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The Down-Under Approach and Reaction to Shari'a: An Impasse in Post-Secularism?

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The Socio-Cultural Heterogeneity of Muslims and the Implication for Shari'a

A recent report¹ based on a research project on the Convention on the Elimination of All Forms of Discrimination against Women reviewed official documents from 44 countries with a Muslim majority. It discovered that among these countries, there were significant differences with regard to Muslim family law. The document concluded that there is no single functioning worldwide Islamic law. Islamic family law, wherever it is practised, is based on the laws and principles set out in the Qur'an and Sunna. However, because there are multiple schools of law and different family law provisions that are influenced by local cultures where Islamic law operates, no single tradition can claim ownership of it.

Through various migration patterns, Muslims in Australia have come from over seventy different nations. Thus they come from various local cultures that have different legal provisions. This makes Muslims the most ethnically diverse religious group in Australia. Some Muslims came from countries where Islam is the religion of the majority, and others from religiously diverse countries. And, of course, we now have a growing population of Muslims born in Australia. Ethnically speaking, this is a religious group that has a wide range of experiences of Australian society, and Muslims in Australia are divided along ethnic and ideological lines.²

The shari'a is a devolved law, sensitive to local traditions, and in this sense unlike so-called Roman continental law. Unsurprisingly therefore, the detail of provisions about marriage, marital property, alimony, divorce, inheritance, custody and guardianship of children differs among the different Islamic countries and ethnic groups. The understanding of the practice of shari'a, or parts of it, in a secular society such as Australia, must thus be nuanced, taking into account the multi-ethnic composition of its Muslim community.

While shari'a is not officially recognized in Australia, it informs the ideas and conduct of Australian Muslims in various ways. The operation and regulation of shari'a in Australia is essentially 'underground' for Black,³ or what we prefer to call an unofficial parallel system. Although shari'a has not been integrated into the legal system in Australia, it continues to be applied at a local level in Muslim communities and mosques⁴ in certain ways and in areas of law that we will elaborate upon below. Sometimes, because of the lack of a formal mechanism of Islamic adjudication in Australia and because of the shortage of trained Muslim scholars, some women travel to their country of origin to apply to a shari'a court.⁵ Muslims may feel more comfortable combining shari'a norms and Australian laws in their understanding of the law. Further, given the ethnic diversity of the Australian Muslim community, there is no dominant shari'a authority that can act as an overarching system and no dominantly authoritative person.⁶ As there is no hierarchy in Islam, and as there is a divergence of opinion as to whom should administer a shari'a court,⁷ each Muslim is free to seek guidance from any scholar of his or her choice, leading to what is called 'fatwa or forum shopping'. This shopping-around has also extended to the Internet. In 2009, Black and Hosen pointed out that requests for *fatwas* from Australia on the 'Islam Q&A' website were so numerous that Australia ranked seventh out of 128 countries in terms of the number of these demands.⁸

As there is no formal process for Islamic adjudication in Australia, Muslims consult *imams* to settle issues relating to divorce and other private disputes. Islamic legal processes seek consensus rather than the adversarial environment typical of Western (common) law traditions. The overriding concern of most *imams* is to save the marriage and to avoid expensive and often bitter conflicts within a divorce court. However, when a marriage has broken down, many Muslims believe that an appropriate way must be found to divorce, which fits with their faith and cultural values. Some Australian Muslims report that they would not accept the authenticity of a divorce unless it was conducted according to their religious norms.⁹ At the same time, other Muslims are satisfied to have divorce procedures conducted according to secular law. In the past, many Muslims were confronted by a range of difficulties, including their lack of familiarity with the legal systems of their adopted countries, the previously adversarial nature of the courts administering these systems, the unsympathetic nature of some judicial officials, and the differences of law relating to property, domestic violence and custody. Recent changes to the Family Law Act and the encouragement of greater cultural sensitivity have made the Austral-

ian family law system more 'user friendly' for all ethnic groups,¹⁰ as we will discuss below.

Shari'a in Australia

Since 9/11, and the Bali bombings in 2002 which killed 202 people, including 88 Australians, the role of Islam in Australian society has been the subject of much discussion in the public and political domain. Central to the debate about Muslim identity has been the issue of women's rights under Islam, and the role of shari'a. The debate has also concentrated on issues such as permission to establish Islamic schools, controversy about 'gang' rapes,¹¹ and shari'a as regards family law matters. The debates were occasionally sparked by controversial remarks by Muslim clerics, often involving disparaging comments about women. All these factors have resulted in some Muslims becoming victims of discrimination, harassment and racial profiling.¹² Debates over national security have brought into focus issues of multiculturalism and acceptance of diversity,¹³ and, as argued below, issues of post-secularism.

While the Archbishop of Canterbury's speech in the United Kingdom¹⁴ was widely reported in Australia, a full national debate about shari'a never really developed. The notion of the adoption or assimilation of shari'a was rejected outright by government ministers and spokespersons, with no explanation or discussion as to its particular attributes or how it actually operated in practice. When the Coalition Government (comprising the Liberal and National Parties) was in office in Australia from 1996 to 2007, Prime Minister John Howard attempted to gain political support by publicly condemning shari'a.¹⁵ In the post-9/11 atmosphere, Howard seemed to consider that it would be unwise to be associated with Islamic values and that, in any event, it would go against his strong political lines on 'law and order' and 'Islamic threat' to say anything positive about shari'a. On assuming office in 2007, the new Labor government of Kevin Rudd was likewise not prepared to engage in a public dialogue about recognizing shari'a, or parts of it.¹⁶

Black and Sadiq¹⁷ have observed mixed responses to shari'a in Australia, predominantly by non-Muslims, and they have made reference to 'good and bad shari'a'. For instance, it could be noted that while there is a public outcry over family law (see recent case studies below), there has been support for legislative change in Australia to facilitate Islamic banking and financial services. It seems that Islamic banking and finance laws are 'good' shari'a worthy of adoption, whilst personal status laws (marriage, divorce, separation, custody of children and inher-

itance) are not.¹⁸ In the following paragraphs we will investigate what could be seen as bad in these latter cases of 'bad' shari'a.

The Relationship Between Shari'a and Australian Law

Muslims are required by their religious law to obey the laws of the country in which they live, provided that those laws do not oblige them to do something contrary to Islam. Therefore, for the vast majority of Muslims, there is not much conflict between shari'a and secular law. For the most part, Muslims are free to follow the shari'a in their private lives, while at the same time adhering to Australian law in all the areas it covers.

This is true of family law, as well as of other aspects of life. The requirements of the Commonwealth Marriage Act 1961, which governs all marriages in Australia, are broadly expressed. Provided that the required notice is given,¹⁹ the correct forms are filled in and the marriage is performed by an authorized marriage celebrant, there is no restriction at all on the time,²⁰ place,²¹ or type of ceremony²² a couple may choose to conclude their marriage. Many *imams* are authorized marriage celebrants and can conduct a marriage ceremony that is valid in both Islamic and Australian law. Imams cannot validly conduct polygamous marriage ceremonies, since polygamy is forbidden in Australian law. However, since the shari'a permits, but does not require, polygamy, this issue does not create any tension.

The requirements for concluding a marriage under shari'a can therefore be met within the framework of Australian law. A contract, whether oral or written, can be made. The *mahr*, an essential part of an Islamic marriage, can be paid in whatever form the parties choose. Muslims can choose not to marry anyone who is not a Muslim, or, for men, a woman who is not a Muslim, Jew or Christian.²³

Traditionally, the common law in Australia did not regulate relationships within the family to any great extent. In recent times, however, laws have been introduced as deemed necessary for the protection of children, and to criminalize domestic violence. The shari'a does regulate family life to a greater extent but, as mentioned, observing Muslims can adhere to shari'a requirements in their private lives without offending against Australian law.

In the area of divorce, on the other hand, there are more zones of conflict between shari'a and Australian law. There are several different forms of divorce in Islamic law. A man may divorce his wife by pronouncing *talaq*. This option is available only to men (unless they cede

this right to their wives), and traditionally did not require any over-seeing by a court. Today, many Muslim countries require some official processes to regulate *talaq* divorce.

It is not so easy for a wife to secure a divorce unless she has it provided in her marriage contract that she retains the right to divorce herself. In Muslim countries, the wife may apply to the shari'a court for a divorce by *khul'*, in which case she normally agrees to return her marriage gift (*mahr*) to her husband in exchange for his divorce by *talaq*. Another form is divorce by *fasakh*, which is more in the nature of an annulment and depends upon establishing grounds for fault. Accepted grounds differ among the various schools. The parties may also mutually agree to divorce.

Since the introduction of the Family Law Act in 1975, divorce under Australian law has not required proof of fault, and has become a simple procedure. Muslims do obtain dissolution of civil marriages from the Family Court but must resort to shari'a to dissolve their marriages also according to religious law. This alternative can be required when a person has property or inheritance rights in an overseas country (for example, Lebanon) which does not recognize civil divorce. It is also of importance for those men and women who regard their religion as a vital part of their lives and who would not wish to depart from its teachings in matters concerning their family life.

Some Muslim women find themselves in a 'limping marriage' after a civil divorce. When a woman cannot persuade her husband to grant her a religious divorce as well, she is then divorced according to civil law but still married according to religious law. There is no shari'a court in Australia to grant a religious divorce to such a woman, nor any central Islamic authority that might confirm her divorced status. Some *imams* feel that they are qualified to grant a divorce in these circumstances, but this is entirely at the discretion of the *imam*. There is some anecdotal evidence that some men who have promised to pay extravagant amounts of deferred *mahr* sometimes refuse their wives a religious divorce in order to avoid the obligation to make this payment. The result is that the wife cannot re-marry within her community since she is still married according to her religion, but since Islam allows polygamy for men, the husband is under no such constraint and can re-marry at will without sanction from either Australian or Islamic law.

A further problem for women is that until very recently, there had been no instance of Australian courts enforcing the *mahr*, which left the divorced wife without the financial provision she would have expected from the terms of her marriage contract. However, in May 2012, the

NSW Supreme Court ordered a husband to pay his former wife the sum of AU\$ 50,000 which in their marriage contract he had promised her in the event that he initiated divorce. The court applied principles of contract law. The couple had married according to religious law only and the Family Law Act 1975 did not apply to their case.²⁴

Rules concerning the custody of children vary considerably between shari'a and Australian family law. Under shari'a, the mother is entitled to the care and control of small children (the right of *hadhanah*). The father retains guardianship and may assume care and control of children at various ages, which vary according to different schools of thought (*madhabs*). However, in practice, it seems that these rules are not always implemented.

Australian Family Law and Islamic Arbitration

Alternative types of dispute resolution are now well recognized in Australian family law. The Family Law Act introduced a greater emphasis on counselling in cases concerning children. In 2004, the Family Court Rules were amended to adopt a new system of case management, with greater emphasis on counselling, conciliation and arbitration in family law disputes. Parties are now obliged to explore avenues for dispute resolution before commencing proceedings in court. This procedure is in line with shari'a law, and is regulated accordingly in many Islamic family laws in Muslim countries.

The Jewish community has for many years maintained a Beth Din, a Jewish religious tribunal, in both Sydney and Melbourne, where Jewish people can seek resolution of problems involving family law. Similarly, the Catholic Church maintains its own tribunal, with power to declare annulment of marriages that are not in accord with the Catholic faith, and there are tribunals for other Christian denominations in Australia. These bodies allow those who approach them to obtain a mutually agreed settlement of their family problems, in accordance with their religious beliefs. At present, there is no national shari'a family law council or tribunal like those of the Jewish and Christian communities. The services of individual *imams* or groups of *imams* are available in this field, but these are uncoordinated and unsupervised at present.

Recent Attempts to Bring Shari'a into the Public Sphere: Two Case Studies

CASE STUDY 1:

AUSTRALIAN FEDERATION OF ISLAMIC COUNCILS (IKEBAL PATEL)

On 4 April 2011, in response to an inquiry into multiculturalism held in that year by the Federal government, Ikebal Adam Patel, the president of the Australian Federation of Islamic Councils (AFIC), made a submission titled 'Embracing Australian Values, and Maintaining the Rights to be Different'. In this document he underlined the fact that Muslim countries differ in their use of shari'a. In his submission Islamic law is viewed as being able to change according to the requirements of different places and times. It is thus implied, without being specific enough, that Australian Muslims can adopt and adhere to the same values shared by all Australian people. Using the active involvement of the Australian government with regard to Islamic finance and halal food as examples of positive sites of cooperation (for example, the exportation of AU\$1.5 billion worth of *halal* frozen meat to Indonesia),²⁵ Patel recommended that multiculturalism in Australia should lead to 'legal pluralism'.

The Attorney-General, Robert McClelland, rejected the submission and claimed that there was no place for shari'a in the Gillard government's debate about multicultural policy or in Australian society. This claim led to the publication in *The Australian* on 17 May 2011 of an article titled 'Muslims to push for shari'a', and in the following week, thirteen articles on the topic were published in three leading newspapers, *The Australian*, *The Daily Telegraph* and the *Sydney Morning Herald*. Of these articles, eight portrayed a neutral view on the issue, four were somewhat negative, and one was somewhat positive. Of the 262 readers' comments published on the Internet sites of *The Australian* and *The Daily Telegraph*, 78 per cent were pro-secular and/or against shari'a, 6 per cent were pro-shari'a, and the rest tended to be off-topic statements without any clear meaning. Of the negative comments, 34 per cent were virulent comments and/or expressed racist tensions. Examples of comments of that type were: '[w]e have our laws in Australia to protect anyone who lives in Australia. If you don't like our laws leave, it's that simple', and '[i]f Muslims want shari'a law, they should go back to Saudi Arabia'.²⁶

On 17 June 2011, after an interview with *The Australian*,²⁷ Ikebal Patel claimed that it was a mistake to have mentioned shari'a law and legal pluralism. He pointed out that there had also been criticism from inside

the Muslim community, which was concerned by the lack of consultation with regard to his submission, and he underlined that in family matters, civil law should always take precedence.

On 24 November 2011, Luke Simpkins, Liberal MP for the Cowan electorate, claimed in the House of Representatives that a poll conducted in his electorate in Western Australia had found that almost all animals raised for meat, apart from pigs, are killed according to Islamic requirements. He argued that every business involved should clearly label halal meat. He stated:

So, when you go to Coles, Woolworths, IGA or other supermarkets, you cannot purchase the meat for your Aussie barbecue without the influence of this minority religion. You have no choice. And the point is that almost no Australians are aware of this, because it is not labeled. ... By having Australians unwittingly eating halal food we are all one step down the path towards the conversion, and that is a step we should only make with full knowledge and one that should not be imposed upon us without us knowing.²⁸

CASE STUDY 2:

DIVORCE IN AUSTRALIA: FROM AN ISLAMIC LAW PERSPECTIVE²⁹

In 2011, an article written by Essof, a solicitor and migration agent, sparked a national debate on Islamic divorce. According to Essof, the current informal Muslim divorce process in Australia, combined with civil law divorce requirements, allows men to distort and abuse the cultural system.³⁰ Essof does not advocate a separate legal system for Australian Muslims, but rather argues for the incorporation of the single aspect of Islamic divorce law. Islam, he argued, does not condone this behaviour. Rather, it is a consequence of the current inconsistency between civil and religious law in Australia, and of the recalcitrance of husbands who decline to finalize their religious divorces with their estranged wives. Essof acknowledges that Islamic law operates on an informal basis via *imams*, or community religious leaders, especially with regard to family law matters.

He points out that there are no existing formal structures in the Family Law Act to deal with individuals or couples seeking divorce according to an Islamic perspective. Although a Muslim man who receives only a civil divorce would be at liberty to re-marry, a Muslim woman receiving only a civil divorce, and not an Islamic one, would not, within her religion, have that same right to re-marry, even though she would be allowed it under Australian law.

To address this issue, Essof proposes the establishment of a council of recognized *imams* and legal practitioners who have knowledge and understanding of divorce under both Islamic and Australian law, and the formalization of the divorce process in a way that it can be recognized under Australian law. The final recommendation of his article is the inclusion of an extra criterion in the divorce application: the applicant should be asked if he or she was married through a religious Muslim ceremony. If the applicant responds in the affirmative, then s/he is required to prove to the Registrar that the couple has been divorced under shari'a law. Contrary to Patel's retraction, wherein he stated that civil law should take precedence in family matters, the case presented here seems to advocate the reverse.³¹

Shortly after the publication of Essof's article, a newspaper article entitled 'Local Islamists draw on British success in bid for sharia law',³² written by the same journalist who reported the retraction by Patel, claimed that Essof's article was the latest move to give shari'a priority over Australian divorce law under the guise of helping Muslim women, and pointed out that this would mean that Muslims would not be able to obtain a civil divorce unless they were first divorced under Islamic law. In this article the journalist argued that Australia had entered an 'ambitious new phase that draws on the tactics that have handed success to Islamists in Britain', thus claiming that there was a hidden agenda behind Essof's argument.

The two case studies we have discussed offered a moderate approach to legal pluralism in the public sphere. Although we are not discussing the nature of their arguments here, we want to underline the fact that in Australia and especially in the Australian media, there has not been a public dialogue of the Habermasian type (that is, engaged in communicative action; see below) concerning the application of legal pluralism, specifically as it applies to shari'a.

The New Australian Conservative Modernity and Its Obstacles to Post-Secularism

The social scientist Jakubowicz³³ uses the expression 'the new Australian conservative modernity' to refer to the country's resurgent social values of Christian conservatism, the active government priorities of disengagement and a rapidly expanding culture of surveillance and obedience. In this new phase of modernity, there is a process of delegitimization of diversity, especially concerning Muslims – meaning that the process 'does not deny diversity, but rather seeks to reassert a

traditional hierarchy of cultural power within which diversity is only acceptable within the dominant moral order.³⁴ In this process, Fozdar³⁵ sees a retreat from multiculturalism resulting from the policies of the conservative Howard government (1996-2007). In this new Australian modernity, political leaders portray 'Christianity as the norm, as a non-migrant religion, and as the taken-for-granted foundation for the nation's values and laws'.³⁶

However, one must be aware of the current situation in Australia with regard to its Christian heritage. Randell-Moon³⁷ and Maddox³⁸ recently demonstrated that in the Australian case (a secular liberal society where a strong division between church and state is supposedly definitive), religion still has a part to play in politics. In this 'secular' liberal culture, where religion is often actually a significant factor in voting decisions and has increasingly intruded into the public sphere since the beginning of the 21st century, one should not be surprised to witness the many social and cultural bleeds across the border between state and religion. Granted that Christianity was for many years a silent backdrop to Australian national identity, Fozdar³⁹ observes that there is now an even stronger sense of the legitimacy of the public status of Christianity, and one of the illegitimacy of other religious traditions.

Bearing in mind the relationship between the mass media and the way political agendas are constructed,⁴⁰ this new religious project of the 'new modernity' also affects (and/or is affected by) the media. Black and Sadiq⁴¹ cite the national newspaper, *The Australian*, as highlighting 'differences' between Muslims and non-Muslims in some Muslim countries (with topics such as stoning for adultery, forced marriages and female genital mutilation), and as feeding into the fear of what shari'a family law would be in Australia if a dialogue on the subject were allowed. While there are demands from some groups in Australia for the adoption of full shari'a,⁴² Saeed⁴³ states that the large majority of Muslims advocating the use of shari'a are only seeking its recognition in a few areas (such as marriage, burial practices, and interest-free financing) and are working towards a compromise between the demands of their religion and the Australian legal system.

Their detractors tend to present the religion of Muslims as unchanging and as representing a pre-modern and patriarchal value system.⁴⁴ These detractors also tend to characterize the Muslim community as bounded, fixed and stable.⁴⁵ This, of course, is far from being the case. Akbarzadeh and Roose⁴⁶ discuss three ideal types of Muslims in Australia, in order to provide a lens through which to look at this religious group. These are: an Islamist type who would embrace shari'a in line with the historic experience of the caliphate; a moderate Muslim type

who engages with the secular West; and a cultural Muslim type – those who define themselves as Muslims but do not actively follow Islamic principles. Cultural Muslims often have a pragmatic approach to religion. Islam is celebrated when it helps consolidate a community, but is not allowed to interfere and interrupt the daily routine of life, which to all intents and purposes may be called secular.⁴⁷

In Australia, these cultural Muslims are the silent majority of the Muslim minority group, not much engaged with advocacy for legal change. Those Muslims mainly engaged in working out shari'a in Australia in line with (and not in opposition to) the Australian legal system are of the moderate type. Some moderate Muslims are already working within a type of unofficial parallel legal system (as detailed above) in the private sphere. But when some moderate voices attempt to discuss, in the public sphere, how the two legal systems could interact, it appears the dialogue is not allowed to proceed. The 'extreme right' is already seeing the moderate Muslim as a 'Trojan horse' for radical Islamists, as if they were harbouring a hidden Islamic agenda.⁴⁸ It might be argued that in the public sphere, debate about the partial use of shari'a leads its detractors (who are not necessarily from the extreme right) to believe that this might be a first step towards implanting full shari'a law, as if shari'a were a homogenous and timeless law straight from the caliphate. This belief is not conducive to a fruitful dialogue about the future of religion in Australia that would be helpful in advancing a post-secular project.

By post-secularism, we refer to the process of the de-privatization of religion, and to the current dialogue about managing the presence of religious groups within secular frameworks in the public sphere. As Habermas⁴⁹ has underlined, the challenge today is to draw the 'delimitations between a positive liberty to practise a religion of one's own and the negative liberty to remain spared from the religious practice of the others'. In other words, how do we work with post-secular societies' religious toleration in ways that celebrate religious diversity but that do not preclude the freedom to be atheist? And, more specifically to this chapter, how far should our own and others' religious practices be implicated within the legal system?

However, as already indicated in this chapter, one should be aware of the difficulties of entering into such a dialogue. Michele Dillon, in her 2009 presidential address to the Association for the Sociology of Religion, stated quite sharply that 'independent[ly] of whether an individual is religious or not, tolerance of otherness does not come easily',⁵⁰ that openness to alternative beliefs is more complicated than Habermas might have us believe, and that the idea that all religious and athe-

ist groups can live in a self-reflective manner 'is attractive but hard to imagine'.⁵¹ Part of the solution for Habermas is to have neutral and secular governments that can ensure that communities of various beliefs can coexist on an equal basis. His post-secular project is based upon the notion that the state is neutral and objective,⁵² yet we know from studies in sociology how the state usually and instrumentally serves certain groups over others, as has already been alluded to in the above discussion of Australia and its new conservative modernity.

It appears that in Australia, one aspect of the trend towards post-secularism, that is the focus on religious and legal pluralism, is not allowed to be fully aired in the public sphere, unless to be shown in a negative light. On that point, it can be argued that Australia is failing to meet or implement the post-secular project. The issue here is not solely about including shari'a in the legal system or preventing its use in the private or public sphere, but about having a fruitful dialogue of the Habermasian type in the public sphere. This is not happening in Australia's new conservative modernity.

Notes

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- 3 A. Black, 'In the shadow of our legal system: shari'a in Australia' in: R. Ahdar and N. Aroney (eds.), *Sharia in the West*, Oxford: Oxford University Press, 2010, pp. 239-254.
- 4 Ahdar and Aroney (eds.), *Sharia in the West*, 2010, pp. 239-254; J. Hussain, *Islam: Its law and society* (3rd ed.), Sydney: Federation Press, 2011; A. Saeed, 'Reflections on the establishment of shari'a courts in Australia' in: Ahdar and Aroney (eds.), *Sharia in the West*, 2010, pp. 223-238.
- 5 Hussain, *Islam: Its law and society* (3rd ed.), 2011; Ahdar and Aroney (eds.), *Sharia in the West*, 2010, pp. 223-238.
- 6 A. Black and N. Hosen, 'Fatwas: Their role in contemporary secular Australia', *Griffith Law Review*, 2009 (Vol. 18, No. 2), pp. 420.
- 7 Ahdar and Aroney (eds.), *Sharia in the West*, 2010, pp. 223-238.
- 8 Black and Hosen, 'Fatwas', 2009, pp. 422.
- 9 Black and Hosen, 'Fatwas', 2009, pp. 423.
- 10 Hussain, *Islam* (3rd ed.), 2011.
- 11 S. Dagistanli, "'Like a pack of wild animals": Moral panics around "ethnic" gang rape in Sydney', in: G. Morgan and S. Poynting (eds.), *Outrageous! Moral panics in Australia*, Hobart, Tasmania: ACYS Publishing, 2007, pp. 181-196.

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- 13 A. Jakubowicz, 'Anglo-multiculturalism: Contradictions in the politics of cultural diversity as risk', *International Journal of Media and Cultural Politics*, 2006 (Vol. 2, No. 3), pp. 249-266; F. Fozdar, 'The "choirboy" and the "mad monk": Christianity, Islam, Australia's political landscape and prospects for multiculturalism', *Journal of Intercultural Studies*, 2011 (Vol. 32, No. 6), pp. 621-636.
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- 16 P. Osborne and J. Turnbull, 'Government rejects call for Islamic courts', *Sydney Morning Herald*, 8 February 2008.
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- 18 Black and Sadiq, 'Good and bad sharia', 2011, p. 388.
- 19 Section 42 Marriage Act 1961.
- 20 Section 43 Marriage Act 1961.
- 21 This is different from the situation in the United Kingdom, where marriages must take place in a registered building and only some mosques meet this requirement.
- 22 Section 45 Marriage Act 1961.
- 23 Jews and Christians are considered 'People of the Book' who may legitimately marry Muslim men.
- 24 Mohamed v Mohamed, 2012, NSWSC 852.
- 25 Hussain, *Islam* (3rd ed.), 2011.
- 26 The authors would like to thank Morgane Dupoux who analysed these articles and comments while undertaking an internship, in 2011, at the Centre for the Study of Contemporary Muslim Societies, University of Western Sydney.
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- 30 Essof, 'Divorce in Australia', 2011.
- 31 Research from Bano (2007) in the United Kingdom points out that in processes of dispute resolution, women are encouraged to reconcile and to conform to cultural dictates and acceptable patterns of behaviour if they are to be issued a divorce certificate. Drawing on a sample of ten women, her study found a process of marginalization of women.

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- 33 A. Jakubowicz, 'Hard shell and soft centre: Australia as a truly modern nation', *International Journal of Diversity in Organisations, Communities and Nations*, 2003 (Vol. 3), pp. 337-350.
- 34 Jakubowicz, 'Hard shell and soft centre', 2003, p. 344. Discussion of shari'a and the thesis of multiple modernity is extended in M. Voyce and A. Possamai, 'Legal pluralism, family personal laws and the rejection of shari'a in Australia: A case of multiple or "clashing" modernities?', *Democracy and Security*, 2011 (Vol. 7, No. 4), pp. 338-353.
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- 36 Fozdar, 'The "choirboy" and the "mad monk"', 2011, p. 632.
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- 41 Black and Sadiq, 'Good and bad sharia', 2011.
- 42 Black and Sadiq, 'Good and bad sharia', 2011.
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