Legal diversity within and beyond the scope of the state:

'Faith-based dispute management' in the transnational Canadian-Moroccan community

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Introduction

State legislation in Canada is regarded as one of the most advanced and path breaking state legislations worldwide allowing for cultural diversity in accordance with multiculturalism politics. There is a country-wide controversial debate on the question, however, to what extent informal normative repertoires, 'cultural normativity', belief systems and religious law are to be considered part of that cultural diversity. While the Canadian concept of legal diversity and legal pluralism refers to the reality of state recognized correlations between Common Law, Civil Law, and Indigenous Judiciary (Aboriginal Justice; s. 35, Constitution Act, 1982; Proulx 2005), informal legal practice within the multicultural society may claim constitutional acknowledgement by the Canadian Charter of Rights and Freedoms as an expression of cultural diversity. This claim rests upon the assumption that basic legal principles laid down in the constitution are preserved. It is particularly the normative power of religion that comes to the fore in the debate on cultural diversity.

It is argued in this paper that recent developments in the Canadian provinces of Ontario and Quebec produced unintended effects challenging the concept of a state guarantied legal room for maneuvering within the cultural diversity framework. It is further argued,

that this development, however, does not diminish the relevance of legal pluralism in practice but qualitatively affects the interaction between the state and its judiciary on the one hand and the various normative orders that play a role in Canadian legal culture on the other hand. The argument continues that actors' expectations toward the function of state have drifted apart. Some insist on its role as a provider of juridical standardization guaranteeing the supremacy of fundamental rights such as gender equality, civic liberties, and human rights in general, over the variety of cultural legal approaches while others expect from it the provision of a juridical frame for an expanded legal self-determination in the multicultural society. In fact, as the empirical example in this papers shows, newly emerging semi-autonomous legal fields wherein exchanges with translocal and transnational normative fields increase, accentuate the need to come to terms with the divergent attitudes toward state framing for legal accommodation.

The paper combines different analytical strands connected to the Canadian discourse on state guaranteed cultural diversity and religious self-determination, normative repertoires rooted in these universes as facets of multicultural coexistence included (Gaudreault-DesBiens 2008). Point of departure is the analysis of two interrelated episodes of the controversial debate within the multicultural society in Canada. The first is the so called *shari'a law* dispute in Ontario between 2003 and 2006 that attracted close attention beyond provincial and national boundaries. The second episode briefly addressed in this paper is the course the debate on reasonable accommodation in Quebec took after the appointment of the so called Bouchard-Taylor Commission (or "Consultation Commission on Accommodation Practices Related to Cultural Differences", CCAPRCD).

In a next step a case is presented that is chronologically situated in the phase antecedent to the debate in Quebec. The paper then analyzes how a decade later the case has been remembered and reinterpreted in the light of the *shari'a* law dispute and the CCAPRCD debate. The social working of a plural legal configuration is thus demonstrated in translocal cooperation.

In a conclusion, it is suggested that the reinterpretation of a case of translocal religious dispute management may provide an epistemological inside into local actors' attitudes toward strategies of informal dispute management in a multicultural and multireligious environment. The question of the continuation and reconsolidation of faith-based forms of dispute management in the aftermath of the debate in Ontario and Quebec is addressed, then without any connection to the official legal sphere in both provinces.

The shari'a law dispute in Ontario

In accordance with the 'right to diversity' informal conflict settlement was defined and legally secured in Ontario by state legislation. The Ontario Arbitration Act of 1991 provides for legally binding arbitration beyond the bar. This included faith based arbitration of private matters, in practice particularly familial disputes. One reason for this was the attempt to unburden the official tribunal of minor issues. Such arbitration was practiced in religious communities for a long time without attracting particular attention. Litigant parties could look for an arbiter, an individual or a board, and present their case before him/her. Both parties had to agree to that. It were in practice mostly religious leaders, rabbis, priests, imams or otherwise called Muslim religious experts who functioned as arbiters. The arbiter is in a quite strong position and is asked to issue an arbitrament which comes close to a decision. One could reject a decision if illegal in the sense that it contradicted Canadian law. But there was no regular control of the awards the arbitrators issued. This weak point became later one of the crucial issues in the dispute over the Arbitration Act (Korteweg 2006). The procedures of arbitration do not necessarily have to meet particular standards and this allowed enough room for diverse modes of conflict settlement.

In fact, the Arbitration Act seemed to be a successful innovation. However, from its very announcement it was also criticized. Feminist organizations critiqued it arguing that in such informal procedures power differentials (Nader 1992) such as unbalanced gendered power relationships would make fair arbitration unlikely (see e.g. Bakht 2004; 2005). In the general public, however, faith-based arbitration within religious communities remained unnoticed.

This changed suddenly in 2003 when Syed Mumtaz Ali, a retired Ontario lawyer, established a new Muslim organization in Ontario, the Islamic Institute of Civil Justice (IICJ), and announced to provide arbitration in accordance with Islamic law (see for details e.g. Aslam 2006; Blackstone 2006).

This announcement which was understood as the first introduction of '*shari'a* law' in Canada, triggered a vehement dispute over the compatibility of Islamic law with Canadian legislation, particularly over the legal and social status of women in Islamic law. This happened despite the emphasis on the fact that the arbitration should meet both the requirements of state legislation in Ontario and of Islamic law.

It is important to note that there was no substantial debate about the very notion of *shari'a*, what it may mean for Muslims or whether they ask for its official recognition or not and what range of interpretations beyond the question of its applicability might be given that no institution in the Islamic world may claim central authority in legal interpretation (see e.g. Hallaq 2005; Zubaida 2003). Reference to *shari'a* whatsoever resonated connotations of a legal code in contradiction to basic western legal principles (Emon 2006). So, the concepts of *shari'a* both Muslims and non Muslims used in the debate can only be seen in their context of Western reference to *shari'a* (see e.g. An-Naim 2008).

In June 2004 the Premier of Ontario felt compelled to ask the Attorney General and the Minister Responsible for Women's Issues to comment on the *shari'a*-based model of arbitration. This led to the so-called 'Marion Boyd Report', issued in December 2004. The author is a former Attorney General and well-known feminist activist. The report triggered a new wave of controversy. Boyd gave a positive answer to the question of the compatibility of 'Islamic legal principles' with the Arbitration Act and expressed her support for religious arbitration. Marion Boyd recommended nevertheless to modify the Act in more than 40 points. She advocated accommodating gender equality, a controlling authority and training for the arbiters, as well as obtaining independent legal advice before individuals agreed to arbitration (Boyd 2004). These three decisive amendments could have transformed faith-based arbitration into an instrument of legal diversity and recognition of civic rights within religious communities. This chance, however, was missed (Razack 2007).

Instead, the report was received with ambivalence. After a controversial debate, the Premier of Ontario agreed in September 2005 to confine the Arbitration Act by excluding all faith-based versions of settlement (Forbes 2005). In February 2006 this amendment passed parliament. After that date the debate faded away.

One important aspect to consider is the fact that the Canadian Muslims represented themselves in the heated debate as far from being a homogenous group. A plurality of opinions on the meaning and significance attached to the *shari'a* in general and to Islamic arbitration in particular came to the fore. Especially so-called liberal Muslims and among them many Muslim partisans of feminist movements joined the ranks of the movement against '*shari'a* in Canada'. After the abolition of the faith-based arbitration in Ontario, radical Islamists held liberal Muslims for co-responsible for 'anti-Islamic' feelings. Intimidations and even death threats have been launched, for instance against the Muslim Canadian Congress in 2006, whose members had taken a very clear position against *shari'a*-based arbitration.

In the wider background of the debate resonate contested notions of multiculturalism, human rights, gender equality, and the Canadian identity as a nation of immigrants.
Basically the debate centered around an assumed discrepancy between the rights of collectivities and integration. It was actually only superficially on extra-state legal procedures and religion. It is argued in this paper that the issue of integration and an assumed obstacle seen in the preservation of traditions of various origins was the most influential meta-discourse behind the debate. Specific cultural inventories should be protected but within these inventories also should be secured basic rights for all members. Ideas of collectivism ascribed to certain Canadian immigrant communities seem to particularly advance anticipations of 'cultural' gender biases. Group rights are perceived as being always discriminating against women (Forbes 2005). Activists of both sides indeed focus on family matters as the litmus test for the acknowledgment of their respective agendas. For conservative Muslims, the family still represents the last stronghold of true religion and has to be defended against the pernicious Western way of

life. For feminist activists family appears to be the last stronghold of patriarchy and suppression of women's rights.[1]

One has to conclude that the debate was mainly based on a conflation of a basic problem with cultural diversity in Canada and the issue of faith-based arbitration. So the Canadian model as a leading example of contemporary liberal or egalitarian multiculturalism was at stake (Forbes 2005). Furthermore, when looking at the differences drawn between the different religions involved in the debate one cannot omit the fact that the conception of Islam by Canadian society at large played a role (cf. Helly 2004). Contributing to the problem was the fact that there was often no difference made between Islam as a religion and local traditions of Muslims.

The CCAPRCD in Quebec

Contrary to the Ontario scenario, faith-based arbitration of familial matters was always prohibited in Quebec. The Ontario example, however, fuelled an ongoing public debate in Quebec on multiculturalism (see e.g. Raffa 2007:7f.). The state therefore installed in February 2007 a commission called the "Consultation Commission on Accommodation Practices Related to Cultural Differences (CCAPRCD)", in colloquial language called 'Commission on Reasonable Accommodation' or 'Bouchard-Taylor Commission' after the two well-known social scientists Gérard Bouchard and Charles Taylor who were charged to investigate the issue of reasonable accommodation.

The process developed a remarkable chronology:

- the antecedent period	(December 1985 – April 2002)
- the intensification of the controversy	(May 2002 – Febr. 2006)
- the period of boiling/time of turmoil	(March 2006 – May 2007)
- the period of calm	(July 2007 – April 2008)

[1] For a more detailed analysis of the on debate on feminism and multiculturalism for the given context, see Shachar 2007.

The commission organized public hearings and conferences throughout the province and collected statements of all kinds of organizations, civil society groups, individuals and so on. All data are accessible on the internet.

The reasonable accommodation debate was actually not on legal diversity but on multicultural tolerance and problems of coexistence in a multicultural environment. From the juridical perspective, rather the excessive judicialization of accommodation was criticized. Reasonable accommodation is a right that can legally be claimed.

However, one of the various narratives on controversial multicultural issues was inspired by the parallel discourse in Ontario. In May 2005, the distorted story emerged that the National Assembly of Quebec had adopted a motion preventing the establishment of Islamic courts based on *shari'a* which otherwise would have compromised equality rights. Fact is, by contrast: The Quebec National Assembly did pass a resolution banning faith-based arbitration despite the fact that the Civil Code of Quebec does not permit the arbitration of family matters on the grounds that it is contrary to public order. So, pursuant to article 2639 of the Civil Code of Quebec, adopted in 1991, religious arbitration in family law is not allowed in Quebec. Some Christian, Jewish, Muslim and other believers call upon religious bodies to settle family disputes although the decision they hand down have no legal value. However, in the realm of civil or commercial arbitration, the parties may agree on the choice on an arbitrator and the type of law (religious, national or international) used to settle the dispute. In this case, the arbitration award is enforceable. Requests related to the establishment of Islamic courts in Quebec would not call into question this distinction found in the Civil Code of Quebec and were thus formulated in a spirit for the respect for the law (Bouchard & Taylor 2008:69).

Significant events with a Muslim component revolved around issues such as women and girls being discriminated because wearing the headscarf; other visible signs of being Muslim; praying; food restrictions; gender issues.

Disappointment among all Muslims increased mainly to the extent to which arguments against global political Islam and the war on terror were introduced in the debate by the opponents of reasonable accommodation (see Helly 2004).
In contrast to Ontario, however, Maghrebian Muslims in Quebec, displaying various attitudes toward Islam, revealed a surprising concord in their assessment of the religious factor in dispute management. In the discussion on cultural tolerance in which informal dispute management just came up as a stereotyped incidence, some Muslims expressed their reservation about reasonable accommodation for religious reasons perceiving it as a possible breeding ground for political Islam that is rife in their countries of origin (Bouchard & Taylor 2008:66).

After one year of investigation the commission issued its 300-pages report by end of May 2008. The report says that time has come for Quebec to get over its collective identity crisis and adapt to a secular, pluralistic society. It summarizes data from the public hearings and regional forums, research projects, and 900 briefs that were submitted by groups, individuals and associations. The authors criticized that the heated public debate was largely fuelled by a ‘crisis of perception’ stoked by distortions in media reports on individual cases of accommodation.
The commission put forward 37 recommendations basically saying that the government must play a leading role in establishing better guidelines for interculturalism. State measures should improve the relations between the majority and the diverse minorities and counteract discrimination. But accommodation should not be over-juridified, the report notes, leaving room for individual and community-based case-by-case negotiations on accommodation.

Since its publication by end of May 2008, the final Bouchard-Taylor report has received ambivalent reactions. Conservative politicians voiced concern that Quebecers can no longer define themselves in terms of their French-Canadian heritage while reactions from community organizations were positive.

The Bouchard -Taylor commission did not question self- or externally ascribed identities so that the categorizations within the realm of diverse identity pools is likely to retain its significance for legal matters separating semi-autonomous social fields. It remains to observe to what extent cross-linkages on the basis of one criterion such as religion or culture may overcome diversity separating the same actors from each other according to other criteria when a common ground for an informal legal encounter is searched.

Although no legislation amendment had taken place on informal arbitration of disputes by religious experts or has been later recommended by the Commission, an emotionally loaded environment for religious impact on legal affairs developed. It is argued that the debate will impact on legal practice. Normative impact of religion is everywhere perceptible, notwithstanding, and continues to give reason for cultural misunderstanding when interpreted on the basis of preconceived expectations.

The Quebec community of Muslims of Moroccan origin and the CCAPRCD

Although members of the Quebec community of Muslims of Moroccan origin were not involved in one of the significant events of accommodation to normative religion the media in Quebec celebrated, they did not remain untargeted. There were various reasons for. One is that they build a large group within the Muslim community of Quebec and Muslims were the group most in the center of the controversy. The estimated 130,000 Muslims in Quebec account for only 2% of its population. Those of Moroccan origin, MRE (*Marocains Résidant à l'Étranger*),[2] compose a community of estimated up to 60,000 members. Most Quebecers of Moroccan origin, however, only maintain loose contact to association of immigrants or other stakeholders of a Moroccan immigrant culture. Even Islam does not provide a frame for a coherent appearance of Moroccans. The most noticeable division among Moroccan Canadian is the one between Moroccan students in the country and immigrant residents with Moroccan background.

One has to emphasize that a credit point was granted for 'Moroccans' because of their position within the most sensitive battle field of reasonable accommodation, the disputed

[2] From a Moroccan perspective such category includes Moroccans who adopted another nationality and their offspring.

tolerance of linguistic diversity. Given the minority status of Francophone Canadians within the country and the peculiar political discourse on the Quebecer identity, the Franco-Arabic bilingualism of Moroccan-Canadians singled them out compared to other non-Maghrebian Muslims.

Another reason for their noticeability in the debate was a number of interventions individuals and organizations made although the Moroccan background of the interveners never was as prominent as it could have been if compared to references to identity markers other interveners of the Muslim community made.[3]
Some incidents, however, attracted the attention of the anti-Islamic Francophone website 'Point de Bascule Canada'. Such 'news' have been implicitly associated with the accommodation debate demonstrating the inability of Moroccans to integrate and the threat Muslims pose to Quebecer identity. There was the story of the good Moroccan guy, who was willing to integrate and, consequently, converted to Christianity. His brutal former fellow believers, however, punished him for apostasy and pushed him from a balcony after all attempts to reconvert him had failed (Point de Bascule 2007).

Canadian-Moroccans felt particularly scapegoated, when the same media published distorted information on Islam in Morocco. With reference to a trustworthy and serious survey on religion in Morocco, conducted and analyzed by three highly respected Moroccan scientists (Tozy et al. 2007), Point de Bascule issued an article headlined: *'Les Marocais musulmans sont moins tolérants que les Québecois'* (Muslim Moroccans are less tolerant than Quebecers). This polemic reading offended the feelings of many Muslims given the serious character of the quoted source. The rare incident of an overt public and critical debate on religious matters in Morocco was not interpreted as a first step toward freedom of expression but as an evidence for the contrary. As the serious and independent Moroccan weekly magazine Tel Quel, to which the polemics referred to, stated: 'A society that diagnoses its omissions is granting itself a chance to cope with its deficiencies' (Iraqi 2007). In fact, the study, which was commissioned by the Moroccan

[3] See the collection of documents at the official website of the CCAPRCD: http://www.accommodements.qc.ca/

government and financed by the German foundation Friedrich-Ebert, approved the hypothesis of an increasing secularization of Moroccan society while contradictory signs come from particular fields. Without going into details, Islamic pluralism, a multitude of Islamic identities, traditionalist and intolerant tendencies included, were presented in a multifaceted and incoherent picture of Moroccan Islam.

Many members of the Moroccan Muslim community expressed their deception during the debate on reasonable accommodation and the polemics voiced against Muslim immigrants. Particularly the incompatibility between 'laicism' and 'multiculturalism' propagated by the admonishers of cultural infiltration and domination offended Canadian Muslims who lived the illusion both to have a Canadian and a Quebecer identity (see Jedwab 2006; Bouchard & Taylor 2008:234f.). The controversy as such revealed in all seriousness an unclear and indecisive position of Quebecers towards their visibly different compatriots. In the next paragraph a case of dispute management with a religious component is presented. It serves as an analytical tool for an assessment of the attitudes Quebecers of Moroccan origin adopt toward faith-based dispute settlement.

A local dispute with a translocally arranged settlement

The case analyzed in the paper coincides with the period classified antecedent to the debate on reasonable accommodation. Since no detailed analyses of informal arbitrations among Muslims in Quebec seem available except for the data I collected, I have recourse to a case I have been confronted with during fieldwork in Morocco in 1998/9.

The case is actually *not* on faith-based arbitration. Instead it would be better addressed as an example for cultural defense since both a religious specialist and state judiciary were involved and inasmuch as the former produced the cultural-religious argument, the latter accepted to consider it for its decision.

Recently, in the aftermath of the *shari'a* law dispute in Ontario and the debate on reasonable accommodation in Quebec, however, the very same case has been quite differently remembered in a kind of rather accumulative than chronological historical perspective.

It is, furthermore, a transnational case, connecting Moroccan and Canadian Muslims of Moroccan origin. The story consists of two intermingled components, a Moroccan and a Canadian one.

Moroccans' dreamland

In summer 1998, during the season when Moroccan migrants use to visit their natal *bled* (homeland), I had a discussion both with local Souassa, the people of the Souss in southwest Morocco, and migrants from various host regions and countries, internal migrants who had moved from the Souss to Casablanca, and from various host countries, from the Netherlands, France and among them two guys from Montréal, the largest city of the Francophone Canadian province of Quebec.

The discussion revolved around a classification of the different types of MRE *zmagria*, *vacancia* or *saffarin*, as migrants are regionally called, according to their host countries and the old question of the best place for Moroccans to stay out of Morocco. There was surprising consent among the discussants: *'Quebec, of course, is the dreamland for Moroccans'*, I have been told. And I could imagine reasons for that reply. Moroccan migrants in Canada display a comparatively high educational level and a higher social standard compared to their co-migrants in European countries. Furthermore, the reputation of Canada as a partner in development cooperation was, despite some reservations in conservative circles, extremely positive.[4]

But when I asked why, the answer came immediately: *'Because it is an Islamic country!'* Being a bit astonished, an explanation followed: *'There is free exercise of true religion and Islamic law is established. And sometimes, when they have problems with Islamic issues they are not familiar with, we are ready to support them.'* So, for my interlocutors and many Moroccans, as I realized afterwards, Quebec represented *'une terre d'islam sans musulmans'* and they enumerated many reasons to support their view, some of them were not really related to Islam in the way I had expected. Free expression of religion was mentioned as guarantied by the Canadian constitution which would include respect

[4] Some guidelines of Canadian development policy, however, are in the Moroccan countryside met with ambivalence such as the focus on the rural woman. The disimpoverishment of women and other gender-based approaches, notwithstanding, contribute to the image of Canadian modernity; see Turner 2006.

for popular Islam and its legal sphere. Also other civic rights of the Quebecers have been associated with a positive impact of Islam on Quebec society such as equality of all citizens before the law. *'What a difference to here'*, was one comment and there was the opinion voiced that Muslim leaders in Canada would exercise much more power than their Moroccan counterparts who are under strict state control. *'Quebecan 'ulama'* (i.e. community of learned men in Islam) *are allowed to issue fatwa-s* (pl. *fatawa*; legal advice of a religious expert) *on whatsoever while their Moroccan counterparts have to ask the ministry for Islamic affairs for permission.'* It is true that Moroccan *'ulama'* is state organized and the influence of representatives of Islam is monitored by state agencies such as the mentioned ministry.

One reason for the Islamic image of Quebec seemed to be the room for maneuvering that was granted for expressions of popular Islam, especially in legal matters. One has to explain that, despite various strong Islamic components in Moroccan plural legal configuration, official Moroccan judiciary indeed does hard to include elements of popular Islam into consideration in legal affairs such as trance rituals in legal process, the infliction of conditional curses, or the imposition of miraculous sanctions.

The Souassa and Canadian MRE discussed cases of *kefala*[5] and divorce[6] among Canadian-MRE and they praised the wise weighting of Canadian courts to the respective requirements of Islam and Canadian law. According to hearsay, Quebec was attributed a liberal attitude in cases of conflict within the realm of legal diversity (see also Lyakoubi 2008).

The dispute between Na'ima and her landlord

In order to illustrate their argument, my interlocutors, Souassa and Quebecers, told me a story that had started in 1998. From then on, I pursued it over some time and could

[5] *Kefala* means tutelage of minors in accordance with Islamic law that prohibits legal adoption. See Bargach 2002.

[6] At that time, in 1998, the reform of Moroccan family law (*muddwwana*) was not yet brought to an end. See Buskens 2003. The Canadian example had an impact on the discussion of the issue among Moroccan intellectuals and representatives of women's' rights movements in Morocco.

arrange meetings with some of the central characters involved.[7] *'We once sent a legal expert from here, a Soussi faqih to help them solve a legal dispute,'* the story began. After some clarifications it turned out that there actually were two scenarios interconnected. It was on the one hand a Moroccan affair with Moroccan protagonists and a Canadian dispute with a Moroccan-Canadian businessman and the Civil Division of the Court of Quebec involved on the other hand.

In the 1990s, Na'ima, the daughter of a Soussi farmer, politician and member of rural elite, studied ophthalmology in Montreal at the francophone Université de Montréal. Such a background socially positions Na'ima in the Moroccan upper class. Also from the perspective of Canadians of Moroccans origin, she was privileged being part of the elitist group of Moroccan students living in Montreal.

After some years in Montreal shortly before the final examinations, Na'ima suddenly felt ill. Symptoms of her disease were heavy headache attacks and sudden states of anxiety, 'avolition', reduced intake of food, and so on. The reasons for her sickness remained unclear and medical treatment in Canada was not successful. Her parents forced her to come home to Morocco for further treatment. She unwillingly agreed. Also medical treatment in Morocco failed. Since her fettle deteriorated further, her father consulted a well known local Sufi expert, *shikh* Abdesslam al-Youssi, who had the reputation to be familiar with the spiritual treatment of such diseases. The hypothesis was that the cause of her state of health was a spirit possession.

Such contacts of human beings with *djnoun*, spirits, may arise out of various reasons. Spirits, *djnoun*, are mentioned in the *qur'an* as an independent species, besides god, angels, plants animals and human beings. They share with human beings the same living space why conflicts between men and spirits are not infrequent. Spirits may take possession of human beings for various reasons. For the children of very wealthy parents, enviousness of people may pose a real threat. Enviers may use magic against them in order to harm the rich parents. There are numerous stories circulating in rural Morocco

[7] The data on which this paper is based stem from fieldwork that was carried out for several weeks annually between 1998 and 2005 in Morocco and in 2003 in Canada. Since 2006, they are analyzed in a project on "Transnational faith-based dispute management in Canadian Muslim communities". The project is part of the Research Group "Religion in Disputes: Religious Belief, Law, and Authority in Dispute Management" within the Legal Pluralism Project Group at the Max Planck Institute for Social Anthropology in Halle, Germany.

about misfortune magically inflicted on rich people. That is why wealthy people usually make an effort to meet their social obligations, distribute alms and fulfill all socially required charity duties. And Na'ima's father surely was the biggest target for such action in the whole region.

The diagnosis of the Sufi *faqih* Abdesslam al-Youssi approved the father's suspicion. All attempts to free the girl from the spirit, however, failed. So, the *faqih* assumed that the spirit, unwilling to release the girl, was not a Moroccan one but maybe a Canadian one who would only agree upon a release in his/her own homeland. So the faith-based explanation for Na'ima's sickness blends in well with the discourse on a globalizing world of spirits and the impact of global spirits on world economy, a discourse that is more common in Morocco than among Moroccan migrants in the diverse host countries.

Na'ima, her father and the *faqih* discussed the matter over the next weeks. Since the young woman did not recover, her father suggested that the *faqih* could accompany her to Montréal in order to exorcize the spirit there. *Shikh* Abdesslam strictly refused given that he never in his life had travelled except for the *hajj* some 20 years ago. The father held out the prospect of a huge *sadaqa* (voluntary charity) and promised all possible travelling comforts. The *faqih* agreed after some weeks and preparations for the travel went on. A private aircraft was chartered for him and his entourage of twenty persons and it must have been a commemorable spectacle to see the *faqih* in his full vestments travelling to Montréal. After arrival he immediately started investigating and detected a spiritual contamination of Na'ima's flat. A plan was made how to clean the apartment of all negative forces.

In the meanwhile, during Na'ima's stay in Morocco, her landlord had filed a suit against the young woman because she had left the country without saying a word and without paying the rent for several months. The landlord was a businessman also of Moroccan, although not of Soussi but of Fassi, background. Since he had had no idea where to find his student tenant, he had taken legal action for her ejection in order to re-rent the flat and filed a civil suit against her. Na'ima's father who accompanied the travelling group

intervened and started discussion with the landlord. Despite all explanations and rapprochements the trial, however, was not suspended because the Souassa insisted on a reduction of the bill assuming an involvement of the landlord in the spirit affair. One has to explain here that immigrant Moroccans brought along to their new homestead also their internal inner-Moroccan tensions such as those between Souassa and Fassi who have the reputation to always compete and who differ in ancestry and religious orientation (see e.g. Bencheikh & Hamdani 2008). Besides many other aspects, the Fassi claim a pure urban Arab ancestry and adhere to a strict orthodox interpretation of Islam while among the Souassa a strong Berber identity prevails and popular Islam with Sufi elements is predominant. This competitive relationship seems to have had a certain impact on the social interaction between the two men.

The attorney who has been engaged by the father called *shikh* Abdesslam al-Youssi as a witness expert. He offered an explanation for the behavior of the defendant and testified that Na'ima still is too sick to appear in court and that the sickness was the reason why she did not pay for her rent and why she had suddenly fled the country. Moreover, he testified that the actual reason for her sickness may be found in the fact that the rented flat was haunted by spirits and that the landlord eventually had to be held responsible for Na'ima's situation. According to what was told to me, the judge interrupted the court hearing in order to give the parties the opportunity to come to an extra-judicial arrangement. The Fassi landlord agreed. According to the witness of my interlocutors he seemed to be extremely embarrassed by being involved in a kind of an atavistic case of exorcism and tried to avoid an official suit with the attendance of figures that fall out of the ordinary such as *Shikh* Abdesslam al-Youssi. The latter, however, mediated between both sides. His authority could not be challenged given his reputation as an erudite scholar of Islam also the Fassi businessman accepted his recommendation.
Under Abdesslam's influence, Na'ima's father was willing to pay all contributions for the rent still due under the condition that the landlord would cover a part of the costs for *shikh*-s travel and the cleaning ritual of the flat. Both parties accepted the deal and confirmed the agreement with a prayer.

Participants of the procedure affirmed that there was an official approval of the compromise later on as an informal arbitrament in a business case under the arbitration of *shikh* Abdesslam al-Youssi and on the basis of Islamic law chosen by the parties involved. After arrangement, the *faqih* successfully negotiated with the spirit who indeed was a Quebecer. The spirit freed the landlord from accusation of complicity and stated that he has chosen the flat on his free will. In exchange for some small benefits he finally agreed to withdraw. Nobody with the exception of the persons involved obviously took notice of this case of spirit possession and the settlement of the case.

Immediately after the exorcism the Moroccan group travelled home, including Na'ima. It took her some further weeks in Morocco to recover. She returned to Montréal where she still lives today and practices as an ophthalmologist. She is married and only returns to Morocco like other MRE during the summer season with her husband, a medical doctor of Lebanese origin.

Interpreting Na'ima's fate

When analyzing the example one has to notice that it also stays for cultural judicature, for customary legal repertoires that are addressed in the shape of faith-based rules. Such code switching is a common strategy in legal affairs in Morocco. Local legal practice may be once legitimized with reference to *'urf*, customary law, and in another context as an Islamic legal prescription. Therefore, to differentiate between the pure religious and the pure legal aspects of the dispute would not help analyzing the motivations and strategies of actors to come to a settlement in a multicultural setting. More promising seems to identify the entanglements of diverse strands within the field of diversities.

For the Souassa involved the affair was above all evidence of their local concept of a transnational network of spirits; and the measures they had developed to cope with transnational spirit movements also proved efficiency. S*hikh* Abdesslam al-Youssi voiced the opinion that Sufi witness experts would be able to contribute to the settlement of dispute that show a component of popular religiosity such as the use of love magic or of curses causing impotency independently of the place where such phenomena occur. Interestingly, all these are typical female means in disputing terribly feared by men.

Also in the Quebec setting, popular religious components of Moroccan customary law such as making contracts with *djnoun*, were framed as an acknowledged Islamic practice. Here the notion of Islamic law was used as a container for cultural diversity and local legal practices. The Canadian landlord who had filed suit against Na'ima had consideration for the Moroccan sensitivities about *djnoun* and spirit possession and respected the vote of the *faqih*. So the different approaches to the conflict demanded an adapted reaction from the respective opposing party. The tendency toward secular dispute settlement among Canadian Muslims, here represented by the landlord, was confronted with an impact from the homeland where the reverse tendency may be stated.

Informal legal interaction between members of diverse communities presupposes the construction of basic markers of a common legal identity allowing them to agree upon an informal set of rules, be it based on religion, local culture, country of origin, professional codes, visual similarities. 'We Maghrebians must stick together' was often said in the Muslim Community in Montréal, despite all differences, referring to the common geographical background. One gets the impression, however, that the construction of such commonalities out of the repertoire of 'diversities' creates a kind of 'shared instant identities' modeled for a moment and a particular occasion, of which disputes to be settled are not the rarest.[8]

The story did not arouse much interest in 1998 beyond the common social field of the two communities in Quebec and Morocco the actors are linked with. The Civil Court of Quebec was regarded by all actors as an impartial institution guarantying a fair compromise in accordance with Canadian law. No mention was made of accommodation or enforcement of Islamic legal principles and so on. The discussion, again, centered mainly around the increasing mobility of spirits in a globalizing world and the question how to deal with this new phenomenon and less on the legal aspects of the case.

Reinterpreting Na'ima's case

[8] To give an example out of the Moroccan-Canadians of Moroccan origin context, the coalition between Hindu vegetarians and politically correct eco-vegetarians during the food war may be mentioned. The food controversy started with critics on rise in food prices. It first went about an increase in offers of *halal* and *kosher* food by large food producers. The suspicion rose that the costs for this development were past along all customers. Then all kinds of cultural food habits were discussed. The vegetarians then turned against discrimination of their lifestyle and religious and eco-vegetarians combined their efforts despite all other criteria separating them.

In the light of the debates on faith-based arbitration and reasonable accommodation, the case reported in this paper was remembered by those who had followed it in retrospect as an example *avant la lettre*. The Canadian discourse on multiculturalism was watched with interest in Morocco and informed the evaluation of the events ten years later. For the Moroccan actors involved, the course of dispute settlement is nowadays interpreted as typical for what they imagine as face-based arbitration on familial matters, they had heard of. In contrast to the abolished model of faith-based arbitration in Ontario, Moroccan experts emphasized that religious intervention in social life should first of all prevent dispute and propagate means of avoidance. Only when it was impossible to prevent a dispute, then, the first ambition has to be to contain its reach and secondly to reconcile the participants. So, the 'offer' of an Islamic arbitration was interpreted as an invitation to dispute and its abolition as having prevented an increase of familial conflicts.

According to the recent interpretation of Moroccan interlocutors, the scope of action of Quebec state judiciary has not been contained by translocal legal interaction at all; on the contrary, Quebec state's recognition of the translocal arbitrament has enriched its legal repertoire adding some color from Morocco's popular Islam to the Quebec universe of legal diversity. That, so emphasize Moroccan local legal experts, is the true multicultural tolerance. Moroccans told me it would be an advantage to travel to Canada in case of a dispute between Moroccans and Canadian MRE because of the effective Quebecan judiciary. So the least one can say is that the case made the Quebec model of cultural diversity known in the Souss and confirmed the image of the paradise for migrants.

For the Civil Court its intervention obviously was about a compromise decision on a business relationship. It is seen as an official acknowledgement of an arbitrament award previously negotiated between the parties involved. The case has not been listed among those with an intercultural component and was not reported to the media or Bouchard-Taylor Commission.

Among the Canadians of Moroccan background who know of that case, there is the feeling prevailing to not have to shout it from the housetops these days. Some of them

voice the opinion that in the current atmosphere after the heated debate on reasonable accommodation, such a way of dispute settlement would be rather unimaginable. Furthermore, the negative press the Moroccans in Quebec had during the heated period of the reasonable accommodation debate thwarts an interpretation of the case as an evidence for religious tolerance within Quebec society in retrospect.

Canadian-MRE do see their scope of action within the realm of state guarantied legal diversity, Quebec style. They comprehend it, however, rather as a realm of legal interaction for people of different backgrounds – their Moroccan compatriots included on the basis of Canadian law. In the case of Na'ima's back rent the landlord as a Canadian Muslim of Moroccan background was the one who first insisted on a formal legal regulation before he accepted a modified approach in his interaction with Moroccans. In this concession actually lies the accommodation, according to his current interpretation, while the Court just accepted that he accepted. A certain reservation resonates in this opinion that translocal interaction could supersede in legal matters over agreement upon normative identity within the Canadian legal environment by reference to identity marker externally shared. What the remembering of Na'ima's case further shows is that Canadian actors use nowadays the discursive field of reasonable accommodation in legal matters to model identity-based legal frameworks according to their living conditions and convictions in their migrant situation. So their internal normative order displays a contamination with local, Canadian standards, with notions of civic liberties, human rights and tolerance towards cultural diversity. One has to notice that besides a Souassa popular Islam also a Quebec-Moroccan popular Islam that is enriched with local elements is forced to accommodate. The notion of Islamic law as a container for various local practices emphasized in 1998 was not preserved in memory when I recently inquired after the case.

Not only had the Quebecan development an impact on the remembrance of the case. Also the increasing integration of rural Morocco in transnational Islamic networks had an effect. Insofar Moroccan and Canadian interpretation of Na'ima's case met in the face of Islamic activism in Morocco (Turner 2007). The recent impact of Islamic activists on

legal affairs in Morocco reverberates in both countries and there is tacit agreement that state suppression of Islamic rigorists would help preserving informal legal practice. Both the Moroccan advocates of popular Sufi Islam and the liberal Muslims in Quebec still interpret the legal intervention of *shikh* Abdesslam al-Youssi positively. What first appeared to the Canadians as an expression of rather exotic and atavistic religiosity transformed itself in memory into a positive expression of tradition. This diversity is now regarded by the majority of liberal Muslims who are integrating in mainstream society as part of their cultural heritage. Simultaneously they voice concern that 'their' diversity may also open up a certain scope of action for the few religious rigorists they would not enjoy in Morocco.

The father-daughter constellation of the case let to interpretations as an example of faith-based arbitration in family matters although family law was not addressed. But for Moroccans it was, given a father's duty to take care of children and the concept that a child may become victim of spirits because of the parents' wealth and their good or bad social behavior. And Quebec Moroccans accept this expanded view on family matters as a positive expression of Moroccan familial cohesion.

Positively remembered is also the gender aspect of the story. Eventually the young woman accomplished her objectives, be they seen in her recovering from sickness or her emancipation from her Moroccan family. Be it as it may, only the interplay of an official court with a Sufi witness expert made her story to a personal success.

To that, one has to add that in both countries a certain group of observers called the spirit intervention in Na'ima's case a 'homesickness possession' open to interpretations into two directions, as a call for coming home, or as an expression of the fear to go back to a social situation one had overcome.

Conclusion

What has been described in this paper was a case of translocal faith-based dispute management among members of the same, albeit internally differentiated, religious community who hold in the one setting the religious monopoly while in the other they

compose a minority in a multicultural environment. Although religion is not the unique commonality quite often such dispute management draws on religious matters.

Nevertheless, as has been shown, the actors prefer a state component in extra-state dispute management; they do see the need for an official compatibility check and insist on a prevention of abuse of informal legal room for maneuvering. Yet avoidance of state interference in private affairs seems to be a possible consequence of the outlined debates that had taken place in both provinces. Only in the field of cultural-religious-legal interplay when actors of different backgrounds encounter a problem, the state is demanded for providing a frame.

The main actors, the landlord and the ophthalmologist, emphasize when referring today to their case of alternative disputing that they acted as Canadian and Quebec citizens to whom is granted a certain informal legal room for maneuvering allowing them to consider cultural aspects and to include elements of traditional Moroccan ways of conflict management. Both said that they would not have imagined a decade ago that their problem would nowadays pertain to the reasonable accommodation complex.

The analysis of reinterpretation of the empirical example meets the general assessment of Maghrebian Muslims of the late and post Bouchard-Taylor era. Most Muslims expressed their satisfaction with the current situation in Quebec and did not plead for a tremendous change in state legal politics in the province. There was also consent about the appropriate consideration of religious concerns in disputing before official institutions of Canadian judicature among the vast majority of Maghrebian Muslims. There seem to be, however, differing reasons and motivations behind this concord.
Liberal Muslims see their secular civic rights secured by the state against a backwards oriented religious legislation they had hoped to leave behind when they immigrated to Canada. Particularly the state protection of civic liberties and civic rights as guarantied by the Canadian constitution seems them a sufficient means for the containment of pernicious religious influence especially in cases when liberal and conservative Muslims were opposed.

Sufi adherents and all those maintaining their respective features of local or popular Islam of their regions of origin may feel free to refer to their local legal practices that they perceive as religious in the context of internal dispute management. Furthermore, under various circumstances state courts and other official institutions are ready to consider the impact of religious aspects so long as conflict parties agree upon. The impact of spirits, *djnoun*, on human life as a factor in legal practice or the intervention of *Sufi* trance specialists as arbitrators with their specific repertoire of methods for dispute settlement could be considered as cultural expression before state courts. Such an overlapping of informal religiously inspired dispute settlement and official legal sphere created a scope of legal action Muslims do not enjoy in their countries of origin.

Only some few rigorists of political Islam, most of them Salafiyya oriented, advocate unperturbed the full state recognition of 'Islamic Law' for Muslims throughout the whole country. But even the majority of conservative Muslims appreciate the room for maneuvering they enjoy for internal management of conflicts.

In sum, Canadian MRE display a remarkable ambivalence with regard to accommodation. While they did criticize discrimination in everyday life they and subscribed the claim for mutual tolerance for the realities of normative religion in multicultural society, they did not claim a right to legal self-determination. So they regarded the two debates on faith-based arbitration and reasonable accommodation that did have an impact on the actors' perspective, as separate although entangled issues.

As a preliminary result for further theorization of religious and legal pluralism within the cultural diversity frame, one may state that informal faith-based mediation will continue under the modified framework conditions. Instead of official acknowledgement for informally stated agreements or awards which never existed in Quebec, a certain consciously unclearly defined interactive zone between the different legal realms helps securing a minimum standard of basic rights. But not necessarily more than this. The challenge for multicultural co-existence lies more in an agreement upon faith-based arbitration on religious matters between members of different religious communities and between minorities and the mainstream society.

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