

Unfairly flogging sharia law

BY JOSEPH WAKIM

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Islamic law exists in Australia, as does Catholic law, yet neither permits the faithful to mete out justice.

It is tragic and ironic that last week's "flogging of a Muslim convert" story weaved another strand into the anti-Muslim whip. There was absolutely no mention of religion when this Sydney story was first broadcast on news bulletins, presumably based on police and court reports. When I heard this report about the 40 lashes with an electrical cable, I immediately cringed as I evoked Opus Dei and self-flagellation. Here we go again, I thought: mocking, defending and contextualising the diversity of Catholics.

But once the intoxicating word sharia was added to the cocktail, this story spilled over into national banner headlines. The story epitomised all the ingredients that so many Australians love to loathe and it played right into the hands of Muslim-haters: a young convert whose name happened to be "Christian"; a gang of four bearded men; an attack in the middle of the night; whipping the victim while he is held down; punishment for having a drink with the boys. All the stereotype boxes are ticked.

The convert was allegedly being punished for drinking alcohol. Rather than feeling relief that this was not a Catholic, I empathised with Muslim elders, who had already braced themselves for another flogging. They pre-empted this with yet another condemnation of these (un)Australian crimes that have no right to incriminate Islam and no place in Australia. These crimes are not sanctioned by Muslim clerics, nor by representatives of Muslim communities, but executed by misguided individuals whose home is Australia.

The sharia label was draped like a burka to completely cover this story, as if quarantining some imported disease before it spreads, as if the case was closed before it was even open. But the label shrouded any questions about the relationships between the offender and the victim, their mental state, any pathology, their mentors. Even if an offender blames a religion, or voices in his head, or a movie, or a book, or a news report, this should not justify generalisations and criminalisations about that source. Just as the Catholic faith, per se, cannot be blamed for paedophile priests.

The story was no longer about an alleged local crime that must face the full force of the law. It was now a renewed "I told you so" moral panic that directly linked Islam with these barbaric crimes. Even Prime Minister Julia Gillard tried to placate the panic merchants before they whipped up a frenzy: "There's only one law in this country, Australian law." NSW Police Commissioner Andre Scipione was just as blunt. "There is no place in Australia for sharia law, full stop."

What is always missing with these stories is perspective. If this is an isolated case of misguided individuals, do the extreme actions of an extreme minority deserve such moral panic? The victim reported the alleged crime to the police who, in turn, acted swiftly and responsibly, putting the religion aside, and concentrating on the offence. One of the offenders was arrested and another voluntarily turned himself in.

The second perspective is the practice of sharia in Australia. In Arabic, the word literally means the path (to the watering hole). It is derived from the teachings of the Koran and the Sunna - the example and utterances of Muhammad as recorded in the Hadith (narrative).

For centuries, Islamic scholars and imams have had diverse interpretations of sharia, with many cultural customs. It is akin to the catechism for Catholics, except that its application is more localised than universal. Among Catholics, local variations can be seen with the liberation theology in Latin Americans compared with the crucifixions in the Philippines compared with the monastic movements in Lebanon. Unlike Catholics, Muslims have no singular papal head of church or clear hierarchy of clergy. But like Catholics and indeed all faiths, there is the usual human spectrum of literalists, conservatives, moderates and progressives. The extreme interpretations of sharia criminal codes, where the "haram" offences, met with abhorrent punishments, have attracted most attention, and need most perspective.

Catholics have their own canon law regarding the status of homosexuals, divorcees, abortions, and unbaptised children within the Church. The consequences are never violent or inconsistent with Australian law, nor are they directly attributed to the Bible. But they have been practised and observed by Catholics in Australia since the First Fleet.

Similarly, civil aspects of sharia have been practised in Australia and have no inconsistency with Australian laws. For example, customs relating to funeral parlours, businesses, Islamic banking, Islamic charities and halal meats. When family disputes reach a stalemate, the parties sometimes turn to their local imam, where sharia is invoked to resolve issues of marriage, divorce, custody and inheritance. This can be problematic if the cleric has no formal training or accreditation in family law. But it can also prevent the protracted and costly process of Family Court settlements.

This compatibility between Australian laws and sharia customs is the subject of a new report, Good and Bad Sharia: Australia's mixed response to Islamic Law, by Queensland academics Ann Black and Associate Professor Kerrie Sadiq, published in the University of NSW Law Journal today. Their report reveals that 90 per cent of Muslims interviewed did not want to change Australian law, and concludes that "the wider Australian community has been oblivious to the legal pluralism that abounds in this country". Perhaps our well-intentioned leaders need to read the report before denying sharia practices exist. It might never need to be enshrined in Australia, but the ugly criminal aspects may detract from the civil pathways.

The third perspective is that sharia criminal codes cannot be implemented by individuals or groups on their own accord. They cannot be self-appointed law enforcers. This is illegal under both Australian and sharia law.

The fourth perspective is pivotal: a rule in sharia law is that one must always obey the law of the land, which always prevails.

Despite all of these perspectives, I suspect any offenders will receive a heavy sentence as a public deterrent to others who dare to take the law - whether Australian or sharia - into their own hands. There is always something disturbing about such public "floggings" to steer people onto the right path.

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