarly literature, both theoretical and ethnographic, draws attention to the nature of the report as a public and non-academic document. Triangulating the three bodies of literature here demonstrates that Boyd's report not only lies in a non-academic genre, it fails to respond in any significant way to contemporary scholarship on Islam. This emphasizes the value of the document as an indicator of latent public sentiment and a crystallization of the assumptions about Islam at work in the Canadian public realm today. The report, in its failure to respond to academic categories, is instead a very useful manifestation of popular constructions of Islam and Muslims in Canada. What the Boyd report represents is a valuable indication of some of the most fundamental and uncritically considered assumptions about Islam at work in government policy and public opinion, both among non-Muslim and Muslim Canadians.

Boyd's report constructs Islam based on the uncritically considered assumptions of its Canadian and transnational context. These constructions of Islam, and the models from which they are developed, remain uncritically considered assumptions because they do important work in a Canadian context. By fitting conceptions of Islam into categories



and concepts already operating in a Canadian and a transnational context, this report, and Ontarians, can construct an Islam which they understand and accept. Status quo power relationships, government systems, and popular discourses remain unchallenged by the new forms of identity or community that another construction of Islam might represent. Thus the Canadian and transnational frameworks are both the context in which Boyd's report defines Islam, and the categories which are re-inscribed through these definitions. Future exploration of the debate over religious arbitration, and discussion about how Canadians construct Islam, should further investigate the ways these assumptions are at work, and the systems and categories they uncritically, and unknowingly, perpetuate.

The debate in Ontario over the use of Muslim religious law in private arbitration has officially ended in Canada. However, I have shown here that the debate continues to provide fertile ground for scholarly analysis. In this debate, which I analyze here in the commission and report of Marion Boyd, Islam is constructed and (re)presented to a Canadian public. Through my analysis I have suggested that the two distinct constructions of Islam offered in this report correspond to the Canadian and transnational frameworks in which it was produced. Such a connection is of interest to Muslim and non-Muslim, academic and non-academic audiences, because while the report and the definitions of Islam it provides perpetuates these frameworks, they also shape them. Future scholarship on this issue must question how these constructions of Islam challenge and change these categories even as they fit within them, and how we might understand Islam in Canada as it exists outside of and beyond these familiar frameworks. Similarly,

we may question how these constructions shape our understanding of Canadian identity, and how we might define belonging and identity differently in light of them.

### Bibliography

#### Primary Sources

Ali, Syed Mumtaz.

- 1994 The Review of the Ontario Civil Justice System: The Reconstruction of the Canadian Constitution and the Case for Muslim Personal/ Family Law. A Submission to the Ontario Civil Justice Review Task Force. Toronto: Canadian Society of Muslims.

Bakht, Natasha.

- 2005 Arbitration, Religion and Family Law: Private Justice on the Backs of Women. National Association of Women and the Law. Viewed 11 Aug. 2006 ([http://www.nawl.ca/ns/en/documents/Pub\\_Report\\_ReligArb05\\_en.rtf](http://www.nawl.ca/ns/en/documents/Pub_Report_ReligArb05_en.rtf))

Boyd, Marion.

- 2006 Religious Arbitration and Family Law in Ontario. Religion and Citizenship Public Lecture Series. Munk Centre for International Studies, University of Toronto, Toronto, ON. 10 February.
- 2004 Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion. Government of Ontario.

Canadian Society of Muslims.

- Syed Mumtaz Ali. The Canadian Society of Muslims Homepage. [http://muslim-canada.org/csm\\_president.html](http://muslim-canada.org/csm_president.html) Accessed 01 May 2007

Mallick, Heather.

- 2004 Boutique Law: It's the Latest Thing. Globe and Mail. 15 May.

Ministry of the Attorney General

- 2006 Ontario Passes Family Statute Law Amendment Act: Family Arbitrations to be Based on Canadian Law Only 15 February, 2006. Ontario: Ministry of the Attorney General.
- 2005a McGuinty Government Declares One Law For All Canadians- News Release. 15 Nov. Ontario: Ministry of the Attorney General.
- 2005b Statement By Attorney General on the Arbitration Act, 1991." 8 Sept. Ontario: Ministry of the Attorney General.
- 2004 Former Attorney General and Women's Issues Minister to Review Arbitrations Processes- News Release. 25 June. Ontario: Ministry of the Attorney General.

Namazie, Maryam.

- 2004 Islamic [In]justice: On the Establishment of an Islamic Court in Canada. International Women's Day Panel Speech. Toronto, ON. 8 March.

#### Secondary Sources

Abu-Laban, Baha.

- 1995 The Muslim Community of Canada. *In* Muslim Minorities in the West. Syed Abedin and Ziauddin Sardar, eds. Pp. 134-149. London: Grey Seal.
- 1983 The Canadian Muslim Community: The Need for a New Survival Strategy. *In* The Muslim Community in North America. Earle H. Waugh, Baha Abu-Laban, and Regula B. Qureshi, eds. Pp.75-89. Edmonton: University of

- Alberta Press.
- 1980 *An Olive Branch on the Family Tree: The Arabs in Canada*. Toronto: McClelland and Stewart.
- 1969 *The Arab Canadian Community*. In *The Arab Americans: Studies in Assimilation*. Elaine Hagopian and Anne Paden, eds. Pp. 18-36. Illinois: The Medina University Press International.
- Abu-Laban, Sharon McIrvine.
- 1992 *Intergenerational Transmission of Islamic Belief: Immigrant Families in North America*. In *Contacts Between Cultures*. Amir Harrack ed. Pp. 353-359. Lewiston, NY: Edwin Mellin Press.
- 1991 *Family and Religion Among Muslim Immigrants and Their Descendants*. In *Muslim Families in North America*. Earle H. Waugh, Sharon McIrvine Abu Laban, Regulla Burckhardt Qureshi, eds. Pp. 6-31. Edmonton: University of Alberta Press.
- 1989 *The Coexistence of Cohorts: Identity and Adaptation Among Arab American Muslims*. In *Arab Awareness: Continuity and Change*. Baha Abu Laban, Michael Auberger, eds. Pp. 45-63. Minnesota: Association of Arab American University Graduates.
- Abu-Lughod, Lila.
- 1990 *The Romance of Resistance: Tracing Transformations of Power Through Bedouin Women*. *American Ethnologist* 19(4):41-55.
- 1989 *Zones of Theory in the Anthropology of the Arab World*. *American Review of Anthropology* 18:267-306.
- 1986 *Veiled Sentiments: Honor and Poetry in a Bedouin Society*. Berkeley: University of California Press.
- Abu-Zahra, Nadia M.
- 1970 'On the Modesty of Women in Arab Muslim Villages': A Reply. *American Anthropologist*. 72(5):1079-1088.
- Ahmed, Leila.
- 1992 *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven and London: Yale University Press.
- Ali, Muna.
- 2007 *Authoring Self in Post 9/11 Muslim American Identity*. Paper Presented at the Annual Meeting of the Society for the Anthropology of Religion, Phoenix Arizona, April 15.
- Ali, Sayed Mumtaz.
- Why Was the Institute Formed? The Canadian Society of Muslims Homepage. Electronic Document, <http://muslim-canada.org/IICJ.html>, accessed 01 May 2007.
- Ali, Sayed Mumtaz and Enab Whitehouse.
- 1992 *The Reconstruction of the Constitution and the Case for Muslim Personal Law in Canada*. *Journal Institute of Muslim Minority Affairs* 13(1):156-172.
- Anderson, J.N.D.
- 1959 *Islamic Law in the Modern World*. New York: New York University Press.

- Anderson, Benedict.  
1991[1983] *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso.
- Antoun, Richard.  
1968 *On the Modesty of Women in Arab Muslim Villages: A Study in the Accomodation of Traditions*. *American Anthropologist* 70(4):671-697.
- Appadurai, Arjun.  
1996 *Modernity at Large: Cultural Dimensions of Globalization*, vol 1: *Public Worlds*. Minneapolis: University of Minneapolis Press.  
1986 *Theory in Anthropology: Center and Periphery*. *Comparative Study of Social History* 28:356-361.
- Asad, Talal.  
2003 *Formations of the Secular: Christianity, Islam and Modernity*. Stanford: Stanford University Press.  
1993 *Genalogies of Religion: Disipline and Reasons of Power in Christianity and Islam*. Baltimore: Johns Hopkins University Press.  
1986 *The Idea of an Anthropology of Islam*. Washington, D.C.: Georgetown University Center for Contemporary Arab Studies.
- Azmi, Shaheen.  
1997 *Canadian Social Service Provision and the Muslim Community in Metropolitan Toronto*. *Journal of Muslim Minority Affairs* 17(1):153-167.
- Barazangi, Nimat Hafez.  
1990 *Acculturation of North American Arab Muslims: Minority Relations or Worldview Variation*. *Journal of Muslim Minority Affairs*. 11(2):373-390.  
1989 *Arab Muslim Identity Transmission: Parents and Youth*. In *Arab Americans: Continuity and Change*. Baha Abu-Laban and Michael Anterman, eds. Pp. 65-82. Belmont: Association of Arab-American University Graduates.
- Bashkow, Ira.  
2004 *A Neo-Boasian Conception of Cultural Boundaries*. *American Anthropologist* 106(3): 443-458.
- Bibby, Reginald  
2002 *Restless Gods: The Renaissance of Religion in Canada*. Toronto: Stoddart.
- Blank, Jonah.  
2001 *Mullahs on the Mainframe: Islam and Modernity among the Daudi Bohra*. Chicago: University of Chicago Press.
- Boddy, Janice.  
1989 *Wombs and Alien Spirits: Women, Men, and the Zar Cult in Northern Sudan*. Madison WI: University of Wisconsin Press.
- Bowen, John R.  
1993 *Discursive Monotheisms*. *American Ethnologist* 20(1):185-190  
1992 *On Scriptural Essentialism and Ritual Variation*. *American Ethnologist*. 19(4):656-671.
- Bramadat, Paul.  
2005 *Beyond Christian Canada: Religion and Ethnicity in a Multicultural*

- Society. *In Religion and Ethnicity in Canada*. Paul Bramadat and David Seljak, eds. Pp. 1-29 Toronto: Pearson Education Press.
- Breton, Raymond.
- 1984 The Production and Allocation of Symbolic Resources: An Analysis of the Linguistic and Ethnocultural Fields in Canada. *Canadian Review of Sociology and Anthropology* 21(2):123-144.
- Cainkar, Louise.
- 1991 Palestinian- American Muslim Women: Living on the Margins of Two Worlds. *In Muslim Families in North America*. Earle H. Waugh, Baha Abu-Laban, and Regula Qureshi, eds. Pp. 282-308. Edmonton: University of Alberta Press.
- Chaichan, Mohammad A.
- 1997 First Generation Iranian Immigrants and the Question of Cultural Identity: The Case of Iowa. *International Migration Review* 31: 612-627.
- Clarke, Lynda.
- 2004 Two Muslim Women in North America. *In Women and Religious Traditions*. Leona Anderson and Pamela Dickey Young, eds. Pp. 256-262. Oxford: Oxford University Press.
- Combs-Schilling, M.E.
- 1989 Sacred Performances: Islam, Sexuality and Sacrifice. New York: Columbia University Press.
- Delaney, Carol.
- 1990 The 'hajj': Sacred and Secular. *American Ethnologist* 17(3):513-530.
- Eickelman, Dale F.
- 1998[1981] The Middle East and Central Asia: An Anthropological Approach. Third Edition. New Jersey: Prentice Hall.
- 1992 Mass Higher Education and the Religious Imagination in Contemporary Arab Societies. *American Ethnologist* 19(4):643-653.
- 1987 Changing Interpretations of Islamic Movements. *In Islam and the Political Economy of Meaning*. William R. Roff, ed. Pp.13-30. London: Croom Helm.
- 1982 The Study of Islam in Local Contexts. *Contributions to Asian Studies* 17:1-18.
- Eickelman, Dale and James Piscatori.
- 1990 Social Theory in the Study of Muslim Societies. *In Muslim Travellers: Pilgrimage, Migration and the Religious Imagination*. Dale Eickelman and James Piscatori, eds. Pp. 3-28. Berkeley: University of California Press.
- El-Zein, Abdul Hamid.
- 1977 Beyond Ideology and Theology the Search for the Anthropology of Islam. *Annual Review of Anthropology* 6:227-254.
- Esposito, John.
- 2000 Introduction: Muslim Americans or American Muslims? *In Muslims on the Americanization Path*. Yvonne Yazbeck Haddad and John Esposito, eds. Pp. 3-18. Tampa: University of South Florida Press.
- Faruqi, Muhammad Yusuf.

- 2002 Ijtihad: An Overview of Some of Its Methodologies. *Hamdard Islamicus*. 25(4): 7-14.
- Fleras, Augie and Jean Leonard Elliot.  
1992 *Multiculturalism in Canada: The Challenge of Diversity*. Scarborough: Nelson Canada.
- Geertz, Clifford.  
1975 *The Interpretation of Cultures*. London: Hutchison.  
1968 *Islam Observed: Religious Development in Morocco and Indonesia*. New Haven: Yale University Press.
- Gibb, Camilla and Celia Rothenberg.  
2000 Believing Women: Harari and Palestinian Women at Home and in the Canadian Diaspora. *Journal of Muslim Minority Affairs* 20:243-259.
- Gilliat-Ray, Sophie.  
1998 Multiculturalism and Identity: Their Relationship for British Muslims. *Journal of Muslim Minority Affairs* 18(2):347-354.
- Gilsenan, M.  
1982 *Recognizing Islam*. London: Croom Helm.
- Haddad, Yvonne Yazbeck and Jane Idleman Smith, eds.  
1994 *Muslim Communities in North America*. New York: State University of New York Press.
- Hage, Ghassan.  
1998 *White Nation: Fantasies of White Supremacy in a Multicultural Society*. Annandale, Australia: Pluto Press.
- Hamdani, Daood Hassan.  
1983 Muslims in the Canadian Mosaic. *Journal Institute of Muslim Minority Affairs* 1:7-16.
- Hogben, Murray.  
1994 The Socio-Religious Behaviour of Muslims in Canada: An Overview. *In The Muslim Community in North America*. Haddad, Yvonne Yazbeck, and Jane Idleman Smith, eds. Pp. 111-123 New York: State University of New York Press.
- Huntington, Samuel  
1993 The Clash of Civilizations? *Foreign Affairs* 72 (Summer):22-47
- Husaini, Zohra.  
1990 Muslims in the Canadian Mosaic: An Overview. *In Muslims in the Canadian Mosaic*. Pp. 9-19. Edmonton: Muslim Research Foundation.
- Karim, Karim H.  
1993 Reconstructing the Multicultural Community. *Journal of Politics, Culture and Society* 7(2):189-207.
- Kazmi, Zaheer A.  
2004 Discipline and Power: Interpreting Global Islam. *Review of International Studies*. 20:245-254.
- Khalafalla, Haifaa.  
2001 The Elusive 'Islamic Law': Rethinking the Focus of Modern Scholarship. *Islam*

- and Christian-Muslim Relations. 12(2):143-152.
- Lambek, Michael.  
1990 Certain Knowledge, Contestable Authority: Power and Practice on the Islamic Periphery. *American Ethnologist* 19(4):23-40.
- Lewis, Bernard.  
2002 *What Went Wrong?* Oxford: Oxford University Press.
- Li, Peter S.  
2003 *Destination Canada: Immigration Debates and Issues*. Oxford: Oxford University Press.  
1999 The Multiculturalism Debate. In *Race and Ethnic Relations in Canada*. Peter S. Li, ed. Pp. 148-177. Oxford: Oxford University Press.
- Lukens-Bull, Ronald.  
1999 Between Text and Practice: Considerations in the Anthropological Study of Islam. *Marburg Journal of Religion* 4(2):1-10.
- Mackey, Eva.  
1995 Postmodernism and Cultural Politics in a Multicultural Nation: Contests Over Truth in the Into the Heart of Africa Controversy. *Public Culture*. 7(2):403-432.
- Mahmood, Saba.  
2005 *Politics of Piety: The Islamic Revival and the Feminist Subject*. Princeton: Princeton University Press.
- Markowitz, Fran.  
2004 Talking About Culture: Globalization, Human Rights, and Anthropology. *Anthropological Theory* 4(3):329-352.
- McDonough, S. and Homa Hoodfar.  
2005 "Muslims in Canada" From Ethnic Groups to Religious Community. In *Religion and Ethnicity in Canada*. Paul Bramadat and David Seljak, eds. Pp.112-133. Toronto: Pearson Education Press.
- McDonough, S and S. Alvi.  
2002 The Canadian Council of Muslim Women: A Chapter in the History of Muslim Women in Canada. *Muslim World* 92(1):79-97.
- Metcalf, Barbara Daly.  
1996 Introduction. In *Making Muslim Space in North America and Europe*. Barbara Metcalf, ed. Pp. 1-30. Berkeley: University of California Press.
- Moghissi, Haideh.  
2003 Diaspora of Islamic Cultures: Continuity and Change. *Refuge* 21(2):114-119.
- Nanji, Azim A.  
1999 Cultural and Religious Heritage: Perspectives on the Muslim Experience. In *Religious Conscience, the State, and the Law*. John McLaren and Harold Coward, eds. Pp. 234-248. Albany: State University of New York Press.
- Pessar, Patricia R.  
1995 On the Homefront and in the Workplace: Integrating Immigrant Women into Feminist Discourse. *Anthropological Quarterly* 68(1):37-47.
- Quick, Abdullah Hakim.



- 1990 Muslim Rituals, Practices and Social Problems in Ontario. Polyphony: The Bulletin of the Multicultural History Society of Ontario 12:120-124.
- Qureshi, Regula B. and Saleem M.M. Qureshi.
- 1994 Pakistani Canadians: The Making of a Muslim Community. *In* The Muslim Community in North America. Yvonne Yazbeck Haddad and Jane Idleman Smith, eds. Pp. 127-148. New York: State University of New York Press.
- Redfield, Robert.
- 1956 Peasant Society and Culture. Chicago: University of Chicago Press. Roy, Olivier.
- 2004 Globalized Islam: The Search for a New Ummah. London: Hurst & Company.
- Said, Edward.
- 1979[1978] Orientalism. New York: Vintage Books.
- Sewell, William.
- 1999 The Concept(s) of Culture. *In* Beyond the Cultural Turn. Victoria Bonnell and Lynn Hunt, eds. Pp. 35-61. Berkeley: University of California Press.
- Schmidt, G.
- 2002 Dialectics of Authenticity: Examples of Ethnification of Islam Among Young Muslims in Sweden and the United States. *Muslim World* 92(1):1-17.
- Shakeri, Esmail.
- 2000 Muslim Women in Canada: Their Role and Status as Revealed in the *Hijab* Controversy. *In* Muslims on the Americanization Path. Yvonne Yazbeck Haddad and John Esposito, eds. Pp. 159-178. Tampa: University of South Florida Press.
- Smith, Jane I.
- 1999 Islam in America. New York: Columbia University Press.
- Sonbol, Amira El Azhary, ed.
- 1996 Women, the Family, and Divorce Laws in Islamic History. New York: Syracuse University Press.
- Statistics Canada.
- 2001 Selected Religions for Canada, Provinces and Territories - 20% Sample Data. Census Population.
- Tapper, N. and R. Tapper.
- 1987 The Birth of the Prophet: Ritual and Gender in Turkish Islam. *Man* 22:9-92.
- Tibi, Bassam.
- 2001 Islam: Between Culture and Politics. New York: Palgrave MacMillan.
- Tucker, Judith E.
- 1998 In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine. Los Angeles: University of California Press.
- Varisco, Daniel Martin.
- 2005 Islam Obscured: The Rhetoric of Anthropological Representation. England: Palgrave MacMillan.
- Vertovec, Steven.
- 2000 The Hindu Diaspora: Comparative Patterns. London: Routledge.
- Waines, David.

- 1995 An Introduction to Islam. New York: Cambridge University Press.
- Waugh, Earle H, Sharon McIrvn Abu-Laban and Regula Burkhardt Qureshi, eds.  
1991 Muslim Families in North America. Edmonton: University of Alberta Press.  
1983 The Muslim Community in North America. Edmonton: University of Alberta Press.
- Wikan, Uni.  
1977 Man Becomes Woman: Transsexualism in Oman as a Key to Gender Roles. The Journal of the Royal Anthropological Institute 12(2):304-319.
- Yousif, Ahmad F.  
1994 Family Values, Social Adjustment and Problems of Identity: The Canadian Experience. Journal Institute of Muslim Minority Affairs 15(1):108-120.  
1993 Muslims in Canada: A Question of Identity. New York: Legas.
- Zine, Jasmin.  
2001 Muslim Youth in Canadian Schools: Education and the Politics of Religious Identity. Anthropology and Education Quarterly 32(4):399-423.