Sharia Challenges to Australian Succession Law

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In 2012 judgments by two superior courts in Australia raised the issue of whether and if so to what extent sharia principles were relevant in the application of the common and statute law of the Australian States and Territories. One judgment (*Omari v Omari* [2012] ACTSC 33) dealt with the substantive validity of a will executed by a woman lacking testamentary capacity but said to have professed an intention to honour sharia inheritance principles. The other (*Mohamed v Mohamed* [2012] NSWSC 852) dealt with the validity and enforcement of a contract made to give effect to sharia divorce principles.

These two cases, decided at first instance, caused a certain amount of public discussion in the media, but did not provoke any detailed or principled analysis. They were apparently decided in an orthodox, common law fashion - the actual dispute before the Court was decided, and no issues of principle were tackled which were outside that dispute. But a sophisticated audience can identify some deeper issues.

- Why can't someone like Mrs. Omari make a will according to Islamic custom?
- The sons' argument is paradoxical. They rely on a supposed constitutional freedom, granted by Australian law and enforced by Australian courts, to oust the jurisdiction of one of those very courts. Should they be able to do that?
- On the sons' approach, the daughters are systemically discriminated against because they are female. The sons say that by virtue of *their* religious freedom, they seek to facilitate that discrimination in the formal legal system. The daughters clearly weren't accepting of their brothers' position because they'd actually contested the case in the official courts of Australia. How does the law resolve that?

We can see these tensions arise in the succession and divorce jurisdiction, but they are particular examples of broader tensions in Australia and in other western liberal democracies. Recent events in Sydney and Paris have done nothing to resolve these tensions - they have heightened them. If there is anything good to have come out of those recent events, it is perhaps that we have been forced to re-examine the fundamental tenets of our society and perhaps be emboldened to restate them.

The Australian decisions

The decision of the ACT Supreme Court in *Omari v. Omari* [2012] ACTSC 33 attracted public discussion because, it was said, it was sought to apply sharia principles of inheritance. The reality of the case is somewhat more pedestrian, and the case was an unremarkable testamentary capacity sensibly case decided on its facts which avoided the necessity to deal with the one point of principle which might have become important. That point is whether freedom of religion guaranteed a Muslim person the unfettered right to leave their will according to Muslim principles.

The background facts

The testatrix died in 2009 aged 81, and made the will 7 years prior in 2002. She was born in eastern Turkey, lived in Lebanon, moved to Australia in 1968 and thereafter lived in a suburb of Canberra. She never learned to read and write in any language, spoke only enough English to cope with grocery shopping, and spoke a little French and Arabic. Her main language was Kurdish. The testatrix divorced her husband in 1986; they had three sons and five daughters, born over a span of 22 years. In 2002 a guardianship order was made - by which it can be inferred she had lost mental capacity to a significant extent - and medical evidence of dementia was present. She was admitted to a nursing home in 2002 suffering from severe Alzheimer's type dementia and cognitive impairment.

The will

One of the sons worked as a translator at the Embassy of the United Arab Emirates. He obtained from an imam at a Canberra Islamic centre – said to be proficient in Islamic will making - a precedent will appropriate "for adherents of the Muslim faith" and adapted the precedent for his mother. It was in written Arabic. Two sons took the mother to a suburban café, where the will was witnessed by the proprietor of the café, a chef employed there, and a Justice of the Peace. The testatrix, being unable to read or write in any language, was read the will by her son the translator, and executed it by impressing her thumb print on the document.

The will provided that three of the children were to give credit for earlier financial benefits they had received, and then left the estate to the eight children so that each son was to get a full share and each daughter a half share; that is, the estate was divided into eleven equal shares and each son would receive two shares and each daughter one share.

One brother gave evidence that when the will was executed in 2002, the café owner asked in Arabic whether the testatrix knew what she was there for, eliciting the response, "Yes, I'm coming here for my will. But please, sons, make sure that applied in accordance, I fear God, I am a Muslim woman, make sure you apply to do the right thing here." She was then asked if she understood the contents of the will and that it had been prepared in accordance with the Islamic faith, to which the testatrix responded, "I understand but I don't read or write." The provisions were then explained in Arabic.

The other son gave evidence that the witnesses had a discussion with the testatrix to explain the contents of the will. She was aware that it was a 'Muslim will', and she said that she was fully in agreement and accepted all the contents of the will. He remembered her saying, "I want the law of the creator, Allah, God, to be applied in the division or distribution of my assets and all my wealth".

Sharia arguments

The sons involved in initiating the execution of the will justified their involvement by contending that it was the obligation and responsibility of the children to remind their parents of their obligation to make a will. One son said that his mother had always said "what pleases Almighty according to Islamic faith, my belief and my wishes". It was found that the sons were acting in good faith, out of a genuinely held concern that their mother's wishes and obligations be given effect.

Another Imam who had attended Sharia law school in Saudi Arabia explained that a Muslim making a will was required to follow set proportions in the gifts to beneficiaries. The defendant put to him that this applied in Muslim countries but not in Australia. His response was that this was not necessarily the case. The principle applied everywhere, except in countries with specific laws prohibiting Muslims from practising their faith.

Thankfully, he said, Australia had no such law and allowed freedom of worship to people of various faiths.

The proposition that there is a guarantee of absolute freedom of religious practice, apparently made in passing and assumed to be self-evident, needs to be examined because it is not correct. Consequently, the whole argument falls away subject to one theoretical caveat which might apply to the Australian Capital Territory and the Northern Territory.

The *Constitution* contains in Section 116 a restraint upon the Commonwealth legislative power preventing the establishment of a state religion and prohibiting any legislation which interferes with freedom of religious practice. Its operation extends to protecting acts done in pursuance of religious belief as part of religion.[1] Necessarily, freedom *of* religion carries with it the right to freedom *from* religion.[2]

Section 116 applies only to the Commonwealth legislature. It is inaccurate to regard it as conferring a 'right to freedom of religion' as such, which would prevail against state-based succession legislation or the common law.[3] Whether it would apply to the legislation passed by the Australian Capital and Northern Territories, whose existence depends on Commonwealth legislation and whose laws therefore might be regarded as a law of the Commonwealth, is not so clear.[4] If there is an implied constitutional right to freedom of religion which would have the effect of defeating family provision or testator's family maintenance legislation, then it is yet to be discovered by the High Court.

In the *Jehovah's Witnesses Case* the Chief Justice asked rhetorically[5]:-

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[1] *Adelaide Company of Jehovah's Witnesses Inc. v Commonwealth* (1943) 67 CLR 116 at 124 *('the Jehovah's Witnesses Case')*.
[2] *The Jehovah's Witnesses Case* at 123.
[3] *Kruger v. Commonwealth* (1997) 190 CLR 1 at 152-3 and 202.
[4] cf. *A-G (Vic) ex rel Black v. Commonwealth* (1981) 146 CLR 559 at 593-4; *Lamshed v. Lake* (1958) 99 CLR 132 at 143, *Teori Tau v. Commonwealth* (1969) 119 CLR 56 at 570.
[5] at 126

> "Can any person, by describing (and honestly describing) his beliefs and practices as religious exempt himself from obedience to the law? Does s116 protect any religious belief or any religious practice, irrespective of the political or social effect of that belief or practice?
> "It has already been shown that beliefs entertained by a religious body as religious may be inconsistent with the maintenance of civil government. The complete protection of all religious beliefs might result in the disappearance of organized society, because some religious beliefs, as already indicated, regard the existence of organized society as essentially evil."

In the context of discussing what it means to have 'freedom', he concluded that "an obligation to obey the laws which apply generally to the community is not regarded as inconsistent with freedom"[6] and went on[7] to adopt John Stuart Mill's distinction between liberty and licence:-

> "He [Mill] recognized that liberty did not mean the licence of individuals to do just what they pleased, because such liberty would mean the absence of law and order, and ultimately the destruction of liberty."

In the *Omari* case, the fact is that Mrs. Omari could quite lawfully have made a will in the terms allegedly required by her Islamic faith, if she had done so when she had the requisite capacity and evidence had been gathered at the time which demonstrated she had the requisite capacity to discharge the *Banks v. Goodfellow* test.

Mostly the fuss that this particular case caused in the media was not justified. This was not a family provision application which called for consideration of any possibility of favouring sons over daughters. The then Shadow Attorney-General Senator George Brandis SC could sensibly observe in the context of this case that, "Our laws start with the presumption that people are entitled to write their will as they choose, subject to certain formal requirements. ... The Coalition does not believe that sharia law should be accepted or recognised in Australia. It is logically possible for somebody to do

[6] at 126-7.
[7] at 131.

something that is both consistent with Australian law and consistent with sharia principles. The question is: are they obedient to Australian law."[8]

At a deeper level, however, one can anticipate this case as an example of tensions which will probably have to be addressed explicitly.

Take for instance the Imam's and the sons' suggestion that conscientious Muslims would be obliged to distribute an intestate parent's estate in the fixed proportion allegedly mandated by their religion. Although we do not know precisely what went on in this particular family, one can infer that by challenging the validity of the will in the secular courts and putting in cross-examination that the intestacy law of the state of domicile applied, that the daughters were not such enthusiastic supporters of this view. Such a distribution would probably not survive a family provision application, where no doubt similar objections would be raised by those seeking to enforce the sharia principles.

The point to be made is that it is all very well for adherents of a particular faith to agitate for their religious beliefs to prevail over the general law, but what happens when not everyone involved agrees? The best answer seems to be that provided that no laws of general applicability are transgressed and provided that everyone affected is of age and consents, then they are free to do whatever they choose in conformity with religious principles; that is to say, everyone is subject to the same law. There are apparently 80 sharia tribunals operating in Britain[9], and the Jewish religious courts called *Beth Din* have operated for some time, effectively being regarded as a form of binding arbitration. Both parties must agree to submit to the process, and there is no criminal jurisdiction.[10] There is no suggestion that they oust the authority of the official courts.

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[8] Patricia Karvelas, "Brandis defends sharia for Muslim wills" *The Australian* 31 March 2012.
[9] Geesche Jacobsen, "Sharia poses problems, says judge" *The Sydney Morning Herald*, 24 August 2012
[10] Nick Terry, *Religious courts already in use*, BBC News news.bbc.co.uk 7 February 2008.

We can see another related example in the New South Wales decision of *Mohamed v. Mohamed* [2012] NSWSC 852. This was an appeal from a Magistrates Court decision which upheld a contract made between two Muslims who were married under Islamic law but not under Australian law. The contract provided that the husband was to pay the wife $50,000 in the event the husband initiated "separation and/or divorce". The technical term for this form of dowry was a "*Moackar Sadak*". There was a factual controversy between the parties as to who initiated the separation or divorce: the husband contended the wife did so by taking his key for the home in which they had both been living. The wife said that the husband asked her to leave their home, and that he had also 'Islamically' divorced her.

In evidence was the concept of '*mahr*' which is apparently a requirement for a valid Islamic marriage contract and specifies the payment a wife will receive either as a form of dowry paid at the time of marriage, or deferred until the dissolution of the marriage by death or divorce. It is designed to provide for the wife's needs when she is no longer maintained by her husband. The husband has an unfettered right to pronounce *talaq* and divorce the wife, which will trigger an obligation to pay any remaining *mahr* and to maintain her for three months, at which point his financial obligations end. The wife does not enjoy any such unfettered right to divorce the husband; she needs a "*khula*" divorce pronounced by a competent sharia authority, and if she does not obtain such a decree then the husband's obligations to pay out the *mahr* and to maintain her for three months are nullified.[11]

The judgment surveys the authorities in the common law world, concluding that, "It is clear that courts in other common law countries have not interpreted these types of agreements in accordance with Sharia law but have applied common law or the relevant legislation, if any, governing the relationship between the parties".

That is not to say that the common law would necessarily ignore religious views of the parties, provided the parties voluntarily sought to submit themselves to those principles and no general laws were broken. There is nothing new or subversive about

[11] For further reading, see Black & Sadiq, "Good and Bad Sharia: Australia's mixed response to Islamic Law" (2011) 17 UNSW Law Journal 82.

this; in Australia for instance four High Court judges (Dixon CJ, Kitto, Menzies and Owen JJ.) held in *Haque v. Haque* (1962) 108 CLR 230 at 249:-

> "The argument was that the deed was unenforceable in our Courts because it contemplated cohabitation between man and woman without lawful marriage, for the polygamous marriage celebrated within Western Australia had no effect as a marriage under our law. In the circumstances of this case it is by no means certain that a court would adopt such a position: for it was an attempt by Muslims honestly and genuinely to establish a relationship which Muslim law would recognize although the ceremony was performed in Australia where the law would not recognize a polygamous marriage entered into within Australia."

These two cases demonstrate that despite superficial media coverage to the contrary, our courts have not yielded the field to any sort of sharia principles. There are separate calls for a parallel system to operate[12], a view apparently supported by the former Archbishop of Canterbury[13]. The former Chief Justice of Australia Sir Gerard Brennan publicly opposed such a move, observing, "The democratic principle prescribes that the culture of the majority is determinative of the legal structure." Sir Gerard identified the gap between the requirement of the law and individual moral standards. "We call that gap 'freedom' and it allows Australian law to protect the cultural moral values of our minorities."[14]

The *Mohamed* decision was referred to the New South Wales Law Reform Commission, and there is an Australian Research Council-funded study being conducted by the University of Western Sydney into the attitudes of Muslims in Sydney and New York to sharia and legal pluralism.

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[12] Nicola Berkovic, "Hyder Gulam calls for Australia to embrace legal pluralism", *The Australian* 28 September 2012

[13] Nick Terry, *Religious courts already in use*, BBC News news.bbc.co.uk 7 February 2008.

[14] Geesche Jacobsen, "Sharia poses problems, says judge" *The Sydney Morning Herald*, 24 August 2012.

The foundation of Anglo-Australian succession law

Before we become chauvinistic about any supposed superiority of the west, we might remind ourselves of some of the historical facts of our system.

There has never been in English law complete freedom of testation. Land tenure systems often limited how interests in land would pass to successive generations, often completely outside the estate which was able to be dealt with by will.

Until comparatively recently, there was no separation of church and state in English probate matters; probate was granted by the courts of the Church of England until 1857, when it moved to the civil courts. Within living memory, probate files were described in the courts of Australian states as "Ecclesiastical" matters.

Since the passage of the *Court of Probate Act 1857* in England, however, general legal principles have applied and the test for the validity of a will enunciated in *Banks v. Goodfellow* (1875) LR QB 549 by Chief Justice Cockburn is distinctly secular. But in that case it was recognised that the formal validity of a will was a legal act, its content still had a moral dimension which was then not justiciable:-

> "Yet it is clear that, though the law leaves to the owner of property absolute freedom in this ultimate disposal of that of which he is thus enabled to dispose, a moral responsibility of no ordinary importance attaches to the exercise of the right thus given ... The English law leaves everything to the unfettered discretion of the testator, on the assumption that, though in some instances, caprice, or passion, or the power of new ties, or artful contrivance, or sinister influence, may lead to the neglect of claims that ought to be attended to, yet, the instincts, affections, and common sentiments of mankind may be safely trusted to secure, on the whole, a better disposition of the property of the dead, and one more accurately adjusted to the requirements of each particular case, than could be obtained through a distribution prescribed by the stereotyped and inflexible rules of the general law."

During the 19th Century, there was a philosophical discussion in England about inherited wealth. Jeremy Bentham questioned[15] the basis and operation of the whole English succession system, describing it as a labyrinth. "To give to foreigners an idea of these difficulties, it would be necessary to begin by a dictionary altogether new to them; since, when they should see the absurdities, the subtleties, the cruelties, the frauds, which abound in this system, they would imagine that they were reading a satire, and that it was intended to insult a nation, on other accounts so justly renowned for its wisdom."

But he did conclude that the "principal object" of the system was "to provide for the wants of the rising generations."[16]

Asking whether there should be freedom of testation at all, he concluded[17] that there was utility in allowing people to do so because it was a powerful form of social control, exercised by the testator over his family: "Clothed with the power of making a will, which is a branch of penal and remuneratory legislation, he may be considered as a magistrate set over the little kingdom which is called a family, to preserve it in good order." Testators could be trusted, by and large, to 'do the right thing' to maintain their family, and expectant beneficiaries could be trusted to 'do the right thing' by their parents lest they be excluded: " ... it is not without advantage, that interest is made to act as the monitor of duty." Also, if a testator is allowed to dispose of his estate as he saw fit, he would conserve his wealth rather than squander it while alive before it was compulsorily appropriated to the state upon his death. Interestingly, Bentham foreshadowed the testators' family provision legislation that would first be enacted in the early 20th Century, by warning that "in making the father a magistrate, it is proper to guard against making him a tyrant. If the children may do wrong, he may do wrong also; and though the power of punishing them may be given to him, it does not follow that he ought to be authorized to make them die of hunger. Thus the institution of what is called in France a *legitime*, is a suitable medium between domestic anarchy and

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[15] *Principles of the Civil Code* (1802) Part 2, Chapter 3, *"Another Means of Acquisition - Succession"*

[16] Part 2, Chapter 3.

[17] Part 2, Chapter 4, "*On Wills*".

tyranny. Even this *legitime*, parents ought to be allowed to take from their children, for causes determined by the law and judicially proved."

John Stuart Mill, buried at Avignon and whose father was patronised by Bentham and with whom he educated the young John as a sort of utilitarian social experiment, suggested that freedom of testation should be restricted in the case of land (to ensure that it was properly worked for the greater good) and disapproved of the amassing of fortunes that were transmitted to the heirs. But he also concluded[18] that:-

> "The parent owes to society to endeavour to make the child a good and valuable member of it, and owes to the children to provide, so far as depends on him, such education, and such appliances and means, as will enable them to start with a fair chance of achieving by their own exertions a successful life. To this every child has a claim, and I can not admit that as a child he has a claim to more."

One might pause to reflect on whether there is, in substance, any difference between the utilitarian analysis of Bentham and Mill, and the passage in the Gospel according to St. Luke[19]:-

> "If a son shall ask bread of any of you that is a father, will he give him a stone? Or if he ask a fish, will he for a fish give him a serpent? Or if he shall ask an egg, will he offer him a scorpion?"

Accordingly, Judaeo-Christian ethics and secular western values have now merged on this point, as they so often do. The great Shakespearean scholar Harold Bloom, who argues that "the two central masterworks" of English literature are the King James Bible and Shakespeare's major plays both written between 1604 - 11, suggests:-

> "These days our shock is provoked by those who govern through their interpretations of the Qur'an. Israel has its nightmares with literalist appliers of Torah and Talmud. The secularization of Christian countries

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[18] *Principles of Political Economy* (1848) *§6 'Property in land different from property in Movables'*

[19] King James version, Luke 11.11-12. I acknowledge the contributions on this topic contained in the paper by Hon. Alan Wilson QC *"Estate Litigation: Moral Issues in Family Provision"* delivered at the Qld Law Society Succession Conference in 2002.

> is complete in Western Europe and Latin America and Canada, yet remains ambiguous in the United States."[20]

Perhaps none of this matters today. I would suggest that most lay people in Australia, England or New Zealand, they would hold the view that *complete* freedom of testation is a feature of ownership of their property; it is theirs, and it should be theirs to do with as they please. Whether or not they support the family provision legislation probably depends on whether they would be applicants or respondents in any application which affected them. If people were asked for some sort of principled explanation of our succession system, I fear that explanation even from most lawyers would be more in keeping with Jacques Derrida than Bentham or Mill. If the explanations of Bentham and Mill were influential in the 19th Century development of succession law but are unknown today, are Mill's ideas of religious freedom and liberty more generally relied upon by the High Court in the *Jehovah's Witnesses Case* still persuasive?

We should probably also pause to acknowledge that there are many things upon which Judaeo-Christian, Islamic and secular opinion is agreed. Succession law is required for the orderly administration of property upon death. Its main object, achieved through a responsibility (however described) imposed on the testator, is to provide for the testator's dependents. The ways and means of doing so might vary, but the sentiment is the same. At a broader level, perhaps, we should also recognise that there are certain basic tenets upon which contemporary Australians largely agree, the rule of law being one of the cardinal beliefs.

In the two cases that prompted this paper, the explanation of Islamic law was unsatisfactory to outside readers. The analysis and evidence of whether making a will in terms of Islamic obligation was an incidence of religious practice was particularly lacking by the parties. It highlights the environment of profound ignorance in which the present discussion and media outrage is taking place. Professor Khaled Abou El Fadl of UCLA Law School observes that there are as many as 130 schools of thought spanning the centuries and the whole of the Islamic world, which means there is no definitive Islamic law as such :-

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[20] *The Shadow of a Great Rock* (2011) page 9.

> "The law plays a central role in Islam and yet, the law is also the least understood aspect of the Islamic faith by Muslims and non-Muslims alike. ... The truth is that so much hinges on the particular conception that one has of Islamic law and the interpretation that one follows."

He goes on to observe that:-

> "'Islamic law' is a shorthand expression for an amorphous and formless body of legal rulings, judgments and opinions that have been collected over the course of many centuries. On any point of law, one will find many conflicting opinions about what the law of God requires or mandates.
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> ...
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> What is customarily referred to as Islamic law is actually separated into two distinct categories: Shari'a and *fiqh*.
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> Shari'a is the eternal, immutable and unchanging law, or Way of truth and justice, as it exists in the mind of God. In essence, Shari'a is the ideal law as it ought to be in the Divine realm, and as such it is by definition unknown to human beings on this earth. Thus human beings must strive and struggle to realize Shari'a law to the best of their abilities.
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> In contrast, *fiqh* is the human law - it is the human attempt to reach and fulfil the eternal law as it exists in God's mind. As such, *fiqh* is not itself divine because it is the product of human efforts. *Fiqh*, unlike Shari'a, is not eternal, immutable, or unchanging. By definition, *fiqh* is human and therefore, subject to error, alterable and contingent."[21]

Conclusions

Recent events have provoked in the popular press concern about the nebulous concept of Sharia being 'imposed' upon us. Last week *The Australian* reported[22] somewhat breathlessly that Legal Aid was training Muslim legal practitioners to act as mediators in Family Court disputes to facilitate 'culturally specific consent orders' for the Family

[21] http://www.abc.net.au/religion/articles/2014/09/23/4092812.htm

[22] *The Australian* 23 December 2015, "Sharia law used to settle divorces in Muslim community".

Court, and that one such mediator had "admitted applying sharia principles to his arbitrations." [*sic.*] Another lawyers said that, "The Muslim community was not using sharia tribunals, as none existed in Australia, but were instead relying on a commonsense application of sharia principles to circumvent a limping marriage, also euphemistically called 'marital captivity'. 'We are not using sharia tribunals, but we rely on trained Muslim mediators who are legally qualified people we can go to and who advise what to do under Australian law and to get an Islamic divorce,' Ms. Hussain said." There were concerns raised in the article that when the Family Court gave effect to mediated agreements "there was little scrutiny of the cultural pressure Muslim women face in coming to make the deal."

Presumably similar concerns arise in many mediations, not just those involving Muslims, but that separate legal representation of the parties goes a long way to offering protection. There are rarely such concerns raised in the popular press about the involvement of Jewish or Roman Catholic tribunals that are involved in divorce cases quite separately to the civil law. One wonders whether there is cause for genuine concern or whether it is merely a current topic amongst the popular press.

It might also be an interesting test of just how pluralistic and tolerant we are as a society, and we return to the question of why Mrs. Omari shouldn't be able to make a will in accordance with the Muslim faith if she wants to. It would seem to be an unlikely first step towards the imposition of the Caliphate. Similarly, if a woman wants to be divorced in such a way that it is recognised by a Family Court judge and an imam, why shouldn't she be able to?

The answer, I would suggest, is that provided by the Attorney-General and Sir Gerard Brennan, and the approach taken by the two courts in the cases identified. The rule of law and the separation of religion from the state are not negotiable in Australia; there are laws of equal application to all which are justiciable in the civil courts. Within that framework, individuals are entitled to act as they please. In the context of the UK *Human Rights Act* according to *The Guardian*[23] the former Lord Chief Justice Lord Woolf observed:-

[23] http://www.theguardian.com/uk/2002/oct/16/humanrights.world/print

> "... 'the real test of the Human Rights Act arose when individuals or minorities attracted the antagonism of the public and "the tabloids are in full cry." Then, the courts must make the difficult decisions that ensured that those under attack had the benefit of the rule of law.
> "But the Human Rights Act was not a suicide pact, he added: "It does not require this country to tie its hands behind its back in the face of aggression, terrorism or violent crime. It does, however, reduce the risk of our committing an 'own goal'. In defending democracy, we must not forget the need to observe the values which make democracy worth defending."

The point about democracy not being a 'suicide pact' is a provocative one but one which, upon reflection, should be reasserted. But so too does the point about the 'own goal'.

So from two single judge decisions affecting only the domestic relationships of two families we suddenly find ourselves reflecting on some of the great challenges facing western liberal democracies. Perhaps this should not be surprising given the generational strife between Jews and Muslims originated with a succession dispute between Isaac and Ishmael[24], the sons of Abraham, and their mothers, with all the attendant complications of step-children cases which we still see today.

Alexis de Tocqueville wrote in *Democracy in America*:[25]

> "But the law of descent was the last step to equality. I am surprised that ancient and modern jurists have not attributed to this law a greater influence on human affairs. It is true that these laws belong to civil affairs; but they ought nevertheless to be placed at the head of all political institutions; for, whilst political laws are only the symbol of a nation's condition, they exercise an incredible influence upon its social state. They have, moreover, a sure and uniform manner of operating upon society, affecting, as it were, generations yet unborn."

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[24] Genesis 22:10
[25] Book 1, Chapter 3 *The Striking Characteristic Of The Social Condition Of The Anglo–Americans In Its Essential Democracy.*