

Testing the Bounds of Liberal Multiculturalism?<sup>1</sup>  
Will Kymlicka

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Debates about the integration of Muslims in Western societies are often bound up with debates about "multiculturalism", understood as a particular model of how immigrants should integrate into society while still maintaining their ethnic and cultural identities. In many countries, there is a perception that multiculturalism has "failed" in relation to Muslims, although the explanation for this failure often differs. Others argue that a more thorough-going multiculturalism is precisely what is needed to deal with the specific challenges raised by Muslim immigrants.

In this paper, I want to explore this question indirectly, by examining one specific context in which Muslims and multiculturalism were linked in the public debate – namely, recent public debates regarding Muslim family law tribunals. Proponents of these tribunals have often appealed to the idea of multiculturalism, and argued that anyone who endorses Canada's multiculturalism policy should accept the legitimacy of sharia-based family law arbitration.<sup>2</sup> Other commentators draw the opposite conclusion: the fact that multiculturalism can be invoked to justify sharia courts shows that the very idea of multiculturalism is dangerous, and should be abandoned. According to Tarek Fatah of the Muslim Canadian Congress, for example, sharia arbitration is an example of "multiculturalism run amok".<sup>3</sup> Yet others argue that while multiculturalism is "a great Canadian value", it is being "abused" by defenders of these tribunals.<sup>4</sup>

Does the idea of multiculturalism support proposals for faith-based family law arbitration? This is an important question, I believe, since multiculturalism has played a central role in Canadian political life for the past thirty years. It has not only had an enormous symbolic effect, reshaping our very ideas of what it is to be Canadian, but has also had important substantive effects on the way that public institutions operate. Whether in the schools, media, police, social services, or in the legal and political system, multiculturalism policies and programs have helped make public institutions in Canada more open to the participation

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<sup>2</sup> See, for example, Part 4 ("Multiculturalism") in Syed Mumtaz Ali's submission to the Ontario Civil Justice Review Task Force (<http://muslim-canada.org/submission>).

<sup>3</sup> See also the statement of the Women Living Under Muslim Laws (April 7, 2005) which says that conservatives within Ontario's Muslim community have "sought to take advantage of state policies of multiculturalism".

<sup>4</sup> "Submission to Ms. Marion Boyd", Canadian Council of Muslim Women, July 2004 ([www.ccmw.com](http://www.ccmw.com)).

of immigrants and ethnic minorities.<sup>5</sup> I believe that these effects have generally been positive, and indeed Canada's multiculturalism policy is often seen around the world as a success story.

It is important, therefore, to figure out how exactly the issue of faith-based family law arbitration is connected to that of multiculturalism. To answer this question, we need to step back and look at the history of the multiculturalism policy. The policy is neither simple nor static: its main goals have changed significantly over time, and may be going through yet another transformation.

### 1. The Liberal Foundations of Canadian Multiculturalism

The multiculturalism policy was originally introduced by Prime Minister Pierre Elliot Trudeau in September 1971. The crucial point about this original policy, for our purposes, is that it was a very liberal conception of multiculturalism, grounded in liberal ideas of individual freedom. As Trudeau put it when introducing the policy to the House of Commons, "a policy of multiculturalism within a bilingual framework is basically the conscious support of individual freedom of choice. We are free to be ourselves" (Trudeau 1971: 8546). Each individual should be free to decide whether, or to what extent, they wish to maintain an inherited ethnic or religious identity, and to what extent they wish to challenge or reject the practices associated with their inherited group membership. People who wish to maintain and express their ethnic or religious identity should be free to do so without fear of discrimination or stigmatization within the larger society – they should not have to hide or abandon their ethnic identity in order to participate in society. But nor should anyone be forced to maintain an ethnic identity, or to preserve its traditional practices, if they no longer wish to do so – they should not be forced by other group members or group leaders to follow customs they no longer value.

In this sense, the adoption of multiculturalism in 1971 was part of a more general liberal revolution in Canada, starting with the (statutory) Bill of Rights in 1960 and capped by the adoption of the (constitutional) Charter of Rights in 1982 (which is very liberal by international standards). In this 20 to 25-year period, many traditional hierarchies and forms of social control in Canadian society were contested in the name of individual freedom and equality, including restrictions on birth control and abortion, the criminalization of homosexuality, as well as various forms of discrimination against women, blacks, Aboriginals and religious minorities.

The multiculturalism policy was seen as a natural extension of this liberal logic of individual rights, freedom of choice, and non-discrimination. It is thus not surprising that government documents explaining the origins of the multiculturalism policy often start with the Universal Declaration of Human Rights in 1948, and the Canadian Bill of Rights in 1960. The fundamental moral impulses behind the policy were the liberal values of individual freedom and equal citizenship on a non-discriminatory basis.

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<sup>5</sup> For evidence, see Kymlicka 1998; and Bloemraad 2005.

This liberal conception of multiculturalism is not unique to Canada. According to James Jupp - who played a pivotal role in defining Australia's multiculturalism policy - multiculturalism in Australia "is essentially a liberal ideology which operates within liberal institutions with the universal approval of liberal attitudes. It accepts that all humans should be treated as equals and that different cultures can co-exist if they accept liberal values" (Jupp 1996: 40).

We can distinguish this liberal ideal of multiculturalism from a different model, which we might call "traditionalist" or "communitarian". On this alternate model, the goal of multiculturalism is to enable a group to maintain its inherited practices even if they violate the rights of individuals (eg., coerced arranged marriages; female genital mutilation; denying education to girls, honour killings, the "cultural defense" in criminal law, etc.). Traditionalist multiculturalism seeks to enhance the ability of a group to enforce the group's practices on its members: group leaders should have the power to police the behaviour of group members, to pressure members to follow the inherited practices of the community, and to sanction those who deviate from them, even if this requires that the community be exempted from constitutional guarantees of individual rights.<sup>6</sup>

This is obviously a very different conception of multiculturalism. The liberal model of multiculturalism is based on the principle that all individuals should be free to make their own choices about whether or how to express and ethnic and religious identity, and that all groups should respect basic liberal values of human rights and democracy. The traditionalist model of multiculturalism is based on the principle of cultural relativism: each group should be able to practice its own customs (including its customary forms of enforcement and punishment), whether or not they respect principles of individual freedom, human rights and democracy.

In both the popular and academic debates, it is often assumed that multiculturalism must take this traditionalist form. It is assumed that proponents of multiculturalism are committed to cultural relativism, and reject the values of Enlightenment liberalism, including its ideal of universal human rights. For example, the international organization Women Living Under Muslim Laws has associated the spread of multiculturalism policies in the West with the spread of cultural relativism (WLURL 2005). Several academics have made the same claim (eg., Barry 2001). Other analysts, who acknowledge that there are both liberal and traditionalist conceptions of multiculturalism, assert there has been a long-standing struggle between the two over how to interpret the ideal of multiculturalism (Tamir 1996).

Yet if we examine the origins of the multiculturalism policy in Canada, what is striking is that no one defended, or even discussed, the traditionalist model. It is not surprising that Trudeau himself was in favour of the liberal model of multiculturalism – his passionate commitment to liberal values is well-known. What is more surprising, perhaps, is that no one else who participated in the original Canadian debates expressed any interest in the traditionalist model. In fact, so far as I can tell, the first time that commentators started to

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<sup>6</sup> A historical example of such a traditionalist conception of multiculturalism is the millet system of the Ottoman Empire.

associate multiculturalism with cultural relativism in the Canadian public debate was in 1990. This debate was spurred in part by Reginald Bibby's book *Mosaic Madness*, which asked whether the logic of multiculturalism entailed allowing immigrant groups to maintain whatever practices they brought with them, no matter how illiberal or undemocratic. A similar charge was made by Neil Bissoondath and Richard Gwyn in influential books in the early 1990s (Bissoondath 1993; Gwyn 1995), and was picked up by countless newspaper columnists.

But this debate only arose twenty years after the policy had been adopted. By 1990, the multiculturalism policy had not only been in operation for twenty years, but it had been constitutionally entrenched in the 1982 Charter of Rights and Freedoms, and given a statutory basis in the 1988 Multiculturalism Act. Multiculturalism policies had also diffused beyond the federal government to the provincial and municipal levels. Throughout this key twenty-year period from 1970 to 1990 when multiculturalism was being defined and diffused, it was simply taken for granted that multiculturalism was grounded in (and constrained by) liberal values of individual freedom and equality.

Why wasn't there more of a debate about the possibility that multiculturalism could be used (or abused) to maintain illiberal practices? The answer, I think, lies with the nature of the groups that initially demanded multiculturalism. The groups who initially mobilized for multiculturalism in Canada, and for whom the policy was initially designed, were long-settled European-origin ethnic groups - above all the Ukrainians, and to a lesser extent the Italians, Poles, Czechs and Slovaks, Germans, Dutch, Scandinavians.<sup>7</sup> It was these "white ethnics" who pushed for multiculturalism in the 1960s, leading to its adoption in 1971.

It is important to remember that Canada had a racially discriminatory immigration policy until the 1960s that kept most Asians, blacks and Arabs out of the country. It was only in the mid-1960s that these non-white "visible minorities" started to emigrate in significant numbers to Canada. And it was only several years later, long after the multiculturalism policy was already established, that they started to gain a significant voice in the debate.

In the 1960s, therefore, the ethnic groups that dominated the public debate over multiculturalism were white European groups. Most of these groups had been present in Canada for two or three generations, and were typically very well-integrated, not only economically but also politically. When they first arrived in Canada, some native-born Canadians expressed scepticism about their capacity to integrate into society and to adjust to

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<sup>7</sup> It's hardly an overstatement to say that we owe the multiculturalism policy to the relentless efforts of a handful of Ukrainian-Canadians who fought persistently in the 1960s for the policy – see Jaworsky 1979; Lupul 2005. The immediate trigger for this mobilization was the Royal Commission on Bilingualism and Biculturalism, and its mandate to enhance the (French-English) "duality" of Canada as a way of accommodating and defusing Quebecois nationalism. The white ethnics believed that the B&B Commission would essentially carve up public resources and offices between the English and French, leaving the white ethnics out in the cold. See Kymlicka 2004.

liberal-democratic values (Palmer 1994). However, by the mid-1960s these groups had proven their loyalty to Canada in World War II, were often fiercely anti-Communist during the Cold War, and were seen as proud and patriotic Canadians, as well as fully committed to the basic liberal-democratic principles of the Canadian state. They had proven their willingness and ability to work within the rules of a liberal-democratic order. The idea that such groups might use multiculturalism to maintain illiberal practices did not even arise.

So multiculturalism was initially designed for well-integrated European ethnic groups whose liberal-democratic credentials were not in dispute: it was a way of recognizing and rewarding their successful integration. However, soon after it was adopted, the focus of the multiculturalism policy started to change. Increasing numbers of non-European immigrants were arriving, and new public policies were needed to assist in their settlement and integration. Although it was not originally intended as a tool for integrating newcomers, the idea of “multiculturalism” provided a convenient and already-established discourse and institutional infrastructure to negotiate these challenges. As a result, both the government and immigrant organizations started to adapt the language and programs of multiculturalism to focus on the needs of newer non-European immigrants.

This led to important changes in the multiculturalism policy. For example, questions about language training and naturalization became more important, as did anti-racism programs – an issue that had not arisen for the ‘white ethnics’. Indeed, by the late 1980s, anti-racism programs became the largest recipient of multiculturalism funding. In short, a policy that initially arose as an acknowledgement of the successful integration of long-settled white ethnic groups became redefined as a tool for assisting in the integration of newer non-European immigrants.

In retrospect, this is a striking example of policy reinvention. However, it was not uncontroversial. For one thing, some of the European ethnic groups started to complain that the policy had been “hijacked” by newer immigrants: the groups who had fought hard to establish the policy were now being ignored by it. More importantly, however, this shift was seen as raising new risks. Granting multicultural rights or benefits to European ethnic groups was seen as a fairly safe policy: there was no fear that such groups would use their rights or resources in ways that threatened liberal-democratic values. But with newcomers, particularly from countries that were not liberal-democracies, there was a risk that such groups would attempt to use their multiculturalism privileges in ways that violated liberal-democratic values.<sup>8</sup> A certain degree of trust is therefore implicit in extending multiculturalism to newcomers.

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<sup>8</sup> A clear expression of this fear comes from Gwyn’s book, where he states:

“To put the problem at its starkest, if female genital mutilation is a genuinely distinctive cultural practice, as it is among Somalis and others, then since official multiculturalism’s purpose is to ‘preserve’ and ‘enhance’ the values and habits of all multicultural groups, why should this practice be disallowed in Canada any more than singing ‘O Sole Mio’ or Highland dancing?” (Gwyn 1995: 189).

In this quote, multiculturalism for European groups like the Italians and Scots is described as a matter of benign differences in music, whereas multiculturalism for non-

Some Canadians did not want to take this risk: they would have preferred to wait until there was firm proof that the newcomers really had internalized liberal-democratic values, and had successfully integrated into Canada's constitutional order, before granting them access to multiculturalism's benefits. We can see similar fears in European debates on multiculturalism. Indeed, in the European context, it appears that the majority of governments (and their citizens) have decided that the risk is not worth taking. Most European countries have not adopted multiculturalism policies, and the few that have are backtracking on them.<sup>9</sup>

In Canada, by contrast, despite these concerns, the policy has remained in place. While public support for multiculturalism has gone up and down over the years, most Canadians appear willing to take the risk of granting multiculturalism benefits to newcomers even before they have fully integrated. Most Canadians appear to endorse what social scientists call the "liberal expectancy" – ie., the view that if a liberal-democratic state reaches out to newcomers, and offers them fair terms of integration into a liberal order, they will over time accept these terms, and become loyal and law-abiding liberal citizens. Based on this liberal expectancy, Canadians have been willing to trust immigrants not to misuse the benefits accorded them under multiculturalism.

Access to multiculturalism, on this view, is not a reward for successfully integrating, but is part of the integration process, a way of encouraging and assisting immigrants to find their place within the larger Canadian order. Using multiculturalism in this way is risky, since there is no guarantee that newcomers will not attempt to use multiculturalism in ways that violate liberal-democratic values. But in Canada, unlike in Europe, a decision has been made that the potential benefits in terms of successful integration outweigh the risks.

Why has Canada come to a different conclusion than European countries? Many people would like to think that this reflects a distinctly Canadian virtue of tolerance, and lack of xenophobia. I suspect that the answer lies elsewhere. Part of the answer, I think, is simply timing. As I noted earlier, a "safe" form of multiculturalism had been in operation for almost twenty years before people started to ask whether non-European immigrants would use it as a justification to maintain illiberal practices. Over these twenty years, not only had multiculturalism become a central part of the Canadian identity, but non-European groups had already, slowly and imperceptibly, taken their place within the larger framework of Canadian multiculturalism. Since the 1970s, visible minority ethnic organizations had begun to take a seat at the table, and a public record was available of what sorts of demands they had made in the name of multiculturalism. And the reality is that no major immigrant organization had demanded the right to maintain illiberal practices. The Somalis had not

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European groups like the Somalis is seen as raising the potential for conflicts over fundamental moral and political values.

<sup>9</sup> On the retreat from multiculturalism in Europe, see Joppke 2004; Entzinger 2003; Brubaker 2001; Back et al 2002.

demanded exemption from laws against FGM;<sup>10</sup> Pakistanis had not demanded exemption from laws against coerced marriages; and so on. If non-European immigrant groups were going to contest the basic principles of liberal-democracy in the name of multiculturalism, one might have expected it to have occurred already by 1990, but it hadn't. These groups had already developed a track record of working within the framework of a liberal (human rights-based) multiculturalism, and this record helped to assuage public fears about the risks of extending multiculturalism to newcomers.<sup>11</sup> In Europe, by contrast, there was no pre-existing multiculturalism policy into which non-European immigrant groups could fit.

## 2. The Debate about Islam and Liberal Multiculturalism

But there is another factor that distinguishes Canada from Europe - namely, the role of Islam. So far, I have been discussing "non-European immigrants" as a single category, all of whom are seen as potential bearers of values and traditions at odds with the values of Western liberal-democracy. But as we all know, some non-European groups are seen as more of a threat to these values than others. In particular, throughout the West today, it is Muslims who are seen as most likely to be culturally and religiously committed to illiberal practices, and/or as supporters of undemocratic political movements. This is particularly the case after 9/11, but has been true for several years now. (There is of course a long history of Islamophobia in Europe, dating back to the Crusades, but I think its modern resurgence dates to the Islamic revolution in Iran, with its virulent anti-Western rhetoric).

As a result, the perception within host countries that multiculturalism is a high-risk policy depends in part on whether Muslims the largest immigrant group, or whether they are a relatively small proportion of the immigrant population. And this points to a fundamental difference between Europe and Canada. In most of Western Europe, the largest group of

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<sup>10</sup> The Canadian government in 1995 gathered together representatives of the various ethnic groups from countries where FGM is traditionally practised, in order to discuss how this issue should be dealt with (Government of Canada 1995). There was unanimous agreement that the practice should not be allowed in Canada, and the discussion quickly moved to questions of how best to inform people within these groups about the law and the reasoning behind it (cf. Levine 1999; OHRC 1996). Of course, the fact that ethnic organizations disavow these illiberal practices does not mean that individual members of the group do not attempt in private to maintain them, or to avoid punishment for them. But there is nothing in Canada like the debates in the UK re forced arranged marriages (Phillips 2003) or in France about FGM (Dembour 2002) or even in the US about the cultural defense (Renteln 2004).

<sup>11</sup> On the broad consensus across racial/religious lines on a human rights-based liberal multiculturalism in Canada, see Howard-Hassman 2003. For example, no one has attempted to invoke the multiculturalism clause (Section 27) of the Constitution to defend the practice of FGM, and any such attempt would certainly be rejected by the courts. Indeed, Canada was one of the first countries in the world to accept that a girl could be granted refugee status if she faces a risk of being subject to FGM if returned to her country of origin (Levine 1999: 40). Since Canada views FGM as persecution for the purposes of refugee determination, it can hardly permit it to be practiced within Canada.

non-European immigrants is Muslims – up to 80% or 90% in countries like France, Spain, Italy, Denmark, etc. Indeed, the term “immigrant” and “Muslim” are seen as virtually interchangeable in these countries. And many of these Muslim immigrants are from parts of Africa or South Asia where traditions of FGM or arranged marriages persist, or where Islamic fundamentalism is strong.<sup>12</sup> Racism and Islamophobia combine to generate a perception of recent non-European immigrants as illiberal and untrustworthy, and hence, of multiculturalism as a high-risk policy.

In Canada, by contrast, Muslims are a small portion of the overall population (less than 2%), and form only a small fraction of recent non-European immigration. Ninety percent of Canada’s recent immigrants are not Muslim. The largest and most politically active groups of non-European immigrants have been Caribbean blacks and East Asians. It is these groups that have dominated Canadian debates about multiculturalism, and they are not perceived as raising the same risks to liberal-democratic values.

Of course all non-European groups in Canada have faced discrimination and prejudice. But the nature of the prejudice differs in ways that have a profound influence on the issue of multiculturalism. Consider the Caribbean blacks, such as the Jamaicans, who were the first large group of non-white immigrants arriving in the late 1960s and early 1970s. There are certainly many prejudices and stereotypes about Caribbean blacks, including perceptions of criminality, laziness, irresponsibility, lack of intelligence, and so on - in short, old-fashioned racism (Henry 1994). But the idea that these groups have a religious or cultural commitment to offensive practices or illiberal political movements is not particularly salient – after all, they are overwhelmingly Protestants, and hence assumed to share a basic Christian ethos. Multicultural recognition of their ethnocultural identity – reflected in such things as Black History Month, the Caribana festival, and anti-racism programs – is not seen as endorsing illiberal practices or undemocratic political movements. The same holds for Latin American immigrants, such as (predominantly Catholic) refugees from Chile or Guatemala. They face racism in Canada, but are not seen as carriers of illiberal values or supporters of undemocratic political movements, and accommodating them through multiculturalism is not seen as posing a threat to liberal-democratic values.

The next large wave of non-white immigrants came from East Asia – particularly the Chinese, Koreans, Vietnamese and Filipinos. Indeed East Asians remain by far the largest source of new immigration to Canada. Here again, there are a range of prejudices and stereotypes against East Asians, but these immigrants are not widely perceived as being prone to religious fundamentalism or as having a strong cultural or religious commitment to illiberal practices. East Asian religions, such as Buddhism and Confucianism, are viewed in

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<sup>12</sup> The popular view in the West that FGM is a "Muslim" practice is doubly incorrect: FGM is practiced by Christians, Jews and animists as well as Muslims in parts of sub-Saharan Africa, and is strongly disavowed by many Muslim leaders. Yet this popular perception is very strong.

Canada as essentially benign and pacific.<sup>13</sup> Moreover, many of these immigrants are Christian (particularly from Korea and the Philippines).

In short, despite their racial prejudices, most Canadians have come to trust that Caribbeans and East Asians will integrate into the liberal-democratic mainstream, and that offering multicultural privileges to such groups is not a threat to the liberal-democratic order. And since these are the groups that have dominated public debates in Canada about multiculturalism, the policy has retained broad public support. The debate in Canada might have been very different if, as in Europe, ninety percent of our immigrants were Muslim.

It is a complicated question why Muslims have been singled out as uniquely or distinctly prone to illiberalism. After all, illiberal practices can be found in all cultures, not least European cultures. Indeed, if we look at court cases where immigrants to North America have invoked “culture” or “tradition” as an explanation or justification for the mistreatment of women or children, we are as likely to find East Asian and Caribbean immigrants as Muslims.<sup>14</sup> So why single out Muslims?

Part of the answer is, of course, the tendency to treat Muslims as a single homogeneous community, ignoring the vast differences between different strands of Islam in different regions of the world. But it also a result of two further factors. First, while most immigrant groups bring with them patriarchal practices, it is widely assumed that Muslims are more likely than other groups to defend these practices in the name of religion. Amongst and Haitian immigrants charged with wife-abuse have sometimes said that this is part of their “culture”, but they have not claimed that they have a religious right or religious obligation to engage in such practices. Where people believe they have a religious obligation or religious sanction to engage in certain practices, they are more likely to fight to defend such practices, and to invoke multiculturalism in that fight.

This point takes on added significance given the larger international context. There is a worldwide movement towards the politicization of Islam, often in a conservative form, and immigrants who wish to maintain a conservative form of Islam are likely to receive

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<sup>13</sup> This is partly due to the extraordinary influence of the Dalai Lama in shaping Western perceptions of Buddhism. The reality on the ground in East Asia is rather more complex. Buddhist monks in Sri Lanka, for example, have been amongst the most rabid opponents of sharing power with the (Hindu) Tamil minority.

<sup>14</sup> See the cases discussed in Okin 1999 and Renteln 2004 where (non-Muslim) Asian immigrants in the United States invoked “culture” as a justification for mistreating women. A similar case arose recently in Canada when a Haitian man in Montreal invoked “cultural tradition” as a mitigating factor when charged with domestic and sexual violence, and the presiding judge accepted this as a reason for a reduced sentence. There was an immediate outcry from Haitian immigrant organizations themselves, who vehemently disputed that Haitian culture predisposed people to violence, or that Haitian people were somehow less capable of respecting rights. The defendant’s invoking of the cultural defense was seen as a betrayal of his community, by perpetuating stereotypes about the group’s culture, habits, and moral values.

moral support and perhaps even financial support from external sources. And of course the radical tip of this international Islamist movement is seen as linked to international terrorism.

In all of these respects, Muslims are seen as raising different kinds of challenges than other non-European immigrant groups. Caribbean, Latin American and East Asian groups often bring with them illiberal practices, but since these are typically seen simply as “customs” or “traditions”, it is widely hoped and expected that the attractions of liberal multiculturalism will persuade groups to transform their practices in a liberal direction. This “liberal expectancy” is more difficult to sustain, however, when illiberal practices are defined as matters of faith, and where there is an international movement encouraging immigrants to defend an uncompromising and conservative interpretation of their faith. Multiculturalism is much riskier in the latter context. And, rightly or wrongly, it is predominantly (if not exclusively) Muslims who are seen as falling into this latter camp.<sup>15</sup>

So where Muslims are seen as the main proponents and beneficiaries of multiculturalism it is more difficult to generate or sustain public support. This is the situation today in much of Europe. Two countries in Europe that have adopted multiculturalism policies – namely, Britain and the Netherlands - are exceptions that prove the rule. In both cases, the initial demand for multiculturalism came from non-Muslim groups, and a backlash arose when Muslims became the main focus of the debate. In Britain, the initial push for multiculturalism was spearheaded by (Christian) Caribbean Blacks, but political mobilization and public debate is now dominated by South Asian Muslims, and the result has been a decided cooling of public support for multiculturalism. A recent article in *The Spectator* was titled “How Islam Has Killed Multiculturalism” (Liddle 2004). The title and article are decidedly biased,<sup>16</sup> but it seems true that public support for multiculturalism has declined as Muslims have come to be seen as the main proponents or beneficiaries of the policy.

A similar story applies to the Netherlands. The original beneficiaries of multiculturalism in the Netherlands were two former colonial groups - the (Christian) Moluccans from Indonesia and the (predominantly Hindu) Surinamese. However, over the past fifteen years, public debate on multiculturalism has become dominated by two more recent immigrant groups – the Turks and Moroccans, both Muslim. And here again, this shift in focus was accompanied by a strong backlash against (and retreat from) multiculturalism. So even those European societies that were able to extend a degree of trust and openness

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<sup>15</sup> In the 1980s, Sikhs were also seen in Canada as falling into this category. There was a conservative religious revival within the Sikh community, connected to a radicalized (and violent) international political movement, and many Canadians feared that multiculturalism was being used as a tool by illiberal forces. This fear has largely dissipated, in part due to concerted efforts within the Sikh community to marginalize the radicals, particularly after the Air India bombing. This provides a hopeful precedent that groups can overcome public fears.

<sup>16</sup> Note that Liddle says it is Islam, not Islamophobia, that has killed multiculturalism.

to non-European immigrants have balked when Islam became the issue. There are indeed very few (if any) cases in the Western democracies where multiculturalism policies have endured when they are primarily demanded by, and designed for, Muslims.

In Canada, however, public debates about multiculturalism have never focused on Muslims. Debates were driven at first by the Ukrainians and Italians in the 1960s and 1970s, then by the Jamaicans in the 1980s, and more recently by the Chinese. This raises the question of whether multiculturalism would endure in Canada if Muslims moved to the centre of Canadian debates. And indeed, in a sense, that is the situation we are currently in. Since 9/11, the spotlight has been put on Muslims in Canada, and they are now (involuntarily) the focus of public debates, even though they remain a small fraction of our immigrant population. As a result, I believe that the Canadian commitment to liberal multiculturalism is being tested in a way it has never been before. Now, for the first time, we will find out whether liberal multiculturalism will endure in Canada under the sorts of conditions and challenges that have eroded it in much of Europe.

There are really two separate questions. On the one hand, will native-born Canadians continue to support multiculturalism, and extend the same trust to Muslims that has been shown to other non-European groups, or will they follow the European path of retreating from multiculturalism when confronted with politicized Muslim minorities? On the other hand, will Muslim leaders and organizations accept the liberal foundations and constraints of Canadian multiculturalism, or will they attempt to use multiculturalism to perpetuate illiberal practices for which they claim a religious sanction?

### 3. Sharia Tribunals as a (Misleading) Test Case

This is the larger context within which the sharia court issue has arisen. Indeed, I believe that the sharia tribunal issue has become a lightning rod precisely because it is a symbol of these larger unresolved questions about Islam and liberal multiculturalism. The issue of how to adjudicate family law disputes is a very important one on its own terms. But it has also become a symbolic issue. Ever since 9/11, the general public, and the press, have been waiting for an issue to arise that could be used as a test-case for whether everyone respects the rules of liberal multiculturalism. And, for better or worse, many commentators have decided that the sharia tribunals will be that test case.<sup>17</sup>

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<sup>17</sup> It took awhile for such a test case to emerge because in the immediate aftermath of 9/11, the reaction of many Muslim organizations was to lie low and try to avoid the public spotlight. Insofar as they did participate in public debates, it was not so much to advance new multiculturalism claims, but rather to defend much more basic civil rights in the face of anti-Muslim hate crimes, discrimination, racial profiling by the police, and the use of draconian “security certificates”. Indeed, post-9/11, Muslim organizations have become some of the most vocal defenders of traditional civil rights in Canada. However, what the press wanted was an issue where Muslims were demanding some “special” rights or treatment in the name of multiculturalism. And the sharia court proposal seemed to fill the bill, although as I explain below I think this is in fact misleading. Had this issue not arisen, the press would have almost certainly continued to look for some other issue

One reason why it is being invoked as a test case is that can be interpreted as a challenge to liberal multiculturalism from both directions. On the one hand, some commentators argue that the public debate is evidence that native-born Canadians are applying a double-standard to Muslims. After all, ever since the 1991 Arbitration Act, other religious groups have set up faith-based arbitration tribunals without any public debate. It was only when a Muslim organization publicly declared its intention to set up an Islamic faith-based tribunal, as permitted by law, that the public furor arose. This can be seen as a case of Canadians refusing to extend Muslims the same trust they have shown to other groups, and abandoning the liberal expectancy that underpins the use of multiculturalism as a tool for integration.

On the other hand, one can also argue that some of the Muslim leaders who have proposed sharia tribunals see this as part of a broader campaign to institutionalize a conservative form of Islam within the Canadian judicial system. They appear to be using it as a first step towards securing broader exemptions from the normal constraints of liberal multiculturalism, and pushing towards a more traditionalist conception of multiculturalism, in which group members would face increasing pressure to follow (conservative) group norms. Some Muslim leaders have even speculated that sharia norms can and should be used more widely in the justice system, including in criminal punishments.

In short, depending on one's perspective, one can view this issue as an example of how either mainstream Canadians, or Muslims leaders, or both, are stepping away from the norms of liberal multiculturalism. As a result, it was predictable, and perhaps inevitable, that this issue would become a symbol of larger debates about Islam and liberal multiculturalism.

Unfortunately, I believe that it is in fact a very poor test case for these larger debates. The reality is that the opportunity made available for faith-based arbitration under Ontario's Arbitration Act has almost nothing to do with multiculturalism. The adoption of this Act in 1991 was not in response to the demands of immigrant groups, nor was it justified in terms of the requirements of the multiculturalism policy. On the contrary, the Act was demanded by, and designed for, members of the mainstream society, who wanted a cheaper, quicker and less adversarial form of dispute resolution. The trend towards creating such alternative forms of dispute resolution is very widespread across the Western democracies, regardless of whether they have multiculturalism policies, and has been supported by both the left and the right of the political spectrum. For the right, it is a way of reducing government expenditures, by relieving pressure on the courts. For the left, it is a way of making dispute resolution more accessible to people who cannot afford the expense of normal litigation. (Indeed, the 1991 Act was introduced by the left-wing

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that could be invoked as a test for Islam and liberal multiculturalism, such as religious schooling, or a free speech case (a la Rushdie, or the Van Gogh documentary).

NDP government in Ontario).<sup>18</sup> This trend has nothing in particular to do with the presence or absence of multiculturalism policies.

It is important to emphasize that (contrary to many press reports) the Act does not accord any special rights or privileges to the Muslim community, or to religious groups in general. It simply establishes a legal framework within which anyone, religious or secular, can agree to use private arbitration to resolve their disputes. No group is given any “special exemptions” – Muslims have no more (or less) freedom to use private arbitration than atheists, environmentalists, or members of the Rotary Club.

It is also important to emphasize that the adoption of this Act was not recommended or funded by the Multiculturalism program of the federal government. (The program funds many pilot projects relating to the accommodation of ethnic and religious diversity, but this was not one of them, in part because it was not originally intended as a project to accommodate diversity). Nor was there any suggestion that this Act was somehow required to comply with the Multiculturalism Act, or with the Multiculturalism clause of the Constitution. Nor was it developed through the sort of community-based deliberative procedure that the multiculturalism policy encourages, in which multicultural reforms are adopted after extensive processes of consultation within and between ethnic communities. The creation of a legal opening for faith-based family law tribunals was not the intended result of a process of multicultural reform; it was the accidental result of a legal reform to the system of private arbitration that was not mandated, inspired or guided by the multiculturalism policy.

Indeed, one could argue that the adoption of the Arbitration Act was actually in violation of the spirit of the Multiculturalism Act. A central principle of the Multiculturalism Act is that all government bodies have an obligation to consider how their actions will impact on ethnocultural minorities.<sup>19</sup> Yet it seems clear that this sort of assessment was not undertaken. If it had been, it surely would have been clear that some safeguards are required to protect the interests of immigrant women and other vulnerable groups. The 1991 Arbitration Act may work well for resolving commercial disputes between independent businesspeople – which was its main original goal – but it clearly was not designed with the interests of immigrants (or other vulnerable groups) in mind.

In this sense, I would argue that the Arbitration Act is not a case of “multiculturalism run amok”, but rather of “private arbitration run amok”. The Act desperately needs revision in order to protect the legitimate interests of vulnerable parties and of the larger society, but none of these revisions require any amendment to the multiculturalism policy. The

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<sup>18</sup> One of the few critics of these forms of alternative dispute resolution have been women’s groups, since the evidence to date suggests that women (whatever their race or religion) fare less well in them.

<sup>19</sup> Of course, the federal Multiculturalism Act only applies to the federal government, not to the decisions of the Ontario government, although Ontario has its own provincial policy of multiculturalism.

problems with the Arbitration Act can be fixed without changing one word in the Multiculturalism Act, or in its associated programs.

Let me put the point another way. Let's imagine that the Arbitration Act had not been adopted in 1991, so there was no legal provision for private arbitration of family law disputes. Could Muslim leaders like Mumtaz Ali have gone to court and argued that the Multiculturalism Act, or the Multiculturalism section of the Charter, required that they be granted the right to set up their own faith-based arbitration? Could faith-based arbitration be demanded as a "right" that is somehow implicit in Canadian multiculturalism? Would any court in Canada have said that provincial governments have a legal obligation to allow such tribunals?

I think the answer is clearly no. There is nothing in the Multiculturalism Act, or the Multiculturalism clause of the Constitution, that requires giving members of religious groups the right to ignore provisions of the Family Law Act that differ from their traditional practices, just as there is nothing in multiculturalism that requires granting an exemption from mandatory education laws, or anti-discrimination laws, or laws against FGM, coerced arranged marriages or honour killings. The courts in Canada have never interpreted the Multiculturalism Act or Multiculturalism section as permitting infringement of the basic rights of individuals. To repeat a point I made earlier, the model of multiculturalism that is enshrined in the Multiculturalism Act, and in the Charter, is a liberal one, predicated on a commitment to individual freedom.

It is one of the many paradoxes of the debate that conservative Muslims were able to achieve something under the Arbitration Act that they almost certainly could not have achieved if the issue had been decided or litigated under the Multiculturalism Act.<sup>20</sup>

In short, multiculturalism was not the cause of this problem, and amending or abolishing multiculturalism will do nothing to solve the problem. Indeed, if the Multiculturalism Act were repealed tomorrow, and all funding for multiculturalism policies stopped, this

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<sup>20</sup> Some critics have argued that, despite their alleged liberal foundations, multiculturalism policies have in fact operated in Canada to reinforce the power of conservative male leaders within ethnic and religious groups. While this is undoubtedly a risk, my own sense is that the sorts of programs funded by the multiculturalism program have usually been quite sensitive to gender issues, and have encouraged women's representation. Indeed, Bloemraad's recent work has shown that multiculturalism policies have helped to create more gender parity in ethnic leadership than would otherwise have existed. In the absence of multiculturalism policies, the leadership of ethnic communities has typically been drawn from three sources of power - business success, religious authority, and previous leadership roles in homeland politics. In the context of most immigrant groups, all three of these routes to leadership have historically been male-dominated. Multiculturalism policies, however, provide resources and opportunities to the providers of immigrant and settlement services, who are often women, thereby creating a new route to leadership, and a more gender-balanced set of representatives (Bloemraad 2005).

would have no effect whatsoever on the legal standing of sharia tribunals in Ontario. There is simply no financial, statutory, or constitutional connection between the Arbitration Act and Canadian multiculturalism.

#### 4. Conclusion

In sum, I believe that there are two conversations being run together in the current public debate about sharia tribunals. One conversation concerns the role of private arbitration as a tool for providing citizens with more affordable and accessible (and less adversarial) forms of dispute resolution. There is a strong trend throughout the West towards new forms of alternative dispute resolution, but they all carry risks, particularly for less powerful groups in society, since they typically contain fewer procedural requirements (eg., regarding legal representation or appeal rights) and fewer substantive guarantees (eg., regarding the fairness of outcomes). For example, we know that women, whatever their race or religion, typically fare less well within private arbitration than they do in the common family law courts. Yet many women, whatever their background, would prefer to resolve their disputes quickly and peaceably, rather than drag the conflict out in the courts, causing pain to everyone involved, including the children. Can we find forms of alternative dispute resolution that are affordable, accessible and non-adversarial, yet still provide adequate safeguards for equality rights?<sup>21</sup>

The second conversation concerns the link between Islam and liberal multiculturalism, and whether we can sustain a consensus on liberal multiculturalism in a context where Muslim communities are growing and increasingly politicized. Will Canadians extend to Muslims the same trust they have shown to other minorities in providing multicultural accommodations, and if so, will Muslim leaders and organizations acknowledge the liberal foundations (and limits) of these accommodations?

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<sup>21</sup> I will not try in this paper to provide a detailed account of what sorts of safeguards would be appropriate, except to say that the current Arbitration Act seems woefully inadequate, and that while the Boyd Report identifies many of the defects of the Act, its recommendations fail to adequately address them. If we approached this issue from the perspective of liberal multiculturalism, the first task would be to develop a process of internal discussion and dialogue within the various communities, to see what sorts of proposals in fact have the broad support of group members, and then to engage in a broader societal debate about whether or how these proposals can be accommodated. This is the sort of process that the multiculturalism policy has encouraged in other cases of proposals for multicultural reforms. In this case, I suspect that the sharia tribunal proposal does not in fact have broad support within the Muslim community in Canada, and that this would have become clear if the government had encouraged a broad consultative process with various Muslim groups and organizations about their concerns with the family law system. Unfortunately, because the sharia proposal emerged out of the Arbitration Act, rather than from the multiculturalism policy, this process of intra- and inter-community debate was short-circuited.

It is my firm hope and belief that liberal multiculturalism can indeed provide a stable and enduring basis for social relations in Canada. Despite high-profile cases of illiberal practices or political radicalism, the reality is that immigrants today of all religions and ethnic origins are integrating into the liberal-democratic consensus in just the same way as earlier European immigrants. Recent studies show that there are no statistically-significant differences in political values between European-origin Canadians and visible-minority immigrants who have lived in Canada for an extended period of time (Soroka, Johnston and Banting 2006). So there are grounds for optimism about the viability of liberal multiculturalism, so long as keep these two conversations distinct.

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