OFFICIAL SPACE(S) & CONTEMPORARY CANADIAN NATION-BUILDING:
AN ANALYSIS OF THE SHARI'A PROPOSAL IN THE MARGINALIZATION AND
PRIVATIZATION OF MUSLIM WOMEN POST 9/11

by

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ABSTRACT

September 11, 2001 will be a date forever etched in the memories of people all over the world. For most in the Global North, it signaled a dangerous shift in international security and rise of "threat" to "freedom"; for most in the Global South, it meant being subjugated to a renewed set of imperial conquests of the Muslim world. For some of us in Canada, it marked the beginning of a series of exclusionary measures to definitively cast us as "the enemy". In the new "War on Terror", political and ideological lines delineate "us" and "them", "insiders" and "outsiders" to the Canadian nation (Thobani, 2003). But what about those of us who identify as both Canadian and Muslim? How are we implicated in this "war"? Particularly, how and where are Muslim women positioned in the debate, and how does our positioning effect Canada's reputation as a "benevolent", "inclusive" nation? (Razack, 2004) These issues lie at the root of contemporary Canadian nation-building post 9/11.

In order to uncover the fractures and fissures in this debate, I engage in a case study of the Shari'a debate in Ontario in 2004. I conduct an anti-racist feminist textual analysis of Marion Boyd's report (2004), which advocates for the recommendation of Shari'a tribunals to be permitted under the *Ontario Arbitration Act 1991* in adjudicating family law issues. My findings suggest that the recommendation not only homogenizes the experience of all women subject to religious tribunals, but it also serves an important ideological function in both Canada's maintenance of "Whiteness" in the nation and promotion of "altruism" to the rest of the world. I argue that these functions are achieved through the systematic marginalization and privatization of Muslim women to "official Othered spaces", while reflecting on my own positionality as a Canadian Muslim woman.

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PREFACE

I have always felt proud to be Canadian. I began traveling with my family at a young age; no matter where our destination, people seemed to have a quiet reverence for Canadians. They respected our values of tolerance, equity and plurality and admired our seemingly "bloodless" history. I was raised with stories of my mother's childhood as a woman of colour in Apartheid South Africa, and felt both deep-seated sadness and anger for the injustices perpetrated against her and all people of colour, coupled with intense gratitude for my place of birth and country of citizenship.

It was not until I learned difficult truths that I began to question these assertions. I realized that people both outside of and inside Canada required my family to qualify our Canadian status. I began to understand the significance of questions like, "But where are you *originally* from?", and comprehended that "real" Canadians did not have brown skin, eat Indian food or go to mosque. More importantly, I learned that our "bloodless" history was in fact marred with genocide; that we live on stolen land; that we are all complicit in the continued subjugation of Aboriginal peoples and their home. These profound truths allowed me to connect the dots: Canada is not the benevolent nation it pretends to be. In fact, oppression of all kinds continues to drive political, economic, social, cultural, and religious relations in this country today.

I am, however, optimistic and invested. I am optimistic that Canada can one day be a great pluralistic nation. It can be a place where all people are welcome, respected and included. I am deeply invested in this idea that will allow my children to one day distance themselves from the experiences of their ancestors as indentured laborers and "second-class citizens". It is with this optimism in mind that I set forth on my inquiry.

The issues raised in this thesis will hopefully shed light on the complex marginalization and privatization of Muslim women in Canada in an effort to affect positive change; change that

will prompt dialogue about and reflection on how we define membership to the nation. It will require recognition of the nation's dark past and shadowy present, in which injustices have been and continue to be perpetrated against Aboriginal and immigrant bodies; it will also require a critical evaluation of power distribution in Canadian society. But I am hopeful. With this hope in mind, I will continue to attach Canadian flags to my suitcases and I will continue to qualify my status as a Muslim-Canadian/ South Asian-Canadian to people who require it; I envision a Canada where I am considered a full member and a real citizen.

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Thank you to my father, Firoz, my mother, Saida, and my sisters, Karima and Salima, for always creating spaces of dialogue for me to articulate my passions, and for defending my voice even if they do not always agree with what I have to say. A special thanks to my father for his valuable insights, for believing in me and for keeping me grounded in my graduate work.

I thank my nanima, dadabapa and nanabapa, who all recently passed away, for their words of wisdom and blessings throughout my life. I am sure that they are smiling down on me today.

And finally, to my husband and life partner, Joshua, I thank you for your love, continued patience and unconditional support in my pursuit of social justice and higher education.

DEDICATION

To all the powerful women in my family who have come before me, especially my mother, Saida, and my grandmothers, Jena and Maleka, for forging the path and laying the foundation for me to pursue feminist social justice work.

INTRODUCTION

Discursive Power

Michel Foucault's seminal theory of discursive power created a substantial foundation upon which feminist and anti-racist scholars have constructed theoretical frameworks for evaluating and understanding contemporary relations of power. From Foucault's radical assertions about the role of power in the construction of sexualities (1980) to his astute insights relating power to the production of knowledge (1969), anti-racist and post-colonial feminists have drawn extensively on his work to investigate the effects of this power on the creation and maintenance of the subject-positions of those on the margins (Fellows & Razack, 1997; Thobani, 2003).

Foucault's claim that power is "everywhere" and "nowhere" signaled a significant break in sociological theory, layering the location of power both in its embeddedness in institutions and structures and its discursiveness in linguistic categories that regulate these structures. Although he rejected the use of any labels to characterize his work, Foucault can nonetheless be understood as a contemporary, post-structuralist, interprevist theorist. Structuralists such as Marx (1955) and later, Bourdieu (1998), theorize that power is embodied in and exercised by the state through social institutions; in this way, power is exerted directly over individuals to subordinate Others. While an understanding of the structural exercise of power is beneficial, Foucault's dramatic reconceptualization of power as productive, traversing the boundaries of structures, and penetrating everyday language provides feminist, post-structuralist, anti-racist and post-colonial scholars with valuable tools with which to deconstruct the creation of marginalized subject- positions. Foucault's assertions about the ways in which individuals are shaped in society through the various masked mechanisms of power at work are particularly intriguing. Moreover, his notion of free flowing power in both directions has allowed critical theorists to engage in more nuanced and contextualized debates about oppression.

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At the center of Foucault's theory of power resides the notion of "subject-position construction". He argues that the hidden power governing social relations creates individuals as "subjects" through different social constructions. Feminists and anti-racist theorists have extended this analysis to claim that as "subjects" in these discourses of power, we come to see ourselves in naturalized positions, produced as gendered, classed, racialized, and "disabled" (Hill Collins, 2000; Smith, 1990). Adopting the position of an "archaeologist" Foucault (1969) examined the set of relations that gave rise to specific discursive formulations in the past. By uncovering their epistemic origins, Foucault believed that one could uncover the erasures, discontinuities and absences that were *not* included in a discourse.

Adopting a feminist position, Smith (1990) argued that objectified forms of knowledge are rooted in specific ideological practices of those in power in society. She claimed that our knowledge of the world is largely mediated by "official texts", predicated on the erasure of the voices of women and other marginalized groups. These "official texts" are formulated as "objectified" forms of knowledge to create the appearance of neutrality, thereby concealing specific subtexts of class, gender, and race. The production of knowledge, therefore, is deeply imbricated in social organization and the power relations that govern it.

Using this conception of power, I argue that "official texts" in the form of legislation create "official knowledge". The discursive power embedded in state- created and -sanctioned texts enables the state to define ideological boundaries of the nation; immigration legislation has enabled the Canadian state to "keep Canada White" throughout history (Strong-Boag, 1995; Thobani, 2000). In the same way, all forms of law operate as tools to create "insiders" and "outsiders" to the nation, regulating gendered, racialized, classed, sexually identified and (dis)abled individuals and groups to "official spaces" outside the borders of the nation. These "official spaces" are official to the extent that they are created by the state, but are not included inside the nation's borders. In this sense then, I employ the term "official space" as a signifier of

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this Othered space: excluded from the ideological boundaries of the "national imaginary" (Anderson, 1983), yet designed and policed by the state. I also wish to make explicit the complexity and diversity of "official space". Though I often employ it in its singular form, I do not wish to denote a singular space to which all Others are proscribed; it is important to understand the multiplicity of lived experiences and hierarchy of oppressions that inform these different spaces. As a conceptual tool, however, I find it helpful to describe the processes of marginalization as creating a "space".

In my investigation, I examine an important piece of potential Canadian law. I conduct a textual analysis of Marion Boyd's Report (2004) (detailed in later chapters), in which she makes a positive recommendation for Shari'a tribunals in Ontario to adjudicate family law issues. Though the Shari'a question has been hotly contested and widely debated within and outside the academic community, feminists have not yet conducted an anti-racist, anti-colonial textual analysis of the Boyd Report (2004). Feminist legal theorist Bakht (2004) has examined the impact of the Report on women, especially Muslim women; my thesis, however, investigates the power of the text in facilitating the larger historical nation-building project in Canada. Situating my discussion in "insider/ outsider" and "stranger" discourse, I also uniquely position myself in my analysis, highlighting the heterogeneity of "official spaces" for Muslim women in Canada.

In the Boyd Report (2004), I evaluate the "juridical discourse" (Smith, 1999) in which power imbalance is both concealed by and embedded in the text, attempting to uncover the role of this contested recommendation in contemporary Canadian nation-building. Chapter one of this thesis explicates the anti-racist, anti-colonial, anti-Orientalist feminist framework guiding my analysis, as well as the textual analysis used to obtain my data. In addition, I consider the utility of reflexivity as tool to deconstruct hidden power imbalances that arise through my analysis of the Boyd Report as a Muslim woman.

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Canadian Nation-building

The academic literature on Canadian nation-building is extensive (Bannerji, 2000; Bruno-Jofre, 2002; Chunn, 2002; Dua, 2004; McLean, 2004; Perry, 2001; Stanley, 2003; Strong-Boag, 2002; Thobani, 2000; Willinsky, 1998). In my analysis, however, I draw mostly on the work of anti-racist/ "Third World" feminist scholars. My intention is to privilege the voices of those who are "writing back" (Tuhiwai-Smith, 1999) to the "master narrative" (Greenwell, 2002) that has dominated Canadian history. By giving colonized perspectives primacy in my theoretical framework, I too am "writing back" and adding a new dimension of "Other" knowledge to the contemporary Canadian nation-building project.

Chapter two seeks to explicate the creation of "official spaces" for "Others" outside the ideological borders of the nation. I examine the making of Canada as a White nation to provide a context for contemporary gendered, racialized, and classed nation-building, paying particular attention to the role of "official knowledge" in the form of legislation in creating "official spaces" for colonized bodies. I examine the "Othering" of minority and immigrant groups in Canada, from the violent internal colonization of the First Nations people to the present-day neo-colonial constructions and policies towards racialized groups. I note the prevalence of Orientalist perceptions of Muslims in the West (Said, 1978) and the subsequent exclusion of "Others" from the nation. Finally, I consider how the demonization of Muslim men creates the derivative construction of "Oppressed Muslim women". In this way, "official spaces" (Oikawa, 2002; Razack, 2002) are created to which Muslim women are relegated.

A Benevolent Nation?: Promoting Inclusion

While Canada's borders continue to exclude coloured (particularly Muslim) bodies (Thobani, 2000), the nation is also invested in exporting its image of benevolence to the world. Canada has become a country other nations aspire to emulate; our "multicultural mosaic" is the rhetorical template for a successful, "inclusive" society. I argue, however, that this image of

altruism belies the subjection of immigrants. Particularly, I am concerned with the message communicated in the Boyd Report (2004) about the Canadian government's motives/ framework for considering the Shari'a proposal.

The title of Boyd's Report, *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion* (2004), reflects the interests of the government in her recommendation. She frames her analysis in the liberal, rights-based discourse, "protecting choice" (operating under the assumption that all women have a "choice" to enter arbitration) and "promoting inclusion" (inclusion as [presumed] members to the Canadian nation). In her Report, the debate concerning the appropriateness of Shari'a law is constructed as a tension between cultural autonomy and sexual equality; Boyd's role as an ex-politician/ privileged woman is to ensure that the democratic ideals of Canada are upheld and that no one's rights have been infringed upon. It will prove useful to outline this liberal rights-based framework now.

The Case for Cultural Autonomy

As an emerging pluralistic society, Canada faces the unique challenge of accommodating the cultures, religions and traditions of a multitude of citizens from various ethnic backgrounds. The *Charter of Rights and Freedoms* already provides for minority language rights (section 23), Aboriginal rights (section 25 and 32), and multiculturalism (section 27), signaling the recognition on the part of the state to allow minority communities to maintain a degree of autonomy over specific cultural, religious and traditional practices. The right of minority communities to self-determination on issues sensitive to their cultural norms is consistent with the tenets of the liberal democracy on which Canada is built. More importantly, it affirms the lack of authority that majority communities ought to have over issues pertaining to minority communities.

Indeed, judges already find themselves ill-equipped to deal with cultural and religious issues within the traditional judicial framework. Fournier (2001) argues that "dominant cultures

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[of countries like Canada and the U.S] often control [cultural] differences by assimilating them into mainstream norms. This tendency manifests itself in family law when judges, when administering complex but vague legal notions, apply their own perspectives to individuals who belong to culturally defined minority communities" (p.51). She claims that in *imposing* their 'majoritarian' opinions on ethnic and religious minority communities, judges effectively denote the "difference" or "Otherness"[1] of the community, advancing the argument that the perpetuation of the "Other" is compounded by both cultural anxiety on the part of judges and the belief in the law as 'neutral' and 'objective'.

Fournier provides an analysis of cases in which judgments predicated on the application of dominant cultural and religious values are applied to minority cultural practices, such as the enforcement of "Mahr"[2] and assessment of "muta"[3] in Muslim marriages. Citing *Khaddoura v. Hammoud* (1999), she argues that the judge's reasoning in deciding whether or not to enforce Mahr was problematically rooted in a Christian interpretation of the practice:

> Tellingly, and erroneously, the judge imports a Christian, majoritarian comparison with the Islamic institution of the Mahr. He overlooks the fact that, whereas Christian vows constitute moral obligations that are indefinite insofar as they can only bind the conscience, the Mahr is a financial obligation. The court's message is that a valid agreement between two Muslim parties is unenforceable [...] because of the agreement's religious *purpose* (Fournier, 2001, p.61).

Ignorance of specific religious traditions, coupled with personal bias on the part of certain judges, makes the proposal for communities to adjudicate their own issues even more pressing. It seems important, therefore, to allow minority communities to have the authority to

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[1] It is important to note that Fournier employs the term "Other" in the spirit of Said's analysis of Orientalism. See Edward Said, *Orientalism*. (New York: Pantheon Books, 1978).
[2] "Mahr" is a marriage-gift that is considered a divine injunction by some Muslims. The groom gives the bride Mahr as a token of his commitment and responsibility to her in the marriage contract. It can be paid in cash, property or material items; there is no legal amount specified under Shari'a law. The Mahr can be paid at the time of the marriage or at some later time; however, in the case of death or divorce, the amount is due in full.
[3] A muta is a temporary marriage in the form of a written or oral agreement between a man and woman. Practiced by some Shi'a Muslims, it secures certain rights for the woman in the event of a pregnancy or other circumstance.

govern their own special interests. Rights theorists like Will Kymlicka assert the necessity of "special rights" which "affirm special status for some groups by according them culture-specific rights" (Kymlicka, 1994, p.19):

> These rights may take the form of special representation of the minority community within the political institutions of the larger society, [...] devolution of powers to the minority community, [...] or direct protection of the resources or practices on which the minority community depends (Kymlicka, 1994, p.20).

In this case, according cultural autonomy to groups such as Canadian Muslims has been proposed in the form of "devolution of powers to the minority community", where private Shari'a tribunals would have the authority to rendering judgments on Muslim marriage contracts. However, the claim to want to provide minority communities with "authority" is contradicted by the state's ability to dictate the recipients of this "power". It is the state that determines and accords "authority" to various groups, demonstrating the extent of *its* real authority and power, and highlighting the imaginary nature of the authority acceded to minority groups.

Furthermore, while there is a strong case for cultural autonomy for minority groups in a pluralistic society like ours, it is important *not* to consider these arguments decontextually. When the "special rights" of a minority group are asserted, we must consider whether these group rights conflict with the individual rights of its members, particularly when they serve to reinforce the oppression of the group's most vulnerable members.

Cultural Autonomy v. Sexual Equality[4]

Many theorists have examined accomodationist policies on the part of the state in an effort to protect multicultural practices within pluralist societies. In her evaluation of the debate, Shachar (1998) argues that the internal impacts of multicultural accomodationist policies within the state must be considered in an evaluation of their validity. She contends that mistreatment of certain members of a community (i.e. women) may occur "in accordance with their group's accommodated traditions" and that pro-identity group policies (implemented to ameliorate the status of the minority group) often worsen the position of less powerful members within the group.

In her critique of both the 'rights-based approach' and the 'process-based approach' in resolving the conflict between sexual equality and cultural autonomy discourses, Eisenberg (2003) cites two cases where this tension is evident: *A-G Canada v. Lavell* and *Santa Pueblo Clara v. Martinez*. In both cases, Aboriginal women had their membership revoked because they married outside the Aboriginal communities of which they were members.[5] The preservation of the cultural autonomy of the Aboriginal communities in question comes into direct conflict with the rights of the women who seek to belong to them: on the one hand, the state should have no jurisdiction over membership decisions within Aboriginal communities; on

[4] I will refer to the tension henceforth in terms of "cultural autonomy" v. "sexual equality" even though I caution against the conception of an Islamic "culture". The idea of a "Muslim culture" is incongruent with the lived experiences of a billion Muslims who reside in a vast number of countries (the majority of which fall outside of the Middle East); Islam is a pluralistic faith, encompassing a wide variety of cultures, languages, traditions, and practices. However, most literature in this area (erroneously) conflates "religion" and "culture", equating their claims and as such, for the purpose of this paper, I will use the terms interchangeably. Having said that, I also recognize the differential claims that arise from asserting the less robust form of a "right" as it applies to the claim for cultural autonomy versus the more robust form, as it applies to the claim for religious freedom (the latter defined as a "fundamental freedom" in the *Charter.*) However, the scope of this paper does not allow an examination of these issues.

[5] I do not wish to equate the fight for self-determination in which First Nations people in this country have engaged since the initial colonization of Canada, to the mistreatment of women in minority communities in general. For the purpose of this paper, however, this discussion of Aboriginal membership issues is fairly useful in considering important implications for other women who are oppressed as a result of cultural autonomy claims on the part of their communities. It is also worth noting that Boyd makes reference to this comparison in Section 6 of her Report, asserting the legal difference in the situations of the Aboriginal and Muslim communities in that the former have rights that are specially recognized in both the *Constitution Act 1982* and the *Employment Equity Act.*

the other, these culturally-consistent judgments on the part of the communities cannot suppress the rights of the women who are part of them.

A look at religious personal laws in India also proves useful in the Canadian context, as India is a secular, democratic country that is home to a diverse group of people with various religious affiliations. Parashar (2001) argues for "one family law that will be non-discriminatory and just for all Indian women" (p.1). She maintains that "all religious personal laws manage to treat women less favorably than men...[and the] history of reforms within religious laws is not promising either for the majority Hindu community or the minority communities of Muslims, Christians, or Parsis" (p.1). While she problematically begins with the universalist and essentialist assumption that "all religious personal laws manage to treat women less favorably than men", Parashar correctly contextualizes the discussion in the lack of equality enjoyed by *Indian* women in their respective religious communities. She argues that the tension between religious freedom and sexual equality can be reconciled if we apply a universal set of requirements that externally governs religious laws to protect women's rights. It is clear that in allowing cultural and religious minority claims in countries such as India, a close examination of the effects of this accommodation on the rights of women is required.

In these cases, as in the cases of all women who belong to specific cultural or religious communities, their positions must be considered relationally to the majority community. If minority communities occupy differential positions in relation to the majority (i.e. they are marginalized from the dominant "official discourse" of the state), then members who occupy subordinate positions within this marginalized segment (i.e. women, children, differently-abled) are doubly disadvantaged. As such, they constitute the *most* vulnerable group in society and must be treated accordingly; the rights of these most vulnerable members must be preserved.

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The Shari'a debate

In my case study of the Boyd Report (2004), I consider this underlying liberal debate in my analysis of Boyd's safeguards to protect against infringing upon the rights of Muslim women under religious tribunals. These safeguards are intended to protect Muslim women from injustices, while protecting their fundamental freedom to religious choice; a closer textual examination, however, reveals that they are written into the "norm" of the text, simultaneously erasing their intersectional subordination and conflating their experiences with the oppression of all women in society and in the legal system. In this way, Boyd assumes the position of "universal sister" (Briskin, 2004) who homogenizes the experiences of all women; she fails to account for the differential construction of Othered subject-positions for different women.

My findings suggest that Muslim women are erased from the discourse in the Boyd Report (2004); our voices are not part of "official discourse" or "official knowledge" of the text. This case study provides a salient example of the ways in which Muslim women are marginalized from the national imaginary, creating "official spaces" outside Canada's political, legal, social and ideological borders. As such, "insiders" and "outsiders" are delineated in contemporary Canadian nation-building.

In chapter three, I reflect on my positionality as a Muslim, Canadian-born woman in this debate, considering the ways in which I have been bordered in the nation. As such, I provide a context for my discussion of the marginalization of other Muslim women post 9/11. I am careful to stress here the importance of not contributing to a monolithic conception of Muslim women. I aim to show that my unique experience both colours the lens through which I analyze texts, as well as highlights the different realities and identities of Muslim women in Canada. I use these assertions again in chapter five to critique Boyd's safeguards.

Chapter four considers the ideological function of the Shari'a proposal in contemporary Canadian nation-building. I examine the relationship between Canada's desire to convey a

benevolent image to the world and the recommendation to privatize family law matters for Muslim women. I evaluate the role of "accommodating difference" to imagine the nation, noting the shifting "imaginations" over time, coupled with the changing faces of "danger". I argue that the "*stranger* stranger"'s face (Ahmed, 2000) has become synonymous with Muslims in a way that frightens Canadian politicians, lawyers, judges, and indeed, all segments of society; at the same time, however, Canada is invested in portraying its multicultural image to the world. The Boyd Report (2004), I contend, allows both to occur, creating "official Othered spaces" for Muslim women to deal with "their issues" while expounding benevolence to the rest of the world.

Finally, chapter five consists of the analysis of Boyd's Report (2004), providing a case study from which to draw on the privatization and marginalization of Muslim women in Canada post 9/11. While I assert that her Report and its subsequent safeguards exercise a certain type of discursive power in their erasure of Muslim women's voices, I must express my caution in making such claims. I, in no way, wish to contribute to reifying stereotypes about the lack of agency of Muslim women, the demonization of Muslim men or the ubiquitous Islamophobia sweeping the Global North today (Nadeau, 2002; Razack, 2004; Thobani, 2003). My arguments are based in a contextualized and nuanced anti-racist feminist analysis of the position(s) of (some) Muslim women in Canada, and are supported by data outlining these positions. Ultimately, I argue that while the Shari'a debate originated in Ontario, it can be read as a case study, providing a micro-level example of the larger exclusionary Canadian nation-building project.

CHAPTER ONE: RESEARCH METHODOLOGY

Feminist Textual Analysis: Reading for hidden power

Adopting an anti-oppressive framework, I examine Marion Boyd's Report as an "official text". In doing so, I engage in a feminist textual analysis, where I uncover "the process whereby certain sets of meanings surrounding 'woman' are constituted [in the text]...open[ing] it up to readings 'against the grain'" (Kuhn, 1982). Particularly, I am interested in an anti-racist reading of how the experiences of all women are homogenized in the official "juridical discourse" of the document (Smith, 1990). In this sense, I employ "a methodology that pays attention to specificity" (Razack, 2000). I examine Boyd's recommendations (2004) for allowing Shari'a tribunals to adjudicate family and marriage issues, focusing on her concerns about Muslim women's rights under such a system. Boyd draws on the concerns of feminist legal theorists about the potential injustices suffered by women under arbitration/ mediation in family law, and includes safeguards in her Report to protect against these injustices. I engage in this theoretical debate by highlighting the ways in which the document glosses over the different lived experiences of women, compounding the particularities of subordination of all women into a singular category of "oppression".

I argue that the liberal language employed in the document serves to reinforce the "juridical/ official discourse" of the text, reflecting the position of its writer (Marion Boyd) and of the state (in this case, the Ontario government) as "authorized speakers" (Smith, 1987). I am interested in how "official texts" such as the Boyd Report (2004) are connected to the "official discourse" of the state. I draw on Ng's (1988) notion that "texts are a central aspect of ruling in advanced capitalism: they provide for and sustain the legality of the state. Indeed, texts and documents have become the general mode of ruling in advanced capitalist societies" (p.91). As such, I understand the Boyd Report (2004) as an example of the power and exclusionary agenda of the Canadian state in its nation-building project.

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I adopt an anti-racist feminist standpoint epistemology, considering my "embodied subjectivity" in my analysis (Smith, 1987). Though I look for relations of power embedded in the language used in the text, I am also concerned with what is *not* written; that is, what is left out and why. The "why" part is most troubling to me; I assert that the ideological function of erasing Muslim women's voices from the text in this particular document is representative of the greater Canadian nation-building project, inscribing Muslim women to "Othered official spaces" (Razack, 2002; Oikawa, 2002) outside the "national imaginary" (Anderson, 1983).

In My Own Voice: A reflection on my positionality in my anti-racist feminist research

Power in Social Relations and Research

As feminists, we must apply a critical lens to deconstruct the patriarchal hierarchy of power in which all social relations are embedded. Particularly, as feminist researchers, we must be attentive to issues of power in knowledge production (Ramazanoğlu & Holland, 2002). The ways in which we are positioned as researchers in relation to our research subjects, as well as to the texts that we examine, can have a dramatic impact on the types of knowledge that we produce. The authority with which we create texts provides an example of how all social researchers exercise power: "by hearing some things and ignoring or excluding others; by constituting 'others' or particular sorts of research subjects; or by ruling some issues as extraneous to 'proper' knowledge" (Ramazanoğlu & Holland, 2002, p. 113). Drawing on Diane Wolf's (1996) definition, Naples (2003a) clearly identifies three interrelated dimensions of power that are present in feminist research:

> (1) power differences stemming from different positionalities of the researcher and the researchee's race, class, nationality, life chances, urban-rural background; (2) power exerted during the research process, such as defining the research relationship, unequal exchange, and exploitation; and (3) power exerted during the post fieldwork period-writing and representing (p.38).

The myriad ways in which power can be exercised in research means that as feminist researchers, it is our responsibility to seriously consider each of these issues. We must be sensitive not only to our positionalities vis à vis those of our research subjects, but also to the way in which we are positioned as knowledge producers in textual analyses. As an anti-racist feminist of colour, I believe it is also particularly important to negotiate issues of "authority" and "legitimacy" in academia when it comes to writing about women who belong to our own racial/ religious groups (Tuhiwai-Smith, 1997). I am conscious not to assert my voice in an authoritative and exploitative manner, so as to attempt to speak for *all* Muslim women. My inquiry focuses on a diverse group of women throughout the nation, and as such, my membership to this expansive community in no way reflects my authority in critiquing and producing knowledge in this area. At the same time, however, I am "writing back" (Tuhiwai-Smith, 1999) by writing my voice as a Muslim woman into the discourse of the nation.

Reflexivity as a Tool to Deconstruct Power

While power imbalances in feminist research cannot be avoided, many feminist theorists offer "reflective practice" as a methodological tool to both negotiate and deconstruct these imbalances (Ramazanoğlu & Holland, 2002; Naples, 2003a; Haggis, 1990). Ramazanoğlu and Holland (2002) argue that reflexivity "generally means attempting to make explicit the power relations and the exercise of power in the research process...it unpacks[s] what knowledge is contingent upon, how the researcher is socially situated, and how the research agenda/ process has been constituted" (p. 118). In essence, reflexivity means considering the effects of one's position in one's research, and taking responsibility for knowledge that is produced (Razack, 2000).

In the context of my textual analysis of the Boyd Report as an "official text", there are a variety of important issues around power that must be critically analyzed. I became interested in this area of research as an undergraduate at Smith College in the United States. The political

climate of the university cultivated my critical, anti-racist feminist leanings. As a Canadian student of South Asian descent and a Muslim woman, I became aware of the multiple systems of oppression at work in the United States. At this time, I decided that I wanted to engage in emancipatory work in academia by researching the ways in which these "interlocking systems of oppression" (Hill Collins, 1999) operated in Canada.

After the events of September 11, 2001, I developed a heightened awareness of the ways in which immigrant women[6] of Middle Eastern and South Asian descent, regardless of their religious affiliations, were lumped together in the category of "oppressed Muslim woman". The characterization of Muslim women (and given the neocolonial gaze, many women of colour) was constructed from a patriarchal, paternalistic, Orientalist perspective in a way that rendered invisible the agency of these women. Particularly, I noted the standard binaries that serve to construct categories/ identities in the West (Ramazanoğlu & Holland, 2002). The characterization of Muslim women as "childlike", "hidden", and "subordinated" was entirely dependent on casting Muslim men as "violent", "uncivilized" and "terrorist". The formation of these binaries, in turn, served to create the unitary and oppositional categories of the "civilized" Western man and the "liberated" Western woman (Razack, 2000). I became curious, as both a "Western woman" and a "Muslim woman", about how I was implicated in this discourse.

My position is further complicated by the complex intersectionality of my race, class, sexuality, ability, ethnic background, citizenship and access to education. While I am a woman of colour, I feel that I occupy a relatively privileged position. I do not enjoy the all privileges that accompany White skin or Judeo-Christian beliefs, but I do enjoy the benefits of higher

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[6] I use the term "immigrant women" as defined by Ng (1988) in her study of immigrant women in a community employment agency. She asserts that "technically, the term, 'immigrant women', refers to women who are landed immigrants in Canada [...] In everyday life, however, women who are white, educated and English-speaking are rarely considered to be immigrant women. The term conjures up the image of a woman who does not speak English or speaks English with an accent; who is from the Third World or a member of a visible minority group; and who has a certain type of job (i.e. a sewing machine operator or a cleaning lady). Thus 'immigrant women' is a socially constructed category" (p. 15). In this way, I do not single out only non-Canadian born women.

education, financial security, social mobility, heterosexual marriage, ablebodiedness and Canadian- born citizenship. In many ways, I feel that this has led to my simultaneous inclusion and exclusion from both the "center" in which the dominant ideology operates, as well as the "periphery" to which women of colour are relegated.

The multiplicity of my identity has given me a unique position from which to approach my research. From this position, I have adopted a specific epistemological standpoint that is not only coloured by my background, but is reflective of the political and emancipatory aims of my research: an anti-racist, anti-colonial, anti-orientalist feminist framework. I recognize the need to approach these issues from an anti-racist, anti-colonial, anti-Orientalist perspective as the neocolonial forces that govern the modern discourse on "Third World women"[7] employ racist and orientalist constructions (Razack, 2000). As my work recognizes the patriarchal roots of this debate and seeks to unveil the ways in which Muslim women are constituted, I adopt a critical feminist lens.

Outsider Looking In or Insider Looking Out?

Reflecting on both my position as a Western Muslim woman and the position that it allows me to adopt in my research, I can effectively consider the operation of power in textual analysis of the Boyd Report's (2004) recommendations affecting Muslim women. In many ways, I feel like both an "insider" and "outsider" in the context of this work, a position noted by several feminist theorists. Naples (2003a) describes "insider research" as "the study of one's group or society" where "insiders" are able to gain "the deeper understandings of cultural practices" than "outsiders", can "blend in more easily", and are "less likely to affect social settings" (p.46); "outsiders" are able to remain objective and uninvolved in research. Winddance Twine (2000)

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[7]While I hesitate to use the standard dichotomies (i.e. "First World" vs. "Third World") for their use in both our everyday language and academic writing serve to reinforce the ideals of the patriarchal, capitalist, Judeo-Christian, hetero-centered context in which they have been devised, for the purpose of this paper, I adopt the term as employed by Razack (2000).

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also offers various advantages to "race-matching" in research, including the "insiders'" abilities to better understand the realities of the research participants, facilitate easy communication, and gain the trust/ confidence of the participants; "outsiders", however, are not expected to conform to restrictive cultural norms, and may elicit information that participants may not feel comfortable sharing with a fellow "insider". Hill Collins (1999) argues that black feminist sociologists experience the "outsider within" dilemma as they are positioned as "insiders" relative to their research but "outsiders" in gender and race-stratified academia.

My "insider status" is apparent in my shared gender, religious and racial background to the Muslim women in whom I am interested. In this sense, I am able to critically analyze and reject the classic Orientalist gaze under which most Western scholarship of Muslim women takes place (Razack, 2000). I also have (presumed) shared political aims in rectifying the ways in which these women are perceived as objects of persecution and subordination. In the larger context, my "insider" status allows me the "legitimacy" and "authority" to remain focused on and committed to the anti-racist feminist agenda (Khan, 2005). Razack (2000) has cautioned, however, against internalizing this sense of "legitimacy" and "authority"; she argues that in academia, this responsibility places pressure on racialized "Third World" women to act as "native informants". The "insider" position, therefore, can be used to further homogenize, and subsequently, marginalize, feminists of colour in the academy.

I do not claim to be a "native informant"; in fact, in many ways I am an outsider to my research. Though I am perceived by some Anglo-Canadians as "unauthentically" Canadian because of the colour of my skin, I am likely also perceived by some immigrant women as "unauthentically" Indian because of my inability to speak native Indian languages, my Canadian-born citizenship, and my class and educational privilege. In many ways, I have no "insider" knowledge of the spaces to which these women are relegated.

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Tuhiwai- Smith (1997) highlights her seeming position of conflict as a Maori feminist and an academic. She claims that her position as a "native intellectual", educated by the same colonial powers that subjugated the Maori people, is imbued with a perceived tension. In the same way, I feel that my "insider" status as a student in academia and privileged knowledge – producer could be perceived as precluding me from accurately portraying the lives of these women. To this charge, I reply that I share Tuhiwai-Smith's sentiments: I believe that my "insider" status in academia (and derivative "outsider" status with respect to other women of colour/ immigrant women/ Muslim women) allows me to access the power and voice necessary to affect change; conversely, my "outsider" status relative to White-skinned, Anglo Canadians (and derivative "insider" status in racialized and marginalized minority groups) allows me to accurately and appropriately represent these women in a way that attempts to restore their agency.

The Limitations of Reflexivity

While the exercise of critical reflection in one's work can aid in determining one's complicity (Tuhiwai-Smith, 1997), one's responsibility (Razack, 2000) and one's power (Ramazanoğlu & Holland, 2002), there are limitations to this methodological tool. Naples (2003a) notes Wasserfall's important conclusion that "the careful monitoring of one's own subjectivity, which is at the core of the use of the term [*reflexivity*], does not have in all situations a potential to keep distortion away" (p.42). In other words, Naples points out that reflexivity alone is perhaps not enough to tell "better stories" (Tuhiwai-Smith, 1997). I am particularly wary of reflexivity as the principal strategy to dismantle power when the conclusions drawn from one's research are nonetheless problematic. For example, if one were to present an Orientalist and patriarchal account of the experiences of Muslim women in Canada post 9/11, but ensured that one engaged in reflective practice, would it be acceptable? The truth

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is, however, that reflective practice is a powerful tool we have as feminist researchers to make more transparent the pervasive power relations that underpin all research.

Conclusion

Ramazanoğlu and Holland (2002) argue that "taking reflexivity personally means reflecting critically on the consequences of your presence in the research process" (p. 158). For me, this means that I must reflect on how I, as a Canadian-born Ismaili Muslim woman, am implicated in the Shari'a debate; more importantly, I must examine the way that my lens affects my analysis of the Boyd Report (2004). Ultimately, I assert that my standpoint gives me access to an epistemology from the margins, one that allows me to uncover the exercise of power in the text. The exercise of reflexivity allows feminist researchers to be accountable for the knowledge we produce, which is created by the voice in which we speak. For me, this means asserting my voice in a debate that has largely left Muslim women out. Haggis (1990) asserts that "doing feminist research demands that my participation and presence- my voice- within my research project must be explicitly admitted and included in the product of that research" (p.77). Indeed, my voice is implicated not only in my research, but in the way in which my work is received by others. As my research carries specific political and emancipatory aims, I feel that it is my responsibility to place myself in my work. More importantly, reflective practice allows me to negotiate my shifting "insider/ outsider" status (Naples, 2003b) in a profound and substantial way. In this way, I am able to write and be heard in my own voice.

In my voice, and the voices of other "immigrant women", I outline the process of contemporary Canadian nation-building. I examine the ideological function of the Boyd Report's (2004) importance in its claims to maintain equality and promoting inclusion in the nation-building project. First however I consider the history of imperial nation-building in Canada, as a way to both provide context for the contemporary colonial project and to consider the creation of "official Othered spaces" throughout the formation of Canada. In my discussion

of the making of White Canada, I draw on feminist and critical theorists who I do not

necessarily consider "colonized voices"; I do so largely because the most comprehensive

literature on early Canadian nation-building has been produced by White scholars. I use this

section of my analysis as a prequel to my examination of the context of contemporary Canadian

nation-building. In this subsequent section, I draw almost entirely on "Third World" voices.

CHAPTER TWO: NATION-BUILDING AND THE "OTHER"

The Making of White Canada

Canadian nation-building has taken many forms over the past several hundred years. At different epochs the nation has been imagined and constructed in various ways, driven by the specific socio-historical forces at that time. It can be posited that the production and transmission of "official knowledge"[8] by the state have shaped the political, economic, and social forms that the country has taken at various junctures. The questions at hand are, how and in what form is this "official knowledge" produced, and in what way does it influence nation-building?

By answering these questions, the problem of contemporary Canadian nation-building can be addressed. Since September 11, 2001 there has been heightened discrimination and marginalization of Muslims and those of Middle Eastern descent in many countries in the Western world (Helly, 2004). In Canada, the media and the state have engaged in the perpetuation of racist assumptions about and characterizations of Muslims (Nadeau, 2002), and have subsequently delineated their place on the fringes of the nation. This inquiry focuses on how the production and transmission of "official knowledge" by the state create the contemporary "imagined community" (Anderson, 1983) of Canada. Particularly, it investigates the impact of more salient and authoritative forms of "official knowledge", such as the Boyd Report (2004), on the inclusion and exclusion of those from the "national imaginary".

To approach this issue, it is important to determine the influence of legislation as a form "official knowledge/ discourse" in Canadian nation-building. Specifically, it is important to examine the extent to which legislation has historically articulated and constructed the "national

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[8] In the context of his discussion on "official nationalism", Anderson (1991) defined "official" as "something emanating from the state, and serving the interests of the state first and foremost" (p. 159). In this paper, "official knowledge" is state-generated and –sanctioned "knowledge" about who does or does not belong to the nation. "Official knowledge", then, is knowable only to those in positions of power and authority but transmittable to the nation through legislation and other means.

imaginary" and its borders. This chapter first seeks to explore the concept of a "national imaginary" and the role of Andersonian (1983) "imagined communities" in the construction of national identity. A discussion of the formation of a "national imaginary" and its accordant notions of "citizenship" also requires a careful examination of the complex intersectionality of gender, race, class, sexuality, age and ability.

Using these themes as a framework, this section investigates Canadian nation-building in two general historical periods: mid to late 19th century and late 19th to mid 20th century. Literature on these periods not only discloses the way that the nation was "imagined", but also points to specific nation-building practices in which the state engaged. The production and transmission of "official knowledge" in the form of legislation are evaluated for their roles in creating the nation, with special attention afforded to the role of intersectionality in producing its members and non-members. Ultimately, an examination of the tools used in past nation-building practices can shed light on the contemporary Canadian issue.

National Imaginary

At the outset of his seminal work, Anderson (1983) defined "nation" as an "imagined political community [...] *imagined* because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion" [emphasis in original] (p.6). This image generates a "national imaginary" in which members to the nation can actively participate. Anderson argued that the "imagined community" of a nation is not only comprised of members who occupy the same geographical location; they also share a linguistic, ethnic and/or cultural background.

Of these features, Anderson (1983) stressed the primacy of language in the formation of the "national imaginary", pointing to "its capacity for generating imagined communities" and "building *particular solidarities*" [emphasis in original] (p.133). Imperial languages served as a means to both forge unity within and delimit membership to the empire: "From the start the

nation was conceived in language, not in blood, and one could be 'invited into' an imagined community" (p.145). The formation of "particular solidarities" by some inevitably renders "Others" outside the borders of the "national imaginary". This process delineates those who participate in the formation of the nation and those who watch from the margins.

Members can account for the exclusion of "Others" by "naturalizing" membership to the nation, and thus, participate in imagining it. The creation of a "national imaginary" requires "nation-ness" to be "assimilated to skin-colour, gender, parentage and birth-era- all those things one cannot help" (Anderson, 1983, p.143). By asserting that members have "natural ties" to one another, nation-building maintains an organic and unwitting quality that sometimes attempts to mask underlying discriminatory and exclusionary forces. In the context of Europe in the nineteenth century, Anderson argued that "official nationalism" was driven by "colonial racism"; colonizers created a legitimate "national community" by "generalizing a principle of innate, inherited superiority" (p.150). So while all people lived under the rule of the empire, not all were members; as Bannerji (2000) states, "living in a nation does not, by definition, provide one with a prerogative to 'imagine' it" (p.66).

The ideas of innate superiority and natural membership to the nation bring into sharp focus the importance of intersectionality in nation-building. The acute intersection of gender, race, class, sexuality ability and age both compound and mutually construct categories of exclusion in the nation. When examined individually, each component provides for only a partial and simplistic analysis of its role in delimiting participation in the "national imaginary". The "Others" who occupy positions in these categories often find themselves in various locations at the same time, providing complex and variegated interactions within the nation.

Bannerji (2000) argues that in Canada the formation of the "national imaginary" has been a racialized, gendered and class-based project. These categories serve to construct one another as racist and sexist constructions become imbedded in classist and ableist tropes. She

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points out that the "feminization" and "racialization" of poverty (p.71) has served as one example of the amalgamation of the categories into the more general characterization of the "Other". "Others" do not comprise the nation, nor are they permitted to imagine it. The "Other" can vary depending on his/ her respective positionality: White, middle-upper class suffragist Nellie McClung was denied membership to the nation based on gender (p.66); First Nations men were denied based on race and class. The points of intersection at which "Other" spaces meet place individuals near the center of the "national imaginary" or on its margins; they provide insight into the myriad lived experiences not included in the "official discourse" or the body of "official knowledge" of the nation.

The production and transmission of "official knowledge" generated by the state has distinguished "Others" in many ways for over a century in Canada. The following sections provide an examination of two periods of Canadian history. In each, the nation is clearly imagined by its members in various ways; the "national imaginary" is forged in each case through an articulation of the "official discourse". From this discourse, "official knowledge" is produced in the form of both educational initiatives and legislation; while the former serves an important ideological function in restricting membership to the nation, the latter provides an authoritative and definitive legal marker of the boundaries of the nation.

Mid-late 19th Century Nation-building

Prior to Confederation in British Columbia[9], there was an active movement to "reconstruct [the province] as a white society" (Perry, 2001, p.194). This movement took various forms, from the termination of relations between First Nations women and settler men, to the procurement of white women to help create the nation (Perry, 2001). The "national imaginary" constructed by the settlers in BC sought to establish an "orderly white-settler

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[9] Though this section explicitly deals with the White project in BC, it should be noted that this process was taking place all over Canada.

colony" (Perry, 2001, p. 195); in order to achieve this goal, the subordination and marginalization of the First Nations people was required.

It is important, however, to note that the creation of the "national imaginary" did not only involve race; gender was a vital component in the making and re-making of the province. Perry (2001) described the importance of both gender and race as signifiers in the colonial Anglo-American culture, paying particular attention to its intersection. She argued that First Nation and settlers "met not as ungendered subjects but as men and women" (p.197). The prominence of mixed-race marriages therefore undermined the creation of White settler society. In an effort to assert the "fitness" of White women only as "mothers of the nation", First Nations women were constructed as gendered, racialized subjects who were "unfit" for the maternal role. The infantilization and sexualization of the First Nations woman as "Pocahontas" and as the classed and gendered "squaw" allowed for the binary construction of White women as "mothers of the nation". In this way, both White and Aboriginal women had extraneous identities imposed on them; one group was charged with "reproducing the nation", while the other was cast to morally degenerate ideological and violent, exclusionary, exploitative physical spaces outside the borders of the nation.

One of the many physically degenerate spaces included residential schools. Here, First Nations children were subject to the "official knowledge" of the colonial nation. Framing the First Nations people as "savage" and "barbaric", colonial education sought to "instill in the native the very character 'insensibly' acquired by civilized peoples" (Willinsky, 1998, 91). Willinsky (1998) points out that the curriculum of the educational mission addressed in specific subject areas such as history, where the dominance of "master narratives" (p. 121) served to erase the presence of First Nations people on the land. These erasures from the official textbooks demonstrated the power of the text: it "wrote out" Aboriginal people in such a profound way that it actually physically erased them from the land (i.e. the development of

reserves, the cultural and physical genocide, the residential schooling system, and the sterilization of First Nations women). On a micro level, through educational texts, the "national imaginary" was created educating "Others" and "real Canadians" about their places in the nation. This curriculum also included education outside the classroom, where relentless violence perpetrated against First Nations people cemented these roles and relationships.

While colonial education effectively drew the ideological borders of the nation, legislation passed before the turn of the century legalized their physical enforcement. In her examination of the "citizenship debates" that led to the 1885 Franchise Act, Strong-Boag (2002) stressed the importance of "gender, race, and class, advantage and disadvantage" (p. 69). The Franchise Act determined who would be permitted to vote in Canada, and thus, actively engage in the affairs of the country. After months of debate, the Act eventually excluded women, most First Nations men, "Asiatics" and "Chinamen" (Strong-Boag, 2002). Strong-Boag's investigation uncovered parliamentary debates in which "Others" were clearly demarked through gendered, classed and racialized discourse. Ultimately, the "national imaginary" was forged on this discursive platform and communicated in the form of exclusionary legislation.

Late 19th-Mid 20th Century Nation-Building

"Official knowledge" was disseminated in a similar fashion at the beginning of the 20th century. Bruno-Jofré (2002) discovered that the "official discourse" of the early century was tied up in "notions of citizenship mostly based on service to the community, duties, responsibilities, and social integration" (p.112). The nation was still largely imagined as a White Anglo-American settler society and public schools in English Canada were accorded the responsibility of creating a "homogenous nation based on a common English language, a common culture, identification with the British Empire, and an acceptance of institutions and practices" (Bruno-Jofré, 2002, p.113).

By 1925, British Columbia had become a White supremacist society (Stanley, 2003). The imagined nation could not include "aliens" such as First Nations people and Asians; as Stanley noted, "Whites properly 'belonged' in British Columbia and First Nations people and Asians did not" (p.113). They were therefore relegated to "official spaces" outside the borders of the nation. In this context, education played an important ideological function in reproducing the nation; textbooks transmitted White supremacist ideas, focusing on an "ideology of difference" (Stanley, 2003, p.113).

Linking "patriotism", "citizenship" and "morality", biological racism was used to categorize and subordinate Other races. "Mental" and "physical" characteristics of White and Other aided to construct one another: the "Ethiopian" has a "long, narrow head, projecting jaw, broad flat nose" and is "unintellectual" and unprogessive"; the (European) "Caucasian" is "fair, moderately large, above-average height" and is "solid and stolid", and "active and enterprising" (Stanley, 2003, p. 122). By signifying differences of Others in such a way, the "official discourse" of the nation denoted members and non-members to the nation.

This discourse also required the racialization of Other women. As Bruno-Jofré (2002) states, (White) women were particularly important in the nation-building and the process of "Canadianization". They were responsible for reproducing good citizens who conformed to the Anglo-American virtues that comprised the "national imaginary". Conversely, Other women such as Asian and Indian women required racialization in order to be excluded from the imaginary. Asians were constructed as unassimilable, as they were racially different from and inferior to Whites (Dua, 2004, p. 74). This construction allowed politicians to justify the exclusion of Asian and Indian women from the country on the grounds that they would reproduce an "inferior race" of an "essentially different culture" who threaten the national imaginary (Dua, 2004, p. 76). As such, they were placed outside the ideological and physical borders of the nation in "official Othered spaces".

The production of "official knowledge" about women of colour was also effectively transmitted through legislation. Noting the emergence of "eugenic-thinking" in the 1920's in BC, Chunn (2002) investigated the "contribution of criminal law [governing sexual offences] to the (re)production of healthy citizens and white settler society" (p.361). She found that racialized and gendered assumptions about the sexuality of Aboriginal and Chinese people disadvantaged and often criminalized both the accused and the victim (p.378). Aboriginal men were constructed as "sub-human" savages with insatiable sexual appetites; Aboriginal women were constructed as "innately wild "and promiscuous (p.378). Aboriginal men accused of sexual assault would undoubtedly be found guilty, but so would women if they were victim to sexual assault. The Supreme Court allowed for these stereotypes to be formalized and adjudicated through the law. "Official knowledge", disseminated as criminal law, therefore aided in the reproduction of healthy, White settler society in BC by relegating Aboriginal bodies to the social (and physical) margins.

Official knowledge was also transmitted in the form of immigration legislation in the early 20th century. Following World War one, a push for "selective immigration" emerged in Canada (McLean, 2004). A "foreign alien menace" was created out of fear of employable aliens, war aliens and feeble-minded aliens. Canadians were not only afraid that "foreign aliens" may take jobs from the 250,000 soldiers returning from war, but feared that they threatened the country's very civilization (McLean, 2004). As a result, immigrants were socio-biologically constructed in racialized, classed and gendered terms. In the thriving eugenics movement in Western Canada, depictions of aliens as feeble-minded in local newspapers such as the *Manitoba Free Press* fuelled the racism (McLean, 2004, p. 6).

These sentiments were echoed in parliament, as the state decided to implement a "literacy test" to determine the fitness of prospective citizens (McLean, 2004). The official knowledge generated from public and official discourse was propagated by the Immigration Act

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of 1919, whereby only immigrants who could successfully pass the discriminatory literacy test were given citizenship. The Act served to frame the borders of the nation based on "desired" race, gender, class, and ability; the intersection of all four categories firmly placed Others in spaces outside the borders of the nation. This legislation effectively communicated the "official knowledge" constructed by the "national imaginary" of the Canada in 1919.

Conclusion

The way in which the nation was imagined and constructed throughout history provides valuable insight into nation-building today. The educative and juridical role of legislation in the construction of the nation at each stage demonstrates that it is perhaps the omnipotent nation-building tool. The literature on the 19th and 20th centuries in Canada indicates a clearly imagined (and enforced) White settler society. The "official discourse" of each period communicates the subjection of First Nations, Asians and blacks as morally and racially inferior to the White man. It also places women at the center of the racialized and gendered struggle, whereby the identities and positions of White and "Other" women were defined in binary opposition. Charged with reproducing the nation, White women were burdened with the responsibility of creating healthy citizens, while women of colour were marginalized and criminalized to "official spaces" outside the nation. The influential role of legislation in this task indicates its authority in communicating the "official knowledge/ discourse" of the state.

In the contemporary national imaginary, public and official discourse center on claiming to create a terrorist- and fundamentalist-free country. By correlating fear of Muslims, terrorism and fundamentalism and by positioning democracy and freedom in opposition to these fears, the Canadian nation has placed some people of colour outside its ideological borders. Unauthorized to participate in the national imaginary, these "Others" have become demonized in a way that is reminiscent of the educational and public initiatives of the past. The role of legislation in communicating this new "official knowledge" cannot be underestimated. An examination of the

success of past legislation in disseminating "official knowledge" provides important tools to investigate its influence in contemporary nation-building. By examining the Boyd Report (2004), I unpack the "official knowledge" by reading against the absence or silence of Muslim women's voices in the text. In the next section, I investigate the nature of contemporary nation-building (post 9/11) and the derivative spaces to which Muslim women have been relegated.

Contemporary Canadian Nation-building

Constructing Borders to Define the Nation

In examining the process of nation-building, a number of scholars have articulated the roles both of 'stranger discourse' and 'colonial discourse' in demarking the boundaries of the nation. Ahmed (2002) contends that the recognition of strangers is "embedded in a discourse of survival: it is a question of how to survive the proximity of strangers who are already figurable, *who have already taken shape,* in the everyday encounters we have with others" (p.22). The stranger among us is easily identifiable: he/ she occupies the position of the Other, defined as one who is not *familiar* or *recognizable* to those who belong to the nation. The nation is constructed in this context in terms of those who occupy positions inside the nation and those who fall outside it; it is through this process that the *familiar* comes to define and recognize the *foreign*:

> National identity is unstable, and emerges through multiple encounters between those who assume themselves to be native and those recognized as strangers, as out of place, in this place (Ahmed, 2002, p.101).

The construction of the nation is predicated upon the inclusion of some members, while requiring the exclusion of Others: *strangers*. The production and identification of these *strangers* reside in colonial constructions.

The origins of the nation-building project lie in the violent history of colonial relations in our country[10]. Tuhiwai-Smith argues that inherent to the process of colonialism is the creation of the racialized and subjugated 'Other', constructed around the "binary of colonizer and colonized" (p.27). This notion is deeply rooted in the manufacturing of the identity of the colonizer vis à vis that of the colonized, each serving to define the other. These concepts have also been articulated by Mohanty (1991) in her critique of the scholarship of Western feminists regarding Third World Women. She asserts that "various textual strategies [are] used by writers which codify Others as non-Western and hence themselves as (implicitly) Western" (p.52).

I argue that Boyd (2004) uses some of these textual strategies in her Report, employing liberal feminist language to "normalize" the debate. Her standardization of women's experiences under religious arbitration leaves Muslim women's specific lived experiences marginal to the "official discourse" communicated in the text. As such, "official spaces" outside the borders of the nation are created:

> Boundaries are constructed according to various inclusionary and exclusionary criteria, which relate not only to ethnic and racial divisions but also to those of class and gender (Anthias & Yuval-Davis, 1992, p.31).

These boundaries must be maintained by the dominant group in order to preserve the construction of its identity and its power. Without them, differentiation between the center and the periphery could not take place. Through this process then, the center can form an "imagined community" where the borders are firmly drawn and "patrolled by border guards". The function of these border guards is to maintain and "ideologically reproduce" the system of identification of 'us' and 'them', or "members or non-members of a specific collectivity" (Anthias & Yuval-Davis, 1992, p.33).

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[10] In using the term "history" in relation to colonialism in our country, I wish only to describe the origins of the Canadian nation-building project; I do not wish to assert that the colonial process has ended, as I believe that it is vitally important to be cognizant of the ongoing fight for both self-determination and land by the First Nations people of Canada. It is also important to note that neo-colonialism masked by/ in the name of globalization cannot be ignored either.

Bannerji (2000) argues that the state designates the *stranger* in Canadian society "by constantly calling on and constructing an entity called 'Canadians' and pitting it against immigrants, [...] by constantly signifying the White population as "Canadians" and immigrants of color as 'others', by constantly stereotyping Third World immigrants as criminals, terrorists, and fundamentalists..." (p.78). Indeed the characterization of Muslims in the media pre- and (especially) post- 9/11 has enforced these stereotypes (Nadeau, 2002; Thobani, 2003), creating a foreign enemy against whom the nation's borders are defined. In this way, *foreign* bodies are easily distinguishable from the *familiar* in the nation's contemporary imaginary of who belongs and who does not.

By framing nationhood as a privileged experience to which only certain individuals have access, Canada has effectively kept immigrants outside of it. Labels created "to give us identities that are extraneous to us [...] originate in the ideology of the nation, the Canadian state apparatus, in the media, in the education system, and in the commonsense world of common parlance" (Bannerji, 2000, p.65). They include racialized and sexualized qualifiers, such as "immigrant women, women of colour, visible minority women, black/ South Asian/ Chinese women..." (p.65) each packaging the Otherness into neat little identifiable boxes of exclusion.

While the ideological borders of the nation are powerfully articulated in creating the national imaginary, it is important to note that the physical borders drawn by the state are equally potent today. Continuing a historical project, immigration policies in Canada continue to be racialized, effectively defining the borders of the nation based on 'keeping Canada White':

> Immigration policy and citizenship continue to racialize membership in the 'white' *Canadian* nation—racialization being the 'glue' holding the nation together—while bordering men and women of colour (excluding them from becoming part of the nation) as *immigrant/* outsiders who pose a 'threat' to the nation's interest and prosperity, even as their labour is put into the service of the 'national' economy (Thobani, 2000, p.281).

Highly discriminatory legislation like the Anti-Terrorism Act (2001), passed on

December 18[th]2001, amends 20 existing Acts[11] and extends broad discretionary, investigative

and enforcement powers to the police, security intelligence officials and bureaucrats. It provides

a clear example of the role of legislation in physically and ideologically defining the borders of

the nation. In this way, an image of "Canada" is created and consequently, an image of who is

"Canadian" is articulated in developing the national imaginary.

Through an examination of the embeddedness of 'colonial discourse' in 'stranger'

discourse, we develop an understanding of the boundaries of the nation and the marked bodies

who fall inside or outside those borders. But the recognition of *strangers* is not stagnant; one

who previously wholly occupied the position of the Other can be easily replaced by another

stranger stranger[12]:

> Nationhood is constantly renegotiated, and that negotiation is crucially dependent on
> encountering those who are recognizable as strangers, and those who demand a response
> from the citizen: who are they? do they belong here? (Ahmed, 2000, p.101).

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[11] These include: Bill C-7, the Public Safety Act (formerly Bill C-17), which in turn amends 23 existing Acts and
both empowers RCMP and CSIS officials to scan airline passenger lists and detain any individuals who might pose
"threats to the security of Canada" (these individuals need not be linked to or suspected of "terrorist activity" in
order to be detained) and expands the power of the Financial Transaction and Reports Analysis Centre to collect
and exchange personal information of Canadians, refugees and landed immigrants for national security purposes;
and Bill C-18 which amends the Citizenship Act and allows for both the deportation of permanent residents and
foreign visitors on the grounds of national security and provides the Minister with the power to revoke or annul the
citizenship of a Canadian who was not born in the country or deny citizenship on the grounds that an applicant has
"demonstrated a flagrant and serious disregard for the principles and values underlying a free and democratic
society."
[12] The term is borrowed from Ahmed (2000) where *stranger* strangers are those strangers that cannot be
"integrated" into the nation in the interest of multiculturalism; they comprise a group of strangers "too foreign" and
thus, "too dangerous" to become a (marginal) part of the "we" of the nation.

The "uncivilized", "backward" Other: Demonizing Muslims

Said (1978) argued that Muslims and other people of Arab and Middle Eastern descent have been viewed under an "Orientalist" gaze by the Judeo-Christian world since the Crusades in the 11th century. The events of 11 September 2001 have exacerbated this process of "Othering", creating a new geo-political and social landscape that deeply affects power and race relations in countries such as Canada. The persistent demonization of Muslims in both the mainstream media (Nadeau, 2002) and government organizations has inscribed Muslims in countries such as Canada to "Other" spaces.

Thobani (2003) argues that Western states are employing "official" colonial discourse, marking the "the civilized West [from] the barbaric Islamic world" (p. 402). Razack (2004) asserts that "the policing of Muslim communities... that has become even more pronounced after the events of September 11, 2001 is organized under the logic that there is an irreconcilable culture clash between the West and Islam with the latter bent on the West's destruction."(p.130). Drawing on Said's (1978) work, Razack refers to the Orientalist construction of people from the East (in this case, those who "appear to be Muslim"):

> They are tribal and stuck in pre-modernity, the argument goes, possessing neither a commitment to human rights, women's rights nor to democracy. It is the West's obligation to defend itself from these values and to assists Muslims into modernity, by force if necessary. (p.130)

These longstanding stereotypes of the 'native'—"unassimilable, duplicitous, tribal, prepared to sell their daughters into marriage and a life of continual rape..." (Razack, 2004, p. 138)–are invoked once again, as a way to incite "moral panic over uncivilized Muslims" (p. 151)

In the aftermath of the World Trade Centre bombings in 2001, Western governments and media alike have conjured up derogatory, racist images of people of Middle Eastern descent. (Nadeau, 2002). The language used by political leaders to describe "terrorists" has been loaded not only with overt racial tropes, but with decontextualized colonial constructions that operate to

create a people against whom all "real Americans" and "real Canadians" must unite in solidarity. In her defense of her October 2001 speech condemning U.S. foreign policy, Thobani aptly notes that "Bush invoke[ed] an American 'nation' and its 'enemy' in clearly racialized terms"; labels like "barbarians", "evil", and "uncivilized" in his address to the nation "echo the colonial constructs of the native as barbaric and dangerous, whose colonization was not only justifiable but also welcome, in the cause of bringing them into civilization and democracy" (Thobani, 2003, p. 402). By using loaded and racialized terms, political leaders like Bush and media organizations who uncritically print and broadcast material are engaging in the construction of the nation .

More recently, derogatory cartoons of Prophet Muhammad were published in a Danish newspaper, released on the internet and then reprinted in several countries across the world, including Canada.[13] Local, national and international newspapers, T.V. stations, magazines and radio stations were flooded with testimonies from fearful Canadians, as images of violence erupted from the Muslim World: liberal discourse dominated the debate, calling for "freedom of speech" in allowing the cartoons to be reprinted in Canada; racist discourse painted Muslim (men) once again as "dark", "dangerous", "violent" figures who would naturally commits acts of terrorism in Canada if reprinting did occur. There was no shortage of high-definition shots of bearded Muslim men, waving guns erratically and maniacally chanting some Arabic phrase with "Allah" in it. These images reinforce negative stereotypes based on fear and reproduces Othered spaces of violence for Muslims.

The wars in Afghanistan and Iraq have also provided the media with myriad opportunities to engage in sensational reporting, both reifying and validating the images of "Oppressed Third World women, particularly the passive, downtrodden Indian woman and the

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[13] In February 2006, some of these cartoons were published by the University of Prince Edward Island student newspaper, and then again by Alberta's *Western Standard* magazine. They were also reprinted by the Jewish Free Press.

veiled Muslim one" (Razack, 1998, p.100). These "recurring and familiar images in Canadian public discourse" are consistent with past experiences of imperialist conquest and external colonization. Muslims women's bodies are implicated in nation-building, as the gendered, racialized project uses "the Muslim woman's body [...] to articulate European superiority; the usefulness of her imperiled body in the contemporary making of white nations and citizens [...] has provided a rationale for engaging in the surveillance and disciplining of the Muslim man and Muslim communities"(Razack, 2004, p. 169). The veiled and imperiled Muslim woman is therefore relegated to a racialized and gendered space outside the nation.

The following section addresses the historical and ideological creation of "official spaces" for immigrants in Canada. I argue that these spaces have always been and continue to be naturalized as sites of violence and fear, providing statistics of hate crimes against Muslim men, women and places of worship in the period immediately following 9/11.

The creation of "official spaces" for "Others", far removed from the center of the "national imaginary" (Anderson1983), has been used to continually colonize people of colour in Canada. This space is highly racialized and succinctly specific. Razack (2002) effectively demonstrates this concept in her description of Pamela George's murder. Pamela George, an impoverished First Nations women working in the sex trade, was raped and murdered by two young White, upper-middle class college students in "her area of town". In her analysis, Razack (2002) argues that the young defendants in the case used the rape and murder to "mark themselves as different from and superior to the racial Others" (p. 138). These practices included visiting an area of town traditionally occupied by Others where the rape of a racialized and sexualized First Nations woman could take place. The ideologically privileged space occupied by the defendants (men, White, middle class, educated, heterosexual) provides a stark contrast to the denigrated space occupied by Pamela George (woman, First Nations, poor, prostitute); it also provides a powerful physical image of the wealthy space occupied by the two men versus the derelict space of town occupied by George. By defining the boundaries of the 'us' space, the dominant group in society is then able to allocate the 'them' space; a racialized, brutal space in which many types of violence can occur.

Similarly, Oikawa (2002) argues that the "official spaces" to which Japanese people were relegated in the Second World War created highly gendered, racialized and sexualized subjects of internment. Particularly, she explores the experiences of Japanese women in internment camps in British Columbia. As in the case of Pamela George, these Japanese women were ideologically and physically marginalized to a space in which violence was naturalized and justified. Culhane (2003) also provides a geographical analysis of the oppressive spaces created in the Downtown eastside of Vancouver for (largely) Aboriginal and economically-marginalized women. She argues that "space" can be conceptualized as a material resource, accessible only to

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those with privilege and power. Privileged spaces, then, are those where women are free(r) to make choices for themselves, to come and go as they please; unprivileged spaces, however, are those where women are constricted by the geographical and ideological borders that prevent them from access to resources or privileges.

In this vein, I assert that the "official spaces" to which Muslim women are relegated in the nation are highly racialized and gendered. They are created through the Orientalist (Said, 1978) gaze that has permeated race relations in Canada, especially post 9/11. By demonizing "uncivilized" Muslim men, the derivative category of "oppressed Muslim woman" has been consolidated and justified in the fashioning of these "official spaces" outside the borders of the nation. In this way, Muslim women are rendered "private" (away from the eyes of the nation, outside the scope of the Canadian justice system), "marginal" (not within the ideological borders of the nation) and erased from the "national imaginary" (Anderson, 1983).

Between September 2001 and September 2002, Canadian Islamic Congress (CIC) figures indicate a significant increase in hate crimes against Muslim individuals or places. The Congress received 11 complaints "related to such crimes the year preceding the September 2001 attacks, but this figure increased to 173 the following year" (Helly, 2004, p.29).These figures are supported by a 2001 Federal Bureau of Investigation Report in the United States. It cites that in 2000, there were 28 reported hate crimes against perceived Muslims; the following year the figure reached 481 and included three murders and 25 cases of arson (Abdelkarim, 2003, p. 51). Canadian police forces also reported a sharp increase in hate crimes: The Toronto Police Service Hate Crime Unit (2001) found that in 2001, there was a 66 percent increase in hostile acts, ninety percent of which correlated with the 9/11 attacks. Between September and October 2001, 121 of the total 338 hate crimes were hostile acts; 57 of these 121 acts specifically targeted Muslims. The previous year, only one hate crime was reported to the TPSHCU against a perceived Muslim. (TPSHCU, 2001).

These figures, however, are not necessarily accurate; the reluctance of Muslims to Report crimes to the police has been identified in both Canada and the United States. Between September 2001 and February 2002, the CAIR-U.S. chapter documents 1,700 reported hate crimes, while the FBI's Reports show only 481 reported hate crimes against Muslims during this same period. (Abdelkarim, 2003). These incidents of unreported violence have not only a racialized dimension, but gendered one too. 181 members of discussion groups held by the Canadian Council of Muslim Women reported being the victims of threatening phone calls, vandalism, verbal abuse on the street and even physical assault; only two were reported to the police (Abelkarim, 2003). In this way, Muslim women demonstrating some form of agency were targeted in racialized and gendered forms of violence.

The physical spaces of Muslim worship are also subject to violent attacks in Canada. Abelkarim (2003) claims that according to CAIR-CAN, between September 11 and November 15, 2001, 12 mosques were attacked across Canada; each Canadian city experienced at least one such attack between September 2001 and June 2002, six of which were bomb threats. Again, the systematic and structural oppression of Muslim people placed them outside the realm of concern of the "official discourse"; as non-members to the nation, police did not feel the need to offer them protection according the rights guaranteed to all Canadians under the *Charter*. Though police presence was initially offered to both Muslim schools and places of worship during Friday prayers, this support waned after a few days or weeks following 9/11 (Abelkarim, 2003).

These spaces, therefore, are gendered, racialized and brutalized in specific ways for Muslim men and women in post-9/11 Canada. The focus of my inquiry is how these official spaces are reproduced through the official texts in the nation. To do this, I investigate the Boyd report (2004) as an "official text", communicating "official knowledge" of the state. But first, I look at the specific space that I occupy in contemporary Canada as an Ismaili, Muslim woman. In the following chapter, I consider how my position in between borders in the nation affects my

interpretation of the Boyd report (2004) and the Shari'a debate. I assert the importance of standpoint epistemology, where my "embodied subjectivity" (Smith, 1987) --as a constructed "Muslim woman" in Canada-- is crucial "for creating knowledge and for determining how fully [I] can understand a phenomenon [or text]" (Wolf, 1996, p. 13). I also provide a personal account of my experience in an "official space".

CHAPTER THREE: LIVING BETWEEN BORDERED SPACES

A Reflection on my Position as a Muslim Other

I have always been an eager learner. As early as my Kindergarten years, I remember relishing in the knowledge I acquired at school. I would come home thrilled at the end of every school day, keen to share what I had learned with my sisters, parents, grandparents and anyone else who dared to engage me in conversation. In school I learned about history, about culture, about the nation. But I knew even back then that it was not my history, my culture or my nation. It is not surprising then that I always had a difficult time seeing myself as part of it, or it as part of me. At home I learned about religion, about language, about customs and traditions. But I also had difficulty placing myself in this context; I knew it was not a part of me with which I completely identified or even understood. My thirst for knowledge led me to learn the most important and difficult lesson of my life: I was outsider to the nation.

Identity is a powerful human phenomenon. My identity serves to define how I see myself and how others see me. As a fluid concept, it is a "changing illusion" in which we see what is "real and concrete about ourselves and others". (Brah, 1996, p. 20) In the same vein, identity is not a monolith; rather, it is comprised of "multi- realities" providing ourselves "with an ongoing sense of self". (Brah, 1996, p. 21) These multi-realities are indicative of how we all experience 'reality' differently; this differential experience, in turn, is due to the ways in which we are situated in our nations, communities and families. The complex intersectionality of race, class, gender, ethnicity, religion, sexual orientation, and ability provide a window into the notion of multi-realities.

The intersection of these various realities is representative of the multiple identifications with which many of us connect. In our society, however, these groups of identification are ordered in a hierarchal manner, determined by the dominant ideology that governs our society:

> Individuals typically learn their assigned place in hierarchies of race, gender, ethnicity, sexuality, nation and social class in their families of origin. At the same time, they learn to view such hierarchies as natural social arrangements, as compared to socially constructed ones. (Hill Collins, 2000, p.158).

These statements are congruent with my experiences as a young, Ismaili Muslim woman growing up in Shaugnessy, a privileged middle-upper class area on the West side of Vancouver. I attended York House School, a girl's private school in Vancouver[14], where when I matriculated in 1986, there were few non-White girls (or boys). My close friends consisted of other racialized girls of Chinese, Japanese, Phillipino and Indian descent; I did not become friends with White girls until well into high school. Even then, I always felt marginalized because of the obvious skin colour difference; I remember my deep desire to be a blonde girl during puberty so that I would be desirable to White boys my age. I also remember my discomfort whenever I was paired with the only Indian boy in our class in P.E., dance or school plays. I was painfully aware of the way in which he was discriminated against for wearing a turban[15] and I did not want to be associated with him.

Reflecting on these experiences now, I realize that I always felt different because of the colour of my skin. It was not until I moved to the U.S. that I had my first direct experiences with racism. When I began my B.A. at Smith College in 1999, I had only heard about racism in the U.S., but did not understand the gravity or extent of it. After my initial shock of experiencing racism wore off, I became accustomed to being pulled over in the car with my Latino friends in Connecticut and witnessing Massachusetts State Troopers harass, rough up, and arrest black men on the University of Massachusetts campus on a Friday night for no reason. Then, in 2000, I made my first trip to the southern U.S. where my friends and I spent Spring Break in North

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[14] While York House is now an all-girls school, at the time I entered Kindergarten in 1986, there were still some boys enrolled in the Junior School (Kindergarten – grade 6). By 1990, all but one boy had left York House (the vast majority was accepted by York House's brother school, St. George's); the last boy left York in 1993 before our class graduated to the Senior school.

[15] He was the subject of ridicule everyday because of his turban; students often attempted to pull it off his head. I recall hearing other boys threaten to cut off his hair. Upon reflection, I now also realize that teachers would laugh or make (seemingly benign) comments that I now realize were part of the discrimination.

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Carolina. I remember the feeling of sickness and sadness after being told for the first time in my life that a restaurant "reserved the right to refuse service" to me and that "people of my kind made the regulars uncomfortable". I also remember feeling consoled by the fact that in Canada, though I felt different, I had never experienced such overt racism. I did not consider at this time that the absence of my story from textbooks and my insecurities around the colour of my skin at school constituted racism.

These feelings were substantiated during a trip to New Brunswick and Prince Edward Island in 2004, where I was approached by young White man who intimated that I was the "first coloured girl [he] had ever seen in person" and was labeled a "negro woman" by an eight year-old boy. Though these encounters seem to indicate the prevalence of racism in rural areas, it is important to note that they also play out everyday in cities in Canada; I believe that I was largely insulated from overt forms of racism in Vancouver due to my class privilege. By sharing these experiences in this discussion, I not only aim to provide concrete examples of the nature of the spaces to which Muslim women have been relegated in the nation and in the Global North, particularly post 9/11, I also aim to uncover my nuanced power in the debate.

Brydon-Miller (2004) suggests that "if those of us within the academy are to work with those facing oppression to challenge injustice, we must be able to draw upon whatever experiences of powerlessness we have had in order to develop a more humane and truly emancipatory practice" (p.5). At the same time, however, we must not mislead ourselves into "assuming that our own experiences of oppression are equivalent to those of others, giving us the right to speak on behalf of those whose true experience we have no way of fully comprehending" (Brydon-Miller, 2004, p.12). I negotiate these issues in the following section.

My Bordered Space

As discussed in chapter 2 and in the previous section, by defining the boundaries of the 'us' space, the dominant group in society is then able to allocate the 'them' space; a racialized, brutal space in which many types of violence can occur. It should come as no surprise then that the Other would seek to in turn border its own space.

Guha (1992) describes the development of "alternative solidarity" on the part of Chandra (a young, unwed pregnant woman in rural colonial India)'s female relatives as a site of resistance from the dominant patriarchal constructions that threatened her reputation, her status, her very existence (p.59). "Alternative solidarity" can be seen as a tool employed by marginalized and subordinated groups to combat the exclusion they experience by virtue of the power of the dominant group. These groups can seek to create "alternative solidarity" by fabricating their own "imagined communities", where they too maintain stringent borders to protect themselves. Anthias & Yuval-Davis' (1992) articulation of the role of symbolic "border guards" can also be employed in this sense, as they can serve to patrol and sustain the borders created by these "imagined communities" which form an "alternative solidarity". Their role also can be conceptualized in yet another sense, as "cultural resources which are used in the struggles for hegemony which take place, at any specific moment, not only between collectives but also within them." (Anthias & Yuval-Davis, p.33). In this sense, they serve to perpetuate and strengthen the hegemony present in these "imagined communities", thereby excluding those who are a part of this "alternative solidarity".

I find myself in the precarious position between these two types of bordering. On the one hand, I am a woman of colour; on the other, I do not occupy the same physical space as most other women of colour. I descend from a family of migrants, yet I was born in one country, have citizenship in one country and have only one country that I consider home. I share the position of marginalization based on gender with other women, yet as a heterosexual, South Asian,

struggle as many of them. I have a strong tie to my religious community, yet I do not necessarily ascribe to the all the same ideological, cultural or traditional systems as it does. It is in this place of contradictory positioning that I seek to define my own space between the borders.

In the following section, I discuss in detail my contradictory positioning within my nation and my community as a conceptual preclude to my analysis of the Boyd report. Each border serves to reify the next, both defining my individual space and highlighting the intricate and interactive process of bordering at work from 'within' as well as 'without'.

National and Community and Borders: Insider/ Outsider Revisited

Hill Collins (2000) presents one definition of nation as "a group of people who share a common ethnicity grounded in blood ties. Cultural expressions of their peoplehood- their music, art, language, and customs- constitute their unique national identity." (p.164) As previously stated, I realized from an early age that "Canadian history" does not include my history. I know that my great grandparents were born in the Kach/Gujarat areas in North-Western India, and that my paternal grandparents were born in India and my maternal grandparents in South Africa. I know that my father and mother left their respective countries (Kenya and South Africa) in search of education in England, and that they eventually migrated to Canada right before my birth in 1981. Aside from this, I have little knowledge of the history of my family: our family has only fractured stories to explain why my ancestors migrated or what jobs they held.

Fortunately, I have had some of my questions answered by Hayter (2000), who describes the migration of South Asians from Gujarat in the early twentieth century (p.18). Before this, however, all I truly knew for certain about my family's history is that it was not included in the books I studied in school, so it certainly could not have been important enough to constitute Canadian history. I also knew that I was supposed to tick the "South Asian" box on my application to college in the U.S. and on my American immigration documents.

However, these boxes of exclusion also have well-maintained borders that define their own "imagined communities" within common sites of struggle. Anthias & Yuval-Davis (1992) articulate the parallel between "ethnic and national collectivities", claiming that "there is no inherent difference (although sometimes there is a difference of scale) between [them]: they are both the Andersonian 'imagined communities'". (p.25) Applying this model we can see that "ethnic collectivities" can create solidarity by defining their difference to the dominant group (who comprises the nation), and by protecting their borders through use of symbolic patrols. A problem, however, arises when there are members who are excluded from both groups: I am a South Asian woman, but was born and raised in Canada; I eat Indian food and wear Indian clothes but only irregularly and (usually) as a measured expression of my heritage; I understand Gujarati and Kachi but communicate ineffectively in both languages. I do however wear "Western clothing", cook "Western food" and speak French fluently. It is almost as if I am not "Indian enough", nor am I "Canadian enough".

Lawrence (2004) poses the question "Who is Indian enough?[16]", reflecting the struggle of Métis, and other Status and non-Status Indians to identify with their heritage. My struggle is analogous in the sense that I feel that I have to "prove" my Indianness in order to feel included in the South Asian community; it is different in the sense that I am automatically identified as South Asian by my physical appearance. My identity then operates under the "double assumption" of inclusion by the members of both "imagined communities" between which I find myself, while I feel effectively excluded from both.

The space of the South Asian community in Canada is highly racialized and marginalized. Most South Asians in Vancouver tend to occupy the geographical space around

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[16] In this article, Lawrence uses the term "Indian" to denote Aboriginal peoples; while I recognize the distinction, I believe that the analysis is useful in considering a parallel, but not analogous, comparison for first generation South Asian/ Indo-Canadians. In Lawrence's argument, the identification as Status or non-Status Indian bears specific historicized legal, economic and social ramifications (which is not the case in my comparison).

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Fraser and Main Streets in East Vancouver and the suburban areas of Surrey, Langley and Richmond. I, on the other hand, grew up in the very affluent neighborhood of Shaughnessy, where I attended a private girl's school. The space that I occupy is still a privileged one, as I continue to pursue my post-secondary work at a high level. Growing up on the West side of Vancouver, I was painfully aware of the absence of other South Asians in the community and profoundly embarrassed to admit my family's economic status to them. I felt that I could not be included in the community in which I lived, nor could I be accepted in the greater community of colour because of my unique social positioning. It was almost as if my parents were not "real immigrants" who had to face the same obstacles as my other South Asian friends' parents. Again, like a double-edged sword, I felt excluded from both communities.

Creating my own Diaspora

The interactive process of bordering is both powerful and authoritative. Within this context, however, it is important to recognize that a new model must be considered to include the numerous other women like me that find themselves "between borders". The model of "cultural pluralism... emphasiz[es] the constantly changing boundaries of the national imagined communities and of the narratives which constitute their collective cultural discourses." (Anthias & Yuval-Davis, 1992, p. 38) This form of pluralism gives voice to "cultural hybrids" like me, "who have lived, because of migration or exile, in more than one culture [and who] both evoke and erase the 'totalizing boundaries' of the nation". (Anthias & Yuval-Davis, 1992, p.38) I am optimistic that one day multi-realties like mine will comprise a significant part of the national collective, and that other young women will not be forced to learn the truth about bordering in our nation and in our world. It is not the kind of knowledge we should be passing down to our children.

CHAPTER FOUR: THE FOREIGN, THE FAMILIAR AND THE TOLERANT

The Ideological Function of the Shari'a Proposal in Contemporary Canadian Nation-

building

This chapter examines the ideological function of the recommendation for permitting

Shari'a-based tribunals in the context of the contemporary Canadian nation-building project. I

argue that these tribunals facilitate nation-building by relegating "Muslim issues" to the private

sphere away from the eyes of the "national imaginary" (Anderson, 1993), effectively drawing

the boundaries of the nation based on recognition of the *familiar* (included) and the *foreign*

(excluded). At the same time, however, the contemporary Canadian nation-building project is

predicated upon affirming the *inclusion* of diversity and the protection of religious freedoms and

cultural autonomy, reifying "Canadian values" of "benevolence" and "tolerance". These values

are expounded in the Boyd report (2004) through the use of a liberal legal framework which

situates the debate. To this effect, the positive recommendation set forth in Boyd's (2004) report

serves to both construct and compliment the "multicultural image" in which "Canadians"[17]are

so invested.

Having already articulated the exclusionary agenda of Canadian nation-building in

chapter two, I now address its inclusionary agenda in reaffirming the "benevolent" and

"tolerant" principles of the nation. I examine the simultaneous "exclusion" and "inclusion" of

Muslims from the nation in the context of the Shari'a tribunal recommendation. I argue that the

Boyd report (2004) facilitates nation-building through both its inclusionary and exclusionary

agendas.

The recognizable *stranger* and his/ her *foreign* "nature" and "values" come into question

when the national collectivity of insiders decide what can be dealt with inside the borders of the

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[17] "Canadians" in this context refers to those who are "written into" the national imaginary as insiders, privileged as "real Canadians". I contend in the following sections that it is this group "insiders" who stand to gain from the idyllic "multicultural image" of Canada and thus, are so heavily invested.

nation. In determining who "we" as a nation are prepared to deal with in our judicial process provides a clear message of which members are considered "citizens" or "insiders" to the nation and which ones are not. A religious tribunal applying Shari'a law in family matters conveys the message that Canadian judges are neither equipped nor willing to adjudicate on matters that are so *foreign* to them that they cannot even be comprehended. I appreciate the arguments for cultural autonomy and religious freedoms that can be advanced against this claim. It is certainly understandable that one may argue that minority communities should not be subjected to the decisions of the majority, especially on issues that affect their lives so greatly (as do issues in family law). I argue, however, that these claims for cultural autonomy cannot be argued independently of the context (of discrimination) in which Muslims find themselves in Canada today (Abelkarim, 2003). These claims operate largely under the assumption that groups already have full membership to the country; it is not the case that Muslim Canadians are full members of the Canadian nation. As such, the Boyd Report (2004) signals that "their issues", *too foreign* to be accommodated in the Canadian system, must be dealt with away from the eyes of the nation.

Accommodating "Difference" to Imagine the Nation

As discussed in chapter 2, "Canadians" are deeply invested in the "imagined community", a specific construction of Canada that requires the demarcation and exclusion of Others. But "Canadians" are equally invested in the international image of "benevolence" and "tolerance" that we seek to continually convey as part of the "core values" of our nation: "Canadians [are] a civilized, tolerant, and fair-minded people who extend a generous welcome to those in need... it would be 'un-Canadian' to turn back battered women, who were mainly women of colour, from Canadian shores" (Razack, 2004, p.100).

There is an interesting tension here between "exclusion" and "inclusion". Chapter two discussed exclusionary policies of the nation in the historical and contemporary period. These

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policies included efforts to "keep Canada White" by forcing Aboriginal people onto reserves and into mental institutions and residential schools; imposing a head tax on Chinese migrant labourers; preventing Sikh's from arriving on the shores of Vancouver on the Komagatumaru, interning Japanese-Canadians and turning back Jews seeking refuge during World War II (to name only a select few). So what accounts for the change today? I would argue that there has not been a change so much as there has been a tenuous shift towards balancing both an exclusionary and inclusionary agenda by the nation. Today, Canada is invested in exporting its image of benevolence and tolerance in a way that did not exist before the last half of the 20th century. In the contemporary project, the exclusion of Muslims from the nation (in terms of discriminatory immigration policy) and from the "national imaginary" (in terms of internal bordering and violence) must be complimented by the (seeming) inclusion of Others to maintain our "middle power nation" status.

As a "middle power nation" (Razack, 2004, p.38), it is our duty to be tolerant, helpful, peaceful; these values underscore the nation-building project in a very powerful way. The image in which we are invested again conjures up colonial constructs of the "civilized" nation that acts rationally and inclusively towards all people: "Canadians like to see themselves as friendly, commonsense folk, who would rather mediate than fight" (Razack, 2004, p.32). In the context of the nation-building project, the image of "the self-effacing, cooperative, peace-loving Canadian" allows us to create "a national mythology" through policies like multiculturalism (Razack, 2004, p.36).

Ahmed (2000) provides a definition of "multiculturalism", referencing a document published by the Australian Council on Population and Ethnic Affairs: "Multiculturalism is defined, not as providing services for 'specific ethnic groups', but as a way of imagining the nation itself, a way of 'living' in the nation, and a way of living *with* difference" (p.95). In this way, *strangers* become a valuable part of the nation, "fit[ting] into the nation precisely because

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they allow the nation to imagine *itself* as heterogeneous (to claim their differences as 'our

difference')" (p.96). But this inclusion is predicated upon the value its accords to the nation—it

does not counteract the expulsion of Others from the nation's borders:

> multiculturalism can involve a double and contradictory process of incorporation and
> expulsion: it may seek to differentiate between those strangers whose appearance of
> difference can be claimed by the nation, and those stranger strangers who may yet be
> expelled, whose difference may be dangerous to the well-being of even the most
> heterogenous of nations (Ahmed, 2000, p.97).

While Muslims are considered *stranger* strangers, their "difference" is certainly "valuable" in

the new geo-political climate. By preserving their religious freedoms and accommodating their

cultural autonomy in continuing the implementation of Shari'a-based tribunals in Ontario,

Canada is able to claim its diversity, tolerance and acceptance of difference, reinforcing the

"benevolent image" we seek so actively to convey.

In this way, we can see that "multiculturalism is an achievement of the 'nation': 'we'

were able to combine the best of 'many cultures' to create a superior *multiculture* that remains

ours. The 'we' is asserted as heroic, as indicative of the ability to combine and build on others to

create a better culture" (Ahmed, 2000, p.101). This "better culture", however, is still wholly

exclusionary; it does not incorporate "difference"— it accommodates it on its own terms, for its

own purposes:

> Ironically, immigrant 'others', who serve as categories of exclusion in Canada's nation-
> making ideology, become an instrument for creating a sphere of transcendence…We
> might say that it is these oppressed 'others' who gave Canada the gift of
> multiculturalism. In any case, armed with the ideological tool of multiculturalism,
> Canada manages its crisis in legitimation and citizenship (Bannerji, 2000, p.74).

Boyd's Report (2004), then serves as an addition to the ammunition provided to the

nation-building project through the policy of multiculturalism. The image of the "benevolent"

and "peaceful" Canadian, built on feigned innocence from imperialist actions and the complete

erasure of the violent internal colonization of Aboriginal peoples, is deeply ingrained in the

national imaginary. As such, Canadians are invested in the maintenance of this image,

particularly in the contemporary climate. So a simultaneous process of inclusion and exclusion operates in the context of the Boyd recommendation: on the one hand, Muslims are conceived of as outside the nation— a conception rooted in colonial constructions and moral dichotomies; and on the other hand, Muslims must be included in the nation insofar as their inclusion upholds the image Canada seeks to convey. The powerful synchronization of exclusion and inclusion proves beneficial to only one group: "Canadians", a group in which Muslims are not granted full membership.

Conclusion

I have argued in chapter two that the contemporary Canadian nation-building project relies on familiar colonial constructions and racial tropes. In the current world climate, the events of 11 September 2001 have reinforced the position of "assumed Muslims" in this category of *foreign Other*. By designating the Other, Canadians can construct an identity and image of purity. While defining the boundaries of the border through exclusionary legislation such as the Anti-terrorism Act (2001), the Canadian government also delimits the nation through accommodations such as the Boyd (2004) Report: it relegates issues too foreign and incomprehensible to the private sphere, allowing Muslim groups to "deal with their own issues" that fall outside the scope of the Canadian fabric of society. At the same time, the image of "benevolence" and "tolerance" in which Canada is so greatly invested requires the provisional inclusion of certain groups to support the notion of a "multicultural", "multifaith" nation. To this effect, the Boyd Report (2004) permits "difference" in a way that is not "intrusive" to the nation (it will not impact on or alter the lives of "Canadians") but allows for the semblance of inclusivity and acceptance.

It is a remarkable feat to be able to present one's nation as "altruistic" and "compassionate" while systematically excluding visible minority groups based on country of origin, ethnicity or religion. This strange paradox lies again at the heart of contemporary debates

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surrounding the Muslim community in Canada, and I believe that it is vitally important to consider these issues both contextually and critically in order to uncover the powerful nation-building forces at work in these debates. It is also vital to consider the ways in which the inscription of "stranger" issues to areas outside the nation create "marginalized spaces" to which Muslim women's issues are relegated. As they are considered *too foreign* to deal with inside the borders of the nation, they are marginalized and subordinated in ways that absolve both government and society from having to confront them. In this way, Muslim women are further inscribed to marginalized and privatized spaces away from the national imaginary.

Having set up the larger theoretical and ideological issues in nation-building and the creation of "Other official spaces", I now focus my inquiry on a text as a microcosm of the larger debate. In chapter five, I conduct a detailed textual analysis of the Boyd Report (2004) based on the methodology and framework discussed in chapter one. I consider the role of this "official text" in both the exclusionary and inclusionary nation-building agenda discussed in chapter four.

CHAPTER FIVE: LEGALIZING THE PRIVATE; PRIVATIZING THE LEGAL

Marion Boyd's Report: An Examination of Religious-based Tribunals under the <u>Ontario</u>

<u>Arbitration Act 1991</u>

Introduction

Alternative dispute-resolution mechanisms have been permitted within the Canadian

legal system for over 25 years. In Ontario, *Beis Din* (Rabbinical arbitration panels) resolves civil

matters according to the Jewish law of Halakah, under the *Ontario Arbitration Act 1991*. Other

communities, such as the Shi'a Ismaili Muslim community, have their own Conciliation and

Arbitration Boards where members can choose to resolve disputes through arbitration or

mediation. In response to a request by Ontario's Attorney General and the Minister Responsible

for Women's Issues, Marion Boyd, the former Attorney General and Minister Responsible for

Women's Issues[18], released a Report in 2004 in which she examines the merits of private

religious-based tribunals initiated by the proposal to adopt Shari'a law for some Muslim

communities[19]. She concludes that religious-based tribunals should be permitted with some

safeguards in her Report *Dispute Resolution in Family Law: Protecting Choice, Promoting*

Inclusion (Boyd, 2004).

In this chapter, I conduct an anti-racist feminist textual analysis of the safeguards and

recommendations made by Boyd in the document. I contend that Boyd was likely chosen as the

investigator and writer of this report because of her reputation and previously institutionalized

position as a feminist. Her report, however, reflects the voice of a privileged White liberal

feminist, as she employs both liberal rights doctrine and "juridical discourse" (Smith, 1999) in

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[18] Boyd served as Attorney General between 1993 and 1995 and Minister Responsible for Women's Issues between 1991 and 1995.

[19] In October 2003 the Canadian Society of Muslims announced the establishment of the Islamic Institute of Civil Justice, along with the proposal of an arbitral tribunal in Ontario under the *Arbitration Act 1991*. These tribunals would apply Muslim law (Shari'a) in order to settle family law disputes, for which the Institute would provide arbitrators. It was this proposal and the subsequent uproar that provided the impetus for the inquiry which culminated in Marion Boyd's Report.

her analysis. As such, Muslim women's' voices and lived experiences are not included in this government-commissioned "official text." I am particularly critical of the creation of "privatized spaces" in the legal system for women, especially marginalized Muslim women, and how it continues to officially inscribe them to the private realm, outside of the "public" nation.

I begin by outlining three main areas of concern for feminists about arbitration that Boyd addresses in her report: (i) "free choice" of women in entering into the process, (ii) bargaining power of women in negotiations and (iii) the relegation of justice to the private domain. I begin this section with an analysis of arbitration as a "feminist alternative" to court-based justice, drawing on the scholarship of Cossman (1990), Grillo (1991) and Goundry (1998). Though Boyd attempts to account for these concerns in her report, the text reveals that she does not account for the experiences of different Muslim women in her discussion. As such, she employs a "totalizing", "juridical discourse" (Smith, 1999) in the text, erasing the voices of Muslim women entirely. She also reinforces and reproduces Othered "official spaces", effectively legalizing private spaces and privatizing legal spaces for Muslim women.

Arbitration: The Feminist Alternative to Court-based Justice?

Based on the assertion that women continue to find themselves in a situation of vast inequality in society compared to their male counterparts, feminist legal theorists such as Susan Boyd (2003) argue that "women's work is often rendered invisible or undervalued in child custody law, despite the well-documented primary responsibility for childcare that mothers assume regardless of their employment status" (p.3). This problem is compounded due to "the relative lack of financial resources of mothers (because of women's greater poverty and lack of equal earning power)" which precludes them from the ability to "engage in prolonged disputes" with their partners in court (p.9). As "women experience difficulty in obtaining legal aid services for family law disputes", fathers, who have relatively more resources than mothers, have "the upper hand in using legal processes to obtain custody or to engage in 'court-based

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harassment' of their ex-spouses" (p.9). It is evident that the vast socio-economic inequities experienced by women translate directly into a position of legal inequality for them in the court system.

It is not surprising, therefore, that some feminists embraced both mediation and arbitration as an alternative to court-based justice. But various feminist legal theorists contest the notion that arbitration provides a feminist-friendly approach to dispute resolution. In her evaluation of mediation[20], Grillo (1991) argues that it is in fact "no more humane" than the traditional court system, and often more detrimental to women. She asserts that mediation (as a potential feminist alternative) promises to: (a) reject an objectivist approach to conflict resolution (so disputes are considered in terms of relationships and responsibility rather than in terms of an abstract hierarchy of rights); (b) serve as a cooperative and voluntary process in which both parties can reach an agreement; (c) provide outcomes informed by context, rather than abstract principles; (d) recognize and incorporate emotions into the process (p.1548).

She claims, however, that the 'voluntary' nature of entry into mediation is questionable, as is the direct engagement with the adversary necessary in the mediation process. She effectively highlights the difficulties presented by private mediation to women's equality, both in the entry into 'voluntary' agreements of mediation as well as in the process of mediation itself, refuting the claim that it serves as a feminist alternative to court-based justice. In her evaluation, three main critiques of mediation arise: (i) the issue of "free choice" or "voluntary entry" into mediation; (ii) the unequal bargaining power that govern dynamics in negotiations; (iii) the private nature of arbitration.

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[20] While I appreciate that Grillo's evaluation addresses the implications of women's equality in mediation, the critiques she sets forth can be applied to arbitration as well. Her discussion of the 'voluntary' entry into mediation is salient in the discussion of free and equal entry into arbitration, namely in its evaluation of inherent power structures that sometimes lead to the coercion of the consent of women. She also presents applicable arguments to arbitration in her evaluation of the power structures present in mediation negotiations, as well as the requirement to confront the other party directly in private negotiations, each of which are valuable points when considering arbitration.

Free choice/ "voluntary entry"

There are various factors that might prevent women from choosing freely and voluntarily to enter into arbitration rather than pursue court-based justice, including socio-economic issues, cultural pressures or fear of ostracism in the community, incidents of violence/ abuse in the relationship, and immigration concerns.

Grillo (1991) notes that disempowered parties who cannot consult with a lawyer due to lack of financial resources may agree to enter arbitration as a result of coercion or fear (p.1597). Indeed, the socio-economic disparities that exist between men and women in society make this a salient concern; Bahkt (2004) notes that, "with no legal aid or mandatory legal representation, there are serious concerns as to whether women will be truly free in the choice to arbitrate" (p.27). Without equal access to financial resources, the disadvantage experienced by women extends to their inability to access legal counsel or engage in the expensive judicial system. The presence of cultural pressures and/ or fear of rejection from one's community also provide powerful incentives for women to agree to arbitration:

> the oppression of women is compounded by societies that strive to deprive them of the recognition of gender based oppression and prevent them from creating the space and cooperation required to form resistance. Women may be susceptible to subtle but powerful compulsion by family members or may be targets of coercion and pressure from religious leaders for whom there may be a financial interest in people seeking mediation (p.28).

This problem is magnified when considering instances of abuse/ violence in relationships. Citing Hart (1990), Bahkt (2004) argues that "the reality is that a battered woman is not free to choose. She is not free to elect or reject mediation if the batterer prefers it, nor free to identify and advocate for components essential to her autonomy and safety and that of her children…"(p.29).

However, if a women is dependent on her husband for immigration issues, her voluntary entry into arbitration may also be called into question: "An immigrant woman who is sponsored by her husband is in an unequal relationship of power with her sponsor" (Bakht, 2004, p.28)

Each of these issues is independently problematic, but when considered in conjunction, they provide a clear picture of the obstacles women face in "voluntarily" entering into arbitral agreements.

Unequal bargaining power

Bakht (2004) outlines some of the same concerns mentioned above in her assessment of the origins of unequal bargaining power:

> Inequality in bargaining power may result from any of various aspects of the parties' circumstances such as 'abuse of intimidation or…learning or other disability…anxiety or stress or a nervous breakdown or indulgence in drugs or alcohol'. Other factors held to indicate the necessary inequality include old age, emotional duress, alcoholism, and lack of business experience (p.17).

In this vein, Grillo (1991) claims that mediation reinscribes problematic stereotypes about women: women must represent themselves as "good women" (rational, measured, accepts responsibility for actions) if they are to be taken seriously in the negotiation process (p.1555). By requiring "masculine" justice-based responses from women in mediation, their emotions are devalued and effectively erased from the process. Grillo warns that the absence of emotion in mediation is especially problematic for women of colour. Citing Lorde (1984), she claims that fear of losing position in negotiations delegitimates the anger of women of colour (Grillo, 1991, p.1579). If a woman suffers abuse at the hands of her husband, her inability to express her anger for fear of losing her bargaining position becomes a legitimate concern in considering her relative equality.

Mediation, like arbitration, carries with it the expectation of shared responsibility on the part of both parties, but the "insistence on formal equality in mediation" does not reflect the real social conditions in which women find themselves today. The presumption of parties assuming equal responsibility for breakdown of their marriage that underscores the ideal of cooperation in mediation and arbitration obscures issues of unequal social power and division of labour. (Grillo, 1991, p.1562). Grillo maintains that the assertion of rights [in blaming and claiming] is

especially important to women and minorities"; they should not be required to "share the blame" through mediation. Mediation "creates a disentitlement" for women, so they have no basis for rights- claiming, severely undermining their sexual equality. In the context of abusive relationships, Bakht (2004) asserts that "it is highly unlikely that a battered woman will be capable of negotiating terms of an arbitration agreement in a way that is fair to her interests (p.28).

In her examination of the courts' role in enforcing separation agreements, Cossman (1990) argues that the court enters these judgments with a preconceived (and faulty) notion of gender relations in families and society at large, assuming gender equality at the outset. She asserts the importance of race and class in the discussion of gender, demonstrating the multilayered effects of marginalization and their impact on the reproduction of gender inequalities in society. Cossman also discusses the notion of "difference" in gender relations, claiming that women are forced into a role of dependency by the organization of gender relations in our society; the courts, then, enforce this dependency through judgments in separation agreements. Applying her analysis to arbitral agreements, we see that arbitrators can apply the same assumption of gender equality (as is expected in arbitration negotiations), both reinforcing women's dependency, and creating obvious power imbalances in women's bargaining abilities.

Relegation of justice to the private sphere

The aforementioned problems for women with arbitration are worsened when placed in the context of "privatized justice". Away from the public eye, agreements are drafted and signed that may serve to reify the marginalization and subordination of women:

> One of the effects of "diverting" family law cases to mediation and other informal dispute resolution mechanisms is to remove family law disputes from the public realm. One of the consequences of this 'privatization' of justice is that social inequalities may be reproduced in these privately ordered agreements, and yet remain hidden from the public eye (Goundry, 1998, p.34).

Within this privatized setting, power and prejudice of the arbitrator are strengthened as arbitration provides a private, "intimate" setting where prejudices can flourish (Grillo, 1991 p.1588). These prejudices might involve a variety of issues from gender, class, and race, to desired outcomes. Grillo (1991) notes that based on Freud's theory, transference and countertransference can take place in intimate settings such as mediation. In these situations, the arbitrator might have a preconceived notion of how he wants the dispute to be resolved, and may allow his desires to cloud his judgment and apply his prejudices in the process. As arbitration occurs in private settings, any arbitral agreements that perpetrate injustices against women can be neither seen nor critiqued by the public or the courts. In this way, these injustices remain "hidden" and allow for further subordination of women.

In the context of family law and religious personal law, the problems with arbitration are further highlighted. If religious personal law is applied to matters of family law within the arbitration framework, the possibility of infringement or suppression of women's rights is heightened. However, these concerns largely reflect the constructed subject position of a "monolithic woman", presumably White. They cannot be applied in an undifferentiated manner across experiences of women from all racialized groups. So while Boyd addresses these concerns in the Report, they were created and oriented specifically for the unified category of women; this assertion is supported by the discourse used in the text.

A Textual Analysis of the Boyd Report

Analysis of Boyd's recommendation

In section (6) of her Report, Boyd (2004) analyses the issue of religious-based private tribunals, with a survey of the history of personal religious law in Western societies. She asserts that "the application of religiously-based personal law to resolve family law matters is very widely available in both informal and formal ways in many countries", citing France and Germany as examples (p.83). In this text, she uses "normalizing discourse" to make a claim in favour of the system (i.e. it is "widely available" in other countries). More importantly, the countries she names are examples of Western democracies akin to Canada's; examples we ought to follow. It is telling that she does not argue that Canada should adopt this system because the "use of religious-based personal law to resolve family matters is very widely available" in countries such as India. In this way, Boyd invokes a specific set of (White) nations to which Canada should be/ allied in this decision.

Boyd also notes the congruence of cultural autonomy with the affirmation of multiculturalism in Canada. She seems to be more concerned with upholding the Canadian ideal of inclusivity than with considering the lived experiences of Muslim women under this system. She recognizes the possibility that some Muslim women's rights may be infringed upon, but maintains that "incorporating cultural minority groups into mainstream political processes remains crucial for multicultural, liberal democratic societies"(p.83). Her use of "official language" of the state ("multicultural", "liberal" and "democracy") in stressing the importance of inclusivity speaks to her "authority" in the text. Her use of language is embedded with a power that suggests that she is writing on behalf of the state.

This "authority" is problematically wielded in her conclusion that, "the Review did not find any evidence to suggest that women are being systematically discriminated against as a result of arbitration of family law issues" (p.83). Again, she fails to account for the different lived

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experiences of Muslim women from (White) Jewish and Christian women[21]. Boyd's use of "juridical discourse" (Smith, 1999) in asserting a lack of "evidence" to suggest "systematic discrimination" reveals the totalizing discourse at play. Completely ignored in Boyd's conclusions were the voices of Muslim women's groups such as the "International Campaign Against Shari'a Court in Canada" and the "Canadian Council of Muslim Women" who repeatedly voiced their concerns about the systematic discrimination and oppression of Muslim women under faith-based religious tribunals during the Review process[22].

Analysis of Boyd's Safeguards

Boyd attempts to address the concerns of feminist legal theorists through a series of safeguards. A close textual reading of these safeguards reveals further operationalization of "official" and "juridical discourse". In response to concerns raised about "free choice" or "voluntary entry", Boyd (2004) recommends in (5):

> Part IV of the *Family Act* should be amended so that if a co-habitation agreement or marriage contract contains an arbitration agreement, that arbitration agreement is not binding unless it is reconfirmed in writing at the time of the dispute and before the arbitration occurs (p.134).

This recommendation presupposes that if the "free entry" of the woman was questionable originally, it is no longer an issue "at the time of the dispute". Realistically, we cannot assume a woman is any freer to "voluntarily choose" to enter an arbitral agreement at the end of her marriage than at the beginning. In the context of some Muslim women, socio-economic issues might preclude her from obtaining counsel or the resources to go to court. She might be dependent on her husband to remain in the country and as such, would be inclined to agree to arbitration under duress. She might be residing with her husband's parents and have no

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[21] Even within (White) Christian and Jewish communities, women are subject to different experiences from one another. Moreover, I do not claim that religious tribunals are better for one group than another, nor do I claim that arbitration is more of a feminist alternative in one case than another. These issues all fall outside the scope of this thesis.

[22] Conversely, there were Muslim women's groups who argued for the tribunals, but employed different terms. These issues unfortunately fall outside the scope of this thesis.

community to which to turn; in this case, fear of exile from the only community she knows may prevent her from having a real choice.[23]

Some Muslim women may suffer from oppressive relationships justified by the contortion of the principles of Islam. In some cases, especially in the case of immigrant Muslim women, they may have little or no power over decisions affecting their everyday lives. Goundry et al. (1990) assert that "one indicator of power imbalance is if one party exercises absolute control of the financial and day-to-day decisions of the other party." The experiences of certain Muslim women may be congruent with this type of oppression, further problematizing their presumed "free entry" into and ability to negotiate in arbitration.

Thobani (2000) notes that immigration is still highly gendered and racialized in Canada, with most women entering the country as dependents on their husbands. This forced dependency can serve to perpetuate inequalities that arise from the aforementioned power imbalances. It is certainly conceivable that some dependent women might be fearful of deportation in the event that they refuse to comply with the wishes of their husbands. As such, it is important to consider that these types of pressures might be compounded for Muslim women whose countries of origin have oppressive regimes in place. In such situations, both her "voluntary entry" and ability to negotiate must be called into question.

The concern for some Muslim women in disadvantaged situations extends to fear of exile from their communities. In her analysis of Boyd's Report, Bakht (2004) quotes Syed

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[23]Again, I wish to assert that I do not seek to contribute to the prevalent Othering of Muslims by ascribing to cultural essentialism (Narayan, 2001). The erroneous assumptions about the both the laws and practices of Muslims have led to dangerous generalizations about a faith that cannot be captured in the essence of a single culture. Nor do I wish to assert that Muslim women are somehow victim to an oppressive religion or patriarchy, as this discourse serves only to reify the demonization of Muslims in our country. When I discuss specific concerns that complicate the issue for Muslim women such as immigration concerns, physical/ emotional abuse, or cultural pressures I do not claim that they are *exclusive* to Muslim women; instead, I contend that all women who find themselves in subaltern positions due to the intersectionality of race, class, sexuality, ability, ethnicity, and/ or religion are more vulnerable to these issues and some Muslim women fall into this category. I want to pay special attention to the specificity of the experiences of different women, and the ways in which the text does not.

Mumtaz Ali, head of the IICJ: "Now that arbitration agreements are considered final and binding…'in settling civil disputes, there is no choice indeed but to have an arbitration board'" (p.18). Bahkt notes that there may be situations "where a devout Muslim woman would be susceptible to pressure to consent to arbitration by Shari'a law because of a pronouncement such as Syed Mumtaz Ali's" (p.18). It is important to consider the situations of some Muslim women who have little or no access to resources, are dependent on their husband for immigration, and have no community to which to turn when their marriages end.

While Boyd (2004) states that "the law of contracts and Part IV of the *Family Act* offer the option to set aside an agreement where there has not been true consent because the person was pressured or coerced into entering into an agreement,[…] more subtle community pressure may not qualify as coercion for the purpose…"(p.136). This is problematic if we consider the gravity of these "subtle pressures" on women who fall victim to them. As discussed above, the "subtle" pressures faced by some Muslim women, such as cultural pressures or fear of ostracism in the community are in fact very powerful motivators for women to agree to arbitration.

Boyd (2004) also claims that judges would have the authority to examine agreements when there is evidence that one party entered into the process under duress. Referencing *Hartshorne v. Hartshorne* (2004), Bakht (2004) notes that "courts have set a high threshold for the test of duress of coercion. Though the common law recognizes defense of duress, its scope has remained narrowly defined with relief chiefly limited to cases of physical threat" (p.17). In the case of Muslim women under the proposed Shari'a tribunals, judges would likely be more trepid in examining cases for fear of "meddling" in the affairs of minority communities. Additionally, if "subtle" pressures do not qualify as coercion, those judges who do review agreements might not believe that these women have been coerced to begin with. As we can see, a number of issues remain unresolved with these recommendations.

In an attempt to safeguard against unequal bargaining power, Boyd (2004) recommends in (18 & 19):

> Regulations in the *Arbitration Act* or the *Family Act* should require mediators and arbitrators in family law and inheritance cases to screen the parties separately about issues of power imbalance and domestic violence…that they have reviewed the certificates of Independent Legal Advice, and are satisfied that each party is entering into the arbitration voluntarily and with knowledge of the nature and consequences of the arbitration agreement (p.136).

The questions however remain: Who employs the test to determine if there is evidence of domestic abuse or power imbalance? What range of violence does this test account for? Is a standardized test to screen for violence adequate to identify the majority of cases? A more robust and nuanced conception that ensures that power imbalances are identified in the cases of specific groups of Muslim women must be written into the text.

Further, the issue of ensuring that the parties have understood the repercussions of waiving Independent Legal Advice continues to ignore the real socio-economic and educational disparities that continue to prevent immigrant women from accessing legal counsel. If a woman has no means to obtain legal counsel, her waiving of that right cannot be considered an autonomous decision on her part. Short of providing both parties with Independent Legal Advice at no cost, I do not believe that Boyd can successfully account for the power imbalances that manifest themselves in the negotiation process for Muslim women.

Boyd (2004) attempts to resolve the issue of "privatized justice" in recommendation (40) where arbitrators would be required to submit annual Reports to the Ministry of the Attorney General with "aggregated and non-identifying information" such as "number of arbitrations conducted; number of appeals or motions to set aside and the outcome, if known; any complaints or disciplinary actions they are aware of that have been taken against them" (p.140). In recommendation (41) she extends this requirement to include "summaries of each decision, free of identifying information" to the Government of Ontario (p.140). The remittance of basic

information to the government by arbitrators does not account for the problems of perpetuating systems of oppression in arbitration or unequal bargaining power in the negotiation process. For Muslim women under the IICJ's proposal of faith-based tribunals, women could be subject to the decisions of conservative Muslim male religious leaders, exacerbating these power issues. Boyd's "juridical discourse" again fails to account for the specificity of lived experiences for different women, employing a liberal conception of justice and homogenizing the experiences of all women under such a system.

CONCLUSIONS AND INDICATIONS FOR FURTHER RESEARCH

An anti-racist feminist textual analysis from my unique subject position suggests that the Boyd report (2004) ultimately marginalizes Muslim women from the Canadian legal system by employing a "totalizing discourse" and "juridical discourse" in its recommendations and safeguards. These discourses erase Muslim women from the "official text", a text that is commissioned by, and reflects the interests of, the Canadian state, creating a type of privatized justice in a special Othered "official space" for them. It is a space that falls outside the ideological and sometimes, physical, borders of the nation. It is a racialized and gendered space in which violence and injustice are naturalized. This case study from Ontario, therefore, might usefully be applied to the larger Canadian context to understand the on-going nation building project. It provides us with valuable insight into the creation of "official space" outside the national imaginary through "official discourse" and "official knowledge" as a result of "official texts". These texts are themselves reflective of and embedded within a complex set of power relations that subordinates immigrant women. Official in nature, they communicate the "authority" of the state and "authorized" voices in the state, which powerfully signals the erasures in the text and ultimately, in the national imaginary.

This enquiry could be extended to consider how the production of this "official knowledge" through "official texts" requires the silencing of "Other" voices that are not authorized to speak. This involves addressing a series of questions: who has the *authority* to construct the "Truth" in the nation; who is *silenced* in the truth-making process; what does this "Truth" communicates *to* and *about* the nation? It also warrants a discussion of the politics of truth- making in articulating official discourse through the erasure of "unofficial", "unauthorized" voices, considering "interrelated and unequally located voices in their struggles for the 'truth' (historical, political, and epistemological)" (Roman, 2003, p. 309).

Roman (2003) also notes that "truths" are not cultural constructions of equally-located

voices; instead, she asserts that "they are invested with powerful inequalities and are made in

specific material and ideological conditions and contexts that should not be left out of any

theoretical account of their origins or effects (p.279). "Truths" spoken by different individuals

are accorded different degrees of legitimacy; the "voices" of these individuals are firmly

entrenched in the "natural social arrangements" in which they find themselves:

> 'voices'—whether coming from persons of texts—are not merely or even predominantly
> determined by the agency of individual actors free of larger structures of institutional
> power and wider material and social inequalities that set limits upon them (Roman,
> 2003, p. 309).

These erasures can be found in the attacks on both Rigoberta Menchú[24] and Sunera

Thobani[25]. In asserting the "truth" in their colonized voices, the integrity of their statements is

called into question by the dominant "authorized" voices in society. As Roman (2003) aptly

questions, "Why is it the case that juridical judgment of "failing" to measure up to the "the

truth" appears at the exact moment indigenous (or other subordinated) voices speak out,

challenging how some "truths" become "givens" or are constructed as "inevitable"? By calling

the veracity of Menchu's and Thobani's claims into question, their "authority" to speak the

"truth" is effectively usurped, vesting this "authority" in the voices that comprise the "official

discourse". As my research has demonstrated, and further research might more fully explore,

this erasure of subaltern voices in Canada and the ability of the state to assume the authority to

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[24] Rigoberta Menchú awakened international community to hundreds of thousands of Guatemalan peasants who were being slaughtered under the Ladino government in her testimony, Rigoberta Menchú, *I, Rigoberta Menchú: An Indian woman in Guatemala.* (E. Burgos- Debray, Ed. and Trans.) (London: Verso, 1984). The veracity of her statements was called into question by David Stoll who published *Rigoberta Menchú and the Story of All Poor Guatemalans* (Boulder: Westview Press, 1999). He argued that Menchú's testimony was not "the story of all poor Guatemalans," (as she claimed) but rather a "highly political document whose author was closely affiliated with Guatemala's largest guerilla group, the Guerilla Army of the Poor (EGP)".

[25] Sunera Thobani delivered a speech at the *Critical Resistance* conference in Ottawa on 1-4 October 2001, where she condemned U.S. foreign policy and warned against future aggression in the Middle East. The attacks launched against her were of a personal nature, as racist, sexist, colonialist language was used to demonize her, and subsequently, to silence her claims. The language reified images of "the angry woman of colour", "the irrational native", "the hysterical woman", "the ungrateful immigrant", "terrorist", "enemy of the West".

create the "truth" in the larger nation-building project share an often overlooked or ignored relationship.

Though the Shari'a tribunal issue was resolved in February 2006 with the decision to prohibit any forms of religious tribunals in Ontario to adjudicate family law issues, I believe that this debate is still relevant. Not only does it allow us to unpack the consequences of any resurgence of the Shari'a proposal, it provides us with valuable insight into the subversive ways in which contemporary nation-building takes place in Canada today. In light of the new wave of conservatism sweeping the nation, it is particularly important for us to engage critically in the legislation and policies that shape our country. Now, more than ever, it is vital that we reflect on the kind of nation we want to be. In order to do this, we must be willing to recognize and rectify past and present marginalization and subordination based on gender, class, race, religion, sexuality, ability and age in the borders of the nation. First and foremost, we must admit to our complicity as a colonial nation in the cultural and physical genocide of the First Peoples of this land. Without this measure of reconciliation, the path for immigrant communities in attaining full membership to the nation will be arduous and fraught with strife.

I am optimistic and I am invested, however, in a better nation: one that ultimately will be the envy of the world. My optimism is predicated on the notion that social justice work can affect change, and that those in power who are made aware of the injustices will want to remedy the wrongs that have been, and continue to be, perpetrated against marginalized groups and communities. I hope that my analysis brings to attention to and opens up spaces of dialogue about many unjust dimensions of Canadian nation-building. Above all, I am invested in a nation to which I wish to fully belong; a place where I can build a family and a life; a place that I can call "home".

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