

Shariah Debate in Perspective

Dr Zachariah Matthews

Sunday 14 March 2010

Sydney

On Monday 8th March 2010, the Sydney Morning Herald published an article entitled "Muslim leader wants elements of shariah in Australia." The story was written by journalist Paul Bibby who interviewed me on the Sunday after the Open Day held at Lakemba Mosque. He had allegedly received a few emails from people who attended the Open Day and wanted to know from me directly what I said about Shariah.

The article caused a storm in a tea cup with several radio media outlets keen to exploit the sensationalist aspects demonising Shariah thereby compounding the fears in the minds of many listeners and readers.

I was fortunate to give three radio interviews on the Monday morning during which I provided the full story of how it happened that Shariah was discussed at the Open Day on the Saturday but by then the damage had already been done and the storm was in full force.

<http://mpegmedia.abc.net.au/newsradio/audi...0308-sharia.mp3>

In particular the journalist neglected to include the following important points I made during the interview:

- The issue of incorporating specific elements of Shariah (Muslim Law) into Australia's legal system is not high on the agenda of the Muslim community.
- The issue of Shariah at the Open Day was discussed in response to questions from the non-Muslim audience. In my answer I linked it to the issue of tolerating difference and diversity with the prospect of including legal pluralism in very carefully selected matters which did not impact on others and only applied to Muslims. I posed the question that perhaps as a nation we were not mature or sophisticated enough to manage legal plurality.
- Even if carefully selected aspects of Shariah such as Muslim Family and Inheritance Law were on our wish list, the Muslim community is so small representing only 1.7% of the population that this has no chance of getting up -- "we had Buckley's".
- In a subsequent call to the journalist before the story was finalised, I emphasised that the example of custody I gave before was complex and that preference is always given to what is of best interest to the child.

I have since communicated my dissatisfaction to the journalist that these important points were not covered in the article published.

So what is Shariah?

The Arabic word *shari'ah* refers to the laws prescribed by Allah (The God). "In Islamic theology, Shari'a is identified as the way to the fulfillment of the Divine will." The *Shari'ah* deals with ideology and faith; behaviour and manners; and practical daily matters. The *Shari'ah* is derived from the Qur'an and *Sunnah* (statements and endorsements) of Prophet Muhammad (peace be upon him), the last and final Messenger and Prophet of God.

Muslim Scholars state that the *Shari'ah* has five basic objectives: justice and equity, rights and obligations, mutual consultation, public interest and success (in this world and the Hereafter). The Shariah is also designed to promote and protect religion, life, lineage (honour), intellect (mind) and property (wealth).

Imam Ibnul-Qayyim, a great Muslim scholar of the past, stated: "The *Shari'ah* is founded and based on wisdom and the benefit of people in this life and in the Hereafter. *Shari'ah* is altogether justice, mercy, benefits, and wisdom. Any rule that departs from justice to oppression, from mercy to brutality, from benefit to harm, and from wisdom to foolishness, is not from the *Shari'ah*."

On Thursday 7th February 2008, the Archbishop of Canterbury, Rowan Williams, in a speech called 'Civil and Religious Law in England' to more than 1,000 eminent lawyers, including the Lord Chief Justice, caused a furore when he said that it is "inevitable" that British law would accommodate some aspects of Shari'ah (Muslim legal tradition). He said that individuals should be free to "choose the jurisdiction under which they will seek to resolve certain carefully specified matters". These could include "aspects of marital law, the regulation of financial transactions and authorised structures of mediation and conflict resolution".
<http://www.guardian.co.uk/world/2008/feb/10/religion.law>

A HEROC Discussion paper in 2008 states that "Issues of freedom of religion and religious accommodation in law are being debated in courts throughout various jurisdictions across Australia."
http://www.hreoc.gov.au/frb/frb_2008.html

A workshop on "Law and Religion" by the Legal Intersections Research Centre, Faculty of Law, University of Wollongong in June 2008, discussed the following important issues:

- How do we place the position and contribution of religion in our multicultural society?
- Should recognition of religious diversity lead to legal pluralism?
- Can state and religion co-exist in harmony in order to promote democracy and human rights?
- To what extent religion can play a role in secular legal system?
- How do peoples of various faiths live successfully by both Australian secular laws as well as their religious laws?

<http://www.uow.edu.au/law/LIRC/activities/UOW043906.html>

In the UK the Jewish community court (Beth Din) was recognised by statute with divorce law amended in 2002 to recognise bodies like these. http://news.bbc.co.uk/2/hi/uk_news/7233040.stm

Singapore also has its separate Shariah Court which deals with matters of marriage and inheritance.

Australian Government initiatives to incorporate elements of Shariah (Muslim Law):

Australian Government Authorised Halal Program:

<http://www.daff.gov.au/aqis/export/meat/elmer-3/notices/2009/mn09-08>

Landmark Islamic finance publication:

Simon Crean, Australian Minister for Trade, 12 February 2010

http://www.trademinister.gov.au/releases/2010/sc_100212.html

Further reading:

The Legal Pluralism Program

<http://www.law.uq.edu.au/cpicl-legal-pluralism-program>

Legal pluralism in South Africa : aspects of African customary, Muslim and Hindu family law / Lesala L. Mofokeng.

<http://searchworks.stanford.edu/view/8077171>

SMH Article:

Muslim leader wants elements of sharia in Australia

Paul Bibby, 8th March 2010

ELEMENTS of Islamic law - the sharia - should be legally recognised in Australia so that Muslims can live according their faith, a prominent Muslim leader says.

Addressing an open day at Lakemba Mosque on Saturday, the president of the Australian Islamic Mission, Zachariah Matthews, said parts of sharia could be recognised as a secondary legal system so that Muslims were not forced to act contrary to their beliefs. "Sharia law could function as a parallel system in the same way that some traditional Aboriginal and Torres Strait Islander law was recognised in the Northern Territory," Dr Matthews told the *Herald* after the session.

"I don't think we are so unsophisticated that we cannot consider a multilayered legal system as long as it doesn't conflict with the existing civil system."

The comments shocked some attending the open day. They felt Dr Matthews was advocating the introduction of the penal system under which women have been stoned to death for adultery, and corporal punishment is meted out for some offences.

"It came as quite a shock to some non-Muslims in the crowd when sharia law and the idea of a parallel legal system was mentioned," one audience member, Jasmine Donnelly, said.

"One group of people just left straight after that."

But Dr Matthews said he was referring only to certain elements of family law and inheritance law and was not advocating the sharia penal system.

"I wasn't talking about sharia law in its entirety - we are not calling for the introduction of the penal system which calls for cutting off hands," he said.

Dr Matthews said a clash occurred in some custody matters. "Under sharia law, if a couple divorce and the mother remarries, her former husband has the right to decide whether the children will live with the new husband or not," Dr Matthews said.

"There is still a preference for the child to go with the mother, but the father has the ultimate decision.

"This does not exist in Australian law but I do not believe it clashes fundamentally with Australian values or the Australian legal system."

<http://www.smh.com.au/national/muslim-leader-wants-elements-of-sharia-in-australia...> 8/03/2010

Letters to the Editor:

Your article failed to mention that Zachariah Matthews talked about sharia during a question and answer session. When the question was put to him, his response began: "Being only 1.7 per cent of the population [in Australia], we have got Buckley's of it ever happening." The audience responded with laughter. He then explained the limited areas in which Muslims could use sharia in Australia. Now you have the complete report.

Faiza Khan Revesby Heights, 9/3/2010

Of course we should consider sharia for inclusion in Australian law (Letters, March 9). Why wouldn't we? Some of it, such as parts of its regulations on banking and divorce, are eminently sensible. Anyone who thinks our legal system is beyond improvement has never read the letters of complaint in these pages, or been in a court. Yes, we should be disgusted by the barbaric application of sharia's primitive elements but where that occurs it has less to do with Islam than with the maintenance of tribal patriarchies by the ignorant and fearful. That said, the spokesman who suggested we adopt elements of the Islamic law made two errors. First, he could have better served his cause had he stepped aside and allowed a woman to offer the idea. Second, he should never have suggested that it apply only to Muslims and within a parallel system. If the change is good and fair, it should apply to all of us.

Gary Stowe Springwood, 10/3/2010

The issue of sharia being introduced in Australia was raised during the question and answer session Zachariah Matthews gave at Lakemba mosque - at the insistence of one audience member. But as Dr Matthews pointed out, it is not a high priority. He said more pressing issues were how to eradicate terrorism, the continued integration of Muslims into Australian society and addressing their negative images in the media. The testament to the success of the open day was surely the number of non-Muslims attending who were willing to see for themselves that the typical Muslim stereotype is false and misleading.

Sue Drummond Artarmon, 10/3/2010

