

Revisiting Weber's Theory of Law: An Examination of the Canadian Arbitration Act of 1991

Rebecca Trammell¹
Tusty Zohra²

For this paper, we use Max Weber's (1930) theory of law to examine the Canadian *Arbitration Act* of 1991. Weber stated that western law would become a formal-rational system because of the rise of democracy and capitalism. Courts need to dole out consistent legal decisions (rational law) and allow no external goals in court cases (formal law). This is necessary to ensure that judicial decisions are fair, equitable and free from emotional response to legal matters. By passing the *Arbitration Act*, Canadian lawmakers allowed substantive courts to settle family disputes for specified populations. However, when faced with a backlash against the Islamic Courts, Premier Dalton McGuinty dismantled the tribunals. We contend that, when faced with a hard decision of addressing the backlash against an established law, lawmakers made a decision which coincides with the foundations of western thought, grounded in the idea of civil liberty and equal protection. In this sense, government agents are adept at making decisions which resonate with established norms and idealized political beliefs. [Article copies available for a fee from The Transformative Studies Institute. E-mail address:

<journal@transformativestudies.org> Website:

<http://www.transformativestudies.org> ©2008 by The Transformative Studies Institute. All rights reserved.]

KEYWORDS: Weberian Theory, Islamic Courts, Arbitration.

¹ Address correspondence to: **Rebecca Trammell**, Assistant Professor, School of Criminology and Criminal Justice, University of Nebraska at Omaha, 6001 Dodge Street, Durham Science Center#248, Omaha, NE 68182-0149; tel: 402-554-3898; e-mail: rtrammell@mail.unomaha.edu

² Address correspondence to: **Tusty Zohra**, School of Criminology and Criminal Justice, University of Nebraska at Omaha, 6001 Dodge St., Durham Science Center #019, Omaha, NE 68182-0149; tel: 402-554-3339; e-mail: izohra@mail.unomaha.edu