The Reconstruction of the Constitution and the Case for Muslim Personal Law in Canada

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Introduction

The present paper is intended for discussion. It delineates a way of looking at various facets of the current constitutional problems besetting Canada. It offers a critical analysis of a select number of themes which we believe have played a fundamental role in creating and shaping the crisis facing Canadians. As interested observers and participants in the social/political fabric of Canadian life, we, to borrow the vernacular of sports, have tried to call things as we see them. We realize some of these judgement calls may upset some segments of Canadian society.

The intention underlying such judgement calls is neither to insult nor to vilify any group. In fact, to continue with the analogy of sports, by citing apparent infractions concerning the spirit and substance of democratic principles, we, somewhat like referees, are not making any moral judgements about the integrity of the people or groups to whom some of the remarks are addressed. Our remarks are directed at drawing attention to the inappropriateness of the behaviour involved, according to our understanding and interpretation of the rules and character of the democratic game.

As Canadians, we subscribe to the general idea of democracy. At the same time, we believe many of the political practices, institutions and processes which exist in Canada fall far short of the promise and potential that democratic theory has for meeting the social and political needs of a truly multicultural society. Radical reconstruction of the Canadian Constitution is necessary, but such reconstruction must be built upon a thoroughly democratic foundation.

Multiculturalism cannot survive in an environment that pays only lip service to the underlying principles and values of that philosophy. The principles and values of multiculturalism must be put into everyday practice.

In any democratic setup, sovereignty is a structurally complexidea. Many people have different ideas about its character and scope. However, as used in the current paper, it must always be understood to be relative and not an absolute term. The shape which sovereignty assumes in any given socio-political context must always be a function of the dialectic between the rights and duties of care of the participants in that context. Consequently, the sovereignty of the individual must be balanced against the sovereignty of other individuals. Moreover. the sovereignty of one level of government must be harmonized with the sovereignty of other levels of government. The same holds true with respect to the sovereignty association of communities and various levels of government.

However, nothing in the ensuing discussion should be construed as advocating either some form of anarchy or the breakup of Canada. Canada must remain whole and united, and it can accomplish this, we suggest, through the combination of constraints and degrees of freedom permitted by the principles and proposals set forth in this paper.

Representational Democracy

What would be required in order for Canada to be a participatory democracy? Some might wish to argue that Canada already satisfies the requirements of a participatory democracy. After all, voting is considered to be a fundamental expression of participation. Moreover, people are free to run for public office, or to help out in their association of choice, or to try to shape the policy platforms adopted by a political party. All of these count as acts of participation.

While conceding the point that there do exist a number of avenues through which Canadians can participate in the political process, nonetheless, the idea of participatory democracy need not be limited to the foregoing sorts of possibilities. For example, once elections take place, the opportunities for most Canadians to continue participating in the political process often becomes severely curtailed. This is the case because Canada operates according to the values of representational democracy. These values tend to place very determinate limits on the extent to which non-elected or non-governmental officials can participate in the political process.

There are, in general terms, two methods of putting into practice the concept of representational democracy.

One approach construes the idea of representation to mean that the elected official must be faithful to the wishes, desires and interests of the electorate. Therefore, the elected official assumes the responsibility of actively seeking to convert such wishes, desires and interests into a government policy which is realized in various sorts of laws, social programs, economic measures, environmental activity and so on.

The other general approach to the notion of representational democracy, which might be labelled the "visionary model", holds a very different picture of the role of an elected official. From the perspective of the second approach, the elected official's primary responsibility is not necessarily to serve, or actualize, or be an agent for the wishes, desires and interests of the electorate. The task of the elected official is to seek to implement what such an individual believes is in the best interests of all of the electorate, even if these beliefs run, partially or entirely, contrary to the wishes, or desires of the electorate.

Participatory Democracy and the Process of Recall

When people talk about the desire to have participation in the governing process, the discussion is often couched in terms of having direct, active, unmediated contact with the governing process. Their desire is to have more autonomy over their political lives in the sense that they do not want their point of view marginalized, shunted aside or ignored by politicians. They are seeking some way to have options to them which offer the hope of circumventing, within limits, the traditional access to power – namely, the politician. In other words, the spirit of participation is rooted in the desire to have access to a form of real power which is beyond the control of politicians and which will make politicians more responsive to the needs of the electorate than does the prospect of holding elections every four or five years.

There are a number of ways of providing the electorate with a sense of having the direct, substantive, unmediated participatory power which they seek. The power of recall is one such possibility.

Referendum Issues

Another sort of power that would enable the electorate to have direct, substantive and unmediated access to the process of governing is linked with the idea of referendum. There is almost nothing that is more conducive to a sense of helplessness than to see policies, programmes or changes being instituted over which one has no control, despite feeling very much opposed to such activities of the government.

Another- possible avenue for helping the electorate to gain more direct control over the political process that affects their lives concerns the way in which election campaigns are run and financed.

There is a growing cynicism among many voters about the way campaign money plays an increasingly corrupting role in the electoral process. More and more it seems, campaigns are about who has the most money to spend on advertising campaigns. More and more, campaigns are about which candidates can be packaged most alluringly. More and more, campaigns seem to be based on the tactics of illusion, deception, evasion and manipulation. Less and less, do campaigns seem to be directed to the needs, interests, concerns and problems of the electorate. More and more, campaigns seem to be reduced to 30 second spots, photo opportunities and repetition of names or slogans. Less and less, are campaigns about an in-depth debate and discussion of issues. More and more, campaigns are about individuals and parties winning elections. Less and less, are campaigns about ensuring that the community wins through the election of people and the promotion of issues that are most responsive to the needs and concerns of the electorate. One way of helping to eliminate such problems and thereby assist the electorate to gain some control over the electoral process rather than be its manipulated victims, is to require that all political contributions be directed to a general election fund which serves the interests of the community as a whole. This fund would be used to underwrite the cost of such things as: debates, non-promotional campaign expenses, as well as publicizing the philosophical positions of all the candidates on various topics, issues and problems.

Sovereignty: A first Encounter

Let us examine yet another area involving the issue of personal autonomy as a basic expression of participatory democracy. Recently, the British Columbia Supreme Court handed down a decision which denied the land claims of a group of Native people. The essence of the court's decision was that the Native land claim had no merit since such claims had all been extinguished during colonial times. This act of extinguishing was accomplished by those who were acting on behalf of the authority of the sovereign power of the King or Queen or England.

The apparent ethnocentric prejudices that are ingrained in certain aspects of Canadian society which are reflected unfortunately in the judgement of the learned justices of the B.C. Supreme Court run so deep that many people do not seem to have properly appreciated just how revealing the court's judgement is

about the assumption underlying the world view of many Canadians concerning Native peoples. Other judges and governmental officials in other localities and times have made statements or rendered judgements which are similar to that of the British Columbia Supreme Court.

The Sovereignty of a people is not a function of law. It is an *a priori* given that has been recognized, appealed to, alluded to and invoked over thousands of years in virtually every society about which there exists recorded knowledge. In fact, the roots of this *a priori* principle are so fundamental and so pervasive to the human condition that no one has been able to mount a plausible, let alone convincing, argument that would justify the denial of such sovereignty in a way that would be acknowledged as a tenable philosophical position by most people. The central importance of this issue of sovereignty also is reflected in every kind of human rights document that has issued forth from the United Nations and its predecessor, the League of Nations.

Law is predicated on, and presupposes the existence of, such sovereignty. Law is derivative from sovereignty. Indeed, although one can conceive of sovereignty without law, one cannot conceive of law without presupposing the existence of a source of sovereignty to generate such law. Law does not generate itself.

Legitimate constraints and limits can be placed on the exercise of sovereignty only through mutual agreement. This sort of reciprocity is exhibited in the case of a social contract between an individual and the larger community in which both parties agree to restraining themselves in certain ways in order to preserve the autonomy and integrity of the other party to the agreement. Each party has rights in such an agreement. Each party has duties of care with respect to the other party under the reciprocal character of the agreement.

However, the willingness of a person or people to accept constraints upon one's sovereignty should not be confused with the idea of extinguishing a people's sovereignty. The latter idea is a figment of the fevered imagination of those who would shamelessly, and with an inflated sense of self-importance, try to rationalize their attempts to deny, if not usurp, the sovereignty of another people.

Neither the Supreme Court of British Columbia, nor the court system of any province, nor the Supreme Court of Canada has any jurisdiction in the matter of the sovereignty of Native peoples. In and of itself, the sovereignty of the Native people is entirely extra-legal in character. However, as indicated earlier, the trappings of legitimate legality arise in conjunction with the sovereignty of Native people only to the extent that, of their own free will and volition, Native people agree to enter into a social contract with the other peoples of Canada. This contract gives expression to the sort of constraints on sovereignty which are deemed necessary in order to protect and, where possible, enhance the integrity, autonomy and access of real power to the respective parties.

Unfortunately, historically, the non-native people of Canada tend to have misconstrued and misunderstood the nature of their relationship with Native peoples. The former have been inclined to consider themselves the superior, "civilized," divinely favoured party which has the right to impose their values, policies, programmes and will on the Native people. In short, most non-Native people of Canada believe they alone had sovereignty. For the most part, there has been a dearth of any semblance of mutuality and reciprocity which has characterized the intentions and attitudes of the non-Native peoples in their dealings and interactions with Native peoples on the issue of sovereignty.

The resolution of the sovereignty problem of Native peoples is complicated immeasurably by the fact that money, natural resources and land have become inextricably caught up in the issue of sovereignty. One the one hand, vested interests – both public and private – stand to lose a considerable amount of power property and money, or both in the present as well as in the future, if the full significance and ramifications of sovereignty of Native peoples is finally acknowledged and acted upon. On the other hand, Native peoples cannot give full expression to their sovereignty as autonomous peoples unless they can exercise control over the land and resources that were taken away from them.

In fact, for Native people, the land plays a central role in their spiritual traditions, since it is a sacred responsibility that has been entrusted to them. They are the trustees of the land over which they have authority and on which they live their lives. If they are denied the capacity to nurture their relationship with the land and to fulfil their spiritual responsibilities as trustees, then they are being denied the opportunity to pursue a fundamental aspect of their religious tradition.

Presumably, Native people will be prepared, as they always have been, to enter a form of social contract with the non-Native peoples of Canada in which reciprocity, mutuality and co-operation become the central shaping forces of that contractual process. This means that the Native peoples will have to assume certain kinds of restraints upon their sovereignty and, therefore, they will not get everything they would like or to which they morally, may be quite entitled. However, there must be a reciprocity to this constraining process. This means that all non-Native Canadians are going to have constraints

placed on their sovereignty as well with respect to the Native peoples, if we are to resolve the problem in as equitable fashion as possible under a very complicated and messy set of circumstances. This is unlikely to be a pain-free process on either side.

Nevertheless, as long as the problems surrounding the sovereignty of Native people continues to fester, then Canada will have lost its moral authority to speak out against intrusions upon the sovereignty of people which occurred in the past, are occurring now, and, very likely, will continue to occur in the future. For the Canadians to denounce the usurping or suppression of sovereignty in other places while standing neck deep in their own cess pool of usurpation and suppression, would be hypocritical in the extreme.

A Possible Solution

One possibility for resolving the sovereignty issue of Native and aboriginal people may revolve around the Yukon and Northwest Territories, together with some added incentives. More specifically, the government of Canada and the provinces could cede substantial portions of these territories to the Native and aboriginal peoples of Canada along with, say, certain areas of the northern portions of a number of provinces extending from British Columbia to Ontario. Such ceding would be done in partial exchange for all outstanding land claims in the various provinces.

From the perspective of the provincial and federal government, ceding the aforementioned land areas may be less conducive to the possibility of becoming entangled in the sort of complex legal/social problems where a spectrum of vested interests are at cross-purposes with one another. Said in another way, the above arrangement may least intrude upon, or interfere with, issues of sovereignty involving non-Native and non-aboriginal people.

To be sure, there will be some non-Natives who will be inconvenienced as a result of the proposed solution. Moreover, there undoubtedly will be economic interests which either will have to be terminated or run in accordance with the wishes of Native and aboriginal peoples. However, as is the case with some of the Native peoples who will be inconvenienced, some sort of monetary compensation may help assuage the inconvenience and difficulties suffered by non-Natives during the process of transition in which lands of sovereignty are generated for Native and aboriginal peoples.

By proposing that Native and aboriginal peoples be given custody of certain lands in the north and that these lands have provincial status, we believe that Native peoples would be in a much stronger, more tenable position through which to fulfil the spiritual responsibilities that have been entrusted to them. Furthermore, with such provincial status, we believe Native and aboriginal peoples would be in a much better position to assist the rest of us to work towards redeeming the Canadian environment as a whole and, thereby, fulfilling the sacred trust which many non-natives also believe they have with respect to the land.

Canadian Identity:

This principle of sovereignty, and its attendant problems, actually goes to the heart of who we are as Canadians. Being a Canadian is not about CBC, Via Rail, the National Film Board, the RCMP, the Maple Leaf Flag or any other symbol one cares to choose as that which helps bind us to one another and helps define our collective identity as Canadians rather than as something else.

Whether we are talking about regions, provinces, municipalities, ministries, institutions or the federal government, we are talking about family, and we interact with the members of that family in a way that we don' t interact with governments and people beyond our borders. The affection, pride or exasperation we feel toward one another has a political/cultural chemistry of its own that is not the same as the sort of chemistry that is generated by the affection, pride or exasperation one may feel towards other peoples. The straw that stirs the political/cultural chemistry of Canada and Canadians is the problem of sovereignty.

The history of French Canada or the Maritimes; the West or the Northern Territories; the provinces or the federal government; Native peoples or immigrants – all revolve around the search for asserting or claiming or fighting for their sovereignty. The story of Canada is a story of the attempts, failures and successes of a variety of people as they sought to enter into a social contract with other peoples. Such a social contract emphasized a reciprocity or mutuality of understanding and, therefore, a concomitant willingness to place constraints on their respective
sovereignties in order to work out a system of rights, duties, freedoms and responsibilities which would enhance the quality of sovereignty of the parties involved in that social context.

The sense of betrayal that all peoples in Canada have experienced, at one time or another, can be traced directly to the perception, whether accurate or not, that there is an inequality in the relationship of reciprocity and mutuality that defines the social contract which links the

sovereignty of one people with other people. Essentially, this means that when a people feel betrayed, they feel they have placed constraints on their own sovereignty as a people which either : (a) are not being reciprocated by others; or (b) are not leading to a sufficient level of enhancement in the quality of that aspect of their sovereignty which is not under constraint.

Sovereignty and Democracy

The issue of sovereignty involves the desire to have substantial control over; or play a fundamental role in, shaping one' s destiny. Sovereignty involves the desire to have access to, and the opportunity to exercise, real power. Such power enables one to structure, orient and colour the character that one's living will assume. Having access to real power in an unmediated fashion goes to the heart of the difference between representational and participatory democracy.

Representational democracy is about people giving up power to other people, i.e. the elected officials and those whom these elected officials appoint or hire. Representational democracy is mediated by, and filtered through, the understanding, likes and dislikes, weakness and strengths, ambitions and visions (if not delusions) of the people who are seeking power through elected office.

Participatory democracy is direct, responsive and focuses on sharing power with the many through a variety of channels which are specifically designed with such sharing in mind.

Once elected, governments, especially in a parliamentary system, often are not run along democratic lines but autocratic ones in which power hoarding and manipulation of power tend to become paramount. The world of 'realpolitik' is about seeking, gaining, wielding and hanging onto power. In this realm, the principles of democracy merely become watchwords that are used to clothe the reality, nothing of substantive value actually exists as far as democracy is concerned.

When the members of the Supreme Court make judgements, or when Parliamentary committees cast votes, or when government boards or commissions arrive at decisions, although the rule of the majority holds within the restricted confines of the court, committee, board, or commission, there is no guarantee that the respective judgements, votes and decisions reflect the wishes of the majority of the population. Consequently, all of these narrowly construed powers of majority rule constitute potential sources of encroachment upon the sovereignty of the people of the nation, province, region or municipality.

The individual often has little or no power to shape, constrain, modify or resist the aforementioned sorts of judgements, votes and decisions. Moreover, unless provisions are established that permit individuals, within certain limits, to have direct, unmediated access to the kind of power that will give them the opportunity to shape, constrain, modify or resist the process of 'realpolitik' then democracy becomes a vacuous exercise for the majority of people.

The operative principle in a democracy is not that the majority rule. Instead, what actually rules is a set of principles to which the overwhelming majority of the people agree or to which they are committed as a means of defining, establishing and regulating the social contract that underwrites a democracy. This set of principles both determines boundaries of the constraints as well as provides for a spectrum of degrees of freedom within, or through which, individuals and the collective pursue their respective sovereignties.

Representational democracy tends to spin one kind of set of constraints and degrees of freedom, which participatory democracy generates another kind of set of constraints and degrees of freedom. Naturally, there is likely to be a certain amount of overlap in the structural character of these two different approaches to implementing democracy, but in many ways, these two perceptions have quite different sorts of priorities, emphasis, interests, orientations and styles.

In effect, what rules a democracy, whether of a representational or participatory var9iety, is a process or procedural framework which is accepted by the majority of people. This process or framework must offer a countervailing influence against arbitrary, prejudicial or autocratic assaults upon, intrusions into, and usurpations of sovereignty. Moreover, what permits such a process or framework to rule is the degree of confidence which people have in the capacity of the process/framework to provide a means of both protecting as well as helping to actualize the sovereignty of individuals and the collective alike. Presently, the Canadian public, on both an individual and collective basis, is indicating that it has lost confidence in the capacity of the current approach to democracy in Canada to be able to resolve the problems which presently exists with respect to various aspects of the social contract – a contract that is supposed to bind us together within a common democratic framework.

Religious Freedom: Some Problems

Earlier, various aspects of the constitutional crisis concerning the Native peoples and the people of Quebec has been addressed. These sorts of issues are well-

known to Canadians. Indeed, much of the talk which is devoted to the current crisis usually focuses on these two peoples. However, there are others in Canada whose needs and problems must be taken into consideration if a revamped Constitution is to serve all Canadians.

For example, although many different ethnic groups and races are represented within Islam, as Muslims – as those who follow the Islamic religious tradition – all these various ethnic groups and races are one people. As a people, Muslims feel there are a number of ways in which their reality as a people is marginalized, if not denied, by the present constitutional arrangement.

To begin with, there is the question of religious freedom. While Canada prides itself as a nation in which, theoretically, individuals are free to commit themselves, if they wish, to a religion of their choice without any interference from the government, in practice this is not always the case.

Religion is not just a matter of having places of worship or having particular beliefs or values. Religion is also a matter of putting into practice what one believes, as well as acting in accordance with the values one holds in esteem. Moreover, these beliefs and values are not meant to be activated only when one enters a place of worship and switched off when one leaves that place of worship. Religious beliefs and values are meant to be put into practice in day-to-day life.

In Canada, there is said to be a separation between church and atate, or temples and state, or mosque and state. This separation is intended to curtail the possibility that people in power may try to impose a certain kind of religious perspective – namely, their own – onto the citizens of the country, irrespective of the wishes of those citizens.

What in fact happens however, is that government officials either (a) use a variety of strategies, diversionary tactics and Machiavellian manipulations to camouflage their religious prejudices: or, (b) wield a set of non-religious biases in order to place a set of obstacles in the way of, as well a impose constraints upon, the way one can pursue one's religions of choice. Although, in the latter case, people in power claim that they are being neutral with respect to religious beliefs and practices, in reality there is a huge difference between being neutral and being oriented in an anti-religious manner.

No jurist or government has ventured forth with sufficient courage to delineate, in a legal opinion or government policy, just precisely what is meant or entitled or encompassed by the notion that Canada is founded "upon principles that recognize the supremacy of God"; nor have they said what it means for such principles to recognize the supremacy of God; nor have they said what the ramifications of such recognition and supremacy are; nor have they said what they mean by God. In fact almost every decision the courts and governments have made virtually ignore such questions, problems and issues.

Becoming a loyal citizen of Canada has nothing to do with being assimilated into some sort of pre-fabricated, monolithic, standard set of assumptions, values, beliefs, commitments and practices which public education, is among other things, intended to promote. Supposedly, such a monolithic process constitutes an allegedly unifying social and political medium. Yet, one can be taught values such as freedom, rights, democracy, social responsibility, justice and multiculturalism without going to public school and without presupposing that everyone must engage these topics in precisely the same way.

On the other hand, public education cannot teach, say, a Muslim child how to be a good Muslim. In addition, public education cannot actively assist a Muslim child to establish an Islamic identity or to adopt an Islamic way of life. Public schools cannot do this because they virtually have no expertise in, or understanding of, what Islam involves. They do not teach Arabic or the Qur'an or the *Sunnah* (practices) of the Prophet Muhammad (peace be upon him) ; nor do they teach *Shari'ah* (Islamic Law); nor do public schools have the capacity to help the individual learn how to put all of this in to practise on a day-to-day basis.

Muslims are told, however, that such educational topics are not the responsibility of the public education system. Such issues are the responsibility of parents and must be done at night or on weekends or during the summer. Consequently, a supposedly neutral state has made it a matter of law, practise and convention that the public education system, despite being funded by Muslim tax money, cannot accommodate an Islamic education.

Muslims are free, of course, to begin their own educational system, but they are not permitted to have access to the taxes which they contribute to the government in order to be able to use that money for the purposes of religious education. Thus Muslims – and this is also true of Jewish, Hindu, Buddhist, Sikh, Native peoples and the Protestant Christians – must bear a special burden of paying twice if they want an education that reflects the values and practices of their religious tradition. The Catholic community, on the other hand, is permitted, more so in some places than in other places, to have access to public money to promote an educational process that does reflect the community's religious values and practices.

Such inconsistency is indefensible – morally,

philosophically and logically. It is not neutral. It is discriminatory. It does not reflect the spirit of multiculturalism. The aforementioned sort of inconsistency clearly points out that the religious freedom of a great many people in Canada, Muslims included, has been seriously circumscribed and inhibited. This is the case since the powers that be have taken something of fundamental importance to the pursuit and practice of religion namely, education – and placed obstacle after obstacle in the path of certain peoples and communities of Canada with respect to their ability to pursue their religion of choice freely.

These obstacles prevent many, if not most, religious minorities in Canada from having access to anything but a curriculum of subjugation to a preconceived master plan of assimilation. As a result, these people and communities are required to: (a) submit to the values and practices of public education which are often antithetical to religious values and practices; or, (b) pay twice for the kind of education they want.

Equality is best served by means of offering a diversity of alternatives. Educational programs do not have to be the same to be equal. The conditions of equality are satisfied when different educational systems meet the needs and reflect the values of the communities being served, respectively, by these different educational systems.

One may never be able to achieve a perfect fit between the diversity of educational systems which are offered and the diversity of values which exist in the community. Nevertheless, one needs to struggle in the direction of providing more flexibility and alternatives than presently exist.

Family and Personal Law

Another example of how Muslims are being prevented frombeing able to realize the promise of religious freedom concerns the area of Muslim family and personal law. This area covers issues such as marriage, divorce, separation, maintenance, child support and inheritance.

In Islam, Muslims are required to follow a set of constraints and degrees of freedom that have been established in Divine Law. Following Divine Law is at the heart of what being Muslim means. Muslims are not free, according to their likes and dislikes, to pick and choose what they will and will not do with respect to Divine Law. Divine Law is inherent in, and presupposed by, the practices of the Islamic religious tradition. Muslim personal/ family law is an integral part of such Islamic practices.

Muslims in Canada have no wish to impose their perspective, or way of doing things, on other Canadians. In other words, Muslims are not requesting that the non-Muslim people of Canada adhere to our practices, beliefs and values concerning Muslim personal/family law . Such an imposition would be an intrusion on the sovereignty of the non-Muslim peoples of Canada.

As indicated many times in the foregoing pages however, sovereignty is a function of reciprocity in which there is a dynamic balance between the rights and duties of care. This balance should shape our interactions with respect to one another. When such a balance is missing, then steps must be taken to re-establish reciprocity. In this regard, Muslims feel that such an imbalance does exist in Canada in a variety of areas, one of which deals with the issues surrounding the implementation of Muslims personal/family law.

Many things in Canada are permitted as long as the people are consenting adults. Presumably, therefore, Muslim personal/family law, which also involves the actions of consenting adults, is not at all inconsistent with some of the basic philosophical principles at work in Canadian society. Nevertheless, the likelihood of consenting Muslim adults being permitted to arrange things in accordance with the Islamic principles underlying Muslim personal/family law is beset by a variety of problems.

Chief among the difficulties which any attempt to establish Muslim Personal/family law in Canada is the unilateral resistance from the legal and political community. After all, the argument might go, there are already programmes, laws, procedures and policies in place of handling matters of marriage, divorce, separation, maintenance, child support and inheritance. These programmes, laws, and so on, have evolved over a period of time and represent the way things are done in this society. Muslims who live in this society, therefore, are obliged to accommodate themselves to the existing way of handling these issues.

The problem with this sort of argument is that it totally ignores the issues of religious freedom to which Muslims are entitled. As previously indicated, for Muslims, religion is not just an abstract set of ideas that are to be taken out on special occasions and dusted off as they indulge themselves in some sort of nostalgic ritual in homage to the past. Religion must be lived; it must put into practice; it must be followed and adhered to with one's actions.

Muslim personal/family law is not an arbitrary afterthought that has been tacked onto Islamic religious beliefs and practices. Such law is rooted in and derived from the two most basic sources of Islamic law: namely, (a) the Qur'an (the Holy Book of God's Revelation); and,

(b) the practices and teachings of the Prophet Muhammad (peace be upon him) who is accepted by all Muslims as the one who was most intimate with, and had the most profound understanding of, and commitment to God's plan for the Muslim community.

Repeatedly the Qur'an enjoins and instructs Muslims to follow the Qur'an and the example of the holy Prophet Muhammad (p.b.u.h.). Again and again, Muslims are informed in the Qur'an that one cannot consider oneself a Muslim – one who submits to the command of God – unless one adheres to the guidelines, counsel, principles, beliefs and practices that are related to human beings though the Qur'an and the Prophet Muhammad (p.b.u.h.).

Part of the guidelines, counsel and principles to which Muslims must adhere are the spectrum of constraints and degrees of freedom which give expression to Muslim personal/family law. Consequently, if Muslims are prevented from implementing such law, they are prevented from freely pursuing and committing themselves to the Islamic religious tradition, since adhering to the various aspects of Islamic family and personal law are all acts of worship.

If one cannot worship God as one is required to do by the tenets of one's tradition, then severe, oppressive constraints have been placed upon one's capacity to exercise religious freedom. Such constraints and impediments to the exercise of religious freedom are especially oppressive in the case of those religious practices that do no require sacrifices from, or place any hardships on, people outside or within the given religious tradition.

In point of fact, the implementation of Muslim personal/family law would not entail sacrifices or hardships for anyone. This would be the case irrespective of whether one were considering Muslims or non-Muslims.

There may be people within the Muslim community who are enamoured with the Canadian way of dealing with and arranging issues of family/personal law. Those people should be left free to choose whatever they believe to be in their best interests.

There are many other people in the Muslim community, on the other hand, who feel that their sovereignty as human beings, in general, and as Muslims, in particular, has been intruded upon, undermined and marginalized through being prevented from following the requirements of their own religious tradition.

The irony of this situation is that the principles, methods, values and safeguards inherent in Islamic family/personal law are every bit as sophisticated as anything in the Canadian legal system. In fact, many aspects of Canadian law dealing with issues of personal/family law have begun, only recently, to be put into practice and yet this has long been an integral part of Islamic law. For example, the easing of restrictions with respect to divorce, which have been introduced into Canadian law just a few years ago, have been a part of Islamic law for more than 1400 years.

One might also maintain that, in many ways, Islamic personal/family law is more flexible, accessible, simple and progressive than are its Canadian counterparts. For instance, human beings have both strengths and weaknesses, and in addition human circumstances are quite variable and diversified. Rather than impose one system of law on everyone, Islam provides people with a variety of alternatives from which to choose the one which best meets the individual's needs and inclinations. Generally, this is not the case in the Canadian legal system, although Quebec does practice a different brand of civil law based on principles drawn from a French/Roman code of law.

Finally, many things for which people in the feminist movement have been fighting for many years now have been regular features of Islamic personal/family law for more than eleven hundred years. Thus the sovereignty of women is a principle which is firmly established in Islam, and such sovereignty encompasses a great many entitlements that have surfaced only recently in North America.

For example, the right of women to be able to specify, by way of contract, precisely what arrangements are to be observed by the man during a marriage, has been available to Muslim women since the early part of the ninth century. Only people's ignorance of Islam – including unfortunately, far too many Muslims themselves – has made this truth appear otherwise.

Issues of sovereignty and religious freedom aside, there are a number of advantages that could accrue to Canada in general if official recognition concerning the right of Muslims to implement their own personal/family law were granted. To begin with, this recognition could save Canadian/provincial taxpayers money since Muslims would be underwriting the financial costs of administering and running such a system themselves. For example, tribunals for handling dispute resolution issues in areas covered by Muslim personal/family law would be set up, staffed and monitored by people from the Muslim community. All of this would be financed by user fees and contributions from the Muslim community.

Furthermore, by assuming such responsibilities, Muslims would be taking a certain burden from the shoulders of an already overwrought judicial system. This could result in a more efficient and responsive

judicial process for other non-Muslim Canadians.

The bottom line of all this is as follows. If Muslims were permitted to govern their own affairs in the realm of personal/family law, then a win-win situation would have been granted for Muslims and non-Muslims alike. Muslims would have the opportunity to realize more of their religious freedom than previously had been the case, and non-Muslims would have a more efficient, less costly, and less burdened system for dealing with their own approach to family/personal law.

In addition, by permitting alternative methods of dispute resolution in matters of family/personal law, one would be providing Muslims with a way of doing things that reflects fundamental aspects of their own sense of justice. As a result, Muslims would be shown that the promise of multiculturalism, when properly implemented, is capable of creating conditions conducive to the generation of peace of mind and happiness that come with true autonomy. Rather than feeling alienated within Canada, Muslims would become integrated, active participants in the Canadian mosaic.

Some people may have reservations about the foregoing possibilities, feeling that if such recognition were given, then one is inviting anarchy and chaos into our society. This would be the case, or so the argument might claim, because legal authorities and governments would no longer have control over what Muslims do in the areas covered by personal/family law. Moreover, what if problems arose during the administering of such a system? How would they be handled?

Although Muslims are as prone to folly, mistakes and ill-considered actions as non-Muslims – Muslims are not children. Among them one will find intelligent, knowledgeable, insightful, wise, committed, just, compassionate, honest, sincere, hardworking, creative people. While problems undoubtedly will arise, it is rather paternalistic ethnocentrism which supposes that Muslims are not capable of resolving, within the limits of human capacity to achieve such things, their own problems in ways that utilize values, beliefs, principles and practices that exhibit integrity, responsibility, fairness and wisdom.

All kinds of organizations, institutions, administrative tribunals, colleges and universities are permitted to run their own internal affairs with little or no interference from the courts and the government. Canadian society has not disintegrated as a result of this.

Canada also will not fall apart or into an abyss of chaos if Muslims are permitted to control their own affairs in the realm of Muslim personal/family law. Canadians should look at this matter not as if they are losing control, but as if they were broadening the mandate of sovereignty, and thereby enhancing the quality of that sovereignty. In any event, establishing such a system of law is not something which is either impossible or impractical.

The Islamic Imperative

The most fundamental reason for the plea concerning the possible implementation of Muslim personal/family law in Canada is a matter of responsibility. This is the obligation we have as Muslims, both individually and collectively, to seek to establish an environment which, as much as is feasible and practical in a non-Muslim country, is conducive to living in accordance with the way in which Allah would wish Muslims to live.

Through the principles, values and precepts which have been disclosed by means of the Qur'an as well as exemplified in the teachings and actions of the Prophet Muhammad (peace be upon him), many guidelines have been given with respect to the manner in which, among other things, matters of personal/family law should be conducted. These guidelines are not arbitrary, peripheral issues. They have been intended to assist us to find harmonious solutions to the problems which inevitably arise in personal and family matters.

However, solving problems is not in and of itself the only rule to be used in measuring the propriety of various modes of conflict resolution. For Muslims, the *sine qua non* of action is that it be undertaken with the intention of submitting oneself to Allah's will such that the action is done for the sake of Allah, as an expression of worship and love of Him.

If the governmental authorities and judicial system of a non-Muslim country have in place methods of conflict resolution that are rooted in principles and values that are governed by motives other than the intention to please God or which do not serve the best interests of the Muslim community or which contain less wisdom than do the guidelines which have been given by Allah and His Prophet, then Muslims place their spiritual and social lives in dire peril when they submit to that which is other than what Allah has ordained for those who wish to submit themselves to Him.

This struggle for an Islamic identity by means of the founding of institutions, processes and a framework that facilitates a way of life which reflects Islamic values, principles and methods is not a matter of trying to impose as Muslim perspective on non-Muslims. Furthermore, the desire for the implementation of Muslim personal/family law is not a demand that Muslims should be treated differently from other people in Canada. Rather, we are simply asking that Canada live up to: (a) the preamble of the Canadian Constitution's Charter of Rights which

stipulates that Canada is a country founded on principles which recognize the supremacy of God; and, (b) the guarantee in the Charter of Rights concerning freedom of religion.

We do not believe that freedom of religion can be restricted to meaning only that one is free to think what one wants about religious issues or that one is free to perform acts of worship in one's home or place of community worship. The very nature of religion has everywhere and at all times been intended to extend into realms which fall beyond the boundaries of the home or the mosque, temple or church. Religion is a way of life, a set of values, a framework which is intended to penetrate into, shape, colour and orient all facets of an individual's life.

Naturally, due to the all-inclusive charter of religion, there is a potential for conflict when one set of religious practices comes into antagonistic opposition to some other set of religious practices. Nevertheless, one of the beautiful, appealing aspects of the desire for seeking to implement Muslim personal/ family law in Canada on a voluntary basis and in co-operation with the existing judicial structure in this country is that no one will be affected by such a system except those who wish this to be the case. Moreover, the effort to implement Muslim/personal law is designed in a cost-effective, responsible fashion, to increase the degrees of freedom in a democratic society without, simultaneously, usurping the rights or freedoms of anyone (Muslim or non-Muslim) under the existing constitution.

Due to the present atmosphere of constitutional crisis, multicultural debates and an apparently genuine receptivity to, and preparedness for change on the part of many Canadians, we believed that the time was right for communicating some of the concerns of Muslims to the people of Canada. While we doubt that the objectives of our campaign will be realized prior to, or in conjunction with, the resolution, for better or worse, of the present constitutional debate in Canada, nonetheless, we believe that the legitimacy and tenability of our quest will carry over into the postcrisis era of Canadian history.

Aside from the foregoing considerations, there is an element of urgency which modulates everything that has been said up to this point. More specifically, there is an increasing number of problems arising in the Muslim community in Canada involving issues of marriage, divorce, maintenance, child support, custody and inheritance.

Neither the present secular judicial system nor the uncoordinated and largely unorganized efforts of the Muslim community are adequately resolving these problems in a way that really serves the needs of the Muslim community as a community, rather than as a integrated collectivity of groups and individuals who have been woven into an arbitrary, social patchwork quilt whose design reflects a whole variety of influences that are often in fundamental conflict with one another. The potential for human tragedy in general and the undermining of spirituality in particular is very frightening under the present circumstances in Canada. Consequently, the implementation of Muslim personal/ family law in Canada might go along way towards helping to lend stability and constructive direction to the Muslim community here.