Gender equality and cultural claims: testing incompatibility through an analysis of UK policies on minority 'cultural practices' 1997-2007

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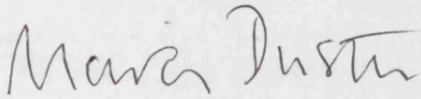
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Abstract

Debates about multiculturalism attempt to resolve the tension that has been identified in Western societies between the cultural claims of minorities and the liberal values of democracy and individual choice. Earlier writing on multiculturalism was criticised for a failure to recognise the centrality of gender and women's symbolic role in debates about culture; more recent feminist analysis has placed gender at the centre of multicultural debate. The risk is that cultural minorities are now characterised and problematised almost entirely through the unacceptable attitudes to women held by some of their members. From this perspective, gender equality and cultural rights are irreconcilable.

While earlier writing on multiculturalism did indeed fail to address the experiences of minoritized women, approaches that take gender as their starting point can be criticised for – at times – resulting in a discourse that feeds cultural stereotypes and serves reactionary agendas. This alienates the very women it is intended to empower, forcing them to make an unreasonable and impossible choice between their cultural identity and their gender rights. I argue that the assumption of a necessary conflict between gender equality and cultural rights is based on a false and simplistic conception of 'culture'. A more sophisticated analysis is provided by writers, including Uma Narayan, Avtah Brah, Leti Volpp and Madhavi Sunder, who challenge the assumption that cultures (and religions) are homogenous and stable units. This thesis takes their work forward by locating it in a UK context and asking to what extent it is practical or possible for policy makers, activists and service-providers to deploy this more satisfactory approach when working for and with vulnerable minoritized women. It does this through an analysis of three 'cultural practices' identified as problematic and addressed in public policy between 1997 and 2007: forced marriage, female genital mutilation or cutting, and 'honour' crimes.

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Chapter 1. Early multiculturalism

1.1 Introduction

> What should a liberal democratic government do when the traditions and
> practices of a cultural minority within the society violate the rights of female
> members of that minority, in particular, such rights as would warrant
> protection by the government of the larger liberal society?[1]

Debates about multiculturalism seek to resolve the tension that has been identified in
Western societies between the cultural claims of minorities and the liberal values of
democracy and individual choice. The assumption is that new minority groups do
not share the values and lifestyles of the majority society and that this causes
conflict and a lack of social cohesion. Multicultural theory often addresses specific
dilemmas, such as a minority community's claim to practice polygamy in a state that
outlaws the practice, and asks what is a just basis for reconciling these different
positions. Possible approaches have included Chandran Kukathas' theory of benign
neglect and Will Kymlicka's theory of multicultural citizenship. But multicultural
theory has been heavily criticised for an early failure to address gender concerns.
Feminist writers have argued that the early literatures fail to identify the central role
of gender in debates about culture. Women have a symbolic role in cultural identity,
and it is typically practices that affect women and girls that are asserted as
emblematic of minority cultures. It is these practices – for example, forced marriage,
female genital mutilation or cutting, and so-called 'honour' crimes – that have
therefore become emblematic of the tension between majority and minorities. While
multiculturalist writing in its early days failed adequately to address gender
concerns, today this is no longer the case. In fact, the danger is that cultural
minorities are problematised almost entirely through the unacceptable attitudes to
women (as well as homosexuals) that they are assumed to hold.

Gender has now taken a central position in debates about multiculturalism.
Feminists and human rights activists see women's rights undermined by
conservative cultural and religious minorities around the world. Some fear that what

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[1] Friedman, 2003, p179.

are known as 'cultural relativist' arguments will lead to the view that only 'insiders' can condemn a country's or culture's practices, while 'outsiders' must withhold judgement to avoid charges of cultural imperialism. Many argue instead for a universal human rights framework within which practices oppressive to women are treated as illegitimate regardless of who perpetrates them, and national governments and the international community taking action to eliminate such practices wherever they take place and whoever the perpetrator.

This thesis does not favour a position of cultural relativism, but argues that in some of its manifestations, a gender-focused discourse does indeed have overtones of cultural imperialism and alienates the very women it is intended to empower. To avoid this, it is necessary to consider who is speaking and on behalf of whom. It is also necessary to consider the context in which judgements about cultural practices are made: in Western democracies where immigration is a permanent subject of media polemic and racism remains prevalent, there is a danger of reinforcing ethnocentric stereotypes of 'backward' cultures, while treating the persistence of gender inequality and oppressive practices within the majority as atypical of 'white' society. Conceptualisations of culture are crucial here: those who identify an inevitable conflict between gender equality and culture claims often imply that minority cultures in Western societies are clearly defined groups of people who share the same language, values, beliefs and behaviours and have done for centuries. There is a tendency to credit culture with defining, even controlling, the behaviour of members of minority ethnic or religious groups. In contrast, members of the majority ethnic group in Western societies are not perceived as having a 'culture' that identifies them; they are regarded as individuals who change and develop within a similarly changing society over time, and for whom culture is a resource or set of activities to enjoy – literature, art, music etc. The result is a simplistic 'us and them' discourse in which some individuals appear as rational and autonomous beings while others are victims of their culture without individual agency.

This dichotomising discourse has not gone unchallenged. Uma Narayan, Avtah Brah and Leti Volpp are writers who have led the way in recognising that cultures are not homogenous, discrete and unchanging, and who point out that there is often a double-standard in force in the way that judgements about cultural practices are made: oppressive gender practices are only identified as 'cultural' when they are perpetrated by a minority ethnic or religious group; when they take

place within the majority community, they are either overlooked or perceived as anomalous individual acts. These writers challenge the idea that gender and culture are in necessary conflict by asking who decides which beliefs and practices define a group and emphasising that it is often older, male, conservative members of a minority who control the group and define its values to the rest of society. One way to avoid this is to open up definitions of culture by recognising their inner diversity. Giving a voice to women (and other minorities within minorities such as gay, lesbian, bisexual and transgender people) then serves two ends: it challenges the notion of homogenous minority cultures and it empowers those within them who are often denied agency. This position is fully compatible with a human rights framework, but by focusing on the diversity within as well as between groups and the need for greater participation, it becomes less likely that human rights will be perceived as an alien set of principles imposed by one part of the global community on another. A key argument is that treating some cultures or religions as inherently oppressive to women forces women within them into an impossible choice between their cultural or religious identity and their gender or human rights. A better approach is to recognise that women also have a role in determining what their culture means to them and should be able to modify it in ways compatible with their needs and experiences, and with equality.

This is the approach I favour in this thesis. It involves challenging homogenising conceptions of culture, and using a more sophisticated analysis of individual identity and group affiliation in which the interaction between gender, ethnicity, age, socio-economic status and a host of other factors is recognised. This is preferable to what Narayan terms 'the package picture of cultures' which forces individuals into artificial and tightly sealed 'cultural packages'.[2]

However, this more satisfying theoretical approach has been mainly developed in a North American context, using cases and scenarios typical to that region. Narayan, for example, identifies an asymmetry in depictions of dowry murders in India and domestic violence murders in the United States. While there are clear parallels between these phenomena, dowry murder is perceived less as a form of

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[2] Narayan, 2000, p1084.

domestic violence than as 'some sort of bizarre Indian ritual' that is 'caused by Indian culture':[3]

> The category 'Indian culture' then becomes the diffuse culprit responsible for 'women being burned to death every day in India', producing the effect that I call 'death by culture'.[4]

In contrast, 'fatal forms of violence against mainstream Western women seem interestingly resistant to such "cultural explanations"'.[5]

Other writers also explore the implications for women of a narrow and biased understanding of culture. Leti Volpp analyses narratives of early marriage in the United States, and argues that this behaviour is labelled differently depending on whether the actors are white or 'immigrants of color'.[6] Sherene Razack considers the relevance of culture in Canadian applications for asylum on the basis of gender persecution, arguing that 'women's claims for asylum are most likely to succeed when they are presented as victims of dysfunctional and exceptionally patriarchal cultures and states'.[7]

This thesis takes the debate forward by relocating it in a British context and considering to what extent it is possible to link this more satisfactory theoretical approach with practical endeavours on the ground in the form of legislation and policy. I do this through an analysis of three 'cultural practices' identified as problematic and addressed in public policy between 1997 and early 2007: forced marriage, female genital cutting/mutilation, and 'honour' crimes. As chapter 3 shows, the election of New Labour in 1997 led to a greater willingness to address unacceptable 'practices'. Each of the three was highlighted in the media and by public authorities as an increasing or increasingly visible problem, and each became the focus of public policy initiatives – either in the form of new legislation, or the creation of policy units or working groups.

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[3] Narayan, 1997, p103.

[4] Narayan, 1997, p103.

[5] Narayan, 1997, p84-85.

[6] Volpp, 2000, p90.

[7] Razack, 1995, p46.

In considering the relationship between theoretical understandings of gender and culture and their practical application in this chapter and the next, I distinguish three broad (and necessarily over-simplified) positions: the 'ungendered' multiculturalism of writers like Kukathas and Kymlicka, the gender-sensitive response of writers such as Susan Moller Okin and Doriane Lambelet Coleman, and the critique of reified understandings of culture provided by Volpp, Narayan and Brah.

I draw a parallel between 'ungendered' multiculturalism and British policy after the Second World War and before the present government took office. I suggest that this period of policy could be described as one of 'benign neglect'[8] with occasional accommodations of culture in the form of, for example, concessions to Sikh populations. While British policy on immigration, race and multiculturalism went through a number of distinct phases – as demonstrated in chapter 3 – there was little recognition of the experiences and concerns of minority women. This period ended with the election of the Labour government in 1997, when a willingness to take on cultural sensitivities in the name of human rights became visible. British policy then came to have more in common with the second strand identified, feminist critiques of multiculturalism, in asserting that 'multicultural sensitivity is no excuse for official silence or moral blindness'.[9]

This movement away from a *laissez-faire* position is further demonstrated in the three empirical chapters on marriage, female genital mutilation/cutting and 'honour' violence. I argue that while the critique of cultural homogenisation that constitutes my third strand of multicultural theory is the most theoretically convincing of the three positions, it is not yet visible in the practices of British multiculturalism and may indeed prove difficult to apply. When developing policies to protect women and girls from forced marriage and other so-called 'cultural practices', policy makers, legal practitioners and campaigners sometimes find it expedient to use ethnocentric portrayals of non-Western cultures that portray them as inherently patriarchal and abusive to women. Stereotypes, in other words, may be easier to use and more superficially appealing than nuanced theory.

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[8] See Kukathas below.

[9] Home Office minister Mike O'Brien speaking in the Human Rights (Women) debate in Parliament, 10 February 1999 (http://www.publications.parliament.uk/pa/cm199899/cmhansrd/vo990210/debtext/90210-13.htm last accessed 6 May 2007).

If asserting the human rights of minority women in liberal-democratic societies has tended to reinforce the implication that 'white men [and in this case women] are saving brown women from brown men', I consider whether this is necessarily the case:[10] is it possible to uphold women's rights without perpetuating cultural stereotypes? I argue that there have been some potentially positive initiatives in the UK, in particular, the Women's National Commission and the model it provides for working in partnership with a large number of women's organisations including those representing women from minority ethnic and religious groups. Similarly, End Violence Against Women (EVAW) campaigns from a human rights perspective for an integrated and cross-governmental strategy on violence against women including female genital mutilation, forced marriage and so-called 'honour' crimes as forms of violence. However, the potential of these initiatives is unfulfilled, as discussed in the case study chapters and conclusion of the thesis.

In the remainder of this chapter I give an overview of some of the theoretical work on multiculturalism that feminists have found problematic. I focus here on two key theorists, Will Kymlicka and Chandran Kukathas, in order to establish why multiculturalism was identified as potentially incompatible with women's rights. I argue that multicultural theory in its early incarnation was unsatisfactory because it failed to recognise the central role of gender and the fact that it is usually the rights of women (and other marginalised or vulnerable groups such as children, young, gay and lesbian people) that are most at risk and most likely to be sacrificed to cultural claims. This suggests that multicultural theory needs to focus on vulnerable minorities within minorities and establish an approach that protects their rights.

1.2 Terminology

One difficulty in writing about gender and culture is the lack of specificity in the terminology used. There is often little clarity about whether the minority group in question is defined on religious or cultural grounds. The term 'minority' itself is unhelpful is several ways. It does not tell us whether members of the group under discussion self-identify on the basis of a religious or cultural identity, or both; it does not clarify whether the group consists of newly arrived immigrants, refugees,

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[10] Spivak, 1994, p92.

or long-standing black and ethnic minority citizens; and in some geographical areas, it may be or may soon become factually incorrect.[11] 'Minoritized' has been suggested as a better term, recognising the importance of perception and the fact that group status is attributed and not inherent, and it is the term I prefer in this thesis.[12]

In theory, and also in political, media and popular discourse, there are a variety of terms used for the subjects of multicultural discourse, including ethnic, cultural or religious minorities, communities and *nomoi* communities.[13] But the lack of clarity, and common slippage between religious, cultural and ethnic identities, feeds a simplistic opposition between white/majority and black/minority values. Media simplification and the failure of (some) multicultural theory to limit its terms of reference also feed stereotypes. The blurring between the experiences of minoritized women in Western countries and women in African, Asian and Middle Eastern countries reinforces perceptions of non-Western women as uniformly oppressed victims of their culture in contrast to their liberated Western sisters.[14]

I hope to avoid this to some extent by being specific about my terms of reference. The case studies in this thesis are not about forced marriage, female genital mutilation/cutting and 'honour' violence as worldwide phenomena. They are about the way they were addressed in the UK between 1997 and 2007. My starting point is the portrayal of women identified as belonging to ethnic or religious minorities and the policies developed during that period to protect them from what came to be seen as culturally-specific forms of violence. However, I recognise that it

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[11] According to the latest UK Census, Bangladeshis form 33.4% of the population of the London Borough of Tower Hamlets (http://www.statistics.gov.uk/census2001/profiles/commentaries/ethnicity.asp Last accessed 6 May 2007). 'In cities such as Birmingham and Leicester, ethnic minority people will soon form a bigger proportion of the population than white people' (Equal Opportunities Commission, 2006, p19).

[12] Thanks to Burman et al for this suggested usage: '…we use the term "minoritization" (rather than "minority" or "minority ethnic group") to highlight how groups and communities do not occupy the position of being a minority by virtue of some inherent property (of their culture or religion, for example) but acquire this position as the outcome of a socio-historical process' (Burman et al, 2004, p334).

[13] The term used by Ayelet Shachar (see chapter 2).

[14] 'This average third world woman leads an essentially truncated life based on her feminine gender (read: sexually constrained) and her being "third world" (read: ignorant, poor, uneducated, tradition-bound, domestic, family-oriented, victimized, etc.). This, I suggest, is in contrast to the (implicit) self-representation of Western women as educated, as modern, as having control over their own bodies and sexualities, and the freedom to make their own decisions' (Mohanty, 1991, p56).

is impossible to fully avoid reproducing the type of simplistic understandings that this thesis challenges.[15]

Similarly, I have concerns about my choice of case studies. One of the aims of this thesis is to show how minoritized women in the UK are portrayed mainly as victims of 'cultural practices' such as 'honour' violence, forced marriage and female genital mutilation/cutting. By structuring this thesis around these three practices, despite emphasising that I am talking about perceptions and policies not actual behaviours, I am aware that I risk reinforcing or contributing to such stereotypes. But, as I go on to argue, these are not cultural practices but forms of gender-based violence that need to be addressed. As participants at a recent conference on these issues at European level concluded, the answer is not to avoid analysis or debate of these subjects, but to do so in such a way as to empower minoritized women and open up the diversity of voices within minority communities.[16]

1.3 Multiculturalism

Debates about cultural claims are clearly topical: if the Cold War and the threat of nuclear attack characterised the latter half of the 20th Century, the 'clash of civilisations' and international terrorism are widely seen as the dominant threats today.[17] Since the fall of the communist bloc there has been an increase in conflicts ostensibly about ethnic or religious identity and the right to self-determination, typified by the Balkan conflicts of the 1990s. Since 11 September 2001, the 'war on terrorism' has been portrayed as the defence of a political culture – that of Western democracy – under threat from Islamic fundamentalism.

Multiculturalism is a concept that operates on several levels.[18] Most obviously, it is simply descriptive of societies whose members no longer (if they ever did) share a common history and background. It may also describe an official

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[15] As Leti Volpp states 'I recognise, as well, that in criticizing the feminism versus multiculturalism discourse, I am inevitably reducing other complexities, for example, by discussing "immigrant women" as if they constitute a singular group. Unfortunately, this kind of reductions seems inevitable when criticizing what is an even more reductionist representation' (Volpp, 2001, p1186).

[16] Dustin, 2006, p2.

[17] Huntington, 1996.

[18] 'A notorious confusion surrounding the notion of multiculturalism is its simultaneous reference to a "state of affairs" and a "political programme"….' Joppke, 2004, p239. Joppke continues to ask why 'the *description* of a multicultural reality should lead to the *prescription* that the state further this reality through its laws and policies' (p239).

national policy, as in Canada.[19] In Britain, multicultural policies developed in some sectors in the 1970s and 1980s, although multiculturalism was never an official policy of government (see chapter 3 for further discussion of UK policy developments). However, multiculturalism is also a prescriptive body of writing and this is generally how I use the term in this thesis. Multicultural theorists generally start from the premise that individuals are organised into distinct cultural units. Culture, here defined, is an accumulation of attributes including language and discourse, behaviour, values, dress and diet. The attributes range from the visible to the less tangible but together add up to more than the sum of their parts, constituting a coherent cultural identity distinct from other cultural identities.

Culture matters because of the part it is seen to play in validating identity. If identity is constructed in part through opposition to what and who one is *not,* then cultural attachments allow the individual to understand who s/he is and understand her/his place in the world.[20] It follows that cultural marginalisation or oppression can be severely damaging: if one's culture is not recognised and valued within the wider society, one's identity and sense of worth are undermined.[21] While culture clearly overlaps with racial and ethnic identity – and the concepts are often used indiscriminately – culture is all-encompassing and has positive overtones of individual self-determination. It is increasingly recognised that to deny people the right to express their culture is to deny them a basic human right.[22]

The body of writing known as multicultural theory developed in response to a perceived need to rethink the basis of citizenship and social cohesion in the context of globalisation and increased migration. An underlying assumption is that cultural self-determination is necessary for individual fulfilment and social harmony, but Western societies no longer have a single culture that corresponds to a national

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[19] Canada adopted an official policy of multiculturalism in 1971. The Canadian Multiculturalism Act was passed in 1988.

[20] 'Culture is a historically created system of meaning and significance or, what comes to the same thing, a system of beliefs and practices in terms of which a group of human beings understand, regulate and structure their individual and collective lives' (Parekh, 2000, p142-43).

[21] 'The usual approach to the politics of recognition – what I shall call the "identity' model" – starts from the Hegelian idea that identity is constructed dialogically, through a process of mutual recognition. ... To be denied recognition – or to be "misrecognized" – is to suffer both a distortion of one's relation to one's self and an injury to one's identity' (Fraser, 2000, p109).

[22] Article 22 of the Universal Declaration of Human Rights (1948) states that '[e]veryone... is entitled to realization...of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.' See also the International Covenant on Economic, Social and Cultural Rights (1966).

identity. Multicultural societies in which several cultural groups live alongside one another are viewed as having replaced the single-nation state as the organising unit of human society.[23]

At the same time, there has been a political shift in Western countries away from passive notions of subject-status towards the more active role of citizen in a democracy, which provides members of migrant communities with a language in which to claim their equality and rights. Members of minority communities in countries across Europe, North America and Australasia are now formally recognised as having the same human rights as members of majority groups (at least where they are not identified as illegitimate asylum seekers or illegal immigrants), but this alone may not be a strong enough foundation for national cohesion. In the past, it was often assumed that people had the same values, religion, lifestyle and language as those who lived alongside them. As Castles and Miller point out '[t]his unity has often been fictitious – a construction of the ruling elite – but it has provided powerful national myths'.[24] Without the fiction that territories contain people with similar values, customs and interests, there needs to be a new basis for national identity and social cohesion in societies where the national 'story' – be it of warm beer and cricket[25] or *liberté, egalité, fraternité*[26] does not engage all members of society.

A further concern is how to redress injustices and avoid imposing an alien value system on those who now live in (and contribute economically and socially to) Western societies, while ensuring that the individual rights of everyone within those groups are upheld. To be specific, what happens when a minority group is identified with a 'practice', usually inflicted on its female or girl-child members, seen as incompatible with the principles of equality that are assumed to underpin liberal democratic states? Every society has members whose behaviour is problematic. What is new is that some of the behaviours that give rise to conflict or tension are now perceived as having a cultural basis; and that some of the rights claimed, or

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[23] Although it is likely that we underestimate the scale of population movement around the world in earlier times. See Castles and Miller, 1998.

[24] Castles and Miller, 1998, p15.

[25] 'Fifty years on from now, Britain will still be the country of long shadows on cricket grounds, warm beer, invincible green suburbs, dog lovers and pools fillers.' Former British Prime Minister John Major, 1993 (http://www.number10.gov.uk/output/Page125.asp Last accessed 6 May 2007).

[26] The slogan of the French Revolution and Republic.

demands for changes in public policy or law, now refer to what is considered
necessary for particular cultures to survive. How then to resolve the conflicting
claims of cultural groups sharing the same geographical space, while preserving
universal norms or standards of human rights?

1.4 Will Kymlicka's theory of multicultural citizenship

A key reference in this literature is Will Kymlicka's *liberal theory of minority
rights*.[27] Kymlicka defines himself as a liberal, and in this way places himself at the
centre of the debate about whether liberalism can accommodate multiculturalism.[28]
He explains why, from a liberal perspective, culture is necessary: because, he
believes, '...individual choice is dependent on the presence of a societal culture,
defined by language and history, and that most people have a very strong bond to
their own culture'.[29] On a fundamental level, culture is how people make sense of
the world.

Kymlicka is concerned with what he defines as 'societal culture', one which:

> ...provides its members with meaningful ways of life across the full range of
> human activities, including social, educational, religious, recreational, and
> economic life, encompassing both public and private spheres. These cultures
> tend to be territorially concentrated, and based on a shared language... I have
> called these "societal cultures" to emphasize that they involve not just shared
> memories or values, but also common institutions and practices.[30]

To find ways of addressing the increasing number of conflicts between minorities
and majorities over issues such as language, education, land and representation,
Kymlicka distinguishes between 'multination' states (which are culturally diverse as
a result of the integration of once self-governing territorially concentrated cultures)

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[27] Kymlicka, 1995a.

[28] For the purposes of this thesis, liberalism is understood as a political philosophy with many
branches but whose two core principles are freedom and tolerance. The emphasis on each of these
principles has shifted over time and the tension between the two is addressed indirectly in this thesis
in the discussion of Kymlicka and Kukathas below. John Rawls' distinction between a 'political' and
a 'comprehensive' version of liberalism is also referred to in chapter 7.

[29] Kymlicka, 1995a, p8.

[30] Kymlicka, 1995a, p76.

and 'polyethnic' states (where diversity is a result of immigration). Thus, the USA is a multination state, whose national minorities include American Indians, Puerto Ricans and native Hawaiians: all these groups were unwillingly incorporated into the United States. It is also a polyethnic state in containing large numbers of immigrants – 'ethnic groups' – that do not occupy homelands, and who participate in the dominant culture and speak its language, and express their cultural differences mainly in a family or social setting. The claims of national minorities are more problematic than those of ethnic groups, as the latter can only survive within a larger 'institutionally embodied' culture.

Kymlicka would not recognise all minority cultural claims. He distinguishes 'the claim of a group against its own members' from 'the claim of a group against larger society'.[31] The former limits members' liberty for the purposes of group solidarity or 'cultural purity' ('internal restrictions'), while the latter limits the power of wider society over the group (termed 'external protections').[32] Only the former conflict with the principle of individual autonomy and should therefore be rejected by a liberal state.

One widely-noted problem with Kymlicka's analysis is that it depends on many distinctions between types of group, types of state, and types of right, that do not correspond to political and social realities.[33] For example, he contrasts 'multination states' in which minorities demand autonomy, with 'polyethnic states' where immigrant groups seek integration into the majority culture. But the relationship between minority and majority groups is not this clearly defined and Kymlicka's typology creates anomalies. It forces the conclusion that refugees – who do not choose to give up their status as a national group – can only hope to be treated as an ethnic rather than a national group in their country of asylum.

Kymlicka's construction is also problematic in allowing the state to define groups either as national minorities to be granted some degree of autonomy, or as

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[31] Kymlicka, 1995a, p35.

[32] Kymlicka, 1995a, p7.

[33] 'The multiculturalist is interested in classifying and naming groups and then in developing a normative theory on the basis of classificatory taxonomies' (Benhabib, 2002, p18). As well as 'internal restrictions' and 'external protections' Kymlicka further distinguishes three types of group right: self-government rights, polyethnic rights and special representation rights. Self-government rights apply to national minorities, involving some degree of federalism. Polyethnic rights take the form of financial aid or legal protection for religious or cultural practices, and are given to immigrant communities. Special representation rights could apply to either type of minority group and describe measures to reverse the under-representation of minorities.

ethnic groups who in the short term may be granted more limited concessions but who will eventually disappear. This appears to undermine the cultural self-determination of (some) minorities and it contrasts with Kukathas' model (discussed below) in which 'the state is only one community, jurisdiction or association among many'.[34]

While Kymlicka did not originally approach multiculturalism from the perspective of women within minorities, he has subsequently addressed the tension between gender and cultural rights. In his response to Okin's question 'Is multiculturalism bad for women?' he claims that his theory provides a formula for ensuring that women in minority groups are adequately protected. Distinguishing between unacceptable minority claims for 'internal restrictions' and acceptable claims for 'external protections' will ensure that ethnocultural groups are not able to restrict the freedom of individual members in the name of culture or tradition.[35] He sees a common cause between multiculturalism and feminism in that each has identified traditional liberalism as failing to meet the distinct needs of ethnic minorities and women respectively, despite liberalism's claim to provide universally applicable principles. Meaningful equality requires gender-specific and culture-specific measures – for example prohibitions on pornography (to protect women) or language rights (to protect cultural minorities).

Again, it is Kymlicka's rigid distinctions that are problematic.[36] 'Internal restrictions' presumably covers the more visible forms of control, such as forced marriage, which would not be a legitimate cultural practice according to his model. But some 'external protections' may also undermine women's rights, for example, state funding for minority religious schools which exempt girls from certain parts of the curriculum. Moreover, the very process of granting 'external protections' such as land or language rights may reinforce power imbalances within minorities, if women and young people are not consulted and do not have a role in implementing such concessions. Kymlicka acknowledges that there is not always a clear line

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[34] Kukathas, 2003, p266.

[35] Kymlicka, 1999, p31-32.

[36] Although he recognises the need for a 'more subtle account of internal restrictions which helps us identify limitations on the freedom of women within ethnocultural groups' he goes on to say that '…it still seems to me that the basic distinction is sound – i.e., liberals can accept external protections which promote justice between groups, but must reject internal restrictions which reduce freedom within groups' (Kymlicka, 1999, p32).

between 'internal restrictions' and 'external protections' and that one may lead to the other.[37] However, his argument that minority group claims are not necessarily a threat to women's rights is dependent on his distinction between 'internal restrictions' and 'external protections'.[38]

1.5 Chandran Kukathas' benign neglect

Chandran Kukathas takes a different approach, which he characterises as 'benign neglect'. He argues that it is not the business of the liberal state to determine whether a minority culture survives. And while he questions the validity of Kymlicka's division of the world into societal cultures,[39] and stresses the fluidity of identity,[40] Kukathas also represents membership of a community or group as clearly defined and based on conscious choice:

> Freedom of association protects groups and communities to the extent that those who wish to remain separate from other parts of society, or to break away and form their own associations of like-minded people, are left undisturbed: free to go their own way.[41]

Kukathas' concern is the basis of legitimate authority, whether that is the authority of the state or the authority of minority group leaders. Defining himself as a liberal (though perhaps more appropriately described as libertarian) he is clearly a different kind of liberal to Kymlicka. Kukathas prioritises toleration, not autonomy or freedom of choice, as liberalism's first principle.[42] Toleration precludes assumptions of infallibility on the part of any group or authority. It causes people to question their beliefs and therefore facilitates reason. Kukathas views society as '...an archipelago of different communities operating in a sea of mutual toleration'.[43] While 'the tendency to differentiate and to form groups is so deeply ingrained in

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[37] Kymlicka, 1995a, chapter 3, in discussion of Rushdie Affair.

[38] Kymlicka, 1999.

[39] Kukathas, 2003, pp80-83.

[40] Kukathas, 2003, p90.

[41] Kukathas, 2003, p107.

[42] Kukathas, 2003, p15 and 119.

[43] Kukathas, 2003, p8.

human conduct that it is ineradicable', the state should take no interest in these group attachments.[44] While it should not make concessions to groups, equally there is no justification for state intervention in minority group affairs, as the state's authority is simply the result of 'historical settlements among groups'.[45] People have very different ideas about how to live and any impulse to impose a monolithic vision on human diversity should be resisted.

This leads to a very minimal form of government. In this model, minority cultures must survive by their own efforts rather than through the support of the state or majority society. And if the description of a 'sea of mutual toleration' sounds idealistic, Kukathas has clarified that there is no ideal solution to the problem he poses:

> We are faced with a fundamental conflict between two irreconcilable aspirations: on one hand, to leave cultural communities alone to manage their own affairs, whatever we may think of their values; and, on the other hand, to champion the claims or the interests of individuals who, we think, are disadvantaged by their communities' lack of regard for certain values. Unfortunately we cannot have it both ways.[46]

The only solution for those who are disadvantaged within their community is to leave the 'association'. The corollary to freedom of association is the right of exit. The minimal responsibility of the state is to ensure the conditions for exit exist. Kukathas acknowledges that exit is a costly solution to the problems of injustice within groups but emphasises that there is a distinction between the freedom to leave a group and the cost of doing so. Exit from the Amish community, for example, may mean the loss of family, friends and property but it is still a choice:

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[44] Kukathas, 2003, p219.

[45] Kukathas, 2003, p261.

[46] Kukathas, 1992b.

...exit may, indeed, be costly; but the individual may still be free to decide whether or not to bear the cost. The magnitude of the cost does not affect the freedom.[47]

One obvious flaw in this argument is that that for some members of a minority group, taking advantage of a formal right of exit may be so difficult as to be impossible. Kukathas does acknowledge that some people may be so deeply committed to their faith and unaware of any alternative way of life that it is unthinkable for them to question their beliefs, but says '[I]t is not clear whether this [situation] is objectionable if one's concern is the freedom of the individual to live as he or she prefers'.[48] He avoids, therefore, the question of what constitutes freedom of choice and at what point formal rights become meaningless without the social, financial and psychological conditions to take advantage of them. Instead, he believes that a liberal state must accept 'all expressed preferences or desires as authentic'.[49]

Kukathas claims that the 'indifferent state' favoured by his version of liberalism 'offers the opportunity ... for people to coexist and for their different arts and letters and sciences to flourish (or die out) with them'.[50] This suggests that cultures can fight for survival on equal terms within a neutral state framework. But an 'indifferent' state is likely to be one which protects the status quo, that is to say the majority culture. For example, in the context of long-standing blasphemy laws that protect only the tenets of the Church of England, the failure to provide protection to minority religions is a form of discrimination rather than neutral non-intervention. Kukathas' 'benign neglect' accepts that some individuals will lose out, but doesn't acknowledge that some groups, for example women and children within minorities, are persistently more likely to be victims than others. It is telling that he uses the metaphor of a company chief executive who is offered a billion dollars not to leave his job: Kukathas argues that it might be costly for him to choose to leave,

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[47] Kukathas, 2003, p107.

[48] Kukathas, 1992b, p678.

[49] Kukathas, 2005, p25.

[50] Kukathas, 1998, p698.

but it would be odd to say that he isn't free to do so.[51] The incongruence of the example indicates why exit is an inadequate solution: the career choices of wealthy business people are not analogous to the situation of young women threatened with forced marriage, as addressed further in chapter 4.

1.6 Conclusion

It is not my objective to give an overall summary or critique of Kymlicka's and Kukathas' theories of multiculturalism. They have been chosen as representative of 'ungendered' multicultural theory because their work has been highly influential, and because both claim to reflect liberal values while taking positions that are in many ways polar opposites. In addition, their writing played a key role in establishing the notion of a tension between individual and group rights that multicultural theory needs to resolve. Kymlicka sees multiculturalism and gender claims as compatible, believes cultural ties are inherently valuable and that the state has a role in protecting (some) cultural minorities; Kukathas presents liberalism as 'indifferent to the groups of which individuals may be members',[52] and believes the state has no role in either protecting cultural identity or interfering in internal cultural affairs. A strongly interventionist approach is contrasted with a minimalist role for the state in which the only individual right appears to be that of exit. Yet, despite their differences, neither writer provides a satisfactory way of protecting the rights of women and other minorities within minorities. Kymlicka's simplified distinction between acceptable external protections and unacceptable internal restrictions ignores the negative impact external protections may have for minorities within minorities. Meanwhile, Kukathas implies that a position of 'benign neglect' by the state is neutral. But non-intervention is not necessarily either benign or neutral. Where there is institutionalised discrimination, the failure to intervene perpetuates inequality. Chapter 3 suggests that the 'gender-neutral' form of multiculturalism that typified Britain before 1997 corresponded to a failure to address violence against minority women.

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[51] Kukathas, 2003, p107.

[52] Kukathas, 1998, p691.

A fundamental problem from a gender perspective is that, despite making reference to the diversity and fluidity of cultures and identities, both Kymlicka and Kukathas imply the opposite. Kymlicka's extensive typology reinforces essentialist notions of cultures as discrete units, while Kukathas artificially portrays communities as 'associations'. Both typify a failure of multicultural theory: in focusing on and perhaps exaggerating differences *between* groups, differences *within* them have been overlooked in a way that has proved particularly damaging for women.

1.7 Thesis outline

Chapter 2 analyses theories that start from the perspective of the rights of women within minorities. If 'mainstream' multiculturalism, as exemplified by Kymlicka and Kukathas, has failed to protect minority women's rights, I ask whether writers who take gender equality as their starting point are able to provide a more convincing approach. I consider whether Susan Moller Okin and Doriane Lambelet Coleman – both writing from what might be called a liberal feminist perspective – have been able to provide a satisfactory way of addressing both gender equality and cultural rights. I go on to discuss Ayelet Shachar's model of joint governance and the deliberative or dialogic approaches of writers including Seyla Benhabib and Carol Gould. I argue that none of these writers fully resolves the gender-culture tension because of a failure to challenge homogenising portrayals of culture. I then go on to consider the work of Uma Narayan, Leti Volpp and Avtah Brah and argue that they provide a better basis for addressing the concerns of this thesis.

Chapter 3 maps trends in policy and legislation relating to race, immigration, and culture in the UK since the Second World War to provide the context for the case studies that follow. I draw a parallel between a mainly non-interventionist policy before 1997 and 'ungendered' multiculturalism, in particular Kukathas' model of 'benign neglect'. I go on to identify three characteristics of British policy during this period: that 'culture' gradually replaced 'race' as the defining concept of multiculturalism in the UK; that (minority) culture became increasingly synonymous with (minority) religion; and that the concerns associated with liberal feminism were barely visible through this period. There was little recognition of the rights or needs of minoritized women before 1997.

The three case studies that follow demonstrate a significant change in policy after 1997, with gender becoming more central as certain 'practices' of the UK's minority communities, relating mainly to the treatment of women within these communities, were identified as problematic. These chapters consider in detail measures introduced to prevent forced marriage, female genital mutilation/cutting and 'honour' crimes. While all three chapters cover the main developments in each area, each has a slightly different focus. Thus, the chapter on forced marriage focuses on policy initiatives by government and public authorities; the chapter on female genital mutilation/cutting takes international human rights debates as its starting point and maps the passage of UK legislation; the chapter on 'honour' crimes asks what can be deduced from case law.[53]

All three chapters consider whether the measures identified succeeded in protecting minority women and, if so, whether this was at the expense of cultural claims. I do not attempt to map the reality of women's experiences of these forms of violence, but identify policy and legislative responses and the stereotypes that informed and were reinforced by them. I argue that policies under New Labour reflected a new willingness to confront the abuse of women and girls in minority cultures. In this they corresponded to the liberal feminist or gender-sensitive approaches identified in chapter 2. On the evidence of these chapters, there was progress in the protection of minority women's rights, but the failure sufficiently to interrogate culture meant this was often done in a way that reinforced cultural stereotypes.

Chapter 4 concerns forced (and arranged) marriage – the first 'minority practice' to be targeted by the New Labour government. I conclude that policies have been partly successful but have depended mainly on providing an exit strategy for the women and girls involved and have been undermined by confusion with the immigration agenda, by an unrealistic distinction between forced and arranged marriage and by the failure to recognise the diversity of the communities involved. I also argue that a lack of research and coherence between statutory bodies has made it difficult to measure effectiveness.

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[53] Moreover, references are taken from a range of disciplines: Feminism and multiculturalism mainly, but also post-colonialism, anthropology, media studies, race theory, legal studies, international human rights discourse and sociology.

Chapter 5 consider female genital mutilation/cutting (FGM/C), the subject of controversy internationally among feminists and women's activists, with disagreement between those who see it simply as an abuse of rights to be eradicated and those who identify a double standard on the part of Western opponents not equally critical of practices like cosmetic surgery. This (lengthier) chapter considers how those debates have played out in the UK, mapping the passage of legislation over a twenty-year period. I consider whether it has been possible for activists and service providers to employ the more complex conception of culture and argue that, in the context of inadequate resources, it has proved difficult to avoid deploying cultural stereotypes.

Chapter 6 maps the way that violence against women in minority communities is increasingly conflated under the single heading of 'honour' crimes. 'Honour' based violence and killings have been identified and condemned as criminal acts, but the way they are depicted reinforces an East/West dichotomy in which the passion of an individual explains male violence in the West, while honour is perceived as motivating criminal behaviour in the East. I consider the way such assumptions have been reflected in the murder defence of provocation, looking at legal cases of so-called 'honour' killings between 1996 and 2002. I suggest that polarised notions of culture may influence the outcomes of murder trials.

Chapter 7 focuses on religion, a recurring theme in the previous chapters. While the tension addressed by the thesis is ostensibly that between claims of gender and of *culture*, it is clear from the case studies that the relationship between culture and *religion* has been inadequately addressed within multicultural theory to date. The chapter takes the contrasting approaches of Bhikhu Parekh and Martha Nussbaum to consider this relationship. I argue that, just as cultures are too readily assumed to be discrete and unchanging, religious identity is similarly perceived as pre-determined and with a single interpretation – an interpretation that has often been hostile to women's interests. This forces women to choose between equal treatment and a faith identity. I suggest that Madhavi Sunder provides an alternative and better approach, arguing that dissenting voices within religions need to be recognised, opening the way to new interpretations of religious identity. I then look at the emergence of religion as a factor in policy in the UK and ask whether this is consistent with Sunder's more interrogative approach. I conclude that while recognition of the rights of religious minorities has developed alongside claims for

racial equality, the diversity of voices within religious minority communities has not been recognised. This failure has tended to be at the expense of the rights of minorities within minorities.

Chapter 8 concludes by summarising what has emerged from the case studies and assesses the effectiveness of policies targeting minoritized women during the period discussed, based on the theoretical arguments made in early chapters. I argue that the assumption of a conflict between women's equality and cultural claims is mistaken because it is based on a false and simplistic conception of 'culture'. However, because this false understanding of culture is rarely challenged in the UK, there remains an assumption that cultural self-determination and gender equality are incompatible. This leaves minoritized women forced to choice between their cultural identity and their gender rights. Finally, I identify some promising, if undeveloped political trends.

Chapter 2. Multiculturalism and feminism

2. 1 Introduction

The previous chapter concluded that 'ungendered' theories of multiculturalism fail to satisfactorily address concerns about the rights of women in minority groups. This chapter brings gender theory to the fore, asking whether liberal feminist approaches, and those that focus on power differentials within minorities are more effective in protecting minoritized women.

2. 2 Liberal feminist perspectives

A number of the writers discussed in this thesis define themselves as liberals, including Kymlicka and Kukathas in the previous chapter and Susan Moller Okin and Martha Nussbaum in this one.[54] Liberal thought contains many strands but is broadly characterised by the principles of individual freedom and tolerance. Multiculturalism may be seen as prioritising tolerance – the principle that the majority society should tolerate or accommodate the 'practices' of its minority members. Some of the writers discussed in this chapter prioritise individual freedom instead – specifically the rights of minorities within minorities. They address the concern that just as liberalism in its original form was 'a particularism masquerading as the universal',[55] equally, early multiculturalism spoke to elites within minority communities and failed to address discrimination against women and other marginalised members. While developments in liberal theory are outside the scope of this thesis, writers such as Okin and Nussbaum demonstrate that if tolerance is not balanced by the comprehensive promotion of individual freedom, then liberalism cannot reasonably claim to be a doctrine of universal rights.

Much of debate about the tension between women's and cultural rights was generated by Susan Moller Okin who famously asked 'Is multiculturalism bad for women?' and answered yes, it is:[56]

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[54] Okin suggests that '[l]iberalism's central aim, in my view, should be to ensure that every human being has a reasonably equal chance of living a good life according to his or her unfolding views about what such a life consists in' (Okin, 1999b, p119).

[55] 'The claim is that the supposedly neutral set of difference-blind principles of the politics of equal dignity is in fact a reflection of one hegemonic culture' (Taylor, 1994, p43).

[56] Okin, 1999a.

I think we – especially those of us who consider ourselves politically progressive and opposed to all forms of oppression – have been too quick to assume that feminism and multiculturalism are both good things which are easily reconciled. I shall argue instead that there is considerable likelihood of tension between them – more precisely, between feminism and a multiculturalist commitment to group rights for minority cultures.[57]

She asks:

What should be done when the claims of minority cultures or religions clash with the norm of gender equality that is at least formally endorsed by liberal states (however much they continue to violate it in their practices)?[58]

Okin rightly points to the danger of accommodating minority religious and cultural claims without paying attention to the status of women within those minorities. She uses polygamy in France as one illustration: during the 1980s, in a concession to French Arab and African communities, the government allowed immigrant men to bring multiple wives into the country. Okin claims that women found living in polygamous relations even more intolerable in France than they had in their country of origin. She sees this as an instance of a liberal state abandoning its norms on gender equality as a concession to an illiberal minority. The result was that the women within that minority were denied the rights enjoyed by the majority of French women.

Okin views the control of women by men as one of the principal aims of most cultures. Western democracies, however, have moved further away from their patriarchal pasts than other types of society:

...I want to point out that this debate [on whether multiculturalism is bad for women] is taking place only because its participants live in liberal societies, whatever the many defects of these societies... In many countries, some of us

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[57] Okin, 1999a, p10.

[58] Okin, 1999a, p9.

would be in danger of being silenced, if not placed in physical peril, for expressing views such as we express here.[59]

This comment illustrates what is widely viewed as a flaw in Okin's argument, which is its conflation of all non-Western countries and communities, and insistence that women in Western liberal democracies are treated better than elsewhere in the world. Her lack of specificity implies a stark distinction between developed and oppressive states and communities. She asks '[w]hen a woman from a more patriarchal culture comes to the United States (or some other Western, basically liberal, state), why should she be less protected from male violence than other women are?'[60]

My research in the UK suggests that Okin is correct in identifying situations where minority women have not been given the same treatment or protection from violence as women from the majority culture; it is a common accusation against public bodies by minority women's NGO's (non-governmental organisations) in the UK that, out of misguided respect for cultural differences, they have failed to protect minoritized women. However, Okin implies that only non-Western societies are inherently patriarchal. She also fails to give sufficient credit to the long-standing efforts of minoritized women to combat oppressive practices and change their cultures from within. In one of her more controversial comments, she suggests that women living in 'patriarchal' cultures *might* be much better off if their culture of birth became extinct, although she subsequently denied favouring the extinguishing of cultures.[61] Okin has been widely read as arguing that minority women must take the path to modernity and abandon their oppressive cultural ties in favour of more progressive Western values and rights.

Like Okin, Doriane Lambelet Coleman identifies a conflict between cultural claims and gender equality. She focuses on uses of a 'cultural defence' in criminal cases where the victim – usually, although not always, female – does not receive justice because:

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[59] Okin, 1999b, p118.

[60] Okin, 1999a, p20.

[61] The implication that some cultures should 'become extinct' was particularly controversial and picked up by many of the writers in the edition. In her final response she argues that she is not in favour of 'extinguishing cultures' (Okin, 1999b, p117).

...the system effectively is choosing to adopt a different, discriminatory standard of criminality for immigrant defendants, and hence, a different and discriminatory level of protection for victims who are members of the culture in question... Thus, the use of cultural defences is anathema to another fundamental goal of the progressive agenda, namely the expansion of legal protections for some of the least powerful members of American society: women and children.[62]

While Coleman draws attention to a worrying trend, the strength of her analysis is also undermined by what Leti Volpp identifies as '[t]he presumption that the United States and its fictive unified culture is *per se* more progressive and more protective of women and children than the culture of Asian and African immigrants.'[63]

Moreover, like Okin, Coleman seems to overlook the activism of minoritized women, portraying them as passive victims of the men who control their cultures and positioning Western/liberal feminism in the role of saviour. Because some cultures are regarded as irredeemably patriarchal, minoritized women cannot hope to retain their cultural membership if they want gender equality. For Western women, in contrast, cultural attachment – in the sense of attachment to both the political culture of liberalism and the national culture – is seen as fully compatible with feminist values. This essentialises some cultures as oppressive, and some women as eternal victims.

The perceived dichotomy between liberated Western women and oppressed women elsewhere is evident in Okin's claim:

[M]ost families in such [Western] cultures, with the exception of some religious fundamentalists, do not communicate to their daughters that they are

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[62] Coleman, 1996, p1095. Coleman provides a number of cases of this 'liberal dilemma' including: rape as courtship or marriage-by-capture (in relation to Hmong communities from Laos); wife-beating and killing (Chinese-American communities); parent (mother)-child suicide (Japanese and Asian communities); and female genital mutilation (African cultures including Ethiopian and Nigerian communities living around Atlanta, Georgia). Her suggestions for resolving this dilemma relate to the judicial sphere and do not extend to recommending that some cultures should wither away, however she does conclude that the use of the cultural defence is unacceptable and states that 'multiculturalism should not be permitted either intentionally or incidentally to erode the progress we have made as a culture in protecting the rights of minorities, women, and children, or to reverse our relative success in elevating the rights of these groups to the level traditionally enjoyed by propertied men of European descent' (Coleman, 1996, p1166).

[63] Leti Volpp, 1996, p1604. Volpp identifies Coleman's article as falling into the category of 'backlash scholarship' in its support for 'United States ethnocentrism'.

of less value than boys, that their lives are to be confined to domesticity and service to men and children, and that their sexuality is of value only in marriage, in the service of men, and for reproductive ends.[64]

Okin says this is not true of many cultures, including those from which immigrants to Europe and Northern America originate. This is a claim that many would reject.[65] She fails to draw sufficient attention to the political, economic and sexual marginalisation experienced by women in Western societies, implying a hierarchy of gender oppression in which violence is the key measure. This ignores the fact that minoritized women may find racism or economic exploitation by members of the majority society equally or more oppressive than sexual violence within their own communities.

Martha Nussbaum's work is also relevant here, for while Nussbaum is not typically identified as a multicultural theorist, she classifies herself as a liberal and was one of the writers who responded to Okin's question 'Is multiculturalism bad for women?'[66] She has also written on the subject of female genital mutilation (FGM), one of the 'cultural practices' addressed in this thesis.[67] Nussbaum's ideas regarding religion are discussed in greater depth in chapter 7. She is mentioned here because she attempts to avoid some of the pitfalls discussed above, while still upholding a liberal universalism. Nussbaum rejects cultural relativist arguments, and like Okin, compares Western and non-Western countries, but she does so to make a more precise point: that female adult illiteracy is far lower in Togo, for example, where FGM is prevalent, than in the US, and that illiteracy is an impediment to independence that is likely to inhibit the ability to make free choices, for example, about consenting to genital mutilation.[68]

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[64] Okin, 1999a, p17.

[65] Bhabha argues that Okin doesn't recognise the levels of abuse of women in Western countries: 'The British civil liberty group Liberty would demur at Okin's description of the egalitarian and empowering "Western" domestic scene' (Bhabha, 1999, p80).

[66] Nussbaum identifies with 'political' rather than 'comprehensive' liberalism, using Rawls' terminology (Nussbaum, 1999a, p110).

[67] Nussbaum, 1999a and Nussbaum, 1999b, chapter 4 'Judging other cultures: The case of genital mutilation'.

[68] See also Nussbaum, 1999b and Nussbaum 2000. In each, she takes individual narratives – for example, in the former she describes the case of Fauziya Kassindja, a woman from Togo fleeing genital mutilation to the US – to argue for generally applicable principles.

Nussbaum also implicitly challenges the notion that certain 'practices' define minority cultures when she stresses the element of human agency: 'There is reason to think that the practice [of FGM] is kept alive above all by the excisers themselves, paramedical workers who enjoy both high income and high prestige in the community from their occupation'.[69] Although she self-identifies as a liberal feminist, she avoids the essentialist portrayals of culture that characterise some other liberal feminist works.

2.3 The rights of minorities within minorities

If some of the explicitly gendered theories of multiculturalism are problematic in reinforcing essentialist notions of both women and culture, a better approach may be provided by writers who focus on relations within as well as between groups.[70] Ayelet Shachar has designed a model whose objective is 'the reduction of injustice *between* groups, together with the enhancement of justice *within* them'.[71] Arguing that there has been too much 'detached discussion about the philosophical merits of multiculturalism',[72] she focuses on the way authority is divided in multicultural states, and identifies two existing models – secular absolutism and religious particularism. In the former, there is no state accommodation of minority culture. In the latter, the state grants religious and customary communities authority over their own affairs in the area of family law. Neither of these models provides the appropriate balance between the protection of vulnerable individual rights and the preservation of what she terms *nomoi* group culture.[73]

As an alternative, Shachar proposes a system of 'joint governance', the most attractive variant of which she describes as 'transformative accommodation'. In this model, both the *nomoi* group and the state 'vie for the support of their constituents'.[74] Authority is broken down along 'sub-matter lines'. For example, in

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[69] Nussbaum, 1999, p126.

[70] See Eisenberg and Spinner-Halev eds (2005) for a collection of papers focusing on conflict *within* minority groups.

[71] Shachar, 2001, p4.

[72] Shachar, 2001, p9.

[73] Shachar uses the term '*nomoi* communities' to describe primarily religiously defined groups of people with a common world view which extends to creating the law for that group (Shachar, 2001, p2 footnote).

[74] Shachar, 2001, p118.

family law, one might distinguish demarcation (the religious authorities' power to define the terms of marriage and divorce) from distribution (the state's control over the division of property on divorce). In this way, exclusive authority by one party is avoided. A second feature of the model is 'the establishment of clearly delineated choice options'.[75] 'In order for constituents to register their response to the competition between state and group, they must have clear options which allow them to choose between the jurisdiction of the state and the *nomoi* group'.[76] Then they can 'discipline' an authority by opting out of a specific area of jurisdiction in favour of that offered by another authority.

At points, what Shachar seems to suggest is a strategy for making vulnerable members of minority groups more powerful in terms of their ability to play off minority group leaders against state authorities and vice versa. If governments have been accused of giving minority cultural leaders licence to control 'their' women in exchange for support, then this could be a way of introducing vulnerable members of minorities, such as women, as a third group of players in the political arena.

Shachar claims to contribute something new to the debate in avoiding the 'either/or' thinking that dominates so much writing on multiculturalism – *either* the state *or* the group controls the affairs of the individual; individuals are first and foremost *either* citizens of the state *or* group members. She rightly criticises Kukathas' 'rigid conceptual opposition between the "Inside", minority group-controlled realm, and the "outside," state-controlled realm'.[77] And her suggestions for breaking authority down into 'sub-matters' so that no one party has a monopoly and providing choices between jurisdictions are constructive in their potential for practical application. But while her analysis of the problem recognises that individuals have 'manifold identities', these complexities are not evident in her own proposed model. Shachar criticises Okin's assumption of the 'innate-ness' of cultural identity, and says she overlooks:

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[75] Shachar, 2001, p122.

[76] Shachar, 2001, p122.

[77] Shachar, 2001, p69.

...arguments about the malleability of culture and the various political manifestations of identity that may dramatically affect the intra-group status of women. She also fails to address the fact that many religious and cultural traditions have been substantially altered over time – as a result, in part, of women's resistance and agency.[78]

However, Shachar herself articulates a clear perception of group boundaries and in some ways represents a 'strong' multiculturalism.[79] She outlines a 'multicultural triad' composed of the *nomoi* group (meaning the group's leaders), the state and the constituents of the *nomoi* group, each clearly demarcated and with a distinct agenda. But members of minority cultures also live and work in the wider society, pay taxes, use its services and hopefully feel some sense of ownership of the state – they should not only be the subject of negotiation between the state and *nomoi* group leaders. Shachar explicitly recognises this, yet her reference to '*nomoi* group's membership rules' gives the impression that identification with a cultural minority is similar to joining a political party or a private members club with a registration procedure and set of written rules.[80]

While Shachar's model of 'joint governance' includes dialogue, several writers have put dialogue at the centre of their proposals for reconciling inter- and intra-group interests.[81] Amy Gutmann outlines a 'deliberative universalism' based on 'the give and take of respectful argument' as a way of approaching fundamental moral conflicts, for example abortion.[82] She concludes that 'without deliberation, societies cannot justly resolve their fundamental moral conflicts over social justice'.[83] Similarly, Seyla Benhabib privileges a 'deliberative' model of democracy which 'focuses on [the] vital interaction between the formal institutions of liberal

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[78] Shachar, 2001, p65-66.

[79] Seyla Benhabib describes 'strong or mosaic multiculturalism', which she rejects, as 'the view that human groups and cultures are clearly delineated and identifiable entities that coexist, while maintaining firm boundaries, as would pieces of a mosaic' (Benhabib, 2002, p8).

[80] See, for example, Shachar, 2001, p45: 'A *nomoi* group's membership rules, encoded in family law, thus provide the bonds which connect the past to the future, by identifying who is considered part of the tradition'.

[81] The writers discussed in this section do not hold a common position but they are grouped together in taking a similar starting point and focusing on process rather than principles or outcomes.

[82] Gutmann, 1993, p198.

[83] 'Gutmann, 1993, p206.

democracies like legislatures, the courts, and the bureaucracy, and the unofficial processes of civil society as articulated through the media and social movements and associations.'[84] She identifies the symbolic role that women bear in the preservation of cultures, and their corresponding vulnerability to human rights abuse. For Benhabib, the solution is through multicultural dialogue.

Benhabib claims that even groups with very different beliefs are motivated to participate in democratic debate because their material interests overlap. She discusses how her model would apply to concrete situations like the French *affaire foulard* in which girls were excluded from state schools for wearing Islamic headscarves.[85] Listening to the girls themselves would have clarified what wearing a scarf meant to them: 'it would have been both more democratic and fairer had the school authorities not simply dictated the meaning of their act to these girls, and had the girls been given a public say in their interpretation of their own actions'.[86] She goes on:

> The larger French society needs to learn not to stigmatise and stereotype as 'backward and oppressed creatures' all those who wear what appears at first glance to be a religiously mandated piece of clothing; the girls themselves and their supporters, in the Muslim community and elsewhere, must learn to give a justification of their actions with 'good reasons in the public sphere'. In claiming respect and equal treatment for their religious beliefs, they have to clarify how they intend to treat the beliefs of others from different religions, and how, in effect, they would institutionalise the separation of religion and the state within Islamic tradition.[87]

Discourse is crucial for this (broad) group of writers. Carol Gould outlines its possible features:

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[84] Benhabib, 2002, p121.

[85] This began in 1989 when three Muslim schoolgirls were expelled from their state school in Creil, near Paris, for wearing Islamic headscarves. The issue of wearing 'ostentatious' religious symbols escalated, culminating in the passing of a law in February 2004 banning the wearing of all overt religious symbols from state schools. There were demonstrations against the law, in France and elsewhere.

[86] Benhabib, 2002, p118.

[87] Benhabib, 2002, p118.

They include reciprocal recognition by the speakers of each other as free and equal in participating in the discourse, and interchangeable in their dialogue roles; they aim at consensus that is rational, in the sense that they are all committed to the sway of the better argument. Such a rational discourse implies criteria of universalizability and impartiality.[88]

The value of these models is that they are based on people's common interests rather than their common identities. There are areas of mutual need for people sharing the same territory, for example the desirability of some type of educational provision. Within that broad area of interest, people will have very different preferences: some people will want their children to receive single-sex religious schooling, while others will believe equally strongly in secular co-education. But the fact that neither party can simple walk away from the debate altogether, because having no education system is not an option, means that there is a basis for bringing people with opposing views together to achieve a compromise through democratic debate. In ways that resonate with Rawls' distinction between 'political' and 'comprehensive' liberalism,[89] writers who focus on dialogue believe only in the need for a kind of 'universal grammar'.[90] Society's members need to agree only in so far as is necessary to achieve common goals in key areas of state provision.

The approaches discussed above have at least two advantages. They are practical strategies that aim to establish a political process rather than the kind of 'detached discussion' Shachar hopes to avoid. And by including members of minorities as equal participants in the debate, they are also respectful of minority cultural identities and claims.[91]

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[88] Gould, 1996, p172 (identifying the key features of Habermas's account of discourse).

[89] Rather than establishing a comprehensive set of morals, values or theory of the good as the basis for society, Rawls' preferred 'political liberalism' is based on citizens with different beliefs and conceptions of the good reaching agreement on the principles of fairness that are the basis of a well-ordered society (Rawls, 1993). See discussion of theoretical models in chapter 7.

[90] 'Deliberative universalists believe only in the moral equivalent of a universal grammar' (Gutmann, 1993, p206).

[91] 'By putting members of cultural communities at the center of debates and decision-making processes about the future of their cultural practices, we express formal respect and equal regard for them as citizens and as members of groups – surely a moral requirement of plural, liberal states' (Deveaux, 2000, p362).

However, there are problems. As Gould points out, difference becomes something to be 'gotten past' and the ultimate goal of consensus may lead to the suppression of differences that might endanger that goal.[92] I would add that political 'consensus' is rarely based on genuine agreement by all parties but more often on a clear winner, and losers who have no alternative but to accept the outcome.

This approach also privileges the public sphere as a neutral space in which citizens can come together for discussion on equal terms. Gould argues that the public sphere is often too narrowly defined and should be broadened to include more localized centres of activity.[93] From a feminist perspective, there are likely to be concerns about this privileging of the role of citizen within the public sphere as the arena in which socially significant debate takes place. This reinforces the public/private divide which feminists have challenged and threatens to exclude the private sphere – with which women are traditionally identified – from discourses about rights and equality. I return to this concern in chapter 7. There is also the danger that a focus on citizenship as the basis of civil engagement prevents asylum seekers, illegal immigrants, homeless people, prisoners and others from participation.

Iris Marion Young points out that the '... tendency to restrict democratic discussion to argument carries implicit cultural biases that can lead to exclusions in practice. The assumption that unity is either a starting point or goal of democratic discussion, moreover, may also have exclusionary consequences'.[94] She argues that the deliberative model has its roots in elitist institutions of the modern West.[95] It seems likely that those who are best at debating, who are socially and economically privileged, and who grew up in the political system will do best, while those who are marginalised or without access to information will fail to achieve their objectives. And an obvious problem with privileging dialogue is that many minoritized men and women will lack the language skills needed to debate as equals with members of the majority society. Like Gould, Young sees this tradition as representing difference as 'something to be transcended, because it is partial and

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[92] Gould, 1996, p172.

[93] Gould, 1996.

[94] Young, 1996, p122.

[95] '...the norms of deliberation are culturally specific and often operate as forms of power that silence or devalue the speech of some people' (Young, 1996, p123).

divisive'.[96] Young argues that difference should instead be viewed as a resource and that our understanding of communication in a democracy should be broadened to include 'greeting, rhetoric, and storytelling'.[97]

A further concern is that in a 'talk-centric' democracy it is highly relevant which individuals within the group are chosen as its representative. It is usually the state that decides whom to recognise, and in doing so it creates or strengthens existing power bases within minority cultures. When the state recognises the more conservative and patriarchal groups members as its representatives, as tends to be the case, the group's defining values and practices are confirmed as conservative and patriarchal ones. Some of the criticisms of Kukathas' theory apply here. Models based on dialogue tend to ignore the structural inequalities that prevent some individuals – women, gay and disabled people and other marginalised groups – from participating on an equal basis.

2.4 Alternative approaches

From a gender perspective, the writers discussed in this chapter all make a significant contribution in putting the rights of women and other marginalised individuals at the centre of their arguments. However in failing to challenge the inevitability of conflicting interests based on one-dimensional identities, these models are ultimately pessimistic. The best that can be hoped for is a balance between intervention and non-intervention, or some other form of compromise.

Building on the work of a further group of writers – Uma Narayan, Avtar Brah and Leti Volpp – to deconstruct the concept of culture puts us in a better position to resolve the tensions between group and individual – in particular women's – rights.[98] By analysing the way the term 'culture' is deployed, it becomes clear how it is used to reinforce artificial distinctions between groups of individuals.

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[96] Young, 1996, p126.

[97] Young, 1996, p129.

[98] Although I focus on these writers, they are by no means the only ones to have argued against current deployments of 'culture'. Other significant contributions include Grewal and Kaplan (eds) 1994 and Mohanty, 1991, while the work of writers identified with a poststructural and/or postcolonial perspective, such as Judith Butler and Gayatri Spivak, has been very important in challenging cultural hegemonies. Nancy Fraser has discussed 'the problem of reification'; the way struggles for recognition today tend 'to encourage separatism, intolerance and chauvinism, patriarchalism and authoritarianism' (Fraser, 2000, p107-120). Benhabib, although included in the

In this section, I suggest that prevalent portrayals and understandings of culture are based on a number of problematic assumptions:[99] that cultural units are discrete; that they are unchanging; that culture is determining, but only for some groups of people and in a way that overlooks human agency; and finally, that the symbolic role women have in the construction and reproduction of cultural identities, while recognised by feminist writers, has not been more widely acknowledged.

First, cultures are generally understood as clearly defined units separating groups of people with shared beliefs, values and lifestyles from other units. References to 'the Muslim community' in the UK, for example, suggest that this is a single community of people with shared interests, beliefs and behaviours – and that to consult a representative of the Muslim community is therefore to consult with every Muslim in the UK. Narayan criticises this: 'We need to move away from a picture of national and cultural contexts as sealed rooms, impervious to change, with a homogenous space "inside" them, inhabited by "authentic insiders" who all share a uniform and consistent account of their institutions and values'.[100]

Similarly, Avtar Brah points out:

[w]e would be in a better position to address the need for mutual respect for cultural difference without recourse to essentialism if cultures were to be conceived less in terms of reified artefacts and rather more as processes. This may also circumvent the issue of cultural relativism. If cultures are understood as processes instead of fixed products, it would be possible to disapprove of a

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section on dialogue because she privileges a deliberative model of democracy, strongly contests homogenising conceptions of culture and identity (Benhabib, 2002, chapter 1 'On The Use and Abuse of Culture').

[99] By prevalent, I refer to a range of discourses, including academic, political, media and public. I realise the risk of making unsubstantiated generalisations: in this chapter, the examples I give will relate mainly to theoretical work; in the case study chapters that follow I will show in concrete terms how such problematic definitions are articulated by policymakers, the media and others in the UK.

[100] Narayan, 1997, p33. Benhabib says 'the multiculturalist resistance to seeing cultures as internally riven and contested carries over to visions of selves, who are then construed as equally unified and harmonious beings with a unique cultural centre. By contrast, I view individuality as the unique and fragile achievement of selves in weaving together conflicting narratives and allegiances into a unique life history' (Benhabib, 2002, p16).

particular cultural practice from a feminist standpoint without constructing a whole cultural groups as being inherently such and such.[101]

Moreover, while the set of values that define Western societies are often assumed to be the more progressive and egalitarian ones, those seen as defining non-Western cultures are most likely to be the views of its more conservative and illiberal members. This essentialism produces a polarised world view in which Western democracies are typified by their liberal values, regardless of current and past realities, and non-Western countries and minority communities are characterised by what are perceived as their primitive and barbaric attitudes and practices – regardless of the existence of progressive voices within those countries and cultures.[102]

Cultural portrayals are essentialist in another way: the set of practices and preferences that adds up to 'culture' is perceived as unchanging. Narayan deconstructs this kind of reification in relation to Mary Daly's portrayal of *sati* in *Gyn/Ecology*.[103] In contrast to her discussion of European witch-burning, Daly gives no context to show that *sati* is a practice specific to time and place and unknown to most Indian communities: instead '...Indian women seem to go up in flames – on the funeral pyres of their husbands and in the "kitchen accidents" that are the characteristic mode of dowry-murder – without historical pause'.[104] *Sati* has recently been defended by the Hindu right as part of an anti-Muslim agenda, but the casual

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[101] Brah, 1991, p174. Elsewhere, she expands: '[c]ulture is the play of signifying practices; the idiom in which social meaning is constituted, appropriated, contested and transformed; the space where the entanglement of subjectivity, identity and politics is performed. Culture is essentially process, but this does not mean that we cannot talk about cultural artefacts, such as those understood in terms of customs, traditions and values. Rather the emphasis on process draws attention to the *reiterative performance* constitutive of that which is constructed as "custom", "tradition" or "value". What is at issue is how *this* cultural practice and not *that* one comes to be represented as "custom"? Why is that that one set of ethics and not another achieves emblematic significance as embodying the 'values' *par excellence* of a given cultural formation? What is it that renders certain inherited narratives, and not others, the privileged icons of "tradition"? Why is it that, under given circumstances, this and not that "tradition" is invoked and valorised?' (Brah, 1996, p234).

[102] Narayan argues that 'This frequently reiterated contrast between "Western" and "Non-western" cultures was a politically motivated colonial construction....Thus liberty and equality could be represented as paradigmatic "Western values," hallmarks of its civilizational superiority, at the very moment when Western nations were engaged in slavery, colonization, expropriation, and the denial of liberty and equality not only to the colonized but to large segments of Western subjects, including women' (Narayan, 2000, p83-84).

[103] Daly, 1978.

[104] Narayan, 1997, p48.

reference to it as shorthand to describe the barbarity of Indian culture does not show how a 'practice' is often deployed to serve a specific political agenda.[105]

Anthropological discourse has, in the past, contributed to this.[106] The language of 'rites', 'traditions' and 'practices', all frozen in their original form, serves to distance some groups from the developed world.[107] This allows us to forget that cultures and cultural identities are human constructs; that the building blocks of society are not natural but artificial, and this is precisely why they do change over time.[108]

Not only are cultures human constructs, they are often constructed to serve particular agendas. Narayan has pinpointed the role of 19th Century power struggles between British colonial rulers and Indian elites in defining *sati* as a 'Central Indian Tradition', ignoring its class and geographically specific nature. This kind of 'selective labelling' is employed by many different power elites in different contexts.[109] For colonial regimes, identifying the colonised as barbaric on the basis of its central practices was useful in legitimizing authority; for nationalists, cultural practices helped establish an oppositional identity in a process that Shachar calls 'reactive culturalism'.[110] A parallel can be drawn today with the way that European politicians who have shown little previous interest in gender equality, have taken up

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[105] Narayan, 1997: Narayan discusses the reasons for the revival of *sati* as an issue/practice. She also points out that colonialist criticisms of sati were part of the justification for Britain's 'civilizing' mission.

[106] This is no longer the case with anthropologists such as Henrietta Moore identifying an earlier tendency to 'over-dichotomize the distinction between socio-centric and ego-centric societies' (Moore, 2007, p27). See also Kuper, who argues that '...to understand culture, we must first deconstruct it. Religious beliefs, rituals, knowledge, moral values, the arts, rhetorical genres, and so on should be separated out from each other rather than bound together into a single bundle labelled culture, or collective consciousness, or superstructure, or discourse' (Kuper, 1999, p245).

[107] 'Another premise that underlies Coleman's article is that the culture of non-European immigrants is bound by anthropological constructions such as "rituals," "customs," "native practices" and "traditions." The freezing of non-European culture in such forms as "custom" or "practice" emerges from colonialist and imperialist discourse which opposes tradition (East) and modernity (West), and which associates East with ancient ritual, despotism, and barbarity, and West with progress, democracy and enlightenment' (Volpp, 1996, p1588-89).

[108] See also Narayan: 'The portrayal of Third-World contexts as "places without History" proceeds by depicting them as places governed by Unchanging Religions Traditions, whose very lack of susceptibility to change appears as a key symptom of the absence of "History" (Narayan, 1997, p53).

[109] See Narayan, 1998, pages 86-90.

[110] Shachar, 2001, p11. See also Narayan, 1998.

the rights of minority women as an issue in order to bolster an anti-immigration agenda.[111]

One of the problems, however, is that essentialist notions of culture are often also deployed by progressive activists within minorities.[112] This has particular bearing on the concerns of this thesis. When those directly involved in tackling abuses such as 'honour' violence or female genital mutilation find it expedient to condemn them as culturally backward practices, and argue that the perpetrators need to abandon them in favour of liberal democratic values, it is difficult for others to argue against such strategies. I return to this problem in the concluding chapter 8.

The further point to stress is the asymmetrical deployment of cultural definitions, noted earlier in reference to Volpp's comparison of portrayals of early marriages in America. Practices that are found to be problematic are typically identified as 'cultural' only where they occur in minority communities or non-Western societies. 'Date-rape', for example, is not perceived as characteristic of British culture in the way that forced marriage typifies Asian communities.[113] Crime rates and other phenomena identified with the white population are commonly analysed in terms of class, region and gender; but this is less likely when a practice is identified with a minority culture, where the culture in question is more commonly seen as having a uniform presence across region and class. This is misleading, as the chapter on forced marriage indicates: research suggests very different attitudes to marriage between British Bangladeshis living in London's East End and British Pakistanis living in Bradford.

For non-Western societies and communities, 'culture' is attributed with a driving force in motivating behaviour.[114] When members of minorities commit crimes, their crimes are identified with the culture rather than the individual who commits them. And while citizens in the West are represented as rational individuals

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[111] See Dustin, 2006, p1 and 16.

[112] Avtah Brah also addresses this question: 'Although I have argued against essentialism, it is not easy to deal with this problem. In their need to create new political identities, dominated groups will often appeal to bonds of common cultural experienced in order to mobilize their constituency. In so doing they may assert a seemingly essentialist difference' (Brah, 1992, p144).

[113] 'For communities of color, a specific individual act is assumed to be the product of a group identity and further, is used to define the group' (Volpp, 2000, p95).

[114] '...culture for communities of color is a fixed, monolithic essence that directs the actions of community members... Hegemonic culture is either experienced as invisible or is characterized by hybridity, fluidity and complexity' (Volpp, 2000, p94).

who control their lives, choosing their jobs, marriage partners, faith (or lack of

faith), system of education, and so on, those associated with the non-West or

minority culture are represented as having these 'choices' imposed on them by their

cultural identity.[115] This not only reduces the degree of agency in minority groups, it

also attributes too much agency to majority ones, ignoring the social, economic,

psychological and other constraints that all individuals live with.

These stereotypes of culture are not gender-neutral. As many feminist theorists

have pointed out, they depend on a symbolic relationship between women and

culture.[116] In their role as mothers, women are responsible for the physical survival

of the cultural group. Their traditional identification with family and the private

sphere means it is commonly women who bear responsibility for the continuity of

cultural values. Women are also often the figurative representatives of national

identity – Mother Russia or the French national emblem Marianne.

Culture, particularly in the context of minority culture as portrayed in Western

discourse, is at least partly defined by practices associated with women:

> Only certain problems receive coverage or generate concern, namely those
>
> used to illustrate the alien and bizarre oppression of women of color; for
>
> example *sati*, dowry death, veiling, female genital surgeries, female
>
> infanticide, marriage by capture, purdah, polygamy, footbinding and arranged
>
> marriages.[117]

In the case of 'multicultural Britain', there have of course been debates about the

slaughtering practices of *halal* meat, and legislation exempting Sikhs from

regulations regarding the wearing of safety helmets. But the multicultural issues that

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[115] 'Western subjects are defined by their abilities to make choices, in contrast to Third world subjects, who are defined by their group-based determinism' (Volpp, 2001, p1192).

[116] '...the role of women as ideological reproducers is very often related to women being seen as the "cultural carriers" of the ethnic group ...Women do not only teach and transfer the cultural and ideological traditions of ethnic and national groups. Very often they constitute their actual symbolic figuration. The nation as a loved woman in danger or as a mother who lost her sons in battles is a frequent part of the particular nationalist discourse in national liberation struggles or other forms of national conflicts when men are called to fight "for the sake of our women and children" or to "defend their honour". Often the distinction between one ethnic group and another is constituted centrally by the sexual behaviour of women' (Yuval-Davis and Anthias eds. 1989, p9-10). See also Saghal and Yuval Davis eds. 1992.

[117] Volpp, 2001, p1208. See also Benhabib, 2002, pp84-84; and Yuval-Davis and Anthias eds. 1989.

tended to generate media coverage in later years were 'honour' crimes, and forced marriage – both of which impact most on women and girls. The practices taken as defining Eastern or 'Third World' countries are similarly gender-specific: *sati,* *dowry,* and bride-burning in India; China's one-child policy; Saudi Arabia's denial of the franchise to women; the *Hudood* Ordinance in Pakistan – all are seen as epitomising these countries' reprehensible record on human rights. The controversy over secularism in France today has been almost entirely focused on the right of girls to wear Islamic dress to school, even though the law introduced in 2004 prohibits all 'conspicuous' religious symbols in state schools. The cases in North America that have become *causes célèbres* concern women – whether as victims of their culture or, in a few cases, as criminals because of their culture. Gender practices are how cultures are differentiated and the 'other' is identified.[118]

This thesis does not attempt to identify the reasons for this;[119] and I not deny the very real problems regarding the treatment of women and girls within cultural minorities and in non-Western countries. But the identification of practices as 'cultural' without an analysis of who identifies them in this way and for what purpose threatens to objectify women from minority cultures, or put them in the impossible position of having to choose between gender equality and a cultural identity. In her discussion of the Shah Bano case in India, Coomaraswamy says '[I]n the end Shah Bano had no rights. She became a metaphor in the political discourse of communalism which has shaped the violent history of post-colonial South Asia'.[120] Analogies can be drawn with the portrayal of Asian victims of forced marriage in the UK today as victims of their culture.

2.5 Conclusion

This chapter began with the supposition that theories beginning from gender or from the perspective of minorities within minorities were likely to be more satisfactory

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[118] 'The "proper" behaviour of women is used to signify the difference between those who belong and those who do not' (Saghal and Yuval Davis, 1992, p8). Mohanty is a key reference for this argument: '...it is only insofar as "woman/Women" and "the East" are defined as Others, or as peripheral, that (Western) Man/Humanism can represent him/itself as the centre. It is not the center that determines the periphery, but the periphery that, in its boundedness, determines the center' (Mohanty, 1991, p56).

[119] Writers who have addressed this question include Mohanty, 1991 and Shachar, 2000. For specific examples of women's deployment by Hindu nationalists as symbols of tradition, see Basu, 1999.

[120] Coomaraswamy, 1994, p54. See chapter 7 (7.4) for discussion of the Shah Bano case.

than mainstream multiculturalism in addressing gender concerns. They are indeed, but only to a degree, for some of the feminist literature remains unsatisfactory in failing to recognise the diversity within groups. This risks stigmatizing cultural minorities in ways that reinforce existing inequalities and can alienate the women most concerned. Much of the existing theory starts one stage into the debate, taking it for granted that people belong to clearly defined groups with competing interests. A better starting point is to deconstruct prevalent understandings of culture along the lines suggested by Narayan, Brah, and Volpp. Rejecting a monolithic view of culture and recognising that people have overlapping and shifting identities allows us to move away from an inevitable conflict between cultural and gender interests, and hopefully from the choice between either a cultural identity or one's rights as an individual and a woman. This approach underpins the remainder of the thesis.

Chapter 3. Multiculturalism in the UK

3.1 Introduction

The focus of this thesis is culture – as it relates to gender – and not 'race', racism or immigration. However, in order to map the development of multiculturalist policies and the extent to which they have included gender concerns, it is necessary to start with an overview of immigration law and policies on 'race', as these have been the means used to introduce measures affecting women in minority ethnic communities during the past sixty years. Moreover, for much of the period there was little discussion of 'culture' by government and the media. It was through policies concerning 'race' and immigration that black and Asian people were problematised, either as victims of racism or as the perpetrators of unwelcome immigration. Some knowledge of this context makes it possible to understand current debates about the cultural 'practices' immigrants are assumed to have imported with them, and to go on to explore their gendered dimensions.

The multicultural theories discussed in chapter 2 do not translate directly into the British experience. Typically, the multicultural paradigm is a liberal-democratic state that contains a discrete religious- or ethnically-defined community, many of whose members have explicitly chosen to join that community, for example, the Amish. Tensions arise because the group wants or has no choice but to live within the wider state framework, but seeks to operate as a kind of mini-society with its own laws and with as little interference from the majority society and state as possible.

This is not the situation in the UK, where minorities do not constitute a small, geographically bounded community. Rather, they are dispersed throughout the country but with concentrations in several urban areas. And in the case studies that follow, the problem is not one of unacceptable practices that the majority condemns but the minority claims. On the whole, forced marriage, 'honour' killings and female genital mutilation/cutting are publicly condemned in the UK by majority and minority representatives alike. The problem is how to address these effectively without reinforcing cultural stereotypes.

This chapter falls into two parts. Part one begins with an overview of immigration policy since 1945 and then identifies different phases of 'race relations' policies: assimilation, integration, multiculturalism, and finally the reaction against

multiculturalism and preoccupation with 'community cohesion'. During this period, a focus on 'race' was replaced by an emphasis on the cultural and religious identity of minorities. The second part considers the gendered dimensions of race and immigration policies but only as far as 1997, setting the scene for the following three chapters, which identify the more visible role gender concerns played in the period 1997-2007 under the New Labour government.

An appendix of relevant legislation accompanies the thesis.

3.2 Immigration and race relations

3.2.1 Immigration policies

Policies and legislation affecting minority ethnic communities before 1997 can be broken down broadly into immigration controls and race relations initiatives. This corresponds to the two prevailing political imperatives of the period: restricting the number of (non-white) people entering the UK; and integrating those who were permitted to enter and settle.

Legislation on immigration and race is a relatively recent phenomenon, most of it dating back only as far as the period after the Second World War, when people from the Caribbean were encouraged to come to the UK to meet the need for labour by filling low-paid positions in the health service, transport system and manufacturing.[121] Up to the early 1960s, the entry right of The UK's colonial and Commonwealth subjects was accepted, but the 1960s saw the beginning of immigration controls, with the 1962 and 1968 Commonwealth Immigrants Act placing restrictions on primary migration.[122] The 1971 Immigration Act contained further measures denying black members of the Commonwealth the right to settle in the UK.[123] In 1972, the Ugandan government announced the expulsion of 50,000

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[121] Modood, Berthoud, et al, 1997; Anwar et al 2000.

[122] Hansen 2000, p251; Alibhai-Brown, 1999. NB 'Primary' refers to new immigrants entering the country in their own right; 'secondary' describes spouses, children and relatives joining family members already in the country. See also Hansen, 2000.

[123] 'New terms of "Patrial" and "non-Patrial" were introduced in the 1971 Act. These differentiated between Citizens of the UK and Colonies who were white and those who were not. Patrials had the absolute right of entry, non-Patrials were subject to immigration control. The direct link of descent by blood with the UK became the essential requirement for entry. Most non-whites could not meet this

Asians, most of whom had British passports. Sections of the British press and some local authorities put pressure on the British government to prevent a 'flood' of Ugandan refugees: in Leicester and Ealing, local authorities placed adverts in the media discouraging Ugandan Asians from moving to their areas.[124] The UK government accepted the exiles, after first asking other countries to share the 'burden'. It was subsequently recognised that this was a group of people with a great deal to contribute to British society and the economy, but the initial portrayal of the 'crisis' suggested that the UK must protect itself from 'swamping' by immigrants, setting a pattern for similar 'crises' in the future.

In the 1980s and 1990s, restrictive immigration controls increasingly focused on asylum seekers and refugees, and partners and relatives of people already resident in the UK (family reunion). Despite opposing Conservative measures when in opposition, on its election in 1997, New Labour also stressed the need for a 'strong' immigration policy. Legislation continued the trend of viewing asylum as an illegitimate means of entry to the UK, rather than an ethical and legal obligation under international law. Although it repealed the hated Primary Purpose Rule (discussed in Section 3.3 below), the government left most other controls in place and introduced further restrictions in legislation on immigration and asylum in 1999, 2002 and 2006. A new preoccupation with combating terrorism was reflected in a series of laws that many perceived as stigmatising Muslim communities and undermining civil liberties.[125]

The impact of European treaties and regulations should also be recognised. Britain's membership of the European Union (EU) has meant engagement with the movement towards 'fortress Europe' and coordination between member states of border controls and measures relating to asylum. European law has also acted as the catalyst for some of the progressive anti-discrimination and human rights measures in the UK, including the Human Rights Act and new equality laws (see chapter 7).

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requirement' ('The ever downward spiral' at National Coalition of Anti-Deportation Campaigns (NCADC), news archive, Newszine Number 18, 2000, NCADC.org.uk).

[124] Alibhai-Brown, 1999.

[125] Including The Prevention of Terrorism Act (2005) and the Terrorism Act (2006).

3.2.2 Assimilation

In the early years of mass immigration it was assumed that new arrivals would be easily assimilated into mainstream society.[126] Immigrants would give up the distinctive aspects of their culture in favour of British values and traditions. They would be absorbed into the mainstream to the point where they no longer stood out. Assimilation was believed to be in everyone's interests: it meant that black and white Britons would be treated equally – in a 'colour-blind' sense – under the law, and by losing the characteristics that differentiated them, the new immigrants would find it easier to fit in, and find work and housing. The erosion of cultural differences was also seen as necessary for social cohesion. Assimilation was also politically uncontroversial in that it made little or no demands on the majority population in terms of a change in attitudes or values.[127]

Assimilation was less a defined policy than the absence of one. Attitudes towards the new arrivals were ambivalent, with public opinion ranging from hostility towards black immigration to a sense of obligation to Commonwealth citizens.[128] There was not at this time the conviction that no party could afford to be seen to be 'weak' on immigration – as was later the case.

While politicians today are often rightly accused of cynicism on questions of 'race', the governments of the 1950s and 60s were perhaps guilty of naivety in failing to anticipate that a policy for a newly multicultural society might mean more than just the provision of English lessons. The fact that new immigrants experienced racism, particularly in employment and the provision of housing, is well documented, yet it was not until 1965 that the first Race Relations Act was passed, to be followed by further legislation over the decade that followed.[129]

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[126] See Poulter, 1998.

[127] See chapter 4 of *The Swann Report* for a description of 'the assimilationist phase' (Department of Education and Science, 1985).

[128] Alibhai-Brown, 1999, p48-49.

[129] 1965 saw the passing of the first Race Relations Act, which created the Race Relations Board. In 1966, Section 11 of the Local Government Act gave local authorities funding to provide for the specific needs of their ethnic minority populations, for example, English language tuition for children. The Race Relations Act of 1968 made discrimination in housing, employment and service provision unlawful, and set up the Community Relations Commission to promote good race relations. The 1976 Race Relations Act introduced the concept of 'indirect discrimination'. The Commission for Racial Equality was established, replacing the Race Relations Board, to promote racial equality and take action against discrimination.

3.2.3 Integration

While the first wave of immigrants from the Caribbean shared a language and often a religion with white British society, from the mid-60s there were an increasing number of immigrants from the Indian subcontinent – Muslims, Hindus and Sikhs – whose lifestyle was more visibly different to that of white Britons.[130] It was from this date that there was a shift towards a more pluralist – initially called integrationist – position, marked by the then Home Secretary Roy Jenkins's rejection of the US idea of a cultural melting pot: 'I define integration, therefore, not as a flattening process of assimilation, but as equal opportunity, coupled with cultural diversity in an atmosphere of mutual tolerance'.[131]

Cultural pluralism or integration involved more initiative on the part of the state or the host community than assimilation, but remained a reactive position. The two Race Relations Acts of the Sixties and Seventies contained measures against direct and indirect discrimination, but it was not until the 1980s that equal opportunities policies and training became the norm in local authority and voluntary organisations. It was only with the Race Relations (Amendment) Act of 2000 that a positive duty to promote equality was established. In the meantime, recognition of minority identity was limited to matters of food and dress, with legislation exempting Jews and Muslims from general requirements on slaughtering animals and exempting Sikhs from the requirement to wear a crash-helmet (to accommodate their turbans).

3.2.4 Multiculturalism

As a description of policy, multiculturalism first emerged in relation to education. In the 1970s, assimilationist language was replaced by an emphasis on 'integration' and then on 'multiculturalism' or what was known as 'Multi-racial education' (MRE).[132] This phase marked a move from equality of treatment to equality based on need:

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[130] Poulter, 1998.

[131] Jenkins, 1967.

[132] Bleich, 1999; Department of Education and Science, 1985.

Thus, schools with ethnic minority pupils should regard any particular educational needs which these pupils may have, as a result of their cultural, religious or linguistic background, as essentially no different from the educational needs which any child may have and which they therefore have a responsibility to meet.[133]

The multicultural approach, as expressed in educational policy in the 80s, was seen as soft and ineffectual by many, to the extent that there was a debate between 'multiculturalists' and 'anti-racists' in the educational literature of the time which eventually spread more widely.[134]

Multiculturalists were represented as naively believing that racism could be eradicated simply by teaching children awareness of different cultures; and anti-racists pointed to the structural and institutional nature of racism and viewed a focus on cultural difference as an evasion of the main problem. But the antiracists failed to take on board differences other than 'race', ignoring the interaction of 'race' with religion, gender and sexuality. Moreover, the focus on racism tended to promote a focus on discrimination against African-Caribbean communities, which had the effect of portraying a single black community and single experience of racism.

Typical of the tensions of this period was the debate over the use of the word 'black'. Anti-racists used it politically to define any victim of racism – so one would find the apparent absurdity of white Irish people identifying themselves as 'black'. This may have been expedient in campaigning terms but it led to a homogenized understanding of racism. And while some Asians did and still do describe themselves as black, many felt that their specific experiences were eclipsed by such an all-encompassing category.[135]

The Swann Report: Education for All, published by the Department for Education and Science in 1985, characterised a wider trend at this time. Developing from a concern with the educational underachievement of West Indian children, the

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[133] Department of Education and Science, 1985.

[134] May 1999; Hesse, 2000, p7; Brah, 1996, p230.

[135] Modood describes how inadequate a simplistic 'racial dualism' proved to be at the time of the publication of Salman Rushdie's *The Satanic Verses* when '[m]uslims neither looked to nor received any form of "black" solidarity and many in "black" politics dismissed Muslim anger as, in the words of Paul Boateng MP., having nothing to do with "the black discourse"...' (Modood, 1992, p29). See also Brah, 1992.

report eventually encompassed the educational needs of all ethnic minority children, and finished by devoting far more space to issues relating to Asian communities, such as the demand for separate schools. This was symptomatic of a wider pattern: cultural issues relating to Asian communities were prioritised alongside or instead of 'race' issues identified with British African-Caribbeans.

The report exemplified the oversimplified nature of the multicultural approach to education: communities were homogenised, children should be taught about these different and discrete cultures, and knowledge of differences would lead to racial harmony.[136] It was a version of the 'cultural supermarket' school of multicultural politics still evident today, in which difference equates to exotic food and dress and is the cause for endless celebration.

Multiculturalism was problematised from another perspective, one more relevant to this thesis. Black and Asian feminists saw it as privileging patriarchal leaders of minority communities and empowering them in certain areas – specifically relating to the family – in ways that disadvantaged women:

> Multiculturalism …is based on an assumption – not always explicit – that minorities can be given limited autonomy over internal 'community' affairs, such as religious observance, dress, food, and other supposedly 'non-political' matters, including the social control of women, without their presence offering any major challenge to the basic framework of social, economic and political relations in society.[137]

This criticism has been most clearly articulated by Southall Black Sisters:

> They [community leaders] often act as gatekeepers between the community and wider society, and determine what intervention for outside is acceptable. The State treats minority communities as homogeneous entities with no power divisions within them, ignoring the voice of women and other

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[136] This was particularly evident in the curriculum recommendations: cultures should be described in their own terms, not compared with euro-centric cultures and 'all children should be encouraged to see the cultural diversity of our society in a positive light' (Department of Education and Science, 1985).

[137] Ali,1998. See also Sahgal, 2004, p51.

powerless sections. In exchange, political parties and politicians get their votes and the State is rewarded with 'good community or race relations'.[138]

Under the Conservative governments of Margaret Thatcher and John Major between 1979 and 1997, multiculturalism was most evident in the development of equal opportunities policies on race and gender in local government and the voluntary sector.[139]

3.2.5 Community cohesion

Multiculturalism remained the unchallenged description of British society in the early years of New Labour, although still with little theoretical underpinning. However, New Labour was more concerned with the common values that it believed to be the basis for social cohesion. Speaking in 1997, the then opposition leader, Tony Blair, said:

> My vision is of a Britain which is genuinely 'one nation' where shared
> values of social justice, tolerance of difference and liberty from oppression
> unite us all. I am passionately committed to creating a society where every
> individual, regardless of colour, creed or race, is afforded the same
> opportunity and respect for his or her neighbour. That means a society where
> Jews, Muslims, Hindus and Christians are free to worship, where our
> expectations of black and Asian children are high and where no-one fears
> attack for reason of the colour of their skin or background.[140]

The reference to 'one nation' and 'shared values' was significant, and this concern with the common values of British society characterised New Labour throughout its period of office. Following unrest in the Northern English towns of Bradford, Burnley and Oldham in the summer of 2001, in which white and Asian communities clashed, the government-commissioned *Cantle Report* suggested that segregated

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[138] Southall Black Sisters, 2001, p9.

[139] Hesse, 2000.

[140] Tony Blair, then opposition leader, speaking at an Anne Frank exhibition on 29 January 1997.

communities were undermining social cohesion.[141] The report was highly influential in the development of a community cohesion agenda and the creation of a Community Cohesion Unit in the Home Office.

The focus on cohesion continued through to 2007, with the creation of a new government Department for Communities and Local Government.[142] The Department was the sponsor for the Commission for Equality and Human Rights established in Autumn 2007. The Commission is responsible for equality and human rights, but also for promoting 'good relations' between groups and individuals in society. A Commission on Integration and Cohesion, also under the Department for Communities and Local government, was set up in 2006 'to explore how different communities and places in England are getting along, and what more might be done to bring people together'.[143]

Under David Blunkett, Home Secretary from 2001 to 2004, cohesion concerns took the form of focusing on citizenship and how to engender a sense of 'Britishness' in minorities as well as majorities. Proficiency in English language and citizenship classes and ceremonies were the concrete means of doing this.[144] In terms of the values or principles that might be binding for British citizens, it proved more difficult to find something uniquely 'British': the Prime Minister, in a speech on 'The Duty to Integrate: Shared British Values' in December 2006, stated that:

> ... when it comes to our essential values – belief in democracy, the rule of
> law, tolerance, equal treatment for all, respect for this country and its shared

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[141] Home Office, 2001a, (*the Cantle Report*), p33.

[142] The Department replaced the Office of the Deputy Prime Minister, which had been responsible for housing and local government. The new Communities department's remit included community cohesion but also areas of responsibility transferred from the Home Office and the Department for Trade and Industry (where the Women and Equality Unit had been located before it was moved to the Department for Communities).

[143] The Commission was an independent advisory body chaired by Darra Singh, Chief Executive of Ealing Council. It published its final report in July 2007. At the time of writing, the Government had still to respond to the report (www.integrationandcohesion.org.uk).

[144] Those applying for British citizenship or indefinite leave to remain in the UK needed to demonstrate their 'knowledge of life in the UK'. There were two ways of doing this: 'by taking the Life in the UK Test or by taking combined English for Speakers of Other Languages (ESOL) and citizenship classes' (www.lifeintheuktest.gov.uk).

heritage – then that is where we come together, it is what we hold in common; it is what gives us the right to call ourselves British.[145]

There is nothing here that is specific to Britain as opposed to any other Western European country and the 'shared heritage' is problematic in, for many, being a history of exploitation.[146] Blair went on to say:

> Our tolerance is part of what makes Britain, Britain. So conform to it; or don't come here. We don't want the hate-mongers, whatever their race, religion or creed. If you come here lawfully, we welcome you. If you are permitted to stay here permanently, you become an equal member of our community and become one of us.

This may not seem a particularly helpful contribution to community cohesion, implying as it does that some members of minorities seek to undermine the rule of law because of their religious and ethnic affiliations, rather than simply as criminal individuals.

Blair's speech of December 2006 was also significant in claiming to defend multiculturalism – though clearly not the multiculturalism of the 1980s. He asserted that we should not 'dispense with multicultural Britain' but continue to celebrate it while also establishing our shared boundaries as a society. However, his emphasis on integration suggested a return to some of the characteristics of an assimilationist policy, with manifestations of diversity limited to saris and samosas.

His reference to multiculturalism followed attacks on the ideology from several quarters. In the early 21st Century, the view that multiculturalism as a policy model was not working took hold across Western European countries.[147] In the UK, it was – perhaps surprisingly – the Chair of the Commission for Racial Equality who questioned the concept in a speech widely interpreted as arguing for

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[145] Tony Blair, 8 December 2006, available at http://www.number10.gov.uk/output/Page10563.asp (accessed 18 January 2007).

[146] Klug, 2002, p27-8. See also Joppke's discussion of the movement against multiculturalism back to 'the discarded notions of universal citizenship and state neutrality' (2004, p238).

[147] See Dustin, 2006, p3.

the end of multiculturalism.[148] The speech and his further comments suggested that multiculturalism could mean different communities sharing the same space but leading entirely separate lives. It led to much media debate on the topic.[149]

Several phenomena contributed to this questioning of multiculturalism: the fallout of American's 'war on terrorism' in terms of increasing Islamophobia[150] and the 'disturbances' in the north of England during the summer of 2001 are two of the more obvious, leading to a perceived need to make Britain's Muslim community feel part of wider British society, while at the same time stamping out 'rogue' fundamentalist or terrorist elements within that community threatening the project. There was an increasing belief that diversity is not an inherently good thing, in contrast to the multiculturalism of the 1980s. But there was also recognition that, after forty years of equality legislation, racism and racial violence persisted and statistics showed continuing inequality in terms of employment, housing, health and education according to ethnic origin.[151]

Despite sometimes inflammatory remarks by senior government figures, there were significant anti-discriminatory measures under New Labour that enhanced the rights of marginalised individuals and groups. Anti-discrimination law was extended, for example, to provide new or greater protection on the grounds of gender, race, disability, age, sexual orientation and religion or belief; and a 'cross-strand' approach to equality emerged, most obviously in plans for the creation of an overarching Commission for Equality and Human Rights and harmonised equality law.[152] New measures to support families were introduced, and a Women and Work Commission established to identify the causes of the

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[148] See 'Race chief blasts homophobia' (*The Observer*, 25 April 2004); 'Multiculturalism's legacy is "have a nice day" racism' by Trevor Phillips (*The Guardian*, 28 May 2004).

[149] For example 'Multiculturalism is dead. Hurrah?' (*The Guardian*, 8 April 2004). See also Modood, 2005, p201, on the 'retreat from multiculturalism'.

[150] The Commission on British Muslims and Islamophobia carried out research suggesting that Muslims feel increasingly excluded from British society and that tensions in Northern towns are at a dangerous level ('British hostility to Muslims "could trigger riots"', *The Observer*, 30 May 2004).

[151] The unemployment rate for Muslim groups has been found to be almost three times as high as the rate for whites (Anwar and Bakhsh, 2003). See also Commission on the Future of Multi-ethnic Britain/the Runnymede Trust, 2000 and Equal Opportunities Commission, 2006.

[152] The Equality Act 2006 established a Commission for Equality and Human Rights opening in October 2007; a green paper, *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*, was published in June 2007, with proposals for harmonising anti-discrimination law.

persistent gender pay gap.[153] All these offered potential gains for women marginalised on one or more grounds.

In summary, the period since the early 1960s saw the development of a pattern that continued until 2007: on the one hand, ever-tightening immigration controls to limit the numbers of black and Asian people migrating to the UK; on the other hand, measures to protect and support the existing black and Asian population. It was a carrot and stick approach summed up in the often-repeated and unsubstantiated claim that 'strong' immigration controls are necessary for good race relations.[154] The inference that reducing racism depends on restricting immigration relieves the host community of responsibility for xenophobia, reinforcing the assumption that it is black and Asian people who are the problem in having introduced racism to Britain by coming here with their different lifestyles and values.[155]

The period before 1997 (regarding 'race relations' policy though certainly not immigration policy) was broadly characterised by a *laissez-faire* approach to majority-minority relations. While there was increasing recognition that cultural diversity is desirable, this rarely resulted in the kind of positive measures to protect minority culture advocated by Kymlicka. Instead, successive British policies had more in common with Kukathas' model of 'benign neglect', with the state providing a minimum of protection against discrimination but taking little responsibility for ensuring the survival of minority cultures. This changed under New Labour, particularly during the later part of the period discussed, when the supposedly problematic nature of minority identities was much debated.

3.2.6 From race to culture

The passage from assimilation, through integration, to multiculturalism was accompanied by the development of new identifiers for Britain's minorities. Alongside 'race', minorities began to be defined and to define themselves in cultural

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[153] The Women and Work Commission Report was presented to the Prime Minister by Baroness Prosser in February 2006 (http://www.womenandequalityunit.gov.uk/women_work_commission/index.htm).

[154] See for example, Conservative MP Nirj Deva, defending the 1995 Asylum and Immigration Bill, by linking good race relations to 'firm and fair immigration controls' (House of Commons Hansard Debates, Asylum and Immigration Bill, 11 December 1995, available at www.parliament.uk).

[155] Hesse, 2000, p6.

and religious terms. In the early post-war period, minority communities were portrayed as belonging to different racial groups on the basis of skin colour and country of origin: black, Indian, Chinese, etc. Cultural and religious differences in behaviour and beliefs were less articulated, presumably because they were expected to disappear over time as individuals conformed to British norms.

As described above, minorities never successfully united around a 'black' identity. Distinct black and Asian interests were evident from the 1970s onwards in the failure of the anti-racist movement to mobilize around the common identifier of a 'black' identity.[156] But a twin-track stereotyping of minorities, with black people portrayed as victims of oppression and Asians as the bearers of a 'rich' cultural heritage, became marked in the 1980s and 1990s.[157] Tariq Modood attributes this in part to Asian communities establishing themselves alongside African-Caribbeans:

> As the Asian communities became more settled and thought of themselves less
> as sojourners, as they put down family and community roots, and as some
> Asian groups, especially African Asians, began to acquire a prosperity and
> respectability that most Asians sought, they began to express their own
> identities rather than the borrowed identity of blackness, with its inescapable
> African-Caribbean resonances.[158]

The stereotypes that had developed of black people – as criminals, drug-dealers, low achievers educationally, sportsmen and women and musicians – were not based on assumptions about the beliefs or traditions of the country of origin. They came down to largely biological notions of racial difference, long discredited but still clearly influencing perceptions. In contrast, people of Asian (and later, Middle-Eastern) origin, came to be perceived as differentiated by their language, beliefs, and behaviour. And as multiculturalism was articulated, first in education and later in the

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[156] Modood uses fieldwork carried out in 1994 to demonstrate a failure among Asians to identify with blackness and also to show 'that religion was prominent in the self-description of South Asians, and skin colour in the self-description of Caribbeans' (Modood, 2000, p181).

[157] Bauman, carrying out research in Southall, West London, is struck by the 'ethnic reductionism' he sees: 'Whatever any "Asian" informant was reported to have said or done was interpreted with stunning regularity as a consequence of their "Asianness", their "ethnic identity", or the "culture" of their "community". All agency seemed to be absent, and culture an imprisoning cocoon or a determining force' (Baumann, 1996, p1).

[158] Modood, 2005, p156.

diversity policies of public bodies, a language of respect for cultural (not racial) diversity developed.

This corresponds to the development of a politics of recognition alongside anti-racist strategies.[159] 'Race' was not initially seen as a positive basis for identity, though it became so in mobilising against discrimination. In contrast, a cultural identity is more commonly though of as something to be recognised and respected, leading, in Modood's formulation, to the idea that equality means not just absence of discrimination but also:

> ... not having to hide or apologize for one's origins, family, or community, but requiring others to show respect for them and adapt public attitudes and arrangements so that the heritage they represent is encouraged rather than ignored or expected to wither away.[160]

However, the attribution of cultural difference to Asians also had a negative dimension. Modood contrasts 'colour racism' with 'cultural racism', with racism based on 'colour' experienced by visible or black minorities, and racism based on 'culture' mainly by British Muslims and/or Asians. Modood argues that the development of an anti-racist discourse in Britain along black/white lines of cleavage failed to recognise the 'double racism' experienced by Asians on the basis of both colour and culture. He distinguishes 'colour racism' as experienced by black Britons on the basis of perceived defects associated with their physicality, from a 'cultural racism' based on a characterization of Asian culture through 'motifs' including language, exotic dress, family structures, and religion. Although Modood notes that black culture is also disparaged and that Asians do not necessarily suffer 'more' racism, there is a potential hierarchy of oppressions in his identification of a 'a double or a compound racism' and his claim that '...on the whole colour racism is declining in Britain except where anti-Asian cultural racism is present'.[161]

The argument 'that racialized groups that have distinctive cultural identities or a community life defined as "alien" will suffer an additional dimension of

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[159] See Taylor, 1994.

[160] Modood, 2005, p134.

[161] Modood, 2005, p7 and p12.

discrimination and prejudice' is problematic.[162] It suggests that Asians are more discriminated against than black minorities. It also implies an artificial layering of different forms of discrimination, in which black people are discriminated against only because they look different and Asian people are doubly discriminated against because they both look different and behave differently. Moreover, as Modood himself recognises, this kind of distinction can have the effect of portraying black people as having no culture or as not culturally distinct from the majority population.[163] The danger here is that while people of Asian origin are depicted as having a strong group identity based on their shared traditions and cultural practices, people of African or Caribbean origin are left with an identity that is entirely negative and reactive, based on socially stigmatizing stereotypes and anti-racist solidarity in response to them.

Modood's analysis of the development of cultural racism in Britain is useful and he has been a key thinker in challenging racial dualism. However, rather than see some groups suffering one and others two forms of racism, I would argue that from the mid to late-60s, minority identities started to be channeled in two different directions, with minorities problematised differently according to whether they were identified as 'black' or 'Asian'. As Susan Benson points out:

> If an issue is focused upon race or social problems, research on African-Caribbeans appears, if it is focused upon ethnicity or culture, Asians predominate. If Asians have culture, then, West Indians have problems: an opposition which denies the vitality and interest of Afro-Caribbean cultural practices and the impact of racism upon the lives of Asian populations.[164]

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[162] Modood, 2005, p38. In relation to colour racism being replaced by culture racism, Stuart Hall argues that 'It is not clear that ... it is particularly helpful to trade one against the other in this either/or way' (Hall, 2000, p224).

[163] '...the putative defects or strengths of black culture are attributed to aspects of their physicality – such as low IQ or rhythm – or to what whites have done to them, such as deprive them of certain heritages. The perception of Asians, whether it be in some hard-core racist discourses, such as those of the British National Party, or implicit in the wider British society, is that their defects lie deep in their culture rather than in a biology that produces their culture' (Modood, 2005, p7).

[164] Benson, 1996, p52-53. See also Hall, 2000, p222.

While race discourse related primarily to discrimination and empowerment, the language of culture has mainly involved recognition and accommodation.[165] However, whether it was minority *cultural* or minority *religious* practices that should be accommodated was not – and still has not – been fully debated. Experience shows that minority practices are more likely to be respected where they have a religious basis, for the only cultural accommodations made during the period were laws exempting Sikhs from wearing motorcycle helmets and exempting Muslim and Jewish butchers from the general rules on animal slaughter. But Sikhs had to establish themselves as an *ethnic* group entitled to protection under the Race Relations Act in order to have their *religious* claim to wear a turban recognised, for there was at this point no legislation banning discrimination on the grounds of religion.[166]

From the early 1980s, it became possible to identify religion as a more visible basis for discrimination against minorities, though mainly in relation to South Asian groups.[167] There is a strong Christian tradition in Britain's African Caribbean communities that resonates with the majority faith in ways that Islam, Sikhism and Hinduism do not. Although it is typically a more evangelist kind of Christianity than that practiced by the majority society, for many years it was largely unproblematic.[168] On the contrary, it was one of the ways in which black immigrants were seen as more easily assimilated than Asians.[169] As the challenge for multiculturalism came to be seen as whether or how to accommodate unacceptable minority practices, public perception of these problematic practices linked them to those of Asian or Middle-Eastern origin, with a perceived or claimed link with religion. Increasingly, a minority religious identity was problematised, alongside or instead of a minority ethnic identity.[170]

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[165] See Hall, 2000, p225.

[166] This was established in the 1983 test case of Mandla v Dowell Lee.

[167] See Home Office, 2001b, p103-104.

[168] This perception changed, to some extent, with a series of cases involving child abuse or murder, where a link was made with witchcraft or exorcism. A key case was the murder in February 2000 of Victoria Climbié by her guardians on the grounds that she was possessed (www.victoria-climbie-inquiry.org.uk).

[169] See Poulter, 1998, p15; Modood, 2005, p17.

[170] Terence Ranger argues that '…the conflation between Asian religion and ethnicity has already gone so far in Britain as to appear inevitable' (Ranger et al ed, 1996, p18).

And while racism and racial attacks were no less a problem in the 1970s and 1980s, they coexisted with a more positive, albeit simplistic, portrayal of the markers that differentiated Asian minorities, with saris, turbans and curry fondly seen as contributing to the diversity of British society. After 1989, and in particular after the terrorist attacks in America and Europe between 2001 and 2005, an Asian and Middle-Eastern identity was portrayed in essence as an Islamic identity, which in turn was seen as a threat to social cohesion and fundamental British values.[171]

The development of religion as a marker also came from within minority communities. After the Rushdie Affair in 1989, there was a visible change in the way that individuals from the Indian sub-continent identified themselves.[172] The descriptions Asian, Indian, or Bangladeshi were increasingly supplemented or replaced by Muslim, Hindu, and Sikh. Those who in 1985 would have described themselves as British Asian were more likely in 2005 to identify themselves as British Muslims.[173]

The shift in focus from race to culture and the subsequent conflation of culture and religion had negative implications. Asian people were defined by their 'culture', which increasingly meant their religious beliefs and practices, while African or African Caribbean people remained defined by their 'race'. 'Culture' became shorthand for 'religion' or even more narrowly for Islam. Britain's black

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[171] On 11 September 2001, a series of co-ordinated attacks were carried out by hijackers in the United States resulting in 2,986 deaths. On 11 March 2004 a series of bombings were carried out on the Madrid train system killing 192 people. On 7 July 2005 bombings on the London transport system killed 56 people.

[172] The publication of Salman Rushdie's *The Satanic Verses* in 1998 caused outrage on the part of many Muslims around the world. In Britain, there were demonstrations and a public burning of the book in Bradford in January 1989. The Iranian Ayatollah Khomeini pronounced a death sentence on Rushdie in February 1989 and called on Muslims around the world to execute it, causing the author to go into hiding. For discussion of the controversy around publication of *The Satanic Verses* and the way it polarised Muslim and non-Muslim voices, see Parekh, 2000, p295-304; Modood, 2005, p118-124; and Katwala, 2005.

[173] Yunas Samad states that '[i]n the fervour accompanying these [*The Satanic Verses*] controversies a new term gained popular currency; British Muslim. The appropriation and usage of this term was an implicit recognition that religious identification was the major characteristics of British people originating from South Asia. British Pakistanis or British Bangladeshis as alternative categories were pushed aside as politicians and the press quickly jumped on the bandwagon' (Samad, 1996, p91). Discussing minority identities 15 years later, the Home Office publication *Strength in Diversity* acknowledges that 'faith is a key factor in how people from ethnic minority communities identify themselves' (Home Office, 2004a, p7). Ashfar et al suggest that among English Muslims there is a generational divide: 'Amongst the youth, Islam has become a more important identity signifier than it is for their parents' (Ashfar, Aitken and Franks, 2005, p275). Samad and Eade also found that 'Muslim identity is becoming more significant than ethnic identity' (Samad and Eade, 2002, p110). See also Choudhury, 2007.

population remained defined by phenomena including racial hatred, poverty and crime, whereas Asian communities were increasingly perceived as having a 'traditional' lifestyles at odds with the role of a modern British citizen. This was a simplistic and polarised representation of minority identities.

The sharpness of the transition from ethnicity to religion as signifier should not be overstated. As Modood recognises, people define themselves differently according to the situation.[174] This is true of members of majority and minority groups alike and applies beyond race and religion to age, gender, sexuality and any other characteristics an individual may have around which common concerns and interests are formulated. But in terms of portrayal and self-identification, religion became an important basis on which to claim minority rights, for example, protection against discrimination. The relationship between religious and cultural identities, the strengthening of religious rights in the UK and their relevance to gender will be explored in the chapter 7.

3.3 Gendered policy before 1997[175]

For most of the period 1945-1997 there was little policy discussion of gender, the rights and interests of women in minority communities, and the extent to which these differed from those of the majority of British women. While black and Asian people were often portrayed as needing to be legislated for and about, it was their presence that was the problem, with a focus on numbers and the quantity of immigrants and refugees. Customs and lifestyles were less of an issue, partly, as noted above, because of an assumption that these would gradually disappear, and partly because so little policy at the time was focused on gender-related issues. It was only when the cultural practices of minorities became a subject of policy under the 1997 government that women in minority communities became visible – mainly as victims of those practices.

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[174] 'Pakistanis were black when it meant a job in a racial equality bureaucracy, Asian when a community centre was in the offing, Muslim when the Prophet was being ridiculed, Kashmiris when a nationalist movement back home had taken off and blood was being spilt. These identities are pragmatic moves...' (Modood, 2005, p158).

[175] Some of this section appears in a previously published paper, 'UK Initiatives on Forced Marriage: Regulation, Dialogue and Exit' by Anne Phillips and Moira Dustin, Political Studies, October 2004, vol 52, pp531-551.

The most visible concessions to culture in the earlier period were laws exempting Sikhs, Muslims and Jews from legislation regulating the behaviour of the rest of the population. These exemptions had a general application (regulation of slaughter methods) or related exclusively to men (the exemptions relating to turban-wearing Sikh men). This does not mean that policy had no impact on women during this period. The gendered dimensions were most obvious in relation to marriage and family reunion. Since 1962, when Commonwealth citizens first became subject to immigration controls, successive laws and changes to the immigration rules attempted to prevent black and Asian Britons from bringing their fiancés and spouses into the country.[176] The best-known example was the Primary Purpose Rule: first introduced in 1980, it allowed immigration officers the power to identify marriages 'entered into primarily to obtain admission to the United Kingdom' and exclude applicants from the UK accordingly.[177] The rule was widely condemned as racist: it forced those falling under it to prove a negative, that their marriage was not entered into primarily in order to gain UK entry. And it impacted solely on black and Asian applicants to the UK: there is no record of a white person being refused entry to the UK under the rule.[178] It was widely misread as giving entry clearance officers the right to judge whether a marriage was 'genuine' or not. The Labour party in opposition condemned the rule and one of its first acts on taking government in 1997 was its repeal.[179]

For those settled or living in the UK, the gendered dimension of cultural difference was evident in relation to the marriage and divorce arrangements of minorities, which sometimes conflicted with UK law. As Britain's minority communities established themselves, this caused problems in situations where members of those communities had been married or divorced outside the British legal system and subsequently had cause to clarify their legal status under UK

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[176] For example, in 1969, the 'concession' by which male Commonwealth citizens were allowed to settle here 'in right of their wife' was withdrawn. See Bhabha and Shutter, 1994, for a full description of the way immigration rules were manipulated to keep out spouses and fiancés.

[177] The Primary Purpose Rule was introduced in its final form in 1994 (Statement of Changes in Immigration Rules HC395 para 281).

[178] Menski, 1999, p83.

[179] Statement of changes in immigration rules, HC26, paras 1, 3.

law.[180] Problems tended to relate to immigration status, benefits or inheritance. A typical case is Bibi vs Chief Adjudication Officer in 1998, where a woman's claim for a widow's allowance under the 1975 Social Security Act was rejected on the grounds that her marriage was celebrated under a law that permitted polygamy. There was some specific legislation aimed at clarifying potential confusion. The 1972 Matrimonial Proceedings (Polygamous Marriages) Act, later incorporated into the Matrimonial Causes Act 1973, confirmed that polygamous marriages could be valid in English law in certain circumstances, but would not be valid if either party were domiciled in the UK or in any other country whose law does not permit polygamous marriage. But otherwise policy was established on a piecemeal basis through court judgements or measures tacked onto other pieces of legislation. For example, the 1988 Immigration Act (in conjunction with amendments to Immigration Rules HC555) included measures to prevent second and third wives in polygamous marriages from joining their husbands in Britain. This may have been promoted as an egalitarian measure – British women are not subject to polygamy, why should there be a lower standard of human rights for women entering the country? – but it was also a way of restricting immigration. Polygamous marriages, and *Shari'a* and Jewish divorces were a factor in many of legal cases, but in the absence of any clear direction from successive governments, it was largely left to the courts to reflect changing attitudes towards alternative marriage and divorce arrangements.[181]

While men and women alike would seem to face problems when falling under two different systems of law, case studies and legal judgements suggest that the confusion as to what constitutes a recognisable marriage or divorce was particularly detrimental for women. The case of Bibi vs Chief Adjudication Officer is an example of many similar cases.[182] Some improvements for women did take place: most notably, the recognition of the intolerable position of Jewish women whose marriage had ended but whose husbands refused to grant them a Jewish

[180] For evidence of the complexity and confusion that has characterised 'inter-country cases' see Akbar Warraich and Balchin 2006.

[181] See David Pearl, 1987, for discussion of recognition of foreign divorces before 1987. See Akbar Warraich and Balchin, 2006, for discussion of confusion relating to polygamous, 'potentially polygamous' and monogamous marriages.

[182] See LSE Gender Equality Digest for examples, available at http://webdb.lse.ac.uk/gender/Casefinallist.asp (last accessed 6 May 2007).

divorce or *get* led to the Divorce (Religious Marriages) Act 2002. This Act allowed judges to withhold a civil divorce until a *get* had been granted, thereby putting pressure on the husband to comply. Muslim women seeking a divorce often found themselves similarly disadvantaged. There is a discrepancy, for example, between the status of women married under Muslim family law in Bangladesh, India and Pakistan, whose marriage is likely to be recognised under UK law, and those married in a mosque in the UK, where few mosques are registered to hold civil ceremonies. Research suggests that some women who have a Muslim ceremony in the UK believe they are legally married, and do not go on to register their marriage according to civil law. They may only find out they do not have a valid marriage when they seek a divorce.[183] While men have sometimes benefited from picking and choosing between systems of law, women are more likely to be victims of the lack of clarity between two systems – unaware or unable to exercise their rights under either.[184]

The concept of consent is central to the way that minority marriages came to be perceived as problematic. According to national law and international conventions (to which the UK is party), marriage is based on the consent of both parties.[185] However, the legal definition of 'consent' has been left to judges to decide. In several criminal cases in the early years of the period discussed, the age of the female victim meant that consent was not an issue. However, the sentences reflected cultural assumptions of the time about the different expectations and entitlement to justice of non-Western women. In R v Bailey (1964), for example, a 25-year-old West Indian man pleaded guilty to intercourse with two girls aged 12

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[183] Nûrîn Shah-Kazemi, 2001; Akbar Warraich and Balchin, 2006.

[184] See Shemshadfard v Shemshadfard (1981) a divorce case where the husband applied for stay of English proceedings in favour of the Iranian divorce proceedings, and admitted that if the divorce were conducted before the English divorce court, the wife 'can take things from me in England and I do not want this'. The Iranian divorce, on the other hand, would 'relieve him of any obligation to maintain or look after his wife' and would ensure he was given custody of the child. The court in this case rejected his application.

[185] The UK's Matrimonial Causes Act 1973 states that a marriage is voidable if 'either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise' (clause 12 (c); The Universal Declaration of Human rights states that 'Men and women of full age...have the right to marry' and that 'Marriage shall be entered into only with the free and full consent of the intending spouses'. Similar principles are expressed in international documents including The International Covenant on Civil and Political Rights and The Convention on the Elimination of All Forms of Discrimination Against Women. Council of Europe Recommendation 2002 5 on the Protection of Women against Violence includes 'traditional practices harmful to women, such as forced marriages' in its definition.

and 14, and had his prison sentence reduced to a fine on appeal on consideration of the fact that he had not known his behaviour was unlawful. In this and other cases from the same period, a guilty sentence conveyed the message that immigrants must abide by English laws, while a reduced sentence or a discharge implied that ignorance of those laws was a mitigating factor. But the reduced sentence could also be read as implying lesser punishments were required for crimes against girls and women, depending on the perpetrator's culture or ethnicity. In Alhaji Mohamed v Knott (1969) a 26-year-old man had married a 13-year-old girl in Nigeria. The Court of Appeal, in revoking the order committing the girl to local authority care, said of Nigerian girls 'they develop sooner, and there is nothing abhorrent in their way of life for a girl of thirteen to marry a man of twenty-five'.[186]

While the term 'forced marriage' had little currency prior to 1997,[187] a changing perception about the balance between parental influence and coercion can be traced through some of the legal cases that occurred during this earlier period. There was a marked progression from a restrictive definition of duress to one that recognised the force of moral and emotional blackmail. Before the early 1980s, petitioners seeking the annulment of a marriage had to establish that they had entered it under duress, with duress interpreted as reasonably held fear of physical harm.[188] This principle was established in 1971 in the influential case of Szechter v Szechter, where Sir Jocelyn Simon ruled that it was 'insufficient to invalidate an otherwise good marriage that a party has entered into it in order to escape from a disagreeable situation'; and that the only grounds for nullity were when the will of one of the parties was 'overborne by genuine and reasonably held fear caused by

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[186] See Phillips, 2003, for a discussion of this and similar cases and the use of a cultural defence in the English courts.

[187] David Pearl, writing in the late 1980s, discusses arranged marriages that took place under 'pressure', where the court had to distinguish 'the "proper" from the "improper" pressures' but does not make the distinction between 'forced' and 'arranged' (Pearl, 1987, p163).

[188] The other possible route was non-consummation of the marriage. But petitioners then had to establish their physical or emotional incapacity – either a medical incapacity or an 'invincible repugnance' – and were unlikely to win the case if they were felt only to be unwilling to have sex with their spouse (Singh v Singh, 1971). Alternatively, a petitioner could win a grant of nullity on the grounds of the other party's 'wilful refusal to consummate' (A v J, 1989). Marrying and then changing your mind has been seen as a matter for the divorce courts, not for nullity proceedings.

threat of immediate danger...to life, limb or liberty'.[189] In the case of Singh v Singh (1971), the Court of Appeal therefore refused to grant a decree of nullity, arguing that there was no evidence of 'fear to life, limb or liberty', and no evidence that the petitioner had not consented. The petitioner was a seventeen-year-old Sikh girl who went through a civil marriage ceremony, but subsequently refused to confirm it through a religious ceremony or have anything to do with her husband. The judges decided that she would have been willing enough to continue with the marriage had the man in question been (as promised) handsome and educated. Despite her age, her obvious vulnerability to parental pressure, and the fact that the two young people had not met before the ceremony, this was accepted as a marriage based on free consent.

Though Simon's 'test' was still being cited in the early 1980s as the definitive reading of duress,[190] the case of Hirani v Hirani (1983) marked an important new development. A nineteen-year-old Hindu girl had entered into marriage with a man previously unknown to her. In this case, she went through both civil and religious ceremonies, but left the (unconsummated) marriage after six weeks. The court refused a decree of nullity. Her application was, however, allowed on appeal, and the decision established a less restrictive definition of duress that no longer revolved around threats of physical violence. The court concluded that the crucial question was not whether she was in genuine fear of her life or liberty, but 'whether the mind of the applicant (the victim) has in fact been overborne, howsoever that was caused'. The case was described as 'as clear a case as one could want of the overbearing of the will of the petitioner and thus invalidating or vitiating her consent.'

The courts subsequently worked with this new test, and later cases further extended its remit.[191] By the mid 1990s, the restrictive definition of duress as

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[189] This was not a marriage arranged by parents against the wishes of their children, but a marriage of convenience entered into in order to help extricate the wife, who was in poor health, from a prison in Poland where she was being held for anti-state activities. After her release, both parties moved to England where the 'wife' petitioned for a decree of nullity. The point of the ruling was that the decree could not be granted simply on the basis that this was a marriage of convenience, entered into for other purposes. It was, however, granted on the basis of a reasonable fear of threat to life, limb or liberty.

[190] Singh v Kaur (1981) involved a 21-year-old Sikh man who had been pressured into marriage with threats of being forced to leave the family business and of exposing his entire family to disgrace. Dismissing his petition for nullity, the appeal court judge said 'it would be a very serious matter if this court were...to water down Sir Jocelyn Simon's test'.

[191] Mahmood v Mahmood (1993) and Mahmud v Mahmud (1993).

involving threats to life, limb or liberty was very much a thing of the past, moderated first by considerations of age, sex, and financial vulnerability, and later by a broad appreciation of the moral pressures parents can bring to bear on their children, even adult children.

While many of the cases cited above – Alhaji Mohamed v Knott (1969), for example – show minoritized women faring badly under the British legal system, sometimes as a result of cultural stereotyping, this was not always the case. There were also situations where women benefited – at least on an immediate and individual level – from cultural assumptions, giving an early illustration of one of the issues that runs through this thesis: the difficulty faced by those seeking to represent or support minority women, and finding that the most effective way to do this is sometimes through employing cultural stereotypes. In several cases in the 1980s and 1990s, for example, court rulings appear to have been made or modified on the basis of perceptions of the status of women in Muslim culture. In R v Bibi (1980), a Muslim widow sentenced for drug smuggling had her sentence reduced after evidence that her isolation through the doctrine of *purdah* and her dependence on her brother-in-law reduced her moral responsibility for the crime.[192] In Seemi v Seemi (1990) a Muslim woman whose ex-husband said that she was not a virgin on their wedding night was awarded £20,000 in recognition of the greater impact this accusation would have for a Muslim wife.[193] In Bakhitiari v The Zoological Society of London (1991) the court recognised the specificity of cultural factors in determining damages to be awarded to an Iranian girl.[194] In all these cases, the cultural factors taken into account were gender-specific, implying that Muslim women have less individual autonomy and are more vulnerable to social stigma than the average British woman.

This presents a problem for advocates and legal representatives in such cases: they can 'buy into' cultural stereotypes when these seem likely to work to the defendant's or client's advantage in leading to a reduced sentence or larger

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[192] Poulter, 1998, p63.

[193] Poulter, 1998, p63.

[194] 'A young Iranian girl had lost three fingers as a result of being bitten by a chimpanzee while on a visit to the zoo. Although plastic surgery had covered the affected area, she was left with an unsightly stump. The Court awarded her a larger sum than would have been awarded to a white girl, in view of the apparent revulsion felt in Iranian society towards any physical blemish in women and the effect of that revulsion upon her prospects of marriage' (Poulter, 1998, p63).

award, or they can reject such strategies as reinforcing gendered cultural stereotypes and risk acting against their client's immediate interests. The dilemma has been articulated by Leti Volpp, writing about the use of cultural defences in criminal cases in North America:

> The first issue we face is the strong tension between helping an individual person and the broader effects of employing stereotypes. …What do we do then if we want to help an individual woman? Do we want to say that her horrific barbaric culture that condones these practices from which she has absolutely no escape, led to these bad acts or led to her being trapped, or led to her not fleeing? Are we using racism to get rid of sexism? Is there a way in which we are relying on certain kinds of problematic descriptions that buy into already existing preconceptions about our communities to help individual women? We know there are broader stereotypes out there and that is why we think they work and that is why we might use them. We need to consider these implications.[195]

Volpp is concerned that by deploying cultural stereotypes to help individual women, advocates are 'creating frozen descriptions of what a woman from a particular culture is', which may be damaging to other women from the culture concerned.[196]

The case of R v Bibi is also an early example of the failure to distinguish ethnicity from religion in law. The factors which the court took into account – the defendant's isolation through the practice of *purdah* and dependence on her brother-in-law – blur the cultural and the religious aspects of the defendant's identity. It is unclear whether her sentence was reduced because in her 'culture' women are expected to obey their male relatives, or because her religion dictated a secluded lifestyle which led to her dependence on her brother in law. Importantly it was the combination of her gender and minority status that denied her a voice and presented her as a passive victim of external forces.

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[195] Volpp, 2002.

[196] Volpp, 2002.

The implication that culture is a qualifying or mitigating factor became less evident or less acceptable over time: in cases from the 1990s and later, involving the murder or abduction of women and girls from minority communities, the judgement tended to emphasise that culture was no justification for the abuse of women. One example is the couple who were jailed in 1998 for drugging their daughter and attempting to fly her out of the country for an arranged marriage. Judge Anthony Ensor told them 'I am aware of your cultural and religious traditions...But clearly your daughter is a British citizen and is entitled to the protection of the law in this country'.[197] Judgements like this demonstrated a new willingness to confront abuses of women rather than applying different standards to different cultures, a trend strengthened under the 1997 Labour government as demonstrated in the next chapter.

While the evidence of legal judgements suggests a growing reluctance to allow culture as a mitigating factor in crimes against women, the only example from this period of legislation on a cultural practice specific to women and girls was the Female Circumcision Act of 1985 (discussed in detail in chapter 5). While cultural assumptions about gender roles were evident in certain Acts, regulations and court judgements, the need to protect minority women from their cultures was not widely expressed. What I have termed 'benign neglect', following Kukathas, was evident in the lack of direction from government on the question of accommodation of foreign personal or family law, leaving it to the judiciary to establish women's rights in relation to marriage and divorce on a shifting case-by-case basis.[198]

3.4 Conclusion

This chapter suggests three patterns emerged between 1945 and 1997. The first was that 'culture' to some degree supplanted 'race' as the defining concept of multiculturalism in Britain. The second was that culture became increasingly synonymous with religion as an identifier of minorities. The third was that multiculturalism was not explicitly gendered before 1997, although 'multicultural'

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[197] 'Asian parents are jailed for daughter's kidnap' (*The Daily Telegraph*, 6 June 1998).

[198] As Pearl argued in 1987 '...a clear, precise and coherent policy [on indigenous law] is certainly required; for advisors, for administrators, and for the members of the communities themselves' (Pearl, 1987, p168).

policies – or the lack of them – had a significant impact on women, with cultural stereotypes sometimes working in women's favour but more often not. More overtly gendered developments took place from 1997 onwards. I turn to these in the following chapters.

Chapter 4. Forced marriage[199]

4.1 Introduction

The last chapter considered policies affecting minoritized women before 1997, when the Labour Party won office. This chapter – the first of three case studies – identifies the different ways that forced marriage was tackled after this date: through support for victims; through proposed legislation, and through immigration controls. I make a link between some of these measures and the theoretical models identified in the first two chapters. Elements of 'benign neglect' with exit as the only redress and dialogue can be identified, as well as a more confrontational approach and a willingness to intervene in minority affairs to protect women. I discuss to what extent these approaches were successful in reducing the incidence of forced marriage and protecting victims.

4.2 Policy initiatives after 1997

The previous chapter showed that, before 1997, it was largely left to the courts to resolve cases of coerced marriages. The election of Labour in 1997 led to a distinct change of course. There were initial signals that the new government planned to tackle human rights abuses of minority women (through initiatives on forced marriage) without recourse to restrictive immigration controls (as suggested by the immediate repeal of the Primary Purpose Rule). While there was indeed a greater willingness to publicly confront abuses of minority women, immigration controls were one of the ways used to do this.

A number of factors contributed to government awareness of forced marriage, including the campaigning work of women's NGOs, articles by journalist Yasmin Alibhai-Brown, and the substantially increased representation of women after the 1997 election, which generated a larger cohort of MPs prepared to speak out against abuses of women.[200]

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[199] Sections of this chapter appear in a previously published paper, 'UK Initiatives on Forced Marriage: Regulation, Dialogue and Exit' by Anne Phillips and Moira Dustin, Political Studies, October 2004, vol 52, pp531-551.

[200] See, for example, debates on Human Rights (Women) on 10 February 1999, Women and Development on 30 March 2000, Women and Equality on 14 March 2002, International Women's Day on 6 March 2003 and Women, Equality and Human Rights on 4 March 2004. Parliamentary time was also devoted to debates on forced marriage and female genital mutilation after 1997. Debates available at www.parliament.uk.

A further catalyst was the close coincidence in 1999 of three high-profile cases: the murder of Ruhksana Naz after she left an arranged marriage and became pregnant by another man; the plight of 'Jack' and 'Zena' Briggs, who spent years in hiding from bounty-hunters employed by Zena's family after she refused to marry a cousin in Pakistan; and the successful return to England of a young Sikh girl, KR, who was made a ward of court when her parents abducted her to India for the purposes of marriage.[201] It may also be relevant that the repeal of the Primary Purpose Rule was felt by some to have removed a source of protection against forced marriage. After its repeal, it was claimed (on no very clear evidence) that entry clearance officers in Islamabad and Pakistan were now hampered in challenging what they suspected to be non-consensual marriages. This claim was taken up by the Foreign Affairs Select Committee, and fears were raised in the media that the abolition of the rule was leading to an increasing incidence of forced marriage.[202] It is worth noting here that the notion that the removal of the Primary Purpose Rule deprived entry clearance officers of the power to deny entry to forced marriage victims was completely rejected by anti-racist immigration advisors.[203]

The conjunction of these factors led the Home Secretary to set up a Working Group on Forced Marriage in 1999, with a remit to 'investigate the problem of forced marriage in England and Wales and to make proposals for tackling it effectively'.[204] The Working Group members included representatives of minority women's NGOs and race organisations, Yasmin Alibhai-Brown, and government advisors on race issues. This model of policymaking based on consultation resonates with the dialogue-based approaches discussed in chapter 2 and illustrates the degree to which New Labour represented a break with previous styles of government. The

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[201] R v Shazad, Shakeela and Iftikhar Naz (1999); Re KR (1999). The plight of 'Jack' and 'Zena' Briggs was reported in several newspapers and was also referred to by Ann Cryer MP in the Commons debate on Human Rights (Women) on 10 February 1999.

[202] 'Huge rise in forced marriages' (*The Independent*, 20 July 1998); 'MPs told: don't aid forced marriages', (*The Independent*, 8 August 1998). On 12 July 1999, a BBC Newsnight report interviewed a British High Commission official in Islamabad who said he felt powerless to intervene when girls are forced to bring husbands into Britain. The programme suggested that the problem was that the Labour Government had scrapped the Primary Purpose rule as one of its first acts in order to 'appease the sensitivities of Britain's ethnic communities'.

[203] Correspondence with Don Flynn, former Policy Officer at the Joint Council for the Welfare of Immigrants, October/November 2003.

[204] Home Office, 2000, p10. Home Office minister Mike O'Brien was also seen as playing an important role in the initiative (Siddiqui, 2005, p269).

Conservative regimes of the 1980s would have been unlikely to employ such a model and on such a topic.

When the Working Group report *A Choice by Right* was published in the following year, it highlighted the distinction between arranged and forced marriage. In arranged marriages, families take a leading role in the selection of partners, but potential spouses always retain the right to say no. In forced marriage, there is no choice. The authors clearly felt it a priority to establish that forced marriage is not condoned by any religion. In the foreword, Baroness Udin and Lord Ahmed state that:

> Many parents use religious rationale to justify their use of force and violence. No religion of the world restricts choice, and we believe that good parents cannot either.[205]

The point is reiterated elsewhere in the report:

> Although in the Western world forced marriage is often discussed as a religious practice, the Working Group has found that no major world faith condones forced marriage. The freely given consent of both parties is a prerequisite of Christian, Hindu, Muslim and Sikh marriages.[206]

The importance of showing that forced marriage is *not* a religious requirement has been evident in all measures to address it since then. At the several conferences organised on the topic, speakers have often begun by attributing the practice to 'culture' not 'religion'.[207] The 2005 consultation on whether to criminalise forced marriage (discussed below) also points out that '[n]o major world religion supports or justifies the practice'.[208] The same point was made several times in the House of

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[205] Home Office, 2000, p1.

[206] Home Office, 2000, p6.

[207] For example, Anni Marjoram, Advisor to the Mayor of London, stated that forced marriage is '...justified not by religion but by culture'. She was speaking at a conference on 'Forced marriage – keeping it on the policing agenda' (16 February 2005). Other speakers made a similar point.

[208] Foreign and Commonwealth Office, Scottish Executive and Home Office, 2006, p4.

Lords debate on a Private Member's Bill in January 2007.[209] Members of minorities

have also insisted that forced marriage is incompatible with Islam. At the same time,

research on forced marriage has confirmed the trend noted in chapter 3 towards

religion as an identifier, with younger and middle-aged people identifying

themselves as Muslim, distinguishing religion from culture and attributing forced

marriage to the latter.[210]

Most of the cases brought to the Working Group's attention involved young

women in their teens to early twenties, and many involved a spouse from overseas.

Though the lack of reliable data made it impossible to determine the scale of the

problem, the figure commonly cited in subsequent discussions was at least 1,000

cases each year, although this was widely regarded as an under-estimate. The Group

recommended a wide-ranging set of guiding principles, including involving the

communities concerned, monitoring the extent of the problem, training for relevant

agencies and service providers, and promoting awareness of services and rights. It

did not support the creation of a specific offence of forcing a person to marry,

arguing that current legislation against threatening behaviour, assault, kidnap or rape

already provided an adequate basis for prosecution. The most contentious issue it

addressed was the role of mediation. A number of women's groups had argued that

the use of community based mediation services to 'reconcile' victims of forced

marriage with their families placed the young people at further risk of abuse, and

Hannana Siddiqui, of the women's campaigning NGO Southall Black Sisters,

resigned from the Working Group because of its refusal to reject mediation outright.

While *A Choice by Right* had not presented forced marriage as an exclusively

transcontinental affair, subsequent initiatives largely focused on what was known as

'the overseas dimension'. Two months after publication of the report, the Home

Office and Foreign and Commonwealth Office (FCO) announced a joint action plan

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[209] Forced Marriage (Civil Protection) Bill [HL], Second Reading debate, 26 January 2007, available at www.parliament.uk.

[210] 'Complementing this development is the greater emphasis on Islam rather than regional (Mirpuri or Sylheti) identities among many members of the younger generation' (Samad and Eade, 2002, p84). 'Middle-aged participants argue that forced marriage is a problem which will eventually die out. They say this because, unlike their parents, they distinguish between culture and Islam and it is cultural practices that legitimate forced marriages. They are re-examining their Islamic heritage and in the process are coming to the conclusion that forced marriage is unIslamic' (Samad and Eade, 2002, p109).

to 'tackle the overseas dimension of forced marriage'.[211] This promised to create a dedicated Community Relations desk in the FCO's Consular Division; to collate statistics; strengthen links with police forces overseas; and enable female victims of forced marriage to be seen by trained female members of staff in overseas consulates where possible. In 2002, police guidelines were issued by the Home Office, FCO and Association of Chief Police Officers.[212] Among other recommendations, these stressed that relatives, friends, community leaders or neighbours should not be used as interpreters, and that no one should be sent back to the family home against his/her wishes. Prior to this, police officers had tended to treat allegations of forced marriage as matters of internal domestic dispute, and instead of helping young people extricate themselves from family pressures, had sometimes returned them to the 'protection' of their families.[213] Such an outcome became less probable over time. *A Choice by Right* had taken a slightly ambivalent position on mediation. Subsequent guidelines reflected an increasing appreciation that involving the wider family or community could reduce protections for the individual: this was stressed in the 2004 guidelines for Social Workers which stated that neither the family nor those with influence in the community should be approached unless the young person explicitly requests this; and that young people reported as missing should be interviewed in private to establish whether it is in their best interest to return home.[214] The guidelines for police alerted officers to the possibility that relatives may falsely accuse a missing family member of theft, thereby obtaining police assistance to locate a young person who has left home to evade a forced marriage.[215]

The most visible element of the government's initiative was the creation of the Community Liaison Unit, later the Forced Marriage Unit, in the Foreign and

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[211] Home Office and Foreign and Commonwealth Office, 2000.

[212] A second edition was published in 2005 (Home Office, Foreign & Commonwealth Office, and ACPO, 2005). Guidelines for Social Workers were also produced (Foreign and Commonwealth Office et al, 2004) and guidelines for teachers were announced in January 2005 (http://news.bbc.co.uk/1/hi/uk/4205173.stm last accessed 25 January 2006).

[213] KR (1999) was one classic illustration of this. In weighing the allegations of the parents (that the young girl had been kidnapped by her elder sister) against the allegations of the sister (that KR had moved in with her sister to avoid being forced into marriage in India), the police sided with the parents and returned KR to her father's custody. At this point, she was indeed abducted and taken to India.

[214] Foreign and Commonwealth Office et al, 2004.

[215] Home Office, Foreign & Commonwealth Office, and ACPO, 2005.

Commonwealth Office. As its location suggested, the Unit dealt with cases involving marriage between an individual settled in the UK and a spouse from overseas.[216] In some instances, individuals contacted the Unit for assistance because they feared their family planned to take them abroad for a marriage. As far as resources allowed, staff arranged private interviews to talk through the issues, seeking either to dissuade them from joining the trip or, failing that, to ensure they were fully informed about who to contact for assistance. In other cases, the contact came via a third party, reporting a friend, family member, or girlfriend who had travelled to the Indian sub-continent and not returned as expected. The Unit then tried to contact the 'missing' individual, encouraging him or her to visit the local office of the British High Commission for a private interview with trained staff to establish whether there was indeed a problem. Since the High Commission could arrange emergency passports and lend money for a flight back to the UK, this proved reasonably effective.

When families obstructed this, what were sometimes referred to as 'rescue missions' were organised. This proved most feasible in India and Bangladesh, where staff of the local High Commission and/or local police were able to provide an escort for suspected victims to enable them to participate in a private interview. Political conditions in Pakistan – particularly in the Mirpur area of Kashmir – usually proved too dangerous for this, and the main alternative there was to take out a writ of *habeas corpus*. This was a relatively well-established practice in cases of forced marriage in both Bangladesh and Pakistan.[217] Where successful, it led to a court order requiring the family to produce the 'missing person' so as to establish whether she was being held against her will. This was employed to good effect in cases involving UK nationals, but it was inevitably a more lengthy process; since the majority of cases dealt with by the Unit involved Pakistan, problems of access limited the Unit's overall success rate.

By 2007, the Unit had a caseload of 250-300 individuals per year.[218] It was relaunched in January 2005 as a joint Home Office and FCO unit (although the

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[216] Information on the work of the Unit draws on an interview with Heather Harvey by Anne Phillips on 3 April 2003.

[217] Hossain and Turner, 2001.

[218] An update on the Unit was provided by Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, Department for Constitutional Affairs, on 27 January 2007: 'The Forced Marriage

Unit's website and physical location is still with the FCO). The Unit also carried out policy development and awareness-raising work. A national publicity campaign was launched in April 2006 including posters on the London underground, a leaflet with information for possible victims and a serious of regional forums in June and July in areas most affected.[219] While the Forced Marriage Unit attempted to work with other departments and agencies to provide the kind of holistic support that makes exit a more meaningful option, it was not clear to what extent other key agencies – in particular social services – were engaged with the forced marriage agenda even as late as 2006.[220]

Another area of intervention was through domestic police work. One of the earliest initiatives was in Bradford, home to the second largest UK community of Pakistani origin, where community liaison work had increasingly focused on family conflicts within the Asian community. Many of these involved coercion into marriage. In the mid 1990s, retired police officer Philip Balmforth was appointed to a new post of Community Officer (Asian Families).[221] His case load – not all cases of forced marriage – subsequently rose to 300 a year. As with the FCO initiative, his work was very literally focused on exit: directing people to alternative accommodation in refuges, housing associations, or council flats; and often

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Unit is a joint Home Office/Foreign and Commonwealth Office venture. It has six members of staff at present, and the team leads on policy development and outreach work. It has three dedicated caseworkers – one from UK Visas – and one office manager, and all members of the unit handle casework. The FMU has a budget of almost £690,000, including staff wages, and it covers 250 to 300 cases a year, 15 per cent of which are male cases of forced marriage. Our embassies and high commissions overseas assist, rescue and repatriate around 200 people each year. Around a third of the cases that the unit deals with concern children, some as young as 13. It also assists reluctant sponsors – those forced into marriage and subsequently forced to sponsor a visa application – and it has dealt with more than 100 cases since May last year...' (Forced Marriage (Civil Protection) Bill [HL], Second Reading debate, 26 January 2007, available at www.parliament.uk).

[219] http://www.fco.gov.uk/Files/KFile/Forced%20Marriage%20Leaflet.pdf (last accessed 6 May 2007). The areas were East and West London, the East and West Midlands and the North West of England.

[220] See update on forced marriage plan which refers to a 'package of care' and work underway or planned with other government departments, statutory agencies and NGOs: 'Forced marriage: update', 9 June 2003, available at http://www.communities.gov.uk/index.asp?id=1502693 (last accessed 24 January 2007). A Survivors' Network – with £30,000 of funding – and handbook were launched in May 2007 ('Supporting victims of forced marriage', Home Office press release, 8 May 2007). Fauzia Khan, case officer at the government's Forced Marriage Unit, speaking at a conference on 'honour violence' said social services are not following guidance on forced marriage. The Unit finds that social services staff 'don't know what to do' when working with victims (reported in *Community Care* online, 'Forced marriages. Special report', 5 October 2006).

[221] Later Bradford District Vulnerable Persons Officer.

providing a protective escort to enable them to collect personal property from the family home before making their escape.[222]

In 2001, the FCO and West Yorkshire Police organised a three-day conference on the issue of forced marriage. Following this, the FCO funded a programme of information sharing, visits and training between forces in the UK, Pakistan, India and Bangladesh, with the aim of improving procedures for dealing with abductions of British nationals for the purposes of forced marriage. Officers from Bradford, South Yorkshire, the Metropolitan and Leicestershire police forces attended a police conference at the Punjab Police Academy; and West Yorkshire police were particularly proactive in developing training programmes and exchanges with their equivalents in Pakistan.[223] In a separate and promising development in 2003, senior members of the UK and Pakistani judiciaries met in London to develop a protocol on international cases of child abduction.[224]

In later years, the role of the Metropolitan Police Service (MPS) became more significant. A National Forced Marriage Working Group, chaired by the MPS, was established to ensure an effective response to cases of forced marriage throughout police forces in England, Wales and Scotland and to implement the National Police Forced Marriage Guidelines. Membership of the group included police officers, government officials and NGO and community organisation representatives.[225] The MPS also held a series of events bringing together service providers and police officers to raise awareness of its work and spread good practice, although the label 'forced marriage' was increasingly subsumed within the category of 'honour' based violence (as discussed in chapter 6).[226] Forced marriage was increasingly viewed as

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[222] Interview with Philip Balmforth, West Yorkshire Police, 9 May 2003.

[223] Interview with Inspector Martin Baines, West Yorkshire Police, 9 May 2003.

[224] Dame Elizabeth Butler-Sloss, President of the Family Division of the High Court of England and Wales and The Hon Mr Justice Sh. Riaz Ahmad, Chief Justice of the Supreme Court of Pakistan signed a UK/Pakistan Judicial Protocol on child abduction and forced marriage cases in January 2003 (Foreign and Commonwealth Office press release, 17 January 2003). Agreed Guidelines were signed at a second judicial conference held in Islamabad in September 2003.

[225] http://www.soas.ac.uk/honourcrimes/Events_MPS_WGFM.htm (last accessed 21 January 2007).

[226] 'Forced Marriage Seminar' (14 June 2001); 'Forced Marriage – keeping it on the policing agenda' (16 February 2005); 'International Conference on Honour Based Violence' (21-22 March 2005). MPS has also participated in conferences organised by others, eg '"Honour" crimes and violence against women – understanding the culture, preventing the crime' organised by the Centre for Crime and Justice Studies on 20 April 2005.

a form of 'honour' violence and approached from the perspective of homicide prevention.

Some members of the Metropolitan Police Service were also initially in favour of proposals to criminalise forced marriage – a measure seen as unnecessary by the Home Office Working Group in 1999.[227] By 2005, there was new pressure to introduce criminal legislation and the government published a consultation document, *Forced marriage – a wrong not a right*, neutrally setting out arguments in favour of and against legislation.[228] In favour was the fact that the problem had not been effectively resolved,[229] that criminalisation could have a strong deterrent effect, and could provide young people with the tools they needed to assert their rights. Against this, it was argued that the necessary legal tools already existed, that the move might be counterproductive in leading to parents sending their children abroad to be married at an earlier age, and that a new law would be seen as targeting certain minority religious and ethnic communities. Responses to the consultation were divided with 34% of respondents in favour of a specific new offence, 37% against and the remainder non-committal.[230] Some of the more established women's NGOs opposed criminalisation, although others supported it.[231] On the basis of responses, the government announced it would not introduce legislation.[232]

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[227] Home Office, 2000, p9.

[228] At some of the conferences mentioned above, senior police spokesmen had indicated that they were in favour of a new forced marriage offense. Some women's organisations and activists also campaigned for a new law. Jasvinder Sanghera, of Karma Nirvana, a Derby support group, spoke in favour of criminalisation: 'I will continue to support criminalisation. I always go back to the domestic violence debate. It was said people wouldn't prosecute their partners but the legislation was eventually passed. It is difficult to contemplate the fact that all sorts of criminal activities are going on and we're condoning it' ('Help for bullied brides', Guardian Society, 26 January 2007).

[229] 'Together with partners across the public and voluntary sector, we have been working for many years to prevent forced marriages taking place and to support victims when it does. But we know that young men and women are still at risk' (Ministerial forward by the Home Secretary, Charles Clarke, Foreign & Commonwealth Office and Home Office, 2005).

[230] *A summary of responses* was published in 2006 (Foreign and Commonwealth Office, Scottish Executive and Home Office, 2006).

[231] FORWARD (the Foundation for Women's Health Research and Development) announced that they were in favour of new legislation (email communication, 2 December 2005).

[232] *The Times* newspaper claimed the plans were dropped because of lobbying from the Muslim Council of Britain on the grounds they would stigmatise communities. ('With this Ring I thee enslave', 31 August 2006). The Government claimed that '...the primary reason ... was that 74 per cent of the police respondents and all those from the CPS and probation services said that it was not an appropriate way forward' (Baroness Ashton of Upholland, Forced Marriage (Civil Protection) Bill [HL], Second Reading debate, 26 January 2007, available at www.parliament.uk).

However, there remained a conviction that further statutory measures were necessary and in November 2006 Lord Lester, a human rights lawyer, introduced a private members bill on forced marriage in the House of Lords. Focusing on civil measures, it sought to protect vulnerable young people through the family courts. Unlike the previous government proposal on criminalisation, this had the support of Southall Black Sisters, who believed it would '...add to the current armoury of tools available to victims of forced marriage', as well as a number of other women's, children's and human rights organisations.[233] Unusually for a private members bill, this received government support and, at the time of writing, was likely to result in an amendment to the Family Law Act 1996 – the key piece of legislation on domestic violence – specifically the insertion of a new part to the Act with provisions to allow third parties to apply to the courts for a forced marriage protection order.[234]

The Bill's focus on empowerment of young people was encouraging, but the way that 'practices' such as forced marriage were still being used to differentiate a civilised majority from a backward and patriarchal minority was visible in some of the debate during the Bill's second reading:

> Forced marriages are the consequence of medieval feudalism, paternal supremacy and the desperate desire to maintain one's culture in the face of threats to it posed by there being insufficient local marriage partners of the desired restricted kind for one's offspring. It is of course the evil end of a wide spectrum of behaviours and attitudes that place some young women in despairing situations, where their education and exposure to wider influences in the UK – by no means would we necessarily say superior influences, but certainly different from that of the communities from which they came – bring

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[233] Letter soliciting support for the Bill from Pragna Patel on behalf of Southall Black Sisters, 20 November 2006. It was also stated that '[t]here is support from British Asian groups, such as Karma Nirvana and the British Muslim Parliament, as well as the Kurdistan Refugee Women's Organisation; from women's groups, including the Middle East Centre for Women's Rights, Rights of Women and Women's Aid, as well as child protection organisations such as the NSPCC, the Children's Commissioner, and both Liberty and JUSTICE. Liberty's briefing paper explains how the Bill gives effect to the UK's international human rights obligations. The Bill is also supported by senior specialist members of the police service, such as Commander Stephen Allen, whom it would assist to combat this form of serious abuse.' Lord Lester, Forced Marriage (Civil Protection) Bill [HL], Second Reading debate, 26 January 2007, available at www.parliament.uk.

[234] At the time of writing, the Bill still had to go through Report stage and Third Reading in the House of Lords before passing to the House of Commons.

them into profound conflict with their parents, and that conflict produces a profound sense of guilt and failure about their obligations.[235]

The preventative and supportive work described above has some of the elements of the dialogic approach discussed in chapter 2, most notably in the establishment of a working group and the later consultation on criminal and civil legislation. In terms of outcome, however, it is closer to the approach favoured by Chandran Kukathas, in that public authorities mainly focused on providing a limited exit strategy for a continuing stream of victims.

The inadequacy of the exit solution is very evident in relation to forced marriage. The Forced Marriage Unit has had cases of the same person returning for help two or three times, presumably because the resources provided for them were inadequate and/or they were unwilling to permanently cut off ties with friends and family.[236] The judgement in the wardship proceedings Re M Minors (2003) makes the point particularly forcefully. The case involved two orphaned girls of Pakistani origin, aged 13 and 15 at the time of the hearing, who had been taken back to Pakistan after the death of their father, and seemingly gone through betrothal ceremonies there. Intervention by the FCO resulted in their repatriation to the UK, where they were placed with a foster carer. Noting that the girls' expressed wishes (presumably to return to where they had been living in the UK) could put them at serious risk of harm, the judge directed the local authority to consider an application for a care order. He commented that while agencies concerned with forced marriage were doing their best to offer 'effective exit', it was important to follow this through so that vulnerable young people 'are not left high and dry if they decide to take what for many of them is the irrevocable step of electing to withstand family pressure or traditional or cultural expectations:'

As a society, we have become increasingly aware of the need to preserve the individual's ability to make effective choices, and to safeguard the integrity of a child or young adult from the risk of marriages forced or imposed upon them

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[235] Baroness Murphy speaking during the Forced Marriage (Civil Protection) Bill [HL], Second Reading debate, 26 January 2007, available at www.parliament.uk.

[236] 'An insight to international parental child abduction and related issues', conference organized by Reunite and held in Leicester on 30-31 January 2003.

by undue pressure and sometimes by violent threat. But we are, I think, only now learning fully to appreciate how traumatic it is for such vulnerable young persons to find themselves effectively confronted with the choice between remaining in what may have become in the broadest of terms an abusive family situation, or of escaping from it on a basis which may not permit bridges to be rebuilt thereafter. Such choices certainly involve a very considerable degree of emotional trauma, and all the other alienating consequences which may flow from exclusion from all of the adolescent's or young adult's most important cultural, social and religious links and heritage. The choices for those who choose to accept help are often limited as well as stark.[237]

Victims of forced marriage are not surprisingly unwilling to come forward if this results in the prosecution of family members – whether for a new specific offence of forced marriage or for existing crimes such as abduction. The consultation document reported that '...in the 165 cases reported to the Metropolitan Police over the last two years all the victims requested confirmation that no prosecution would result against their parents or other family members'.[238]

Moreover support for victims *after* a crime has been committed or a threat made does not address the fundamental causes of forced marriage as a phenomenon. Ayelet Shachar comments that the 'right of exit' offers a case-by-case approach that imposes the whole burden of resolving conflict on the individual, and contrasts this with a more comprehensive policy that would begin to address the power relations that continue to generate significant numbers of individual cases.[239] Her comments could accurately describe work on forced marriage in the UK – punishment and victim support will never offer the full solution of prevention through attitudinal change.

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[237] Mr Justice Peter Singer, Re M Minors (Repatriated Orphans) (2003) EWHC 852. Singer was also the judge in the important case Re KR (1999).

[238] Foreign and Commonwealth Office and Home Office, 2005, p17.

[239] Shachar, 2001, p41.

4.3 Immigration measures

Where there *was* a focus on prevention, rather than exit, it was through immigration regulations. Foreign and Home Office ministers and representatives repeatedly affirmed that they approached marriage from a human rights perspective, and this seems an accurate reflection of the principles guiding the people working on the ground, such as the staff of the Forced Marriage Unit.[240] However, what motivates caseworkers is not the full story, and there was a widely shared perception that forced marriage was part of the government's wider immigration strategy. Genuine matches were contrasted with 'bogus' or 'sham' marriages, entered into in order to secure entry to the UK. This promotes the notion that the most effective way of reducing the incidence of forced marriage is to reduce the number of people marrying overseas spouses. Members of Britain's South Asian communities have expressed the opinion that the real purpose of the forced marriage initiative is to keep people out of the UK: in their research on attitudes to forced marriage, Samad and Eade found that older people, in particular, saw the underlying motivation for tackling forced marriage as 'a desire to halt the immigration of spouses'.[241] Such suspicions make it less likely that members of minorities will support efforts to combat forced marriages.[242]

Rules relating to marriage have always been part of immigration controls. As noted in chapter 3, family reunion regulations have become one of the main means of determining the numbers of people settling in the UK, and immigration regulations were repeatedly altered after the 1960s to reduce the right to bring fiancés and spouses into the country.[243] These restrictions were overwhelmingly directed at minority ethnic citizens. And here Labour policy followed a familiar course. The Labour Party in opposition raised hopes that it would take a stand

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[240] '...we are accused of being involved in this issue for reasons relating to immigration or as a result of racially discriminatory behaviour. We have absolutely nothing to do with immigration and everything to do with Human Rights.' Heather Harvey, Community Liaison Unit, Foreign and Commonwealth Office, speaking at 'An insight to international parental child abduction and related issues', conference organized by Reunite and held in Leicester on 30-31 January 2003.

[241] Samad and Eade, 2002, p105.

[242] Samad and Eade point to the danger of perceptions of racism and Islamophobia derailing policy initiatives around forced marriage (Samad and Eade, 2002, p107). Their focus groups demonstrated that many Bangladeshi and Pakistanis – particularly the older generation – believed 'government interest in forced marriages was motivated by the desire to halt immigration of spouses' (Samad and Eade, 2002, p106).

[243] Bhabha and Shutter, 1994.

against racist immigration controls, and indeed one of its first acts on election was to abolish the Primary Purpose Rule. However many discriminatory measures remained in place, and new ones were introduced to prevent those from an ethnic minority enjoying the same rights to marriage and family reunion as other UK citizens. They make it difficult for victims of forced marriage to obtain the help they need.[244]

These measures included an extension of the 'one year rule' to two years, making an applicant for indefinite leave to remain (ILR) first complete a period of two years as the spouse of someone settled in the UK.[245] It was recognised that women were particularly vulnerable to domestic violence during this probationary period because they would find it harder to leave an abusive spouse.[246] In 1999, in response to campaigning by women's NGOs, the government introduced the Domestic Violence Concession, under which, if a person is given leave to remain in the country on the basis of marriage and that marriage breaks down because of violence on the part of the sponsoring partner, s/he will be given ILR. Originally, the standard of proof that an abused spouse had to provide was high: an injunction against the abuser, a court conviction or a police caution of the sponsoring partner were necessary; but under changes made in 2002 (again in response to campaigning), other forms of evidence, such as a letter from a GP, were allowed.[247]

Yet according to the Women's Aid Federation, the success of the concession was limited.[248] Even under the less stringent rules of 2002, an applicant needed two pieces of evidence if they did not have one of those specified under the original concession. However, the key problem women faced was the 'no recourse to public funds rule'. This meant that someone whose immigration position had not been regularized – and the legal process of obtaining ILR under the domestic violence concession could take several months – was barred from accessing state benefits. This prevented victims of domestic violence claiming income support and – crucially – housing benefit, making it very difficult for women's refuges to provide

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[244] See Southall Black Sisters, 2001.

[245] Immigration Rules, Section 8, para 287.

[246] Women's Aid Federation, 2002.

[247] Acceptable pieces of evidence included a medical report from a hospital doctor, a letter from a GP, an undertaking to a court, a police report, a letter from social services or a letter from a women's refuge (Immigration and Nationality Department press release, 26 November 2002).

[248] Women's Aid Federation, 2002.

accommodation to vulnerable women in the period when they did not have secure immigration status.[249] Given their recent arrival in the country, women in this situation were unlikely to have friends and family with no connection to the abusing spouse to whom they could turn for support, and often had no alternative but to stay in a violent situation. Even government guidelines recognised the possibility that rules limiting access to public funds could deter some people from leaving a forced or violent marriage.[250] Not surprisingly, the 'no recourse' rule has been a focus of women's organisations' campaigning.[251]

Victims of forced marriage are likely to make up a large proportion of those for whom the domestic violence concession was intended. But they are also those most likely to fall foul of the 'no recourse rule'. Women are unlikely to take advantage of the domestic violence concession if it means they are homeless and without financial support while waiting for a decision on their immigration status. This is an example of the failure to make connections across government, in this case between the forced marriage and immigration agendas. And this failure reinforced the perception in some quarters that the overriding political imperative was to prevent the use of marriage as a means of entry to the UK.

A further problem arose with spouses failing to obtain ILR for their sponsored partner after the expiry of the initial two-year probationary period. Women in this situation – and it was women according to West Yorkshire Police – then became overstayers, were committing an offence and were liable for deportation.[252] Forced marriage victims who entered the country as sponsored spouses were completely dependent on their sponsor – unless they felt able to make use of the domestic violence concession – and by not applying for ILR, a husband kept his wife in a

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[249] The first question Philip Balmforth (Vulnerable Persons Officer in Bradford) asked when interviewing a woman was whether she had Indefinite Leave to Remain (ILR) as it was crucial in establishing her chances of getting into a refuge or being rehoused (interview 9 May 2003).

[250] Foreign and Commonwealth Office with ADSS, Home Office, Department for Education and Skills and Department of Health, 2004, p29.

[251] Southall Black Sisters was campaigning against the rule at the time of writing. A conference on 'Gender, Marriage Migration and Justice in Multicultural Britain' recommended that women should be exempt from the 'no recourse to public funds' rule, particularly those who were under the two-year probationary period (Conference supported by the European Commission Daphne II Project, held at Roehampton University, London, 12 January 2006, conference report, p22).

[252] Interview with Philip Balmforth, 9 May 2003.

position of dependence. In the case of a young girl brought into the country as wife to an older man, she was particularly unlikely to be aware of her rights.[253]

The Working Group on Forced Marriage noted that there was also a problem from the other side:

> Women who are forced to act as the sponsor for their husband's immigration to the UK find themselves in an extremely difficult situation. A person who is refused immigration to the UK has a right to know the reasons why – and the right to appeal against the decision. This is a fundamental human right and should be protected. But this does mean that a woman's statement that a marriage is forced cannot be kept confidential if the decision to refuse entry to the UK is to be based on that statement... Fear of reprisals for going against their family's wishes, often reinforced by direct threats, means that women are often unable to place their reluctance on record with the immigration service.[254]

The suggestion that it is difficult to reject an applicant because of the need to fully disclose the reasons why has been vigorously rejected by one of the main NGOs working on immigration issues.[255] However, this does raise the question of the legitimacy of using immigration controls as a weapon against forced marriage, and takes us back to some of the arguments against the repeal of the Primary Purpose Rule. Some groups – most notably Southall Black Sisters – have insisted that they will have no truck with what they see as racist immigration rules, and have rejected any suggestion that the Primary Purpose Rule be reintroduced in order to inhibit forced marriages.[256] Others have been more willing to work with whatever tools are

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[253] Philip Balmforth had noted the large numbers of women with problematic immigration status, and came across one woman who had been in the country for ten years without her husband putting in an application for her Indefinite Leave to Remain. Balmforth would like to see a legal responsibility on spouses to apply after the expiry of the two-year probationary period (interview 9 May 2003).

[254] Home Office, 2000, Page 24.

[255] Spousal applications are regularly refused on the basis of minor inconsistencies in the 'stories' of the parties involved and it is unlikely that an entry clearance officer would find it difficult to refuse an application where evidence of a forced marriage was given confidentially (correspondence with Don Flynn, formerly Policy Officer at the Joint Council for the Welfare of Immigrants, October/November 2003).

[256] Hannana Siddiqui of Southall Black Sister has argued that that liberalising the immigration laws would in fact indicate a greater willingness on the part of Government to prevent forced marriage: 'If

available.[257] In 2000, the Danish government introduced new regulations, raising the age requirement for family reunification for spouses from 18 to 24, with a general rule that permission for reunification would not be granted if it were 'considered doubtful that the marriage was entered into according to the wishes of both partners'.[258] Following the Danish example, Ann Cryer MP effected a change in the immigration rules increasing the minimum age of sponsorship from 16 to 18, the result of a two-year campaign intended to reduce the number of vulnerable young people who unwillingly sponsored a spouse.[259] The rationale was to protect the youngest and most vulnerable from coercion, the (not unreasonable) presumption being that an eighteen-year-old is in a better position to resist family pressures than a girl of sixteen. This is true, but it effectively meant that 16-year-old Asian Britons wishing to marry and live with someone from overseas did not have the same rights as white Britons. It was also argued that raising the age limit for sponsorship could have a negative outcome in encouraging parents to send underage girls abroad to be married until they reach the age of sponsorship, thereby putting them out of reach of educational and social services and at greater risk of harm.[260] Moreover, it has been pointed out that this measure did 'little to help the many women and girls subjected to a forced marriage inside the UK'.[261] At the time of writing, the government was consulting on raising the minimum age of sponsorship further from 18 to 21.[262]

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there were no immigration rules to by-pass, families would not have to force women into marriage in order to allow non-British men to settle in the UK' (Siddiqui, 2003, p78).

[257] See 'Bounty hunters tail runaway brides' (*The Independent*, 20 July 1998). The article quotes Shamshad Hussain of the Keighley Women's Domestic Violence Forum: 'Women come to us and say they are being sent on "holiday" or they have been told to visit their grandmother who is dying, and they worry that there is an arranged marriage waiting for them...We advise them to go through with it if they have to but to make a note of their new husband's visa application when they are interviewed at the High Commission in Islamabad. Then, when they get home, we tell them to write to the authorities telling them that the application is based on a forced marriage. It is sad that we have to use what we have always viewed as racist legislation to keep these men out, but it is vital that we protect these women's basic human rights. I reckon hundreds of unwanted husbands have been kept out like this. Officials in Islamabad said they do try to interview women separately from husbands.'

[258] *The Government's Action Plan for 2003-2005 on Forced, Quasi-forced and Arranged Marriages* by the Danish Government (August 2003, p6-7).

[259] Interview with Ann Cryer MP, 26 June 2003.

[260] See Dustin, 2006, p7. Alternatively, Akbar Warraich and Balchin suggest that '[I]n response to this regulation, families are continuing to have their daughters married at age 16 and the process of bringing over the husband is delayed until she is 18'. Akbar Warraich and Balchin, 2006, p52.

[261] Siddiqui, 2005, p273.

[262] Home Office and Foreign and Commonwealth Office, 2007, p4.

4.4 Analysis of measures

Compared to the earlier period, a great deal of work took place to address forced marriage after 1997. However, research suggests three factors undermined its success. First, the confusion of the forced marriage agenda with immigration issues, encouraging the perception by members of minority communities that the real purpose of such measures was to keep people out of the UK. When the Home Office commissioned research on the subject, researchers found that among at least some of their participants, 'a legacy of suspicion ha[d] developed' and there was a strong concern that the issue of forced marriage would be used in such a way as to increase racism and Islamophobia'.[263]

The fact that the Foreign and Commonwealth Office originally led work on forced marriage has been described as 'regrettable'.[264] There was recognition that this was a problem and, as described above, the Unit was relaunched in January 2005 as a joint FCO/Home Office initiative. However, it continued to be housed at the Foreign Office with an FCO website, thereby identifying it with an overseas agenda. And there continued to be immigration controls and regulations that undermined the effectiveness of work with victims, in particular the regulations concerning 'no recourse to public funds'.

The perception that it was *all* transcontinental marriages that were under attack, and not just forced marriages, was fed by the government when it stated:

> We also believe there is a discussion to be had within those communities that continue the practice of arranged marriages as to whether more of these could be undertaken within the settled community here.[265]

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[263] One participant said '[t]he British immigration [service] is just fed up of granting visas to the spouse of our sons and daughters who are having arranged marriages in Bangladesh. They are trying to stop that...' The researchers pointed out that '[t]he study had no question in the topic guide on race, Islamophobia and immigration. These issues were spontaneously raised by the focus groups and indicate the sensitivity of the communities researched to this issue' (Samad and Eade, 2002, p104 and 106).

[264] Hannana Siddiqui of Southall Black Sisters has stated that it was regrettable that the Foreign Office led on this issue and not the Home Office or another department as it meant there had been too much focus on the international and too little on the domestic dimension (Siddiqui was speaking at a conference on 'Forced marriage – keeping it on the policing agenda' held in London on 16 February 2005).

[265] Home Office, 2002, p18. The suggestion was made again by Lord Ahmed during the debate on legislation against forced marriage when he suggested that 'bring[ing] people in from abroad where

The overseas dimension is clearly important, but is not the only priority. Focusing on overseas cases while leaving in place immigration controls that hamper victims obtaining support in the UK sends mixed messages about the government's motives. These can undermine credibility with the minority communities concerned, making it more difficult to engage them in changing attitudes.[266]

Many of the government's measures to reduce forced marriage concern situations where marriage would indeed entitle a non-British citizen to remain in the UK. In cases that do not involve a spouse or potential spouse from overseas, the victim's needs are likely to be met by social services, educational authorities or the police. But such cases may go undetected as most of the awareness raising and publicity generated by the forced marriage initiative has been about abduction overseas or the import of unwilling spouses. It is not possible to know the proportion of cases involving no overseas partner as this has not been monitored or recorded.

The second phenomenon this chapter identifies relates to choice. Initiatives on forced marriage are based on a clear distinction between arranged (good) and forced (bad) marriage. The government was (at times) keen to emphasise that the former are unproblematic. *A Choice by Right* stated that it was not about arranged marriages, which have operated successfully in many countries and communities for years and continue to be the choice of many. The report stressed that the distinction lies in 'the right to choose':

In the tradition of arranged marriages, the families of both spouses take a leading role in arranging the marriage, but the choice whether to solemnise the arrangement remains with the spouses and can be exercised at any time. The

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there is no compatibility. ...means that the community continues to go backwards rather than move forwards' (Forced Marriage (Civil Protection) Bill [HL], Second Reading debate, 26 January 2007, available at www.parliament.uk).

[266] Purna Sen, speaking at an 'Expert Meeting on Violence in the Name of Honour' (Ministry of Justice, Stockholm, Sweden 4-5 November 2003) criticised the use of immigration to combat forced marriage. The CEDAW Shadow Report for 2003 welcomed the forced marriage initiative but said '[I]n the absence of greater domestic work, however, this can give the impression that forced marriages are an international issue not a domestic matter. Greater involvement by the Home Office should be encouraged'. The report goes on to say '[b]y attacking the practice of arranged marriages and of marriages involving one person from a country outside the UK, policy-makers have squandered the support they might have had in some parts of the relevant communities' (Sen et al, 2003, p27).

spouses have the right to choose – to say no – at any time. In forced marriage, there is no choice ...This report is not about arranged marriage.[267]

It is clearly important that public authorities challenge the idea that all minority marriages are the same, or that forced marriage is a minority norm. And of course policy makers and legislators have to work with clear distinctions that may not fully correspond to reality.[268] But it remains the case that there is more of a continuum between arranged and forced marriage – and between both of these and so-called 'love' marriages – than policy recognised, with the potential marriage partner's degree of choice as the variable.[269] The women interviewed by Kalwant Bhopal in East London described marriages in which their parents chose their partner as arranged, not forced.[270] Yet when one considers their comments – 'if a girl says no, it's really considered a bad thing'; 'you just have to go along with it... if you didn't there would be just hell to pay from your parents and all your relatives' – it is clear they saw themselves as having minimal power to refuse. In a similar vein, the young Punjabi women interviewed in Glasgow were all either in or anticipating what they described as an arranged marriage. Yet when refusing such a marriage means, as one of them put it, that 'you're literally cutting yourself off from the whole Asian culture', the pressures to agree are clearly enormous.[271]

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267 Home Office, 2000, p10.

268 For example, there must be an age of sexual consent above which sexual relations are consensual and below which they are child abuse: in reality, a girl does not change from victim to consenting adult overnight on her sixteenth birthday.

269 'The government has consistently distinguished between forced and arranged marriages but this distinction has not percolated down to the communities' grass root levels' (Samad and Eade, 2002, p112). Gangoli et al's research found 'slippage' between the categories of forced, arranged and love marriage (Gangoli et al, 2006, p10). Gita Sahgal points out that the argument that all major religions require consent to marriage isn't strictly true (Sahgal, 2004, p55). In the House of Lords debate on a private member's bill, Baroness Rendell pointed out that 'it should not be forgotten that many, if not all, forced marriages begin as arranged marriages but change in character when one of the couple, usually the prospective bride, objects to the arrangement.' And Baroness Falkner of Margravine suggested that '[t]he very prevalence of obedience as an overarching filial duty makes the distinction [between forced and arranged] negligible. One cannot know for sure either way, but I know from many recorded and personal accounts that the line between coercion and consent is often obscured by perceptions of family honour, filial duty and cultural conformity' (Forced Marriage (Civil Protection) Bill [HL], Second Reading debate, 26 January 2007, available at www.parliament.uk).

270 Bhopal, 1999, p.121.

271 Bradby, 1999, p.157. Yasmin Ali points out that '[d]omestic violence, even, may be tolerated because the prospect of rejection — not by one man, but by one's whole social world — is felt to be too catastrophic to contemplate' (Ali, 1998).

This suggests that a simple correlation of arranged marriage with choice and forced marriage with absence of choice is inadequate. It also leaves women and girls threatened with forced marriage with the choice of two equally unattractive roles: to embrace a liberal or feminist notion of autonomy and risk alienation from their family or community; or to remain (perceived as) victims in an oppressive situation. Monique Deveaux, discussing the arranged marriage debate in The UK, has argued that liberal conceptions of autonomy based on the subject's 'visible reflexivity' fail to capture 'the many factors that may contribute to the endorsement of a custom by a member of an ethnic or religious minority...'.[272] The distinction between forced and arranged marriage deployed in policy discourse depends on a single act of choice or its absence, with little consideration of the context within which individuals act and the way social practices are resisted and adapted. Deveaux favours a more minimal account of autonomy articulated in terms of 'agency'. The following chapter suggests this is equally true in relation to female genital mutilation and cosmetic surgery and picks up some of these issues of autonomy.

A final flaw in forced marriage initiatives can be traced directly to the failure to recognise the heterogeneous nature of minority communities and the complex interplay of factors that contribute to forced marriage. This takes us back to the danger identified in chapter 2, of reinforcing a 'package picture of cultures'. The 2005 consultation stated that while the majority of forced marriage cases in the UK involve South Asian families '...forced marriage is clearly not a uniquely South Asian problem – there have been cases involving families from South-East Asia, the Middle East, Europe and Africa in the past'.[273] However, the diversity of communities has not been recognised, nor the diversity of opinion *within* communities. This is despite a number of studies suggesting that minority attitudes to questions such as marriage vary enormously, with focus groups providing evidence of significant variations in opinion according to education, class/caste, age, and gender.[274]

Research had long indicated a generation gap within South Asian families over the practice of arranged marriage. In a survey in 1983, 81% of South Asian

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[272] Deveaux, 2007, p145.

[273] Foreign and Commonwealth Office and Home Office, 2005, p4.

[274] Bhopal, 1999; Samad and Eade, 2002; Bradby, 1999.

parents but only 58% of their children agreed that 'arranged marriages still work well within the Asian community and should be continued'.[275] This difference of opinion is reflected in the declining proportion of marriages where the parents make the final decision as shown in a major survey of ethnic minorities, carried out in the mid 1990s.[276] All commentators agree that the nature of arranged marriage is changing, with increasing input from the prospective partners in the marriage decisions.[277] Where once parents and other family members determined both when marriage was appropriate and who was the appropriate spouse, now young people often make their own choice from a shortlist of approved candidates, or choose the future partner themselves, then wait for parental approval.

Views on forced marriage have proved similarly diverse, with some older people and community leaders denying the existence of the problem and seeing media attention on the issue as an attack on arranged marriages, while younger people are more likely to be aware of the problem and to favour a choice-based version of arranged marriage for themselves.[278]

Studies have also shown that geographical factors are significant in determining attitudes to and the persistence of forced marriage – geography in terms of where communities come from and also where they settle in the UK. While the attitudes and values of minorities are generally assumed to derive from the country or region of origin, there is little recognition of the degree to which they are a reflection of their new political and social environment. There is reason, for example, to think that what appears to be a north/south divide in the UK is as applicable to minority as to majority communities:

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[275] Anwar, 1998, p108.

[276] The overwhelming majority of older Hindu, Sikh and Muslim respondents reported that their parents had decided their marriage partner. Among those under 35, the only group for whom this remained the majority experience was Muslim women, where 67% still reported a parental decision. The change was most dramatic among Hindu and Sikh women: 86% of Sikh women over 50 said their parents had decided their marriage partner, but only 27% of the under 35s; 74% of Hindu women over 50 reported that their parents had made the decision, but only 20% of the under 35s. Interestingly, 41 % of the younger Sikh men said their parents made the decision; 18% of younger Hindu men; and 49% of younger Muslim men (Modood et al, 1997, p317).

[277] Samad and Eade, 2002; Bhopal, 1999; Stopes-Roe and Cochrane, 1990.

[278] 'In sharp contrast to the elders and the middle aged focus groups, who spent a lot of energy arguing on the discriminatory nature of our research, young men and women claimed that the problem of forced marriage does exist and that coercion has no role in the marriage process' (Samad and Eade, 2002, p106). See also Gangoli et al, 2006, which suggests different attitudes among young people and community leaders.

On a whole range of social questions – but significantly not on political affiliation – the North was more conservative than the South. That this closely mirrors social and political attitudes in Britain generally is certainly worthy of wider recognition. Northern English Muslim communities are as they are in part because of their specifically English regional qualities, not their 'alienness'.[279]

Some commentators have suggested that British Pakistanis in parts of the UK are more conservative than their families of origin in Pakistan. Narina Anwar, a writer for the website missdorothy.com, fled her family in Bolton to avoid forced marriage.[280] When asked about the differences between Bolton and her family's place of origin in Pakistan, she replied 'in Pakistan they had more liberal views than the community in Bolton which was very enclosed. My parents came to this country in the 60s and they're still stuck in the Pakistan of the 60s while Pakistan has moved on'.[281] A similar phenomenon has been identified in Bradford, with a more conservative interpretation of religious requirements than in some sectors of Pakistani society.[282]

This raises the question of whether assumptions have been made about what is happening nationally based on a regional phenomenon, because that is where the problem is most visible or acute and where there has been most publicity. Much research on forced marriage has focused on Yorkshire, specifically Bradford.[283] In

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[279] Yasmin Ali claims that '[t]he regional context of Northern social conservatism has also had its impact upon how women in all communities, including Muslim communities, are constructed' (Ali, 1998).

[280] www.missdorothy.com is a website for young people including information and advice about forced marriage.

[281] 'Forced marriage – keeping it on the policing agenda' (conference held on 16 February 2005).

[282] Philip Balmforth reported that a local girls school had carried out an exchange programme with a girls school in Islamabad '…and the girls came from Islamabad and said "why do you wear head scarves? We don't wear head scarves" and that the Bradford girls had no answer (interview 9 May 2003). Lord Desai has claimed that '…often, groups have come from the subcontinent to this country and the culture that they believe in has been frozen in aspic from the time they were there in the 1940s and 1950s. Back in south Asia, the culture has progressed and the position of women has improved, but some people here feel, "We must preserve our culture as we thought it was in the 1940s"' (Forced Marriage (Civil Protection) Bill [HL], Second Reading debate, 26 January 2007, available at www.parliament.uk).

[283] Ali, 1998; Macey, 1999; Samad and Eade, 2002. This last is a comparative study of Tower Hamlets' Bangladeshi community and Bradford's Pakistani community. Although not on the subject

Parliament, Ann Cryer, MP for Keighley, has been the main voice of victims of forced marriage, while the West Yorkshire police in Bradford have worked on the issue for many years. In parliamentary debate, Cryer has drawn attention to the problem of girls who are taken to Pakistan for marriage and then forced to act as their husband's sponsor, a situation she came across frequently in her Yorkshire constituency.[284]

This may or may not be a problem specific to Bradford's conservative Mirpuri community; that it is a problem among all Britain's South Asian or Muslim communities needs to be demonstrated. This is not to argue against national measures on forced marriage but to point out the need for research to identify regional and other variations. If forced marriage does indeed take different forms in different parts of the UK, then it would make sense to target strategies and service where the problem is more acute. It may be that this has happened to some extent – with NGOs emerging as and where they are needed. But greater recognition of specificities based on age or region might also lead to new policies: specific training for social workers, teachers and police officers might be most appropriate in some areas, while in others it might make sense to establish outreach offices of the Forced Marriage Unit. And, very importantly, if the diversity that researchers have identified were more fully recognised, it would undermine the impression of Muslim/Asian culture as a 'package' with forced marriage as a key ingredient of the package.

4.5 Conclusion

It is difficult to judge the effectiveness of measures to tackle forced marriage because of the lack of national monitoring, and the contribution of demographic factors which mean that more members of the communities concerned reached marriageable age during the period discussed.[285] There has been disagreement as to

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of forced marriage, *the Cantle Report* on the summer 2001 'riots' in Bradford, Burnley and Oldham identified polarization between communities as a significant factor, something which undoubtedly influenced the Home Office's focus on speaking English and finding spouses in the UK in the white paper published the following year (Home Office, 2001a and Home Office, 2002).

[284] Immigration (forced marriage) debate, House of Commons, 19 March 2003, available at www.parliament.uk.

[285] Ann Cryer MP stated that an increase in forced marriages was inevitable because of the growing number of members of the Asian community reaching marriageable age (interview, 26 June 2003). Samad and Eade compared the Bangladeshi community of Tower Hamlets with the Pakistani

whether the problem is increasing or whether there is simply greater awareness of it. However, there has been no indication that the incidence of forced marriage is falling, and much to suggest that it is the experience of living in contemporary Britain (rather than a 'tradition' left over from a different context) keeping it alive. Parents faced with what they see as their children's wayward behaviour may become more (rather than less) keen to arrange an early marriage with a 'suitable' spouse from the Indian sub-continent. In their report on attitudes towards forced marriage among Bangladeshis in East London and Pakistanis in Bradford, Samad and Eade comment that '(t)he knee-jerk reaction to young men's involvement in drug use and petty crime or young women forming illicit liaisons is to get them married and thereby, hopefully resolve the problem'.[286] If, as this suggests, the social and sexual control of their children is one of the main reasons why parents will force them into a marriage, this is not so obviously something that will die out in another generation.

What is clear is that there was far greater recognition in 2007 of the specific needs of young women threatened with forced marriage than there was a decade earlier. It was also the case that policy was made in a more consultative way, with black and minority ethnic women's organisations engaged, as for example, in the drafting and passage of the Forced Marriage (Civil Protection) Bill in 2006 and early 2007. The ministers responsible for this area of policy or who spoke on the issue – Baronesses Scotland and Ashton – publicly identified forced marriage as a domestic violence and human rights issue, and not a race or immigration issue.[287] This certainly represents progress.

However, I argue that the efforts of police, parliamentarians, civil servants and – in particular – women's NGOs have been undermined in several ways. The first is

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community in Bradford: 'In terms of age structure both communities are young, with Bangladeshis having an even younger population than Pakistanis. Thus various socio- economic issues that are confronting Pakistani young at present will be faced by Bangladeshis young in five to ten years time. This relates to a wide range of issues from education to employment and marriage' (Samad and Eade, 2002, p119). This could imply that forced marriage has been more of a problem in Bradford than in Tower Hamlets because the Asian community in Tower Hamlets have not yet reached or are only just reaching marriageable age.

[286] Samad and Eade, 2002, p. 67. They also found that elders '…see marriage as the last resort in stopping young people going off the rails' (p79).

[287] Baroness Ashton of Upholland, who spoke for the Government at the House of Lords debate on 27 January 2007, was responsible for human rights, including human rights issues relating to the Commission for Equality and Human Rights, at the Department for Constitutional Affairs (later the Ministry of Justice). In the debate, she replaced Baroness Scotland QC, Minister for Justice at the Home Office with responsibility for domestic violence.

through the identification of forced marriage with immigration abuses instead of primarily with the violence against women agenda. Particularly problematic here are the immigration regulations that deny support to victims of domestic violence.

Second, there is a genuine difficulty in distinguishing forced and arranged marriage. This is more difficult to address, as legislation and policy will always need to make clear-cut distinctions that are often arbitrary. However, the continuum between choice and coercion demonstrates the need for more focus on educating and empowering victims and potential victims about their human rights. Ultimately, it is the children and young people concerned who need to be able to determine the difference between force and consent.

Finally, there has been a failure to recognise the diversity of opinion in minority communities and the complexity of factors contributing to the phenomenon of forced marriage. Several pieces of research have shown that attitudes about marriage, arranged marriage and forced marriage vary enormously, with age and geography as variables that should clearly be further investigated if policy and services are to be effectively targeted and cultural stereotypes avoided.[288]

In the meantime, while there was some progress after 1997, victims or potential victims of forced marriage were often faced with a stark choice: to either leave their 'community' – their friends and family – and seek refuge in the majority society, or to continue to be abused. Adequate protection and redress *within* their community was rarely an option.

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[288] In particular, the report by Samad and Eade commissioned by the Home Office and published in 2002.

Chapter 5. Female genital cutting

5.1 Introduction

Debates about female genital cutting (FGC) have polarised opinion between those who see it as an abuse of women's health and human rights, to be 'eradicated', and those who may or may not oppose the practice, but stress a double standard on the part of Western campaigners who fail to challenge misogyny in their own communities. While my overall argument is that cultures should not be portrayed as discrete, it has been particularly difficult to maintain this in the face of the polarisation between Western and African 'cultures' in relation to FGC. It is clear from both the academic and campaigning literature on female genital mutilation/cutting/circumcision that this is an emotive, complex and multidimensional issue that has divided academics, activists and service providers internationally and nationally for the past three decades. This chapter will examine why this subject has been so sensitive, and how these international debates have played out in the UK. An important underlying theme is the relationship between theory and practice: is it possible to employ the more discerning theoretical analysis of culture identified in chapter 2, while at the same time campaigning effectively against female genital cutting, or providing support to those who have experienced or are at risk of experiencing it? The case of the UK suggests that this is, in practice, a difficult line to draw.

I do not, myself, argue that FGC is a legitimate practice, seeing it, rather, as an abuse of women's and children's rights that should be combated using a combination of strategies and arguments. However, I draw attention to some problematic assumptions about the 'practice' and argue that cultural stereotyping is evident in the way it has been tackled in the UK, and that this has undermined efforts to reduce the prevalence of FGC.

5.2 Terminology

Virtually all discussions begin with terminology and this chapter is no different: the decision about what to call this 'practice' is a political one which must be taken before even beginning the discussion. The options include female circumcision, female genital mutilation (FGM), female genital surgeries (FGS) or female genital cutting (FGC).

The term employed in the 1970s was female circumcision, making it analogous with the surgeries carried out on male children for religious or health reasons. However, feminists, activists and human rights campaigners have long argued that 'circumcision' misrepresents the severity of the practice as carried out on girl children, that what takes place constitutes a serious risk to women's health, that it damages their prospects of sexual enjoyment, and symbolises the control of women's bodies.

The term 'mutilation' was adopted in the 1980s as a more accurate description and a means of 'condemnatory advocacy'.[289] Female genital mutilation, now often abbreviated to FGM, is the term commonly used to campaign against what many perceive as a major violation of human rights. However, in the course of the 1980s and through the 1990s, a body of literature developed that represented the term FGM as offensive to women who had undergone the practice, and indicative of the 'arrogant perception' of Western writers and feminists opposed to the practice.[290] To describe someone as 'mutilated' is pitying, disparaging and polemical. The term also prejudices debates about women's degrees of autonomy and choice in relation to FGC, as there is a presumption that no one would choose to be mutilated.[291] Defenders of the term argue that its extremity is an accurate description and appropriate response to the reality of what is being done to many women, but mainly to children, around the world.[292] But as Isabelle R. Gunning among others has argued, less inflammatory language like cutting – is more respectful, not of the practices but of the individual women and children identified with them, and is less likely to reinforce stereotypes that contrast cultures along an axis of more or less barbaric.[293] Moreover, not all forms of FGC are mutilating and some may leave the

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[289] Cook, Dickens and Fathalla 2002; Rahman and Toubia, 2000, px.

[290] The term 'arrogant perception' has been associated with Isabelle R. Gunning since her 1992 essay 'Arrogant perception, world travelling and multicultural feminism: the case of female genital surgeries'. However, it was coined – as Gunning acknowledges – by Marilyn Frye in an essay called 'In and out of harm's way' in her book *The Politics of reality: essays in feminist theory* (New York, Crossing, 1983).

[291] Meyers, 2000, p470. She chooses the term female genial cutting for that reason.

[292] An issue of concern at the 6th General Assembly of the Inter-African Committee was the attempt 'to dilute the terminology Female Genital Mutilation (FGM)' (Assembly report, p28, available at http://www.iac-ciaf.com/Reports/6th%20General%20Assembly%20Report%202005.pdf last accessed 5 June 2007).

[293] She argues for different language in different contexts: 'Harsh and blunt language at the international level reveals respect for the lives of women and girls by placing their pain and suffering

'victim' unmarked. Finally, FGM may be a term that is unfamiliar to those who experience it, making it difficult for service providers to engage with women and children in practicing communities.

In recognition of these arguments, some commentators have adopted what they see as the more neutral terminology of female genital surgeries or cutting.[294] While 'surgeries' is also a controversial term, having medical connotations and suggesting a health need, 'cutting' comes as close as one can hope to a descriptive term not highly offensive to either camp. Cutting or FGC is therefore the language I use in this chapter, except where discussing the stance of a particular writer or initiative, where I employ the terminology of their choice. This may result in an occasional confusing switch from 'FGM' to 'FGC'. My choice of term is not, however, intended to signal neutrality about the practice itself. In the sections that follow, I argue that measures to reduce FGC in the UK are urgently needed, particularly as existing strategies have not been entirely successful

5.3 Definitions

Female genital cutting, female genital mutilation and female circumcision are terms used to describe the cutting, alteration or removal of part of a woman's or girl's genitalia for non-therapeutic reasons. Most definitions also include the fact that it is a 'traditional' practice or done for 'cultural' reasons, without defining the terms 'traditional' or 'cultural'.[295] As with forced marriage, commentators are keen to point out that it is not a requirement of any of the major world religions.[296] This might suggest that the practice can more easily be eradicated if practicing communities can be convinced that it is not a religious imperative to circumcise their daughters. This implication will be discussed further in chapter 7.

Material on FGC often starts with a definition of the kinds of surgery that are carried out, usually using a typology of procedures based on that given by the World

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on the same level, internationally, with acknowledged public harm. At the grass-roots, educational level, however, more muted tones carry respect for the cultural contexts and tensions in which particular women and girls struggle to survive' (Gunning, 2002, p119-120).

[294] Gunning's choice of the term 'female genital surgeries' facilitates an analogy with cosmetic surgeries such as breast augmentation in the United States (Gunning, 1992, p213).

[295] For example, World Health Organisation factsheet on female genital mutilation at www.who.int/mediacentre/factsheets/fs241/en/ last accessed 6 May 2007; Toubia and Sharief, 2003.

[296] A 2006 campaign by statutory and voluntary agencies included the statement that 'FGM is a cultural practice, which has no basis in any religion' (http://www.forwarduk.org.uk/news/news/130 last accessed 6 May 2007). See Lockhat, 2004, chapter 3 on 'Female circumcision in Islam'.

Health Organisation:

- Type I – excision of the prepuce, with or without excision of part or all of the clitoris;

- Type II – excision of the clitoris with partial or total excision of the labia minora;

- Type III – excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (infibulation);

- Type IV – pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue;

as well as:

- scraping of tissue surrounding the vaginal orifice (angurya cuts) or cutting of the vagina (gishiri cuts);

- introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it; and any other procedure that falls under the definition given above.[297]

It might be simpler to make a broad distinction between *sunna* (comparable with type I above), excision, and infibulation, while recognising that none of the above are discrete definitions but overlap and take different forms according to time and place.[298] One point to note here is that while many writers begin with a typology similar to that given above, there is a subsequent tendency to forget the complexities and variations and treat FGC as a single procedure – usually the more extreme infibulation – in all its manifestations.[299]

[297] 'Female Genital Mutilation', World Health Organisation fact sheet no. 241, June 2000, (http://www.who.int/mediacentre/factsheets/fs241/en last accessed 6 May 2007).

[298] The Ghent Meeting of Experts in 1998 recognised the 'considerable evidence in literature that classifying these procedures can only be done theoretically' and that '[I]n practice, the three forms [clioridectomy, excision and infibulation] are not clearly separated anthropologically and many groups practice intermediate forms' (International Centre for Reproductive Health 1998). Bettina Shell-Duncan describes female circumcision as 'a euphemistic description of what is really a variety of procedures for altering the female genitalia' (Shell-Duncan, 2001, p1015).

[299] Janice Boddy makes a similar point that '…the term *female genital mutilation*…though seemingly descriptive, forges a single decontextualised fact out of diverse practices and meanings and imbues it with specific moral and ideological significance' (Boddy, 1998, p80). Christine Walley suggests that '[t]o lump together the diverse forms of the practice into a bundle known as "female genital mutilation", female circumcisions," or "female genital operations" obscures the diverse geographic

5.4 The diversity of genital cutting

The reasons commonly cited for the persistence of FGC are varied, including the preservation of virginity or chastity, the belief that it is a religious requirement, that it is more hygienic, that it is a necessary requirement for marriage, that it marks the passage to adulthood, that it enhances fertility and that a circumcised female genitalia is more aesthetically pleasing. Diana Tietjens Meyers suggests that rationales can be 'classified according to the broad themes of sexual repression, gender identity and group cohesion, [but] there is no uniformity whatsoever in the specifics. This heterogeneity is echoed in the variety of forms that female genital cutting takes'.[300]

This diversity of form and purpose is not surprising if what is being described is several different procedures (perhaps misleadingly) defined by a single term, taking place in different (mainly, but not exclusively, African) countries, carried out on girls and women at ages ranging from a few days old to full adulthood, and for a range of different reasons. Campaigns to eradicate FGC have often ignored this diversity, portraying it simply as the ultimate expression of patriarchal oppression.[301]

The elision of a range of practices is reinforced by the use of the same few facts again and again in the literature, gaining greater credibility with each repetition. For example, it is common to come across the assertion that the girl's legs are tied together for forty days after she is cut, or that her genitals are stitched together with thorns.[302] It is not clear from the literature whether this is typical of every case of FGC, every case of infibulation or only a few cases of infibulation in a specific country or region within a country. There are also many references to the

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locations, meanings, and politics in which such practices are embedded, and rhetorically constitutes a generic "they" who conduct such practices and a generic "we" who do not' (Walley, 1997, p429).

[300] Meyers, 2000, p473.

[301] 'A primary concern expressed in African feminist texts is the tendency among Western human rights activists to essentialize the motivations for practicing FGS as rooted either in superstition or in the passive acceptance of patriarchal domination' (Lewis, 1995, p31).

[302] 'Slivers of wood or matchsticks are used to stop the vagina from sealing fully. Kitchen knives, razor blades or pieces of glass are used in the operation and stitching is with silk, catgut or thorns. Girls may have their legs bound for 40 days to allow scar tissue to form' (*The Independent*, 7 July 1992).

'secrecy' that surrounds the practice of FGC.[303] It is probably true that people are unlikely to talk about a custom widely viewed with incomprehension or distaste, but identifying FGC as a clandestine practice means that sweeping statements may be made without support, and the lack of empirical evidence attributed to the 'secrecy' of those who practice it.

5.5 Historical and global developments

FGC is not a new phenomenon. Nor is it specific to non-Western cultures. As many writers point out, it was a common treatment for female hysteria or to discourage masturbation in America and Europe until the early 20th Century.[304] There is agreement that it is now most prevalent in African countries but has also become a problem in immigrant and refugee communities in Western countries.[305] It is therefore of direct concern for Western governments who can no longer relegate the issue to one of overseas development and the international aid agenda.

FGC was identified as a global human rights concern in 1979, when the World Health Organization held an international conference on female circumcision, advocating its eradication. In the period immediately after, anti-FGM programmes focused on the health implications. However, during the Women's Decade (1980-1990), there was greater attention to FGC as an issue of women's rights. In 1993, the World Conference on Human Rights in Vienna accepted gender-based violence as a violation of human rights. In 1997, the World Health Organization, UNICEF and the United Nations Population Fund issued a call for the elimination of all forms of FGM or female circumcision, and unveiled a joint plan to bring about a major decline within a decade based on educating the public and law-makers, de-medicalising FGC and encouraging countries to develop culturally specific plans for its eradication.[306]

There are a number of international instruments used to support the argument

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[303] For example 'Secrecy creates a problem for prosecution' (*The Times*, 21 August 2001).

[304] Gunning, 1992. See also Atoki, 1995, p229; Rahman and Toubia, 2001, p7; Lewis, 1995, p23.

[305] 'Changing a Harmful Social Convention: Female Genital Mutilation/Cutting' (UNICEF Innocenti Research Centre digest available at http://www.unicef-icdc.org/publications/pdf/fgm-gb-2005.pdf last accessed 6 May 2007)

[306] WHO 'Female genital mutilation: a joint WHO/UNICEF/UNFPA statement', 1997. For discussion of how FGM became an international human rights issue see Toubia and Sharief, 2003 and Lockhat, 2004.

that FGC is a human rights abuse, most obviously the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the 1990 Convention on the Rights of the Child, but also the 1997 African Charter on Human and People's Rights. Many governments have legislated against the practice, including some of the African countries with the highest prevalence and some whose population now includes practicing communities, for example, Canada, New Zealand, Sweden and the USA.[307] Others, most notably France, have not legislated specifically against FGC but have used existing legislation to address the practice.[308]

Alongside the development of an international human rights movement, a body of literature has developed, drawing on anthropology, sociology, health studies, feminism, human rights discourse, and postmodernism. Much of this literature targets female genital mutilation as an abuse of women's rights to health and bodily integrity.[309] But many of the arguments used are presented as uncontestable facts, making up a solid case against a single act. In fact, each of the most commonly used arguments has been qualified or interrogated by writers who are not necessarily in favour of FGC, but who identify inconsistencies or hypocrisies in the way that the anti-FGM lobby has been articulated that may have hampered efforts to eradicate it. The following section considers these arguments.

5.6 Debates about female genital cutting

5.6.1 Necessity

FGC is said to be unnecessary. There is no therapeutic reason to circumcise women and girls and reasons for doing so are often unfounded. For example, campaigners point out that despite common perception, it is not an obligation of any of the world's major religions. In response to the argument that it is an integral part of the tradition of some cultures, it might be argued that many practices once maintained on the grounds of tradition have been rejected because they have become incompatible with modern values – corporal punishment in English schools for example. Equally, if it is being done in the mistaken belief that the clitoris represents

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[307] See Lockhat, 2004, chapter 4, for details on which countries have passed legislation.

[308] Dorkenoo and Elworthy, 1994, p143; 'Sexual mutilation: the French approach in the application of law' by Linda Weil-Curiel in International Centre for Reproductive Health, 1998, p22.

[309] Hosken, 1994; Lightfoot-Klein, 1991.

the male sex organ and will grow to the length of a penis if it is not circumcised, practitioners should be persuaded that this is not the case.[310]

Against this, it can be argued that most human activity beyond eating, sleeping and procreation is not strictly necessary and comes into the category of 'culture'. Campaigners might do better to argue that it serves no useful purpose. But from some anthropological or sociological perspectives, practices such as FGC *do* have a purpose. They help to establish or reinforce group identities. To the extent that humanity is divided into cultural and ethnic groupings, it is through behaviours and practices like FGC that the boundaries between different groups are made evident or visible. One can question the degree to which cultures are homogenous and discrete, while still recognising that people identify with cultures. And if cultural identity makes life meaningful by facilitating choice – as Kymlicka has argued – then practices such as FGC will be particularly important for ethnic groups whose cultural identity is threatened or degraded, for example minority ethnic communities in Western countries. For immigrant and refugee communities who have relocated away from friends and families and their country of origin, the maintenance of practices such as FGC may be one way of preserving a continuity between their past and present lives and asserting the value of their cultural identity in the face of a society that devalues it. One implication of this is that FGC is unlikely to be a vestige of a past way of life but could increase in Western countries with growing immigrant communities. This echoes the suggestion in the previous chapter that forced marriage is not a practice that will necessarily disappear over time.

Feminists ask – with justification – why it is that cultural boundaries tend to be identified through customs that are particularly painful or restrictive for women. But as well as attempting to answer that question, we should also ask why violence against American and European women is *not* identified as cultural and is seen as an aberration on the part of individual men, while violence against African and Asian women is viewed as intrinsic to their culture and therefore their identity. This is a recurring question in this thesis.

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[310] Lockhat, 2004, p17.

5.6.2 Health

Critics point out that FGC has an extremely detrimental affect on women's health and well-being. Apart from the extreme pain the operation itself is likely to cause, it can lead to short term problems such as hemorrhage, infection, bleeding and urinary complications. Longer-term problems include menstrual, urinary and obstetric complications, cysts and ulcers, difficulties in having vaginal intercourse and psychological trauma.[311]

The argument that FGC can be extremely damaging to women's and children's health is hard to deny and few people do. What is not always clear is that the catalogue of illnesses, symptoms and conditions cited, for example, by Fran P. Hoskens, Hanny Lightfoot-Klein and international governmental and non-governmental organisations, are not the single and inevitable result of all experiences of FGC for all women, but usually a worst-case scenario.[312] The reasons why FGC is damaging to women's health are rarely broken down according to which type of procedure causes which particular health problems, and there is an acknowledged dearth of research on the subject.[313] For example, the Amnesty International website recognises that 'the type of mutilation practiced, the age at which is it is carried out, and the way in which it is done varies according to a variety of factors...' but follows this with a section beginning with the statement that 'the effects of genital mutilation can lead to death'. This is true, but the probability will vary enormously according to whether the type of 'mutilation' is *sunna* or infibulation. Some manifestations do not leave a mark or cause any permanent damage. And some women have testified that the experience was not horrific or traumatic but left them feeling 'happy' and 'proud'.[314] This is not an

[311] See 'Appendix 1, International Centre for Reproductive Health, 1998. A study published in 2006 by the World Health Organisation and based on the follow-up of more than 28,000 mothers from six African countries where FGM is commonly practised 'shows the harmful medical effect of the practice on reproduction conclusively: A mother who has undergone the practice or her baby are at significant risk at childbirth, with more than a 50 percent chance of dying. The degree of severe complications or the risk of dying for mother and baby increases with the severity of the genital mutilation performed' (available at: www.who.int/mediacentre/news/releases/2006/pr30/en/index.html last accessed 6 May 2007).

[312] Bettina Shell-Duncan claims that 'noteworthy case studies on infibulation are generalized to describe the health risks of *all* forms of genital cutting' (Shell-Duncan, 2001, p1016).

[313] 'The exact incidence of morbidity and mortality associated with FGM is difficult to measure. Until now, few studies have been done on this subject' ('Appendix 1, International Centre for Reproductive Health, 1998).

[314] Lockhat, 2004, p117.

attempt to belittle the pain and trauma which most children and women experience, but it is important to point out that there is not a single terrible experience of female genital cutting. If one can even call it a single practice, it is one with many manifestations; the way it is experienced will be manifold as a result. From a different perspective, one danger in focusing on the health risks is that it encourages a response that would make the procedures safe for women by transferring them to a clinical setting or performing type 1 rather than type III. Yet most campaigners argue against medicalisation on the grounds that this would only legitimize FGC (see discussion below).

5.6.3 Sexuality

Amnesty International states '...the importance of the clitoris in experiencing sexual pleasure and orgasm suggests that mutilation involving partial or complete clitoridectomy would adversely affect sexual fulfillment'.[315] Linked to this is the assumption on the part of many campaigners that the denial or restriction of female sexual enjoyment is the very purpose of FGC, that for all the talk of coming-of-age rituals, girls are circumcised either to ensure their chastity (they will no longer enjoy adultery or promiscuity) or to make sexual intercourse more pleasurable for their husbands or future husbands.

This has been interrogated on two counts. The argument that FGC destroys women's sexual pleasure has been particularly controversial. After asserting that 'clitoridectomy would adversely affect sexual fulfillment', Amnesty International goes on to acknowledge that 'the mechanisms involved in sexual enjoyment and orgasm are still not fully understood'. In one study, 90% of women interviewed who had been infibulated reported experiencing orgasm.[316] It is typical to read that 'FGM...involves foregoing altogether the very possibility of sexual functioning ... well before one is of an age to make such choice'.[317] But not all cases of FGC involve the removal of the clitoris; sexuality is a cultural construct; and FGC is not always carried out on girls under the age of legal consent.

[315] Female Genital Mutilation: A human rights information pack, Amnesty International 1997, available at www.amnesty.org/ailib/intcam/femgen/fgm1.htm.

[316] Female Genital Mutilation: A human rights information pack, Amnesty International 1997, available at www.amnesty.org. See also Shweder, 2002, p221, for evidence that circumcised women enjoy sex.

[317] Nussbaum, 1999, p127.

Secondly, It has been suggested that the reason Western feminists devote so much energy to campaigning against FGC is that the clitoris has become an icon of women's liberation in the West.[318] Discussions dating from the 1960s about whether there were two kinds of orgasm – clitoral and vaginal – challenged the notion that penetration is equivalent to sex and necessary for sexual pleasure, and the clitoris symbolised this.[319] But just as feminists challenged male definitions of what sex is and who has the right to sexual pleasure, so African women have questioned Western feminism's definition of sexual enjoyment as dependent on the clitoris and the assumption that the significance attached to sexual pleasure in Western cultures is universal.

Against those who see FGC as representing a denial of female sexuality, are others who argue that it enhances female sexuality:

> In places where the practice of female circumcision is popular, including Somalia and the Sudan, it is widely believed by women that these genital alterations improve their bodies and make them more beautiful, more feminine, move civilised, more honourable...Here a cultural aesthetics is in play among circumcising ethnic groups – an ideal of the human sexual region as smooth, cleansed, and refined – that supports the view that the genitals of women and men are unsightly, misshapen and unappealing if left in their natural form.[320]

One could argue that a belief that the female body in its natural form is ugly and requires surgical modification should be challenged not accommodated. But if one of the reasons for FGC is a cultural belief about what constitutes beauty in the female body – in this case smooth unobtrusive genitalia – this is akin to the justification routinely given for cosmetic genitoplasty and also to the tendency to

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[318] Shweder, 2002, p233.

[319] Masters and Johnson, 1966); Koedt, 1991 (first published in 1970).

[320] Shweder, 2002, p224. Obiora states that '[o]ther ethnic groups justify the practice on grounds of aesthetics, as they consider the normal female genitalia unsightly and prefer occluded or attenuated body orifices' (Obiora, 1997, p297).

show women in pornographic magazines and films with their pubic hair shaved.[321]

In both cases it could be argued that a female aesthetic has been created in which it is desirable for women to look unnaturally child-like and undeveloped. Cutting women's genitals to have them meet an aesthetic norm can also be compared to the breast enhancements or (less often) reductions that women in industrialised countries routinely undergo to try to meet their society's norms of female beauty.

5.6.4 Human rights

Finally, FGC is condemned on broader human rights grounds: that women and children have the right to bodily integrity and that FGC is against the spirit or the letter of international instruments ranging from the Universal Declaration of Human Rights of 1948, to the International Covenant on Economic, Social and Cultural Rights of 1976 and the 1990 Convention on the Rights of the Child. One of the global achievements of the past century has been the development of an international human rights culture and accompanying body of law: FGC is precisely the kind of harmful practice that the international community should unite to oppose. If bodies like the United Nations, the World Health Organisation and international NGOs do not take action to end FGC, then they have little value.

Those who challenge the position of FGC within human rights discourse are usually not questioning whether women and children are entitled to the same human rights as men. They are more likely to believe there is something inappropriate in the weight given to the campaign against FGC, its polemical nature and hysterical and sometimes ethnocentric tone in comparison with other abuses of women. The repetition of 'engrained', 'deeply rooted', 'ritualistic' in conjunction with the elision of time and place, the grisly stories of girls whose legs are tied together for 40 days and diagrams of the different procedures carried out, combine to portray FGC as the worst possible abuse of women and children.[322] Mary Daly's *Gyn/Ecology* is an early example of this, containing a chapter on 'African Genital Mutilation: The

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[321] 'Our [cosmetic surgery] patients uniformly wanted their vulvas to be flat with no protrusion beyond the labia majora, similar to the prepubescent aesthetic featured in advertisements' (Mei Liao and Creighton, 2007, p1091).

[322] 'It is a deeply rooted traditional practice among many African, South East Asian and Middle Eastern communities' (Sleator, 2003, p8); 'FGM is deeply embedded in the culture of the practising community...' (Local Authority Social Services Letter LASSSL (2004)4); 'Ritual mutilation of girls must stop' (*The Daily Mirror*, 14 May 2004).

Unspeakable Atrocities' which identifies such 'barbaric rituals/atrocities' as a manifestation of 'planetary patriarchy' which surfaces in Kenya, Mali, Algeria, Senegal, Somalia, Mauritania, Central African Republic, 'Ancient' Egypt, Guinea, Sudan, Abyssinia and Tanganyika – all within a 25-page chapter. *The Hosken report* (1994), which describes African refugees in the Netherlands as clinging 'to such deplorable customs', similarly portrays many different countries and ethnic groups as manifestations of something called 'African culture'.[323] Lightfoot-Klein describes female circumcision in equally condescending and homogenizing terms:

> The rationale for female circumcision seems to be consistent in most African
> societies and is based for the most part on myth, an ignorance of biological
> and medical facts, and religion. The clitoris is perceived variously as
> repulsive, filthy, foul smelling, dangerous to the life of the emerging newborn,
> and hazardous to the health and potency of the husband.[324]

Lightfoot-Klein also exploits the shock value of the subject to win support for the cause with references to circumcisions carried out with unsterile razors, scissors or kitchen knives by old women 'often with defective eyesight'.[325] This kind of description is so common that a reading of the most influential literature on FGC creates an image of a blind old woman in some generic African country carrying out circumcisions in the dark in a muddy hut using a broken piece of glass on a screaming infant. Not only does this reinforce the 'othering' of cultures identified in post-colonial literature, but such descriptions are rarely backed up with evidence about where they were observed, let alone quantitative figures on what proportion of genital surgeries correspond to this picture.

5.7 Inconsistency and the 'arrogant perception'

While none of the above arguments suggest that FGC is a desirable practice, they do begin to indicate that the campaign against it is not as straightforward as might appear before questions of subjectivity, hegemony and agency are raised. As

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[323] See Abusharaf, 2000, p160-164 for further criticisms of Hoskens' approach.

[324] Lightfoot-Klein, 1991.

[325] Lightfoot-Klein, 1991.

Gunning has pointed out, the hallmark of the 'arrogant perception' that typifies Western criticisms of other cultural practices is the difference and distance it creates between the enlightened observer and the ignorant and backward 'other'. Her article highlights the significance of context in debates about cultural practices: discussants in these debates do not start on the same footing and some voices have authority while others have none. Western feminists need to be aware that their 'articulations of concern over the contemporary practice of genital surgery in third world nations are often perceived as only thinly disguised expressions of racial and cultural superiority and imperialism'.[326] This is particularly so when they fail to acknowledge the decades of work by African women dedicated to ending FGC practices. Other writers have pointed out the tendency to ignore the West's complicity in the survival of FGC: 'clitoridectomy, it's worth remembering, was falling into desuetude in Kenya when nationalists revived it as part of their rejection of British colonialism'.[327]

Critics of what can be seen as a morbid fascination with FGC also point to the hypocrisy of campaigning against FGM when action to end poverty or illiteracy or AIDS in African countries may be a greater priority for women there but is not able to grab media headlines in the same way as a bloody and secretive 'ritual'.[328] Who is deciding that FGM is a priority, if not the priority, for the global community? Not, at least until recently, the women who experienced it.[329] The priority given to FGM in human rights debates could be taken as a symptom of the fact that the international human rights agenda is the product of Western philosophy with its focus on individual rights and bodily integrity over social and economic rights and community interdependence.[330]

One of feminism's most significant contributions to epistemology and

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[326] Gunning, 1992, p213.

[327] Pollitt, 1999, p29. See also Walley, 1997; Lewis, 1995, p33.

[328] 'Henry Louis Gates, the seminal scholar of African-American studies, wonders: "Is it, after all, unreasonable to be suspicious of Westerners who are exercised over female circumcision, but whose eyes glaze over when the same women are merely facing starvation?"' (*The New York Times*, 27 March 1994). Or, as Ellen Gruenbaum states '...for outsiders to target female circumcision as the social problem in need of the most urgent attention seems outrageous to many Arab women...since there are so many worse problems that wealthy countries have caused, exacerbated, or at any rate failed to help solve' (Gruenbaum, 1996, p471).

[329] Gunning, 1992, p225-226.

[330] Coomaraswamy, 1994; An-Na'im, 1990, p15.

ontology has been the challenge it has made to a masculine, Western/Eurocentric intellectual orthodoxy. If feminists have been quick to point out that the supposedly universal ideologies which laid the basis for international and much national law – liberalism, socialism and Marxism to name three – are based on a skewed perspective that has excluded women's and other marginal voices, this insight should not be lost simply because the issue is the 'culturally challenging' one of FGC.[331] It should be possible to oppose FGC – although the appropriate manner of opposing it is debatable – while also recognising that not all nations and communities are held up to the same rigorous human rights standards as those in which women are circumcised.

The imbalance leads to a double standard on FGC in comparison with attitudes to various surgeries routinely and in some cases increasingly carried out in the West. It is often pointed out that FGC bears little relation to male circumcision, hence the rejection of the term female circumcision. But there are still parallels, and it might be appropriate to put male circumcision under the same microscope as FGC. While male circumcision is less invasive than clitoridectomy or incision, there are similarities between the circumcision of girls and boys – both are often done to children too young to make a decision to have the surgery, both can be seen as an infringement of bodily integrity and in most cases neither are medically necessary and are actually harmful.[332] Yet the campaign against FGC has not extended to all medically unnecessary genital alterations, whether carried out on males or females.[333]

In part, this can be explained by the fact that while there has been increasing questioning of the practice of male circumcision in the past two decades, there is a degree of respect for it because it is perceived as a religious duty of Islam and Judaism. This suggests that it is more acceptable to challenge a practice that is 'cultural' than one that is religious. It is likely that this is why anti-FGC campaigners reiterate that FGC is not a religious requirement.

Also significant in explaining why only male circumcision is tolerated, is the

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[331] Gunning, 1992, p193.

[332] Obiora points to a study of neonatal male circumcision that found problems developed in 24 out of 100 circumcision cases (Obiora, 1997, p319).

[333] Gunning describes how male and female circumcision have been treated differently in the United States, the former through education and the latter through penal law (Gunning, 2002).

contrasting symbolism of female and male circumcision. Male circumcision is perceived as a religious requirement for Jewish and Muslim boys, associated with cleanliness, the naming of the child and religious identity. In contrast, for many campaigners, female circumcision symbolizes male control and abuse of women's bodies and their sexuality, and is the ultimate manifestation of misogyny. Even for those who oppose male circumcision, it does not have this oppressive symbolism.

However, if it is the symbolism of FGC that provokes outrage, this begs the question of why there is not a similar level of outrage about cosmetic surgeries carried out in the West. Breast enhancement, labial reduction and 'trimming' are all reported as on the increase in the UK.[334] Like FGC, these are therapeutically unnecessary surgeries carried out with the intention of making women fit a cultural norm. Which, if any, of these practices one finds shocking or horrific depends on one's perspective. As Gunning points out 'How bizarre and barbaric must a practice like implanting polyurethane covered silicone into one's breasts be perceived [to be] by one not accustomed to the practice'.[335] And while there has been much discussion of the health risks attached to cosmetic implants, plastic surgery is not identified as mutilation by either the media or policy makers in Britain.

The perception is that the difference is one of choice. FGC is carried out on children who are below the age of legal or reasoned consent, while cosmetic surgery is carried out on consenting adults. And if adult African women collude in perpetuating FGC, this is because do not have 'real' life choices in the way Western women do:

> Since marriage and childbearing are as yet virtually the only options open to most African women (aside from prostitution in the urban areas), this leaves them little choice but to submit to the practice and to impose it on their daughters.[336]

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[334] Mei Liao and Creighton, 2007. See also 'The new nose job: designer vaginas' which claims that '[m]ore than 100 women over the past year have been to private clinics around the UK to undergo surgery which is aimed at improving their relationships, particularly after childbirth' (*The Observer*, 17 August 2003). Men's magazine *Nuts* ran a competition for readers to win breast implants for their girlfriends' (reported in 'The cutting edge of fashion', *The Guardian*, 8 August 2005).

[335] Gunning, 1992, p213.

[336] Lightfoot-klein, 1991.

However, choice is not what distinguishes FGC from other non-therapeutic surgeries. Firstly, in Western countries, surgery has been carried out on perfectly healthy children without consent – sometimes without even parental consent – in cases that are termed 'intersex': where a baby's genitalia are 'ambiguous' in terms of sex, it has been common for medical practitioners in the United States and Europe to determine the sex of the child and operate to make that determination a reality.[337] In both intersex and FGC cases, a young child's healthy tissue is being removed or altered to make the child sexually 'normal' in the eyes of its culture; in both cases societal attitudes about what a girl's (or boy's) genitalia should look like require painful surgery which ought to be but is often not elective. Justifications for this 'reconstructive surgery' include that without it the child would be rejected by its parents and peers. This echoes some of the justifications for FGC, yet there is no implication that parents who agree to corrective surgery are mutilating their children.

Secondly, there are adult women who choose to be circumcised. Because the figures on FGC are inadequate, it is difficult to know how they are divided between adult women who choose to be circumcised and children who are unable to give informed consent, but in Britain there are certainly adult women who ask to be defibulated before childbirth and reinfibulated after childbirth (although it is illegal for a surgeon, doctor or midwife to agree).[338] One response might be that it is impossible for a woman to freely choose to go through such a painful experience repeatedly, that women in this situation must be under pressure to conform for fear of social stigma or rejection by their husband or community; but that social pressure seems comparable to that on Western women who have their vaginas tightened to conform to their society's ideal of what 'normal' genitalia look like. And given that FGC is often controlled and carried out by women, in contrast with the male-

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[337] Cheryl Chase asserts that 5 children per day in the US are subject to excision because their clitoris is perceived as too large and that 90% of genitally 'ambiguous' children are made into females by excising their genital tissue because 'you can make a hole but you can't build a pole' (quoting Melissa Hendricks, 'Is it a Boy or a Girl' in *John Hopkins Magazine*, vol. 45, no 5, 1993): those who are unfortunate enough to be assigned a male sex are subjected to multiple operations (Cheryl Chase, 2002). See also Meyers, 2000, p472.

[338] Comfort Momoh, FGM/Public Health Specialist at Guys & St Thomas Trust, reported women giving birth and then asking to be 'restitched' (RCN Study Day for Midwives, Doctors, Nurses, Health Visitors, Social Workers and other Professionals, 29 October 2004). 'Female genital mutilation. Caring for patients and child protection. Guidance from the Ethics Department' informs UK doctors that reinfibulation is illegal (British Medical Association, February 2004. Para 4.4).

dominated plastic surgery industry, there are even grounds for arguing that that it allows some women to exercise autonomy, if only at the expense of the women and girls they circumcise.

This is one of the ways in which FGC is more complex than other 'cultural practices' and suggests that the exercise of autonomy is not absolute nor always a good thing. It also highlights the inadequacy of portraying African women as either victims of false consciousness or simply victims. There is general agreement that FGC is perpetuated by women (in fact one of the arguments against medicalisation has been that it would put it under the control of the male-dominated medical profession with women losing their monopoly of influence).[339] There is a debate about whether it is perpetuated to serve men's interests and whether women are simply what Mary Daly describes as 'token torturers', but it is acknowledged that it is mainly, if not solely, women who carry out FGC on their daughters, grand-daughters and nieces, sometimes without the knowledge of men or even in the face of their opposition, and in the belief that they are acting out of love and in their children's best interests. The line of cleavage here seems to be between older and younger women, with the latter more easily persuadable against the practice. This may be the reason why 'good practice' on FGM is aimed at keeping the victim in the family, while in cases of forced marriage, mediation is increasingly advised against.[340] Feminists cannot easily identify this as an issue of misogyny without saying that the perpetrators suffer from 'false consciousness' to an unprecedented degree. FGC challenges the simplistic notion that women are always the innocent victims of culture. This risks being a case of white women saving brown women from other brown women.

Nor is it the case that women in Western societies exercise full autonomy in relation to their bodies. Studies of eating disorders suggest that anorexic and bulimic women do not 'choose' to behave in an unhealthy way, but neither is it appropriate to say they have caught a disease or illness. Like FGC, eating disorders have

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[339] Shell-Duncan and Hernlund, 2000, p32; Gunning, 1997.

[340] *Working Together to Safeguard Children* states that '...parents and others who have this [FGM/C] done to their daughters do not intend it as an act of abuse. They genuinely believe that it is in the girl's best interests to conform to their prevailing custom. So, where a child has been identified as at risk of significant harm, it may not be appropriate to consider removing the child from an otherwise loving family environment' (Department of Health, Home Office and Department for Education and Employment, 1999, para 6.15). See also *Female Genital Mutilation Protocol* (All Wales Area Child Protection Committee, 2005, p9).

multiple causes and meanings and the two phenomena are very different. This is not to suggest that a girl child's circumcision is comparable to an adult woman's self-starvation, but both illustrate the way societies differentiate themselves through the control of women – including women's extreme self-control or endurance, whether of hunger or pain.

The complexities relating to FGC and questions of agency are also evident in relation to asylum law. As suggested in chapter 3, there are situations where advocates find it useful to deploy cultural stereotypes in order to help individual women. This is certainly the case for women at risk of FGC. Women's and human rights organisations around the world have lobbied for some time to have FGC accepted as grounds for asylum. In the UK, the Women's National Commission working group on FGM pointed out the inconsistency of introducing new criminal legislation on FGM while continuing to reject applications for asylum based on the applicant's fear of being forced to undergo FGM if returned to her country of origin.[341] But, as Sherene Razack has argued, the easiest way of supporting such asylum claims in the courts is usually to argue that the applicant is fleeing from an oppressively patriarchal regime to seek refuge in the liberal West, reinforcing a simplified 'us' and 'them' concept of culture in which the individual woman can appear to be a pathetic victim.[342] In prosecutions of *exciseuses*[343] and parents in France, one defence strategy was that the perpetrators of FGC are acting in

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[341] Letter from Baroness Prosser, then Chair of the Women's National Commission, to the Rt Hon David Blunkett MP and then Home Secretary on this inconsistency, November 2004.

[342] Razack, 1995, p46. In the case of Mohammed v. Gonzales in 2005, the US Federal Appeals court recognised FGM in the past as grounds for asylum. The issue in gender-based asylum cases is often whether the woman concerned is eligible for protection as a member of a 'social group' as defined by the Geneva Convention. In this case, the court held that Somalian females did constitute a social group because practice of FGM is 'deeply embedded' in Somalian culture (reported in *Women's Asylum News* no 50 April/May 2005). In 2006 in the UK, the House of Lords granted asylum to a woman from Sierra Leone fleeing FGM on the basis of membership of a particular social group, stating that: 'it clear that women in Sierra Leone are a group of persons sharing a common characteristic, which, without a fundamental change in social mores is unchangeable, namely a position of social inferiority as compared with men. They are perceived by society as inferior. That is true of all women, those who accept or willingly embrace their inferior position and those who do not' (Reported in *Women's Asylum News*, October 2006). However, this has to be seen as an advance on the decision a year earlier when the Court of Appeal refused to overturn the rejection of the young woman's asylum claim on the grounds that genital mutilation of young single, uncircumcised Sierra Leonean women does not constitute persecution in part because '[t]he practice, however repulsive to most societies outside Sierra Leone, is ... clearly accepted and/or regarded by the majority of the population of that country, both women and men, as traditional and part of the cultural life of its society as a whole' (reported in *Women's Asylum News*, no 52, July/August 2005).

[343] The (female) French noun used to describe those who carry out FGM/C.

accordance with a cultural tradition that has the same imperative as the law in their minds and constitutes a kind of 'group super-ego': '...the defendant is of sound mind but is entirely subjected to the authority of his or (usually her) cultural traditions'.[344] The implication is that, in contrast to rational Western individuals, Africans are bound to act in certain ways by their culture. In both examples given, the interests of the defendant or appellant are best served by reinforcing stereotypes of backward cultures. It would be difficult for an advocate to bring in the kind of contextual factors that would lead to a less simplistic portrayal of cultures and at the same time, pursue the best interests of the client in these cases.

In fact, it is the attribution of a cultural imperative that most clearly separates FGC from practices tolerated in the West. FGC is perceived as beyond the pale because it is carried out for 'cultural' reasons, while male circumcision is carried out for religious reasons and cosmetic surgery is carried out by women to make themselves more attractive. The latter may provoke contempt on the part of feminists but nothing like the horror that FGC provokes. The lack of information about FGC broken down by country, by kind of practice and by the age of the child or adult on who it is practiced means that anyone who is circumcised is presented as a victim and denied agency, regardless of whether she is a girl too young to decide to be circumcised or an adult woman who chooses it but who cannot be making a 'free' choice. In this way African women are infantilised and presented as victims of their culture. In contrast, American and European women are seen as making a choice, albeit one that many think demeaning, when they spend large sums of money on cosmetic surgery.

If one rejects this polarized perspective and recognises that all societal values are culturally determined, that women in Europe, America and Australia do not always have more autonomy than women in Africa and Asia, then the next step is to recognise that there is a lack of clarity about what is behind the international campaign against FGM (which in turn leads to questions about the appropriate strategies for trying to reduce it). Is it the symbolism of FGC or the extremity of it that sets it apart from other non-therapeutic body alterations? If the reason why FGC is a human rights abuse that must be called 'mutilation' while male circumcision is an accepted practice is only a question of degree, then it would be logical to accept

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[344] Winter, 1994, p950.

suggestions for replacing infibulation, excision and clitoridectomy with a minor form of *sunna* or a ritual pricking. However, when suggestions are made to mitigate the damage by medicalising FGM, campaigners insist that this would only perpetuate an unacceptable practice by legitimizing it. If bodily integrity must be respected, then ear, tongue and belly-button piercing should be banned. If the argument is about choice, then it would be reasonable to allow adult women to choose to be infibulated and reinfibulated. If FGM is set apart from other bodily interventions it is because it represents an extreme abuse of women, so there can be no negotiation about the practice – it must simply be 'eradicated'. But if practices that are emblematic of women's oppression are to be banned, why not apply the same judgment to cosmetic surgery?

The vocabulary of FGM discussions plays a significant role in reinforcing the polarization between 'us' – women who make choices and are part of the modern world – and 'them' – victims of an oppressive culture: '[a]n ancient cultural ritual still blights the lives of millions of women' shows the hyperbole that is common even among the medical community.[345] The following is taken from *The Times* newspaper in 2001:

> The details of the 'operation' are so horrific that they defy belief. While the child writhes in agony, begging for her mother, the clitoris, prepuce and inner labia are cut out, usually with a razor blade, and the vulva sewn up so tightly that only a tiny hole is left for the flow of urine and menstrual blood. The idea is that reducing feelings of sexual arousal in women will make them less likely to have sex before marriage or to commit adultery afterwards. Tradition has it that men will not marry an uncircumcised woman, considering her dirty. She therefore has no status, no 'passport' in life. Female circumcision is also considered to make her face more radiant.[346]

'Tradition' is the explanation for this child's pain. The elision of different forms of genital alteration under the single heading of FGM to be 'eradicated' like a disease

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[345] *British Medical Journal*, 29 July 2000.

[346] 'Why must we still mutilate' (*The Times*, 24 August 2001). See also 'Ritual mutilation of girls must stop' (*The Daily Mirror*, 14 May 2004), 'Mutilated in the name of culture' (*Daily Record*, 7 September 1994), 'A tradition of misery' (*The Daily Mail*, 14 October, 1993).

reinforces the lack of agency associated with all those who perform and undergo it.[347] In contrast, the role of Western observers is to choose not to 'tolerate' FGM.[348]

None of the above is to argue in favour of FGC, although there are those who do.[349] It is to point out the need for a) clarity about what is at the heart of the anti-FGM campaign and b) recognition that FGC is only one of the many ways in which women's bodily and sexual integrity is abused, often with their own participation. It is to suggest that it is not helpful to identify FGC as the most shocking or the most horrific abuse of women because it is 'traditional' or 'cultural'. The dilemma for those who want to advance women's rights and improve women's lives is how to facilitate a decline in a practice they believe is painful and harmful to women in the context of the very simplistic notions of autonomy and culture that have so often resulted in what has been called the 'external messiah syndrome'.[350]

One way would be to argue for the application of consistent principles of choice. This would mean making a distinction between adults who can choose how to modify their bodies in irreversible ways – however much the majority might deplore their choices – and children who cannot.[351] Marilyn Friedman takes this position, starting from the argument that '[f]rom a liberal standpoint, respect for people's actual choices is relevant to the principle of respect for their personal autonomy'.[352] She makes a distinction between 'content-neutral' and 'substantive'

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[347] Lane and Rubinstine point out that the 'public health language of "eradication" is most often associated with germ theory and worldwide campaigns against infections diseases like smallpox, malaria, and polio' (Lane and Rubinstine, 1996, p38). See also Shell-Duncan and Hernlund, 2000, p24.

[348] 'Above all, we need to make it clear that such an act cannot be tolerated under any circumstances' (Lord Hunt of Kings Heath, House of Lords debate 5 November 2002, available at www.parliament.uk).

[349] Fuambai Ahmadu experienced 'ritual initiation' as a young adult in Sierra Leone. Although she describes herself as 'neutral' in terms of the continuation of FGC, she says 'It is difficult for me – considering the number of these ceremonies I have observers, including my own – to accept that what appear to be expressions of joy and ecstatic celebrations of womanhood in actuality disguise hidden experiences of coercion and subjugation' (Ahmadu, 2000, p301-305). See also Richard A. Shweder, who argues for 'limited toleration' (Shweder, 2002).

[350] Mugo, 1997, p462.

[351] In response to African women activists making this point, the United States limited its prohibitions of FC/FGM to procedures performed on children under the age of 18 (Rahman and Toubia, 2001, p66). Britain, in contrast, bans FGM for all girls, with girls defined to include adult women ('Girl includes woman', Female Genital Mutilation Act (2003) 6(1)).

[352] Friedman, 2003, p188.

autonomy.[353] The former is neutral in regard to the content of what is chosen: an individual can be said to be autonomous even in the moment of choosing a life of constraint, for example in choosing to enter a convent. The latter understanding of autonomy involves her making choices seen as compatible with the value of autonomy itself – a value that is usually judged by Western standards. Friedman suggests the content-neutral account is preferable, in that 'an account of autonomy with fewer requirements has, independently of other considerations, the advantage of promoting a more inclusive sense of equal worth'.[354] This leads her to believe that:

> If women in a cultural minority consent to practices that violate their liberal rights, and do so under conditions promoting content-neutral autonomy, then the liberal society at large has at least one good reason to permit the practices to continue, namely, respect for the content-neutral autonomy of the women in question.[355]

However, the situation is different for children who are not able to meet the conditions for Friedman's 'content-neutral' autonomy, and there the 'surrounding liberal society must decide whether to tolerate those practices based on considerations other than the (present) autonomy of the girls or the autonomy of the women in the culture who may endorse the practices'.[356]

This would have several implications. It would mean saying that male circumcision of boy babies, if it has been established that it has no medical benefits

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[353] Friedman, 2003, p19-25.

[354] Friedman, 2003, p23. But she also recognises that it is necessary to consider the existence of conditions that undermine the capacity to exercise autonomy. To give an example, if French schoolgirls claiming the right to wear a *hijab* were doing so under parental or other coercion, then this is neither content-neutral nor substantive autonomy; if, however, they are making an unconstrained choice that is perceived as conflicting with autonomy values, then this would not present a problem for a content-neutral account of autonomy. The difficulty is, as Friedman recognises, in defining reasonable constraints on the conditions for autonomy, but she suggests some working guidelines.

[355] Friedman, 2003, p191.

[356] She continues: '[t]he case of children is a continual challenge to liberal notions of political legitimacy, rights, and autonomy; it is an issue that will have to be addressed elsewhere' (Friedman, 2003, p202).

and is done purely for religious reasons, is unacceptable;[357] it would mean that it would be illegal to circumcise a girl under the age of consent; and it would mean that if an adult woman is allowed to decide to have her genitals 'tidied up' after childbirth or one of her ribs taken out as 'cosmetic' surgery, then she should be allowed to make that choice. This may not be a satisfactory position but it is a way of avoiding hypocrisy while the real work of changing the attitudes that produce these behaviours takes place.

Thirty years after the issue first came to light at international level, there is disagreement about whether it is on the decline or increasing, if not in Africa then in multicultural Western countries. It is also clear that many women around the world have been alienated by a campaign intended to help them.[358] This suggests that condemning a practice as barbaric is not the best way to bring about its decline and may even make it a symbol of national or cultural integrity.[359]

5.8 Strategies for 'eradication'

Whether FGC should be 'eradicated' is one question. Even assuming that it should, there is further controversy about how best to pursue this goal – and who should do it. A strong argument might be made that 'the West' – whether in the form of the international human rights community, feminism, NGOs or individual states – should leave African countries with a high prevalence of FGC to develop the most effective strategies for addressing the problem. In the context of the way Western intervention has alienated African women through sensationalist reporting and a failure to acknowledge the ongoing work by indigenous campaigners, it is difficult to deny that African states, NGOs and campaigners are best placed to lead initiatives. However, as Western societies become increasingly multicultural and

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[357] Unless one agrees that it is a) a religious requirement and b) that such requirements are compelling, arguments that are taken up in chapter 7.

[358] Angela Y. Davis describes a visit to Egypt in 1985 where she met women outraged by the 'myopic concentration' on FGC in isolation from a wider social context (Davis, 1990, p116-154). Obiora describes a conference in Copenhagen in 1980 at which Fran Hosken and Renne Saurel initiated a discussion on FGC: 'The African women who were present at the meeting registered their protest by walking out after incisively criticizing the graphic presentation that violated, exploited and sought to "forcibly strip them in company"' (Obiora, 1997, p327-328).

[359] 'Discussion paper: Socio-cultural aspects of female genital cutting' by Maria de Bruyn in International Centre for Reproductive Health, 1998. Against this, Ogbu claims that, with the exception of Sudan and Somalia, '...in most parts of Africa [FGC] is dying or disappearing because of forces of social change; including formal schooling, Christianity, urbanization and the like' (Ogbu, 1997, p419).

globalisation breaks down clear distinctions between societies – whether or not these ever existed – Western states increasingly have to address the fact that FGC is going on within their borders. Even if one did not believe the international community has responsibility for human rights abuses wherever they occur, states like Britain would not be able to ignore FGC.

Legislation against FGC is an obvious route that many countries have taken.[360] If parents know they risk punishment, they will be less likely to circumcise their girl children and the law is often seen as conveying a message about what is acceptable and unacceptable in society. However, there are strong arguments against punitive targeted legislation as the primary means to bring about this kind of change. These include arguments from an ethical point of view (Hope Lewis has pointed out the association of penal legislation with the history of colonialism as a significant factor in the polarisation of views),[361] but also on the basis of what is most effective.[362] The countries in Africa that have legislated against FGC do not head the list of countries where prevalence has been most successfully reduced.[363] In the industrialized countries that have legislated against FGC, such as Australia, the United States, Norway, Sweden, Canada and the UK, there have typically been no prosecutions under the law.[364] The country with the most prosecutions – France – has no specific law against FGC, but uses the general provisions of its Penal Code, Article 312. And there is no evidence that the spate of prosecutions in France – at least 25 since 1978 – has led to a reduced prevalence of FGC.[365] In fact, it has been

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[360] See Lockhat, 2004, chapter 4, for details on which countries have passed legislation.

[361] Lewis, 1995, p40.

[362] Shell-Duncan and Hernlund argue that 'legislation has been shown to be a poor tool for effecting change...' and point to the case of Senegal where the introduction of coercive law undermined the a successful grass-roots programme of voluntary abandonment of the practice (Shell-Duncan and Hernlund, 2000, p34). Mackie points out that '[c]riminal law works because thieves and murderers are a minority of the population that the state can afford to pursue with the cooperation of the majority of the population. It is not possible to criminalize the entirety of the population or the entirety of a discrete and insular minority of the population without the methods of mass terrorism' (Mackie, 2000, p278).

[363] Gunning, 1992; Lockhat, 2004. Heaven Crawley claims that '...despite the fact that FGM is currently illegal in many countries in Africa and the Middle East, this has not reduced the number of girls that are mutilated each year' (Crawley, 2001, p191).

[364] Sleator, 2002, p20.

[365] Rahman and Toubia, 2001, p152.

suggested that the punitive French approach has driven FGC underground.[366]

Arguments arise here about the purpose of the law. It could be argued with FGC, as with prostitution, that if criminal measures drive the practice underground, that is a necessary stage on the way to its elimination. It could also be argued that the law should make a statement about what is and isn't acceptable in society. This is true, but the statement could be made by a general law protecting bodily integrity rather than a targeted law on FGC. And moving from a principled stance to the question of what is actually effective in bringing about a change in behaviour, it is clear that the law is not the lead factor. A confrontational legal system in which the losers are minoritized women is unlikely to lead to the kind of attitudinal change necessary for a decline in circumcisions. As with initiatives against drugs, prostitution and other social 'problems', those who are arrested and criminalised are not usually those people in a community with the power to change behaviours.[367]

There have been debates about the desirability of medicalisation, most famously in 1996, when the Harbourview Medical Center, Seattle in the United States proposed carrying out a token circumcision or 'nick' in response to demand by Somali parents. This followed discussions with Somali men and women which suggested that otherwise girls would be flown home to Somalia or operated on by a Somali midwife with her own idea of what *sunna* circumcision means. When news of the proposal broke, the hospital was besieged by feminists opposed to it, and US representative Pat Schroeder, who had campaigned for anti-FGM legislation, wrote to Harbourview claiming that its proposal would contravene federal law. The proposal was abandoned in the face of opposition from a mainly American anti-FGM lobby.[368]

There are arguments for providing a limited form of FGC – such as a symbolic

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[366] Linda Weil-Curiel's report in International Centre for Reproductive Health, 1998. See Winter, 1994, for detailed discussion of French FGC prosecutions. Likewise, when Egypt's state hospitals were banned from performing the practice in the 1990s, the practice was driven underground and a group of supporters attempted to sue the Minister of Health for withdrawing medical support (Shell-Duncan, 2001).

[367] Of the Senegalese and Malian women prosecuted for excision in France, it has been said '[t]he result is that the weakest persons in society are prosecuted for acts in which they had no free choice, even if they did not agree with them' (Van Broeck, 2001, p14). Some of the mothers and *exciseuses* found guilty in the French courts spoke no French – the language in which they were prosecuted (see Winter, 1994, for discussion of cases).

[368] See Coleman, 1998, for a full discussion of the Harbourview events. A similar scenario occurred in Holland (Obiora, 1997).

prick under local anaesthesia – in a safe and hygienic place in order to prevent parents from having their daughters circumcised in more risky conditions. It is argued that this would be better for the health of women and children, would co-opt the support of practicing minority communities, and would be a first step on the road to total proscription.[369] At its starkest, the choice may be between legitimising a pernicious practice in order to save lives in the short-term or working for the elimination of all forms of FGC and in the process ignoring preventable suffering.[370]

Debates about medicalisation bring to the fore the confusion about the motives of the anti-FGC lobby. If the priority is women's health and the problem with FGC is simply the extremity of the invasion and the unhygienic conditions it is performed under, then medicalisation is an obvious solution. One would then expect to find anti-FGM campaigners arguing for all forms of female surgery to be replaced by *sunna* or a symbolic cut less invasive than the removal of the male foreskin. After all, nobody argues against cosmetic surgery purely on the basis of the botched jobs. Or, to take another comparison, if reconstructive surgery in the US 'normalizes the deviant' in a clinical setting, why shouldn't African parents be able to 'normalize' their daughters in the same way?[371] In the case of adult women, at least, one could even turn the health rights argument around to argue that access to safe female genital cutting, like access to safe legalised abortion, is a woman's right.[372] This is only unacceptable on the grounds that FGC has a symbolic status; and it appears that it does, for arguments against medicalisation have won the day in the United States and have never been raised as a serious option in the UK.[373]

Some of the more effective strategies in African countries, such as that of the Senegal-based organisation Tostan, have involved community pledges against the practice.[374] This approach recognises how difficult it is for families to renounce

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[369] Bettina Shell-Duncan argues for the medicalization of female circumcision as a 'harm reduction' measure. (Shell-Duncan, 2001).

[370] This is the moral dilemma as presented by Shell-Duncan (Shell-Duncan, 2001).

[371] Chase, 2002, p143.

[372] Obiora, 1997.

[373] During the Harbourview controversy about medicalisation of FGC, one of the doctors involved identified a confusion on the part of the Somali parents about American attitudes to female and male circumcision which the hospital was not able to dispel: "'We will cut the whole foreskin off a penis," said Dr. Miller, relaying their frustration, "but we won't even consider a cut, a sunna, cutting the prepuce, a little bloodletting (on a girl)"' (Coleman, 1998, p749).

[374] In December 2006, about 150 communities in Guinea 'collectively abandoned the practice of

FGC if the surrounding community continue to circumcise their daughters. A sense of ownership of the process of change is particularly important if FGC is an area of control that women are being asked to renounce. What has also proved effective is a 'multi-dimensional' rather than a 'single-issue' approach, for example the Tostan program in Senegal does not focus on FGC alone but on the provision of skills and information more broadly.[375] Another approach that has been effective is to establish alternative rituals or coming-of-age ceremonies – something which has happened in Kenya and Uganda.[376] It would make sense for Western states addressing what is for them a relatively new problem to look at what has worked in countries with a longer history of dealing with FGC.

Regardless of whether they think the law useful as a deterrent or not, campaigners and 'experts' on FGC are virtually unanimous in believing that the law is a secondary factor. The real drive to change patterns of behaviour – and particularly in the case of marginalised minorities who perceive their cultures as threatened – must be bottom-up and situated within the context of broader social and educational development work. If people know that FGC is illegal but attitudes have not changed, there is likely to be a trend towards less detectable forms of surgery – *sunna* rather than infibulation – as has been reported in the UK since the passage of the 2003 Act.[377] This may be an improvement but it is not the solution most campaigners look for.

5.9 Female genital cutting in The UK

We are doing very well by them in allowing them to live in this country. It is nice for them and it is nice of us to do it. But we do not have to import their

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female genital cutting – a landmark declaration in a country where more than 97 percent of women undergo the ritual ...The Senegal-based NGO Tostan organised the Guinea declaration after working with communities to show how traditional practices such as genital cutting are harming individuals and communities.' (http://www.wunrn.com/news/2006/12_04_06/121006_fgm_west.htm last accessed 29 January 2007).

[375] Mackie, 2000.

[376] 'Discussion paper: Socio-cultural aspects of female genital cutting' by Maria de Bruyn in International Centre for Reproductive Health, 1998; Toubia and Sharief, 2003, p256.

[377] Royal College of Nursing Study Day for Midwives, Doctors, Nurses, Health Visitors, Social Workers and other Professionals, 29 October 2004.

kind of rules. The point is that such people are not in a position to teach us anything about sexual behaviour.[378]

A graph illustrating the level of interest shown by policy makers and the media in FGC in the UK since 1980 would show a series of ups and downs with two peaks of activity around the 1985 and 2003 Acts – the two pieces of legislation banning the practice.

FGC or female circumcision as it was then termed, first became a concern in the early 1980s when a Malian child died after excision by a professional circumciser who escaped to Mali, there were reports of the practice being carried out by doctors in private clinics in London, and a BBC2 film about 'female circumcision' led to public concern and questions in the House of Commons.[379] FORWARD (the Foundation for Women's Health Research and Development), founded in 1983, was also instrumental in raising concerns about the practice as a human rights issue. What was eventually to become the Prohibition of Female Circumcision Act had a long and painful passage of more than two years and it is instructive to look at the debates that took place during its passage.[380]

Before doing so, it is worth comparing the passage of legislation in The UK with the federal and California state anti-FGM bills described by Gunning as 'of cynical and symbolic value':

A vote for such a bill was a way for conservatives who had little interest in women or people of colour, as shown by voting records, to claim concern for racial and gender issues. Moreover, the vote often provided an opportunity to make a comfortable speech, safely denouncing African culture and people. At the California and federal level that meant an opportunity to label Africans as the most egregious of child abusers. In addition, such a vote was and remains cost-free. It would not divert resources from their 'real constituents'. Although both bills call for the creation of health and educational materials, no money

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[378] Baroness Gaitskell, Hansard, 10 November 1983.

[379] Dorkenoo and Elworthy, 1994, p142; Hoskens, 1994, p51 and p54.

[380] The Prohibition of Female Circumcision Bill was introduced by Lord Kennet on 30 June 1983 but Parliament was dissolved for a general election before it could be passed. The Bill had to be reintroduced and it was not finally passed until 19 April 1985.

has been allocated for such programs, either in California or at the federal level, by the end of the 1990s.[381]

Similarly, in The UK, the passage of the two Acts on Female Circumcision (1985) and Female Genital Mutilation (2003) presented an opportunity for left and right to unite in condemning unsavoury imported practices at minimal cost.[382]

The long delay in passing the 1985 Act was caused by disagreement over two sentences, one referring to 'mental health', the other to 'custom or ritual', and the relationship between the two. The Bill as originally introduced said that the operation of female circumcision must not be performed except where necessary for the physical health of the patient. This recognised that there are cancerous, pre-cancerous and other conditions that necessitate genital surgery and that the legislation needed to be defined tightly enough to allow those operations to be carried out legally. However, Lord Glenarthur for the (Conservative) government, was concerned that '(t)here are operations of what might be called a cosmetic nature, which may properly be undertaken but which are not required for the direct physical health of the woman', which would not be permitted under the original terms of the original legislation. Therefore, the Bill would only have the government's blessing if it were amended to allow surgery where necessary for the physical or mental health of a person; in determining, however, whether there was a threat to physical or mental health, no account should be taken of beliefs based on ritual or custom.[383]

What the government sought to differentiate and legalise were cases where a 'perfectly healthy' girl develops an anxiety about the shape or size of her external genitalia: this distress was said to be so extreme that it can lead to mental illness and only be relieved by surgery, colloquially referred to as 'trimming'. It was suggested that there were 8,000 legitimate operations carried out on women's genitals each

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[381] Gunning, 2002, p121.

[382] 'Beastly', 'disgusting', 'abhorrent', 'primitive', 'cruel', an 'unsavoury practice', a 'revolting practice' – these are all descriptions of female circumcision in parliamentary debates on the Prohibition of Female Circumcision Bill (See Hansard debates in the House of Lords 9 November 1982, 10 November 1983, 23 January 1984, 26 January 1984, 7 February 1984, 27 March 1984 and Hansard report of Standing Committee C, Prohibition of Female Circumcision Bill 3 April 1985, Hansard debates in House of Commons 19 April 1985 available at www.parliament.uk).

[383] See Hansard, 10 November 1983 and 23 January 1984.

year and 10 to 20 of such 'trimming' operations.[384] Behind the government's intransigence, there was clearly well-mobilised and concerted pressure from the medical colleges and bodies to block any new law that would prevent them carrying out these 'trimming' procedures.[385]

The government amendment caused a lengthy debate at committee stage. Lord Kennet, who had introduced the Bill in the House of Lords, emphasized that it was 'a very great pity that the words "custom" and "ritual" should be making their first appearance in British law since the Catholic emancipation'; and the Commission for Racial Equality argued that it was discriminatory to allow doctors to differentiate between patients according to whether or not their state or mind was based on custom or ritual.[386] It was suggested by Lord Kennet, with support from other peers, that if a girl with 'normal' genitalia mistakenly thought she was deformed (it was made explicit that the new law would not prevent surgery in cases of actual 'abnormality' or 'deformity') then she should receive counselling not surgery, but this argument was rejected.[387]

The government's amendment failed in the House of Lords, but the argument moved to the House of Commons where the Bill was introduced by Marian Roe MP. Again, the government was adamant that the Bill could only be passed with the specific caveats on mental health and custom or ritual. With the threat of the entire Bill falling, its backers gave in and the final wording of the Prohibition of Female Circumcision Act 1985 stated that it was an offense to excise, infibulate or

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[384] Lord Glenarthur, Prohibition of Female Circumcision Bill, House of Lords, 23 January 1984.

[385] On 27 March 1984 Lord Glenarthur quoted a letter from the British Medical Association stating '[w]e agree that it would be quite wrong for any doubt to be cast over the position of women, black or white, or of any ethnic group, requiring surgery for reasons which have nothing to do with the custom or ritual practice of female circumcision'. A letter to *The Times* on 8 February 2004 from Rustam Feroze, President of the Royal College of Obstetricians and Gynaecologists, claimed that Lord Kennet's original Bill 'would have interfered with normal medical practice to a degree unknown in this country' and accuses him of failing to distinguish between 'ritual circumcision' of young girls and 'plastic surgery on adult women who are seeking help for themselves'.

[386] ' ... A doctor, when assessing mental health as justifying the performance of an otherwise prohibited operation, will normally base his judgment on the patient's state of mind as he finds it. To suggest that some reasons for that state of mind may be acceptable and others, broadly confined to those which might affect persons of African origin or descent, are not is, in our view, discriminatory and therefore to be avoided' (letter from the Commission for Racial Equality, 22 December 1983, quoted by Lord Kennet in House of Lords Debate on the Prohibition of Female Circumcision Bill on 23 January 1984).

[387] 'I am advised that the Royal College of Obstetricians and Gynaecologists consider that surgical correction is the appropriate form of treatment – not psychotherapy in the way that the noble Lord suggests' (Lord Glenarthur, Prohibition of Female Circumcision Bill, House of Lords, 23 January 1984).

otherwise mutilate the whole or any part of the labia majora or labia minora or clitoris with the exception of cases when:

2(1)(a) it is necessary for the physical or mental health of the person on whom it is performed and is performed by a registered medical practitioner.

and:

2(2) In determining for the purposes of this section whether an action is necessary for the mental health of a person, no account shall be taken of the effect on that person of any belief on the part of that or any other person that the operation is required as a matter of custom or ritual.[388]

The government argued that interfering with a cruel custom or ritual was the precise purpose of the Bill.[389] In their determination to distinguish between female circumcision for 'customary' reasons and 'trimming' operations on girls and women under the misapprehension that they had deformed genitalia, the government, the British Medical Association and the Royal College of Obstetricians and Gynaecologists faced difficulties in identifying the difference between the two kinds of surgery. They admitted this, but refused to recognise that the difficulty in distinguishing the two is that there is very little difference in reality.[390] Both are operations that are carried out in the belief that they are necessary to make the female genitalia 'normal'; in both cases, what is perceived as normal is a socially specific construction. Whether the medical lobby really believes that there is a clear distinction between an unacceptable cultural practice and a legitimate cosmetic operation, or whether there was pressure from private clinics and surgeons for financial reasons is difficult to judge. But the lengthy passage of the Act was evidence of the power of the organised medical lobby in Britain.

The 1985 Act was based on precisely the kind of double standard that has

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[388] Passed on its Third Reading on 19 April 1985.

[389] 'But the whole object of the Bill as introduced by the noble Lord is to prohibit practices which are confined to particular ethnic groups. If the new clause discriminates, then so does the Bill itself' (Lord Glenarthur, Prohibition of Female Circumcision Bill, House of Lords, 23 January 1984).

[390] 'The problem is that while the distinction between this legitimate surgery and the traditional practice of female circumcision is quite clear in commonsense terms, there is no precise anatomical definition which would admit one and not the other. That is why we need the provision for surgery on mental health grounds together with the qualification [on custom or ritual] contained in subsection (2)' (Lord Glenarthur, Prohibition of Female Circumcision Bill, House of Lords, 23 January 1984).

dominated the international FGC literature. In effect, it said that if you are a British girl or woman who believes her genitals are abnormal, it is permissible to have surgery to fit in with the ideals of the majority society. However, if you are from a minority, your mental health is culturally determined – you have a group delusion rather than an individual one – and you do not have the same rights as members of the majority society to alter your body. The implications of the attribution of a group versus an individual identity are explored in subsequent chapters.

In the years after the introduction of the 1985 Act, public interest in FGC declined, although there was some ongoing development work. Parliamentarians had recognised that laws in themselves do not change behaviour and there had been emphasis at Committee stage in the House of Commons on the need to combine legislation with an education programme involving members of practicing communities.[391] The government had been asked to 'put its money where its mouth is' in funding voluntary organisations in areas of the country with large Somali communities.[392] Some funding was immediately forthcoming for NGOs working on FGC issues.[393] And in 1989, FGM was identified as child abuse in the government guidance which stated that '...a local authority may exercise its powers under s.47 of the Children Act 1989 if it has reason to believe that a child is likely to be or has been the subject of FGM'.[394] But there were no mandatory guidelines or procedures set in place for professional bodies and the majority of local authorities developed no specific policies and procedures.[395] While there were isolated initiatives,[396]

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[391] In the United States, the law gives the Secretary of Health and Human Services certain responsibilities, including the design and implementation of outreach activities to educate relevant communities about the harmful effects of FGM (see Lockhat, 2004, p47). In Britain, there is no such requirement, making education and developmental work dependent on budgetary constraints.

[392] Harry Cohen MP, Standing Committee C, Prohibition of Female Circumcision Bill, 3 April 1985. John Patten MP, Parliamentary Under-Secretary of State for Health and Social Security, promised to consider funding applications sympathetically.

[393] 'Grants for educational campaigns were announced to the Foundation for Women's Health Research and Development (Forward), the Minority Rights Group, and the London Black Women's Action Project' ('Cash to fight outlawed ritual', *The Guardian*, 10 October 1985).

[394] Department of Health, Home Office and Department for Education and Employment, 1999, 6.15. The guidance is for all practitioners and managers with child welfare responsibilities in England.

[395] FORWARD, 1999.

[396] For example, the African Well Woman Clinic at Guy's and St Thomas Hospital Trust was established in September 1997 in response to the increasing number of women with FGM presenting at delivery suites and Family Planning Clinics (Momoh et al, 2001, pp186-191). A weekly NHS walk-in clinic for African women seeking reversals was established at the Central Middle Hospital (*British Medical Journal*, 29 July 2000). 'There are at least ten specialist clinics in the NHS which

government funding for services and awareness-raising was inadequate and there was little attempt to reach practicing communities in a concerted way.[397]

At the same time, no cases were ever prosecuted under the 1985 law, although there were reports of two doctors who were struck off the medical register for agreeing to perform the illegal operation, and of local authority interventions to protect children from circumcision.[398] The difficulty in obtaining sufficient evidence for a prosecution with such a 'secretive' practice was mentioned.[399] It is clear that no-one working in this area believed the absence of prosecutions was because the problem no longer existed, and that the failure to marry legislation with awareness-raising programmes in practicing communities and comprehensive guidelines for health professionals, teachers and social workers meant that many professionals and parents remained unaware that FGC was illegal, while some parents took their children overseas to be circumcised.[400] To a large extent, this had to be assumed, as the only information on the practice was word-of-mouth. No nation-wide prevalence research was funded or carried out and the only figure available for the whole UK

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treat women and girls who have been mutilated. Women do not need to be referred by their own doctor' (Women and Equality Unit, 2007, p46).

[397] The problem of funding was raised at a meeting organised by the Agency for Culture and Change Management in February 2005 to set up a UK FGM Network. Agencies campaigning and providing services related to FGM identified short-term funding as a problem. The Women's National Commission Violence Against Women working group meeting in July 2006 reported a depletion in FGM services.

[398] In 1992 there were reports of a private consultant claiming to carry out the surgery in private clinics by giving a false description when booking the operating theatre (*The Sunday Times*, 18 October 1992). The surgeon, Dr Faroozue Hayder Siddique, was found guilty of professional misconduct and struck off the medical register in November 1993 (*The Sunday Times*, 28 November 1993). In December 2000, GP Abdul Ahmed was struck off the medical register after agreeing to perform a *sunna* circumcision on the C4 Documentary 'Cutting the Rose' in 1997 (see ''Doctor struck off over genital surgery', *The Guardian*, 20 December 2000).

In 1990, *The Guardian* reported that '[f]or the first time in Britain, two small girls have recently been made wards of court by a local authority to protect them from being circumcised' ('The Unkindest Cut', *The Guardian*, 9 October 1990) and it has been claimed that 'since 1989 there have been at least seven local authority legal interventions which prevented parents from sexually mutilating their daughters or wards' (Dorkenoo and Elworthy, 1994, p143).

[399] Baroness Jeger – who argued against the Government's 'mental health' amendment at the time of the 1985 Act – wrote a letter to *The Times* stating that '[t]he fact that there have been no prosecutions is not because the Crown Prosecution Service or the police are not enforcing it; nor is it because of a lack of clarity in the existing law. It is because of the difficulties in obtaining evidence to support prosecutions' (*The Times*, 1 April 1999). See also 'Secrecy creates a problem for prosecution' in *The Times*, 21 August 2001.

[400] 'In 1997, Forward, a charity that campaigns against FGM, uncovered four people who were willing to perform genital mutilation. Forward's acting director, Faith Mwangi-Powell, says FGM is undoubtedly going on in this country – she had even heard of one mother in Leicester with two four-week-old girls she was planning to have circumcised' (*The Guardian* 21, December 2000). See also Sleator, 2003, p 35 and 'The first cut' by Julie Flint, *The Guardian*, 25 April 1994.

remained FORWARD's estimate 'that within the UK around 279,500 women have undergone FGM and each year approximately 22,000 girls under 16 years are at risk of becoming victims of FGM'.[401]

Awareness that the 1985 legislation had not succeeded and anecdotal evidence that the problem might be increasing in the UK because of the growth of refugee communities from Somalia, Sudan, and other practicing countries in the late 1980s and 1990s, combined with continuing behind-the-scenes pressure from NGOs such as FORWARD, led to a surge in interest in the problem in the late 1990s.[402] This took the form of parliamentary questions, and letters and articles in newspapers.[403] A 1999 French court case in which 27 Malian women were tried for the mutilation of minors helped raise awareness, and comparisons were made with the lack of prosecutions in the UK.[404] It was also reported that Home Secretary David Blunkett was shocked to hear of cases of FGM in his Sheffield constituency.[405] However, the catalyst for moving from concern to fresh legislation was the work of the All-Party Parliamentary Group on Population Development and Reproductive Health, which carried out a global survey and held parliamentary hearings on FGM, then produced a report with recommendations for the government in November 2000.[406]

As a result of this activity, the Female Genital Mutilation Bill was introduced by Ann Clwyd MP as a Private Members Bill in March 2003, won government backing and was passed in October 2003, although not brought into force until early 2004 to allow time for awareness-raising among practicing communities. The new

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[401] http://www.forwarduk.org.uk/news/news/130 (last accessed 7 May 2007).

[402] 'Researchers believe more than 3000 young girls in Britain may be being mutilated each year, a sharp increase resulting from a recent influx of refugees from the Horn of Africa, where female circumcision is commonplace' (*The Observer*, 24 September 2000). The then directors of both Forward and the London Black Women's Health Action Project were quoted in December 2000 as saying FGM was still happening in the UK and might actually be increasing with a growing number of refugees from practicing countries (*The Guardian*, 21 December 2000).

[403] See questions by Lord Kennet on 'Prohibition of Female Circumcision Act: Prosecutions', 19 April 1999; by Chris McCafferty MP on 'FGM', 8 May 2000; and by Baroness Rendell of Babergh on 'FGM', 12 February 2001. See also letter from Baroness Jeger to *The Times*, 1 April 1999 'Female circumcision goes on despite legal ruling' and 'Sex operation fear for girl, 6', *The Sunday Mercury*, 19 March 2000.

[404] See All-Party Parliamentary Group on Population, Development and Reproductive Health, 2000, which refers to France as the country with the 'best prosecution record'. Britain was perceived as weak in comparison, having specific legislation but failing to use it.

[405] 'Blunkett has strong personal feelings about FGM after dealing with several cases in his Sheffield constituency' (*The Observer*, 1 December 2002).

[406] All-Party Parliamentary Group on Population, Development and Reproductive Health, 2000.

law repealed and re-enacted the 1985 Act. It received an unopposed third reading in the House of Commons with all parties united in support: Labour Home Office Minister Paul Goggins told MPs that 'FGM is a barbaric practice'; Conservative MP George Osborne hoped the new Bill would bring successful prosecutions where the 1985 Act had failed to; and Liberal Democrat Dr Jenny Tonge said '[I]t is something that has been exercising everyone for the last twenty years and the problem has been escalating'.[407]

Parliamentary debate on the 2003 Act was limited in comparison with the 1985 Act. Debate was not seen as necessary for the main purpose of the new Act was to make two changes: the word 'Mutilation' replaced 'Circumcision' in the title, and it became illegal to take a girl or woman abroad to be excised or infibulated, even to countries where FGC is legal. The language and the terms of reference were taken wholesale from the earlier Act, even though it is unlikely that the suggestion that a (white) girl who believes she is abnormal should have surgery and not therapy would stand today. As a result, the caveat about mental health is retained in the new law along with the reference to 'custom or ritual'.[408]

In fact, in so far as it increases the sentence for those convicted to 14 years, and creates the offence of assisting a girl to mutilate her own genitalia, while adding that 'Girl includes woman' (the 1985 Act simply referred to 'persons' so did not infantalise women from FGC-practicing communities in the same way), the new Act can be seen as more discriminatory than the earlier one. It takes a stronger stance against female genital cutting, but only where this has a 'cultural' dimension. Even more clearly than the earlier law, the 2003 Act distinguishes between the illegal reinfibulation after childbirth of a 21-year-old woman of Sudanese origin, regardless

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[407] 'New curbs on FGM clear Commons' (Press Association, 11 July 2003).

[408] The 2003 Act states '1(1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris.

(2) But no offence is committed by an approved person who performs (a) a surgical operation on a girl which is necessary for her physical or mental health...

...(5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual'.

RAINBO a leading international NGO working on FGM recommended the Bill be amended to apply to all non-consenting minors regardless or racial or religious origins and regardless of whether the request was for cosmetic surgery based on a perceived abnormality and that the Bill did not apply to consenting adults regardless of whether their reasons were 'cosmetic' or 'customary'. These recommendations were not taken up (Sleator, 2003).

of her own wishes, while permitting white British women to have surgery to create 'designer vaginas'.

There was a clear belief in The UK that the 2003 Act was necessary to 'close a loophole' in the law allowing people to take children abroad for FGM.[409] However, if there had been the will to reduce FGC in the years prior to the new Act, there were several legal instruments that could have been used: the 1985 Act, the 1998 Criminal Justice (Terrorism and Conspiracy) Act which makes it an offence to conspire to commit an offence outside the UK, and the Children Act 1989 which allows local authorities to intervene to protect a child, for example to prevent her being taken out of the country for circumcision.[410] In part, the question of whether adequate legislation existed depends on whether the purpose was to prevent a child being circumcised or punish the parents after the act had taken place.

Whether or not a new law to make a public statement was necessary – and many campaign groups and service-providers believed it was – there is agreement that legislation is only useful in so far as it backs up educational work. Many would agree that the law is useful less for enforcement than as a deterrent and must be reinforced by awareness raising and education in communities, and that therefore, funding of grass-roots organisations is a priority. But as with the original legislation, NGOs claimed that the new law was not backed up with adequate funding for community work.[411] The implementation of the 2003 Act was delayed by several months after its enactment to allow time to inform communities before criminalizing them. Organisations including the Agency for Culture and Change Management and

[409] Based on interviews with staff at FORWARD and the Agency for Culture and Change Management, and Women's National Commission FGM working group meeting on 26 February 2003.

[410] In 2000 there were reports of a young Birmingham girl whose family planned to fly her to East Africa for circumcision. The Midlands Refugee Council tried to dissuade the family but said that under the Children Act they could get an emergency interim care order to stop the mother taking her daughter out of the country. The same article says 'social workers in the city have already stepped in to protect two girls from mutilation by preventing their parents from taking them out of the country' (*The Sunday Mercury*, 19 March 2000). The BMA Ethics Department Guidance on Female Genital Mutilation 1996, revised February 2004 states that '[u]nder the Children Act 1989 the local authorities can also apply to the court for various orders to prevent a child being taken abroad for mutilation'. There may have been a loophole in that under the 1998 criminal Justice (Terrorism and Conspiracy) Act 1998 it is an offence to conspire to commit an offence outside the UK only if the act is an offence in both the UK and the country where it is to be committed. So there could be cases where a parent took their child abroad to a country where FGM is not illegal and could not be prosecuted on their return.

[411] Interview with FORWARD, 4 November 2004 and Women's National Commission FGM working group meeting minutes.

Black Women's Health and Family Support were given funding by the Home Office and letters of guidance were circulated – the Department for Education and Skills sent a letter of guidance on the new Act to all local authority Directors of Social Services.[412] A campaign by statutory and voluntary agencies in 2006 took the slogan 'Summer Holidays are for Fun not Pain'.[413] But organisations working on the ground affirmed that there were still many members of practicing communities who remained unaware that FGM is illegal whether carried out in this country or abroad.[414]

In some ways, the passage of time between the two Acts suggests an improvement in the mechanisms for grass-roots organisations and civil society to influence legislation. The 2003 Act had what was in effect a steering group in the form of the FGM sub-group (to its broader Violence Against Women Working Group) convened by the Women's National Commission.[415] Its membership included representatives of service-providers, women's groups, national and international NGOs working on FGM, as well as government departments. The Group made recommendations on the drafting of the 2003 Act to government, and a Home Office representative attended the Group's meetings during the Bill's passage. This was an inclusive and expert set of individuals with expertise on FGM/C, acting as a bridge between government and experienced NGOs and service providers. But once the Bill became an Act, the Home Office stepped back from its involvement in the Group. Responsibility for implementation should then have moved to the Departments of Health and Education but they were not involved in the group in the same way. There seemed to be a reluctance to accept responsibility

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[412] Awareness-raising consisted of Home Office funding to the Agency for Culture and Change Management and to Black Women's Health and Family Support, a Home Office circular to all police forces and Crown Prosecution Service officials, a Department of Health circular to nurses and GPs, and a Department for Education and Science circular to local authority social services departments (Local Authority Social Services Letter LASSL (2002)4) and visits by Home Office ministers to NGOs at the time of the Act.

[413] Agencies included the Metropolitan Police Service in conjunction with the British Medical Association, FORWARD, Africans Unite against Child Abuse, Development Support Agency and the Somali Information Integration Centre (http://www.forwarduk.org.uk/news/news/130 last accessed 6 May 2007).

[414] 'In research by the Development Support Agency, 50% of those interviewed did not know that female genital mutilation was an illegal practice and 31% of those questioned said that they did not care if it was and still intended to go on doing it' (Parliamentary question by Baroness Rendell of Babergh on 3 March 2005).

[415] The work of the Women's National Commission is discussed in the conclusion at 8.5.1.

for FGC by either government departments or local authorities.[416] This may be partly because of uncertainty as to whether FGC is a health, children's, violence against women or human rights issue.

The November 2000 Report of the Parliamentary Hearings on Female Genital Mutilation by the All Party Parliamentary Group (APPG) on Population, Development and Reproductive Health made 47 recommendations, many of which related to UK domestic policy.[417] Two were picked up and acted on by the government promptly: that 'the UK law on FGM is amended to ensure that UK residents who take girls abroad to have them circumcised, can be prosecuted under the UK Law on their return, regardless of the legal status of FGM in the country where the circumcision takes place' and that 'the name of the Female Circumcision Act is changed to incorporate the term FGM'. Both these recommendations were implemented and cynics might say they were the cheapest and most visible for the government to act on. Other recommendations, relating to communicating information about the Act to UK communities, providing guidance, funding educational materials and training, establishing an interagency approach and increasing funding for groups working on FGM were taken up in a less whole-hearted way, if at all.[418] And, like its predecessor, the 2003 Act had resulted in no prosecutions at the time of writing.[419]

In the absence of a co-coordinated implementation strategy for the 2003 Act, NGOs had to do the best they could on limited resources. The result was inevitably patchy and involved identifying for themselves the balance between 'recognising the

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[416] Following restructuring, FGM became part of the remit of the Sexual Violence sub-group as well as the over-arching Women's National Commission Violence Against Women working group. The Group's Chair, Professor Liz Kelly, was unable to find a Government representative to attend its July 2006 meeting to talk about work on FGM. In 1999, a survey of local authorities by FORWARD found that 65% had no specific FGM policy or procedure and 67% of local education authorities provided no training to schools (FORWARD, 1999, p7).

[417] All-Party Parliamentary Group on Population, Development and Reproductive Health, November 2000.

[418] An application for funding for prevalence research that FORWARD made to the Department of Health was turned down (Interview with FORWARD, 4 November 2004).

[419] In response to a parliamentary question by Baroness Rendell of Babergh about prosecutions under the Act, the Attorney-General (Lord Goldsmith) replied that there had been none: 'But the success of the Act is not necessarily to be measured solely in terms of the number of prosecutions. Prosecution after the fact does not relieve the victim of a lifetime of pain and discomfort. Ideally, we want to obviate the need for prosecution by preventing this practice occurring in the first place. To that end, the 2003 Act is intended to send a powerful message of deterrence' (3 March 2005, available at www.parliament.uk).

sensitivity and complexity of issues related to FGM, and avoiding becoming judgmental or punitive' while at the same time not becoming 'paralyzed by being seen as racist or being confused by arguments based on culture, tradition or religion that you do nothing'.[420]

Women and children in areas of London and Sheffield were probably best served with specialist NGOs (FORWARD, the Agency for Culture and Change Management and Black Women's Health and Family Support) providing information and support and the possibility of referral to specialist Well Woman Clinics for treatment (reversal or obstetric care). But the lack of governmental coordination of departmental responsibilities meant that the response an infibulated woman received from her GP or whether a school picked up on the fact that a girl was about to be taken abroad to be circumcised was a question of luck.

Another result of this lack of co-ordination was that no standards of good practice were established and implemented, raising concerns about overriding confidentiality in order to detect cases of FGC. For example, in July 2002 the Sheffield Area Child Protection Committee wrote an open letter to all Somali parents warning them to reconsider if they were planning to take their children on holiday to be circumcised.[421] This approach seems likely to provoke resentment and hostility, but in the absence of more general education and information programme, it was clearly felt to be the only way to inform parents who might be planning to circumcise their children that this would be illegal.

The most striking gap in FGC initiatives, and something that was picked up by both the All Party Parliamentary Group and the Women's National Commission working group, as well as individual NGOs, was the failure to fund research on prevalence. The All Party Parliamentary Group noted that 'there is clearly a severe shortage of data on the prevalence of FGM in the UK and overseas' and 'there needs to be data collection on the nation wide prevalence of FGM in a co-coordinated

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[420] Adwoa Kwateng-Kluvitse from FORWARD. Her conclusion is that 'to do nothing to protect the child would be racist indeed' (RCN Study Day for Midwives, Doctors, Nurses, Health Visitors, Social Workers and other Professionals, 29 October 2004).

[421] 'In July the Sheffield area child protection committee wrote an open letter to all Somali parents informing them of the health problems associated with FGM and advising them that if they were planning to take their children on holiday for FGM they should reconsider'. [Sarah] 'McCulloch says "It caused a furore. People were so angry and said we were attacking their culture but the feedback was that people were afraid and some families cancelled their trips"' (Sleator, 2003, p13-14).

manner'.[422] Conducting empirical research is an obvious and expected response by policy makers to an emerging social problem, yet, a quarter of a century after the issue was first raised as a concern, there was still no verifiable national data on the prevalence of FGC in the UK.[423]

It is difficult to think of a comparable area of social or health policy where a problem has been identified and there has been no research, with the exception of small-scale surveys by NGOs, to identify the level and type of problem. At the time of writing there was no national data on the ages of girls/women involved in different communities, whether the priority was prevention for children or support to women who are already circumcised, and the different patterns for different communities. That is one reason why there is still widespread oversimplification about what FGM/C is and why it is done. Legislation has been introduced (twice) without research on prevalence. This raises the question of how the need for action has been identified. One small-scale study found that nearly half the women who were circumcised spoke little or no English.[424] This suggests that language is a crucial factor in communicating the illegality of FGM. Research making this kind of connection is vital.

So while campaigners and service-providers giving training suggest that teachers need to look out for girls who come back from long holidays and take a long time going to the toilet and midwives should prepare themselves for pregnant women who ask to be reinfibulated after their child is born, there is no data on the likelihood of either of these two scenarios. It is then difficult for NGOs to know whether to target their small resources on providing information and support for

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[422] The report recommends that 'Funds are allocated for data collection and subsequent research into the incidence of FGM in the UK, collated by the Department of Health' and that 'Inter-agency research involving the immigration services, refugee councils, health authorities and education departments is undertaken to map out needs in the UK' (All-Party Parliamentary Group on Population, Development and Reproductive Health, 2000).

[423] 'The absence of national survey data means that the impact of Government and civil society efforts to eradicate FGM in the UK are almost impossible to measure' (Sen et al, 2003, p30). There are some local studies: The International Centre for Reproductive Health report, 1998, includes data on the number of cases of circumcised women seen at London's African Well Woman Clinic, Northwick Park Hospital and Central Middlesex Hospital African Clinic over different periods of time. FORWARD's 1999 report Moving Forward also contains information that could be the basis of national prevalence work. However, in 2007, the Government reported that 'the Department of Health funded a prevalence study undertaken by several bodies including the leading FGM organisation FORWARD (the Foundation for Women's Health, Research and Development) which will indicate the likely incidence of FGM in England and Wales' (Women and Equality Unit, 2006, p46).

[424] Momoh, et al, 2000.

teachers and social workers who come into contact with schoolgirls who have been or are likely to be circumcised, or to prioritise information and services for adult women who have already been excised or infibulated. Is the priority educating girls to say 'no' to circumcision or funding reversals of women who have already been infibulated?[425] To complicate matters further, the dispersal of asylum-seekers around the country means that communities where FGC is practiced are less likely to be clustered in a few large urban areas where service-providers are aware of the issue, and more likely to face incomprehension from teachers or midwives in areas where they are the only non-whites.[426]

FGC presents strategic problems for service-providers and support workers in the UK. It is a 'practice' that has been criminalised where the 'criminal' is likely to be the parent or relative of the victim and is unlikely to perceive herself as criminal. These are criminals who are 'misguided' rather than wicked. And there is awareness of the desirability of persuading otherwise loving parents against circumcising their children, with care orders as a last resort.[427] In fact there is ambivalence among activist/service providers about whether the 2003 Act should be enforced. On the one hand, it is recognised that the 1985 Act was useless in not resulting in prosecutions and there is definitely a sense of waiting for a prosecution under the new Act. At the same time, nobody wants to take a child from parents who genuinely believe they have acted in their children's best interests in the same way as it is in a child's interest to suffer the pain of going to the dentist.[428]

This draws attention to a fundamental problem in identifying cases of FGC

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[425] 'Comfort Momoh, an FGM specialist midwife with Guy's & St Thomas', told MPs that since her clinic started in September 1997, over 3000 women have turned up with FGM-related problems. The clinic carries out around 10 reversals every two weeks' (*The Guardian*, 21 December 2000).

[426] 'FGM is practiced among migrant and refugee communities who tend to settle in urban areas near to existing communities (when given the choice). The government's policy of dispersing refugees and asylum seekers to rural, isolated government accommodation centres has major implications for women who have experienced FGM. Culturally sensitive health care services tend to be centralised in urban areas and removing, or making more complicated, women's access to such services is a major concern for women's health and well being' (Sen et al, 2003, p32).

[427] On 9 October 1990, a *Guardian* article referred to the alarming implications of identifying FGM as child abuse for child welfare specialists and ethnic community representatives: 'Caring and loving parents would be labelled child abusers; children could be taken away from their homes, families broken up. Black people in Britain already had enough problems living in a hostile, racist environment without being told by social workers that they were abusing their children'.

[428] 'If this is child abuse, then the whole Somali community is abusing children. Child abuse needs an intent to harm but there is no intent to harm here' (Sadia Ahmed, sociologist working at Oxford House, a Somali community resource centre in East London quoted in 'The first cut' by Julie Flint, *The Guardian*, 25 April 1994).

among British nationals and residents: if a GP asks a girl or woman if she is 'closed', s/he is asking her if she has been the victim of a crime whose perpetrators are probably family members. As in cases of forced marriage, the 'victim' is likely to be an unwilling witness. And service providers obviously face a dilemma in some situations, particularly for midwives or social workers and particularly if they come from the community they are working in, as to whether to report a case of suspected FGC and risk causing a child to be taken away from an otherwise 'good' family environment. This is where guidelines and training of health and education workers would be particularly useful.

Faced with such difficulties, UK NGOs have sensibly chosen to focus on the child abuse aspect over the women's rights perspective.[429] Organisations like FORWARD might recognise the hypocritical aspects of the law on FGM, but believe that their priority is to protect children rather than engage in academic debates about the similarity between FGM and cosmetic surgery. In focusing on FGM as a child abuse issue, they implicitly recognise the complications of the topic as it relates to adult women. But under funded women's organisations do not have the resources to devote to disseminating a more complex portrayal of FGC and cultural practices to counteract the simplistic picture put forward by the national media and legislature. As Efua Dorkenoo (founding member and former Director of FORWARD) puts it, 'we don't have time to wait until white women are conscious of their own oppression [in relation to cosmetic surgery]'.[430] Ever since the debates around the 1985 Act, activists have realized they have to take what they can get in terms of statutory support when it is available, even if it is not ideal.

The child/adult distinction is useful for strategic purposes in another way. There is clearly an age-gap in relation to attitudes to FGC, with older women who have had it done to them more likely to believe that it should be done to the younger generation and more likely to change their attitudes through involvement in an overall health strategy rather than one that focuses on 'mutilation'. Meanwhile,

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[429] 'FGM is child abuse – no ifs, buts, or maybes' Adwoa Kwateng-Kluvitse of FORWARD, speaking at RCN Study Day for Midwives, Doctors, Nurses, Health Visitors, Social Workers and other Professionals, 29 October 2004. See also FORWARD's 1999 report, which stresses that 'in the majority of cases the victims are little girls. Children cannot represent their interests, they do not have a voice and they therefore need policy makers, non-governmental organisations (national and international), and the communities working together on their behalf to provide protection against FGM'.

[430] Meeting with Efua Dorkenoo of FORWARD, 4 November 2004.

young girls in schools are more likely to be part of a peer culture that rejects the practice entirely. It might therefore be helpful to distinguish between statutory protection of children and support services for adult women who may be under pressure to comply with FGC or who may already have experienced it – similar to approaches to domestic violence.[431]

In the same way, FORWARD's members are aware of the arguments about language but take a strategic approach to the issue.[432] For awareness-raising purposes, they believed the legislative change of nomenclature from Female Circumcision to Female Genital Mutilation to be necessary. It provided a useful tool to work with communities 'as insiders', persuading people that this is mutilation and it is no longer tolerated. In contrast with international literature, the term female genital cutting has no currency in the UK where FGM is the acronym used by all parties. And while it is not ideal that the practices of minorities are seen as 'intolerable' while the practices of the majority are not subject to the same inspection, if the alternative is a debate in academic journals while children are being abused, NGOs have chosen to take the incremental road and use the legislative and policy tools that are available.

This is not to argue that academic research and writing is irrelevant. There are few areas where the relationship between campaigners and academics is so evident as in this debate, with much of the literature written by women strategically involved in trying to end the practice.[433] But organisations with small resources have to prioritise. They might believe it is desirable to raise awareness among white/British/Western women of the fact that cosmetic surgery is degrading and unnecessary in the same way as FGC, but they need to focus on the job in hand.

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[431] RAINBO suggest that 'Help-lines can be set up so that a woman who chooses to escape such pressures is provided with alternative accommodation, financial and legal support etc. by her local council the same as other women who are suffering violence and violation be it emotional or physical' (Sleater, 2003, p38).

[432] See Momoh, 2004.

[433] Such as Efua Dorkenoo and Nahid Toubia in Britain.

5.10 Conclusion

For the international human rights community over the past thirty years, female genital cutting has become a test of whether there are absolute rights and wrongs that are the basis of international human rights standard, or whether universalism is 'barely disguised ethnocentrism'.[434] In the international and theoretical literature on female genital cutting, two distinct positions have evolved: there is the anti-FGM lobby and there are the critics of the anti-FGM lobby – the latter do not (usually) support FGM but believe that different standards are being deployed for different cultural groups, that the issue is complex and that it is not being addressed in the most effective way. This chapter has argued in favour of the latter theoretical position. However, in policy debates on the subject in the UK, that range of voices is not expressed. Politicians from all parties, policy makers, service providers and campaigners condemn FGM (no other term is used) outright. The agonizing found in the international FGC literature – about language and who has the right to make judgements about cultural practices – is barely evident in British debates; there has been virtually no public support for the practice of FGC as a cultural right[435] and the 1985 Act (incorporated with minimal debate in the 2003 Act) was only passed with the addition of an amendment effectively accommodating a system of dual values.

As with forced marriage, the theoretical approaches most visible in British initiatives on FGC have been liberal feminist (the use of the term FGM and identification of it as a form of violence and a human rights abuse in awareness raising and service provision), based on exit (removing a girl from her family if all else fails, though such cases have been few) and dialogue (through the partner-based work of the Women's National Commission). The latter is the most positive initiative, but the partner organisations concerned are inadequately funded; they need to prioritise their resources and challenging cultural stereotypes has not been their priority.

This suggests that it is difficult to combine a more complex understanding of

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[434] Gunning, 1992, p190-191.

[435] The only examples I have been able to find are when Councillor Poline Nyaga of London's Brent Council tabled a motion calling for the legalisation of female circumcision in 1993 ('A Knife in any language' by Helen Pitt, *The Guardian*, 3 March 1993) and when Germaine Greer defended FGC in her book *The Whole Woman* in 1999 (Anchor Books, new edition, 2000). Both Nyaga and Greer were denounced, with the Commons International Development Select Committee calling Greer's comments 'simplistic and offensive' ('MPs condemn Germaine Greer on female circumcision', *The Guardian*, 25 November 1999).

culture with effective campaigning and service provision in a context of limited resources. In The UK, the focus has been on punitive legislation without at the same time sufficiently empowering women in the communities concerned to engage in debate, change attitudes and create alternative versions of cultural identity to demonstrate that cultural values are fluid. This has reinforced the perception of a liberal state (reflecting the homogenous values of the white majority) imposing its democratic values on a (homogenous) minority culture of immigrants and refugees that needs to be dragged kicking and screaming up to 'our' level of modernity.

In the face of the simplistic portrayal of FGC by the British media and legislature, it is not surprising that it is often grass roots NGOs who are the first to insist that action to protect children must not be delayed by sensitivity about possible charges of racism. It is difficult to see how they can do otherwise when the alternative would be to ignore child abuse. FGM campaigners in Britain have had to choose between some protection for children on terms dictated by the government – which perceive and treat minority women differently from the majority – or none at all. The best that can be said is that indirectly and strategically, the arguments of writers like Friedman and Gunning are reflected in the work of British women's community organisations: in the way they position FGC within a broader health and education framework, in their belief that punitive legislation should be only one of the means for changing attitudes to FGC, and in their focus on FGM primarily as a child protection issue.

Chapter 6 'Honour' based violence

6.1 Introduction

Measures to prevent and punish 'honour' based violence in The UK demonstrate more clearly some of the assumptions and trends that emerged in the previous chapters, namely, the complex relationship between religion and culture as perceived identifiers of minorities, the polarisation between those ascribed a group and those regarded as having an individual identity, and the focus on legal or punitive measures rather than attitudinal change.

This chapter is divided into three sections. The first (6.2) considers how 'honour' violence has been identified as a problem internationally and analysed in the literature. The focus is on why 'honour' crimes have been perceived as distinct from other forms of gender violence. I consider whether such distinctions are valid in the UK, and the extent to which such distinctions risk reinforcing cultural stereotypes. The second section (6.3) identifies strategies in the UK to prevent 'honour' crimes and penalise perpetrators – by both statutory and voluntary bodies. The final section (6.4) considers how 'honour' crimes have been prosecuted in British courts in several high-profile cases, and whether the defendant's culture has been a relevant mitigating or aggravating factor. The sections on strategies and cases examine experience in the UK to see whether the theoretical arguments of the first section resonate in policy and case law, and whether measures on 'honour' crime have been carried out in a way that challenges or reinforces stereotypes of minorities and the gender-culture tension.

As with the previous chapters, the focus is not 'honour' crimes as a minority 'practice', but rather the way they have been identified and addressed as a supposedly new phenomenon in the UK. For this reason, I make use of media articles to demonstrate how sensationalist and exoticising portrayals of 'honour' crimes raised public awareness of the issue, and then refer to case law to see whether these portrayals were reflected at judicial level.

While the label 'honour' is used in relation to a broad range of crimes – and forced marriage in the UK is increasingly addressed as a form of honour-related violence – this chapter mainly discusses 'honour' killings rather than the broader range of 'honour' crimes. However, the second section maps the shift in vocabulary in the UK from a discourse of 'forced marriage' to one of 'honour'.

6.2 Analysis of 'honour' violence

The concept of honour is bound up with basic attitudes in the outlook of Arabs, and represents yet another major difference between Middle Eastern and Western thinking.[436]

Activists, theorists and policy makers working in this field face a problem about language. The word 'honour' has mainly positive connotations.[437] By repeating it, there is a danger of reinforcing rather than undermining the idea that there is an honour attached to some forms of violence. In the UK, the Metropolitan Police Service has been keen to emphasise that 'there is no honour in murder'.[438] For feminists, there is the '...added resistance to accepting a notion of honour that endorses or may indeed require violence against women...'.[439] Against this, no other term has emerged to describe the offences discussed here, perhaps indicating how broad a category of behaviours is covered. For activists and service providers, as with FGM, it is also important to use a commonly recognised term.[440] This dilemma is usually resolved by using inverted commas as a distancing mechanism, by referring to so-called 'honour' crimes, 'honour' based violence (HBV), or crimes committed in the name of 'honour'.

The phenomenon of 'honour' killings has been identified as a worldwide problem, including in diasporic communities in Western Europe.[441] The gendered dimension of 'honour' violence is widely accepted. At the heart of any definition is the idea that communal or family honour is maintained by controlling women's

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[436] Butt, 1997, p234.

[437] 'Almost all cultures place value on honour defined as virtuous behaviour, good moral character, integrity and altruism...' Gill, 2004a, p475.

[438] 'There can be no honour in killing' said Sir Ian Blair, Commissioner of the Metropolitan Police Service when he opened the International Conference on Honour Based Violence held on 21-22 March 2005.

[439] Welchman and Hossain, 2005, p6.

[440] See Welchman and Hossein, 2005 p9, who point out that use of the term 'honour crimes' has advantages in terms of its wide recognition but is also problematic in its loose usage.

[441] A UN report claimed that there are 5,000 'honour' killings a year (United Nations Population Fund, 2000).

social or sexual behaviour. 'Honour' crimes are committed when that control is compromised:

> Honour related violence is a form of violence perpetrated predominantly by males against females within the framework of collective based family structures, communities and societies, where the main claim for the perpetuation of violence is the protection of a social construction of honour as a value-system, norm or tradition.[442]

Honour is identified as a justifying or mitigating factor used by the perpetrators:

> The concept of so-called 'honour crimes' is a complex issue but may be defined as a crime that is, or has been, justified or explained (or mitigated) by the perpetrator of that crime on the grounds that it was committed as a consequence of the need to defend or protect the honour of the family.[443]

It is often said that one of the most important values in community-based societies is honour and its opposite number, shame. Honour is the most precious asset a family possesses – it can be seen as self-esteem, but understood as a group rather than an individual asset.[444] Within families, it is men who have honour but their honour is dependent on women's sexual behaviour. In such narratives, women (and girls) do not have honour in their own right, but can bring honour – or shame – on the family and the male family head through their sexual transgressions. These can range from having an affair, to seeking a divorce or talking to a man who is not their husband. Sometimes the event that brings shame is not within the woman's control, for example, if she is raped.

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[442] Kvinnoforum, 2005, p19. Welchman and Hossein give a similar definition: 'The project uses the term "crimes of honour" to encompass a variety of manifestations of violence against women, including "honour killings", assaults, confinement or imprisonment, and interference with choice in marriage, where the publicly articulated "justification" is attributed to a social order claimed to require the preservation of a concept of "honour" vested in male (family and/or conjugal) control over women and specifically women's sexual conduct: actual, suspected or potential' (Welchman and Hossain, 2005, p4).

[443] Council of Europe, 2003.

[444] Kvinnoforum, 2005, p93.

When a woman or girl has – intentionally or unintentionally – failed to conform to her prescribed role and brought shame upon her family, it is said to be up to the men of the family – brothers, fathers or cousins – to redress the shame and retrieve family honour. This can take many forms, but at an extreme it means killing the female and/or the male who was complicit in bringing the dishonour. While killing a sister or daughter who has brought shame on the family is obviously not desirable, in the circumstances, the community perceives it as the only way in which the family can retrieve its honour. The killing is at least partially condoned on that basis.

The above is a typical account of honour-based codes of conduct and the crimes which may result.[445] The 'honour' crime is portrayed as a chain of events, which, once set in train (by the shame-bringing behaviour) is impossible to stop because those involved believe they have no choice but to act in the way they do. This is a very different narrative to the typical 'crime of passion' where a man kills his unfaithful or rejecting partner in the heat of the moment.

In the context of 'honour' killings in minority communities in the UK, Sweden and other European countries, the contrast of supposedly Eastern and Western values is made even more explicit. It has been reported that young women or girls were killed, not simply because they were promiscuous, but because they chose the values of the Western society in which they were raised over the 'traditional' values of their parents' country of origin.[446] That choice usually includes not only choice of a sexual partner or what to wear, but also the pursuit of an education or career. The victim is portrayed as having progressed by adopting Western values, while her family remain characterised by the 'backward' culture they come from.

'Honour' crimes have often been associated with Muslim communities or societies,[447] yet it is repeatedly emphasised by Muslim organisations, politicians and

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[445] For such narratives see Luopajärvi, 2003; Kvinnoforum, 2005; Baker et al, 1999.

[446] 'Although honor undergoes a transformation in its application in the West, it may still be understood as an ideology held by those who seek to hold on to patriarchal power in a competitive arena by mandating certain behaviours by others, notably women. Here, the competitive arena may include the increasing demands for female equality' (Baker et al, 1999, p173). See also Luopajärvi, 2003 p7.

[447] 'The Assembly notes that whilst so-called "honour crimes" emanate from cultural and not religious roots and are perpetrated worldwide (mainly in patriarchal societies or communities), the majority of reported cases in Europe have been amongst Muslim or migrant Muslim communities (although Islam itself does not support the death penalty for honour-related misconduct)' ('Parliamentary Assembly Resolution 1327 (2003) on So-called "honour crimes"').

campaigners that Islam does not condone 'honour' crimes.[448] And some of the more high profile cases in the UK and Europe have not involved Muslims.[449] Despite this, 'honour killings are increasingly cast as emblematic of the problematic nature of one religion – Islam – and its treatment of women'.[450] Abdalla Yones, who murdered his 16-year-old daughter Heshu in 2002, was generally described by the media as a Muslim who disapproved of his daughter's Christian boyfriend.[451] The implication, with little evidence to support it, was that religious and cultural differences were the motive rather than, perhaps, a father's frustration at his inability to control his daughter and her choice of a different way of life. Yones jumped from a third floor flat after killing his daughter and asked the judge to kill him for what he had done but his mental health was not discussed in reports of the case.

A preoccupation of many working in this field is what – if anything – differentiates 'honour' crime from other forms of violence against women.[452] One difference is provided by the term itself: 'honour' crimes are not differentiated by their form but by their (ascribed or claimed) motive. The range of crimes included under the heading spans kidnapping, domestic violence, rape, forced marriage and murder, the main common denominator being the justification of the perpetrator as protecting or restoring personal or family honour.

There is clearly a belief that these forms of violence *are* different by virtue of their motive and that the label 'honour' is meaningful in identifying this.[453] This chapter focuses on 'honour' crimes in the UK, and the supposed contrast will be between domestic homicides and 'honour' killings.[454] In some countries, it has been

[448] The Muslim Council of Britain made a statement in 2003 – when press coverage of 'honour' killings was high – recognising that 'this is a problem, which is found within a very small section of the British Muslim community' but insisting that 'honour killings are in no way, shape or form condoned by Islam' (Nothing honourable about 'honour killings' 14 October 2003, Muslim Council of Britain available at www.mcb.org.uk).

[449] For example, the murder of Anita Gindha, who was a Sikh, in 2003 http://news.bbc.co.uk/1/hi/england/london/3735927.stm (last accessed 6 May 2007).

[450] Sen, 2005, p42.

[451] http://news.bbc.co.uk/1/hi/england/london/3149030.stm (last accessed 6 May 2007).

[452] See Welchman and Hossain, 2005; and Sen, 2005.

[453] 'In order to make sure that those who suffer from honour-related violence receive accurate support, and in order to prevent HRV from occurring, it must be seen as vital that HRV is distinguished from other forms of violence against women' (Kvinnoforum, 2005, p18).

[454] 'Domestic homicide is defined as the killing (including murder, manslaughter and infanticide) by one family member of another (including killings by and of children) or by a current or former partner' (Metropolitan Police Authority, 2003).

suggested that it is important to separate 'honour' killings from other forms of domestic violence because the latter is trivialised by the state and wider society.[455] The shock value of the 'honour' discourse is, by implication, useful in campaigning, unlike the 'normalised' language of domestic violence that is less likely to spark media interest. This has relevance in the UK, where two women a week are killed by their partners in cases that rarely hit the headlines.[456] In contrast, 'honour' crimes have a novelty value in the British media: a mother who holds down her daughter while she is strangled by her son, bounty hunters who pursue a couple over a decade, a father who stabs his daughter then slits his own throat and jumps from a third-storey window – these are stories that lend themselves to sensationalist journalism.[457] The secrecy associated with these crimes adds to the idea of minorities living according to alien values that sometimes lead them to murder their women. However, on closer inspection, 'honour' killings are not always so distinct from or more 'exotic' than other domestic homicides: sometimes it is the label and the meanings attached to it that make them appear so, as I go on to discuss.

One difference between 'honour' killings and domestic homicides is who is being killed and by whom. In British cases where women are killed in a domestic context, the attacker is most likely to be a partner, ex-partner or husband.[458] In 'honour' killings it is more likely to be a brother, father or cousin. But even this distinction does not always hold. For example, in what was reported as an 'honour killing', Nuziat Khan was strangled to death in 2001; her husband, from whom she had been seeking a divorce, is believed to have fled to Pakistan.[459] Nor is it unheard of, in the majority society, for men faced with a partner's infidelity to kill the

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[455] Siddiqui, 2005, p276.

[456] www.fawcettsociety.org.uk.

[457] The references are to: the murder of Rukhsana Naz described in 'Death before dishonour' (*The Guardian*, 21 November 2004); the case of 'Jack and Zena' described in 'Death threat couple still running – 11 years on' (*The Guardian*, 28 June 2004); and the murder of Heshu Yones described in 'For families that fear dishonour, there is only one remedy...murder' (*The Observer*, 5 October 2003). See also '"Honour killing' cousins jailed' (*The Daily Mail*, 20 October 2003); 'Police to target wave of murders in the name of family honour' (*The Daily Telegraph*, 10 March 2003). For concerns about sensationalist journalism, see Cimel/Interights, 2001, p31.

[458] 'Within England and Wales government statistics consistently show that approximately one-half of all women killed are killed by current or ex-male partners' (Criminal Statistics England and Wales 1996 cited at Justice for Women website jfw.org.uk). Fawcett Society reports that two women a week are killed by their current or former partner (www.fawcettsociety.org.uk).

[459] http://www.bbc.co.uk/religion/ethics/honourcrimes/crimesofhonor_2.shtml (last accessed 6 May 2007).

children of the relationship – sometimes killing themselves or their partner as well.[460] In general, however, the relationship between victim and murderer is different in cases of 'honour' killings and domestic homicide among the majority society.[461]

The second distinction is that honour crimes are seen as cold-blooded acts, carried out with premeditation. This is contrasted, often explicitly, with the classic 'crime of passion' where a man discovers his wife is unfaithful, loses all self-control and kills her on the spur of the moment:

> The so-called 'honour crimes' should not be confused with the concept of 'crimes of passion'. Whereas the latter is normally limited to a crime that is committed by one partner (or husband and wife) in a relationship on the other as a spontaneous (emotional or passionate) reply (often citing a defence of 'sexual provocation'), the former may involve the abuse or murder of (usually women by one or more close family members (including partners) in the name of individual or family honour.[462]

An honour killing is usually characterised as a planned murder, often involving more than one family member, and sometimes the manipulation of younger brothers or cousins to carry out the actual murder in the knowledge that they will receive a lighter sentence.[463] The perpetrator or perpetrators are fully aware of what he or they are doing and may be willing to pay the price under the law.

Here too, however, the distinction is not always so sharp as is portrayed. Abdalla Yones, for example, was described as having become 'so "disgusted and distressed" by his daughter's westernised ways that he stabbed her eleven times and

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[460] After Gavin Hall killed his daughter Amelia in 2005, the jury agreed that he had been motivated by bitterness and the desire to punish his wife (see 'Fathers who kill their children', *The Observer*, 5 November 2006).

[461] Lama Abu-Odeh compares the killing of women for 'sexual or intimate reasons' in the United States and the Arab world. She argues that there are 'deep similarities' between each legal system in terms of what constitutes a legally tolerated killing but that in the United States it is mostly wives, partners and girlfriends getting killed while in the Arab world it is sisters and daughters (Abu Odeh, 1997, p290-291).

[462] Explanatory memorandum by Mrs Cryer, Council of Europe Report, 2003. See Abu-Odeh, 1997, for detailed comparison of 'honour' versus 'passion' in relation to legal systems and femicide.

[463] Cimel/Interights 2003, p7.

left her to bleed to death before trying to kill himself'.[464] The case was widely portrayed as an 'honour' killing, but the 'cool' or 'cold-blooded' factor, often presented as making 'honour' killings worse than crimes of passion, is missing in this case.[465] Yones appears rather as a frantic and desperate man. From the other side of the perspective, plenty of non-minoritized men have killed partners or family members in a calculated way. There is a danger that the terminology of 'honour' represents one kind of femicide as deplorable but understandable because committed without malice aforethought, while representing murder by Asian and Middle-Eastern men as carried out in cold blood because culture drives them to act.

In communities where 'honour' killings are prevalent, they are often seen by observers and claimed by perpetrators as a regrettable but necessary response to a situation. 'Jack Briggs' who has been on the run with his wife 'Zena' from her family for over a decade has stressed the importance of understanding the mindset of their pursuers: 'they think that they are justified and are correcting a wrong'.[466] 'Passion' is treated as a possible excuse for an unacceptable act while perpetrators of 'honour' killings are portrayed, and sometimes portray themselves, as acting according to the unwritten laws of their culture. More explicitly than in cases of forced marriage or FGM/C, culture becomes personalized, it is culture that is the killer.[467] In discourses on 'honour', culture is credited with a compelling power to direct and drive behaviour.

Members of minorities thereby lose their individuality to their culture. They are not attributed with the same degree of rationality as members of the majority society. If men from the majority group commit murder it is because they are poorly socialized – either mad or bad. If minoritized men kill in the name of honour, it is because they are only too well socialized within the values of their community, to the point where these values have taken precedence over the norms and laws of the majority society. Cultures where 'honour' violence is prevalent are identified as

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[464] *The Guardian*, October 3, 2003.

[465] '"Honour killing" father begins sentence' (http://news.bbc.co.uk/2/hi/uk_news/england/london/3149030.stm last accessed 6 May 2007).

466 'Jack Briggs' speaking at the Metropolitan Police, New Scotland Yard and Home Office (PSU) International Conference on Honour Based Violence, 21-22 March 2005.

[467] See Elden, 1998, p93, describing the trial of an Arab man who murdered his daughter: 'in this interpretation [the Swedish court's], Albert is not guilty of killing his own daughter but is instead himself a victim of his own culture'.

based on community rather than individual values. The literature refers to perpetrators as 'victims of fate', suggesting they are not independent actors:

> While committing the act the perpetrators are apparently not overcome by emotion, nor do they act in a fit of insanity. Instead they are led by culturally specific moral reasoning informing the killings. This moral reasoning is apparently shared by the community which responds with understanding if not sympathy, since the perpetrator is not viewed as a murderer but as a 'victim of fate'.[468]

These are not understood as acts committed by individuals but by the community, with one person chosen to commit the deed in which many are complicit.[469]

This chapter focuses on the UK, so does not attempt to assess the extent to which 'honour' killings are indeed condoned by communities elsewhere. However, in the UK at least, the degree to which 'the community' condones 'honour' violence is considerably overstated. If nothing else, the significant number of activist women campaigning against 'honour' crimes within their communities clearly do not condone it, while the degree to which members of the majority community condone (or are unconcerned about) gender violence is probably understated. Although a worrying opinion poll in 2006 suggested that one in 10 young British Asians believes so-called honour killings can be justified,[470] there is strong evidence that attitudes throughout society as a whole are similarly unenlightened: a year earlier, an opinion poll indicated that more than a quarter (26%) of respondents thought a woman was partially or totally responsible for being raped if she was wearing sexy or revealing clothing.[471]

There are obvious parallels between minority and majority perceptions that a woman who is raped or killed only has herself to blame. In Britain, the sexual history of the victim has been seen as a relevant factor in rape trials, nagging as a

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[468] Maris and Saharso, 2001, p56.

[469] 'As the case of Ayse and many others indicate, honour killing is usually not an individual act. It is a crime in which the family and the community participate. Much like genocide, the group nature of honour crimes makes them easier to anticipate and prevent' (Mojab, 2004, p18).

[470] BBC.co.uk 4 September 2006.

[471] The poll 'Sexual Assault Research' was published on 21 November 2005 as part of Amnesty International's 'Stop Violence Against Women' campaign (www.amnesty.org.uk).

just cause for murder, and the murder of prostitutes has been treated less seriously than that of 'virtuous' women.[472] The tendency to show women as *either* virtuously conforming to the expectations of wives and daughters *or* as promiscuous and therefore complicit in their abuse seems to be cross-cultural.

Prevalent conceptions of 'honour' killing fail to recognise that these are crimes carried out by individuals and, as writers like Narayan or Volpp would argue, with human agendas and motives. 'Honour' can sometimes be the exotic label for crimes carried out for more mundane reasons, such as money: Amnesty International have referred to 'fake honour killings' in Pakistan as the basis for a moneymaking industry.[473] In the UK, reports of 'honour' killings may too readily accept the label of 'honour' as a full explanation of the crime, without considering the possibility of less exotic motives.

Because the attitudes that support 'honour' systems are seen as typical of cultures rather than wayward individuals, there is often an anthropological perspective to analyses of 'honour' violence, a tendency to list the characteristics typical of 'honour' based societies using a vocabulary of 'patriarchal kin groups' and 'clans' which it would be rare to find in relation to Western male homicides.[474] This compounds the perception that countries or communities where 'honour' crimes are prevalent are incomprehensible until they are put under the anthropologist's microscope. Uni Wikan – herself a professor of social anthropology in Norway – states that '...the very word "honour" has an allure that tempts anthropologists to make use of its evocative multivalency, rather than see analytical

[472] In 2005 '...Vera Baird QC, a Labour MP and leading criminal barrister, said a "depressingly large" number of judges still considered sexual history relevant.' The same article reported that just 5.3% of rape allegations result in a guilty verdict (*The Observer*, 31 July 2005). 'In 1995 Brian Steadman was jailed for three years after he hit her 13 times with a hammer, he pleaded diminished responsibility due the his wife's constant nagging' (www.jfw.org.uk last accessed 6 May 2007). In the hunt for Peter Sutcliffe – the Yorkshire Ripper – West Yorkshire police made a rigid distinction between prostitutes and 'innocent' women. It has been argued that their insistence on seeing the Yorkshire Ripper simply as a 'prostitute-killer' contributed to the delay in apprehending him (Smith, 1989).

[473] Pakistan. Honour killings of Girls and women, 1 September 1999, Amnesty International Index: ASA 33/018/1999, available at www.amnesty.org).

[474] For example, Kressel lists 24 characteristics of 'intrafamily murder for the sake of honour' and states that '[a]ttempts at translation from Western cultural reality to the Arab Muslim East... obscure the influence of the kin group through its demands on the individual and the extent to which the law is restricted in its ability to penetrate the realm of the clan, where socio-politico-economic activity is organised on the basis of the agnatic principle' (Kressel, 1981, p151-152).

precision'.[475] In such discourse, the term 'honour' serves to reinforce boundaries: between individual and group mentalities, modern and pre-modern societies, rational and irrational people.[476]

I have suggested above that 'honour' killings are not always so distinct from domestic homicides as is claimed. Purna Sen has identified six key features of crimes of honour, and she argues that 'these features *in combination* identify the particularity of codes and crimes of honour' (emphasis mine).[477] The features in question are:

1. Gender relations that problematise and control women's behaviours, shaping and controlling women's sexuality in particular;
2. The role of women in policing and monitoring women's behaviour;
3. Collective decisions regarding punishment, or in upholding the actions considered appropriate, for transgressions of these boundaries;
4. The potential for women's participation in killings;
5. The ability to reclaim honour through enforced compliance or killings;
6. State sanction of such killings through recognition of honour as motivation and mitigation.[478]

The first is clearly not specific to 'honour' violence. Western feminism has long argued that male violence against women – rape in particular – serves not only to punish individual women who do not conform to patriarchal values but also to act as a threat or warning to all women. The last does not apply in the UK, where honour killings are not officially sanctioned. If it is the *combination* of Sen's six features that marks out honour crimes, than they are not so clearly differentiated from other crimes in the UK. The main distinction from crimes of passion may be the language, and the way behaviour is coded and actions made meaningful.

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[475] Wikan, 1984, p849. See also Kurkiala, 2003, who addresses 'honour' violence in Sweden from an anthropological perspective.

[476] Uma Chakravarti says '…the violence [of 'honour' killings] becomes associated with the "uniqueness" of Asian cultures, with irrational communities and aberrant and archaic patriarchal practices refusing to modernise' (Chakravarti, 2005, p308-9). See also Razack, 2004.

[477] Sen, 2005, p50.

[478] Sen, 2005, p50.

I am not arguing here that the specific features of crimes should not be identified as a way of addressing and preventing them. I am suggesting, rather, that portrayals of 'honour' killings in Britain sometimes reinforce cultural stereotypes. Sen herself accurately sums up this danger:

> As the veil, child marriage and widow immolation did in colonial times, 'honour' killings had at the end of the twentieth century become emblematic of the backwardness of oriental cultures that exemplify the oppression of women.[479]

She rightly concludes that '[t]he challenge then is to be able to acknowledge if crimes of honour do have specific characteristics and to do so in ways that do not suffer the same traits of a Western, Orientalist gaze as described above'.[480]

6.3 Strategies in the UK

As with forced marriage, it is easy to believe that 'honour' killings are a new problem, first identified and addressed around 2002-2003. This perception is flawed on two counts. The first is that researchers and campaigners had identified this area as one that needed work many years earlier. Asian and Middle Eastern women's organisations such as Newham Asian Women's Project, Southall Black Sisters, and the Iranian and Kurdish Women's Rights Organisation have been protecting women from HBV for years – and these groups played a key role in bringing the issue into the public domain. The CIMEL and Interights 'Honour Crimes' Project produced valuable research and gathered information on the issue while deliberately not sensationalising the phenomenon.[481] Secondly, 'honour' work was not so much a

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[479] Sen, 2005 p45-46.

[480] Sen, 2005, p49.

[481] The project was an action-oriented collaborative research project initiated in 1999 and jointly coordinated by CIMEL (the Centre of Islamic and Middle Eastern Law at the School of Oriental and African Studies (SOAS), University of London) and Interights (the International Centre for the Legal Protection of Human Rights). The editors' introduction to Welchman and Hossain eds. 2005 describes the work of the project over the five years of its operation. Its primary aim was to exchange information to help develop strategies by a range of actors committed to eliminating 'honour' violence. The project's achievements include a bibliography of literature and case law, a compilation of key human rights law materials, and a roundtable event in 1999 bringing together activists, academics, journalists and lawyers from many countries to consider responses and strategies (see http://www.soas.ac.uk/honourcrimes/).

new initiative as an expansion of on-going work in relation to forced marriage under a new title. After 'honour' violence was identified as a problem, it became the label for a range of abuses.[482] Measures on forced marriage in particular were subsumed under the heading of 'honour crimes' but also, on occasion, practices including FGM/C, ritualistic killing and abandoned spouses.[483]

The problem may not have been new, but the label of 'honour' only became widely employed after 2002. The issue was raised at European level, when a report and resolution on *So-called 'honour crimes'* was put before the Parliamentary Assembly of the Council of Europe by the British Member of Parliament Ann Cryer.[484] And the key role of the Metropolitan Police Service dates back to 2003, when Commander Andy Baker – the public face of police work on 'honour violence' – established the Strategic Homicide Prevention Working Group on 'Honour Killings'.[485] This followed pressure for action by women's organisations and a report identifying 'honour killings' as an area for future work on good practice.[486]

However, the catalyst was extensive media coverage of the murder of 16-year-old Heshu Yones by her father in 2002. The case was one of the first of several to be identified in the mass media as an 'honour crime', indicating the significance of the press in determining when an 'issue' becomes the focus of policy and under what label (the forced marriage initiative a few years previously can similarly be identified with the conjunction of a few cases receiving lengthy media coverage). At an 'International Conference on Honour Based Violence' organised by the Metropolitan Police, New Scotland Yard and the Home Office in March 2005,

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[482] 'More recently, we have noticed a shift – deaths that would once have been used to highlight forced marriage are now being redefined as honour killings' (Siddiqui, 2003, p90).

[483] The International Conference on Honour-based Violence organised by the Metropolitan Police Service and the Home Office in March 2005 included a presentation by Perdeep Gill on 'Violence in the name of honour and child abuse'. Alongside forced marriage and FGM, the speaker referred to witchcraft in relation to the torso of a boy child found in the Thames and the abuse of children in the belief that they were possessed. Gill claimed that African children were being brought to the UK and killed in the belief that an uncircumcised penis restores honour.

[484] Council of Europe, 2003.

[485] The Metropolitan Police Service working group subsumed an earlier working group on forced marriage and is a multi-agency group whose members include Women Living Under Muslim Laws, the Asiana Project, Refuge and others. A second, national 'honour' crimes working group co-ordinated by the Association of Chief Police Officers (ACPO) was an internal group for police officers only.

[486] Metropolitan Police Authority, 2003.

pictures of Heshu Yones were displayed and speakers referred to the case on numerous occasions.[487] This is not to ignore the work of other agencies: women's organisations such as Kurdish Women Action Against Honour Killing and the Iranian and Kurdish Women's Rights Organisation have taken a leading role in raising awareness of 'honour' violence and engaging with government and other statutory agencies.[488]

The Metropolitan Police Service (MPS) was the most visible agency behind the identification of HBV as a new area of crime incorporating 'honour' killings, forced marriage and sometimes FGM/C. It held several conferences to raise awareness and spread good practice attended by service providers, academics and policy makers but also by significant numbers of police officers.[489] 'Honour' violence was highlighted across different areas of MPS operations, including frontline policing to improve initial responses to individuals making contact. In January 2003, following pressure from women's organisations, and a MPS report on domestic violence that identified 'Honour killings' as an important area for future work, the MPS set up the Strategic Homicide Prevention Working Group on 'Honour Killings'. This subsumed an earlier working group on forced marriage and was a multi-agency group whose members included Women Living Under Muslim Laws, the Asiana Project, Refuge and others.

In June 2004, Scotland Yard announced that its detectives were going back to examine 109 possible honour-related killings, many involving women from South Asian communities who were killed between 1993 and 2003. Of the 22 cases reviewed by April 2005, 9 were classified as 'definite honour related homicides' and a further 9 as 'suspected honour related homicides'.[490] These cases were not being reopened – many of them had been through the courts and resulted in a conviction.

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[487] The media reported other 'honour' killings in the period 2002-2005 but Heshu Yones' case received more coverage than most and many reports were accompanied by her portrait.

[488] For example, the Iranian and Kurdish Women's Rights Organisation organised a demonstration outside the Central Criminal Court on 8 March 2007 demanding 'a full police investigation and inquiry into the failure to protect Banaz Mahmod Babakir Agha' who was murdered in January 2006.

[489] Forced Marriage Seminar (14 June 2001); Forced Marriage – keeping it on the policing agenda (16 February 2005); International Conference on Honour Based Violence (21-22 March 2005). The Metropolitan Police Service has also participated in conferences organised by other organisations, including by the Centre for Crime and Justice Studies on 20 April 2005.

[490] 'Homicide Prevention Unit Factsheet: "Honour Killings" and Honour Based Violence' (Metropolitan Police Authority, March 2005, distributed at International Conference on Honour Based violence 21-22 March 2005).

What detectives were doing was looking at them anew as possible 'honour' killings in order to understand the 'honour' phenomenon and try to prevent future cases occurring.

'Honour killings' was introduced as one of the areas addressed by the MPS Homicide Prevention Unit. The Unit employs a matrix of risk factors that are often precursors to domestic violence and which it abbreviates to SPECSS: Separation (child contact), Pregnancy/new birth, Escalation, Cultural issues and sensitivity, Stalking and Sexual Assault. In addition they have identified risk factors unique to HBV, including threats to kill, controlling access to passports or finances, and extra-marital affairs. The 'prevention' model is a response to the recognition that there had been several indications that victims like Heshu Yones were in danger that were not acted upon. Also relevant here is the death in 1999 of Victoria Climbié, an 8-year-old girl from the Ivory Coast, who was abused by a great-aunt and her boyfriend despite repeated contacts with police, health professionals and social services. The inquiry on her death stressed the importance of heeding warning signs and intervening earlier in cases of child abuse.[491] The lessons of the Climbié case have spread beyond the specific circumstances to the protection of children and young people generally, including protection from forced marriage, HBV and FGM/C.

This risk management approach is positive. It is clearly worrying if there were 109 murders over a relatively short period of time sharing common factors that could have enabled the police to prevent them. The identification of 'risk factors' to prevent domestic violence was a new area of police work that has been widely welcomed by women's organisations, who worked with the police to develop this. Against this, the fact that the MPS is taking a lead on 'honour' killings inevitably suggests a focus on punitive measures rather than attitudinal change.[492]

The MPS also participated in work at European level, including a European Union-funded project on 'Prevention of violence against women and girls in

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[491] *The Victoria Climbié Inquiry, Report of an Inquiry by Lord Laming*, Presented to Parliament by the Secretary of State for Health and the Secretary of State for the Home Department by Command of Her Majesty, January 2003.

[492] 'Indeed Southall Black Sisters and NAWP [Newham Asian Women's Project] have vigorously argued that despite a real increase in police powers to combat VAW, the result has been not prevention of violence but simply increased monitoring and the surveillance of BME communities' (Gill, 2005a, p44).

patriarchal families' co-ordinated by Kvinnoforum, a women's forum based in Stockholm. One of the outcomes of the project was a resource and good practice book on honour-related violence. The project ran from 2003-2005, covered seven European countries and had a partner organisation in each. In the UK, this was the MPS. The involvement of the police in the Kvinnoforum project may seem surprising – the other partner organisations were research or voluntary organisations – but it is a reflection of the leading role the MPS assumed, not only in prevention but also in raising awareness of 'honour' crimes in the UK.

The public involvement of the MPS saw the development of constructive working partnerships between a range of organisations, with statutory bodies like the police and Home Office openly acknowledging the expertise of community and women's organisations on this issue. Representatives from small, under-funded women's organisations frequently shared a platform with the Metropolitan Police Commissioner and officers at a series of conferences held to raise awareness of 'honour' violence. Research was commissioned to inform police work, including by academics from the minority communities concerned. This reflected a greater willingness to consult and engage with the voluntary sector on the part of statutory bodies than existed prior to 1997.

The less positive side to this was the tendency to use the label of 'honour' crimes to address a number of different abuses. This was reflected in a recommendation of the Metropolitan Police Authority for the 'Development of FM [forced marriage] based structure which incorporates other "honour" based violence issues including FGM, dowry, early marriage, trafficking leading to "honour" killings in order to raise awareness of the issues and improve police responses to victims of such crimes'.[493] As previously mentioned, conferences on 'honour' crimes used 'honour' as descriptive of a range of offences. There was a danger of 'honour' becoming the blanket category for any form of violence against girls and women in minority ethnic communities.

Sometimes the connection makes sense: the link between forced marriage and 'honour', for example, is often clear. Some of the high profile UK 'honour' crimes of murder or kidnapping involved young women who had rejected a forced marriage

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[493] Metropolitan Police Authority, 2005.

or had an extra-marital relationship following a forced marriage.[494] But sometimes HBV was used to describe phenomena that differed significantly in terms of motives, the minority communities where they were prevalent, and the appropriate means to prevent them. If 'honour' becomes a shorthand term for all forms of domestic violence within minority ethnic communities, this is likely to conceal the complexity of reasons why young girls are forced into marriage or abducted to their country of origin or have their genitals 'mutilated'. While there may be instances where a girl is excised as a prerequisite to a forced marriage,[495] the reasons why parents carry out FGM/C on their children are very different from the reasons why a brother kills his sister for having an adulterous affair. As discussed in the previous chapter, black women's organisations in the UK, whilst mainly supporting the Female Genital Mutilation Act 2003, expressed doubts about criminalising parents who sincerely believe they are acting in their children's best interests. In contrast, Asian and Middle Eastern women's organisations have shown no sympathy for those who kill in the name of 'honour'. The trend towards conflating these different crimes under the heading of honour has been noted with concern by activists.[496]

Also of concern is the fact that the government failed to match police work in this area. In contrast to earlier initiatives on forced marriage, there was no unit established to provide support to victims and potential victims of HBV, guidelines were not circulated to service providers, and there was little engagement with the issue by the Departments of Education and Health, or by local government.[497] This was attributed to changes of personnel at a senior level and in political climate.[498] The result was a focus by statutory agencies on regulation rather than attitudinal change.

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[494] For example, Tasleem Begum who was killed by her brother-in-law Shabir Hussain allegedly because she walked out of a forced marriage (*The Daily Mail*, 26 September 1995); in 1998 Mohammed Bahir and his wife Sekina Khan were jailed for kidnapping their daughter by doping her and attempting to fly her out of the country when she resisted a forced marriage (*The Daily Telegraph*, 6 June 1998).

[495] At the Centre for Crime and Justice Studies conference on 'Honour' Crimes and Violence against Women on 20 April 2005, Vinay Talway of the Government's Forced Marriage Unit claimed a link between forced marriage and some African cases of FGM.

[496] See Welchman and Hossain, 2005, p19.

[497] The Government has said that it 'addresses honour based violence through the Domestic Violence Inter-Ministerial Group' (Women and Equality Unit, 2007, p63).

[498] Hannana Siddiqui attributes this to post 9/11 sensitivities and the fact that Mike O'Brien, Junior Minister at the Home Office who formed the Working Group on Forced Marriage, moved to the Foreign Office in 2001 (Siddiqui, 2006, p269).

More positive was the work on Violence Against Women (VAW) carried out by women's organisations. Some of this work was done under the aegis of the Women's National Commission Violence Against Women working group and the more recent End Violence Against Women Campaign (discussed in the concluding chapter 8). The value of this work was reflected in the shift from a discourse of domestic violence – originally limited to partners and ex-partners – to one of Violence Against Women (VAW), covering a broader range of relationships. And where the term domestic violence was retained, it was often recognised as including a broader range of family members, particularly relevant to the question of 'honour' crimes.[499]

However, while minority women's organisations were united in confronting 'honour' crimes, it was possible to identify distinct approaches.[500] Southall Black Sisters, for example, expressed concerns about the role of the police, the influence of the media and the way 'honour killings' became the new 'popular' issue. To avoid feeding racism and stereotypes, they argued for integrating work on 'honour' violence within a domestic violence and human rights framework.[501] Other NGOs focused specifically on 'honour' killings, identifying them as at least in part as a cultural problem and using more polemical language to capture attention.[502] The Iranian and Kurdish Women's Rights Organisation, for example, identified a 'culture of honour' in order to challenge it. In this culture, women are ancillary to men and:

> Any deviation from the restrictive life-script of virginity, marriage according to the choice of the family and fidelity afterwards is believed to bring shame upon the entire family, a shame which can often only be removed by murder... 'Honour' killing is a widespread phenomenon but is endemic to

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[499] See section 4.4 in chapter 4. See also Kelly and Lovett, 2005.

[500] See Siddiqui, 2005, p275-276, referring to the 'clear division on strategy that emerged' between Middle Eastern and South Asian groups.

[501] Siddiqui, 2005.

[502] The same phenomenon has been identified in Sweden: In relation to the murder of Fadime Sahindal, it was Kurdish women and women from regions where honour killings happen who were most vocal in saying there should be a recognition of culture: 'They pointed to the specific logic of an "honour culture", transcending religious, ethnic and national boundaries, where male control over females and their sexuality is a matter of utmost importance' (Kurkiala, 2003, p7).

South Asia and the Middle East amongst other regions, and also in places with immigrants from these areas.[503]

Diana Nammi, the organisation's founder, has claimed that Heshu Yones' father received a reduced sentence on account of his culture.[504] The organisation appears focused on 'honour' violence while being less concerned about the possibility of feeding cultural or racial stereotypes than some other women's groups.[505] However, along with Kurdish Women's Action Against Honour Killing, the International Campaign Against Honour Killings and other NGOs, it played an important part in raising the profile of 'honour' killings and their victims. As with FGM/C, voluntary organisations need to raise awareness of 'honour' violence and provide support to victims as effectively as possible with limited resources. They will do so in different ways, reflecting the diversity of the 'sector'.

Some commentators have argued that, rather than disappearing with time as might be expected, 'honour' violence in European countries such as the UK could increase.[506] As with forced marriage and FGM/C, the experience of migration may exacerbate the problem. It has been suggested, for example, that the problem is not the older generation, clinging to the values of their country of origin, but younger British-born men.[507] Others have suggested a 'clash of cultures' when people from 'honour' based societies arrive in the West.[508] If this is the case and British society is producing a new generation of 'honour' killers, then addressing the problem at source by changing attitudes is as much of a priority as pursuit and punishment after the event.

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[503] 'Honour' killing: How many more?', conference organised by the Iranian and Kurdish Women's Rights Organisation and the International Campaign Against Honour Killing, held in London on 1 December 2006.

[504] Reported in an interview in *Refugee Women's News*, Sept/Oct 2005.

[505] Sometimes, the language used would be challenged as offensive or sensationalist if used by the Government or the police: 'The killing of Banaz and other who fall victim of "honour killings" show that this barbaric phenomenon is a very real problem in the UK' (Iranian and Kurdish Women's Rights Organisation/International Campaign against Honour Killings press release, 9 February 2006 about the killing of Banaz Mahmoud Babakir Agha, a 20-year-old woman of Kurdish origin).

[506] See Maris and Saharso, 2001, p60-61.

[507] Hannana Siddiqui of Southall Black Sisters and lawyer Anne Marie Hutchinson suggested this at the Imkaan Roundtable discussion 'Responding to Violence against Women in the Name of so called Honour' held in London on 2 November 2006.

[508] Kvinnoforum, 2005, p17.

Over a few years, HBV came to be recognised as a prevalent type of crime in the UK. However, the section above suggests this awareness of 'honour' killings was achieved by a combination of sometimes sensationalist media coverage and sometimes polemical campaigning by minority women's NGOs. A polarised discourse of 'honour' versus 'passion' obscured the specific circumstances of individual cases and is unlikely to contribute towards this kind of attitudinal change necessary to lead to a reduction in such crimes.

6.4 Criminal cases

This section examines perceptions of 'honour' killings and their implications in the criminal justice system, specifically in relation to the partial defence to murder of provocation. If the first section of this chapter suggested that portrayals of 'honour' violence risk deploying cultural stereotypes and the second section argued that this has indeed been the case in the way the issue has become topical in the UK, this last section looks at whether such stereotypes have also been evident at the final stage of the legal process.

The defence of provocation has long been a target for feminist campaigners who have drawn attention to the way it is used to mitigate crimes of violence by men but has – until recently – been unavailable to women. The issue of HBV introduces a third subject for comparison alongside (white) men and black or white women accused of murder: that of men of (mainly) Asian or Middle Eastern origin accused of honour-related killings. I look at the possible defence of provocation in such cases, and consider whether the portrayal of 'honour' crimes as fundamentally different from other forms of violence against women is also evident in the way 'honour' killings are treated in the criminal courts.

Under English law, there are a number of avenues open to a person accused of murder. The accused can claim that s/he was acting in self-defence. This is taken as a complete defence and if successful, s/he will be found not guilty. However if the action taken in self-defence is judged disproportionate, this defence will fail entirely and the accused will be found guilty of murder. There is a fixed sentence of life imprisonment for murder. Alternatively, the accused may use one of three partial defences, which, if successful, reduce the charge from murder to manslaughter. Importantly, the sentence for manslaughter is not fixed and is at the discretion of the sentencing judge. The two that are relevant to my discussion here are diminished

responsibility and provocation.[509] The ethical distinction between them has been put thus:

> provocation is a partial *excuse* for wrongdoing while diminished responsibility consists of a partial *denial of responsibility*.[510]

In relation to diminished responsibility, the law states:

> [w]here a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.[511]

In the first part of this chapter, I identified similarities between 'honour' killings and 'crimes of passion'. I argued that, in many cases, the chief difference is that the label of 'honour' is only explicit in the former. But male honour has a history in English law. The defence of provocation developed in the 17th Century on the basis that some circumstances mitigate murder, one of which is catching one's wife in the act of adultery when 'a violent response was not only condoned but necessary for a man of honour'.[512] Its current application is defined in the 1957 Homicide Act:

> Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take

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[509] The third is killing pursuant to a suicide pact.

[510] Law Commission, 2003, p45.

[511] Section 2 of the Homicide Act (1957).

[512] Sullivan, 1993 p422. See also Burton, 2001, p254 and Horder, 1992.

into account everything both done and said according to the effect which in their opinion it would have on a reasonable man.[513]

A key statement in 1949 defined provocation as an act or series of acts that causes in the accused 'a sudden and temporary loss of self control, rendering the accused so subject to passion as to make him or her for the moment not master of his own mind'.[514] For many years, the requirements that loss of self-control be 'sudden' and 'temporary' remained the unchallenged basis for a successful use of provocation. The defence has been successfully deployed in cases where a man claims to have flown into a rage and killed his wife on discovering that she is having an affair.[515]

Legal campaigners and others have argued that there is a gender bias in the use of provocation in domestic homicides: it works well as a defence for men who kill their partners but not for women, who usually do so in circumstances that correspond to what the court defines as 'premeditated'. A shorthand has developed in which the combination of 'suddenness' and 'anger' adds up to provocation leading to a verdict of manslaughter, while a time-delay before the killing and no evidence of anger is interpreted as premeditation leading to a verdict of murder.

Women have therefore often found it necessary to pathologise themselves by using the alternative partial defence of diminished responsibility.[516] The syndrome of women pleading diminished responsibility while men claim provocation means that whether they kill or are killed, women are to some degree responsible: a woman who kills is mentally unbalanced; a woman who is murdered has provoked her killer.

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[513] Section 3 of the Homicide Act (1957).

[514] Duffy (1949) 1 All ER 932. This case preceded the 1957 Act but remained the basis for determining provocation before and after it.

[515] For example, the murder of Madeleine Humes who was killed by her husband Les after admitting to an affair. Humes claimed that he 'just saw this red mist' and was sentenced to 7 years for manslaughter. The provocation defence has also been successfully deployed where a woman's nagging or other intolerable behaviour drives a man to murder. See www.jfw.org.uk/ONTRIAL.HTM for further examples of such cases (last accessed 6 May 2007).

[516] The case of Sara Thornton stands out: Thornton was convicted of murder after killing her violent and alcoholic husband. The defence plea of diminished responsibility was rejected. On appeal, her counsel argued that 'the slow burning emotion of a woman driven to the end of her tether ... may be a loss of self-control in just the same way as a sudden rage'. This appeal failed and when Thornton was finally released at a later appeal it was on the grounds of diminished responsibility (Kennedy, 2005, p210-211).

Minority ethnic women accused of murder have been equally vulnerable to this double standard, with Southall Black Sisters at the forefront in drawing attention to the cases of Kiranjit Ahluwalia and Zoora Shah (among others) as miscarriages of justice. But while demonstrating a temporary and sudden loss of self-control has been difficult for all women regardless of ethnicity, black and Asian women may face particular obstacles when using the defence of provocation. It has been argued that Zoora Shah's case failed in the first instance and again on appeal because she did not fit the court's perception of the passive Asian woman.[517] It is likely, for example, that descriptions of Shah as 'strong-willed' with little honour left to salvage prevented her fitting the court's perception of when it is reasonable for a women to be provoked to kill.[518] Similarly, in the case of Ahluwalia, the judge's mention of her university degree might suggest that in his mind 'her education and her Asian background stood as two polarised and mutually exclusive opposites'.[519] Ahluwalia's murder conviction was finally overturned on the basis of medical evidence of depression in an appeal that portrayed her as a more typical victim of domestic abuse.[520]

Although Ahluwalia's murder conviction was reduced to manslaughter on the grounds of diminished responsibility, it was the significant case in challenging the 'sudden' and 'temporary' requirements of a defence of provocation and establishing 'battered woman syndrome' as a possibly relevant characteristic.[521] The presiding judge Lord Taylor accepted counsel's argument that 'women who have been subjected frequently over a period to violent treatment may react to the final act or words by ...a "slow-burn" reaction rather than an immediate loss of self-control'.[522] However, the requirement of immediacy was not completely jettisoned, with Taylor adding that '[t]he longer the delay and the stronger the evidence of deliberation on the part of the defendant, the more likely it will be that the prosecution will negative provocation'.[523]

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[517] Phillips, 2003, p524. See also Edwards 1998 and Carline 2005.

[518] Phillips, 2003, p524.

[519] Patel, 2003, p245.

[520] See Gupta ed. 2003 and Phillips, 2003 for discussion of cases of Asian women accused of murder.

[521] Discussed in Edwards, 2004, p187.

[522] R v Ahluwalia (1992) 4 All ER 889, 896.

[523] McColgan, 1993, p512.

This was nonetheless a positive development for campaigners, and made it possible for a provocation defence to be considered where there was no sudden rage or loss of self-control. Counsel constructing a defence for a woman who kills an abusive partner is now less likely to find the only option available is a plea of diminished responsibility. Within the context of the flawed structure of defences to murder – provocation, diminished responsibility or the all-or-nothing gamble of self-defence – this has to be viewed as a positive development.

I now analyse three recent cases of 'honour' killings and their implications in light of the polarisation (identified above) between discourses of 'honour' and 'passion'. I argue that, in order to receive the lighter sentence based on the recognition of provocation, the defendants in these cases attempted to portray their crimes as characterised by 'passion' – a sudden loss of self-control – rather than as a 'cold-blooded' crime of 'honour'. The extent to which they succeeded in doing so was reflected in their sentences.

6.4.1 Shabir Hussain

Shabir Hussain was jailed for life in 1996 for murdering his sister-in-law and cousin Tasleem Begum by running her over with a car. Begum had had an arranged marriage but entered into a relationship with a married man whom she was waiting to meet at the time of her death. At his trial in October 1996, Hussain pleaded not guilty, with much of the case revolving around the identification of the driver of the car that killed Begum. After less than two hours' debate the jury found him guilty of murder and Judge Gerald Coles QC told Shabir: 'You deliberately took the life of this young woman without any justification, and you did so in a wicked and callous manner which caused her considerable suffering and pain.'[524] Hussain was granted a retrial on the grounds that he had been falsely identified. At the retrial he successfully changed his plea to manslaughter on the grounds of provocation. Judge Hodson cut his sentence from life to six and a half years, and said: 'I accept there has been considerable pressure on you for the last few years. Something blew up in your head that caused you a complete and sudden loss of self control'.[525]

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[524] *The Guardian*, 5 October 1996.

[525] *The Guardian*, 2 November 1998: 'The short prison term – and the recognition of provocation, and implicitly, cultural factors in the crime – was derided by many Asian women's groups. Immediately, comparisons were drawn with the case of Zoora Shah'.

6.4.2 Shazad Ali Naz, Shakeela Naz, Iftikhar Ali Naz

Rukhsana Naz was strangled to death in 1998. The accused were her brothers Shazad and Iftikhar, and her mother Shakeela. The motive was that she 'had brought disgrace on the family by becoming pregnant by a man other than her husband by whom she had two children.'[526] There was no attempt to plead innocence. Shazad admitted to restraining Rukhsana with some kind of ligature which caused her death. There were two possible grounds for a verdict of manslaughter rather than murder: firstly, that there was no intent to kill, that in trying only to restrain Rukhsana, Shazad unintentionally killed her; if this were disproved, the Crown also had to show that Shazad was not provoked by his sister's conduct to 'suddenly and temporarily lose his self-control'. If he was, the issue was whether that conduct was such as to cause a reasonable and sober person of Shazad's age, sex and characteristics to do as he did.[527] The provocative conduct was Rukhsana's sudden revelation to her brother that she was pregnant. Shazad was described by his counsel as 'an idealistic Muslim follower holding the ideas of Islam' and there was also reference to the importance of 'respect', 'family honour', 'shame' and disgrace'.[528]

The defence attempted to present the killing as spontaneous: Shazad's account was that when Rukhsana told him she was pregnant an argument ensued and Rukhsana 'lashed out' at her mother. He attempted to restrain Rukhsana. In describing his behaviour he said 'I was paralysed, quite surprised and shocked because she was going for my mother' and 'I just freaked out'.[529] The prosecution's case was that this was premeditated murder. Evidence was given of a shopping trip by the defendants to buy a spade, fork, acid and a torch which the prosecution said were for a sinister purpose. There were suggestions of a financial motive in the form of a will by Rukhsana that was never executed. And it was claimed that Shakeela had said that her daughter's death was 'written in her fate'.[530] Shazad and Shakeela

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[526] R v Shazad Ali Naz, Shakeela Naz, Iftikhar Ali Naz in the High Court of Justice at Nottingham, 10-25 May 1999. T981445. Transcript from the official tape-recording of Cater Walsh and Partnership, p3.

[527] Cater Walsh and Partnership transcript, 1999, p6.

[528] Cater Walsh and Partnership transcript, 1999, p6 and p22.

[529] Cater Walsh and Partnership transcript, 1999, p54-55.

530 "We did not want to kill her,' her mother told police. 'But it was written in her fate.' ('Life for "honour" killing of pregnant teenager by mother and brother', *The Guardian*, 26 May 1999).

were found guilty of murder and Iftikhar was found not guilty of murder or manslaughter. The judge described the murder as a 'particularly horrific offence' and said 'it was, in my view, a planned murder'.[531]

6.4.3 Faqir Mohammed

Faqir Mohammed killed his daughter Shaida by stabbing her after coming home to find her boyfriend in her bedroom. The defence case was that he lost his head. He 'heard a movement' in his daughter's bedroom and rushed in: 'I did not intend to stab him. I don't know what I intended. From the time I first saw him I lost it'.[532] The boyfriend escaped through the window and Mohammed rushed down the stairs where Shaida attempted to block his way and he stabbed her. The prosecution portrayed a man with a history of violence who suspected his daughter had a boyfriend and had talked about killing her if she did (suggesting premeditation), contrived to find them together, locked the boyfriend in the room while he got a weapon and then went back to kill him, pursued the escaping boyfriend and killed his daughter, either because she got in his way or because she had a man in her room. Whichever of these, he killed her because he believed he had a right to do so and he killed her in a 'controlled rage'.[533]

In his summing up the judge repeatedly referred to the defendant's devout beliefs and pointed out that '[s]ex outside marriage is a grave offence against Islam which, if discovered, brings shame on the families of the individuals involved.'[534] In considering whether it was a case of provocation and whether Mohammed had been 'so overcome that he was incapable of controlling his behaviour', the jury were asked to 'take into account the defendant's strongly held Moslem and cultural beliefs that a daughter should not have a boyfriend' (as well as the defendant's depression).[535] In identifying possible characteristics that might reduce the defendant's powers of self control, the judge repeatedly mentioned his culture and

[531] R v Shazad Ali Naz, Shakeela Naz, Iftikhar Ali Naz in the High Court of Justice at Nottingham, 10-25 May 1999. T981445. Sentencing remarks. Transcript from the official tape-recording of Cater Walsh and Partnership.

[532] R v Faqir Mohammed, Crown Square, Manchester, 18 February 2002. T2001/7410. Transcript from the official palantype note by Cater Walsh and Company, p41.

[533] Cater Walsh and Company Transcript, 2002, p55.

[534] Cater Walsh and Company Transcript, 2002, p1.

[535] Cater Walsh and Company Transcript, 2002, p6-7.

religion – juxtaposed with his history of depression. The judge also read out damaging parts of interviews with the defendant where he had said that it was reasonable to kill someone for what his daughter did because it is in the *Qur'an*.[536] Mohammed was found guilty of murder and sentenced to life imprisonment.

It has been argued that 'it is when cultural arguments resonate with mainstream conventions that they have proved most effective'.[537] This argument was made in relation to the treatment of Asian women who killed abusive partners, but the three cases above suggest it is equally relevant to Asian men who kill female partners and relatives. In all three cases (as in most court cases in an adversary system) there were two entirely different accounts of the same events: the prosecution's description of a cold and callous premeditated killing to defend or recover a family's honour, warranting a verdict of murder; and the defence's description of an impassioned, spur-of-the-moment killing, justifying manslaughter. Where the defendant was successful in pleading manslaughter – Hussain at his second attempt – it was where he convinced the judge that 'something exploded in his head' – suggesting a sudden anger in response to provocation. Where the defendants were unsuccessful – the Naz mother and sons and Faqir Mohammed – it was where the defendants attempts to present their behaviour in the classic provocation format – 'I freaked out', 'I lost it' – failed. Here, I suggest that reported statements such as 'her death was written in her fate' (Shakeela Naz) or the portrait of a devout man capable of a 'controlled rage' (Mohammed) did not correspond to the judges' and the juries' understanding of provocation and the defendants received life sentences for murder. In these cases, the defendants did not convince the court that they were acting in a way that accorded with English law's understanding of how the 'reasonable man' responds to provocation.

It is not entirely clear how minority 'culture' and religion operated in these cases, whether in favour of the defence or the prosecution. They are clearly factors –

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[536] Cater Walsh and Company Transcript, 2002, p49.

[537] Phillips, 2003, p510. See also Edwards' argument 'that when the law authorises a loss of self-control it is in effect giving way not to physiology but to the "mirror of nature". In this sense, the law permits and gives its exculpation to anger and rage and also prescribes the external conditions which allow the weakening of the moral bind. What is being encapsulated here is not a physiological model of man at all, nor a referential description of human responses or emotions, but bears testimony to the social construction of the human response in so far as social conventions excuse conduct' (Edwards, 2004, p188).

as evidenced by the constant reference to, for example, Mohammed's devout religious belief or the Naz family's concern to avoid 'shame' and 'disgrace'. In the cases of Naz and Mohammed, statements were made about the defendant's culture and religion that were used by both sides either as the justification for premeditated murder or as 'characteristics' relevant to the provocation defence. There was no attempt to define or distinguish culture, ethnicity and religion, with both the prosecution and defence citing family honour and beliefs based on the *Qur'an* in defence of their opposing positions. This is not surprising – there is general conflation of religion and culture in Britain, as this thesis suggests. In the cases cited above, it is likely that the defendants' association with a minority culture and/or religion served to reinforce the juries' view that these were cases of premeditated murder – on the basis of these deeply held beliefs – rather than manslaughter.

Problems with the law on provocation have been recognised, including the gendered application of the law. In 2003 the Home Secretary asked the Law Commission to make a report on the law and practice of partial defences to murder with particular regard to its impact in the context of domestic violence. In the summary paper published in October 2003, the Law Commission clearly stated that '[w]e do not believe that the law of provocation should remain as it is'. The reasons given for abolishing the partial defence of provocation in its current form were that it encourages a culture of blaming the victim and places a premium on anger and sudden anger at that:

> The defence, therefore, operates as a concession not to human frailty but to the male temperament and, as a result, operates in a discriminatory manner. It serves to perpetuate male violence.[538]

Following the Law Commission report, The Home Office announced a fundamental review of murder law in July 2005. The Law Commission, which carried out the review, made its report in November 2006.[539] It recommended a new Homicide Act for England and Wales with a three-tier structure of homicide offences. There should be a partial defence of provocation but it would now include the response to

[538] The Law Commission, 2003, p45.
[539] The Law Commission, 2006.

'fear of serious violence towards the defendant or another' (potentially covering women who kill abusing partners) but would not cover cases where 'the defendant acted in considered desire for revenge.' The report commented that:

It has been put to us that there are other cases that, whilst not involving cold-blooded revenge, should nonetheless be ruled out as potential provocation pleas. Examples are so-called 'honour' killings, in which D may say that he (and it will normally be a 'he') planned the killing of the victim to uphold the honour of the family rather than to take revenge on the victim for something said or done. We believe that there is likely to be a strong motive of revenge in such cases. The offender is seeking to make an example of the victim because she (and it normally will be a 'she') has defied tradition, custom or parental wishes in her choice of boyfriend, spouse or life-style.[540]

These recommendations address some of the concerns raised in this section of the chapter, however, at the time of writing, the government had not responded to the Law Commission report.

The way the law is reformed has important implications for minoritized women as victims and offenders. A limited reform of the provocation defence formally removing the requirement of a 'sudden and temporary' loss of self control would help make the defence available to 'battered women' who kill, but could also make it more easily available to 'honour' murderers.[541]

This would not address the inherent flaws in the defence.[542] It has been claimed that the 'reasonable man' formulation that is part of the objective test of

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[540] The Law Commission, 2006, p20, 5.25.

[541] Attempts to modify the defence 'ironically ... make it easier still for jealous and possessive men to claim partial excuse for their angry violence against "provocative" partners who cross them' (Horder, 2005, p124). See also Burton, 2001, p247.

[542] 'In English common law the provocation defence is satisfied only where the killing is founded on moral indignation or outrage, and, in more recent times, the result of an uncontrolled rage following trivial and, more latterly, grave provocation. Over the last two decades counsel and judges in "doing justice" have stretched the requirements of provocation in order to bring women within the ambit of the defence, who out of fear, delay the final strike or who deploy what might appear to others a disproportionate force out of necessity for self preservation. Such a development has done nothing whatever to address the defence's fundamental flaw which is to bestow upon angry men the privilege of immunity from murder when pepper pots are moved or when it has so pleased them' (Edwards, 2004, p181).

provocation is ethnocentrically specific.[543] However, if that were modified to include the circumstances that might appear 'reasonable' to a man of Asian or African origin (or to a jury's perception of what might appear reasonable to their stereotype of a man of Asian or African origin), that, in conjunction with the removal of the requirement of 'sudden and temporary' loss of self control could extend the category of provocation to a much wider group of men who kill women, including those who claim the justification of 'honour'. Defendants could argue that they had acted in response to provocation – in this case a cousin or sister rather than a wife who had taken a lover, and that it was 'reasonable' for them to do so.

Avoiding this outcome means a more radical revision of the possible defences to murder. While the plight of women who kill their violent partners is not the subject of this chapter, the evidence here supports those lawyers and campaigners who suggest that it would be better to consider reforming the law on self-defence to make it available to them. It is more plausible to say that women who kill partners who have abused them for many years – Zoora Shah, Kiranjit Ahluwalia and others such as Sara Thornton – are not so much responding to provocation as acting in self-defence, as long as it is recognised that self-defence does not only occur in the context of an immediate threat of violence.

If the currently 'all-or-nothing' feature of self defence – where the defence fails if the response is excessive and the defendant is found guilty of murder with a mandatory life sentence – were removed, more abused women might feel able to attempt this defence rather than provocation (they aren't 'provoked' into an angry response) or diminished responsibility (they aren't mad – their response is often a rational reaction to their situation). If this were done in conjunction with the recognition of other emotions than anger it would allow fear to be a valid reason for pre-emptive or excessive use of force in cases of women who kill their abusing partners.[544] This suggests a need for an overall revision of the murder law – if

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[543] 'The objective test [of reasonableness] is not suitable even for a superficially homogenous society, and the more heterogeneous our society becomes, the more inappropriate the test is' (Judgment of Murphy J in the Australian case of Moffa quoted in The Law Commission, 2003, p33).

[544] Anger is the only emotion recognised as valid in defences to murder. It has also been pointed out that men can allow themselves to 'give way' to anger against a weaker partner in a way that women cannot: Horder argues that the accused 'permits' him or herself to lose control, but 'women are far less likely to "permit themselves" to lose self-control in the face of provocation. The reason is not far to seek. It is obvious that when a defendant is taunted by a victim who is know or believed to be physically more powerful and aggressive than the defendant, the defendants' anger at the taunt is

defendants whose self-defence claim fails are subject to a mandatory sentence of life imprisonment, they will always find it expedient to plead a partial defence that might lead to a verdict of manslaughter, however inappropriate to their circumstances.

This section suggests that criminal law needs to be reformed in such a way as to prevent all men from using women's sexual (and other) behaviour as justification for killing them. This is only partly what is recommended by the Law Commission in its report currently under consideration by the government.

6.5 Conclusion

> This is, on any view, a tragic story arising out of, to quote defence counsel, irreconcilable cultural difficulties between traditional Kurdish values and the values of Western society.[545]

This quote from the judge in the trial of Heshu Yones' father illustrates a failure to see culture in anything but monolithic terms. This chapter suggests that the less simplistic understandings of cultural identity identified in chapter 2 have not been reflected in the work of statutory agencies and legal practitioners in the UK. Instead, 'honour' violence has become a reifying feature of minority cultures – one of the 'practices' that sets them apart from the majority.

While it is unclear whether the label 'honour' has been an aggravating or a mitigating factor in criminal cases, the view that it should be neither – that all defendants have a 'culture' that is relevant to their behaviour – has not been heard. There have been cases where anthropologists have been called as witnesses in 'honour' cases.[546] In comparable cases of domestic homicide among the majority

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liable to be tempered by fear of the provoking victim's own reaction to any expressive display by the defendant of annoyance at the taunt' (Horder, 2005, p128).

[545] Regina v Abdulla M Younes, His Honour Judge Denison QC, T2003 7247, 29 September 2003, Sentencing remarks, Computerised transcript of Smith Bernal Reporting Ltd. Younes received a life sentence for murder.

[546] Maris and Saharso cite such a case in the Netherlands (Maris and Saharso, 2001, p53). Unni Wikan, a Norwegian professor of social anthropology, has been an expert witness in at least two cases of forced marriage/'honour' crimes (http://www.culcom.uio.no/forskning/artikler/wikan-eng.html last accessed 6 May 2007).

community, a psychologist would be called on to testify on the subject of the defendant's sanity. This reinforces the notion that Western criminality is characterised by reason or the lack of it, while Asian or Middle Eastern criminal behaviour is culturally driven. It ignores the evidence suggesting that defendants will use whatever justification is most likely to result in their acquittal or a lesser sentence. In cases of femicide in Britain, this has historically been a plea of provocation.[547] In cases of femicide in some Middle Eastern and Asian countries, this has been by citing 'honour'. If minoritized men who kill women find that this plea does not work in the UK, they are likely to adapt their defence to fit the more familiar narrative of provocation. I argue that this is what happened in the three cases above.

'Honour' based violence illustrates the dangers of using culture – but only some people's culture – as an explanation for violence against women.[548] If Western societies persist in the belief that among the majority, men kill women for individual and, perhaps, understandable motives, while in minority cultures, women are killed systematically and irrationally for cultural reasons then it will continue to allow majority men who kill women to avoid appropriate punishment.

Previous chapters have argued that it is sometimes expedient for members of minorities themselves to deploy cultural stereotypes. This chapter suggests that it may benefit members of minorities – in this case Asian or Middle Eastern men accused of a violent crime – to be aware of contrasting cultural stereotypes in constructing their defence but to attempt to conform to Western rather than Eastern stereotypes. Presenting a case in terms that correspond to the narrative of a 'crime of passion' rather than that of an 'honour' killing may enable minoritized men to receive the same reduced sentence as majority men who kill women. It is to be hoped that the review of the law underway at the time of writing will address this danger.

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[547] A successful plea of provocation reduces the sentence of life for murder to an average of 7 years for manslaughter (Burton, 2002, p282).

[548] 'Interestingly, culture is often invoked to explain forms of violence against immigrant or third world women but not similarly to explain violence against western women. Thus while sexual violence in immigrant or third world communities is seen as cultural, the cultural aspects of sexual violence against white, western women are usually not recognised' (Luopajärvi, 2003, p97).

Chapter 7: Culture, ethnicity or religion?

7.1 Introduction

This thesis began by identifying a potential tension between gender-based claims and culture-based claims. My starting point, in addressing this tension, was to interrogate the concept of culture, and the subsequent chapters have examined three areas of policy intervention with a more nuanced understanding of culture in mind. However, it has become clear, both in the process of examining these areas, and in the shifts in political discourse that have occurred over the period in which I have been writing the thesis, that religion and religious identities are increasingly central.[549] Time and again, in emphasising that forced marriage, FGM/C or 'honour' crimes are illegitimate practices, minority spokesmen and women have pointed out that these are problematic cultural or traditional practices carried out by a small minority, and have no religious basis. Similarly, members of the government and police have stressed that these practices are not endorsed by any major religion. This leads one to wonder whether there *is* some connection, for if not, why mention religion at all?

Moreover, the implication is that a claim made on religious grounds is more worthy of consideration than one made on cultural grounds. In discussing the history of multiculturalism in Britain, I have already noted that the minority practices that were respected tended to blur religious and ethnic identities. The laws exempting Sikhs from wearing motorcycle helmets or Muslim and Jewish butchers from the general rules on animal slaughter were passed in recognition that without them, Sikhs, Muslims and Jews would not be able to live a life in Britain that accorded with their belief system. Confusingly, there was not, at this time, a formal recognition of minority religious claims in law: Sikhs had to establish themselves as an *ethnic* group entitled to protection under the Race Relations Act in order to have their *religious* claim to wear a turban recognised.[550]

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[549] Religion is defined as belief in and obedience to a supernatural power or powers that is assumed to have control of human destiny and the institutionalised expression of such belief (*Collins English Dictionary*, 1999, HarperCollins Publishers, Glasgow). Religion as it is discussed in this chapter refers mainly to organised or institutionalised belief.

[550] The 1983 test case of Mandla v Dowell Lee. In the 1970s and 1980s there were several contradictory rulings given in Industrial and Employment Appeal Tribunal cases about Sikh demands to wear turbans or beards or – in the case of women – trousers (see IDS Diversity at Work Brief 641 'Dress at work – the legal issues').

The introduction of religion as a factor might suggest that there are two kinds of (minority) 'culture': culture as equivalent to ethnicity; and culture as equivalent to religion. This begs the question of which, if either, is 'bad' for women.[551] It could be argued that it is only when cultural practices assumes the status of religious dictates that they are harmful to women, in which case the supposed tension between gender equality and cultural rights might be resolved by rejecting claims made on religious grounds. Alternatively, it could be argued that practices such as FGM/C or 'honour' killings represent cultural phenomena based on 'inauthentic' interpretations of religion, in which case classic liberal principles of religious tolerance may remain intact, and only their later extension to include culture are problematic.

Both these positions are untenable. It is both theoretically implausible and normatively unreasonable to expect members of minorities to distinguish between the religious and cultural aspects of their identity. Human identity is complex and its components overlap, reinforce, and at times contradict one another. In choosing how to behave, or what to eat or wear, individuals do not isolate and differentiate either religion or culture as 'causes' for their behaviour. The following case of a Sikh woman arguing for exemption from the general dress code for nurses shows how difficult it can be to disentangle religious, cultural, and ethnic factors:

> The Industrial Tribunal ...held that Miss Kaur belonged to a racial group consisting of Sikhs; alternatively, they found her racial group to be Punjabi or Indian. The Industrial Tribunal accepted evidence that Indian women wear either a sari or the salwar kameez, ie trousers. Sikhs come from the Punjab. 80 to 90% of Sikh women in the Punjab wear trousers; 60 to 70% of Sikh women living in the United Kingdom wear trousers. The wearing of trousers is both a requirement of the Sikh religion and a custom of Sikhs. Miss Kaur said that she would not feel respectable if she did not wear them and was told by a priest that it would be very sinful not to do so.[552]

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[551] To borrow from Susan Moller Okin's 1999 title 'Is multiculturalism bad for women?'

[552] Kingston & Richmond Area Health Authority v Kaur, Employment Appeal Tribunal, (1981) ICR 631, (1981) IRLR 337, 3 June 1981. Miss Kaur, a Sikh woman, had complained that the imposition of a standard uniform for nurses by the Health Authority constituted indirect discrimination. The Industrial Tribunal found in her favour but the decision was overturned by the Employment Appeal Tribunal (above citation). The case was further complicated in that it preceded the 1983 case of

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particular, a model that accommodates religion without disregarding women's rights. The chapter then looks at the emergence of a religious voice in policy and legislation in the UK between 1997 and 2007. I ask whether Sunder's conception of religion – mirroring the more open conceptions of culture I endorse in this thesis – has been articulated in these measures; and concludes that this has not been the case, with troubling implications as regards gender (and gay) rights.

7.2 Religion and culture in multicultural theory

The relevance of religion to debates about multiculturalism is recognised – implicitly or explicitly – by many of the writers discussed in this thesis. Bhikhu Parekh, for example, does so implicitly when he gives 'a sample of minority practices that have generated different degrees of public debate in most liberal societies'. The list includes practices associated with Muslim, Jewish, Asian, African, Sikh, Roma, Amish and Hindu people: ethnic and religious identities are juxtaposed under one heading.[554] Ayelet Shachar addresses the problem of multicultural accommodation by examining the situation of women living in *nomoi* groups; religiously defined groups of people who share a comprehensive world view.[555] In *Culture and Equality*, Brian Barry concludes that '[s]o far from finding every ethnic group making demands for some kind of special treatment, what we actually discover is that almost all demands arise in virtue of subscription to a non-Christian religion and focus in one country after another around the same handful of issues'.[556]

However, while religion is clearly central to debates about multiculturalism, there has been little attempt to understand and analyse it in ways comparable to the discussions of culture.[557] Nor has there been sufficient consideration of the relationship between religion and culture and the implications of that relationship for models of multiculturalism. Parekh identifies a close connection between the two:

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[554] Parekh, 2000, p264-265. It has also been noted that the majority of these practices concern the status of women and girls (Benhabib, 2002, p83-84).

[555] Shachar, 2001, footnote 5, p2.

[556] Barry, 2001, p319.

[557] See Spinner-Halev, 2000, writing on multicultural theory's failure to address religion.

Since culture is concerned with the meaning and significance of human
activities and relations, and since this is also a matter of central concern to
religion, the two tend to be closely connected. Indeed, there is hardly a culture
in whose creation, constitution and continuation religion has not played an
important part, so much so that we have few if any examples of a wholly
secular or humanist culture.[558]

Discussing the case of an orthodox Jew forced to resign from the US Air Force
because he wanted to wear a *yarmulke*, Parekh says 'It is striking that the Court saw
the yarmulke as a matter of personal desire or preference rather than a religious
requirement which Goldman was not at liberty to disregard'.[559] The implication here
is that had the court recognised this as a religious requirement, they would have
been more sympathetic to Goldman's insistence on wearing his head covering. This
suggests that religion imposes more stringent requirements on the individual than
culture, or as Christian Joppke phrases it:

...one has to consider that non-religious impositions are always less exacting
on the individual – they don't violate a script and ultimate commands to be
kept, but challenge mere conventions or customs.[560]

Yet while Parekh clearly recognises the significance of religion for multiculturalism,
discussing its role in public life and the problem of finding common ground for
secular and religious discourse, he does not explicitly defend the view that making a
claim on religious grounds *should* have greater persuasive power.

Interpretations of secularism are relevant to the recognition of religious claims
by the state.[561] Tariq Modood, whose significant role in identifying the shift towards
religion as an identifier for minorities has already been discussed in chapter 3,

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[558] Parekh, 2000, p147.

[559] Parekh, 2000, p245.

[560] Joppke, 2004, p241.

[561] At its simplest, secularism is the separation of politics and religion but as a theoretical and
operational model it takes different forms. It can mean a strict neutrality of the state, with no state
involvement in religion and no religious-based laws or policies; alternatively, the state can be seen as
the facilitator of equality between all religions in public and private life. Which of these is preferable
has been the subject of much debate in India, for example, and has significant implications for
women's rights. See Chhachhi, 1994 and Jeffery and Basu, 1999.

argues in favour of a 'moderate' secular model as appropriate for a multicultural society, a reformed version of what currently exists in most of Europe.[562] This resembles the model favoured in India:

> By way of illustration, American secularism is suspicious of any state endorsement of religion, but Indian secularism was designated to ensure state support for religions in addition to those of the majority. It was meant not to deny the public character of religion but to deny the identification of the state with any one religion. The latter is closer to what I am calling moderate rather than absolute secularism. In the British context, this would mean pluralizing the state-religion link (which is happening to a degree), rather than severing it.[563]

On one level this implies extending religious representation from the majority religion to the newer minority religions. But Modood also describes his model in terms of locating religion alongside race, gender, disability etc as a basis for the recognition of identity and protection against discrimination: 'I argue that at least some of the current Muslim assertiveness is a politics of catching-up with racial equality and feminist achievements'.[564] In policy terms, this fits with what has indeed happened in Britain since 1997, as I discuss below: the move to extend protection against discrimination to religious grounds and incorporate representatives of religious minorities more directly into the policy process. Modood argues that this is 'moderate' because '...a move from the idea of equality as sameness to equality as difference [which has already taken place] is a more profound conceptual movement than the creation of a new identity in a field already crowded with minority identities'.[565] So having made the leap to a politics of recognition, it is then only a small step to add religious claims to those of other disadvantaged groups.

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[562] '...it is clear that a historically evolved and evolving compromise with religion is the defining feature of Western European secularism, rather than the absolute separation of religion and politics' (Modood, 2005, p142).

[563] Modood, 2005, p145.

[564] Modood, 2005, p20.

[565] Modood, 2005, p167.

This might be challenged on two grounds: it could be contested by those who argue that religion has no place in public and political life; but it could also be questioned by those who accept the need to give religious interests a voice, but argue that the ways in which religion differs from, say, race present problems that Modood does not resolve. One obvious problem is that of the conflict between claims based on religion and claims based on other grounds. How, if at all, should the state intervene when a religious body or authority asserts that employing women on an equal basis to men conflicts with its fundamental tenets, or that homosexuality is an 'unacceptable' practice?[566] In attempting to find a solution, different conceptions of equality become apparent, as Parekh recognises: at its minimum, equality is the absence of discrimination, but increasingly it is recognised as meaning the positive recognition and inclusion of marginalized groups. But this expanded concept of equality has problematic implications. It is easy to agree that nobody should be discriminated against on the basis of their religious beliefs; it is harder to agree on the right to recognition of a religious identity if discrimination against *other* marginalized groups is claimed as an intrinsic part of that identity. The difficulty in distinguishing these two kinds of equality claims became visible in the UK in the late 1990s and early years of the 21st Century.

Recognising equality on religious grounds is contentious in a way that race and gender equality are not and suggests that religion is different from these earlier equality claims in a number of ways. Firstly, while organisations representing gender, disability, sexual orientation and race generally exist to confront discrimination, anti-discrimination work is a secondary activity for most organised religions. Indeed, some organised religions are identified with a proselytizing ethos that rejects the rights of others to live as they wish, in a way that is at odds with the underlying principles of most multicultural theory. Some are also organised in a hierarchical way with rules that breach equal opportunities practices for women and minorities that are generally accepted for other organisations in society.[567]

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[566] Tensions have also arisen in Britain over potential conflicts between religion and gay and disabled people's rights: In January 2006, Sir Iqbal Sacranie, then head of the Muslim Council of Britain, told the Today Programme that civil partnerships were 'harmful' and homosexuality an 'unacceptable' practice. His remarks were investigated by the Metropolitan Police but no charges were pressed. The Disability Rights Commission has mediated on the question of whether it is acceptable for Muslim restaurants and businesses to deny entry to guide dogs ('No Ban On Guide Dogs Under Islamic Law', Disability Rights Commission news release, 11 December 2002).

[567] See Barry, 2001, p156.

Moreover, religion is not only a basis for protection against discrimination, it is also commonly recognised as and demands to be a legitimate basis for exemption from universal equality measures.[568] Under the heading of 'Exceptions to the principle of equal treatment', the European Commission allows member states to 'maintain national laws or practices which existed before adoption of the [EU's Equal Treatment] Directives and which allowed churches and other public or private organisations whose ethos is based on religion or belief to treat persons differently on the basis of their religion or belief.'[569] Several European countries allow exemptions from equality legislation, including gender equality legislation, for religious organisations or on faith grounds.[570] The European Women's Lobby paper on 'Religion and Women's Human Rights' was published in response to 'concerns expressed by Lobby members about a perceived stronger influence on governments of religious argumentation with respect to women's role and gender equality'.[571] In the UK, the question of exemptions for religion became particularly topical in 2006 in relations to regulations preventing discrimination in the provision of goods and services on the grounds of sexual orientation. This is discussed in the section on the UK below.

One danger, then, is that demands for religious protection could undermine the rights of other marginalized groups, and that as religion becomes a recognised partner in the equality agenda, these demands are increasingly couched in the language of equality, freedom of speech and human rights. Rather than employ only scripture-based arguments, discrimination by religion is also – paradoxically – justified using an anti-discrimination vocabulary.[572]

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[568] See for example, the response to the Government's consultation 'Getting Equal' by the Evangelical Alliance which is presented in terms of the need to balance different kind of rights, rather than the claim to be able to continue to discriminate against gay and lesbian people on religious grounds (available at www.eauk.org/ last accessed 30 May 2007).

[569] European Commission, 2006.

[570] See Dustin, 2006, p14.

[571] Dustin, 2006, p15.

[572] Akbar Warraich and Balchin identify '…a virtual monopoly [in Britain] of the interpretation of Islam, Muslim laws and women's rights within Islam by the extreme Right and conservative Right, the latter often masquerading as "moderates" having co-opted the language of human rights' (Akbar Warraich and Balchin, 2006, p64). As an example of a discourse of rights being employed to justify discrimination on religious grounds, see Lord Ferrars' argument to the House of Lords that '[w]e have an Equality Bill saying that all these people [homosexuals and transsexuals] should be equal. However, as my noble friend said, people who have religious convictions often find that they are discriminated against if they do not want to take part in these [gay and lesbian] marriage ceremonies.

While multicultural theory often conflates religious and cultural practices, and the community most often taken as a 'case study' – the Amish – is a religious one, little multicultural theory openly addresses minority religious claims and names them as such. As Jeff Spinner-Halev points out, multicultural theory typically refers to religious groups but treats them as ethnic groups.[573] The units problematised are named as ethnic minorities, minority cultures, *nomoi* groups, rather than as religious minorities or faith communities.[574] A 'cultural defence', not a 'religious defence' has developed in North America. Britain is still more often described as a multicultural than a multi-faith society.

Where thinkers from John Locke to John Rawls have been preoccupied with the limits of toleration, and have conceived this primarily in terms of the toleration of religious belief, liberal thought as expressed in multicultural theory has focused on the accommodation of difference (with the possible exception of Kukathas). But the differences that were accommodated were for many years attributed to ethnicity and culture, not religion. Multiculturalism's failure to address religion explicitly may reflect a more widely held assumption that religion would soon become obsolete when confronted with more rational systems of thought.[575] This now seems unlikely. Controversies such as that about the publication of the Danish newspaper cartoons, and the increasing identification of an Islamic identity as incompatible with Western values, are likely to lead writers on multiculturalism to focus more on minority religious identities.[576] We may then see a return to early liberal

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... As I say, this is an Equality Bill. It is very important that those people who have strong views should not find themselves being made unequal or being threatened with dismissal' (Equality Bill, [House of Lords] Committee Stage, 13 July 2005 available at www. Parliament.uk). Similarly, in an interview on Radio 4 in January 2006, the then head of the Muslim Council of Britain used a discourse of democratic rights to express opposition to civil partnerships and homosexuality transcript of BBC Radio 4's PM Programme, 3 January 2006. Interview with Sir Iqbal Sacranie, leader of the Muslim Council of Britain).

[573] Spinner-Halev, 2000, p6.

[574] See Kymlicka, Kukathas and Shachar in chapter 2.

[575] Madhavi Sunder traces this line of thought from Descartes, Locke, Kant and Hume, through Voltaire and Diderot to evolutionary theory and finally the writings of Weber and Marx (Sunder, 2003, p1417). Gita Saghal and Nira Yuval-Davis point out that '[f]or many years, religion has been thought – definitely by the Left and those prophets of modernity, the social scientists – to be withering away' (Saghal and Yuval-Davis eds, 1992, p2).

[576] In September 2005, the Danish newspaper *Jyllands-Posten* printed a series of controversial cartoons, some of which depicted the prophet Muhammad. Protests by Danish Muslim organisations escalated to boycotts and demonstrations around the world.

preoccupations with the limits of tolerance – for example, in discussion of the appropriate limits on free speech.

The discussion above suggests that culture and religion are closely linked but that their relationship has been inadequately addressed. Does this matter? If members of minority communities behave in ways that are unacceptable to the majority, does it make a difference whether those behaviours are attributable to culture or religion? I argued above that it is unreasonable to expect individuals to separate the cultural from the religious aspects of their identity. However, there may be pragmatic reasons why the state needs to distinguish the two. One might be that practices sanctioned by religion are harder to influence or change than practices sanctioned by custom or tradition, hence that it is important for policy makers to differentiate between them. To refer back to the example discussed in chapter 5, if parents circumcise their daughters because they believe it to be a religious requirement, it may be harder to persuade them not to and require different strategies of intervention than if they do it simply because everyone they know has always circumcised their daughters. The distinction may also matter in terms of political processes. If minority groups make their claims for recognition on the basis of their religious identities and beliefs, then a state that accommodates these claims is recognising the religiously-based organisations that make such claims as participants in public policy. If new religious lobbies composed of minority religious groups thereby emerge, this offers a more visible challenge to secular principles than what may be the long established but more indirect influence of the majority religious groups.

Related to this, the distinction matters in terms of the basis on which claims are accepted or rejected. This chapter has suggested that religious claims carry more normative weight than those of culture or tradition because religion is understand as a matter of conscience and deeply held conviction, rather than mere habit. This has serious implications for the rights of women where the claims in question undermine gender equality.

Just as chapters 1 and 2 compared models of multiculturalism from the perspective of women's rights, the following section in this chapter assesses some possible models for accommodating minority religious claims, and asks whether any model would also safeguard the rights of other groups in society, specifically women. It then discusses these in relation to UK experiences, considering which, if

any, of these approaches are reflected in policy and practices between 1997 and 2007.

7.3 Theoretical models: Bhikhu Parekh

One approach to the accommodation of religious equality claims might be through the application of Bhikhu Parekh's concept of 'society's operative public values'.[577] Like Modood, Parekh addresses the UK context and his starting point is that:

[w]ith the exception of a deeply divided society, and perhaps not even that, every society requires for its survival and smooth functioning at least some agreement on what values and practices should regulate the conduce of their collective affairs. These values and practices often acquire their dominant position through a prolonged process of indoctrination and coercion, and continue to be actively or passively contested by marginalized groups. However, whatever their origins, history and mode of reproduction, over time they become part of society's moral structure and are embodied in its major social, economic, political and other institutions. Its members may personally hold and live by different values, but in their interpersonal relations they are expected to abide by those the society collectively cherishes. …these values are limited in their scope and largely confined to the publicly relevant and regulated areas of individual life.[578]

He continues:

They [the operative public values] are values because society cherishes, endeavours to live by, and judges its members' behaviour in terms of them. They are public because they are embodied in its constitutional, legal and civic institutions and practices and regulate the public conduct of its citizens. And the values are operative because they are not abstract ideals but are generally observed and constitute a lived social and moral reality. The operative public

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[577] Parekh's model relates to 'minority practices' rather than religious claims, however, as mentioned above, many of the problematic practices included in his 'sample' relate to, or are perceived as relating to religion. In *Rethinking Multiculturalism* he addresses the religion-culture relationship more explicitly (Parekh, 2000).

[578] Parekh, 2000, p268.

values of a society constitute the primary moral structure of its public life....

By and large they form a complex and loosely-knit whole and provide a

structured but malleable vocabulary of public discourse.[579]

The concept of 'operative public values' is appealing. It builds on some of the

dialogic approaches discussed in chapter 2 in prioritising participation and debate,

and shows how competing claims can be resolved in ways acceptable to all parties

through a process of dialogue. The process begins with the identification of a

minority practice as problematic. This acts as a trigger for members of both minority

and majority groups to assess or reassess their respective values. The minority group

is called on to explain why the practice in question is crucial to its identity and this

initiates an internal debate on whether it really is so. Meanwhile, the society at large

must consider the extent to which the practice violates the operative public values. A

process of argument and counter-argument takes place resulting in agreement as to

whether to allow the practice in question or not. The factors taken into account in

reaching agreement will include how important the practice is to the minority, how

much it offends the values of wider society and the balance between the two, but the

dialogic process itself will cause all parties to question their own values rather than

accept them as fixed. The operative public values at any given point in time have

legitimacy in society, but they are also open to contestation and through that process

of contestation both majority and minorities question their importance. There is a

constant process of evaluation and revision of societal values in which all members

participate. The model has features common to Young's model of 'communicative

democracy [which] emphasises that people's ideas about political questions often

change when they interact with other people's ideas and experiences.'[580]

One factor inhibiting the success of Parekh's dialogic process is minority

groups' awareness that they are starting from a position of disadvantage.

Compromise is more likely where all parties feel they are starting from a position of

equality. Taking the Rushdie Affair as an example, what is clearly conveyed by

many writers is the sense of injustice about the restrictions on free speech permitted

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[579] Parekh, 2000, p269.

[580] Young, 1996, p125.

to different groups. For example, both Parekh and Modood make comparisons with accepted restrictions on what can be written or said about the Holocaust.[581]

This suggests that for a process of 'intercultural evaluation' to operate successfully, there needs to be an underlying framework of equal entitlement for all participants in the political process. Clearly minority religions like Islam will have had less opportunity than Christian lobbies to contribute to the formulation of the operative public values over time. It may sometimes be reasonable to expect minorities to abide by the existing operative public values unless they can demonstrate a good reason for changing them, but if an inequality between groups is formalized through legislation and some of the majority privileges are then put beyond negotiation, the dialogic process is unlikely to have credibility with minority groups.

A further problem with the model is the likelihood of it reinforcing essentialist understandings of cultural and religious groups and practices. Parekh's process of intercultural evaluation implies that there are clearly defined groups in society, each with specific values and practices that are incompatible with those of other groups. The danger with the dialogic process as described is that rather than leading to compromise and changes of opinion by all parties, it reinforces artificial boundaries between cultural groups, and could encourage each 'side' to take an entrenched position. The diversity of opinion within minority groups then tends to be lost and the views of a small number of 'traditional' or patriarchal leaders are taken as representative of the entire community. Activists have argued that this is precisely what has happened in Britain.

Parekh's model is also limited to public life. The operative public values are enshrined in the three levels on which 'the common life' is lived – society's constitution, its laws and 'the norms governing civic relations between its members'.[582] He clarifies that 'these values are limited in their scope and largely confined to the publicly relevant and regulated areas of individual life'.[583] The effect of this could be that where the process of intercultural evaluation fails, minorities are left with the right to practice their religion as they wish – but only in private.

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[581] Parekh, 2000, p318 and Modood, 2005, p119.

[582] Parekh, 2000, p268.

[583] Parekh, 2000, p268.

This does not address the fact that it is often public recognition of a minority identity that is sought as validation of that identity and to show that the individuals in question are fully accepted as participating members of society: Sikhs were always able to wear a turban in the privacy of their homes; the changes made by the 1989 Employment Act were in recognition of their right to wear a turban in the public field of employment. And from a feminist perspective, retaining the possibility that some issues belong to private life and are not the concern of society is worrying. Although Parekh uses his model to discuss practices which might be assumed to belong to the private sphere – polygamy and female genital mutilation – and comes down in favour of women's equality in each case, the danger is that his model could be employed to perpetuate oppressive situations for women in the family.

7.4 Theoretical models: Martha Nussbaum

Martha Nussbaum has also addressed the dilemma of recognising religious claims without compromising gender equality.[584] Nussbaum suggests that liberals have not really acknowledged or understood the importance of religion because it is seen as 'little more than a bag of superstitions'.[585] She points to the good that can come out of a religious identity, using her own example as a Reform Jew. She gives instances of religion as a lever for social change, including US abolitionist and civil rights movements and Indian movements based on Gandhian principles.[586] For Nussbaum, the right to religious self-determination is not optional and something that can be easily discarded if it conflicts with gender equality; it is on the contrary central to her 'capabilities approach':[587]

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[584] Both in her response to Susan Moller Okin's question 'Is multiculturalism bad for women' and in *Women and Human Development* (Nussbaum 1999 and Nussbaum 2000).

[585] Nussbaum, 1999, p105.

[586] Nussbaum, 2000, p178 and Nussbaum, 1999, p106.

[587] In *Women and Human Development. The Capabilities Approach* Nussbaum adapts the concept of capabilities, taken from her collaborative work with economist Amartya Sen, to address the needs of women in developing countries. The model deserves more discussion than there is space for here but it claims that a better way of addressing poverty and development issues than current models is through focusing on human capabilities – 'what people are actually able to do and to be' in a way that is 'based on a principle of each person as end' (Nussbaum, 2000, p5).

To be able to search for an understanding of the ultimate meaning of life in one's own way is among the most important aspects of a life that is truly human. One of the ways which this has most frequently been done historically is through religious belief and practice.[588]

But Nussbaum also recognises that women's ability to exercise the full range of human capabilities is often limited in what she describes as 'traditional religious cultures'.[589] If religious self-determination is non-negotiable, the question then becomes how to determine the extent to which it is reasonable to constrain the free exercise of religion to ensure gender rights. Here, Nussbaum uses Rawls' distinction between comprehensive and political liberalism.[590] Under the former, liberal values such as autonomy 'pervade the fabric of the body politic, determining not only the core of the political conception but many non-core social and political matters as well'.[591] Under the latter, citizens are required to endorse the core values – such as the equality of all citizens – as political values only. Nussbaum's preferred framework of political liberalism is based on the 'fact of reasonable disagreement in society, and the existence of a reasonable plurality of comprehensive doctrines about the good, prominent among which are the religious conceptions'.[592] This means that citizens, including religious believers, must accept the political equality of women as citizens but do not have to accept that men and women are equal as a 'comprehensive moral value'.

As a guiding principle to use in dealing with the 'religious dilemma', she suggests the United States Religious Freedom Restoration Act of 1993:

This act prohibits any agency, department or official of the United States, or of any state, from 'substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability,' unless the government can demonstrate that this burden '(1) is in furtherance of a

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[588] Nussbaum, 2000, p179.

[589] Nussbaum, 2000, p188.

[590] Rawls, 1993.

[591] Nussbaum, 1999, p109.

[592] Nussbaum, 1999, p109.

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compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'[593]

Guided by this model, Nussbaum supports laws of general applicability over religious claims in several cases.[594] But she concludes that 'as long as the freedom of individuals to change their religion is also firmly established' the state should not dictate the internal practices of a religious body.[595] The Roman Catholic Church should not be compelled to hire women priests, which is a religious function, though it probably should be compelled to employ female janitors on the same basis as men.[596]

Nussbaum stresses on several occasions the need for any adequate approach to such dilemmas to recognise the diversity of views and evolution over time that exists within all religious traditions.[597] In discussing the case of Shah Bano, that led to the Muslim Women's Bill, she points out that one of the main problems was the Indian government's failure to listen to the range of Muslim (and other) opinions on the case:

> Throughout the debate, many Islamic thinkers opposed the retrograde Muslim Women's Bill, among them politicians, intellectuals, and Islamic women's organizations. They made compelling moral-constraint arguments, claiming that compassionate moral concerns central to Islam made more adequate maintenance for destitute women mandatory even in religious terms. Thus they demonstrated very convincingly that there was not really a gap between core constitutional principles and the core of Islamic tradition. But the government totally disregarded their views, according legitimacy to a small

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[593] Nussbaum, 2000, p198-199.

[594] For example, the case of Mary Roy, a Syrian Christian woman who challenged the inheritance daughters were entitled to under the Travancore Christian Act. Nussbaum rejects the Christian Church's claim here because it 'is simply not a claim about the religious capabilities of individuals' (Nussbaum, 2005, p218, and chapter 3 for analysis of other cases).

[595] Nussbaum, 2000, p228. The meaning of 'change' is ambiguous here: does Nussbaum mean freedom to renounce a religious identity, or does she mean freedom to modify it?

[596] Nussbaum, 2000, p228.

[597] 'What counts as Jewish, or Muslim or Christian is not in any simple way read off from the past: although traditions vary in the degree and nature of their dynamism, they are defined at least in some ways by where their members want to go'. Nussbaum follows this statement with examples of evolution and reform within Judaism, Catholicism, Hinduism and Islam (Nussbaum, 2000, p182).

group of established patriarchal clerics as the true representatives of the community – even though one Muslim minister resigned from the government in protest against this neglect of Muslim opinion in favour of sex equality.[598]

This might suggest that conflicts between religious and gender equality claims can sometimes be resolved by opening up the debate to a range of opinion, including dissenting opinion within the religion in question. However, Nussbaum does not pursue this as her main strategy. For example, in saying the Catholic Church should not be compelled to hire women priests, she does not challenge the right of conservative Catholics to define Catholic doctrine or explain why a democratic government should accept this definition. Yet if gender equality is categorised as a 'compelling interest' of democratic governments – which seems uncontroversial – surely the state should recognise a gender-friendly over a gender-discriminatory interpretation of religious principles?

Instead of internal debate, Nussbaum partly follows Kukathas in prioritising individual rights of exit as a safeguard for women. This allows her to satisfy her requirement that the state should not impose a 'substantial burden' on religious freedoms without a compelling interest. But, as argued in previous chapters, exit only works if individuals view their religious identity as similar to membership of a voluntary organisation. Nussbaum's experience may have been one of choosing the most progressive of the variety of interpretations of Judaism on offer, but that is not the experience of many women. This takes us back to the inadequacy of the exit option as a solution to the subordination of minorities, discussed earlier in relation to forced marriage. When the organisation in question contains your family, friends and all those who provide support in the context of a sometimes hostile or racist environment, the factors are weighted against exit as a realistic solution.

Cass Sunstein makes a related argument in suggesting that the most pernicious forms of religious discrimination can produce internalised norms of subordination that invalidate exit as a solution:

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[598] Nussbaum, 2000, p226. In 1985, Shah Bano, an elderly Muslim woman who had been divorced by her husband, was awarded maintenance by the Indian Supreme Court in what was seen by many as a ruling that undermined India's Muslim personal law. In response to protests at the Supreme Court decision, The Congress (I) Government passed the Muslim Women (Protection of Rights on Divorce) Act 1986 which reduced the liability of Muslim men to pay maintenance to their ex-wives. Nussbaum discusses the implications of the case in detail.

The remedy of 'exit' – the right of women to leave a religious order – is crucial, but it will not be sufficient when girls have been taught in such a way as to be unable to scrutinize the practices with which they have grown up. People's 'preferences' – itself an ambiguous term – need not be respected when they are adaptive to unjust background conditions; in such circumstances it is not even clear whether the relevant preferences are authentically 'theirs'.[599]

Sunstein highlights a further problem with Nussbaum's position: that the choice of individual women to subordinate themselves perpetuates norms that may have a detrimental impact on *all* women. This suggests that, even if it were acceptable to give individual women the stark choice between gender equality outside their religion or oppression within it, the legitimacy this gives to discriminatory practices is unacceptable.

7.5 The public/private dichotomy

The models discussed above suggest that some form of distinction between public and private life or between state and civil society can help resolve conflicting gender and religious claims. Nussbaum's preference for 'political' over 'comprehensive' liberalism and Parekh's 'operative public values' function by marking out a fairly limited area of core values as the basis for generally applicable laws. Beyond this area, the state's remit is debatable. For example, Nussbaum says 'it seems illiberal to hold that practices internal to the conduct of the religious body itself – the choice of priests, the regulations concerning articles of clothing – must always be brought into line with a secular liberal understanding of the ultimate good.'[600] This could be used to justify an area of 'non-political' life where values such as gender equality are not enforced. This raises difficult issues. While few people, least of all those taking a liberal perspective, would welcome state intrusion in every area of life, if

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[599] Sunstein, 1999, p88.
[600] Nussbaum, 1999, p114.

the dividing line is drawn in terms of political/civil or public/private, this is likely to have a particularly negative impact for women.[601] As Hilary Charlesworth argues:

> Why is lack of regulation of particular areas of social life significant for women? ... it is important... to recognise that a deliberate policy of non-intervention by the state does not signify non-control or neutrality. Thus lack of regulation of rape in marriage supports and legitimates the power of husbands over wives. Further, regulation of areas such as employment, taxation, social security and crime have significant, if indirect, impact on the private sphere and reinforce a particular sort of family unit – a nuclear family in which there is a division of labour between men and women. Lack of direct state intervention in the name of protection of privacy can thus disguise the inequality and domination exercised in the private sphere.[602]

This picks up on an earlier criticism made of Kukathas' work and a problem with prioritising tolerance over autonomy as the core principle of liberalism: that a seemingly neutral position often reinforces existing power imbalances. One might reasonably ask why respect for individual freedom – in this case religious freedom – is generally at the expense of women. Historically, a general freedom from state intrusion in supposedly non-political areas of life has left women vulnerable to violence in the home. In relation to religion, the fact that it is so often women's rights that are sacrificed to the exercise of religious freedom – the right to equal access to employment for example – supports longstanding feminist claims that the public/private dichotomy plays a significant role in perpetuating gender inequality. If a church claimed that it needed to exclude black people as candidates for priesthood in order to protect its religious identity, this would no longer be seen as a reasonable exemption. As Nussbaum herself notes:

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[601] 'Some domain of privacy both as the condition for free individuality and the development of personal relations must be essentially preserved as a domain free from government intrusion, and this is necessary from a feminist perspective as well' (Gould, 1996, p179).

[602] Charlesworth, 2001, p193-194.

It is characteristic of many modern debates that racial discrimination is taken to be an impermissible expression of religious tradition, while sex discrimination is taken to be just the way things have always been.[603]

One reason for this is that gender discrimination takes place in an area traditionally seen as beyond the remit of the state. Feminist analysis of the public/private distinction, taken in conjunction with Sunstein's point that individual cases reinforce wider discriminatory norms, suggests that in allowing gender discrimination on religious grounds, the state is not a neutral protector of religious freedoms but is actively promoting women's inequality.[604]

7.6 Alternative models

How could what Nussbaum calls the 'religious dilemma' be resolved in a way that respects self-determination on religious grounds without allowing gender inequality to persist outside of the political arena? One way is by rejecting simplistic conceptions of religion and gender that position them as necessarily in opposition. This corresponds to the argument I have stressed throughout against presuming a simple dichotomy between cultural claims and women's rights. But just as that more general argument depends on a willingness to interrogate the claims of culture, so too, this depends on a willingness to interrogate religious claims. The writers discussed above recognise the plurality of voices within any organised religion, but often fail to challenge claims made by religious authorities about the fundamental tenets of their religion. On the one hand, religion is treated on a par with other claims: for Modood, for example, it is a logical extension of gender and race equality. On the other hand, there is a highly deferential approach to religion: believers and non-believers appear to accept that certain tenets of religion are so deeply held that they are not open to debate, certainly not by outsiders. Terence Ranger suggests that:

> [m]any British whites, occupying their own post-Christian world, treat real, living World Faiths with an almost awed respect, very different from that

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[603] Nussbaum, 2000, p229.

[604] See Carole Pateman, 1983, for discussion of the centrality of the public-private dichotomy to feminist thought.

accorded to merely cultural manifestations of ethnicity. Out of all this has emerged the single, monolithic model of Islam...[605]

Religious claims are thereby differentiated from other identity-based claims. Interestingly, Nussbaum both acknowledges this and endorses it:

> Religion is given a high degree of deference and protection in many constitutional conceptions, as it will be in mine. One reason for this deference is surely that religion is extremely important to religious people, as a way of searching for the ultimate good. But another important part of this deference involves the role religions play in transmitting and fostering moral views of the conduct of life.[606]

The assumption that religious beliefs are entitled to a 'high degree of deference' because of their moral role will be resented by many as implying that a religious identity is the only or principal basis for morality. Many atheists and agnostics, for example, would argue that they have an equally developed set of moral values derived from a political philosophy – liberalism, socialism, feminism, or humanism for example – or from no identifiable philosophy at all. Moreover, one can respect the importance of religion to many people's lives without respecting unacceptable claims made in the name of religion.

Religious identities do, of course, differ from other identities when used as the basis for rights: this chapter has already discussed some of the ways this is so: that equality is a secondary concern for most religious organisations, and that religions are often organised hierarchically and may have a proselytizing function. But all identity claims are unique in some way.[607] However, rather than debate the extent to which religion is similar to other identities in order to fit faith into an existing model of rights, a better approach might be to start from the recognition that religion is a

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[605] Ranger, 1996, p19.

[606] Nussbaum, 2000, p191.

[607] Disability claims, for example, often employ the concept of 'reasonable adjustment' in recognition of the fact that treating disabled people in the same way as non-disabled, for instance in the provision of transport, would not give them equal rights; age could be seen as a unique equality ground in that we all have an age and those who are guilty of discriminating against older people now may one day be subject to that discrimination themselves; gender is 'different' in that it is the only area of discrimination where the oppressed is expected to live with and love her oppressor, and so forth.

crucial dimension of many women's lives worldwide and that they have the right to determine what their faith is and means. Religion should not be imposed upon women as an oppressive identity.

Several writers are worth considering here. The argument developed in this thesis is that cultures and cultural identities are fluid and can only be understood within their geographical and historical contexts. The behaviours identified with them emerge within these contexts. If this is true of culture, it is equally true of religion and the writers cited earlier in support of a nuanced view of culture – Narayan, Volpp and Brah – are matched by a number of writers arguing against essentialist conceptions of religion. Theorists including Madhavi Sunder, Ziba Mir-Hosseini, Leila Ahmed, Janet Afary and Abdullahi Ahmed An-Na'im have challenged monolithic interpretations of Islam and Muslim identity, and drawn attention to the women activists around the world engaged in reinterpreting what it means to be a Muslim and developing an Islamic feminism.[608] Mir-Hosseini, for example points out that:

> [b]y both uncovering a hidden history and rereading textual sources, [Islamic feminists] are proving that the inequalities embedded in Islamic law are neither manifestations of divine will nor cornerstones of an irredeemably backward social system, but are instead human constructions. They are also showing how such unequal constructions contradict the very essence of divine justice as revealed in the Qur'an, and how Islam's sacred texts have been tainted by the ideologies of their interpreters. For example, men's unilateral rights to divorce (talaq) and to polygyny were not granted to them by God, they show, but by Muslim jurists. These 'rights' are juristic constructs that follow from the way that early Muslim jurists conceptualized and defined

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[608] Madhavi Sunder, 2003; Ziba Mir-Hosseini, 2004; Leila Ahmed, 1992; Janet Afary, 1998; Abdullahi Ahmed An-Na'im, 1990 and 2004. Ahmed challenges the presumption 'that Islamic cultures and religion are fundamentally inimical to women in a way that Western cultures and religions are not, whereas (as I have argued) Islam and Arabic cultures, no less than the religions and cultures of the West, are open to reinterpretation and change' (p245). See also Afshar, Aitken and Franks, who point out that 'Across the world politicised Islamist women have been reading the Qur'an and holy texts; offering their own interpretations of their Islamic rights, and writing about and fighting for these rights' (2005, p268). This chapter focuses on challenges to patriarchal interpretations of Islam but similar work is taking place in relation to other world religions. See, for example, the work of Judith Plaskow on Judaism, Mary Rose D'Angelo on ancient Judaism and Christianity, and Karen Armstrong on monotheistic religions.

marriage: as a contract of exchange patterned after the contract of sale, which, by the way, served as a model for most contracts in Islamic law.[609]

She argues that by ignoring the context within which Islamic texts emerged and the existence of alternative texts, secular fundamentalists are as guilty as Muslim traditionalists of 'essentializing and perpetuating difference, reproducing a crude version of the Orientalist narrative of Islam'.[610]

Janet Afary has written of women's attempts to reinterpret the *Qur'an* in a feminist light, stating that they 'may not seem radically egalitarian from a secular feminist perspective', but they have an impact:

> Women have now entered the debate and have proven knowledgeable about minute theological issues. They have become capable of demonstrating ambiguities and multiple meanings in Qur'anic verses and other texts, and are trained as theologians in major religious centres. These facts are in some ways more significant than the substance of the argument. They mean that feminist theologians and legal experts have to be taken seriously and that they have opened a breach in conservative ideology at a time when there was anyway popular dissatisfaction with the heavy-handed patriarchy of the Islamist regime.[611]

The argument that a strongly secular position might undermine rather than empower Muslim women is fully developed by Madhavi Sunder in 'Piercing the Veil'.[612] Sunder argues that international law, premised on Enlightenment ideas of freedom, constructed religion as 'inherently personal, uncontestable, homogeneous, and communal'.[613] Law and religion then coexist but only on the basis that they are separate spheres, with law dominant in the public realm and religion in the private. The democratic principles that govern public life are not applied to the private realms of culture, religion and community, where the claims of 'fundamentalist or

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[609] Mir-Hosseini, 2004.

[610] Mir-Hosseini, 2004.

[611] Afary, 1998, p26-27 in the context of Iran.

[612] Sunder, 2003.

[613] Sunder, 2003, p1419.

traditional leaders' are consistently upheld, ignoring the larger plurality of voices. Religion has therefore been allowed to develop as a sphere without rights. By failing to acknowledge the views of religious 'dissenters', law has given women no option but exit if they want to claim their rights. Sunder demonstrates the harmful impact for women of either a non-interventionist approach, in which exit is the only option for minorities within minorities, or a model of state intervention based on a public/private distinction that ignores discrimination outside the domain of public or civic life. She argues that this is no longer acceptable:

> Individuals in the modern world increasingly demand change *within* their religious communities in order to bring their faith in line with democratic norms and practices. Call this the New Enlightenment: Today, individuals seek reason, equality and liberty not just in the public sphere, but also in the private spheres of religion, culture, and family.[614]

Like Mir-Hosseini, Sunder argues that there is a third way beyond the religion or rights dichotomy based on conceiving religion as 'an ever-shifting, subjective construct'.[615] This empowers women to reconstruct religious norms and texts in ways that reflect their lives and aspirations.[616] When a specific dispute is brought before decision-makers, elites and dissenters should be placed on an equal footing. This approach – which Sunder calls 'passive proceduralism' – would replace traditional legal understandings of religious rights that affirm the right of religious leaders to impose their views on members. Sunder recognises that this assumes women and other disempowered groups have the capacity to challenge religious leaders, which is not always the case. To address this she also proposes a 'robust proceduralism' on the part of the state in promoting discourse and giving women the educational and economic tools they need to challenge accepted norms.[617]

Sunder's work on religion plays a similar role to that of Narayan in relation to culture. Both challenge homogenizing conceptions that encourage a dichotomy between supposedly fixed minority or gender claims. Sunder's model is thus based

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[614] Sunder, 2003, p1403.

[615] Sunder, 2003, p1424.

[616] Sunder, 2003, p1445.

[617] Sunder, 2003, p1468.

on a willingness to challenge religious claims in all areas of life. A position of unquestioning respect for religion can lead to too ready acceptance of established and conservative views as to what religion is and what it requires. In this way, a position of deference to religion makes it difficult to avoid tensions between religious identity and women's rights. By contrast, from Sunder's perspective, women should not be required to choose between their beliefs and their rights – and secular individuals and states should not collude in that false dichotomy but recognise the scope for discussing and contesting religious claims from within. This position recognises the importance of religion to individual self-determination but sees religious interpretations and claims as open to internal contestation.

7.7 Experiences in the UK

How does any of the above map on to experiences in the UK? As argued earlier in relation to the more nuanced understanding of culture, it has proved difficult for this more internally contested understanding of religion and religious identity to gain a foothold in recent UK articulations and accommodation of religious claims.

Britain is usually identified as a secular state but one that makes some concessions to the established religion, the Church of England. These include the position of the monarch as head of both state and the Church of England, a requirement for daily worship of a broadly Christian nature in schools, a blasphemy law that protects only Christianity, and the right of bishops to sit in the House of Lords.[618] These privileges are not usually seen as a threat to social cohesion or the secular status quo, and have been defended as an important but superficial part of the national heritage.[619] Where religion has been more controversial is in relation to education, specifically state funding of what are now called faith schools and the requirement for religious assembly in schools.[620]

We can date the more visible political identity of minority religions – and more specifically of Islam – back to the Rushdie Affair in 1989, when the Ayatollah

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[618] The legal requirement for daily collective worship in school dates back to the 1944 Education Act and is most recently stated in Section 70 of the 1998 School Standards and Framework Act. Parents can remove a child from worship and schools can apply to their local Standing Advisory Council on Religious Education (SACRE) for exemption from the 'broadly Christian' requirement.

[619] See Katwala, 2005, p45.

[620] 'The fight for religious equality, which began in earnest around the time of the Rushdie affair, was mainly articulated in terms of state funding of religious schools' (Dhaliwal, 2003, p200). See also Baumeister, 1998 and Department of Education and Science, 1985.

Khomeini placed a *fatwa* on author Salman Rushdie following the publication of
The Satanic Verses, and burnings of the book in Bradford led to controversy around
the issue of freedom of speech. Another landmark was the Commission on British
Muslims and Islamophobia set up in 1996 by the Runnymede Trust, which argued
that religious markers of identity had become a new focus for discrimination and
hate crime.[621] And by 2005, as discussed in chapter 3, there was evidence that
people who would once have identified themselves as British Asian were now
identifying themselves as 'British Muslim'. Some of the generational differences
discussed in chapter 4 are also evident here. One study found young people keen to
separate culture from religion, and tending to identify as Muslims, rather than with
culture or with their parents' country of origin.[622] This has also been reflected in the
views of Muslim women.[623]

There has been increasing demand for equality of religion in recent years,
either through disestablishment of the Church of England, or by including faiths
such as Islam in the blasphemy laws which currently apply only to Christianity. *The
Future of Multi-ethnic Britain* recommended 'a commission on the role of religion
in the public life of a multi-faith society be set up to make recommendations on
legal and constitutional matters' and 'that legislation be introduced in Britain
prohibiting direct and indirect discrimination grounds of religion or belief'.[624] As
minority groups' demands for recognition have increasingly been expressed as
demands for religious autonomy or equality, the Labour government's response to
such demands was again more accommodating than previous governments,
particularly in relation to faith schools, but also in moves to outlaw religious
discrimination.

While minorities were increasingly stressing their religious identity,
government policy documents were increasingly recognising these identities through
the concept of 'faith communities'. The boundaries between religious and ethnic
minorities often appear blurred: for example, the 2005 strategy to increase race

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[621] 'A legal term such as "religious and racial violence" is required. The term "racial violence" is no
longer adequate on its own' (Runnymede Trust, 1997, report summary).

[622] Samad and Eade, 2002, chapter 5.

[623] 'A lot of the bad stuff is nothing to do with religion: it's cultural' (quote taken from Muslim
Women's Network, 2006, p51).

[624] Commission on the Future of Multi-Ethnic Britain/The Runnymede Trust, 2000.

equality and community cohesion promises funding for faith communities and protection against religious discrimination.[625] But some of the initiatives clearly identify religious belief as an important new marker. Recommendations made in 2004, for example, for cooperation between government and faith communities suggest that government departments should '[p]ursue "faith literacy" and participate in internal faith awareness training'.[626] As part of the pursuit of faith literacy:

> Departments should always be wary of making a false assumption that a certain ethnicity always implies a particular faith adherence, e.g. that people of South Asian origin will always be Hindu, Sikh or Muslim. There are, for instance, many Indian Christians and Muslim Africans. Officials should also try to inform themselves of different traditions and doctrinal disagreements within a faith community and of gender issues, and broaden the consultative base if necessary.[627]

Events internationally and nationally contributed to a new or renewed preoccupation with the relationship between religion and the state.[628] At the same time, as discussed in chapter 3, 'multiculturalism' became a term with largely negative connotations. The causal relationship between these events and a stronger British Muslim identity is debatable. What is clear was that the government addressed minority religious identities and concerns to an unprecedented degree. However, it

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[625] Home Office, 2005a, p46 and p39. See also the earlier Home Office strategy document, 2004a.

[626] Home Office Faith Communities Unit, 2004b, p1 'Summary of Recommendations'. See British Humanist Association, 2005, p18-19, for the suggestion that moving from the language of 'religion' to that of 'faith communities' has made it easier for religious organisations to secure statutory funding.

[627] Home Office Faith Communities Unit, 2004b, p20.

[628] Gurpreet Kaur Bhatti's play *Behzti* (*dishonour*), playing at Birmingham Rep, was closed down in 2004 due to opposition on the grounds that it demeaned Sikhism. The author was forced into hiding after receiving death threats. When *Jerry Springer – the Opera*, a musical with a high level of profanity that suggests that Jesus Christ might have been homosexual, was screened in January 2005, the BBC received more than 45,000 complaints. Protests against the Jerry Springer Show came from Christians but not the mainstream Church of England (http://news.bbc.co.uk/1/hi/entertainment/tv_and_radio/4154071.stm last accessed 6 May 2007). On 7 July 2005 a series of bombings carried out by four Muslim men (three of whom were British born citizens of Pakistani origin) on the London transport system killed more than 50 people (*Report of the Official Account of the Bombings in London on 7th July 2005*, HC1087, London: The Stationery Office, 11 May 2006).

did so in ways that were often contradictory: sometimes problematising or stigmatising Islam; at other times making considerable efforts to accommodate minority religious claims.

As regards the problem of forced marriage, represented in media reporting as a particular problem for Muslim and Sikh communities, the government showed that it was not afraid to confront harmful practices even if this risked stigmatising minority religious communities. And as part of its response to the terrorist attacks in London in July 2005, the government established what was described in the press as a 'Muslim taskforce' – in fact seven separate Working Groups commissioned to make recommendations 'for community and government' to help prevent extremism. Working Group membership was almost entirely Muslim, which could be interpreted either as the government empowering religious minorities or as presuming that extremism is the responsibility of the Muslim community alone, rather than society as a whole.[629] The areas covered by the Working Groups included engagement with young people and Muslim women, but also the training and accreditation of Imams and the role of mosques in the community.[630] An earlier Home Office strategy document also recommends training for faith leaders. Under the heading 'Marginalising extremists who stir up hatred' it states:

> Faith leaders can make a particularly significant contribution to fostering good community relations and we will continue to support leadership training for faith leaders in order to strengthen their capacity to deal with challenges facing their communities, counter divisive and extremist influences, and provide role models for young people....[631]

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[629] Although the Working Groups stressed that this should not be the inference: '[f]rom the outset it was recognised that whilst this process was largely looking at Muslim communities, that the responsibility for tackling extremism and radicalisation in all its forms was the responsibility of society as a whole. The Working Groups are united in the view that whilst the remit for various working groups was to tackle extremism and radicalisation, most if not all the strands see that the solutions lie in the medium to longer term issues of tackling inequality, discrimination, deprivation and inconsistent Government policy, and in particular foreign policy' (Home Office, 2005b).

[630] Home Office, 2005b, p63.

[631] Home Office, 2005a, p52.

The document suggests that it is appropriate for the government to intervene in what might be seen as the internal affairs of religious minorities in order to prevent extremism and promote community cohesion.

Many British Muslims, including Muslim women, felt that the government's domestic and international policies on terrorism not only failed to recognise their views but also stigmatised them as a group.[632] The majority of British Muslims opposed the government's support for the US war on Iraq (as did a large section of the non-Muslim community).[633] The Prime Minister's refusal to change course was interpreted by many British Muslims as an indication that their views as British citizens did not count. And anti-terrorist legislation after 9/11 was also seen as having a disproportionate impact on Muslims.[634]

All this would suggest that the government did little to accommodate Muslim voices in the period discussed. But there were a range of initiatives and Acts that extended rights to religious groups, some of which were less publicised or debated. First, there was an expansion of state funding and recognition to religious schools. When the Labour government was formed in 1997, only Christian and a small number of Jewish schools received state funding. The Prime Minister and the Department for Education and Skills viewed religious schools as a positive feature of the education system.[635] After 1997 the number of state-funded schools for

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[632] For example, The Muslim Women's Network report provides evidence of the perception that British foreign policy is anti-Muslim (Muslim Women's Network, 2006, p9 and p24).

[633] An ICM poll for *The Guardian* in 2004 found that 80% of British Muslims opposed the war in Iraq ('Muslims abandon Labour over Iraq war', *The Guardian*, 15 March 2004).

[634] Participants in a platform for (103) young British Muslims organised by The Guardian in November 2004 felt that '[t]he Government's anti-terrorist laws, including detention without charge or trial, introduced in the wake of 9/11 had been unfairly used against the Muslim community, with an increasing number of stops and searches and arrests – which led to few convictions' (Bunting ed, 2005, p132). The Muslim Council of Britain urged MPs to vote against the 2005 Terrorism Bill (Muslim Council of Britain press release of 9 November 2005, available at www.mcb.org.uk).

[635] Jodie Reed identifies a new enthusiasm in government for rebuilding the link between religious organisations and schools: '[t]here are broadly three key lines of argument driving the government to reverse the trend in declining faith influence in schools. First, an eagerness to replicate the perceived *academic success* of many faith schools. Second, a desire to break away from monolithic provision and give parents *choice* and, third, a belief in the potential of faith to engender coherent *morality systems* amongst young people' (Reed, 2006, p253). See also Department for Education and Skills, 2001, p45. At the time of writing, the new system of trust schools identified in the controversial 2005 Schools white paper and the development of the Government's academies programme appeared likely to increase the involvement of a range of religious organisations in educational provision (Department for Education and Skills, 2005).

minority religions increased, partly in recognition of the need for a more balanced treatment of majority and minority religions.[636]

Government support for faith schools often appeared to conflict with 'multicultural' policy in other areas of activity. As discussed in chapter 3, the government-commissioned *Cantle Report* into the 'riots' of 2001 suggested that segregated communities were undermining social cohesion and expressed concern 'that some existing faith schools appear to be operating discriminatory policies where religious affiliations protect cultural and ethnic divisions'.[637] The report was highly influential, but its concerns about faith schools were not acted upon.

In the area of legislation, the European Employment Directive in 2000 led to the inclusion of religion as grounds for discrimination alongside race, gender, disability, sexual orientation and age, and required EU member states to introduce anti-discriminatory employment legislation in these areas. Regulations were introduced in 2003, preventing discrimination in employment and training on the grounds of religion and belief (and sexual orientation). The 2006 Equality Act extended the protection in employment to the provision of goods, facilities and services. The Racial and Religious Hatred Act, also passed in 2006, created a new offence of incitement to religious hatred to parallel provisions on incitement to racial hatred. This was extremely controversial and during its passage an oppositional lobby sprang up of MPs, writers, academics and journalists concerned with protecting freedom of speech.[638] A process of intercultural evaluation such as that proposed by Parekh might have given the various voices the opportunity to

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[636] In 1998, just after the Labour Government came into office there were 7,219 maintained denominational primary and secondary schools, of which the majority were Church of England with 24 Jewish and no Sikh or Muslim schools (*Statistics of Education. Schools in England 1998*, available at http://www.dfes.gov.uk/rsgateway/DB/VOL/v000130/index.shtml last accessed 6 May 2007). By 2004, there were 6,903 maintained denominational primary and secondary schools including 4,681 Church of England, 33 Jewish, 4 Muslim and 2 Sikh schools (*Statistics of Education. Schools in England, 2004 Edition*, available at http://www.dfes.gov.uk/rsgateway/DB/VOL/v000495/index.shtml last accessed 6 May 2007). For further discussion and information about minority religious groups and education in Britain see Ansari, 2002, p22 and the Office for National Statistics, 2004. The low level of educational achievement among Muslim children is mapped on page 12 of the ONS report based on 2001 Census data, and also by Anwar (2005, p32-34) and Ansari (2002, p21).

[637] Home Office, 2001a, p33.

[638] For example, Liberal Democrat MP Evan Harris argued that '[t]he government's measure would stifle religious debate and feed an increasing climate of censorship' (http://news.bbc.co.uk/1/hi/uk_politics/4075442.stm last accessed 30 May 2007). See also Hansard debates including 31 January 2006, 24 January 2006, 8 November 2005, 25 October 2005, 11 October 2005, 5 July 2005, 21 June 2005 (available at www.parliament.uk).

argue their case and in the process perhaps reevaluate their position to allow a compromise to be reached. What actually happened was a polarization of views exacerbated by media coverage that was to some extent a repeat of the Rushdie Affair fifteen years earlier: on one side representatives of government and organisations such as the Muslim Council of Britain argued that legislation was urgently needed to tackle rising Islamophobia and hate-crimes directed at Muslims; against this, the media highlighted concerns of writers, artists, liberals and non-believers fearful of the restrictions on freedom of speech that might ensue. One of the effects was to reinforce the belief that Islam represents an attack on democratic values. In this instance, dialogue appears to have reinforced entrenched positions rather than facilitated reevaluation and compromise. In the process, moreover, the diversity of Muslim opinion was lost.

While religion in general is the object of these pieces of legislation, the focus was religions identified with ethnic minorities. Organisations funded to raise awareness of the 2003 regulations, for example, included the Muslim Council of Britain, the Network of Sikh Organisations UK, and several 'race' organisations such as the Turkish Cypriot Community Association and Dudley Race Equality Council.[639] While the Catholic Bishops Conference of England and Wales received £3,000 to produce awareness-raising materials, it was those belonging to minority religions who were perceived as most in need of protection from religious discrimination. Two years before the new regulations were introduced, the Council of Europe had noted the lack of legislation on religious discrimination in the UK as a matter of particular concern for national minorities.[640]

These new measures were ostensibly a rational response to social trends. If, as evidence suggests, minority groups in Britain are increasingly identifying themselves by religion and increasingly facing attacks or discrimination because of their religious rather than ethnic identity, it is surely right to introduce new protective legislation to address this phenomenon.[641] It is reasonable that the law

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[639] http://www.dti.gov.uk/employment/discrimination/emp-equality-regs-2003/page21856.html for details of the Employment Equality Regulations 2003 (last accessed 6 May 2007).

[640] *Opinion on the United Kingdom*, Advisory Committee on the Framework Convention for the Protection of National Minorities, Council of Europe, adopted on 30 November 2001

[641] 'Religion as a signifier of intolerance appears to be growing in importance in relations between young people. Skin colour as the main way of dividing the races appears, on the other hand, to be receding'. (Lemos, 2005, p55). Evidence suggests that individuals once vilified as 'Pakis' are now

adapt to tackle new forms of discrimination, particularly given the existence of what many would see as archaic legislation protecting the majority religion against blasphemy.[642]

The social exclusion and marginalisation of minorities defined by religion was also highlighted by research as an area of concern. Since the 2001 Census first included a question on religious identity, it has been possible to separate British Asians into the categories of Muslim, Sikh, Hindu and Buddhist and demonstrate that in a range of areas – health, education, employment and housing – Muslims have a significantly lower achievement rate than members of other minority religions.[643] Recognising and extracting figures on the basis of religious as well as ethnic identity thus gave a better insight into disadvantage. Where statistics demonstrate a marginalisation or under-representation on the basis of religious markers, it seems appropriate to introduce policies and legislation to redress this.

Yet the measures described above all raise questions about the processes and structures that established them. Policy and legislation does not happen in a government vacuum. It happens, ideally, through partnership and consultation with the groups most directly affected, and it is always a legitimate criticism of any new law or policy that the relevant interest groups were *not* fully consulted. Initiatives concerning religion might be seen as models of good practice in this regard. Following a 2001 manifesto commitment to 'look at Government's interface with the faith communities', a steering group was set up.[644] A Faith Communities Unit was established in the Home Office in 2003, alongside units working on race and

abused as Muslim terrorists and that this kind of hate crime is increasing – 206 incidents of violence, harassment and abuse were reported to the Islamic Human Rights Commission in the month following the September 2001 attacks in the United States, and the Metropolitan Police recorded 269 religious hate crimes in the three-week period after 7 July 2005 compared with 40 in the same period in 2004. (Ansari, 2002 p4 and the Interfaith Network for the UK, 2005, p17).

[642] While from one perspective, the privileging of the Church of England discriminates against minority religions (see, for example, Katwala, 2005), from another, Britain's church-state relationship is a useful model and precedent for minorities campaigning for religious recognition: '[t]he presence of an established church and its close link with politics and public policy in Britain does two things. First, it encourages Muslims to press the state to accommodate their religious practices in the same way that the state accommodates other religions. Just as importantly, the religious establishment enables Muslim leaders to make the argument for a public, political role for religion. Far from arguing for the disestablishment of the Church of England, Muslims are very conscious that the church is a significant resource for them' (Fetzer and Soper, 2005, p234).

[643] Office for National Statistics, 2004. See also Equal Opportunities Commission, 2006 and Choudhury, 2007.

[644] Confirmed by then Home Office Secretary of State Fiona McTaggart in House of Commons written answers, 30 June 2003 (available at www.parliament.uk).

community cohesion, 'to lead on Government engagement with faith communities...' and 'to recognise and utilise the experience, skills and diversity of faith communities, whilst ensuring that members of all faiths and none enjoy the same life opportunities'.[645] The Interfaith Network – an umbrella body for faith groups – receives part of its funding from government departments. And in 2005, a £3 million programme was created for faith communities, with an announcement of further funding of £4.3 million in 2007.[646]

In the process, religion has become an organised interest whose demands are now recognised alongside the longer-standing claims of race, gender and disability, as well as the 'new' grounds of sexual orientation and age. The Equality Act (2006) established a Commission for Equality and Human Rights with responsibility for encouraging good relations between different groups in society. In doing so it must have particular regard to race and religion.[647] The government-established Steering Group 'to identify and lead on the work needed to establish the Commission on Equality and Human Rights' included representatives of the 'new equality strands', including religion.[648] Its minutes and other papers were not public documents. The Equality and Diversity Forum is a network of national equality and human rights organisations which began in 2002 and whose meetings are regularly attended by government officials working on equality issues. The Forum's members are organisations whose primary purpose is lobbying for equality on different grounds – race, gender, sexual orientation etc. But its members and observers also include religious organisations, such as the Muslim Council of Britain, the Board of Deputies of British Jews, Churches Together in Britain and Ireland, and the Interfaith Network UK, whose key function is not promoting equality in the same way as the other members.[649] On the contrary, some of these organisations have lobbied for religious organisations to be exempted from otherwise generally applicable anti-discrimination measures.

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[645] The Unit subsequently moved to the Department for Communities and Local Government.

[646] Home Office, 2005a, p46. In March 2007, the Department for Communities and Local Government announced grants of £4.3 million to help faith organisations, particularly women's and young people's organisations, to promote community cohesion.

[647] The Act also extends protection on the grounds of sexual orientation to the provision of goods, facilities and services and introduces a public duty to promote gender equality.

[648] www.womenandequalityunit.gov.uk/cehr/steering_group.htm (last accessed 6 May 2007).

[649] www.edf.org.uk.

In February 2005, the government announced two Equality Reviews – one of the structural obstacles to equality and one of anti-discrimination legislation.[650] A reference group to inform the Reviews was established. Alongside representatives of equality and anti-discrimination bodies such as the Equal Opportunities Commission, Stonewall, Press for Change and the Forum Against Islamophobia and Racism, the group included representatives of the Catholic Bishops Conference of England and Wales and the British Muslim Research Centre. The reference group was not only composed of representatives of equality organisations – it also included members of the CBI and the TUC. But the growing number of equality bodies and networks on which religion was directly represented demonstrates how the religious lobby came to be recognised, over a relatively short period, as a legitimate partner to be consulted and included in anti-discrimination work.

The growth of the Interfaith Network – an umbrella organisation bringing together majority and minority religious organisations – could give rise to fears of a 'holy alliance' of minority and majority religious voices that can gain the ear of government to claim a monopoly on moral values in society.[651] In one sense, the development of a 'multi-faith' perspective is an appropriate recognition that Britain is no longer a country dominated by one organised religion. In the past, there was criticism of the 'religious supermarket' approach that presented different faiths as an array of equally valid perspectives, a representation seen by many believers as antithetical to their belief in the uniqueness of their own faith.[652] This stance has since been to some degree supplanted by the strategic recognition that minority and majority religious interests can combine as a lobby alongside – perhaps in opposition to – secular opinion, achieving more in terms of resources and access to government than when working in opposition to each other.

While public engagement with religious organisations is not necessarily new, the novelty is the inclusion of minority religions and the more formal structures of consultation. 'A broader engagement by Government with faith

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[650] www.theequalitiesreview.org.uk.

[651] The Interfaith Network for the UK *Annual Report* 2003-2004 identifies a substantial expansion of the Network: 'There are now some 180 local inter faith bodies operating in the UK, around 40% of which have come into existence in the last two years' (Interfaith Network, 2005).

[652] Writing about *The Swann Report* (Department of Education and Science, 1985) Baumeister says 'According to the Report's Muslim critics, to present Islam as one of a variety of equally valid perspectives is to fail to recognize the special significance of Muslims of the Qur'an as the revealed work of God...' (Baumeister, 1998, p929).

communities' was proposed in 2004, including the creation of 'a new inter-departmental official committee, with the aim of mainstreaming faith issues. The committee will provide a vehicle for the exchange of good practice on matters relating to faith and other ethical belief systems and of information about the Government's discussions and consultations with faith communities.'[653]

This more formalised engagement has implications for those pursuing equality on gender and other grounds. There is a danger that this proliferation of networks, steering and reference groups will give the organised religions a more direct channel to government, carrying greater weight by force of numbers. Moreover, these channels and processes are not always public. A well-organised religious lobby might prevent some measures reaching the policy table in the first place, while those not invited to participate in the political process remain unaware of how policy is being made or how to intervene. The government might legitimately respond that the fora created to take forward the equality and human rights agenda have been made as inclusive as possible, with the views of religious bodies balanced by those of organisations like Stonewall and the Fawcett Society.[654] But the inclusion of conservative religious organisations as partners in policy-making is likely to mean that new measures requiring a degree of consensus will be less radical than might previously have been the case.[655]

This concern surfaced in the UK in 2006. The question of exemptions for religion became topical in relation to regulations preventing discrimination in the provision of goods and services on the grounds of sexual orientation.[656] Some small religious organisations placed advertisements in the press saying that the new rules would require heterosexual policemen and firemen to join Gay Pride marches.[657]

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[653] Home Office, 2004b, p4. A progress report in August 2005 reported that the Interdepartmental Group on Faith had met three times.

[654] Stonewall works for equality and justice for lesbians, gay men and bisexuals; Fawcett Society campaigns for equality between men and women.

[655] See Siddiqui, 2005, p271.

[656] The regulations were included in the 2006 Equality Act. Later that year the Government produced a consultation paper on how to implement the new regulations: *Getting Equal: Proposals to Outlaw Sexual Orientation Discrimination in the Provision of Goods and Services.* The Women and Equality Unit at the Department for Communities and Local Government received a large number of responses, many from religious organisations lobbying against the proposals or for exemptions.

[657] Advertisement placed in *The Times* on 27 November 2006 by 'Coherent and Cohesive Voice, a network of hundreds of Christian leaders in the UK representing hundreds of thousands of voters'. The advertisement stated 'Freedom of conscience? Freedom of religion? Not any more' and said that

More established religious organisations, like the Catholic Church and Muslim Council of Britain also expressed concerns about the regulations, including the fear that that denominational adoption agencies might be required to place children with gay couples.[658] That the Minister responsible for these regulations was a member of Opus Dei was seen as a conflict of interest by many.[659]

My arguments above suggest that the problem here is not necessarily religion *per se* as the choice of religious representatives. The danger with these developing policy processes is that they tend to consolidate a range of opinions into one 'community'. As noted already, there seems to be a tension here, even an internal contradiction, for in other spheres of activity public authorities seem increasingly aware precisely of this danger. There have been several moves in the direction of greater consultation with young and female Muslims in recognition that the Muslim community is too often represented only by its 'traditional' – ie older, male – leaders. The Muslim Women's Network was set up in 2002 by the then Minister for Women Patricia Hewitt 'to give independent advice to government on issues relating to Muslim women and public policy'.[660] The Network was supported by the Women's National Commission and in 2006 published *She Who Disputes – Muslim Women Shape the Debate*, a report based on the views of more than 200 women on a range of issues. As might be anticipated from Sunder's analysis of religious dissent, the interviewees 'were keen to explain that the Islam that they embraced was distinct and different from the artificially stark, gendered religion envisaged by protagonists on both sides of the divide'.[661] The proposals that came out of the Preventing Extremism Together working groups included empowering Muslim

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the Government's new proposals would 'Force all schools to actively promote homosexual Civil Partnerships to children...Force a printing shop run by a Christian to print fliers promoting gay sex...[and] Force a family-run B&B to let out a double room to a transsexual couple...'

[658] *The Observer*, 21 January 2007.

[659] Gay rights campaigner Peter Tatchell suggested that her appointment as minister responsible for this issue showed that the Government did not take lesbian and gay rights seriously: 'Tony Blair would never appoint someone to a race-equality post who had a lukewarm record of opposing racism' (http://news.bbc.co.uk/1/hi/uk_politics/4756399.stm last accessed 6 May 2007).

[660] Muslim Women's Network, 2006, inside cover.

[661] Muslim Women's Network, 2006, p63. Women consulted in the report also felt that their rights were not accepted by men within their communities and many believed that their local mosques should be challenged to open up to women and have a better understanding of their rights (p12). They felt excluded from debate on community issues and felt their needs were ignored by male community leaders (p16).

women and develop ways for young Muslims to become active citizens.[662] In May 2006, the Prime Minister 'talked face to face to 40 Muslim mothers and grandmothers from across the UK about the issues affecting themselves, their families and their communities'. This resulted in the report *Engaging with Muslim Women*, launched in September 2006.[663] Muslim Women Talk, a campaign to act as a conduit between individuals and government, was established with government support in 2005.[664]

From being ignored by policy makers and the media, a heightened interest in Muslim women developed in the early 21st Century, something that was exacerbated by the debate about the veil sparked by the ex-Foreign Secretary Jack Straw's remarks in October 2006.[665] But this attention was not necessarily helpful. The 'veil' controversy, did not, on the whole, give a voice to British Muslim women. Their appearance became the stamping ground for religious, secular and feminist activists. But their views and interests were rarely mainstreamed outside of debates about gender-specific cultural 'practices'. When the issues in question had a gender dimension – forced marriage, FGM/C or honour crimes – both religious and secular minority women's organisations were consulted.[666] But when a panel or steering group on equality or another 'mainstream' topic was established, there was usually only space for one Muslim representative and that tended to be the Muslim Council of Britain.[667] The voices heard as representative of minority religions on issues such

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[662] Home Office, 2005b.

[663] The report is available from the Women and Equality Unit at www.womenandequalityunit.gov.uk.

[664] Muslim Women Talk is a campaign organised by a coalition of British Muslim women's groups and organisations. It is supported by the Home Office, Welsh Assembly Government & Scottish Executive. See http://www.muslimwomentalk.com.

[665] The Blackburn MP wrote an article in a local paper, *The Lancashire Evening News*, saying that he asked constituents visiting his surgery wearing a full veil to uncover themselves (http://news.bbc.co.uk/1/hi/uk_politics/5410472.stm last accessed 6 May 2007). In his speech on 'The duty to integrate' in December 2006, the Prime Minister expressed sympathy with Straw's position.

[666] For example, the Home Office working group on forced marriage included Hannana Siddiqui from Southall Black Sisters (she resigned from the Group in May 2000) and Humera Khan, Consultant to the Muslim women's organisation the An-Nisa Society.

[667] See Birt (2005, p92-106), who argues that the MCB emerged in response to the demand by then Home Secretary Michael Howard for a single Muslim representative body for administrative convenience and that it has remained "the only show in town" in the eyes of the government. See also Ansari (2002, p20), who argues that '[t]he British establishment, finding it confusing and impracticable to negotiate with myriad bodies claiming to be the authentic voice of Muslims in Britain, applied pressure on Muslim communities to create a unified Muslim organization, similar to the British Board of Jewish Deputies, which could represent their interests and with whom

as terrorism or homosexuality tended to be male and conservative. The contributions of minoritized women were limited to areas seen as gender-related.

7.8 Conclusion

> The presumption…is that Western women may pursue feminist goals by engaging critically with and challenging and redefining their cultural heritage, but Muslim women can pursue such goals only by setting aside the ways of their culture for the nonandrocentric, nonmisogynist ways (such is the implication) of the West. And the presumption is, too, that Islamic cultures and religion are fundamentally inimical to women in a way that Western cultures and religions are not, whereas … Islam and Arabic cultures, no less than the religions and cultures of the West, are open to reinterpretation and change.[668]

The section above depicts a society that is ostensibly secular but whose political agenda is built on a Christian heritage without sufficient acknowledgement that this is the case. From the late 1980s, minorities in Britain increasingly organised around religious identities and this, in conjunction with internal and external events, led to a shift away from the tacit role of religion in public life towards a more formalized inclusion of religion in the policy and legislative process. After 1997, in particular, the influence of the established church was brought out into the open; minority faiths were included in new fora; and 'religion' became an organised lobby and permanent part of the political process alongside 'race' and other equality interests. Religious claims, including those made by members of minority religions, were increasingly recognised alongside claims based on race, gender, disability, sexual orientation and (last of all) age.

However, the way consultation processes work meant that minority religious views were represented by a few voices from within the more influential, longer-established and better-funded organisations. Except when the issue was a 'women's

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negotiations could take place'. These arguments could be used to reinforce the claims of Southall Black Sisters and others of an implicit pact between Government and patriarchal minority leaders in which support is given in exchange for access to the power structure and the interests of minorities within minorities are lost along the way.

[668] Ahmed, 1992, p245. Ahmed must be credited as identifying this phenomenon some time ago.

issue', women and women's organisations were rarely invited to participate or comment. This situation was changing, but by 2007 there were still too few minoritized women (and young and gay people) involved in policy processes.

Because the diversity of views within religion has not been recognised, some of the claims made on minority religious grounds have been worrying from a liberal, human rights, or feminist perspective. One example can be found in *Muslims on Education: A position paper* which supports parental choice to withdraw children from non National Curriculum sex education and states:

> Within other subjects, there lie some problems. For example, the teaching of Arts & Crafts may bring the student into contact with inappropriate forms of sculpture or with paintings whose subject matter is similarly in conflict with Islamic values. Some literature might encompass material that promotes inappropriate morality. In addition the use of certain musical instruments may be looked upon unfavourably by some Muslim parents.[669]

How should these views be recognised by the state in a way that does not undermine women's development and right to an education? Some of the literature discussed in this chapter would encourage us to deal with minority religious claims by distinguishing areas where it is legitimate for government to intervene from areas where religious freedom should be paramount. If we take private to mean activities relating to the home and family, this was not the approach taken in Britain after 1997, where the government openly confronted 'practices' such as forced marriage and female genital mutilation/cutting (whether or not they do have any religious basis). But if the public-private distinction is taken to mean a distinction between political and civil society, with voluntary and private organisations falling into the latter, it is easier to identify areas where the government has not felt it legitimate to intervene. It is accepted by policy makers that religious organisations should be allowed to exempt themselves from general norms if they can demonstrate that this is necessary to preserve their religious ethos. For example, the 2006 Equality Act contains exemptions that could be used by religious bodies to avoid complying with general anti-discrimination requirements – in order to protect their religious

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[669] Association of Muslim Social Scientists et al, 2004, p32.

identity.[670] This suggests that in some cases, freedom from state intervention in the non-public sphere on religious grounds is accepted.

The model that developed in Britain therefore corresponds to a large extent with the models proposed by Parekh and Nussbaum. Gender equality is treated as an operative public or political value but not an all-encompassing or comprehensive one. The belief that the state should not impose a 'substantial burden' on religion is evident in the exemptions that allow religious organisations to avoid compliance with equality norms. And deference to religion means that conservative interpretations of religious identity are not challenged by the state, leaving women within those religions forced – as Sunder phrases it – to choose between their religion and their rights.

In chapter 2, I discussed how Narayan and others have identified the way that cultures are seen as monolithic. This is also true of representations of Islam and a Muslim identity in Britain. Analysis of the media in the late 1990s shows that coverage of Islam focused on terrorism, conflict and disasters, and that even articles specifically about British Muslims referred to world events. While many British Muslims are indeed concerned about Muslim countries and communities around the world, this reinforces a perception of Muslims as somehow foreign and attributes to them a unitary global identity and agenda.[671] This corresponds with the common juxtaposition of 'Muslim' with 'traditional', generally contrasted with 'Western', and conflation of religion and culture in minority identities in ways that serve to increase their 'otherness'.

If it were possible to build on Sunder's alternative representation of religion, some of these pitfalls could be avoided. To take some specific instances, when the Muslim Council of Britain is accepted as *the* voice of British Muslims, and its Secretary-General says that Civil Partnerships are harmful and homosexuality an unacceptable practice, this will be interpreted as the authoritative statement of the

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[670] Section 49 of the Equality Act 2006 states that it is unlawful for an educational establishment to discriminate against pupils in its admissions, benefits, facilities and services. Section 50 exempts schools with a religious character or ethos from the provisions in Section 49. Section 59 allows faith schools to restrict the provision of goods, facilities and services 'in order to avoid causing offence, on grounds of the religion or belief to which the institution relates, to persons connected with the institution' (Part II of the Equality Act 2006). During the Act's passage through Parliament, organisations including JUSTICE and the British Humanist Association lobbied to overturn some of the exemptions to accommodate religious beliefs. See British Humanist Association, 2005, p29 for discrimination by religious schools in admissions policies.

[671] Poole, 2002.

Islamic position on the issue. If, however, organisations like the Naz Project, which works with gay Muslims, or Safra, a Lesbian, Bisexual and Transgender Muslim Women's Organisation were also consulted, an alternative view of what is required by Islam might emerge.[672] Instead of inviting only the Muslim Council of Britain to sit on steering and reference groups as the voice of British Muslims, the government could engage with a range of organisations, including more women's groups, and on all areas of policy.

Sunder's analysis, like Narayan's as regards culture, also suggests that we should ask who is making claims on religious grounds and with what motives. This is certainly illuminating in the UK context. The religious organisations supporting exemptions for religion during the passage of the Equality Bill in 2005 tended to be from the established Christian churches, organisations that saw themselves primarily in the role of employers and service-providers, and lobbied for exemptions in anticipation of discrimination claims made against them by employees and users. There was less concern about this among minority religious organisations, who took the purpose of these regulations to be protecting their communities from discrimination, and did not identify a similar necessity for protection against claims of discrimination.[673] Recognising these different agendas might prevent religious identity claims being used to undermine other group or individual rights.

If we extend beyond the details of British policy and legislation to consider some of the hypothetical dilemmas presented as examples of the conflict between religion and gender, Sunder's approach is again illuminating. Cass Sunstein lists some plausible dilemmas, including a Catholic university that refuses to agree tenure to women teachers and Jewish schools that refuse to admit girls.[674] But these are only dilemmas because the discriminatory interpretation of Judaism and Catholicism is deferred to and accepted as the only legitimate interpretation of these faiths. If the Jewish families seeking access to the schools and the Catholic women seeking employment as teachers were recognised as having their own – legitimate –

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[672] The Naz Project London 'provides sexual health and HIV/AIDS prevention and support services to South Asians (including Bangladeshis, Indians, and Pakistanis), Muslims (including Middle Easterners and Africans), Horn of Africans (Eritreans, Ethiopians, and Somalis), Portuguese speakers (including Angolans, Brazilians, Mozambicans, and Portuguese), and Spanish speakers (mainly Latin American). It provides a social support group for gay identified men, bisexual men and MSM [men who have sex with men] (www.naz.org.uk). See www.safraproject.org.

[673] Based on internal meetings of the Equality and Diversity Forum, autumn 2005.

[674] Sunstein, 1999, p86-87.

interpretations of the requirements of their faith, the situation shifts. Now there is a lobby within the religious lobby, demanding equality in a way that more closely conforms to the state's general interest in equality.

The tendency so far is to add religion to the list of equality grounds, extending to it the discourse of rights and recognition. But this has been combined with a reluctance to question or challenge religious claims – even where they undermine equality norms. The right of the established church to exempt itself from equality norms has long been accepted and is now being extended to minority religions. This has not been accompanied by the recognition that:

> ...far from being homogeneous and fixed, religion and culture are and *ought to be* plural, contested, and constantly evolving to meet the changing needs and demands of modern individuals.[675]

If religions were monolithic, ahistorical and unchanging, it would indeed be difficult to include religious claims in a democratic system based on equality and human rights. Then, the only solutions to the 'religious dilemma' would be to reject religion or confine it to the private sphere. But there is a growing body of writing claiming that religion does not have to be conceived in this way, that women should not have to choose between their rights and their faith, and should be able to interpret their beliefs in ways that accord with their lives and experiences. The state can support this by refusing to exempt religion from its core societal values, such as gender equality. By facilitating the inclusion of dissenting voices, the state therefore has a role to play in encouraging religious organisations to become more democratic and responsive to their members. Religion should be included and recognised within an equality and human rights agenda but its claims need to be assessed according to the principles of that same agenda. To date, in the UK, this has not been the case.

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[675] Sunder, 2003, p1441. Nussbaum also states that '[t]he humanity of religion means that its practices are fallible, and need continual scrutiny in the light of the important human interests that it is the state's business to protect' (Nussbaum, 2000, p238).

Chapter 8. Conclusion

8.1 Introduction

In much recent discussion of multiculturalism, it is claimed, or simply assumed, that women's equality and cultural rights are irreconcilable. I have argued in this thesis that this pessimistic reading of an inevitable and irreconcilable tension is based on a distorted understanding of 'culture' that represents it as a sealed package, defining, only the behaviour of people from minority or non-Western groups. As articulated in contemporary discourse, culture often reinforces implausibly stark distinctions between members of majorities and minorities as rational versus irrational, modern versus traditional, individual versus communitarian, democratic versus oppressive. Challenging what Narayan has termed the 'package picture of cultures' – and the related package picture of religions – helps break down these perceived oppositions. Once we recognise that customs, traditions and religious tenets are not set in stone but have developed over time to serve particular agendas – often at the expense of women's interests – it becomes possible to consider alternative, more gender-friendly, interpretations of what it means to belong to a religious or cultural minority. Once we recognise that majority behaviours are also culturally influenced, it becomes possible to reject the idea of an inevitable conflict between Eastern and Western values. Failing this recognition, minoritized women are often expected to choose between their ethnic or religious identity and their rights as women. Madhavi Sunder speaks for many contemporary feminists when she argues that women should be entitled to both.

I have also argued that policies targeting the abuse of women in minority communities in the UK have been less successful than they might have been partly as a result of the failure to challenge simplistic assumptions and stereotypes. In the preceding chapters, I have identified a tendency, in the official measures adopted to address 'honour' crimes, FGM/C and forced marriage, to reinforce perceptions of minority cultures as inherently abusive to women. Identifying certain crimes as culturally specific and/or creating new laws and methods of enforcement to combat them has been only partially effective. Too few women from minority ethnic and religious groups are consulted and included in the policy-making process, reflecting the failure to recognise the internal diversity of cultures, and minority women's organisations have been inadequately resourced.

In this concluding chapter, I return to the discourses regarding minoritized groups and cultural practices that became prevalent in the period 1997-2007, and sum up the key policy approaches, shaped by those discourses, adopted in this period. I return to the question of whether political realities allow women's NGOs to deploy a more sophisticated understanding of culture. Finally, I look ahead to consider future directions for policies affecting minoritized women.

8.2 Discourses

For most of the post-war period in the UK, discourses of culture have portrayed cultures, to a greater or lesser extent, as stable units resistant to change. In the final decade that is the focus of this thesis, a more gender-sensitive approach to minority claims was visible, but this failed to challenge assumptions of minority communities as inherently patriarchal and oppressive; indeed, if anything, it strengthened that perception. Governments rarely gave a voice to alternative interpretations of minority practices and values. This was the case in relation to culture and, as chapter 7 demonstrates, even more so in relation to religion, where conservative orthodoxies were seldom challenged and the voices of a few 'leaders' were taken as representative of the whole. Longstanding deference to conservative interpretations of Christianity was extended to similarly conservative interpretations of minority religions in the UK, in particular Islam. As minority communities came to be recognised on the basis of a religious as well as an ethnic identity, it was common to see references to 'the Muslim community' – failing to recognise the heterogeneity of British Muslims.

These stereotypes were not only employed by the state or the majority society, for minorities themselves often presented themselves as homogenous. This is partly grounded in the expectations regarding representation. As Gerd Bauman has argued:

> [c]ommunity leaders working on the premise of having to represent whole
> ethnic-cum-cultural communities must underpin their efforts by demanding
> and gaining respect for the culture concerned. This culture must be
> represented as a monolithic body of lifestyles and convictions hallowed by
> custom and shared among all their constituents. …the established community

leaders face a dominant discourse that obliges them to deliver culturally homogeneous communities.[676]

The tendency to homogenise a community also reflects what Ayelet Shachar describes as 'reactive culturalism', where the conditions of a multicultural society themselves produce more conservative versions of minority culture. In response to pressures to assimilate, reactive culturalism may:

> ...enforce hierarchical and rigid interpretations of group traditions which can, once multiculturalism is introduced into the equation, exacerbate the disproportionate costs imposed upon traditionally less powerful group members.[677]

In the face of racism and Islamophobia, a 'siege mentality' may develop,[678] with older minority leaders in particular presenting their communities as united around conservative values. Akbar Warraich and Balchin suggest that multiculturalism in Britain has led:

> ...almost frightened communities into coalescing around a more fixed identity. Those who have experience of both majority and minority Muslim contexts, find that the space for challenging monolithic visions of Islam and confidence in accepting diversity are generally greater in Muslim majority countries.[679]

This supports the argument made by some commentators that forced marriage, 'honour' violence and FGM/C will not decline over time as minorities become more integrated in British society; on the contrary, the juxtaposition of majority and minority communities in a context where minorities are economically marginalised and their cultures discredited may make it more difficult for minorities to abandon practices they associate with their 'culture'.[680] It also supports the argument I made in the introduction for specificity and avoiding generalisations between Western and non-Western societies and

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[676] Baumann, 1996, p159-160. See also Ali, 1998; and Brah, 1991, p174.

[677] Shachar, 2001, p11.

[678] Sen, 2005, p45.

[679] Akbar Warraich and Balchin, 2006, p32.

680 'But the experience of being in the minority makes people more conscious of the distinctiveness of their culture; while the sense of being pressured to conform to majority norms sometimes makes people more committed to sustaining their distinctiveness' (Phillips, 2007, p18).

values. It is unhelpful to analyse 'cultural practices' such as 'honour' killings as global phenomena isolated from the context in which they occur.

The claiming or attribution of a homogenous group identity has particular implications for minorities in Western societies. It has been argued that Eastern and/or Asian societies are characterised by community values that contrast with Western individualism.[681] I do not attempt in this thesis to assess the legitimacy of this characterisation, but the perception that some people identify principally as members of a community is certainly problematic when those people constitute minorities in Western countries that prize individuality as the basis of identity and citizenship.[682] In the face of discrimination and marginalisation, it is hardly surprising if minorities claim a solid group identity as a basis from which to defend their position and assert their rights. But in a society where progress to modernity is judged by the degree to which its members become rational individuals, a group identity can be seen as implying a lack of agency.[683] The implications of this are probably clearest in relation to 'honour' based violence, where communal collusion in crimes has been seen as one of the factors distinguishing it from 'mainstream' forms of gender violence. But all the problematic 'practices' discussed here are seen as typifying minority communities. There is a widespread perception that minority communities do not know how – as a group – to treat women and girls, and that this is manifested in 'honour' killings, forced marriage, and female genital mutilation/cutting.

For women within minorities a group identity can be particularly disempowering. For all the seeming focus on minority women and the problems they face within their communities, it seems that minoritized women are not seen as autonomous actors in their own right. They are seen, rather, as victims, or as bargaining tools between minority leaders and the state. As indicated in previous chapters, they have been largely excluded from most areas of policy discussion, with

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[681] Sawitri Saharso identifies some of the research on which these arguments are based (Saharso, 2007).

[682] Writers who identify this problematic perception include Volpp, 2000, p90; Razack 2004; and Sen, 2005, p45.

[683] Purna Sen makes this point: 'Modernisation theory posits gender relations as key indicators on the road from tradition to modernity; modernity that is exemplified by individualism and choice. Collective controls over individual actions through codes of shame and honour have been deemed remnants of backward cultures which have no place in contemporary societies and for those seeking to join the club of enlightened, secular and rational societies' (Sen, 2005, p45).

the relatively recent exception of issues such as FGM/C, HBV and forced marriage. Majority women are also subject to violence on the basis of gender, but the discourse that positions them as voiceless victims is less strong in their case, and rarely connected to notions of an ethnic or religious group identity. For minoritized women, however, a gender and a group-based identity intersect to deny agency.

Autonomy has been a recurring theme in this thesis. The chapter on FGM/C suggested that measures aimed at enhancing minoritized women's autonomy may in fact give them only the option to be autonomous on the terms of the majority society – adult women can choose to undergo genitoplasty but cannot choose to be reinfibulated after childbirth. Chapter 4 showed that defining choice as a single act of consent leads to an equally limited set of options for girls and women facing forced marriage: exit or staying in an unhappy situation. The discussion about religion in the previous chapter also suggests that choice is a problematic concept: supporting minority religious claims may mean facilitating what, from some Western or feminist perspectives, appears to be a lack of choice. It may mean recognising that choice, as generally understood, is not *a* or *the* priority for everyone. And it may not always be useful to defend religious rights on the grounds of religious identity as an abstract and objective choice if those who claim that identity see it as something more intrinsic. Andrea Baumeister covers this question in discussing approaches to religious education:

> For proponents of personal autonomy our beliefs are mere possessions of the 'self'. Consequently, we are able to distinguish between our 'self' and our beliefs. Because of this conception of belief and believer as distanced, advocates of personal autonomy tend to view beliefs as chosen and propose an open-ended, critical attitude vis-à-vis beliefs. However, for numerous communitarian critics of personal autonomy this conception of the 'self' fails to appreciate the extent to which the 'self' is constituted by the beliefs we hold and the communities we live in. From a communitarian perspective, membership of a community is not something which we choose but an attachment which we discover.[684]

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[684] Baumeister, 1998, p928. Baumeister considers the usefulness of Rawls' liberal theory in the context of British education policy and the 1985 *Swann Report*.

What is suggested here is that a framework for resolving differences that takes autonomy as its chief principle and objective may not create a society in which all members can achieve what they regard as fulfilment.

The problem in challenging simplistic readings is that, just as a worrying number of women are subject to rape and sexual harassment, equally it is clear that a significant number of minoritized women and girls *are* forced to wear a veil or marry a partner not of their own choosing. And while there are extreme cases of physical violence and brutality, coercion may take less obvious forms, such as emotional blackmail, making it hard to identify where women are making their own choices and where they are being coerced. In the UK today, it may be the case that there are girls and young women who prefer to accept an unwanted marriage if the alternative is rejection by their family and friends: does this count as their choice or as coercion? It is unclear to what extent their choices are restricted by their family and close community, and to what extent by the lack of meaningful exit options. In the long term, solutions must lie in both attitudinal change and developing resources to make exit a more meaningful choice. But in the shorter term, it can be difficult to draw a line between coercion and volition in ways that leave the 'victim' with any degree of autonomy or agency.

It is reasonable to argue that some belief in autonomy needs to be maintained. Friedman would argue that while multiculturalists might reject autonomy as liberal individualism, supporting women's rights to live according to their cultural traditions 'implicitly relies on a commitment to autonomy...'.[685] Building on Friedman's distinction between 'substantive' and 'content-neutral' autonomy (see chapter 5), I would argue that discourses of culture in the UK have tended to employ a substantive concept of autonomy. Minoritized women are expected to exercise their autonomy by making the kinds of choices associated with being liberated women, choices which do not include wearing the *hijab* for example. Martha Nussbaum has said that she is 'fascinated by [Robespierre's] dilemma of wanting liberty for everyone, but having to figure out what to do with individuals who won't go along with your plan'.[686] This poses a challenge for Western feminists and a dilemma for the liberal state and liberalism: what do you do when you extend

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[685] Friedman, 2003, p189.

[686] Interview in *The New York Times*, 28 November 1999.

democratic rights to people who appear to use them to reject those same rights, for example by consenting to practices such as FGM/C? The easy solution has been to refuse to accept that minoritized women who submit to such practices can be regarded as acting autonomously. They tend to be seen as victims of coercion or of brainwashing by patriarchal leaders and/or family members. But the fact that many minoritized women have not chosen or felt able to choose an autonomous Western lifestyle when it is offered to them – for example, that many victims of forced marriage return to their families and some women would choose to be infibulated – suggests that using a either/or conception of choice in which the options are to remain a member of a minority community or to embrace the majority society and its values is not going to solve the problem of violence against minoritized women. Better to point out that *all* women operate within constraints that prevent autonomy being absolute but do not leave them absolutely without agency, and that the state has a role in enhancing that agency.[687] The recognition that autonomy is never absolute and that the choices of women and girls in the majority society are also constrained would help prevent a discourse that contrasts oppressed minoritized women with liberated Western women.

8.3 Policies

The discourses identified above have been reflected in the policy developments of the period 1997-2007, and may explain why initiatives on such matters as forced marriage were not entirely successful. Yet it is important to point out that in many ways the period discussed marked a significant improvement on earlier years in terms of targeting violence against minoritized women. Problems such as forced marriage were openly discussed for the first time and it was recognised that the state had a responsibility for addressing such problems directly, rather than leaving them to be addressed in the courts on a case-by-case basis. In the early years of the period discussed, there was hope of a radical social agenda and a complete break with the previous Conservative regime.

Despite these signs of progress, many statutory initiatives continued to reflect a homogenising concept of culture. Firstly, the diversity of groups and behaviours was largely ignored, and members of minority cultural and religious groups were

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[687] Suggesting it is useful to focus on agency rather than or as well as autonomy, as Monique Deveaux suggests (Deveaux, 2007).

portrayed as sharing a common identity and interests. In the previous chapters I identified a failure to recognise diversity within minority cultures along age, geographical region, class and, of course, gender lines, and noted some of the ways in which this rendered policy interventions less effective. In relation to forced marriage, for example, the significant geographical and age differences in attitudes to marriage among minority communities meant that opportunities to target policy may have been missed. In cases of so-called 'honour' killings, I have suggested that 'honour' became the label for a range of crimes affecting minoritized women in a way that disguised the specific features of each, making it less likely that they would be tackled effectively. Simplistic distinctions between the 'passion' of the West and the 'honour' of the East in criminal cases may have obscured similarities between majority and minority homicides and disguised the motives and agendas of individual defendants. In chapter 5, I argued that the failure to commission research was a significant problem in relation to FGM/C, meaning that there was no reliable data on which to challenge an 'arrogant perception' of FGM or provide the basis for appropriately targeted work by service providers. The perception of FGM as a horrific abuse of children, for example, meant that the priority was the introduction of new legislation preventing young girls being circumcised, while the needs and wishes of adult women received comparatively little attention.

A second phenomenon illustrated by the case studies is the tendency to locate initiatives on violence against minoritized women within a race agenda, rather than mainstreaming them within work on women's rights.[688] This was most noticeable in relation to forced marriage, where initiatives were partially undermined by their association with an anti-immigration agenda. Measures to address 'honour' violence were led by the police and took a homicide-prevention approach, albeit one which made useful connections with existing work on domestic violence. The situation with FGM/C is slightly different: here I have argued that one reason new legislation

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[688] 'Government agencies that are beginning to recognise and work on "honour" crimes tend to be situated within the Race and Diversity departments. This illustrates the underlying assumption that 'honour' crimes are an expression of racial or cultural politics, obscuring the gendered nature of the crime and its connections with violence against women more broadly' (Sen et al, 2003, p24). At a conference on 'Forced marriage – keeping it on the policing agenda' held on 16 February 2005, Hannana Siddiqui of Southall Black Sisters expressed concerns about the failure to integrate issues concerning minority women within broader gender policy. For arguments that minoritized women's rights should be mainstreamed within a broader gender equality framework see Maleiha Malik's paper for Fawcett Society's roundtable debate on 'The veil, feminism and Muslim women', December 2006 (available at http://fawcett.wholething.co.uk last accessed 6 May 2007).

was not successful was the failure to locate responsibility with any government department(s), and the lack of clarity about whether this is a gender, race or child protection issue.

A final problem is that measures to tackle these issues have prioritised exit and punishment, rather than education and attitudinal change. Measures to help victims of forced marriage have focused on enabling them to leave their families. Women's organisations argued against the use of mediation as putting women at risk of further abuse, but the fact that individuals 'rescued' by the Forced Marriage Unit often returned to their families and to further abuse suggests that exit, though important, is an inadequate strategy. The lead role taken by the police in regard to forced marriage and HBV, the involvement of the Foreign and Commonwealth Office and the Home Office – at the time responsible for most areas of race, immigration and crime – and the lack of significant input from the Departments of Education or Health and social services, are all suggestive of a failure to work on long-term attitudinal change *alongside* immediate recourse for women and girls in immediate danger. The identification by women's NGOs of violence – including violence against minoritized women – as both a crime and an equality issue is discussed below and may lead to a greater focus on prevention.

A key question is whether it has proved useful and effective to identify certain crimes or abuses as culturally specific and/or create new laws and methods of enforcement to combat them. On the limited evidence available, it is difficult to say, but the analysis of the initiatives against FGM/C suggest that criminalisation is not the most effective way of bringing about change.[689] Victims of forced marriage and FGM/C generally do not see the perpetrators – usually their parents – as criminals. So while it may be appropriate for the state to identify them as such to clarify that these practices are unacceptable, it seems unlikely that punitive measures will lead to the kind of reduction in cases that is desirable.

This reduction requires the agencies involved (both statutory and voluntary) to have greater credibility with the communities concerned than they had by the end of the period discussed. Particularly in relation to forced marriage, there appears to be a perception that the real agenda is not protecting women but attacking Islam or

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[689] The UK's two laws, on Female Circumcision and the law on Female Genital Mutilation that replaced it, had resulted in no prosecutions at the time of writing while the European country which has seen the most prosecutions – France – has used a general law.

reducing immigration. Here, it would be helpful if different departments worked together coherently, for example, if measures to protect minoritized women led by one part of the Home Office were not undermined by immigration regulations in another.[690] Clearly defining forced marriage, HBV and FGM/C as forms of gender-based violence – as began to happen (see below) – would help prevent any confusion about motives and make engagement with the communities concerned easier.

While a culture of consultation with NGOs did develop in the period 1997-2007, these organisations often lacked the staff and resources to respond.[691] They were not sufficiently empowered to take the lead role on these issues that, given their experience and expertise, might have led to greater reductions in the number of cases of FGM/C, 'honour' crimes and forced marriages. Instead, policy was led by the police, government departments and parliamentarians. And while minoritized women's NGOs played an important part in raising awareness of these issues among state officials, new policies were as often a response to polemical and sometimes stereotyping media coverage.

8.4 Strategic concerns

The simplistic portrayals of culture and problematic policy approaches identified above place minoritized women's NGOs in a difficult position. One of the questions running through this thesis is whether it is possible, in practice, to 'operationalise' the kind of understandings of culture we find in the works of Uma Narayan, Avtar Brah or Leti Volpp. An optimist might hope that empowering minoritized women would open up the cultural 'package' by creating gender-friendly interpretations of cultural and religious identities alongside dominant conservative ones. But even if minority women's NGOs were better resourced, it is unlikely that the solution would be so simple. Although we might anticipate that the perceived tension between gender equality and cultural claims would shift if women were enabled to reinterpret and articulate their culture in different ways, I would caution against the

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[690] Sen et al, 2003; Kelly and Lovett, 2005.

[691] The call for sustainable funding for women's NGOs, including those working with and for minoritized women, was regularly made at the workshops and conferences and in the reports and interviews cited in this thesis. For example, this was raised by several participants at a seminar on 24 April 2007 to discuss the contribution of women in building integration and community cohesion organised by the Commission on Integration and Cohesion.

assumption that this is a quick and unproblematic process. Romantic notions of minoritized women and of grass roots women's organisations as inherently progressive should be avoided. It is discourses, not men or women, that are the problem, and women's attitudes, language and behaviour can be as conservative as men's. It is naïve to imagine that conservative interpretations of culture and religion are only held by 'outsiders' and by minority men whose interests are served by such agendas, while minority women remain immune from prevalent discourses and values. That view is as deterministic in its way as the 'package picture' of culture this thesis rejects.

Minoritized women are likely to interpret their interests in different ways, rather than as a single unified lobby. FGM/C is a good example of the diversity of interests among minoritized women, for here women are not only victims with an interest in ending the practices, but also the main perpetrators, gaining financially and in terms of prestige from their role. Similarly, mothers have been complicit in 'honour' killings and in forcing their daughters into marriage. It is unrealistic to believe that minoritized women will always interpret their cultural/religious identity in a sexually egalitarian way.

It is also unrealistic to expect campaigners, advocates and service providers working on these issues always to reject simplistic conceptions of culture, either in their campaigning and awareness raising or in specific casework. When campaigning, NGOs may find it effective to use simplistic portrayals of culture. This has been most obvious in relation to 'honour' violence, where campaigners have not always challenged the idea that honour is a reflection of culture but sometimes have accepted it precisely as an outmoded cultural form that needs to be eliminated. That this should be the case may be partly because of the failure to explore the difference between religious and customary imperatives. I have suggested that arguments based on religion currently carry greater weight in the development of public policy than those based on culture or tradition. Those campaigning against 'honour' killings have reflected that hierarchy of values by stressing that these crimes are not condoned by any religion. But this sometimes suggests, either explicitly or by default, that they are indeed an outdated manifestation of culture – without defining or analysing 'culture'.

Moreover, on their limited resources, women's organisations have to prioritise. NGOs such as FORWARD, Southall Black Sisters and Kurdish Women's

Action Against Honour Killing are principally service providers and campaigners. Their job combines casework with working to eradicate the forms of violence experienced by their clients. For underfunded and understaffed organisations, discourse analysis cannot be a priority. And if experience shows that the easiest or most effective way of raising awareness of needs is by using language that strikes a chord with popular discourse, it is not surprising that many women's NGOs take this approach. My research suggests that polemical language and cultural stereotypes have sometimes been effective in leading to official recognition of a problem. In each of my case studies, media highlighting of often shocking cases was a critical factor leading to government or statutory intervention. The lack of data on prevalence and shifting trends in many of these areas meant NGOs were not able to convince government departments on the basis of solid evidence because such evidence was and is generally not available. Sensationalist campaigning around individual cases may be one of the few ways to draw attention to a problem.

Not all minority women's NGOs take this approach – reflecting of course the diversity of opinion I have stressed throughout – but for those who want to challenge violence against minority women without reinforcing cultural stereotypes of backward and patriarchal cultures, there is a difficult balance to be struck. Pragna Patel of Southall Black Sisters talks of walking a tightrope:

> Whilst not wanting to construct Asian culture as some monolithic and static phenomenon, problematic or pathological, we needed to spell out exactly how Asian women can be constrained by their families and communities.[692]

Sherene Razack has also talked of finding herself in an impossible bind:

> Since the naming of violence against Muslim women is a principal weapon in the 'War on Terror', Western feminists have begun to share conceptual and political terrain with the far right…How is it possible to acknowledge and confront patriarchal violence within Muslim migrant communities without descending into cultural deficit explanations (they are overly patriarchal and

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[692] Patel, 2003, p245.

inherently uncivilised) and without inviting extraordinary measures of stigmatisation, surveillance and control?[693]

When women's NGOs deploy negative cultural stereotypes from their position as 'insiders' while failing to challenge racial discrimination or violence, they risk reinforcing the view that individuals must choose between their cultural and their gender identities. I have argued in this thesis that it is difficult but not impossible to reconcile the two. The fact that many minoritized NGOs recognise that it is possible, even necessary, to tackle racism and inequality in wider society as well as violence against women within minority communities shows that there are alternatives. While there are those who favour the use of immigration regulations to tackle forced marriage, there are others who point out that immigration regulations are one of the main obstacles keeping women in violent situations and preventing service providers from helping them. Southall Black Sisters has over many years identified the way that immigration rules undermine efforts to support minority women experiencing violence.[694] Similarly, Newham Asian Women's Project (NAWP) identified the Domestic Violence, Crime and Victims Act (2004) as a 'missed opportunity' to reduce domestic violence in failing to:

> provide equal access to protection for all women regardless of their immigration status. Since women experiencing domestic violence who are subject to immigration control have no recourse to public funds, they cannot leave to get to a place of safety, as they have no guaranteed funds for rent or living expenses. They face the stark choice of either staying in the violent relationship or facing destitution and/or deportation if they leave the abusive family member(s).[695]

Working holistically on a range of issues, rather than focusing on a single 'cultural' abuse can also be a way for NGOs to provide necessary services without reinforcing

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[693] Razack, 2004, p130-131.

[694] In 2006 Southall Black Sisters published *How can I support her? Domestic violence, immigration and women with no recourse to public funds. A resource pack for voluntary and community organisations* (available online from www.southallblacksisters.org.uk last accessed 30 May 2007).

[695] Newham Asian Women's Project *Annual Report*, 2003/2004 (available at www.nawp.org last accessed 30 May 2007). See also discussion of 'no recourse to public funds' in chapter 4.

prevalent stereotypes. NAWP's Teens project addresses the issues that cause young women distress – violence and abuse such as the threat of forced marriage, but also homelessness, racism, and social exclusion. This is similar to the work of international and UK organisations working on FGM which have a wider social, health and educational agenda in recognition of the need to address FGM within a context, rather than lobby purely on one topic. This approach is more likely to appeal to minoritized women experiencing violence in addressing all dimensions of their experiences of abuse or discrimination, rather than focusing on their family or culture as the single cause of their problems.

The discussion above suggests that NGOs do not consciously reinforce cultural stereotypes, and that many try to resist this. However, there may also be individual cases where it is genuinely expedient to reinforce cultural stereotypes, situations, for example, where it may help an individual woman to paint her culture as irredeemably oppressive. Gender-based asylum claims are the obvious example here. Sherene Razack identifies this dilemma:

> Racial and cultural othering, as an important part of how her claim is presented, arise initially from the need for a refugee claimant to establish that she has a well-founded fear of persecution from which her own state will not or cannot protect her. The simplest and most effective means of doing so is to activate in the panel members an old imperial formula of the barbaric and chaotic Third World and by implication, a more civilized First World.[696]

Refugee-producing states need to be represented as abusive and patriarchal in ways the West recognises as 'other' – by conforming to 'racial tropes'. So a victim of FGM/C is more likely to be granted asylum than a victim of domestic violence. Domestic violence is not exotic and is experienced by Western women. This may explain why Ann Cryer, in lobbying for Council of Europe members states to allow women to claim asylum on the basis of the threat of honour violence, was keen to separate such violence from the crimes of passion that typify Western countries. If fleeing a crime of passion were justification for granting asylum, one could anticipate the unlikely situation of Western women taking refuge from patriarchal

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[696] Razack, 1995, p69.

regimes by applying for asylum in the East. And perhaps this should not seem so improbable. Asylum is given to those fleeing persecution who are unable to claim the protection of their country of nationality. The justification for extending asylum to women fleeing FGM/C has been that the state in question has colluded or failed to protect their women from abuse.[697] One might argue in light of current evidence on attitudes to rape and an appalling conviction rate, that Britain fails to protect its women citizens – majority and minority – from gender-based violence.[698]

Though I began my thesis with a strong sense of the importance of challenging conventional understandings of culture, and rejecting the cultural stereotypes so often associated with these, the dilemma for advocates in gender-based asylum claims has emerged as the greatest obstacle to doing this. I am pessimistic about the possibility of developing an approach that rejects all forms of stereotyping without in the process jeopardising individual women's cases. As Volpp points out, 'the legal system really likes fixed categories'.[699] Oppressively patriarchal regimes that contrast with societies where women are free and equal are just the kind of fixed categories that legal systems like, even if they do not correspond to reality. On the other hand, my case studies clearly indicate that failing to recognise complexity and diversity undermines the effectiveness of policies on forced marriage etc. Here I remain more optimistic about the possibility of articulating a more nuanced understanding of culture in the development of policy initiatives on the basis of initiatives and activities underway in the UK at the time of writing. I identify some of these in the final section of this thesis, arguing that by 2007, there were several

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[697] A refugee is a person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country...' (Article 1 of the 1951 Convention Relating to the Status of Refugees).

[698] 'It is clear that in approaching "crimes of honour" each treaty body has categorised these as human rights violations, despite the fact that they are perpetrated by non-state actors, usually family members, on the basis that state legislation and policy provide an environment in which such acts can occur, or that the state has failed to act effectively to eradicate the custom or practice. The treaty bodies have identified several rights in their respective treaties as being compromised where honour killings are concerned: the right to life; the right to non-discrimination; the right to equality before the law; the right to liberty and security of the person; and the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment' (Connors, 2005, p30). Conviction rates for rape in the UK were reported as being at their lowest ever are now at their lowest ever in 2005, with only 5.3% of reported rape cases ending in a conviction for the perpetrator (www.endviolenceagainstwomen.org.uk).

[699] Volpp, 2002.

promising, though by no means fully realised developments, in terms of addressing violence against *all* women.

8.5 Positive developments

8.5.1 Working in partnership and consultation

The 'practices' considered in this thesis have begun to be addressed in gendered terms through the work of the Women's National Commission and the End Violence Against Women Campaign (EVAW). Located at the time of writing in the Department for Communities and Local Government, the Women's National Commission is an independent advisory umbrella organisation representing the views of women to government. Its partner organisations include many of the minority women's organisations that have been active on the issues discussed in this thesis. The Commission has a Violence Against Women Working Group with subgroups on domestic and sexual violence that include forced marriage, female genital mutilation and 'honour' violence within their remit, alongside rape, trafficking and other forms of gender-specific violence. EVAW developed out of the Group's work, calling for an integrated strategy on gender violence and with the long-term goal of 'ending all forms of violence against women throughout the UK'.[700] Like the Women's National Commission, EVAW understands violence against women to encompass forced marriage, female genital mutilation and so-called 'honour' crimes, as well as domestic violence, rape, stalking, prostitution and trafficking. The development from a 'domestic violence' to a 'violence against women' agenda was particularly promising because domestic violence has traditionally been seen as relating to violence by spouses and partners, thus excluding abuse by parents and other relatives.[701]

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[700] Members of the Campaign include Southall Black Sisters, Imkaan, the Agency for Culture and Change Management, FORWARD and other black and Asian women's NGOs. See www.endviolenceagainstwomen.org.uk.

[701] In 2003, domestic violence was defined by the Home Office as '[a]ny violence between current and former partners in an intimate relationship, wherever and whenever the violence occurs (Home Office, 2003b, p8). In 2004 it was re-defined: 'Domestic violence is any incident of threatening behaviour, violence or abuse between adults who are or have been in a relationship together, or between family members, regardless of gender or sexuality' (see http://www.homeoffice.gov.uk/crime-victims/reducing-crime/domestic-violence/ last accessed 22 April 2007). This was in order to cover issues of concern to black and minority ethnic communities such as 'honour crimes'. Among NGOs the term violence against women and acronym VAW is more

My research suggests both organisations have the potential to make a useful contribution to the concerns discussed here. Both employ a partnership or coalition model and include as members some of the black and Asian women's NGOs that I highlight above as taking the lead in challenging stereotypes.[702] As networks focused on policy rather than service providers, the Women's National Commission and EVAW have the potential to act as a bridge between the women's voluntary sector and government, including ensuring that the views of minoritized women reach policy makers.

EVAW has also taken the government to task for its record on violence against women. At the time of writing, EVAW (with the support of the Women's National Commission) had published two annual independent analyses of government initiatives on violence against women, scoring the government for its work in this area. The second of these illustrated the extent of gender-based violence using statistics on forced marriage and FGM as well as rape and prostitution, and made connections between exposure to violence and migrant women's lack of recourse to public funds.[703] EVAW replicates the arguments made in this thesis for locating violence against minoritized women within a broad gender-based violence strategy and not within a race or immigration agenda. It has also taken the first steps in addressing violence as an equality issue (see below).

The Women's National Commission, despite its small staff and resources, played a significant role in giving a voice to Muslim women in the period after 2002 in the support it gave to the newly-established Muslim Women's Network. Chapter 7 identified a number of initiatives to give Muslim women a voice, occurring around the time of or following the July 7 2005 bombings.[704] However, the series of consultation events that were the basis of the Network's report, *She who disputes...*, were unique in that:

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common.

[702] Newham Asian Women's Project and Southall Black Sisters are members of the EVAW coalition; the Women's National Commission's partners include FORWARD and the Muslim Women's Network (see Women's National Commission Annual Report 2005-2006, available at www.thewnc.org.uk/pubs last accessed 30 May 2007).

[703] End Violence Against Women, 2006, p12-13 and p17.

[704] Others were the Preventing Extremism Together working groups, the Prime Minister's consultation resulting in the report *Engaging with Muslim Women*, and the Muslim Women Talk campaign.

...the women themselves set the agenda and spoke about a variety of issues, ranging from: the lack of voice and representation for Muslim women both within society as a whole and within their own communities; employment, education, the misinterpretation of Islam, violence against women and service provisions. Racism and Islamophobia was an overarching theme.[705]

The report also gave space to some lesbian and transsexual women's voices, running closed focus groups for LGBT women. I see this as an illustration of Sunder's model, in which the authorities (or in this case an independent non departmental public body) can have a role in opening religion up to more progressive interpretations. Again, I would caution against the assumption that minoritized women – in this case Muslim – will instinctively reject conservative, traditional or homophobic interpretations of religion. Rather than see such initiatives as single achievements, they need to be viewed as the first step in a process of engagement that over time may lead to a more radical discourse.

She who disputes... clearly demonstrated that women did not feel well represented either by community leaders or by government:

> The Muslim community is growing – policy makers need to understand that there isn't just one way of interpreting Islam. They shouldn't go to just a few religious leaders who have a particular view. Where women are involved, and affected by an issue, policymakers need to talk to women – they must.[706]

The value of such partnership or networking organisations can be seen here. The capacity–building function the Women's National Commission played in relation to the Muslim Women's Network – in terms of providing secretarial, administrative and publishing support – helped the Network develop over four years to the point of seeking funding in its own right and autonomous legal status.

I highlighted above the development of a culture of consultation in the period 1997-2007. Sometimes these were public consultations, for example on proposed

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[705] Women's National Commission Newsletter, May 2007, available at www.thewnc.org.uk/pubs last accessed 30 May 2007).

[706] Muslim Women's Network, 2006, p9.

legislation on forced marriage, sometimes working groups or task forces were established. In principle, these gave minoritized women the opportunity to voice their concerns and state their needs. However, with small resources, women's NGOs often lacked the capacity to respond to consultations or join working groups. In such situations, the Women's National Commission played a constructive role in coordination and dissemination: chapter 5 discussed the way the Women's National Commission brought together black and refugee women's NGOs with service providers and civil servants to 'steer' the Female Genital Mutilation Bill. It played a similarly useful role in relation to the consultation on criminalising forced marriage and the passage of the subsequent civil protection bill by circulating briefings and responses between some NGOs.

It is likely, moreover, that consultation with the voluntary sector will increase with the new Commission for Equality and Human Rights and also as a result of the Gender Equality Duty that came into force in April 2007. The Commission for Equality and Human Rights has a duty to consult on its strategic plan and must issue a general invitation to make representations.[707] The Gender Equality Duty requires all public authorities in England, Scotland and Wales to demonstrate that they are promoting gender equality and acting to eliminate discrimination. This is progress from the traditional legal approach to discrimination, in which the victim was responsible for seeking redress, in moving towards a preventative approach, with public bodies actively responsible for promoting equality. Significantly for the concerns of this thesis, the duty requires bodies to consult with relevant stakeholders. Guidance by the Equal Opportunities Commission suggests that '[w]here women or men have been under-represented or disadvantaged in a policy or service area, you may need to make special efforts to encourage participation.'[708] This may help to ensure that those consulted include religious and ethnic minorities, as well as young, gay and disabled women.

Set against these positive developments, the women's voluntary sector – like other sectors – contains many internal tensions. The healthy diversity of opinion on, for example, issues such as criminalisation of forced marriage, could less optimistically be seen as a reflection of splits between secular and religious opinion,

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[707] The Equality Act (2006) 5(c).

[708] *Consulting stakeholders on gender equality. Guidance for GB public authorities* by the Equal Opportunities Commission, February 2007, available at www.eoc.org.uk.

or between black, Asian and Middle-Eastern groups, that prevents minoritized women uniting to lobby government effectively. Tensions between different groups and factions are as often about resources and funding as about fundamental principles. The position of the Women's National Commission as an independent body located in a government department of which it is often critical creates strains.[709] Moreover, it is unclear to what extent minoritized women's NGOs see the Women's National Commission as representing their interests.[710] In addition, the Women's National Commission and many of its partner organisations, including those focusing on violence against minoritized women, are hampered by inadequate resources. Small NGOs often receive funding only for a year or for time-limited projects. This prevents them having the financial security needed to work strategically and effectively in the long-term.[711] (The Forced Marriage Unit also survives on a small staff and budget.[712])

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[709] For example, women's minister Meg Munn strongly rejected criticisms of the Government's record on violence against women made in the report *Making the Grade?*. The report was produced by EVAW with the support of the Women's National Commission (speech by Meg Munn MP at launch event on 28 November 2006). The Women's National Commission is based in the Women and Equality Unit (WEU), which has not had a fixed departmental location. Once located in the Cabinet Office, it then moved to the Department of Trade and Industry, then to the Department for Communities and Local Government and at the time of writing a further move to the Department for Work and Pensions appeared likely. The Minister for Women appointed in 2005, Meg Munn, was not initially given a ministerial salary and appeared to be a last-minute appointment. These factors led to fears that gender equality was not the priority the Government insisted it was. At the time of writing, the Women's National Commission was undergoing a 'light-touch' review of its role.

[710] Its broad range of partners include the British Housewives League and the National Federation of Women's Institutes as well as the Muslim Women's Helpline, Womankind and the Refugee Council.

[711] The Women's National Commission's budget for 2004-05 was only £410,000. See annual report available at http://www.thewnc.org.uk/pubs/wncannualreport200405.pdf (last accessed 4 May 2007). The report of the conference on 'Gender, Marriage Migration and Justice in Multicultural Britain' (London, 12 January 2006) calls for '[r]ecognition of the NGO sector in terms of resource support – currently there is minimal statutory resourcing of, and investment in the specialist NGO sector. This sector is crucial in implementing activities aimed at eradicating FM [forced marriage]' (p23). In a parliamentary debate in 2007, Baroness Uddin asked 'I would like some assurance from the Minister about the genuine concerns raised by members, particularly of Imkaan and SBS [Southall Black Sisters], about the resources and financial commitment of the Government. Does she accept that the current trend of reduction and closures of specialised units has put our commitment to the victims of violence and forced marriage under threat? How do the Government intend to address this?' (Forced Marriage (Civil Protection) Bill [HL], Second Reading debate, 26 January 2007, available at www.parliament.uk).

[712] See Forced Marriage (Civil Protection) Bill [HL], Second Reading debate, 26 January 2007, available at www.parliament.uk, where the Unit's budget was discussed.

8.5.2 An integrated equality agenda

A second potentially positive development was the movement away from a 'silo' approach to discrimination – with race, gender and disability located in discrete statutory bodies – and towards an integrated one, capable of recognising the interaction between different grounds of inequality. This is key for minoritized women in the UK experiencing discrimination on the basis of a gender, race and/or faith identity (as well as perhaps on the basis of age, disability, and sexual orientation). As of October 2006, the existing equality commissions are replaced by an overarching Commission for Equality and Human Rights better positioned to address intersectionality and the complexity of experiences

This does not at first seem relevant to the concerns of this thesis. I argue that FGM/C, forced marriage and 'honour' killings are not cultural practices but forms of violence. Violence has not historically been seen as an equality issue. Equality legislation focuses on discrimination in the workplace and in the provision of goods, facilities and services. The Equal Opportunity Commission did not prioritise violence for much of its existence. However, both the Women's National Commission and EVAW define violence as 'both a cause and consequence of inequality'. In June 2007, EVAW published a paper aimed at helping the Commission for Equality and Human Rights develop 'an integrated approach to violence'.[713] It discussed experiences of violence from an intersectional perspective, including that of migrant women. At a launch event for the paper, its author argued that to make progress in preventing violence in all its forms, it needs to be viewed not just as part of the crime agenda, it must also be seen as an equality issue. It was suggested that the Commission for Equality and Human Rights could play an important role in addressing violence in a number of ways: by lobbying the government to fund preventative work, by identifying knowledge gaps and commissioning research, and by funding voluntary organisations.

The perception of groups – whether defined on the basis of race, religion, gender or some other characteristic – as discrete and internally unified also began to be challenged in the form of work on intersectionality and 'multiple'

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[713] End Violence Against Women, 2007, p 1 and 11.

discrimination.[714] The Equality and Diversity Forum which had played an important role in bringing together organisations working in different areas of discrimination, commissioned publications and events about intersectionality in 2007. Members of the Equality and Diversity Forum used meetings in 2006 and 2007 to raise concerns with officials about the inability of discrimination law to reflect the complex reality of experiences of discrimination.[715]

This integrated agenda was far from realised at the time of writing. Discrimination law remained focused on single areas of discrimination,[716] and violence was unlikely to be a priority for the new Commission for Equality and Human Rights operating on a relatively small budget, and with competing priorities. Moreover, many NGO's, including minoritized women's NGOs, were unaware of the new Commission. And some of those in the women's voluntary sector who were aware of it were fearful that a single equality commission would mean a dilution of expertise and lack of focus on women's issues.[717] But as Burman et al have pointed out:

> ... key conceptual and political challenges for policy development include how to grapple successfully with questions of both the specificities *and* commonalities of minoritized women's positions and needs in ways that do not indulge prevailing stereotypical conceptions – either of disproportionate need for, or equally lack of need for, dedicated services.[718]

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[714] While 'multiple discrimination' is an unhelpful term in implying a layering of different forms of discrimination – for example, race on top of gender – it is commonly used.

[715] Cases of discrimination generally rely on a single comparator. A woman bringing a charge of discrimination in employment will compare her situation to that of a man; a black person will compare his situation to that of a white person – for 'person' read 'man'. This is a practical example of the way that 'the narratives of gender are based on the experience of white, middle-class women, and the narratives of race are based on the experience of Black men' (Crenshaw, 1992, p1298). These representations were made to officials at the Women and Equality Unit working on the Discrimination Law Review.

[716] A consultation published in June 2007, *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*, outlined the Government's proposals for harmonising equality legislation.

[717] It should be noted that this corresponded to fears among race and disability organisations that the Commission for Equality and Human Rights would result in a loss of expertise and focus on race and disability issues respectively (see parliamentary debates during the passage of the Equality Bill now Act 2006 available at www.parliament.uk).

[718] Burman et al, 2004, p351.

They recommend a 'both and' approach '...involving both culturally specific services and mainstream services; and both issue-specific services and general services'.[719] I would argue that a single equality body is best placed to carry out *both* the issue-specific *and* the general work needed to address the reality of women's experiences – whether as disabled, elderly, young, lesbian, black or Muslim women.

8.5.3 Developing a human rights 'culture'

Human rights law and values are increasingly seen as the way to address many of the factors discussed in this thesis that prevent individuals living a good life, including gender inequality, cultural marginalisation and violence against both women and minorities. Internationally, it is widely recognised that instruments including the Convention on the Elimination of All Forms of Discrimination Against Women, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and others are a necessary part of any solution to such problems. However, human rights are under attack in many quarters. Globally, human rights law and discourse has been identified as a culturally specific and having little resonance in African and Asian societies:

> The notion of human rights has sometimes been thought to be limited by its Eurocentric origin and thus its closeness to Western rather than universal ideals of the autonomous individual.[720]

In chapter 5 I pointed out that the focus on FGM as a human rights abuse has been criticised by those who claim that economic and social rights are just as important to African women and have been overlooked by the human rights community.

In the UK, the Human Rights Act (1998) enshrined certain basic rights – of potential use to both minority and majority women – in law for the first time.[721] However, since its introduction, the Act and the 'culture' of human rights has been attacked by politicians and in the press based on the misconception that the Act has been used to protect the rights of terrorists, criminals and 'illegal' asylum seekers at

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[719] Burman et al, 2004, p351.

[720] Walby, 2002, p535. See also Coomaraswamy, 1994 and Cook, 1994.

[721] See Klug, 2002.

the expense of 'ordinary' citizens.[722] This misperception has been challenged both by human rights organisations and by some sections of government.[723]

Perhaps a greater problem is the belief that a human rights framework is not of use in addressing racism and discrimination against minority communities. There is a perception in some quarters that human rights are about individual claims in a way that conflicts with group identities and values. For example, the Director of Policy and Public Sector at the Commission for Racial Equality has written:

> I fear that an overriding human rights culture will mean that an individual's behaviour is more important than the effect upon the whole. In many cases, promoting good relations will require the sacrifice of what might seem as individual rights in favour of the good of the wider community.

He continued:

> Any progressive case for the HRA [Human Rights Act] has been undermined by a culture that has seen it used to defend individuals and their rights with little context of how those rights fit in with those of the wider community.[724]

There has sometimes been an implication that when minoritized women assert their rights they are betraying their communities and undermining the anti-racist struggle.[725] This takes us back to the problematic distinction between those identified as individuals and those who have a group identity. In claiming their

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[722] Two cases in 2006, in particular, caused concern about the Act: a group of Afghan refugees who hijacked a plane and who were subsequently protected from return to Afghanistan and the murder of a woman by a convicted rapist who had been released on parole (see British Institute of Human Rights press briefing available at http://www.bihr.org/downloads/media_brief.pdf last accessed 2 June 2007). See also *The Human Rights Act: the DCA and Home Office Reviews*. Joint Committee on Human Rights, Thirty–second Report of Session 2005–06, November 2006. In June 2006, the Conservative Party leader David Cameron proposed abolishing the Human Rights Act.

[723] In February 2007, the Department for Constitutional Affairs (DCA) launched a campaign 'Human Rights: Common values, common sense' and also produced *Making sense of human rights – A short introduction* to help public officials use the Human Rights Act (DCA news release 9 February 2007).

[724] 'The Right to a Good Society' by Nick Johnson writing for *Catalyst* (the Commission for Racial Equality journal) 27 October, 2006 (available at http://www.catalystmagazine.org/Default.aspx.LocID-0hgnew0mg.RefLocID-0hg01b00100600f00f.Lang-EN.htm last accessed 1 June 2007).

[725] For example, Patel, 2004, p38.

(individual) human rights, minoritized women are seen as diverting attention from a community-based struggle. The strategic concerns identified above show how difficult it is for individual women, activists and advocates to challenge abuse without feeding racist stereotypes that portray some cultures as inherently misogynistic. The fact that it is small NGOs like Southall Black Sisters and FORWARD that have been at the forefront of challenging violence against minoritized women and not mainstream race bodies such as the Commission for Racial Equality or gender bodies such as the Equal Opportunities Commission suggests that it is still the case that 'the concerns of minority women fall into the void between concerns about women's issues and concerns about racism'.[726]

However the idea that human rights is a Western and individualised discourse of little use to minorities and minoritized women has been challenged. Sylvia Walby has argued that feminism is being reframed in terms of universal human rights. She challenges the idea that a rights tradition is unable to address issues of collective disadvantage arguing that 'the shift from a discourse stressing women's subordination by men to one of neglect of women's human rights has not led to the adoption of an individualistic political strategy' and that there are still collective political projects.[727] In Britain, Francesca Klug, one of the architects of the Human Rights Act, responded to Nick Johnson's concerns by denying that 'a human rights framework blurs distinctions and denies the specific experiences of particular groups'.[728] And the EVAW campaign has argued that freedom from violence is not only necessary to achieve equality but is a basic human right.[729] On a practical level, it has been suggested that the Human Rights Act can be used to challenge the 'no recourse to public funds provision'.[730]

I argued above that the Commission for Equality and Human Rights has the potential to address inequality – including violence – in an integrated way of benefit to minoritized women. The Commission will have three pillars to its work: equality, 'good relations' and human rights. There is recognition of the potential for conflict

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[726] Crenshaw, 1992, p1282.

[727] Walby, 2002, p548.

[728] See also Klug, 2002.

[729] Horvath and Kelly, 2007, p11.

[730] Katie Ghose, director of the British Institute of Human Rights, suggested that Article 3, which prohibits torture, inhumane and degrading treatment, could be used to challenge the denial of access to public funds (speaking at a conference on 6 June 2007).

between different 'equality' claims – religious versus gay rights is the one that has received most attention. While the argument of this thesis has been that group identities should not be viewed as discrete silos, that this ignores the interests of gay people of faith for example, it is clear that conflicting claims often present difficult decisions. If there continues to be a perception of sealed communities defined on the basis of religion, gender and sexual orientation, then human rights principles are likely to be deployed to allow some claims to 'trump' others. However, if they are used in conjunction with a recognition of the diversity of communities and of individual identity, then they can have a vital role in breaking down the perceived conflict between different claims. If the self-determination rights of lesbian Muslims for example, are recognised alongside the rights of those who claim that homosexuality is unacceptable on religious grounds, there is still a problem, but it is no longer based on two entirely polarised positions that reinforce stereotypes of minority identities.

8.6 Conclusion

I began this thesis with a quote from Marilyn Friedman setting out the 'dilemma' perceived to characterise multicultural societies whose minority members defend practices that wider society sees as oppressive to women. The case study chapters of this thesis have shown there is a danger of reinforcing a simplistic narrative – the story of girls from minority communities who are torn between their desire to live a Western lifestyle based on equality and individual rights and their family's and community's desire to hold them back and force them to subscribe to 'traditional' values.[731] In this scenario, FGM/C, 'honour' violence and forced marriage are practices that typify the oppressive cultures that young black, Asian and Middle Eastern women want to escape. I have argued that it is more useful to see these 'practices' less as symptoms of an intractable conflict of values, but rather as crimes perpetuated by a minority that are widely recognised as illegal and unacceptable by both majority and minority. While we should not ignore the cultural dimensions of violence against minority women, we also need to recognise the cultural dimension of all forms of violence and all behaviour – without allowing 'culture' to be used as a mitigating factor. Seeing *all* members of society as simultaneously individuals and

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[731] for example Kennedy, 2005, p181.

members of collectivities – whether those collectivities are defined by religion, gender, sexuality, class, employment etc – would help to demonstrate that individual autonomy need not conflict with group rights.

Emphasising the diversity within cultural and religious communities and the possibility of myriad interpretations of religious and cultural norms will not make all conflicts of rights disappear. There will always be tricky practical dilemmas. But if a human rights 'culture' is disseminated alongside the recognition of diversity within minorities, we can then stop seeing measures on forced marriage and other 'cultural practices' as the imposition of equality and human rights on backward groups. We can see them, rather, as overriding the unacceptable views of certain individuals, rather than 'their groups'. It may then be possible to increase the autonomy of minoritized girls and women *within* their families and communities.

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Appendix: UK legislation relating to gender, race and religion[732]

1962 The Commonwealth Immigrants Act: introduced Ministry of Labour vouchers.

1965 The Race Relations Act: creation of the Race Relations Board that coordinated the work of nine regional committees dealing with complaints of racism.

1965 The Labour government introduced a voucher scheme for Commonwealth citizens.

1966 The Local Government Act: Section 11 contained measures giving local authorities grants to make specific provision for their ethnic minority populations.

1967 The Slaughter of Poultry Act: created exemptions for Jews and Muslims from the requirement that slaughtered poultry is first stunned.

1968 The Commonwealth Immigrants Act: imposed strict immigration quotas, and removed automatic entry to British passport-holders, except those born in Britain or with a British parent or grandparent.

1968 The Race Relations Act: made discrimination in housing, employment or service-provision unlawful. The Race Relations Board was given stronger powers. The Community Relations Commission was set up to promote good race relations.

1970 The Equal Pay Act: the Act gave an individual the right to the same pay and benefits as a person of the opposite sex doing the same job.

1971 The Immigration Act: empowered the Secretary of State to make immigration rules and replaced employment vouchers with work permits, which denied holders and their dependents the right to permanent residence in the UK.

1972 The Matrimonial Proceedings (Polygamous Marriages) Act: allowed courts to grant matrimonial relief to parties to potentially or actually polygamous marriages contracted abroad.

1973 The Matrimonial Causes Act: incorporated the 1972 Act. Marriages that were not consensual on both sides could be declared void.

1973 The Domicile and Matrimonial Proceedings Act: Section 16 removed the rights of Muslims and other minorities to follow their own divorce procedures exclusively.

1974 The Slaughterhouses Act: exempted Jews and Muslims from the requirement that slaughtered animals are first stunned.

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[732] Legislation specific to Scotland and Northern Ireland is not listed.

1975 The Sex Discrimination Act: the Act prohibits sex discrimination against individuals in the areas of employment, education, and the provision of goods, facilities and services and in the disposal or management of premises.

1976 The Race Relations Act: incorporated the concept of 'indirect discrimination' and established the Commission for Racial Equality. Discrimination cases could be taken to court or industrial tribunal.

1976 The Motorcycle Crash Helmets (Religious Exemption) Act: exempted Sikhs from the general requirement to wear a crash helmet.

1977 Immigration rules were introduced by the Labour government to deny entry to those suspected of entering into a 'marriage of convenience' to gain entry to the UK.

1980 The Conservative government's changes to the immigration rules established the requirement that entry clearance would be refused if the Officer had reason to believe the primary purpose of marriage was to obtain entry to the UK (the Primary Purpose Rule).

1981 The British Nationality Act: the term 'patriality' in the 1971 Act was replaced by a new phrase: those with a 'close connection' with Britain.

1985 The Prohibition of Female Circumcision Act: made female genital mutilation/cutting illegal in the UK.

1987 The Immigration (Carriers' Liability Act): imposed fines on airlines and ferry operators bringing people into UK without valid documentation.

1988 The Immigration Act: in conjunction with amendments to Immigration Rules HC555, the Act contained measures to prevent second, third etc wives of polygamous husbands from joining their spouses for settlement.

1988 The Education Reform Act: see 1996 Education Act.

1988 The Criminal Justice Act: contained exemptions for Sikhs from provisions on carrying knives etc.

1989 The Employment Act: Sikhs were exempted from the requirement to wear safety helmets on construction site in place of their turban.

1989 The Children Act: local authorities and voluntary organisations were obliged to give consideration to religious persuasion, racial origin and cultural and linguistic background of any child in their care when planning for his/her future.

1990 The Broadcasting Act: contained measures to prevent abusive treatment of religious views and beliefs.

1993 The Asylum and Immigration Appeals Act: the Act provided that refused asylum seekers have the right to appeal negative decisions on their applications,

but laid down strict time limits. Under the Act, all asylum seekers, including children, had to be fingerprinted, and asylum seekers were liable to be detained while awaiting a Home Office decision on their case.

1994 Statement of Changes in Immigration Rules (HC395 para 281): this established the final version of the Primary Purpose Rule.

1995 The Private International Law (Miscellaneous Provisions) Act: this reversed the provisions of the Matrimonial Proceedings (Polygamous Marriages) Act 1972 in terms of giving greater recognition to potentially polygamous marriages contracted abroad.

1996 The Education Act (incorporated the 1988 Education Reform Act): this maintained the requirement that all state school pupils have a daily act of 'wholly or mainly' Christian collective worship unless parents chose to withdraw them.

1996 The Asylum and Immigration Act: the Act introduced a 'white list' of countries which the Home Office considered did not pose any serious risks of persecution, and imposed tighter time limits for appeals. The Act also introduced restrictions on employment and made it an offence for employers to knowingly employ someone without the correct documentation. It restricted entitlement to housing for asylum seekers and removed welfare benefit entitlement for all those who did not make a claim for asylum immediately on arrival in the UK with an Immigration Officer.

1997 Statement of Changes in Immigration Rules abrogated the Primary Purpose Rule.

1998 The Human Rights Act: this incorporated into British law the European Convention on Human Rights. The rights enshrined include freedom of thought, conscience and religion, as well as respect for private and family life – rights likely to be of use in bringing challenges against racial, cultural and religious discrimination. The Act came into force on 2 October 2002.

1999 The Immigration and Asylum Act: the Act introduced vouchers for asylum seekers, a system of dispersal around the UK, and extended carriers liability to trucking and rail companies.

2000 The Race Relations (Amendment) Act: the Act imposed a general duty on public authorities to promote racial equality

2000 The Terrorism Act: the Act proscribed certain terrorist groups; enhanced police stop, search and detention powers; and created a number of new offences, including inciting terrorist acts.

2001 The Anti-Terrorism Crime and Security Act: contained measures to detain foreign nationals suspected of involvement in international terrorism.

2002 Divorce (Religious Marriages) Act: the Act enabled a court to require the dissolution of a religious marriage before granting a civil divorce.

2002 Nationality, Immigration and Asylum Act: measures included abolishing the voucher system, denying support to 'in-country' asylum applicants, establishing accommodation centres around the country for asylum seekers, and 'streamlining' the appeals process. Section 55 denied access to the National Asylum Support Service to those who do not apply for asylum 'as soon as reasonably practicable'.

2003 The Employment Equality (Religion or Belief) Regulations: the regulations provided protection people from discrimination on the grounds of religion and belief.

2003 The Employment Equality (Sexual Orientation) Regulations: the regulations provided protection people from discrimination on the grounds of all sexual orientation.

2003 The minimum age for sponsoring a spouse from overseas was raised from 16 to 18.

2004 The Female Genital Mutilation Act: made it an offence for UK citizens or residents to carry out, or to aid, abet or procure the carrying out of FGM abroad as well as in the UK.

2004 The Asylum and Immigration (Treatment of Claimants Act): included measures to prevent 'sham' marriages. (In 2006, the High Court judged the new rules to be in contravention of the European Convention on Human Rights.)

2004 The Civil Partnership Act: created a new legal relationship of civil partnership, giving recognition to same-sex couples for the first time. The Act came into force on 5 December 2005.

2005 The Prevention of Terrorism Act: allowed control orders to be made against suspected terrorists, whether UK or a non-UK nationals.

2006 The Immigration, Asylum and Nationality Act: included changes to the right to appeal against Home Office immigration and asylum decisions and allowed the Home Secretary to deprive someone of British citizenship for the public good.

2006 The Terrorism Act: created new offences relating to encouraging terrorism.

2006 The Equality Act: established a Commission for Equality and Human Rights (opening in October 2007), provided protection against discrimination on the grounds of sexual orientation, religion and belief in the provision of goods and services, and created a positive duty to promote equality between men and women.

2006 The Racial and Religious Hatred Act: prohibited incitement to hatred on religious or racial grounds.

2006 Forced Marriage (Civil Protection) Bill published.

Relevant European directives

1975 Equal Pay Directive 75/117: provided for the elimination of all discrimination on the ground of sex in respect to pay.

1976 and 2002 Equal Treatment Directive (76/207) amended by Directive (2002/73): prevented discrimination on the grounds of sex in access to employment, training and working conditions.

2000 Race Directive 2000/43: this Directive was adopted under Article 13 of the EC Treaty by the UK and other European Member States in 2000. It set out the framework for combating discrimination on the grounds of racial or ethnic origin.

2000 Employment Directive 2000/78: this Directive was also adopted under Article 13 of the EC Treaty. It prohibited discrimination on the grounds of sexual orientation, religion or belief, disability and age in employment and training.