Criminalising Female Genital Mutilation in Canada: The Excision of Multiculturalism?

On 25 April 1997, Royal Assent was given to Bill C-27, *An Act to Amend the Criminal Code of Canada*. This omnibus-styled amendment addresses child prostitution, child sex tourism, criminal harassment and female genital mutilation (FGM). Member of Parliament, Val Meredith, acknowledged that FGM involved 'a wide variety of concerns: legal, medical, immigration and multicultural' (Canada 2 October 1995:15073). The later rejection of multiculturalism as a culturally relativistic appeal in support of FGM raises questions about the criminalisation of female genital mutilation (Fraser, 1994). Although FGM has been an issue for several decades, only recently has it garnered attention in Canada. The first public mention of FGM in Canada appeared in the Globe & Mail (Roberge 1983). The article promoted FGM as a practice of cultural significance. Fourteen years later, FGM is being described as a 'barbaric act', 'shameful atrocities', and a 'diabolical practice' (Canada 2 October 1995:15074–15076). How did opinions about FGM change in such a short period of time? This comment concentrates on the contribution made by anti-multiculturalism discourse deployed during the *political* process of criminalising FGM in Canada.

Kellner (1993) suggests that 'FGM recently became a public issue in Canada due to numerous requests by African immigrants and refugees for the procedure'. On 27 January 1992, the Council of Physicians and Surgeons of Ontario announced that the performance of female circumcision, excision or infibulation by a licenced physician would be treated as professional misconduct. It also declared its intention to lobby the Federal government to criminalise FGM.[1] Canadian health organisations during this period reported a rise in African (particular Somali) immigration statistics.

Despite taunting by members of the opposition, Minister of Justice, Alan Rock declined to introduce legislation criminalising FGM. His decision not to criminalise FGM was based on two arguments. first, pre-existing legislation could be used to bring charges against those practising FGM, and second, it was felt that preventative education would be more effective (Canada 2 October 1995:15074). The refusal of the Minister of Justice to introduce legislation, prompted a private members bill (C-277) by MP Christine Gagnon (Quebec). Bill C-277 called for the creation of an indictable offence for a person who excises or otherwise mutilates, in whole or in part, the labia majora, labia minora or clitoris of a female person, or anyone who aids, abets, counsels or procures the performance by another person. The serious possibility of Bill C-277 passing forced the Minister of Justice to draft legislation concerning FGM. Originally introduced as Bill C-119 (which was prorogued), and later Bill C-27, the proposed legislation sought criminalisation of the practice of FGM in Canada.

These debates reflect a growth in awareness of FGM as a social and legal issue; they also reflect an anti-immigrant and refugee sentiment, that characterising immigrants and refugees from African countries as the 'deviant Other'. The deviantising and scapegoating of immigrants and refugees is evident in comments made by members of the House:'[w]e are well aware that this practice is carried on in Canada by immigrants to this country' (Canada 29 September 1994:6298). Criminalisation is seen as a panacea: 'It must be made

1 Ironically, Bill C-27 includes an exemption from prosecution for medically necessary genital surgeries. Thus, physicians are once again accorded the privilege of determining the necessity of medical procedures at the cost of women's autonomy.

clear to Canadians and those who come to our country that genital mutilation is not only unacceptable as a matter of principle, but also not accepted and severely punished, since it is in fact a crime' (Canada 2 October 1995:15075).

In addressing the issue of 'clashing cultural values' Meredith states that '[m]y response to such criticism is simple. If you do not like the rules we play by in Canada do not come to our country' (Canada 2 October 1995:15073). Meredith adds that '[o]ur rules say one cannot have more than one spouse and, more important, that one does not mutilate little girls. Female circumcision is just that, mutilation' (Canada 2 October 1995:15073). Members of the Opposition claimed that pre-existing provisions in the *Criminal Code* offered inadequate protection. Meredith argued that specific criminalisation was necessary, stating that: '[w]hile there appears to be a fairly substantial body of evidence that female genital mutilation is occurring in Canada, there has never been a prosecution of anyone involved in such a procedure. Why?' (Canada 2 October 1995:15073). Although the lack of prosecution stems from a lack of awareness and difficulties in enforcement, this logic is used to mobilise a call for criminalisation as the solution. This response demonstrates a wider law and order trend towards criminalisation and punitive sanctions. Increased penalties were sought even before the Bill was passed into law: 'I have to agree with the members for Calgary Southeast and Bellechase who called for an increased maximum sentence' (Canada 2 October 1995:15073). Punitive sanctions are seen as necessary for extinguishing the practice of FGM in Canada, however, these sanctions are not seen as sufficient in themselves to eradicate FGM:

> I strongly believe that once Parliament passes Bill C-277 or similar legislation the provinces should make amendments to their child protection acts. These amendments should make the reporting of female genital mutilation mandatory for those employed in health, education and social services professions (Canada 2 October 1995:15074).

Alternative strategies, such as education, are no longer held as viable options to stop FGM in Canada. 'Education and prevention are fine, but that is just not enough. Monitoring needs to be instituted to find, denounce and, more importantly, punish offenders for real,' stated one MP. (Canada 2 October 1995:15075). Education is construed as 'counselling' and carries the usual negative connotations of most therapeutic intervention. Criminalisation is both the medium and the message. Criminalisation is deemed as an appropriate means for counselling immigrants and refugees who come to Canada:

> What better way of counselling anyone who comes from a culture that practises female genital mutilation than by having a section in the Criminal Code by which if anyone commits female genital mutilation or even aids, abets, counsels or procures such an act he or she is guilty of a serious crime? (Canada 2 October 1995:15073).

This sentiment resonates with section 19 of the Criminal Code which claims that 'ignorance of the law by a person who commits an offence is not an excuse for committing that offence.' This serves to establish the dominance of legal discourse on FGM over appeals to cultural relativism. Criminalisation proponents maintain that cultural relativism is a misguided attempt to maintain a politically correct stance concerning cross-cultural and multicultural issues.

> [W]e must also take into account that human behaviours and cultural values, no matter how senseless or harmful they appear in light of our personal and cultural perspectives, do have a meaning for those who practice them' (Canada 2 October 1995:15076).

Ironically, those who called for legislation to criminalise FGM consider legislation to be potentially problematic. 'Charterphobia' is evident in the portrayal of multiculturalism and religion defences for those who practice FGM (Sigurdson, 1993).

> A person who performs or causes this kind of mutilation to be performed could use religious and particularly cultural arguments to justify this practice. Legislation such as the

> Canadian Multiculturalism Act and the Canadian Charter of Rights and Freedoms require that the various cultures be recognized and promoted (Canada 2 October 1995:15074).

The *Charter* embraces multiculturalism in section 27 which states that: '[t]his Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians'. The *Canadian Multiculturalism Act* states in section 3. (1) that it is the policy of the Government of Canada to 'recognize and promote the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage'.

Yet, many countries justify the victimisation of women through violent practices by the use of tradition and religion (Chang 1996). Consequently multiculturalism, similar to the Charter, is critiqued from both the liberal perspective as inadequate for achieving diversity, and from the ultra-conservative perspective as disruptive of unity (Ng, 1995). Bissoondath claims that multiculturalism is a 'gentle and insidious form of cultural apartheid' (1994:90) and is nothing short of 'ethnicity as public policy' (1994:212). The question is not just one of cultural sensitivity about the fundamental values of different cultures within our society.

Western culture is guilty of its own contradictory practices: encourages cosmetic surgeries, such as breast augmentation, collagen implants; discourages non-mainstream body modification, such as piercing and branding; allows the medical profession to over use C-sections and episiotomies; and is wilfully blind of the plight of incarcerated women who engage in self-mutilation as an act of resistance. No one would suggest that forms of violence against women are Western cultural traditions deserving constitutional and legal protection. The question is whether criminalisation is an appropriate solution. Criminalisation and the accompanying threat of punishment has not been successful in eradicating other similar practices of mutilation. As Snider suggests we need to carefully consider the appropriateness of punitive sanctions within feminist solutions for violence against women (1994).

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