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Introduction: complex transformations – gender, religious subjectivities and the new politics of belonging

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This Special Issue features six articles from new and established socio-legal scholars, discussing Muslim women's lives before the law in the UK, France, Canada, South Africa and the EU. The articles presented provide in-depth analyses of areas of law as ostensibly disparate as faith-schooling, family law, immigration and integration policy, and the regulation of religious dress. They have in common a focus on shifting governmental approaches to Muslim women as citizens and legal agents in the wake of the apparent 'death of multiculturalism'. The articles presented engage in sustained reflexive critique of the discourse of 'Muslim women's citizenship', taking stock of the material costs of governance projects that have contributed to a growing marginalisation and exclusion of Muslim minority communities in recent years. They highlight the mixed pedigree of states that present themselves as champions of gender equality and of human rights and trace the role of the state and of law in producing (and reproducing) inequalities that are often attributed solely to religious-cultural membership. In doing so, they seek to unpack broader, often false, distinctions between that which is 'of culture' and that which is of 'the liberal state', tracing the outlines of women's potential legal agency in times of difficulty and the potential for disruption and transformation that may arise through such agency.

Questions of participation in deliberation and reform processes recur throughout this issue. A great deal is written in mainstream political theory about the mechanisms of deliberation that may provoke emancipatory transformations in the 'in-group' lives of women, as well as in the definition of the shared values that define the public sphere and shape the content of our laws. An essential question for such debates is the core issue of who participates in those deliberations, and how the status group of 'we the citizens' is constituted. When states embark on projects of national renewal, often in the face of fragmenting forces of globalisation, these questions become more urgent.

A reinvigorated, though not new, governmental concern with 'cohesion' and integration is evident in many of the jurisdictions under consideration here, as is a concern to reproduce shared national identities premised on common values and ways of life. It is important not to overstate the coherence or stability of these governmental endeavours, however; they are fraught with ambiguity, inconsistencies and internal dissent. Nevertheless, despite such contestation, the blurring of the boundaries of national membership and citizenship is evident in the situations and cases examined. The thin obligations of citizenship connecting the individual and the state are thickened, and allegiance to the state is increasingly represented in identitarian terms. At times, that identity is specifically ethnicised (Jivraj; Albertyn). At other times, supposedly universal liberal values, in particular, commitments to gender equality and human rights, are deployed in the service of ethno-national projects (Enright; Macklin). Gender equality becomes

less important as an end in itself, than as a marker of British, French or Canadian values; a shibboleth by which our insiders make themselves known.

Ordinarily, citizens' commitments to the nation state and its appropriated values are taken as read. The bonds between states and majority citizens remain secure. Those at the margins, however, become objects of increased state interest (Enright), required to prove their belonging to the nation, against presumptions of disloyalty. Muslims are increasingly positioned at the margins of liberal democracies through racialised discourses of culturalised threat. Against this background, citizenship becomes an earned status and we see a proliferation of law-making and regulatory initiatives that set standards for the performance of belonging. These standards are forever in flux, as governments redraw the distinctions between categories of acceptable and unacceptable outsider. The fate of those who fail to meet these standards varies from context to context; the state may seek to civilise the outsider to the state's conception of universal citizenship, or may cast her out altogether. What is crucial here is that the shift from civic pact to cohesion does not signify the simple replacement of one abstraction with another. Cohesion is presented as a lived experience of unity, and so one's adherence to the stated national values that undergird cohesion can be read from one's way of life and even from one's body, intimate relationships or dress.

In her article, Jivraj explores the racialisation of discourses of belonging and citizenship in the UK as expressed, in particular, in a series of policy documents published over the last decade on community cohesion, citizenship and immigration. The particularity of the values and ways of life deemed to be common and shared, she argues, is masked behind a universalising discourse that denies its racial origins. The minority religion thus becomes 'evicted from the universal'. This eviction from the universal is a theme that recurs in both Macklin's and Mullally's articles, and is evident also in Albertyn's exploration of the limited constitutional transformations that have taken place in the regulation of Muslim family law in South Africa. Jivraj notes the key role played by education in what she describes as a project of 'racial upliftment', evident in the rise of citizenship education initiatives in the UK over the last decade. While the rise of faith schools in the UK has met with opposition, much of this opposition, she points out, has focused on the potential for radicalisation and segregation presumed to follow from the establishment of Muslim schools. It is Muslim schools that are presumed to undermine the presumed neutrality and universality of citizenship and not faith-based schools per se, and it is the Muslim child, the girl child in particular, that is viewed as the 'encultured subject' (to borrow Macklin's evocative term). Drawing on Razack, Goldberg and others, she notes that 'values talk' conceals the hierarchy underpinning the configurations of Muslim others – in this case, the Muslim girl-child in educational discourse.

This concealing of hierarchies is a theme that reappears in Macklin's discussion of the '*Shari'a* arbitration' debate in Ontario and the campaign, endorsed by many women's rights NGOs, to deny legal recognition of faith-based arbitration of family law disputes. Both Macklin and Albertyn highlight the failure of incomplete family law reform processes to engage with cross-cutting issues of identity and disadvantage, of religion/culture and gendered inequalities. As Enright notes in her article, these failures and incomplete projects of reform are linked to discourses of culturalised threat that have problematised Muslim women's citizenship, in particular. Macklin's juxtaposition of litigation on prenuptial agreements with the *Shari'a* arbitration debate in Ontario highlights the potential for inequalities resulting from law's responses to family disputes, particularly in the context of deference to neoliberal ideals of choice, autonomy and private ordering. As she notes, these cultural ideals are deeply embedded, though not always acknowledged as such, in dominant Canadian legal cultures. The polarisation of the debate in Ontario, Macklin suggests, was at least in part a consequence of the dominant perception of the Muslim woman as 'encultured', abject and without agency, as against the Canadian, liberal ideal of the unencumbered self, a woman

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unburdened by culture, patriarchy or community responsibilities. Against this background, the possibility of more egalitarian family law reforms, regardless of religious affiliations or practices, was limited, as other forms of family dispute resolution not fitting the arbitration model were left untouched. The legal reform that followed on from the arbitration debate was largely symbolic but, as Macklin notes, was nonetheless significant, revealing the circuits of insecurity (Rose, 2000, p. 330) that lead to law reform and the continuing perception of risk linked to Muslim minority communities and to manifestations of the *Shari'a*, in particular.

Albertyn examines the unfinished projects of family law reform in South Africa. Her exploration of custom, religion and Muslim family law reform brings to light the often neglected questions linked to law's regulation of religious diversity in the post-apartheid state. Ultimately, Albertyn argues for a 'pluralistic solidarity', one that acknowledges law's role in structuring access to power, resources and benefits, and builds upon 'institutionally enabled dialogues' through courts and with and within religious communities. The incomplete process of reform and limited participation of Muslim women in reform dialogues, she argues, risks leaving Muslim family law adrift from the constitutional change and ongoing democratic processes of iteration/reiteration that has marked equality jurisprudence and reforms of customary marriage.

Questions of participation in national dialogues reappear in Daly's examination of recent debates on national identity and values in France. Both Daly's and Mullally's articles examine the rise of civic integration and community cohesion agendas, exploring the intersections of gender equality discourses with debates on religion and state-led projects of liberal democratic renewal. Daly's article on the prohibition of the wearing of the face-veil in France reveals what he refers to as a 'thickening' of constitutional secularism. The citizen of the Republic explored by Daly is one that is stripped of contextual embodiment and location, a highly abstract public citizen. This abstraction masks the law's unease with religious affiliations, practices and ways of life of Muslim minorities in the French Republic. It also masks what Renan describes as the 'brutality' behind the cohesion of the body politic. The perennially fragile nature of the state is presumed to require intervention by the state to safeguard threatened liberal values and ways of life. That such intervention is itself inconsistent with the professed liberal values of the state is not acknowledged. This lack of reciprocity (also evident in Macklin's analysis of the Ontario debates) is central to Mullally's critique of the evolving civic integration paradigm in the EU. She returns to questions of integration and gendered religious practices in the immigration context, this time focusing on the rise of integration testing in the EU. The deployment and instrumentalisation of gender equality discourse to support punitive immigration practices, targeted in particular at Muslim migrant women, is examined here. Her article reflects on the shifts away from what Albertyn describes as the aspiration to 'pluralistic solidarity' that was evident in critical feminist engagements with policies of multiculturalism. The limited possibilities of dissent and contestation open to migrant religious women highlights the disciplinary potential of immigration law and reform processes that fail to recognise the marginal position of the migrant in discourses of rights and equality.

Enright examines law and processes of law reform as sites of struggle and contestation, exploring the specific roles played by law and both the potential and limits of legal agency. Law is often understood to provide excluded minorities with the possibility of resistance in the face of discrimination and oppression. Part of what equality before the law is assumed to mean is that the citizen's right to access law is recognised as a civic status, defined independently of other identities, but also co-existing with them. Litigation and law reform are presented as sites of struggle, wherein Muslim women can renegotiate their positions, both in communities bound by religious law and in the wider community that grounds the legitimacy of state law. Of course, as Enright points out, we need to be mindful of the limits of this struggle. In the first place, Muslim women are largely left to make their own way in agitating for inclusion in state family law or in

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cementing law reform through litigation of new statutes; second, they may be negotiating the strictures of religious group membership at the same time as they are engaging with civil law, as is also noted by Albertyn in the South African context. Moreover, we also need to be mindful of a possible third burden. As the '*Shari'a* debates' in the UK, Canada and South Africa discussed in this issue reaffirm, even at moments when it is subject to scrutiny and challenge, state law remains as much a site of control and homogenisation as of contestation and resistance. As Enright argues, the concerns for unified national identity that drive the perhaps more visible, governmental projects discussed herein, are also echoed in dominant constructions of Muslim women as disruptive or difficult legal agents.

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