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THE SHARIA DEBATE IN ONTARIO

Gender, Islam, and Representations of Muslim Women’s Agency

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In late 2003, the Canadian media reported that the Islamic Institute of Civil Justice would start offering arbitration in family disputes in accordance with both Islamic legal principles and Ontario’s Arbitration Act of 1991. A vociferous two-year debate ensued on the introduction of “Sharia law” in Ontario. This article analyzes representations of Muslim women’s agency that came to the fore in this debate by examining reports in three Canadian newspapers. The debate demonstrated two notions of agency. The predominant perspective conceptualized Muslim women’s agency as their ability to resist domination, tying secularization to agency. A second strain of the debate portrayed agency as embedded in intersecting social forces of domination and subordination. The first perspective homogenized diverse Muslim communities, fostering the gendered racialization of these communities. Understanding agency as embedded, by contrast, enabled conceptualizations of Muslim women as agentic religious subjects.

Keywords: gender; Islam; agency; media; immigration; ethnicity

In late 2003, a small Muslim organization in Ontario, Canada, proposed to offer arbitration for private business and family matters in accordance...
with Islamic legal principles and provincial and federal law. An intense debate on the introduction of “Sharia law” in Ontario erupted. The debate ended in early 2006, when the provincial premier amended the Ontario Arbitration Act to disallow all forms of religious arbitration. This article analyzes divergent perceptions of immigrant Muslim women’s agency that were brought to light during the debate.

Feminist critiques of Western understandings of women’s agency focus on false universalisms and the damage their unthinking application can do to the political struggles of women in the global south (Bulbeck 1998; Mohanty 2003; Tripp 2006). Similar universalisms structure public debates on gender equality that occur in the context of large scale immigration from the global south to the global north, particularly in relationship to Muslim immigrants (Abu-Lughod 2002; Korteweg 2006; Okin 1999). What are often conceptualized as geographically distinct cultural practices coincide as people from across the globe become neighbors in cities like Toronto, where in 2006 45.7 percent of the population was foreign born, most coming from Asia.1 In such cities, the north/south divide, conditioned by unequal global capitalist development in a context of spatial separation, is transposed onto experientially far more intimate social-political contestations within what are now local communities of divergent origins, ethnicities, and migration statuses (Mohanty 2003). In these contexts, assumptions about agency rooted in Christian, but ostensibly secular, traditions (Mack 2003) are put into question.

The debate on Sharia-based arbitration reflected two divergent representations of agency. Dominant discourses saw Muslim (immigrant) women’s agency as contingent upon their resistance to Islam. An alternate framing represented agency as embedded in religious (and other) contexts. As the theory of embedded agency would suggest, this latter framing facilitated more nuanced representations of Muslim women as both agentic and religious subjects. By contrast, seeing agency solely as resistance to gendered religious practices homogenized religious Muslims as a group. This homogenization enabled the gendered racialization of the very diverse Canadian Muslim immigrant communities and discounted the notion that Muslim women’s capacity to act could be informed by religion.2

“SHARIA IN ONTARIO”: OUTLINE OF A DEBATE

In late 2003, Syed Mumtaz Ali, a retired lawyer and scholar of Islamic jurisprudence, announced in the media that the Islamic Institute of Civil Justice (IICJ) would offer arbitration in family and business disputes in
accordance with both Islamic legal principles and Ontario’s Arbitration Act, 1991, which became law in 1992 (Boyd 2004, 4). Established in part to diminish a backlog in the courts, the Ontario Arbitration Act of 1991 allowed for religious, as well as non-religious, arbitration in private matters. After the law came into effect in 1992, Jewish and Christian groups set up arbitration boards that ruled in accordance with their religious principles. All of these arbitrations were legally binding, as long as they did not violate existing Canadian law.

Within Islam, the term “Sharia” covers the general set of principles and moral obligations that structure religious Muslims’ lives (Abou el Fadl 2004, 30-1; Rohe 2004). Sharia includes, but is not limited to, a set of laws that govern family matters, including custody, inheritance, and divorce. Islamic jurisprudence, or fiqh, is considered to be in the realm of people and is open to interpretation and change to some extent (Abou el Fadl 2004, 31). Historically, there are different schools of Islamic jurisprudence that can come to different conclusions on how family matters should be resolved (see also Emon 2006; Wadud 2005). Such variations were largely obscured in the debate that ensued upon IICJ’s announcement; instead, the debate focused almost entirely on Muslim women’s ability to safeguard their interests.

In response to the IICJ’s announcement, Ontario Premier McGuinty asked Attorney General Michael Bryant and Sandra Pupatello, the Minister Responsible for Women’s Issues, to investigate the issue. In June of 2004, they commissioned former Attorney General Marion Boyd to conduct a study on the feasibility of continuing to allow religious arbitration under the Arbitration Act of 1991. In her report, various interest groups expressed the fear that Muslim arbitration boards could undo the “many years of hard work, which have entrenched equality rights in Canada, [...] to the detriment of women, children and other vulnerable people” (Boyd 2004, 3). These interest groups construed Muslim women’s capacities as severely limited by Islam, and Islamic legal rules regarding family matters as inherently gender unequal (Boyd 2004). Nonetheless, in her report, Boyd argued that religious arbitration based on what she called “Islamic legal principles” was permitted under the Arbitration Act, and should continue to be allowed. At the same time, Boyd appealed to a society-wide obligation to ensure that women would be able to address unfair decisions in any type of arbitration. Her proposed amendments to the Arbitration Act focused on institutionalized oversight and education on the principles of religious arbitration and Canadian family law. Courts were directed to look at arbitral decisions in the aggregate to
identify whether rulings contravened existing Canadian law. The education measures were to ensure that people would understand the legal ramifications of their decision to arbitrate, know their rights to appeal if they did not agree with the arbitral decision, and comprehend the relationship between religious law and Canadian law.

Rejecting Boyd’s recommendations, McGuinty announced on Sunday, September 11, 2005, that he would put forth an amendment to ban all religious arbitration, including Christian and Jewish arbitration, under the Arbitration Act, to ensure that there would be “one law for all Ontarians.” McGuinty’s decision implied that only such a legal context could safeguard Muslim immigrant women’s capacity to act.

UNDERSTANDING MUSLIM WOMEN’S AGENCY

From a theoretical perspective, agency requires an underlying sense of self, as well as an ability to assess the impact of one’s actions on future outcomes and the impact that past actions have had on present conditions (Emirbayer and Mische 1998; McNay 2000). The debates surrounding Sharia law did not address these facets of agency, but rather questioned Muslim immigrant women’s capacity to act in a self-interested way. The notion of self-interested action calls forth two understandings of agency: as a reaction against forces of domination, or as embedded in particular historic cultural, social, and economic contexts (Bulbeck 1998, see also Ahearn 2000; Mahmood 2001; McNay 2000).

In bringing the concept of embedded agency to feminist sociology, I draw on work by a number of feminist theorists from outside the field who argue that women’s capacity to act is obscured when read only from their resistance to forces of domination (Ahearn 2000; Mack 2003; Mahmood 2001; McNay 2000; Mihelich and Storrs 2003; Ortner 1996, 2001). Agency is, of course, always informed by social contexts. The distinction here is between seeing agency solely as resistance, which captures actions that explicitly aim to undermine hegemony, and embedded agency, which captures practices that do not have this explicit aim, yet still reflect active engagement in shaping one’s life. The notion of embedded agency allows for a richer sense of how practices of domination and subordination, such as those associated with religion, structure the subjectivity underlying the capacity to act (Mihelich and Storrs 2003). By seeing agency as potentially embedded in social forces like religion, which are typically construed as limiting agentic behavior, the capacity to act is not contingent on adopting liberal “free will” and “free choice” approaches to subjectivity (see also Ahearn 2000; Mihelich and Storrs 2003; Ortner 2001).
Many of the debates on the integration of Muslim immigrants in the nation-states of the global north have focused on the ability of Muslim women to resist forces of domination and avoid the gendered subordination often seen as inherent in Islam. For instance, the continuing debates on the hijab often construe the wearing of the veil as a sign of limited agency and of the incompatibility between Islamic and Western values (Ahmed 1992; Alvi, Hoodfar, and McDonough 2003; Atasoy 2006; Bartkowski and Read 2003; Bloul 1998; Fournier and Yurdakul 2006; Killian 2003; Macleod 1992). Discussions of forced marriage and honor killing similarly reinforce that Muslim women’s capacity to act is severely constrained by their religion (Kogacioglu 2004; Korteweg and Yurdakul forthcoming; Razack 2004). Public debates often frame these issues as indications of the ways in which Islam coincides with a particular form of patriarchy that severely circumscribes Muslim women’s capacity to act (Abu-Lughod 2002; Razack 2004). In this process, Muslims also become ethnically “other” and often actors both within and outside Muslim communities ethnicize religion through appeals to women’s proper role in the family, their bodily comportment and so on, (Bloul 1998; Korteweg 2006). By positioning women as objects, this process of ethnicization also supports notions of Muslim women’s limited agency.

Yet the agency of religious Muslim women can also be understood in dramatically different ways. In her work on the Egyptian Islamic revival movement, Saba Mahmood (2001) argues that liberal theories of freedom are the result of locally specific historic trajectories, rather than the universal set of norms and values they purport to be. Mahmood argues against feminist theories, such as those articulated by Judith Butler (1993), in which agency is understood as the capacity to resist dominant understandings of right action. Approaches like Butler’s link agency to resistance and liberal subjectivity to freedom or autonomy (see also Ahearn 2000; McNay 2000; Ortner 2001). Such a framework, Mahmood argues, can only understand women’s active participation in an Islamic revival movement that seems to reinforce gender difference and attendant gender inequalities as either delusional or as somehow materially self-interested (Mahmood 2001; see also Macleod 1992). Mahmood (2001) proposes a different reading in which women involved in this religious movement actively shape their desire through embodied practices linked to piety under Islam (such as veiling, modesty in clothing, the practice of shyness, etc.). She concludes that for these women, agency does not flow from freedom (or those parts of our lives in which we are free from constraints by others), but rather is formed in direct relationship to structures of subordination.
These embedding contexts extend beyond religious ones. For example, Rachel Bloul (1998, 1) shows that the lives of Maghrebi immigrant women were informed by discourses of “engendering ethnicity” practiced by both French and Maghrebi men, in which the wearing of the veil became a way to draw ethnic boundaries between majority French and minority Maghrebi society. Yet these processes also had an impact on Muslim women’s agency; the capacity of Muslim men to influence the local political economy of their neighborhoods increased women’s labor force participation and extended the sphere in which (veiled) women could move (Bloul 1998). Similarly, North African women’s responses to the French public debate regarding the headscarf shows that these women occupied a variety of subject positions regarding when to wear the veil and that they interpreted the veil differently depending on the strength of their connection to majority French society (Killian 2003). Such findings imply that Muslim women’s agency is shaped by local and national social, cultural, and political struggles that intersect with, but also move beyond, religion per se (see also Fournier and Yurdakul 2006). Furthermore, this agency is not (solely) informed by resistance, but directly shaped by these intersecting forces.

In sum, the literature implies the importance of identifying which conceptualizations of agency are mobilized in debates like those considered here. As I noted above, the legal arbitration process presupposes a capacity to act in one’s self-interest, and the concerns voiced by various community groups centered on whether Muslim women had the agentic capacity to resist forces of domination that many believed inhered in Islamic legal practice. In what follows, I analyze newspaper articles to see whether this conceptualization of agency dominated in the debate and to what extent a conceptualization of agency as embedded held sway. To see how these conceptualizations in turn structure the contexts of women’s agency, I pay attention to how divergent conceptualizations of agency fostered calls for different kinds of state intervention. Furthermore, I examine how conceptualizations of agency promoted visions of social groups as more or less different from majority society along ethnic and racial lines.

**METHODOLOGY**

To analyze how Muslim women’s agency was conceptualized in the context of Canadian press coverage, I looked at three newspapers: *The Globe and Mail*, the *National Post*, and the *Toronto Star*. The *Globe and Mail* and the *National Post* are Canada’s two nationally distributed papers. *The Globe and Mail* generally reflects the political center of Canadian politics, while the *National Post* is a more neo-conservative paper. The
Toronto Star is Toronto’s leading local paper. It has the largest distribution of any paper in Canada, the Greater Toronto Area having the greatest population density in Canada. Reflecting the position of Toronto in Canadian politics, the Star tends to be politically to the left of the two national papers.

With the help of my research assistants, I created a database of articles by searching for the word “Sharia” and filtering out the articles that concerned foreign countries. The three newspapers published between 21 and 45 articles each in the period beginning in December 2003 with Syed Mumtaz Ali’s announcement that he would introduce Islamic arbitration and ending with the cessation of religious arbitration altogether in February 2006, for a total of 108 articles. Roughly half of the articles are op-eds, editorials, comments, and opinion pieces. National, or sometimes international, news comprise the remainder (see Table 1).

Newspapers construct social problems as they selectively report on certain issues and not others and as they highlight some aspects of these issues and not others (Best 2002; Critcher 2003; Ferree 2003; McCarthy, McPhail, and Smith 1996; Smith et al. 2001; Spector and Kitsuse 1977). Recognizing this, I approached the data analysis in ways designed to uncover representations of agency reflected in arguments regarding the advisability of instituting Sharia-based tribunals. I quickly realized that a select group of people was treated as sources of authority on the topic in both news and opinion pieces. The debate was quite polarized, and members of the various Muslim communities were called on to comment on either the “for” or “against” side. I identified the actors who were quoted in more than one article or op-ed by coding both the news and editorial pieces and marking each article that contained a meaningful quote by a particular person, noting whether they argued for or against the institutionalization of Sharia-based tribunals (see Table 2). I also focused on the op-eds and editorials as another place where the issue was strategically framed and again counted how many writers or editorial boards made arguments for and against (see Table 3).
I then conducted a qualitative discourse analysis of the portrayals of Muslim women’s agency that drove these arguments. In my presentation of these findings, I hone in on the voices of Muslim women and men who participated in the debate. Their assertions reflected the overall discursive representations of Muslim women’s agency that structured the debate. Furthermore, the participation of Muslim women and men in the debate could itself be read as particular representations of agency, thus adding a layer of complexity to the analysis.

**TABLE 2:** People Quoted in *The Globe and Mail, National Post, and the Toronto Star*

<table>
<thead>
<tr>
<th>Quoted For</th>
<th>Number of Articles</th>
<th>Quoted Against</th>
<th>Number of Articles</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Mohammed Elmasry</td>
<td>7</td>
<td>2. Tarek Fatah</td>
<td>14</td>
</tr>
<tr>
<td>3. Mubin Shaikh</td>
<td>6</td>
<td>3. Alia Hogben</td>
<td>14</td>
</tr>
<tr>
<td>5. Katherine Bullock</td>
<td>3</td>
<td>5. Fatima Houda-Pepin</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9. Soheib Bencheikh</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>41</strong></td>
<td></td>
<td><strong>72</strong></td>
</tr>
</tbody>
</table>

**TABLE 3:** Editorials and Opinion Pieces For and Against in *The Globe and Mail (GM), National Post (NP), and Toronto Star (TS)*

<table>
<thead>
<tr>
<th>Editorials for</th>
<th>Number of Editorials</th>
<th>Editorials against</th>
<th>Number of Editorials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Editorial Board <em>GM</em></td>
<td>5</td>
<td>3 regular columnists <em>GM</em></td>
<td>6</td>
</tr>
<tr>
<td>3 guest columnists <em>G&amp;M</em></td>
<td>3</td>
<td>Open letter to McGuinty <em>GM</em></td>
<td>1</td>
</tr>
<tr>
<td><em>TS</em> Editorial Board</td>
<td>4</td>
<td>5 regular columnists <em>TS</em></td>
<td>6</td>
</tr>
<tr>
<td>1 regular columnists <em>TS</em></td>
<td>5</td>
<td>5 guest columnists <em>TS</em></td>
<td>5</td>
</tr>
<tr>
<td>2 guest columnists <em>TS</em></td>
<td>2</td>
<td>4 regular columnists <em>NP</em></td>
<td>4</td>
</tr>
<tr>
<td>Editorial Board <em>NP</em></td>
<td>2</td>
<td>3 guest columnists <em>NP</em></td>
<td>2</td>
</tr>
<tr>
<td>2 guest columnists <em>TS</em></td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>23</strong></td>
<td><strong>—</strong></td>
<td><strong>24</strong></td>
</tr>
</tbody>
</table>

**REPRESENTING MUSLIM WOMEN’S AGENCY**

As in many debates about Islam and Western liberal values, gender (in)equality and presumptions of Muslim women’s limited agency became
a flashpoint for arguments against public recognition of Muslim religious practices (Abu-Lughod 2002; see also Okin 1999). Authors like Bloul (1998) show that both majority and minority men constitute ethnic difference by positioning Muslim women as objects. In the case of the Ontario Sharia debate, both self-identified secular and self-identified religious Muslim women, as well as men, actively participated in the debate. These participants both represented and articulated divergent understandings of agency.

The arguments against, put forth by Muslim women and men, were widely shared among the participants in the debate. The tabulations of Table 2 and Table 3 show that largely secular Muslim voices arguing against Sharia-based tribunals were joined by those from members of majority society, most of whom were women, and that these voices, quoted in a total of 72 articles, dominated in the debate. The voices arguing for the institution (with state oversight) of Sharia-based arbitration were less-well represented in 42 articles and more narrowly confined to the Canadian religious Muslim communities, though the editorial boards of all three newspapers shared their views.

Privileging Agency of Resistance

Secular Muslim women, such as Homa Arjomand, Fatima Houda-Pepin, and Ayaan Hirsi Ali, occupied a prominent place in the debate (see Table 2). These three women contributed almost half of all quotations against the adoption of Sharia-based tribunals. Their participation in the debate could be read as an example of agency through resistance—they were often portrayed in the newspapers as Muslim women who, through their own experience, came to understand Islam as inhibiting agency. Newspaper accounts juxtaposed their active engagement in the public sphere with quotes in which these women highlighted the detrimental effects of Islam on Muslim women’s capacity to act.

Often the newspaper articles that quoted them started with a portrayal of Islamic law as riddled with injustice and (gendered) oppression. This line of argument took on multiple guises. For example, Fatima Houda-Pepin, a representative for the Liberal Party in Quebec’s provincial parliament and a Muslim immigrant from Morocco, argued that,

We’ve seen the sharia at work in Iran... We’ve seen it at work in Afghanistan, with the odious Taliban regime, we’ve seen it in Sudan where the hands of hundreds of innocent people were cut off. We’ve seen it in Nigeria with attempts of stoning... The list is very long. Is that what we want to import to Canada? (NP March 11, 2005)
This equation of Sharia-based tribunals with the worst examples of justice enacted under the guise of Islam was widespread among the arguments against arbitration. Opponents framed immigrants from non-Western societies as bringing practices that contravene the dominant norms of majority society. In such quotations, Houda-Pepin represented Muslim immigrants who rejected the importation of the norms and practices associated with Islam in non-Western countries. In so doing, Houda-Pepin exercised agency expressed through resistance to Islamic law and practice.

The link between gendered practices and Muslim women’s agency came to the fore in discussions of how Sharia-based tribunals might work within Canada. Homa Arjomand, the most quoted person in the opposition, was one of the prime movers against the IICJ’s proposal. The newspapers described Arjomand as a refugee from Iran who worked on women’s rights issues there and saw her friends killed one by one. After a harrowing trip across the mountains from Iran into Turkey in the late 1980s, she ended up a refugee in Canada. When the Sharia proposal hit the newspapers, she started the International Campaign Against Sharia Courts in Canada. In one article, Arjomand described how,

. . . she has counseled many Muslim women whose rights were abused during informal arbitration by Muslim leaders. In the case of one family who turned to their Markham, Ont., mosque for resolution of a dispute, the results were not positive for the wife and adolescent daughter. The woman, of Pakistani origin, and her 15-year-old daughter were “returned” to Pakistan against their will, Ms. Arjomand said, and the daughter was placed in the custody of an uncle and preparations were made for an arranged marriage.

The father then married a 19-year-old woman and brought her to Canada.

“Was the mother forced to leave the country? We don’t know what really happened here,” said Ms. Arjomand. (GM September 9, 2004)

Arjomand’s agency was here linked to her resistance, first to the Islamic regime in Iran, then to attempts to bring Islamic jurisprudence into the Canadian legal sphere. The juxtaposition between the descriptions of Arjomand and the Markham mother and daughter reinforced the link between Islam and limited agency, foreclosing representations of embedded agency.

Descriptions of abuses of power in Canadian Muslim communities’ interpretations of Islamic jurisprudence became the bases for arguments that connected Islam directly to the oppression of women. In the resulting representation of women’s relationship with Islam, the conceptualization
of Muslim women’s agency was implicitly or explicitly tied to secularism, privileging the modern but deeply Western subject whose agency is expressed through resistance (Bulbeck 1998; Mack 2003; Mahmood 2001). The most extreme version of the idea that agency depends on women’s resistance to all expressions of religion appeared in a number of op-ed pieces by Margaret Wente, a regular columnist for The Globe and Mail. Wente often recounted arguments made by Muslim women. For example, when Ayaan Hirsi Ali (a Somali-born woman who at the time was a member of Dutch parliament and who now works for the American Enterprise Institute in the US) visited Toronto in the summer of 2005 to help Arjomand’s campaign, Wente wrote a full-page article based on this visit in which she interspersed her analysis with quotes from Hirsi Ali:

“Canadian law,” [Ayaan Hirsi Ali] says, “is now offering some Canadian men the opportunity to oppress us.” She believes in the strict separation of religion and state. She believes that the religious law of any faith—Muslim, Christian, Jewish—invariably oppresses women. And she believes that the promised safeguards, such as the right to appeal any decision to a secular court, are a load of hooey for women who live, as many Muslim women do, in a closed society. “What is freedom of choice when you depend on your family and clan for everything?” (GM August 20, 2005)

Again, such arguments predicated the agency of Muslim women on their resistance to religiously informed family and community practices. Secularization became the way to create the conditions within which Muslim women had the capacity to act; without secularization, family relationships structured by Islam could not be penetrated by the more liberal ways of the host society in which immigrants found themselves.

**Representations of Embedded Agency**

A conceptualization of agency as embedded takes seriously that women’s subjectivity is informed by their religious practices in ways that directly shape their agentic behavior (Mahmood 2001). Marion Boyd’s report on the advisability of Sharia-based tribunals recognized this link between subjectivity and agency and argued for continuing to allow arbitration based on Islamic principles, contingent upon institutionalizing oversight measures (Boyd 2004). The participation of self-identified religious Muslim women and men in the debate further showed that agency could be embedded in religion (and its intersection with gender, immigration, and ethnicity).
Religious Muslim participants in the debate constructed the link between agency and Islam in three ways that reflected conceptualizations of embedded agency. First, proponents of Sharia-based arbitration made claims against the state from a perspective in which Muslim women’s agency was embedded in religious and other contexts. After Ontario Premier McGuinty announced that he was going to end all religiously based arbitration, proponents emphasized that religious immigrant Muslim women needed state protection, claiming that religious arbitration would continue but now without the oversight of Canadian legal institutions. For example, in one of her editorials for *The Globe and Mail*, regular columnist Seema Khan argued that women suffered under informal Islamic jurisprudential practices and she claimed that women could be protected only through institutionalized state oversight:

> . . . too many unqualified, ignorant imams [make] back-alley pronouncements on the lives of women, men and children. The practice will continue, without any regulation, oversight or accountability. [...] [W]e have missed a golden opportunity to shine light on abuses masquerading as faith, and to ensure that rulings don’t contradict the Charter of Rights and Freedoms. *(GM September 15, 2005)*

Khan, in her participation in Canadian society as a self-identified religious woman, illustrated the possibility of embedded agency, or a capacity to act informed by religiosity. In her columns on Sharia-based arbitration, she extended this capacity to all religious Muslim women. However, given the clear possibility of abuse in unmonitored, informal arbitration processes, this agency could not solely be embedded in religious contexts, but also needed to be safeguarded by the Canadian state. Thus, Khan and others who argued for the institution of Sharia-based tribunals nuanced the negative link between Islam and agency put forth by secular Muslim women (and others) by pointing the finger at poorly-trained imams and a lack of transparency in decision-making, rather than at Islam in general. In claiming that Sharia-based arbitration needed to be institutionalized, proponents argued that Islamic jurisprudence does not necessarily contradict Canadian standards of gender equality and, by extension, does not solely curtail women’s agency. Rather than making agency contingent on resistance, these women and men promoted the intersection of religion with state-oversight, or a strengthening of some of the social forces in which agency was embedded to increase the possibility of gender-equality in Sharia-based decision-making.
A second line of argument put forth by religiously identified Muslim women also nuanced the dominant understanding of Islam as always limiting women’s agency. Alia Hogben, the president of the Canadian Council for Muslim Women, was, like Khan, a self-described religious woman. In an op-ed piece written for the *Toronto Star*, Hogben, the second most cited person against Sharia-based arbitration, argued that it was impossible for Muslims to be against Sharia as the term “metaphorically describes the way Muslims are to live” (*TS* June 1, 2004, see also Raza *TS* December 24, 2004). Yet she was against Sharia-based tribunals because she believed that allowing them would negatively affect a group of religious Muslim women within Canadian society.

One of Hogben’s primary concerns was that the use of the term “Sharia” would lead religious Muslim women to believe they were mandated to go to Sharia-based tribunals rather than the secular court system to negotiate issues surrounding family dissolution and inheritance. According to Hogben, Canadian law was already “congruent with the principles of Islam,” and Sharia-based tribunals were simply unnecessary except to make rulings that are detrimental to women (*TS* June 1, 2004). In other words, even though their agency was embedded in religious contexts, religious Muslim women might act in ways that were detrimental to their self-interest. Thus, Hogben differed from Khan in arguing that institutionalized recognition of Islamic jurisprudential practice would amount to public recognition of those aspects of Islam that would always curtail women’s agency. For Hogben, women’s agency could be informed by Islam as private practice, but also needed to be embedded in a secular public sphere. Taken jointly, Khan and Hogben’s participation in the debate showed that being embedded in a religious context created more nuanced representations of the ways religion could inform agency than the outright rejection of such a possibility that dominated in approaches which construed Muslim women’s agency as resistance to religion.

A third link between agency and religiosity was articulated by the person who started the debate, Syed Mumtaz Ali. He was the most quoted proponent of Sharia-based arbitration and the only one to voice a perspective in which the agency associated with using Sharia-based tribunals was unproblematically embedded in religion; for Mumtaz Ali, there simply was no tension between the strictures of religion and religious Muslim women’s agency. Early on in the debate, *The Globe and Mail* stated that Mumtaz Ali “hopes some of the arbitrators will be women” (December 13, 2003). However, from his religious perspective, women’s attendant capacity for agency was based on a particular understanding of the relationship between women and men within Islam:
[Mr. Mumtaz Ali] also acknowledged that inheritance and divorce rulings under Islamic law tend to favour men, for historical reasons. “Brothers and sons always get more. But it is because under the Islamic system, the man has the duty and responsibility to look after the woman,” he said.

Women may use the tribunal to negotiate prenuptial agreements that allow them to initiate divorce proceedings without the permission of their husbands: “They are in the driver’s seat before they marry,” Mr. Mumtaz Ali said. (GM December 11, 2003)

This argument represented devout Muslim women’s agency as embedded. They had the capacity to act as religious women; they could be arbitrators and negotiate an equal right to divorce prior to their marriage. In Mumtaz Ali’s interpretation, Islam renders women and men unequal, but this inequality, in Mumtaz Ali’s perception at least, is erased by differences in obligation. Yet conceptualizations of embedded agency are about recognizing that agency can be differently informed by historically, culturally, and socially specific interacting social forces. Mumtaz Ali’s assertions were clearly problematic in that, unlike the arguments put forth by religious Muslim women like Khan and Hogben, his did not recognize how these contexts contained complex forces of resistance and domination.

Mumtaz Ali notwithstanding, the vast majority of the arguments, whether for or against the institution of Sharia-based tribunals, reflected widespread agreement across the Muslim communities in Canada that Sharia-based tribunals risked constraining devout Muslim women’s agency, either by definition or because of abusive practices by imams in a context of limited state oversight. Religious Muslim women, particularly recent immigrants, according to the arguments, would not be able to act in their own self-interest given the pressures of their family and community and given existing experiences with the treatment of women within informal Islamic jurisprudential practices.

These possibilities were assessed differently depending on whether agency was (implicitly) recognized as embedded or as solely expressed through resistance. The dominant representations of agency as resistance to religious strictures led to arguments against state recognition of Sharia-based tribunals. These arguments rooted agency in secularism and positioned the state as the guardian of the secular public sphere. The less dominant representations of agency as embedded in religion more often led to calls for state oversight of Sharia-based tribunals to reduce the potential for abuse and strengthen the aspects of Islamic jurisprudence that support women’s capacity to act in their own interests. In these representations, the state facilitated the agency of devout Muslim women.
Implications: The Problem of Racialization

A failure to recognize that Muslim women’s agency can be embedded in religion is problematic, not only because it narrows public debate, but also because it risks a narrowing of possible policy responses to concerns of immigrants from the global South to the North. An expanding literature explores the ways portrayals of gender inequality within the Muslim world, whether that world is situated in the global South or in immigrant communities within the global North, are rooted in orientalist discourses that strategically justify Western actors’ interventions in these communities (Abu-Lughod 2002; Falah 2005; Kogacioglu 2004; Razack 2004, 2007). These discourses reify monolithic portrayals of the impact of religion on Muslim women. A similar reification occurred in representations of Muslim women’s agency as resistance that dominated in the Canadian Sharia debate.

Some participants in the debate, mostly proponents, but also opponents to Sharia-based arbitration, highlighted the potential racialization of Muslim immigrants in the dominant portrayals of Muslim women’s agency. Racialization refers to the process of imputing innate group differences that distinguish subordinate groups from majority society. Where Bloul (1998) discusses the engendering of ethnicity in French discourses on the veil, participants in the Canadian Sharia debate saw a process of racialization that was clearly gendered. For example, Tarek Fatah, communications director for the Muslim Canadian Congress, an organization that advocates against bringing religion into the public sphere, saw such racialization intersecting with Muslims’ immigrant status. In an editorial, Fatah wrote:

If implemented, this law will also cut along class and race lines: a publicly funded, accountable legal system run by experienced judges for mainstream Canadian society, and cheap, private-sector, part-time arbitrators for the already marginalized and recently arrived Muslim community.

For groups like the Muslim Canadian Congress, there is no such thing as a monolithic “Muslim family/personal law,” which is just a euphemistic, racist way of saying we will apply the equivalent of “Christian law” or “Asian law” or “African law.” (TS June 22, 2005)

The first part of the quote echoed arguments that recent immigrants should have the same rights and privileges as long-time Canadians, which informed discourses that saw agency solely in resistance. However, the second part indicated how the dominant discursive portrayals of Islam fostering this understanding of Muslim women’s agency could also be read
as a form of racialization. This racialization occurred through the homogenization of “the” Muslim community and the drawing of stark boundaries between that community and the rest of Canadian society facilitated by discourses that linked Muslim women’s agency to resistance to Islam.

Faisal Kutty, general counsel for the Canadian-Muslim Civil Liberties Association, which supported the institutionalization of Sharia-based tribunals, implicitly argued that the racialization of Muslims within the debate prevented (state) recognition of the ways all women’s agency was embedded:

[I] can appreciate that many are concerned about the exploitation of Muslim women. However, the discourse is now bordering on being racist. For instance, critics contend that true consent cannot be ascertained, as Muslim women will be forced to cave in to social pressure and accept unfair decisions. The concern is valid but is not restricted to Muslims and can be partly addressed by imposing duties on arbitrators. (NP January 4, 2005)

Kutty accepted that women’s agency was embedded in social contexts, and that such social contexts could lead to curtailing women’s agency (like Khan, he advocated for institutional oversight of Sharia-based arbitration). However, he also asserted that in the public debate, gender inequality was recognized when it was situated within the Muslim community, but not in majority society. As Kutty argued, the debate singled out Islam, rather than addressing systemic expressions of gender domination that, according to some, structured all overtly gender-neutral arbitration processes (see also Bakht 2004). By associating gender inequality with Muslim communities, gender equality was discursively linked to majority society. In doing so, the debate positioned Canadian Muslims as racialized others. This racialization became gendered through the associations between gender inequality and Islam that flowed from linking agency solely to resistance.

**CONCLUSION**

The concept of embedded agency draws our attention to the way forces like religion have multiple effects on women’s agency. By approaching agency as embedded in such forces, public debates can move away from associating liberty and freedom with pulling women out of the contexts that shape agency and ultimately subjectivity. In the case of the debate on Sharia-based arbitration, the relative absence of such an approach to
agency led to the homogenization of Islam and diverse Canadian Muslim communities to the point of “being racist,” in the words of one of the participants in the debate. Furthermore, the privileging of agency as resistance to religion and its concomitant emphasis on secularism as that which can safeguard women’s capacity to act seems to have informed the Ontario government’s decision to halt all religious arbitration in the province. This decision constituted a failure to recognize the possibility that religious women might want to be able to enact certain religious practices, but that they might need government assistance in securing a fair interpretation of Islamic jurisprudence.

Many of the tensions surrounding the integration of immigrants in Western Europe, and to a lesser degree in Canada, center on the presumed incompatibility between Western and Muslim religious values. These debates often focus on issues of gender inequality and the treatment of women within Islam. Conceptualizing Muslim women’s agency as embedded enables an analysis that does not predicate women’s capacity to act on liberal freedom, but rather carefully situates agency in the contexts that inform it. As Tripp (2006) illustrates in her analysis of Western feminists interventions in the case of Amina Lawal, the Nigerian woman sentenced to death by stoning for adultery, misrecognizing the forces that inform women’s agency can hinder, rather than facilitate, their capacity to act.

To investigate the broader implications of the findings reported in this article, two further avenues of research should be pursued. First, the newspaper debates discussed in here tell us little of what happens in the daily lives of Muslim women who do not actively participate in public debate. Further research needs to examine the ways devout Muslim women negotiate their lives in the intersections of Canadian (and other states’) legal practices and their (communities’) interpretations of religious dictates. This research should seek out these women to understand their perspectives and desires with respect to living a life in accordance with religious practice within multi-dimensional social and political contexts. Here, understanding religion and other social forces as intersecting in dynamic ways will help us move towards a fuller understanding of how agency is embedded in religious and other contexts. Such research can and should occur in any immigrant-receiving nation-states that grapple with religious and other culturally informed differences.

Second, we need to see how policy (mis)recognition of women’s agency, as reflected, for example, in policy approaches to wearing the veil, arranged marriages, and honor-related violence, affects women’s capacity to act. These issues all come up repeatedly in debates on Muslim women’s
integration in the global North. Knowing the various ways Muslim women relate to these practices and how their religiosity intersects with gender, class, migration status, ethnicity, and race can provide the basis for an analysis, which assesses whether (proposed) policies impede or facilitate women’s agency. Such assessments require us to understand agency as embedded in multiple social forces, rather than flowing solely from liberal, secular practices. This research would further our understanding of how various state institutions can work to support rather than undermine women’s varied expressions of agency.

Ultimately, the concept of embedded agency is applicable in any inquiry into what shapes women’s (and men’s) capacity to act. Representations of agency rooted in the Western, liberal tradition, do not produce socially untethered free-floating subjects. As the portrayals of the secular Muslim women’s arguments in the Sharia debate show, they produce an agentic subject embedded in its own particular political-philosophical tradition. In our globalizing world, these traditions increasingly stand in tension with other conceptualizations of the forces that shape agency.

NOTES


2. A caveat about terminology—in 2006, an estimated 700,000 Muslims resided in Canada, the majority in the Greater Toronto area and the province of Ontario. Taken together, Muslim communities constitute the largest religious minority in Canada. However, the Muslim world stretches across the globe, and Canadian Muslims reflect the resulting cultural, ethnic, and linguistic diversity, as well as diverse interpretations of Islam. I use the terms “Muslim women” and “Muslim men” throughout this article to identify people who are situated as Muslims within public debate, sometimes adding the modifiers “secular” and “religious” or “devout.” By secular Muslim women, I mean those who in their self-descriptions, as published in the newspapers, adhere to the ideal of a secular public sphere, but who might (or might not) practice their religion in private. When I discuss women who self-identify or who were presented as religious, I use the modifiers “devout” or “religious.”

3. The Arbitration Act covers a wide range of private legal issues, but I focus on arbitration of family matters because this took center stage in the debate.

REFERENCES


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