

Heart of Darkness: The Criminalisation of Female Genital Mutilation

In 1985, the Parliament of Great Britain passed the *Prohibition of Female Circumcision Act*. This statute made it a criminal offence to “excise, infibulate or otherwise mutilate the whole or any part of the labia majora or labia minora or clitoris of another person” or to act as an accomplice (section 1(1) a and b). The maximum punishment under the statute is a term of imprisonment of five years and a fine (section 1(2)). Section 2 (2) further provides that “... no account shall be taken of the effect ... of any belief that the operation is required as a matter of custom or ritual”.

The passage of this statute apparently brought to an end, or at least created a new beginning for, a lengthy campaign waged by women in Britain and other countries to end the practices which were seen to be the brutal perpetuation of patriarchal domination of women in its starkest form. It also seemingly demonstrated that the struggle to end these practices could be successfully waged in Western democracies and that legislators could be convinced to outlaw the “torture” of women.¹

At the same time as the Parliament placed the practices of infibulation, clitoridectomy, and *sunna* as well as associated procedures outside the law, it also made it clear, through the provisions of section 2(2), that it was not persuaded by arguments that these practices are somehow mandated by custom and therefore deserving of some special status which might result from an appeal to some idea of “multiculturalism”.²

Since late 1993, calls have been raised in Australia for similar legislative intervention to deal with the issue of “female genital mutilation” in this country. Parliamentarians in both State and Commonwealth legislatures have been joined in the public outcry for criminalisation by the Family Law Council,³ the Australian Medical Association, lobby groups of female lawyers and newspaper columnists.⁴

Australians who join in the call for the criminalisation of “female genital mutilation” present convincing arguments for their case. The practices as portrayed are painful, shocking and clearly aim at putting women and young girls at risk of serious medical complications. Whether their claims are made in terms of “patriarchy”, “international human rights” or “torture is not culture”, they resonate strongly in the mainstream of Australian culture.

1 For a careful and detailed study of the campaign to pass the Bill, see, Sochart, E A, “Agenda Setting, The Role of Groups and the Legislative Process: The Prohibition of Female Circumcision in Britain” 41 *Parliamentary Affairs* (1988) at 508.

2 See, Poulter, S, “The Significance of Ethnic Minority Customs and Traditions in English Criminal Law” 16 *New Community* (1989) at 121.

3 See *Female Genital Mutilation: Discussion Paper* 31 (January 1994).

4 See Pegler, T, “Court Hears of Genital Surgery” *The Sydney Morning Herald* 2 December 1993; Kissane, K, “We Must Set Limits, for the Sake of Little Girls” *The Age* 3 December 1993; Smith, D, “Painful Truth about Female Circumcision” *The Sydney Morning Herald* 3 December 1993; Donnelly, K, “Daring to Condemn” *The Herald Sun* 8 December 1993; Olsen, S, “7 Years’ Jail for Female ‘Ritual’” *The Telegraph Mirror* 3 March 1994.

However, this call to the criminalisation of the practices associated with “female genital mutilation” and the people who carry them out or assist therein, must itself be called into question. Does the ease with which the so-called “cultural relativity” argument is dismissed indicate a sensitivity to the international and cross-cultural nature of patriarchy and the oppression of women or does it reflect that the struggle against “female genital mutilation” is being waged in terms which are themselves simply reflective of other international and cross-cultural forms of oppression?

As we watch the evening news on television and read our newspapers on the way to work each morning, we are bombarded with a whole set of cultural messages which, however distant they may seem from the practice of clitoridectomy and infibulation, are in fact deeply implicated in the creation of the ideological conditions which inform current debate in Australia and indeed make it possible.

What have we seen in the past few months and weeks? Contingents of US Marines disembark in Somalia under the watchful gaze of the local population and the CNN cameras. A humanitarian and international mission which quickly degenerates into a “shoot to feed” policy. A national leader (Aideed) who soon becomes a hunted man, special Ranger execution squads are sent after the man, who, weeks later, again becomes a party at the negotiation table. Now our focus has turned to Rwanda, where some estimates are now in figures of 500,000 and more dead. News photos of the executed and maimed, reports from the inadequately provisioned refugee camps on the border. Calls for UN intervention. And now creeping famine in Ethiopia and the Sudan. Again, Live Aid and Aideed, shoot to feed.

These are the images of Africa, the dark continent, heart of darkness, literally and figuratively. Massacres, genocide, tribal warfare, barbarism. It is, of course, in Africa that the majority of women who undergo “female genital mutilation” live. This can only confirm our view. A barbaric practice among any number of barbaric practices. Mutilation among mutilation and death. And now, in Australia, they are here, it is happening here. “We” must put a stop to this barbarism. This practice will not be tolerated in this country. This so-called cultural practice must cease. After all, this is a civilised country.

Those who call out for the criminalisation of female genital mutilation, either consciously or unconsciously, participate in the creation and recreation of the great imperialist and colonialist tradition of intervention to save the “natives” from themselves. Worse yet, they seem, for the most part, to deny or ignore the myriad of ways in which their discourses simply replicate the universalising discourses of the not-so-distant imperialist past. Instead of an appeal to God and country we hear the implicit call to “progress” as these cultural practices should be left behind or the call to “international human rights” or “patriarchy” as if these norms were in fact neutral or universal. Those same voices who argue for more and more subtle analyses of the ways in which patriarchal hegemony works its insidious way into our cultural values cry out in favour of the criminalisation of “female genital mutilation” as if the simple horror of the practice were enough to eliminate it from discussion.

What is really being excluded from the discussion here, however, is the voice of the women from these countries themselves. In the cacophony around the rush to criminalisation, the voice of the real victim, not the universal victim, “woman”, but the real women upon whom the procedures are being carried out and, yes, let us speak this, the real women who carry them out, and who bring their daughters, nieces and granddaughters to have them “circumcised”, these are the voices who cannot speak here. Because, after all, we have the voices and we have the speech. Those who operate in the corridors of power, in the Parliaments, in the TV news rooms, in the “Women Lawyers Against Female Genital

Mutilation”, in the Universities and in journals such as this, we all have a lot to say on the subject but not much to listen to from the subjects.

For this is, and always has been, the great strategy of the Western intellectual — to speak through and to the organs of power as if we were not in fact part of those very organs of power. To speak on “female genital mutilation” as if it were not in fact, in and of itself, a highly complex set of cultural practices and knowledges not just about the procedures but about family, identity and, yes, gender, itself something we do not wish to problematise among the simpler peoples of the “Third World”. To speak of “female genital mutilation” as if it were foreign to us, brought into Australia by these foreigners, to be eradicated from the body politic, to define the practice as “un-Australian” and those who practice it as violating the accepted cultural norms and then to confirm their status as strangers by criminalising them.

We speak of all these things but we do not speak of the fact that these women and children are here because of the diaspora which is the legacy of imperialist adventure and the direct result of the interventions of the West in the creation of neo-colonial Africa. Where is the discussion of the political economy of the “Third World” which makes “female genital mutilation” the only available source of income in the lumpen-economies of the gendered job market in many African countries? Where is the discussion of the fact that the diaspora itself is the result of the Western political and military rush to arm the “Third World” for profit? Where is the discussion of the fact that women fleeing from starvation, rape and civil war, huddled in refugee camps still have the procedures carried out on their daughters and that this is more than simple false consciousness? Where are the cries to criminalise cosmetic surgery?

These cries are not heard because they are not part of our function in the machinic production of knowledge. And because we are unwilling to listen to the calls of the women themselves. They are there, working to end the practice by changing the culture that makes it not only possible but necessary. Until “we”, those who are empowered, stop to listen, our interventions can only be a part of the continuing exploitation and domination of the neo-colonial globe.

Do we actually believe that the criminalisation of these practices will have any positive effect? It is not likely that criminalisation will deter those who wish to engage in the practice. The cultural and personal forces of identity are too strong for imprisonment to work. If the horrible conditions of civil war, famine and refugee camps will not stop the practices, a term in Mulawa will not either. Those most likely to feel the effects of criminalisation and the exclusion which accompanies the process, the mothers and the “gran-nies” are already excluded by the colour of their skin and their place in diaspora from Australia and their country of origin. To criminalise them might make “us” feel good, but the alleged public education function of criminalising legislation — “sending a message” will do little more than send one more message of exclusion and effacement.

Nor can we hold out hope for the “reintegrative shaming” of the women in question. Any attempt to integrate them into Australian society must result in their removal from their “native” culture. This is little more than neo-colonial criminology. Any attempt to reintegrate them into their “own” culture can not work in our terms because to renounce “female genital mutilation” in current circumstances would by definition exclude them from that very culture.

The cries which have sounded so loudly in recent months in Australia for the criminalisation of “female genital mutilation” must be heard for what they are — the sounds of yet more, sometimes well-meaning, interventions from the heart of the neo-colonial centre for

the further marginalisation and exclusion of the Other. Unless and until we are willing to be quiet and to listen to the words of the women themselves, who struggle under extraordinary and difficult conditions within their communities to educate to eradicate, we are doomed simply to serve out our traditional roles as the intellectual border police, maintaining the integrity of the Australian body politic from the incursion of the barbaric Other.

In concluding, let me return to the point of departure — the British experience.⁵ Since the passage of the Act, there has not been a single prosecution under its provisions. The practice of “female genital mutilation” continues, driven partly underground. What has resulted from the criminalisation of the practices is that the communities in diaspora in Britain find themselves subjected to greater and more intrusive surveillance from the medical and social work professions and subjected to greater media coverage and public hostility. In this sense, criminalisation has worked. Entire communities have been excluded, studied, objectified, turned into cases of media curiosity about their “exotic” and “barbaric” practices. The success of criminalisation in Britain has been in the protection of the body politic from infection and invasion by the Other. While this was not the explicit goal of the legislation, it is clearly the ideological structure which informs most of the debate in Australia. It is the ideology of the neo-colonial which must be interrogated by those of us who are located at the centre. Perhaps when we have correctly located ourselves and our complicities, we will be able to hear the call of the Other; perhaps then we can respond to our responsibilities to justice.⁶

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5 See Flint, J, “Putting Rites to Wrong” *The Guardian Weekly* 22 May 1994.

6 See Derrida, J, “Force of Law: The ‘Mystical Foundation of Authority’” 11 *Cardozo LR* (1990) at 919.