

Starting the dialogue: Academics of Islamic faith and *R v Bayda; R v Namoa (No 8)*

By Yaseen Shariff and Bilal Rauf

The decision in *R v Bayda; R v Namoa (No 8)* [2019] NSWSC 24 generated interest well beyond the courtroom. In sentencing two offenders who were convicted of the offence of conspiring with each other to do acts in preparation for a terrorist act, reliance was placed on certain extremist material found on their respective phones: *R v Bayda; R v Namoa (No 8)* [2019] NSWSC 24 at [59].

In the course of the judgment, Fagan J referred to the extremist material and found that the two offenders understood it to be a ‘...divine command for attacks on innocent Western civilians’: *R v Bayda; R v Namoa (No 8)* [2019] NSWSC 24 at [58]. Reference was also made to verses of the Quran which, it was said, ‘unmistakably instruct the believers to undertake jihad in pursuit of universal Islamic dominance’: *R v Bayda; R v Namoa (No 8)* [2019] NSWSC 24 at [60]. His Honour characterised some of the materials as ‘...sermons and writings.’ which were ‘...serious and scholarly religious teaching’: *R v Bayda; R v Namoa (No 8)* [2019] NSWSC 24 at [60]. In this context, it was noted that the ‘whole concept of inclusive tolerance would be destroyed if respect and protection were accorded to beliefs that are themselves violently intolerant and that conflict with secular laws designed to secure diverse freedom of worship for all’: *R v Bayda; R v Namoa (No 8)* [2019] NSWSC 24 at [78].

The decision proceeds to state that if Australian Muslims make ‘a clear public disavowal’ of certain verses as not being authoritative instructions from Allah (God) then terrorists convictions might be weakened. The decision further states that ‘(t)he incitements to violence which terrorists quote from the Quran cannot just be ignored by the many believers who desire harmonious coexistence’ and ‘in the absence of express public disavowal of verses which convey Allah’s command for violence’, assurances that ‘Islam is a religion of peace’ and that the faith of Muslims requires them to obey the laws of a country ‘are apparently contradicted’: *R v Bayda; R v Namoa (No 8)* [2019] NSWSC 24 at [78] – [80].

Soon after the decision, the Australian National Imams Council issued a public statement noting its disappointment and reiterating its rejection of extremist interpretations of the Quran and the misuse of Islam by extremists. The Muslim Legal Network of NSW issued a statement expressing concern about the obiter comments directed at Australian Muslims. The Law Council of Australia, through its President, Arthur Moses SC, made the observation that ‘we must ensure that the criminal actions of a few are not used to unfairly judge, discriminate against or condemn a whole community and religion. And that those who break our laws are the ones that pay the price and bear the punishment – not others wrongly implicated by association’ (as reported in the *Sydney Morning Herald*, ‘Judge



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not: lawyers back Muslim community’, by Michaela Whitbourn, dated 8 February 2019). We spoke to two senior academics who are well versed in issues associated with the administration of justice in Australia, and are leading scholars in the Islamic faith and its practices.

Professor Mohamad Abdalla is a Professor in the School of Education at the University of South Australia and Director of the Centre of Islamic Thought and Education at that University. His recent books include

Leadership in Islam: Processes and Solutions in Australian Organizations, and *Islamic schooling in the West: Pathways to Renewal*. Professor Abdalla has had extensive involvement with the Australian Muslim community including acting as an Imam, Advisor to government and non-government organisations and Vice-President of the Australian National Imams Council. Dr Salim Farrar is an Associate Professor in Law at the University of Sydney. He specialises in Islamic Law, Muslim minorities and the law and Comparative Criminal Justice. He was called to the English Bar in 1992. He has also taught at the Universities of Coventry, Warwick, Manchester and International Islamic University Malaysia. Dr Farrar also acts as a Muslim Chaplain at the University of Sydney and assists Muslim students on campus. His academic research actively engages with the Australian Muslim communities. His most recent book is *Accommodating Muslims under Common Law: A Comparative Analysis*.

Discussions with Professor Mohamad Abdalla and Dr Salim Farrar

What are the different approaches to textual interpretation of the Quran?

Professor Mohamad Abdalla:

Interpretation (exegesis) of the Qur’an is the most important of sciences in Islam. Scholars distinguish between *tafsir* and *ta’wil* of the Qur’an. The former aims at explaining the ‘outer’ or exoteric meaning of the Qur’an. The latter aims at explaining the ‘inner’ or esoteric meaning of the Qur’an. There are multiple approaches to the textual interpretations of the Qur’an. Orthodox Muslim scholars suggest that an exegete of the Qur’an must have a number of specialisations including: expert knowledge of the principles of jurisprudence, Arabic grammar and morphology, rhetoric, literal and

contextual understanding of the Qur'an, the science of abrogation, the Sunnah and must be able to contextualise the interpretation of the Qur'an to reflect contemporary realities.

Dr Salim Farrar:

The Qur'an is not an 'open book', although it is 'clear' for those with comprehension and understanding. We rely on scholars' interpretations who are informed by the Prophetic example and aware of the context(s) and different applications of the Revelation. One cannot simply flip open a page, read and assume to comprehend a verse's full and proper meaning. That is not to say that there are not splinter groups or individuals, historically and presently, separate from the majority and who have either denied the validity of 'interpretation' or give verses of the Qur'an meanings which the majority do not accept.

Do you believe that there are parts of the Quran that are open to interpretations which may incite violence? To the extent that jihadist literature relies on violent interpretations of the Quran, what position do the orthodox and mainstream schools of thought have relating to these verses?

Professor Mohamad Abdalla:

It is true that there is text contained in the Qur'an that seems very violent. When such text is not read in its proper textual and historical context, it is manipulated and distorted – by Muslims and non-Muslims alike.

Muslim scholars argue that those who read the Qur'an should keep at a minimum the following principles in mind: An awareness of the inner coherence in the Qur'an; to study at the least the preceding and following verses for a sense of the immediate context; look at all of the verses that deal with the same subject in the book; the occasion of revelation, the historical context, of a particular verse; a cursory knowledge of Prophet Muhammad's life; finally the way the Prophet implemented a particular directive in a verse of the Qur'an in his own life.

According to mainstream and orthodox Muslim scholars, the use of the Qur'an to justify the killing of any person, including civilians, is prohibited, completely wrong and a misguided innovation. (There is an exception where people are engaged in a field of battle and even then it extends to those engaged in the combat, much like the position under international law where there are designated rules of combat.) The nature of this prohibition is so specific and well-defined that there can be no legal justification, nor can there be a legitimate *Sharia* excuse, for circumventing this scholarly consensus: Shaykh Muhammad Afifi Al-Akiti, 'Defending the Transgressed by Censuring the Reckless against the Killing of Civilians,' <http://warda.info/fatwa.pdf>.



Professor Mohamad Abdalla

<http://warda.info/fatwa.pdf>.

Indeed, one of the highest objectives of Islamic law is the preservation of life or anything which leads to the preservation of life (for instance, training of medical staff, investment in cures and medicine, establishing and supporting hospitals and so on).

Dr Salim Farrar:

There are verses in the Qur'an which are open to interpretations of violence, just as there are verses in the Christian Bible, but they do not incite violence. Rather, it is violent people who incite violence; they use and misinterpret religious texts for their own purposes. In an authentic saying of Prophet Muhammad (peace be upon him), narrated via the famous Companion, Abdullah ibn Omar, he warned: 'What I fear greatly for my nation is a man who mis-explains the Qur'an and who takes it out of context'.



Dr Salim Farrar

There were individuals and groups in Islamic history who misinterpreted the Qur'an, with devastating and violent consequences (including against mainstream and orthodox Muslims). The first of these was the Kharijites (during the time of the Companions of the Holy Prophet) who regarded it lawful to kill all those who disagreed with them. The orthodox and mainstream schools of thought regarded the Kharijites, and those like them, as misguided and even beyond the fold of Islam. They certainly did not regard their beliefs or interpretations as canonical. Unfortunately, there are some around today who similarly misinterpret the Qur'an. Their interpretations are no more Islamic than those of the Kharijites.

Do you think there are parts of the Quran that should be repudiated?

Professor Mohamad Abdalla:

There is a consensus position among Muslims, in the past and present, that the Qur'an is the speech of God, sent down upon the last Prophet Muhammad, through the Angel Gabriel, in its precise meaning and precise wording. Therefore, no parts of the Qur'an can be repudiated. However, *interpretations* of the Qur'an that contravene the rules of exegesis (as outlined above), scholarly consensus, or the fundamentals of Islam can and have been repudiated. For example, in his scholarly article 'Defending the Transgressed by Censuring the Reckless against the Killing of Civilians,' Shaykh Al Akiti repudiates the interpretations of violent extremists' understanding of jihad. Further, an open letter to Abu Bakr al-Baghdadi (the leader of ISIL/ISIS), signed by hundreds of Muslim leaders and scholars, repudiates the group's actions and ideology based on the Qur'an and other jurisprudential texts.

Dr Salim Farrar:

There is no basis for any part of the Quran to be repudiated. A Muslim is a Muslim because they believe all of the Qur'an was revealed to Prophet Muhammad; every single letter and word. If a person says that Muslims should repudiate even one letter of the Qur'an, they are telling them to renounce their faith. If a Muslim were to accept

that part of the Qur'an was wrong, then logically, the same might flow for other parts of the Qur'an or its entirety. All of the Qur'an is a revelation from God. The issue is one of interpretation only.

Do you believe that the Islamic faith is reconcilable with a liberal democratic society such as Australia?

Professor Mohamad Abdalla:

A substantial amount of scholarly literature supports the claim that the major tenets of liberal democracy are compatible with Islam and that Islamic values and norms actually encourage 'democracy'. I support this claim. Scholars argue that Islam and its laws have inherent values compatible with important elements of democracy, including: shura (consultation); ijma' (consensus) and ijihad (independent legal reasoning). Furthermore, a focus on the fundamental moral values shows that the tradition of Islamic political thought contains both interpretative and practical possibilities that can be developed into a democratic model. The Sharia and its sources (Qur'an and Sunnah), did not specify a particular form of government, but advocated for principles of 'good governance'. The Sharia identified a set of social and political values that are central to any form of government. In fact, it can also be argued that 'In espousing the rule of law and limited government, classical Muslim scholars embraced core elements of modern democratic practice.'¹ Three values are significant: 'pursuing justice through social cooperation and mutual assistance (Qur'an 49:13 and 11:119); establishing a non-autocratic, consultative method of governance; and institutionalising mercy and compassion in social interactions (6:12; 21:107; 27:77; 29:51; 45:20)'. Khaled Abou El Fadl (2003), 'Islam and the challenge of democracy,' *Boston Review*, <http://bostonreview.net/archives/BR28.2/abou.html>

In the area of Islamic jurisprudence, Muslims are obliged to comply with the laws of their country of residence as premised on the Qur'anic dicta demanding fulfilling 'obligations' and 'covenants'. The Quran states, for example, that 'You who believe, fulfil your obligations' and 'Honour your pledges: you will be questioned about your pledges.' Muslim jurists have also understood that the ultimate authority in any country belongs to the government, and so in a non-Muslim context it is counter-intuitive to assume that individual Muslims, or the religious leaders, can take the law into their own hands: : Mohamad Abdalla (2012), 'Sacred Law In a Secular Land - To What Extent Should Sharia Law be Followed in Australia?', *Griffith Law Review*, Volume 21, 2012 - Issue 3.

Dr Salim Farrar:

I do, but it depends what type of 'liberal' society one is referring to. I also think it is reconcilable, (almost), with any democratic society, hence why Muslim communities have endured across the world.