Harm or Benefit? Hate or Affection? Is Parental Consent to Female Genital Ritual Ever Defensible?

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I. Introduction

A. Preliminary Definitions, Caveats, and Clarifications

This paper is not a recapitulation or regurgitation of mainstream literature on female genital ritual ("FGR"). Its purpose is different. Motivated by abstruse

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The terms “FGR” and “circumcision” are used interchangeably throughout this discourse as an encapsulation of all forms of genital female procedure, from the mildest to the most severe. Although some commentators object to the use of FGR as an apt descriptive term, since it is claimed that the procedure is not always accompanied by formal initiation rite or celebration, this does not detract from the ritual origin of the practice. Moreover, in most FGR societies, ancient ritual and contemporary versions still remain an essential part of the celebration marking the initiation. See Rogaia Mustafa Abusharaf, Revisiting Feminist Discourses on Infibulation: Responses from Sudanese Feminists, in FEMALE “CIRCUMCISION” IN AFRICA: CULTURE, CONTROVERSY AND CHANGE 151, 153 (Bettina Shell-Duncan & Ylva Hernlund eds., 2000) [hereinafter FEMALE “CIRCUMCISION” IN AFRICA] (describing the celebrative and festive aspects of FGR in Sudan); Elena Jirovsky, Views of Women and Men in Bobo-Dioulasso, Burkina Faso, on Three Forms of Female Genital Modification, 18 REPROD. HEALTH MATTERS 84, 85 (2010) (reporting that in past, people of Bobo-Dioulasso (Burkina Faso, West Africa) performed both male and female circumcision on the same day “during a ritual celebration”).

Many have also rejected the use of “circumcision” on the ground that it falsely analogizes the
deficiency in extant orthodoxy, this discourse challenges the notion that certain
procedure to male circumcision when, in fact, they claim, the two are quite distinct: the latter
being less invasive and, unlike the former, free of serious deleterious health consequences. This
paper completely rejects that contention. At least one form of FGR (removal of just the prepuce
or the sheath covering the clitoris, also known as clitoridotomy or hoodectomy) is equivalent to
male circumcision. In addition, circumcision is the most common descriptive term used in
societies where FGR is the norm, not some cleverly contrived exotic appellation. See Rogaia
Mustafa Abusharaf, *Virtuous Cuts: Female Genital Circumcision in an African Ontology*, 12
*Virtuous Cuts*] (explaining that among people of Douroshab (Sudan), common nomenclature for
FGR is “circumcision” or “tahara”, which denotes cleanliness and purification); Bettina Shell-
Duncan et al., *Women Without Choices: The Debate over Medicalization of Female Genital Cutting and its
Impact on a Northern Kenyan Community*, in FEMALE “CIRCUMCISION” IN AFRICA, supra at 109, 114
(reporting that term “khandi” in Rendille language (Northern Kenya) is used in reference to male,
as well as female circumcision); Jirovsky, *supra*, at 85 (finding that people of Bobo-Dioulasso
(Burkina Faso) not only use same term in describing female and male circumcision but
understand two procedures as equivalents); ELLEN GRUENBAUM, THE FEMALE CIRCUMCISION
CONTROVERSY: AN ANTHROPOLOGICAL PERSPECTIVE 38 (2001) (reporting that among
Sudanese women, colloquial term “tahur” (purification) is used in reference to both male and
female circumcision). Amongst the Igbo people of Southeastern Nigeria, the term “ibeugwu”
refers to female, as well as male circumcision. See also ALICE WALKER & PRATIBHA PARMAR,
WARRIOR MARKS: FEMALE GENITAL MUTILATION AND THE SEXUAL BLINDING OF WOMEN 367
(1993) (describing “sunna,” or “circumcision,” a less severe form of FGR, as involving
“[r]emoval of the prepuce or hood of the clitoris, with the body of the clitoris remaining intact”);
Ellen Gruenbaum, *Sexuality Issues in the Movement to Abolish Female Genital Cutting in Sudan, 20
MED. ANTHROPOLOGY Q. 121, 121-22 (2006) [hereinafter *Sexuality Issues*] (stating that there is
variation of FGR practiced in Sudan which involves “removal of just the prepuce”);
GRUENBAUM, THE FEMALE CIRCUMCISION CONTROVERSY, *supra* at 2 ("[The least severe types
of FGR are] those where a small part of the clitoris or prepuce ('hood') is cut away, analogous to
the foreskin removal of male circumcision").

Another term that is increasingly being used by scholars is “female genital cutting” (“FGC”).
The recent surge in its usage derives from the idea that the term is said to be more neutral and
culturally sensitive than “female genital mutilation” (“FGM”) which, although widely used in
mainstream literature, is perceived as inflammatory and gratuitously offensive to practicing
communities. See Nancy Ehrenreich & Mark Barr, *Intersex Surgery, Female Genital Cutting, and the
(describing changes in terminology as a result of feminist efforts to eliminate practice of female
genital cutting); REBECCA J. COOK ET AL., REPRODUCTIVE HEALTH AND HUMAN RIGHTS:
INTEGRATING MEDICINE, ETHICS AND LAW 262-63 (2003) (discussing terminology). Although some authors defend FGM as an appropriate nomenclature, because most forms of the
procedure are believed to result in damage to, or involve removal of, healthy tissues or organs,
they, nevertheless, insist on using circumcision, not because it accurately describes the procedure,
but to avoid the evil connotation and mayhem that FGM imports. See GRUENBAUM, THE
FEMALE CIRCUMCISION CONTROVERSY, *supra* at 3-4 (discussing terms for practices).
sociocultural beliefs, attitudes, or practices of certain groups of people are automatic candidates for inquisition. It denies legitimacy to one particular belief system over another in the absence of showing that the preference was the result of an unbiased and reflective distillation of the rationales, assumptions, and justifications underlying both systems. It is a critique of the ongoing scramble to criminalize even the slightest manifestation of traditions or culture-oriented belief systems on account of their perceived incompatibility with the “right” or “acceptable” moral standard. These and more constitute the critical contextual background that is vital, not only to the interrogatory exercise to which the various postulations and claims explored in this paper are subjected, but also to the position advanced as ethically and legally congruent with the parental right to raise their children.

FGR is defined as procedures involving partial or total excision of external female genitalia, or other injury to female genital organs for non-therapeutic reasons. In other words, as long as the purpose is non-therapeutic, any sort of excision of, or injury to, the vagina or adjoining tissues would amount to FGR. The World Health Organization’s (“WHO”) most recent taxonomy identifies four types, or variations, of the procedure. Type I, known as clitoridectomy, consists of “partial or total removal of the clitoris and/or the prepuce.” Type II, or excision, involves “partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora.” Type III (infibulation or pharaonic circumcision) involves narrowing of the vaginal orifice upon the excision of the labia minora and/or the labia majora, with or without removing the clitoris. Type IV comprises all other forms of FGR not mentioned above, including pricking, piercing, incising, scraping, and cauterization.

Significantly, the current taxonomy strays considerably from the original definition of FGR Type I, which was unveiled at a WHO technical consultation in 1995, and widely reported in a 1997 publication. This publication describes Type I

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3 Id. at 4.
4 Id.
5 Id.
6 Id.
simply as excision of the prepuce, with or without removal of the clitoris. Remarkably, the focus of this classification is distinctively the prepuce, or, more precisely, its removal – in sharp contrast to the new, redefined categorization which centers on a different part of the genitalia, the clitoris; hence, the appellation “clitoridectomy,” which would have been clearly and linguistically inappropriate had the prepuce remained the focal point of attention.

This 2008 redefinition, shifting away from prepuce excision as a distinct category of FGR, was not inadvertent. The WHO, without explicitly saying so, was responding to claims by activists and anti-FGR literature that circumcision is never limited to prepuce removal, although the organization concedes, rather paradoxically, the reverse, that FGR, in some cultures, indeed involves the excision of only the clitoral prepuce. This concession is striking. As argued elsewhere, prepuce removal (clitoridotomy or hoodectomy), as a recognized form of FGR, is not a delusory rumination of some new breed of scholars; it actually obtains in several cultures. Emphasizing this point is critical because, in comparison to the more invasive types of infibulation, for instance, clitoridotomy is relatively benign. In fact, the procedure is the same as male circumcision considering that “[t]he clitoral prepuce is anatomically analogous to penile prepuce, and both serve relatively similar function.”

In response to worries about possible health risks attendant upon FGR, an increasing number of commentators are seeking a middle ground that would

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9 Id.

10 See Obiajulu Nnamuchi, Hands Off My Pudendum: A Critique of the Human Rights Approach to Female Genital Ritual, 15 QUINNIPIAC HEALTH L. J. 243, 244 n.1 (2011) (arguing that Type I FGR, which WHO classifies as “clitoridectomy,” is too broad since the classification incorporates also hoodectomy or clitoridotomy – a procedure that is physiologically and psychologically different).

11 WORLD HEALTH ORGANIZATION, supra note 2, at 25.

12 See id. The use of the term “and/or” in the definition of Type I could be interpreted as implying WHO’s recognition of prepuce removal as a distinct form of FGR, notwithstanding the inappropriateness of “clitoridectomy” as a descriptive nomenclature. Id.

13 Obiajulu Nnamuchi, “Circumcision” or “Mutilation”? Voluntary or Forced Excision? Extricating the Ethical and Legal Issues in Female Genital Ritual, 25 J. L. & HEALTH 85, 92-94 (2012) [hereinafter “Circumcision” or “Mutilation”?]; GRUENBAUM, The Female Circumcision Controversy, supra note 1, at 2 (describing clitoridotomy as least severe type of FGR); Gruenbaum, Sexuality Issues, supra note 1, at 122 (affirming “removal of just the prepuce” as among forms of FGR practiced in Sudan).

14 Nnamuchi, “Circumcision” or “Mutilation”? supra note 13, at 95.
accommodate sociocultural concerns of practitioners while, at the same time, sparing girls and women unnecessary pain and suffering. Alternative rites of passage, such as the Kenyan initiative *Ntanirana Mugambo*, circumcision through words, which retains all aspects of initiation and circumcision except cutting, owe their evolution to this thinking.\textsuperscript{15} Other sensible middle grounds include pricking, piercing, incision (defined as “procedures in which the skin is pierced with a sharp object; blood may be let, but no tissue is removed”), and hoodectomy.\textsuperscript{16} Proponents of a middle ground platform sharply contrast these minimally invasive forms from the more radical procedures, precisely because of potentially grave health consequences said to result from the latter. In her remarkably provocative article published in 1997, legal scholar Amede Obiora found that “available data does not implicate mild forms of [FGR] as dangerous,” following a review of the biomedical literature.\textsuperscript{17} Put differently, less invasive forms of


\textsuperscript{16} See P. STANLEY YODER & MARY MAHY, DHS ANALYTIC STUDIES NO. 5, FEMALE GENITAL CUTTING IN GUINEA: QUALITATIVE AND QUANTITATIVE RESEARCH STRATEGIES 29-31(2001). The study determined 99% of the female population in Guinea undergo circumcision, but 6% undergo superficial cutting such as nicking or pinching, which is the highest percentage of any ethnic group. *Id.* The study also showed the “medicalization of FGC implies that girls are being cut by trained personnel, and only a minor form of FGC is performed (e.g. pinching, nicking, or partial removal of the clitoris).” *Id.*; Carolyne Njue & Ian Askew, *Medicalization of Female Genital Cutting among the Abagusii in Nyanza Province, Kenya*, FRONTIERS IN REPRODUCTIVE HEALTH PROGRAM (2004), http://www.popcouncil.org/pdfs/frontiers/FR_FinalReports/Kenya_FGC_Med.pdf; WORLD HEALTH ORGANIZATION, ELIMINATING FEMALE GENITAL MUTILATION, supra note 2, at 26. Pricking may be too different from other forms of FGC to be labeled an FGC because of the lack of evidence that pricking causes anatomical changes and because pricking is considered a significantly less harmful method for a potential alternative to the more drastic options to protect cultural diversity and sensitivity. *Id.*

\textsuperscript{17} L. Amede Obiora, *Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign against Female Circumcision*, 47 CASE W. RES. L. REV. 275, 287 (1997). Obiora argues that despite concerns about the quality of existing data, there is ample evidence to suggest that health complications are more associated with the severe forms of the procedure, in particular infibulation. *See id.* at 365; *see also* Alison T. Slack, *Female Circumcision: A Critical Appraisal*, 10 HUM. RTS. Q. 437, 470 (1988). Slack faults the “more severe forms of female circumcision” as harboring potential adverse consequences for the life or health of circumcised girls and argues that it is unjust to perform the operation in absence of consent on the part of the girl. *Id.* The implication that follows from this assertion is that different considerations would apply to non-
FGR are free of the seriously deleterious consequences attributed to the radical FGR procedures. This distinction is critical to understanding the rather nuanced positions advanced in this paper.

Accentuating the distinction between mild forms of FGR and more dangerous types is vital because repulsive and demonizing impulses motivating public outcry against FGR largely stem from uncritical acceptance and readiness by the global community, particularly outsiders, to accept activists' ruminations regarding the heinous medical impact of all forms of FGR as proven scientific fact. Anthropologist Bettina Shell-Duncan, who has written extensively on key dimensions of the practice, helpfully puts it this way:

[A] laundry list of adverse health outcomes is repeated in the introduction of nearly all papers in the voluminous literature on female “circumcision.” Yet, one serious problem with these accounts of the medical “facts” is that they largely fail to distinguish differences in the types and frequency of complications associated with different types of genital cutting.18

This, again, is no happenstance. As Shell-Duncan subsequently explains, “graphic sensationalized accounts of select cases of infibulation with severe complications are intended to ignite public outrage and fuel anti-circumcision campaigns.”19 Obviously, disaggregating risks according to different forms of FGR would elicit a different type of attitude from the proselytized population. Public sentiment would become sympathetic and swayed to the types that harbor slight or no health complications. The possibility of such changed attitudes, in the form of increased receptivity to some forms (read less risky) of FGR, is dreadful to those bent on expeditious annihilation of all forms of expressions of the cultural rite, precisely because it goes against the zero-tolerance paradigm. This is the reason, as Shell-Duncan further elucidates, “noteworthy case studies on infibulation are generalized to describe the health risks of all forms of genital cutting.”20

The conclusion of a paper aptly subtitled “Female Genital Cutting and the Politics of Intervention” is striking. In response to her own question, to wit, whether

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19 Id.
20 Id.
parents should be barred from consenting to all forms of FGR, even those "such as nicking [the clitoris] that are milder than male circumcision," Shell-Duncan holds that until such a time as this and other related concerns are addressed, it would be problematic to support the zero-tolerance platform.\textsuperscript{21} But beyond support for the zero-tolerance mandate is a more fundamental human rights concern. To deny parents the right to consent to forms of FGR that are, for all practical purposes, as mild, and only as invasive and extensive as male circumcision is tantamount to gender bias and discrimination, since the only true distinction between the two types of genital procedure is that one pertains to males.\textsuperscript{22}

Gender bias, discrimination, as well as inequality are ignoble ills already marked for extinction by the international community as ably demonstrated by a battery of prohibitive regional and international legal regimes. The trinfecta was the catalyst that spurred the adoption of one of the most "transformatively radical" human rights instruments, the Convention on the Elimination of all Forms of Discrimination against Women ("CEDAW"), which is also one of the most widely ratified human rights treaties (a total of 186 countries).\textsuperscript{23} CEDAW seeks to universalize human rights, specifically those pertaining to women, such as the obligation, assumed by States Parties under Article 5, to eliminate offensive social and cultural practices in their respective jurisdictions.\textsuperscript{24} But then how do we determine what constitutes "offensive social and cultural practices" and, furthermore, who makes the determination? Apparently the determination is not left to the whims and caprices of individual States Parties, otherwise

\begin{itemize}
\item[22] \textit{Id.} Excepting clitoridotomy, the specific forms of FGR defended as within the realm of parental right to consider for their children are milder and less risk laden than male circumcision. \textit{See id. See also Nnamuchi, supra note 13, at 91, 95 (arguing that clitoridotomy itself is functionally equivalent to male circumcision and carries similar risk).}
\item[24] \textit{See CEDAW, supra note 23, at 17.}
\end{itemize}
the goal of universalism, sought to be achieved through the instrumentality of the treaty, would be defeated. This is at the core of debates surrounding the legitimacy of beliefs and attitudes that are geographically specific, in contrast to those that are universally shared. Nevertheless, if the universalization of human rights is a goal worth pursuing, it must mean not only subjecting non-Western cultural traditions to standards that were crafted and ratified in the West, but also deferring to well-intentioned, affection-grounded and relatively benign ideas about child rearing and development that have been cultivated and celebrated for centuries in other places. This is the context underlying a plea made a few years ago “for genuine cross-contamination of cultures to create a new multicultural human rights corpus.”

25 MUTUA, supra note 23, at 8; Abdullahi Ahmed An-Na‘im, Problems of Universal Cultural Legitimacy for Human Rights, in HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES 331, 341 (Abdullahi Ahmed An-Na‘im & Francis M. Deng eds., 1990) (arguing for “cross-cultural search for universal human values” to anchor truly universal human rights regime). See also Adamantia Pollis, A New Universalism, in HUMAN RIGHTS: NEW PERSPECTIVES, NEW REALITIES 9, 13 (Adamantia Pollis & Peter Schwab eds., 2000). Pollis suggests that achieving the sort of “cross-contamination” and “cross-cultural search” projected by Mutua and An-Na‘im requires “a recasting, free of ethnocentrism . . . whereby elements” from Western, as well as other cultures “can be merged and synthesized into a new reconstructed universalism.” Id. Elaborating this point further, Richard D. Schwartz argues that success hinges on whether the reconstructed human rights regime meets the following criteria:

(a) draws on elements from all the great cultural traditions and is compatible with each of them; (b) serves as a way to obtain and maintain self-determination for all nations; and (c) integrates in full measure the political, economic, and civic components stated in the United Nations’ Declaration of Human Rights and in the two international human rights covenants.

Richard D. Schwartz, Human Rights in an Evolving World Culture, in HUMAN RIGHTS IN AFRICA, CROSS-CULTURAL PERSPECTIVES, supra, at 368, 369. An-Na‘im’s “cross-cultural search” project aims to bridge the gap between opposing values, a task that could be accomplished by embracing what he calls the “principle of reciprocity” — meaning, one should not treat others differently from how he would like to be treated. An-Na‘im, supra, at 345. As an illustration of this principle, one might point to cosmetic surgeries performed on Western women to enhance sexual enjoyment/aesthetic appeal of the vagina and argue that since women in countries where the surgery is common would, presumably, not countenance condemnation from people outside that moral horizon, they should re-evaluate their criticism of, and support for criminalization of, FGR or, at least, some specific variations of it. Some might be tempted to dismiss this as an attempt to justify cultural relativism, but that would be wrong. An-Na‘im’s principle is, in fact, not new; it merely reformulates the ancient golden rule, namely, “do unto others as you would like them to do unto you” — a classic rule of universal applicability. There is nothing relativistic in demanding precisely the same kind of behavior or conduct as you would impose upon yourself in identical circumstances. This is apparent from the definition he distills from his reciprocity principle: “human rights are those that a person would claim for herself or himself and must therefore be conceded to all other human beings.” Id. at 366. In this sense, the value of the
contamination, how does one really – that is, legitimately – speak of a truly universal human rights regime?

FGR does not exist in a vacuum. As rigorously illuminated in the next two sections, the practice holds a number of powerful benefits for practitioners, explaining its survival for centuries, even as eradication forces have proven unrelenting in their mobilization of resources for its extirpation. By adopting less invasive forms of FGR, progressive practitioners retain the benefits and yet are spared adverse consequences that could possibly have resulted from the more severe types. This surely is a legitimately defensible position. To be clear, the type of FGR to which parental consent is defended in this discourse is narrowly limited to pricking, piercing, incision and prepuce removal – all of which involve no removal of useful tissue, are comparatively harmless, and attract no adverse life-long health or psychosocial consequences. It is these defined set of FGRs, as opposed to the more radical types, that is projected as ethically and legally permissible for parents to authorize on behalf of their children.

B. Framing the Issue

The central task of this paper is to determine whether human rights law may be invoked to support the right of parents or guardians to submit their children to less invasive forms of FGR. Since children under 18 years old, except in some limited

26 See COOK ET AL., supra note 1, at 267. Troublingly, these perceived benefits are routinely dismissed by anti-circumcision advocates as bereft of foundation in reality. Id. at 267. Of the medical profession, legal scholar Rebecca Cook and colleagues report that it characterizes FGR as adverse to health and dignity of affected girls and women, and remains “unpersuaded by the fact that in some cultures the procedure is considered beneficial.” Id. In other words, as far as physicians with this kind of mindset are concerned, culture-oriented justification – marriageability, social acceptance and personhood, for instance – is an irrelevant consideration. Id. As to how to perceive this dismissive attitude or the supercilious and arrogant posture of individuals and organizations propagating the attitude, Mutua offers some guidance:

Culture is a set of local truths which serve as a guide for life’s many pursuits in a society. The validity of a cultural norm is a local truth, and judgment or evaluation of that truth by a norm from an external culture is extremely problematic, if not altogether an invalid exercise.

MUTUA, supra note 23, at 22 (citing ELVIN HATCH, CULTURE AND MORALITY: THE RELATIVITY OF VALUES IN ANTHROPOLOGY 8 (1983)).

27 See supra, note 17.
28 See supra, note 22.
circumstances, lack legal capacity to consent to therapeutic interventions, including FGR, could their parents, upon careful consideration and honest reflection on associated risks and benefits, consent to have the procedure performed on their children? To most anti-circumcision scholars, pundits, and activists, this question is a non-starter. Their dismissive attitudes rest entirely on the widespread assumption that FGR, of any form, is indefensible as a legitimate cultural practice.

Especially over the

Lest the task of this paper be misunderstood, a brief explanation seems quite in order. There is clearly a distinction between the central contention of this article, that ethico-legal considerations may justify parental authorization of milder forms of FGR, and actually endorsing such authorization. While this paper advances the former, an appropriate moral instruction for parents unsure of the right decision to make in relation to their children is the ancient catechism, “let your conscience be your guide.” While strongly arguing for choice, this author remains neutral, neither encouraging nor dissuading parents from circumcising their daughters.

See FRAN P. HOSKEN, THE HOSKEN REPORT: GENITAL AND SEXUAL MUTILATION OF FEMALES 16 (1993). It is argued, in apparent rejection of the claimed benefits of FGR, that although “violence against women in all kinds of vicious ways goes on all over the world there is one difference: for African men to subject their own small daughters to [FGR] in order to sell them for a good bride-price shows such total lack of human compassion and vicious greed that it is hard to comprehend.” Id. This sort of contrived representation or sense of cultural superiority is precisely what alienates even African feminists committed to obliteration of FGR from active cooperation with their Western counterparts, notwithstanding the mutuality of their interests. See AAWORD, A Statement on Genital Mutilation, in THIRD WORLD-SECOND SEX: WOMEN'S STRUGGLES AND NATIONAL LIBERATION 217-218 (Miranda Davies, ed., 1983). The Association of African Women for Research (“AAWORD”), itself opposed to FGR, puts it this way:

This new crusade of the West has been led out of the moral and cultural prejudices of Judeo-Christian Western society: aggressiveness, the ignorance or even contempt, paternalism and activism are the elements which have infuriated and then shocked many people of good will. In trying to reach their own public, the new crusaders have fallen back on sensationalism, and have become insensitive to the dignity of the very women they want to “save.”

Id. at 217-218.

Moreover, in the vast majority of cases, if not all, FGR remains an entirely women's operation. Mothers initiate the process by contacting the village circumciser (usually a woman) or the circumcision society (membership is limited to women). See Abusharaf, Virtuous Cuts, supra note 1, at 113, 121 (2001). Instructions on womanhood and motherhood given during the seclusion period (to allow the wound to heal) are given by specially trained women and the festivities marking the end of the initiation period are organized by women. See id. at 113, 121. Indeed, as a female Sudanese anthropologist demonstrates through documented interviews of circumcised women, it is “African women, not men,” that “insist on circumcising their daughters.” Id. As a matter of fact, she continues, “[a]s far as this ritual is concerned, women have the upper hand in determining when, how, and where a girl will be excised.” Id. At no point do men take an active
last two decades, opponents have been widely successful in recasting the operation and the initiation ceremonies that accompany it as a vestige of patriarchal hegemony, a relic of antiquated past, aimed at the subjugation and subordination of women.31

But it is indeed possible to clothe the less invasive forms of FGR performed on children with the consent of their parents with the cloak of righteousness and the imprimatur of human rights law. Beyond the suffering and harm that are automatically, but unexaminedly, presumed as inevitable for circumcised girls and women lies a much higher value, to wit, the natural parental instinct for, and pursuit of, ways and means that would result in improved life conditions for their children. This is a responsibility which, when taken seriously, requires parents to develop and implement a system that, as far as possible, attends to the immediate and long-term needs of their children. It is role in the process. Id. Whereas men handle the circumcision of boys, the responsibility for FGR rests squarely with older women in the village. See id. In the minds of these women, it is “[t]hrough [this] ritual performance” that they “ensure the transmission of cultural ethos within their lifetimes.” Id. Furthermore, there is no traditional African society, even those not practicing FGR, where payment of bride-price is conceptualized as having any association with selling anything, not least the bride. Bride-price, which may be paid for in kind or cash, evidences the ability of a prospective groom to cater to the needs of the bride and future family, in return for which the bride’s family entrusts the security and wellbeing of their daughter to him. This is as factual a statement as it is also common knowledge amongst everyone in communities requiring bride-price as a precursor to marriage.

Information on marital processes and initiation ceremonies in Africa is readily available to anyone keen on making a fact-based presentation on FGR, particularly those with years of ethnographic experiences in the region. See HOSKEN, supra at 16. What is rather dumbfounding and, indeed, “hard to comprehend,” to quote Hosken, is the relative ease with which, when it comes to African beliefs and practices that do not comport with Western sensibilities, commentators of different stripes unabashedly prioritize personal biases over serious scholarship. See id. Legal scholar Marilyn Frye has described this “us” versus “them” and tendency to privilege one’s circumstances over others’ as “arrogant perception.” See Isabelle R. Gunning, Arrogant Perception, World- Travelling and Multicultural Feminism: The Case of Female Genital Surgeries, 23 COLUM. HUM. RTS. L. REV. 189, 198–202 (1991); Marilyn Frye, In and Out of Harm’s Way, in THE POLITICS OF REALITY: ESSAYS IN FEMINIST THEORY 52–83 (1983). It is this arrogance, perhaps more than anything else, which fuels the wild tendency to concoct false and unimaginable representations of vital aspects of the culture of people in distant lands and present them as “truths.” See id.

31 CEDAW, supra note 23, Art. 5. CEDAW links offensive cultural practices to gender-related stereotyping or subjugation. See id. A claim often made is that FGR violates human dignity and because, as anti-circumcision literature purports to establish, serious health complications await women who have undergone the procedure, it constitutes an infringement on their right to health. Nnamuchi, “Circumcision” or “Mutilation”? supra note 13, at 107. Therefore, according to this view, to suggest that such a “reprehensible” practice is defensible under international or domestic law is as lunatic as it is outrageous. See id. at 107.
within the ambit of this broad vision, particularly the long-term happiness and fulfillment of their children, that parental consent to FGR must be located. This paper seeks to demonstrate the compatibility of this vision - and hence the parental choice of FGR for their children - with the human rights of affected children and their parents. The domain of human rights is sufficiently broad to accommodate visions which might appear unfamiliar, absurd, or even weird to others but which, nevertheless, serve a legitimate need for those exercising their right to autonomous choice.

There is no doubt that the FGR eradication campaign represents one of the most divisive human rights issues in contemporary times, garnering interest from fields as diverse as sociology, anthropology, ethics, law, and so forth. Very few subjects have attracted more resources and attention from serious academics, popular media, activists, and organizations than the global movement to eradicate FGR. But as the ideological and intellectual divide between proponents and opponents of the procedure nears a crescendo, it is becoming increasingly clear that many of the claims on the adverse consequences of the procedure are based, not on credibly established facts, but on anecdotes, conjectures, and pseudoscience. Muddling the water even further, for the vast majority of negative effects that have been linked to FGR, there is a positive, or neutral, association in published literature.32 Although an overwhelming plurality of scholarly work on the procedure is of the abolitionist bent, there has been a recent upsurge in the volume of research that is, at least implicitly, supportive of the right of those who may wish to avail themselves of the benefits of the cultural right to do so.33 Worthy of mention is a very recent work which forcefully argues that even if each and every adverse consequence claimed to result from FGR actually materializes, that fact alone is grossly insufficient to justify extant domestic and international frameworks banning the procedure, but only in respect to consenting rational adults.34

Regarding children, most anti-circumcision advocates assume that because

34 See generally Nnamuchi, Hands off My Pudendum, supra note 10 (discussing use of international human rights law to ban FGR and adverse effects that laws can have on cultures).
children are incapable of informed consent to therapeutic procedures, and because, in their minds, FGR equals harm, parents cannot provide proxy consent, unlike in other medical contexts. Furthermore, the assumption goes, since harm would inevitably result to such children, it is not in their best interest to be subjected to the procedure. This paper vehemently rejects that position. It shows first that, contrary to popular assumptions, parents can legitimately consent to forms of FGR that are not harmful on behalf of their children, and second, that such consent is defensible as morally and legally congruent with the best interest of the children.

The paper consists of six sections. Following the introduction, Part II responds to a very critical question in FGR discourse: why do they do it? The section elucidates the rationales, assumptions, and justifications sustaining circumcision, the objective being to show that, beneath all the claims and counterclaims, the practice, at least the version defended in this discourse, is, in reality, no different from any other belief system that rests on culture as a source of moral legitimacy. Part III pursues this theme further by considering whether there are ethico-legal grounds that could be relied upon by parents to justify decisions to submit their children to circumcision. Whether parents have such a right depends on whether it could be shown that FGR promotes the best interest of children. By relying almost exclusively on original evidence in the form of firsthand narratives from the lips of women who have actually been circumcised as opposed to secondary evidence by people outside the culture, the section provides fresh insights into what should really inform future policy and legal frameworks regarding FGR. Part IV interrogates the traditional deference to the parental right to raise children according to the dictates of the parents' conscience versus the duty of the State to intervene when parental decisions or actions become blameworthy. The latter would be the case when parents, for instance, make decisions or take actions which expose their children to harm. The question then becomes: would submitting one's child to FGR instantiate such decisions or actions? In other words, is FGR a harmful cultural practice against which the State should protect children? By juxtaposing what is known about circumcision against the unknown, the section argues that existing knowledge does not support the claim that grave health consequences await circumcised girls and women. At any rate, the limited set of FGR posited as appropriate for children does not harbor grave health complications—a reason that there is no basis for State intervention. Part V is a critique of extant FGR legal framework. Its central argument is that the current prohibitory regime is based not on objective evaluation of a socially pressing

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35 Id. at 268. See also Prince v. Massachusetts, 321 U.S. 158 (1994) (holding that parental authority is not absolute to determine children's welfare treatment).
36 Id. at 269-79 (noting women above the age of 18 also need medical attention after FGR).
issue, but on a profound misunderstanding and distortion of the cosmology and tradition of individuals for whom circumcision constitute an integral part of their cultural identity, sociality and personhood. The conclusion, Part VI, urges a rethinking on the criminalization fervor currently gripping the world.

II. Underlying Assumptions, Rationales and Justifications

An apt introduction to this section is a set of questions recently posed by cultural anthropologist Ellen Gruenbaum: "Why do loving parents allow such things to happen? How can they bring themselves to celebrate these events? How can they justify the practice . . ."\(^{37}\)

The world wonders how loving parents can allow their daughters to be held down and cut, usually causing fear, pain, and possible major damage to health and physical functions. It seems incongruous and shocking to imagine a six year-old girl enduring such pain and indignity, particularly at the hands of those she trusts.\(^{38}\)

Concerns such as these are at the root of the confusion surrounding FGR and, to some, justify the call for completely stamping out the cultural rite. Understood simply as a painful procedure that evokes fear and attracts serious health complications, it becomes less problematic to join the abolition bandwagon, especially when young non-consenting girls are on the receiving end. Yet there are countless medical procedures, just like FGR, that are painful and dreadful to some, but are, nevertheless, performed due to their perceived benefits. An instance is male circumcision. As to whether adverse health consequences await those undergoing FGR, there is no consensus among scholars, though it cannot be denied that minor complications such as bacterial infection might occur; but then again, this is equally true of many medical procedures. What we are left with then, is to consider the underlying assumptions, rationales, and justifications for a practice its opponents denounce as dangerous, unnecessary, and non-beneficial, but practitioners tenaciously defend as a reverential cultural rite, an in-eliminable part of their cultural identity.\(^{39}\)

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\(^{37}\) Gruenbaum, The Female Circumcision Controversy, supra note 1, at 1.

\(^{38}\) Ellen Gruenbaum, Socio-Cultural Dynamics of Female Genital Cutting: Research Findings, Gaps, and Directions 7 Culture, Health & Sexuality 429, 429-30 (Sep. - Oct., 2005) [hereinafter Socio-Cultural Dynamics of Female Genital Cutting].

Rationales undergirding FGR differ widely amongst practicing communities. Some justify it as a cultural prescription that connects the present generation to their ancestors; others justify the practice as a religious edict. Regardless of specific justificatory model, FGR practitioners profess a strong belief that the procedure is necessary for chastity and preservation of virginity, as well as aesthetic beauty of the vagina and surrounding area, and improves marital prospects. These reasons, though seemingly quite distinct, are intimately related. Reproductive capability is highly treasured in FGR societies. The more children a wife begets, the stronger her position in her husband’s family and entire community. In some parts of Southeastern Nigeria, tradition requires that upon delivery of a tenth child, the mother receives a cow in recognition of her achievement. Chastity and preservation of virginity until marriage, achieved through FGR, promote reproductive viability in women in so far as exposure to conditions and diseases that could cause infertility is thereby curtailed. Even if FGR does not stifle sexual appetite, as reported in some studies, the fact that virginity preservation and chastity are valued highly in these societies likely conditions women against promiscuous tendencies, shielding them from sexually transmitted diseases, a key factor in reproductive morbidities. Moreover, a woman found not being a virgin brings great dishonor and disrepute to her family and, in some cultures, is an automatic ground for dissolution of marriage. As explained by an informant intimately familiar with the procedure:

[FGR] does ensure virginity because circumcised women do not feel the need to have sex, they don’t run around looking for sex. When a man marries a virgin, she has his respect forever. He will respect her, honor their marriage, but if he married a non-virgin he will divorce her immediately, and if he doesn’t he will despise her.

Since, as made clear in this elucidation, virginity preservation is seen as crucial to family harmony and stability, the onus is on the community to adopt measures that would maximize this vital communal interest. And this is believed to be best attained through circumcision.

In addition to chastity and virginity concerns, another consideration often cited

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40 See Abusharaf, Virtuous Cuts, supra note 1, at 113, 121.
41 See generally, Note, What’s Culture Got To Do With It? Excising the Harmful Tradition of Female Circumcision, 106 HARV. L. REV. 1944, 1952 (1993) [hereinafter What’s Culture Got to Do With It].
42 See Abusharaf, Revisiting Feminist Discourses on Infibulation: Responses from Sudanese Feminists, supra note 1, at 154.
43 Id.
in defense of FGR is that the procedure is required by tradition. The need to comply with ancestral beliefs in the nature of initiation into adulthood is viewed as a sufficient warrant, even if the procedure is painful. Amy Kendo, a member of the powerful Bundu women’s secret society in Sierra Leone where as many as 90 percent of women are circumcised, puts it this way:

I have grown up to the age of fifty years, and this is the first time anyone has come forward to ask me why we do these ceremonies. It doesn’t matter what other people think because we are happy with our customs. We will carry on with our lives.

In a survey of the reasons for FGR in Southwestern Nigeria, 77 percent of the respondents cited conformity with tradition and culture as the reasons they would submit their daughters to circumcision. Among the Kono people of Eastern Sierra Leone, for instance, children are traditionally perceived to be in primitive natural state, undefined, and endowed with both male and female sexual organs. For them, the prepuce—the fold of skin that covers both the penis and clitoris—is symbolic of femininity, part of the female sexual organ. Because male initiation ceremonies involve the removal of the prepuce from the penis, the process is seen as defeminization, leading to masculinization of the circumcised boy. The exposed clitoris, on the other hand, is believed to represent the male sexual organ, and its removal symbolizes the demasculinization and, once removed, feminization of the girl, marking an irreversible transformation to a woman.

In societies that traditionally circumcise girls and women, circumcision is seen as a status symbol. For a woman to gain acceptance as a full member of her ethnic group, with all the privileges such acceptance entails, the individual must be circumcised.

44 See What’s Culture Got To Do With It, supra note 41, at 1944-51.
46 Id.
47 See I.O. Orubuloye, Pat Caldwell & John C. Caldwell, Female “Circumcision” Among the Yoruba of Southwestern Nigeria: The Beginning of Change, in FEMALE “CIRCUMCISION” IN AFRICA, supra note 1, at 81.
48 Ahmadu, Disputing the Myth, supra note 33, at 14.
49 Id.
50 Id.
51 Id. See also Nancy C. Lutkehaus, Gender Metaphors: Female Rituals as Cultured Models in Manam, in GENDER RITUALS: FEMALE INITIATION IN MELANESIA 183, 196 (Nancy C. Lutkehaus & Paul B. Roscoe eds., 1995).
An uncircumcised woman is often the subject of derision and ridicule, especially by her peers. The vast majority of ethnic groups have derogatory terms for uncircumcised women. These names are not taken lightly so much so that erroneous reference to one as uncircumcised, when the person was indeed circumcised, attracts swift and hefty sanction. As an illustration:

In Akwa Ibom [State] and in villages in the Calabar area of Cross River State [Nigeria], uncircumcised women face derision when they quarrel with their more numerous circumcised sisters. A woman will make a particular clicking sound with her tongue during a disagreement, implying that the woman she is arguing with is uncircumcised. If the woman is indeed uncircumcised, she is shamed by the act. But so serious is the insult that if a woman is circumcised then the woman who insulted her would be fined.52

In such societies there is no greater insult to a woman than to refer to her as “uncircumcised.”53 The need to belong, to be accepted as a fully fledged member of one’s ethnic group, is thus a strong motivating factor to submit to FGR.54

Religion provides yet another justification for FGR. In submitting themselves, or their children, to circumcision, women in societies where FGR is common do so believing that they are fulfilling a religiously ordained obligation. Although where FGR ceases to be culturally prescribed and becomes solely a religious obligation is not always clear. In some societies, religion takes front and center in the rationales underlying circumcision. For instance, the Mandinga people of Guinea Bissau explicitly link circumcision to their religious identity. For them, circumcision is a “cleansing rite that defines a woman as a Muslim and enables her to pray in the proper fashion, both of

52 What has Culture Got to Do with It? Excising the Harmful Tradition of Female Circumcision, supra note 41 at 1950 (citing Harriet Lawrence, Excising a Harmful Tradition, GUARDIAN, June 11, 1992, at 9). See also Ylva Hernlund, Cutting Without Ritual and Ritual Without Cutting: Female "Circumcision and the Re-ritualization of Initiation in Gambia, in FEMALE “CIRCUMCISION” IN AFRICA, supra note 1, at 239. It is reported that fear of being labelled as “solema” (meaning not just “uncircumcised” but also rude, ignorant, immature, uncivilized and unclean) is a strong motivating factor for submitting to circumcision in Gambia. Id.; Sandra D. Lane & Robert A. Rubinstein, Judging the Other: Responding to Traditional Female Genital Surgeries, 26 HASTINGS CENTER REP. 31, 35 (1996). It is noted that following an extensive field studies in Egypt, in FGR-practicing communities, “to call a woman uncircumcised, or to call a man the son of an uncircumcised mother, is a terrible insult and noncircumcised adult female genitalia are often considered disgusting.” Id.
53 Ahmadu, Rites and Wrongs, supra note 33, at 301 (describing context in Kono, Sierra Leone).
54 What’s Culture Got To Do With It, supra note 41, at 1950.
which are defining features of Mandinga identity.\textsuperscript{55} In this construct, gender identity becomes fused with religious identity creating a morally mature adult person – a woman in all its quintessence.\textsuperscript{56} The religious foundation of Mandinga FGR is particularly striking for it serves to dispel some of the popular claims and counterclaims regarding the religiously imbedded nature and foundation of the practice.

An oft-repeated charge in anti-FGR discourse is that no verse in the Islamic holy text explicitly endorses circumcision, that most Islamic scholars have spoken out against the practice.\textsuperscript{57} Inability of Islamic religious leaders to cite specific passages in the Quran in substantiation of their claim is readily projected as proof of lack of religious basis for the practice.\textsuperscript{58} As anthropologist Michelle Johnson reports, however, although there is no verse in the Quran explicitly mandating circumcision, the Mandinga people, including Islamic scholars in their midst, believe that it is one of the mysteries of the holy book – that is, the fact that the words are not visible to the naked eyes does not mean that they are not there.\textsuperscript{59} A local Islamic scholar interviewed by Johnson was quite emphatic, “even experts are not always perceptive enough to see or understand all the mysteries of the Quran.”\textsuperscript{60} As to people who might be tempted to be dismissive of this belief, Johnson cautions that most of the ethnographic studies on Africa document many instances of “hidden, deep or ‘secret’ meanings beyond the readily visible or apparent.”\textsuperscript{61} For Mandinga Muslims, the portion of Quran ordering circumcision is among those deemed so sacred as to be invisible to the naked eyes.\textsuperscript{62}

Aesthetic-based concerns constitute an additional rationale for FGR. There is a general notion in practicing communities that in its natural state, the female genitalia is sexually and aesthetically unappealing.\textsuperscript{63} In this sense, genital modification or improvement, achieved through the specialized skills of traditional circumcisers,

\textsuperscript{55} Michelle C. Johnson, \textit{Becoming a Muslim, Becoming a Person: Female “Circumcision,” Religious Identity, and Personhood in Guinea Bissau}, in \textit{FEMALE “CIRCUMCISION” IN AFRICA}, supra note 1, at 219.

\textsuperscript{56} Id.

\textsuperscript{57} See \textit{What’s Culture Got To Do With It}, supra note 41, at 1951-52.

\textsuperscript{58} Id.

\textsuperscript{59} Johnson, supra note 55, at 220-22.

\textsuperscript{60} Id. at 221.

\textsuperscript{61} Id. This might strike some as absurd, but Islamic practitioners are not particularly unique in this regard. Other major religions, including Christianity, exhibit similar traits. A number of core doctrines of the Catholic Church, the most important of all Christian denominations lack explicit Biblical support; yet, for adherents to the faith, this textual omission is irrelevant to the practice. An example is the confessional and priestly intercession for remission of sins.

\textsuperscript{62} Id. at 222.

\textsuperscript{63} Gruenbaum, \textit{Socio-Cultural Dynamics of Female Genital Cutting}, supra note 38, at 435.
becomes a necessity to correct this culturally affirmed anomaly.\textsuperscript{64} Since people in these cultures tend to link a protruding clitoris with a male sexual organ, leaving it intact is not an option.\textsuperscript{65} Although infibulation, the most severe form of FGR, might arouse horrific emotions on the part of people outside the culture, in societies where circumcision is practiced, "the uninfibulated state can seem repulsive to women themselves and/or their sex partners."\textsuperscript{66} There is a report that in Sudan, the circumciser is often reminded by relatives of soon-to-be circumcised girls to "make it smooth and beautiful like the back of a pigeon."\textsuperscript{67} Here, there is a link between the ancient and the new, between old antiquated ideas about feminine beauty and more recent ideals. Like women in FGR-practicing communities, the recent surge in interest in all sorts of female cosmetic and genital modification surgeries among Western women is driven by the desire to improve sexual appearance.\textsuperscript{68} Responding to women's concern about what constitutes vaginal and sexual beauty is a necessary element in the realization of sexual and reproductive rights of women worldwide – in Western, as well as in African and Muslim societies.

There has been a vigorous attempt to whittle down the force of aesthetic concern as a justificatory ground for FGR. In fact, the very idea that circumcision leads to genital beauty has been dismissed as "at best arbitrary, and at worst absurd."\textsuperscript{69} The keloid stump that develops in consequence of excision and the long scar from infibulation, notes this critic, is seen as extremely unattractive by some people.\textsuperscript{70} While apparently in agreement that "beauty is in the eyes of the beholder," she nonetheless proceeds to make an evidently contradictory claim that "the post-operative scarification that results can hardly be perceived universally as beautiful."\textsuperscript{71} But if there is no objectively verifiable criterion for measuring beauty (hence it is "in the eyes of the beholder"), then on what basis could it be argued that the scarification that sometimes results from circumcision would have a universal appeal as attractive or unattractive? To say that something is capable of attaining universal acceptability implies that there are some objectively-based measurements, or considerations, upon which every reasonable

\textsuperscript{64} See id.
\textsuperscript{65} See id.
\textsuperscript{66} Id.
\textsuperscript{67} Abusharaf, \textit{Virtuous Cuts}, supra note 1, at 122.
\textsuperscript{69} What's Culture Got To Do With It, supra note 41, at 1953.
\textsuperscript{70} Id. (\textit{citing Olayinka Kos-Thomas, The Circumcision Of Women: A Strategy For Eradication} 7 (1987)).
\textsuperscript{71} Id.
person is agreed. This is not the case with beauty, femininity or otherwise. As Richard Shweder, University of Chicago anthropologist, rightly points out, "there is no single essential, inherent or universally binding objective ideal for femininity or masculinity." In fact, beauty is not only culturally constructed, but is also subject to individually-determined standards, explaining why, in many instances, even identical twins entertain disparate ideas as to what constitutes beauty. The point is that when FGR-practicing communities insist that circumcised genitalia are more attractive than uncircumcised ones, they aim not to speak for people outside the confines of their moral and cultural horizons. This is the major dividing line between claimants of the legitimacy of FGR and opponents that seek to transplant their own value system, such as conception of beauty, to an entirely different sociocultural context.

Still oblivious to the logical inconsistency in this critique, the author goes on to obfuscate the issues one more time. Having charged that the post-operative appearance of the vagina lacks universal affirmation as attractive (notwithstanding that circumcised women and their societies never claimed universal appeal), she retreats somewhat, suggesting that her stance should not be interpreted to mean that notions of beauty held by Westerners should be the standard for everyone. Yet this is exactly the most reasonable understanding to be gleaned from her position. She concludes that her analysis aims "to challenge the sincerity of those who insist that 'true' conceptions of beauty and femininity necessarily exclude the woman who is not circumcised . . ." This conclusion is problematic for if as stated previously there are no universally valid "truths" in conceptions of beauty or femininity, then there is no bias-free means of assessing the sincerity of a group of individuals about their ideals of beauty.

Regarding ideals of beauty, public health scholar Lori Leonard reports that women in Sara Kaba (Northeastern region, Chad) wore lip plates consisting of large

72 Shweder, supra note 33, at 233.
73 What's Culture Got To Do With It, supra note 41, at 1953.
74 See KITTY CALAVAITA, INVITATION TO LAW & SOCIETY: AN INTRODUCTION TO THE STUDY OF REAL LAW 70–71 (John M. Conley, 2010) (describing tendency to judge others according to Western norms and standards as “white consciousness”); RUTH FRANKENBERG, Whiteness and Americanness: Examining Constructions of Race, Culture, and Nation in White Women’s Life Narratives, in RACE 62 (Steven Gregory & Roger Sanjek, 1996); Carlos D. Londoño Sulkin, Anthropology, Liberalism and Female Genital Cutting, 25 ANTHROPOLOGY TODAY 17, 18 (2009). It is argued that querying the aesthetic foundation of FGR takes “for granted that our (Euroamerican) societies’ mainstream accounts, practices and aesthetic preferences concerning our genders, bodies, and sex are somehow more natural or normal or better than those of people whose views of these matters differ from ours.” Id.
75 What's Culture Got To Do With It, supra note 41, at 1953.
pieces of polished wood or dried gourds called “calabashes” which are inserted into the pierced lips of women prior to marriage.\textsuperscript{76} The larger the insertions, the more stretched the lips became. Although the outcome of this exercise has been described by some writers as “monstrous” and “ugly,” a local woman whose lips were actually pierced according to this tradition describes the plates as beauty enhancer just like body scarring, ear piercing, and so forth.\textsuperscript{77} Who is right? Or, rather, whose perception is relevant to the practice? Obviously the critical voice is that of partakers of the culture, not some commentators whose worldviews are obviously shaped by their own cultural and historical experiences.

One of the most cherished principles of human rights, and, of course, bioethics, is the idea of the individual as an autonomous being. As an autonomous being, each individual is entitled to do as he or she pleases, to pursue any course of action that maximizes his or her happiness and wellbeing, including FGR — and, for whatever reason — providing his or her actions does not deleteriously impact the right of others.\textsuperscript{78} This could be the reason third world scholars, even those embittered by Western obsession with FGR, are not clamoring for punitive legal regime against breast implants, the new fad in Europe and North American, notwithstanding associated risks. There is a report that of the 2.3 million women in the United States who had breast implants, 155,000 suffered serious health complications, including leakage of silicone materials into their bodies and infections.\textsuperscript{79}

The final reason why FGR endures is that the procedure improves marital prospects. In countries where the dominant population practices FGR, a decision not to be circumcised reduces the pool of potential suitors. In the vast majority of these countries, marriageability is typically cited as the primary reason parents circumcise their daughters.\textsuperscript{80} This factor cuts both ways. An uncircumcised woman will not get married, and even if a man has a preference for uncircumcised women, his kinsmen will not allow him to act on this preference.\textsuperscript{81} An informant in Guinea Bissau explains:

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\textsuperscript{76} Lori Leonard, \textit{Adopting Female “Circumcision” in Southern Chad: The Experience of Myabi}, in \textit{FEMALE “CIRCUMCISION” IN AFRICA}, supra note 1, at 182.

\textsuperscript{77} Id.

\textsuperscript{78} \textit{JOHN STUART MILL}, \textit{Of the Limits to the Authority of Society Over the Individual}, in \textit{ON LIBERTY AND OTHER ESSAYS} 49, 51 (John Gray, 1998). Also emphasized is that “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. . . [h]is own good, either physical or moral, is not a sufficient warrant.” \textit{Id.} at 10.

\textsuperscript{79} Rosen, \textit{supra} note 68.

\textsuperscript{80} \textit{What's Culture Got to Do with It}, \textit{supra} note 41, at 1959-60.

\textsuperscript{81} See Johnson, \textit{supra} note 55, at 229.
I have been with [i.e., had sex with] many women who are not circumcised. For me it is not a problem. But my older relatives would never agree to it. I would have to ask the woman if she would be circumcised, and if she refused, then I wouldn't be allowed to marry her.  

Marriageability and other factors sustaining FGR are discussed in greater detail below in the context of whether parental decision to submit their daughters to circumcisions is consistent with the best interest of the children.

III. Parental Consent and Best Interest of Children

A. Consent as a Basis for Therapeutic Intervention

As for girls too young to give consent, we must accord to their parents the same rights we accord to the parents of boys in neonatal male circumcision and not discriminate on the basis of gender, religion, ethnicity or country of origin.

— African Women are Free to Choose (AWA-FC), 2009.

Informed consent is an ethical, as well as legal, precept that defines the boundaries of clinical relationships.  

82 Id.

between health professionals and patients. The doctrine is believed to have originated in the 18th century case of *Slater v. Baker* where the Court declared that "it is reasonable that a patient should be told what is about to be done to him, that he may take courage and put himself in such a situation as to enable him to undergo the operation." The doctrine is remarkable for introducing a new way of thinking of clinical relationships – a radical departure from the old system which relied on strict paternalism. The notion that health care providers know what is in the best interest of patients and are, therefore, at liberty to render services they consider appropriate without soliciting input from patients. With this new trend of deference to the decision-making capacity of patients, patient empowerment became established and over time gained ascendancy over paternalism.

In the United States, this empowerment was concretized in *Schloendorf v. Society of New York Hospital*, where Justice Cardozo, then of the New York Court of Appeals, set forth what is probably the most important human right applicable in clinical contexts:

> Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an

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85 See BEAUCHAMP & CHILDRESS, supra note 83, at 176. Since formalization of medical practice, physicians have always relied on their own judgment of what they perceive to be the patient's need for information and therapeutic intervention, not information obtained from the patient as to his or her preferences. Id.

86 Id. at 178. Paternalism is defined as "the intentional overriding of one person's known preferences or actions by another person, where the person who overrides justifies the action by the goal of benefiting or avoiding harm to the person whose preferences or actions are overridden." Id.
assault, for which he is liable in damages.\textsuperscript{87}

The significance of this decision rests on its explicit infusion of a novel dynamic to the physician-patient relationship. No longer would it be permissible for physicians or other health professionals to substitute their own conception of the good for the clearly expressed preferences of patients.\textsuperscript{88} There is only one exception, and that is in emergency situations, where it is impossible to obtain the consent of the patient.\textsuperscript{89} Other than in this very limited circumstance, the erring physician risks being held liable in tort for battery.\textsuperscript{90} But despite its legal origins, the prohibition against unauthorized medical intervention has, over the years, metamorphosed into an ethical injunction, the implication being that physicians who violate the rule risk legal, as well as ethical, sanctions.\textsuperscript{91} Driving this paradigmatic shift is the principle of autonomy, meaning individual sovereignty, or "self-governance," or the liberty to direct one's life and course of action, including what might be done to one's body or vice versa.\textsuperscript{92}

In order to be truly considered a product of informed consent, an expression of the patient's preferences must satisfy five conditions known as the "elements of informed consent."\textsuperscript{93} First, the patient must be competent, "capable, psychologically or

\textsuperscript{87} 105 N.E. 92, 93 (N.Y. 1914).
\textsuperscript{89} See Karlin v. Foust, 188 F.3d 446, 490 (7th Cir. 1999) (stating that informed consent requirements may be waived in case of medical emergency).
\textsuperscript{92} \textit{See BEAUCHAMP \\& CHILDRESS, supra} note 83, at 57-58.
\textsuperscript{93} \textit{Id} at 79.
legally, of adequate decision-making;"³⁹⁴ second, there must be full disclosure on the part of the physician in which all material information must be disclosed to the patient; third, the patient must have full understanding of the information that was disclosed to him; fourth, the consent must be voluntary; and, finally, the patient must clearly agree or consent to the proposed therapeutic intervention.⁹⁵ Of these elements, the most relevant to the subject of this discourse is, for very obvious reasons, competence. This is due to the fact that children, because they lack decision-making capacity, are incompetent and, therefore, must rely on parents and guardians to make medical decisions on their behalf.⁹⁶ This raises very critical questions: what legal safeguards are available to protect children in these circumstances? How do these safeguards apply when parents decide to submit their children to circumcision?

B. Best Interest of Children and FGR: A Survey of Empirical Evidence

Following a statement in a recently published paper that the African Charter on the Rights and Welfare of the Child ("ACRWC")⁹⁷ stipulates that actions or decisions undertaken by any person or authority in respect to a child shall be valid to the extent that such actions or decisions promote the best interests of the child,⁹⁸ one author immediately arrived at the following conclusion:

The implication, then, is that since [FGR] is harmful to children . . . the practice runs afoul of the "best interest of the child" principle. Therefore, regardless of semantics, [FGR]-practicing nations who are parties to the ACRWC could be subjected to sanctions for failing to meet their obligation under the treaty.⁹⁹

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³⁹⁴ Id.
³⁹⁵ Id. at 78–104.
³⁹⁶ Lynne Marie Kohm, Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence, 10 J. OF L. AND FAMILY STUDIES 337, 349 (2008). "The feebleness of infancy demands a continual protection . . . [a]t a certain age, it has already strength and passions, without experience enough to regulate them. Too sensitive to present impulses, too negligent of the future, such a being must be kept under an authority more immediate than that of the laws." Id. (quoting Jeremy Bentham)
³⁹⁹ Nnamuchi, "Circumcision" or "Mutilation", supra, note 13 at 113.
This conclusion is fraught with serious, albeit latent, analytical deficiencies. Subjected to a more in-depth and nuanced examination, the conclusion will be seen to be unnecessarily broad and in urgent need of some contextualization. Before deconstructing the claim, however, some preliminary insight into the “best interest” principle seems appropriate. The principle has its roots in moral philosophy, the idea that the vulnerability of children foists a moral obligation on adults, particularly parents, to relate with the former in a manner that best serves their interest—physically, emotionally, psychologically, and otherwise. The criterion for determining whether a particular action or decision meets this test is whether the action or decision is consistent with what reasonable people would agree maximizes the child’s welfare.

It is usually unproblematic for individuals charged with decision-making responsibilities on behalf of children to choose wisely. For instance, the parent of a hungry child instinctively knows that the child needs to be fed. Of course, the quality and quantity of the food fed to the child varies in tandem with the socioeconomic circumstances of the family; still, the decision to feed a hungry child is almost always automatic. On the other hand, there are various circumstances where the path to an appropriate decision is not quite straightforward. This would be the case where there are two or more appealing alternatives and consensus is lacking as to which of the alternatives presents the better moral choice. An instance that readily comes to mind is the dilemma clinicians confront in cases involving the child of a Jehovah’s Witness whose treatment regimen necessitates blood transfusion. The Jehovah’s Witness’s faith is the only mainstream Christian denomination whose catechism forbids transfusion of blood and blood products.

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100 See Kohm, supra note 96, at 343-46 (discussing moral foundation of best interests decision making)
102 See generally In re Rena, 705 N.E.2d 1155 (Mass. App. Ct. 1999). In this case, the hospital filed action seeking authorization to administer blood transfusion despite protestations of patient and family based on Jehovah’s Witness faith. Id. at 1156.
103 They base their belief on their interpretation of the following Biblical verses:

Leviticus 17:

10 If any one of the house of Israel or of the strangers who sojourn among them eats any blood, I will set my face against that person who eats blood and will cut him off from among his people.

13-14 Any Israelite or any foreigner residing among you who hunts any animal or bird that may be eaten must drain out the blood and cover it with
The anguish physicians undergo and the tragedy that occasionally results in such cases stridently testifies to the difficult moral choices that often task the abilities of those whose regular or professional lives involve dealing with children. But physicians are not alone. As the wind of the crusade against FGR reaches the far corners of the earth, parents, hitherto undisturbed in fulfilling what they consider revered ancestral edicts, are increasingly being forced to rethink their beliefs. Circumcise their children and risk the wrath of the law in jurisdictions with anti-FGR statutory frameworks, or refuse to circumcise and condemn their daughters to a dim future? Another way of expressing the same concern is to ask whether existing FGR regime is consistent with the best interests of children in countries where the practice is an established cultural rite. In other words, can a legitimate case be made that female circumcision advances the best interest of the child?

In an article published in 2001, Professor Abusharaf posed a thought-provoking question which points directly to the subject at hand: “Is circumcision a vicious act of mutilation and injury, or a virtuous act of purity and rectitude?” This is a complex question which admits no simple response. Because the question touches on the crux of the FGR polemic, highlighting as it does radically opposing perspectives with disparate moral and legal ramifications, there is need to be extremely cautious in unpacking it. Before responding to the question, however, some discussion of the article is necessary. In sharp contrast to the dominant mode of inquiry, the author relied almost exclusively on original evidence, insights from the experiences of women in Douroshab, Sudan—a community where infibulation, the most severe form of FGR, is widespread. Rather than structure her studies within the ethnographic boundaries constructed by activists, which tend to unexaminedly depict FGR as a manifestation of culture-driven patriarchal tyranny and gender oppression, Professor Abusharaf veered a different path. She meticulously documented the narratives of those whose experiences and proximity to the geography of this cultural practice shed critical light on aspects of the practice that are often lost in mainstream literature. This methodological approach is superior to

earth, because the life of every creature is its blood. That is why I have said to the Israelites, “You must not eat the blood of any creature, because the life of every creature is its blood; anyone who eats it must be cut off.”

Genesis 9:

4 But you must not eat meat that has its lifeblood still in it.


Id.

See Sulkin, *supra* note 74, at 19. Sulkin laments that many anthropologists have been too quick to join the FGR condemnation bandwagon apparently oblivious to the discipline’s methodological injunction to pay attention to what the subject being studied “say and do about
others based on the fact that it adds a vital contextual color to this very controversial cultural practice; it provides "an understanding of the ritual as presented in women's own words, which reflect their own truths."107

By unearthing the experiences of women who themselves have been circumcised and the realities of their lives as they strive to balance the necessity of ancient edicts with other aspects of daily life, researchers supply an important missing link in extant scholarship. Too often published literature has been dominated by well-packaged theorizations and speculations that appeal to activists and their cohorts but do not, in any substantive way, reflect the views of the people whose intimate lives are at the forefront of the controversy. Credibility is unduly lavished on a handful of activists, usually educated and urbanized, brazen in their eagerness to flaunt their progressive credentials to the outside world. And they, in turn, always manage to get their views assiduously promoted by the media and, in some cases, "scientific" publications, as representative of women's voices on the issue. In the scramble to stamp out FGR, the view of millions of women throughout the world, those with little or no education, with no discernible agenda other than to be left alone, are muted. The views of the silent majority, those primarily affected individuals and communities, are left to wither on the vine. Despite this uncanny paradox, the need to protect the human rights of those at the risk of FGR, the very people whose views are cavalierly muted, always receives "exalted" position in the armamentarium of eradication activists. They claim to be fighting for the human rights of these very women, that they are giving voice to the voiceless. Yet human rights, to a certain degree, remain personal and private, in the sense that every individual remains the ultimate arbiter of his or her own rights. As argued elsewhere:

At the core of all human rights . . . is the right to choose. This right is innate to humanity. All the freedoms and liberties guaranteed by human rights, whether expressed in an international treaty or within a domestic legal framework, are premised on choices freely expressed by individuals.108

What this means is that human rights amount to nothing unless examined through the lenses of individuals whose interests are primarily at stake, those who would be negatively impacted in the event that incorrect decisions are made. This underscores the need for studies, such as the one under consideration, which privilege the input of

107 Abusharaf, *Virtuous Cuts*, supra note 1, at 122.
groups whose human rights are alleged to be bastardized over that of third parties. From the lips of Saadia, a 62-year old woman interviewed by Abusharaf, comes this narrative:

Our mothers and grandmothers taught us that circumcision is very important for women and girls. I was given pharaonic circumcision when I was eight years... I still remember the operation being painful, but to this day I believe it is necessary... Female circumcision is a good custom because the removal of the external genitalia is necessary for girls... People try to do the sunna, but the real circumcision is pharaonic because a lot of doctors and some women are trying to teach people that their ways are wrong. Circumcision is what makes one a woman because by removing the clitoris, there is no way that her genitals will look like a man’s. The woman with a big clitoris is just like a man. How can a woman carry such a long organ between her legs and pretend that things are normal? That is why we say that pharaonic is good because after it is done the girl’s genital area becomes very beautiful and smooth... For this reason, all my daughters were given pharaonic. None of them had any complications. Of course during the first days after the operation, they were not very comfortable. But when their wounds healed, they were fine. I continue to believe in it and I hope that people don’t abandon it. It is an old Sudanese custom that should not be changed because without it, women’s bodies are not as beautiful. A woman should do everything in her power to keep her body beautiful and she should do the same thing for her daughters, too.109

A close look at this first hand account of the sociocultural significance of circumcision reveals at least three issues worthy of note. FGR is often faulted for the pain and other adverse factors claimed to result from the procedure, yet as Saadia unequivocally testifies, pain is a worthy sacrifice to make in order to attain a higher goal – in her case, feminization and beautification of the genitalia.110 Second, although published literature tend to link FGR with a gamut of health hazards, the claim does not square with the experiences of circumcised women. While some discomfort occurred immediately after the operation, the circumcised area quickly recovered and the women

110 Id.
resumed normal life activities, "when their wounds healed, they were fine." This is true of many surgical procedures. Saadia testified that although all her daughters submitted to the most radical version of FGR – infibulation – none of them suffered any adverse health consequences. The third noteworthy issue in this testimony is that women who insist on circumcision for their daughters are guided primarily by the maternal instinct to protect the interest of their offspring. What woman, with full knowledge that circumcision enhanced her feminity and fulfilment as a woman, would deprive her daughter of the feeling and satisfaction of being “complete?” Motherly love dictates that trivial sacrifices, such as the pain of circumcision, be accepted and endured for the sake of greater future happiness.

Here is another profound statement, this time from Aziza, who underwent pharaonic circumcision but would subject her daughters to less invasive version of the surgery, sunna:

I got married and from the first day, I suffered. After giving birth, like the rest of the women I demanded re-infibulation. I have to tell the truth: circumcision does not allow women to want sex. Now, I only have relations on Thursdays, because my husband’s job in Khartoum is demanding. When he comes home, he just wants to rest. I have no problem with this, because I believe that having sex all the time is bad. It reduces a woman. Once a week, once every two weeks is okay. I am convinced that circumcision is a good practice. Maybe not the pharaonic but just the sunna. I am planning to circumcise my daughter during Eid Ramadan, because the weather is cool then. My family and my in-laws are in favor of pharaonic circumcision because it is considered a beautiful circumcision. I am not going to have pharaonic done to my daughters, so I will just lie to them and say that I did. I think pharaonic is very cruel. Right now, I say pharaonic is good, so that I can prevent it from happening to my daughters. If I do sunna, I think that will be enough for the girls. The most important reason for

111 Id.
112 Id.
113 Id.
114 Abusharaf, Virtuous Cuts, supra note 1, at 130. Circumcision gives women a lot of power in the relationship with their husbands. Id. One woman interviewed by Abusharaf, named Najat, claims that “her circumcision will allow her to take control and be able to refrain from sex for a long time until she brings him to see the problem exactly from her viewpoint.” Id.
me to circumcise my daughter is to keep them clean.\textsuperscript{115}

Here, in addition to emphasizing aesthetic concerns underpinning FGR, the interviewee very strongly displays the emotional bond that connects mother and daughter. Although she appreciates the significance of FGR and supports its continuation, she does not support subjecting her daughters to the most drastic form of circumcision – the pharaonic type – but would settle for sunna, which is less invasive, believing the two serve the same function; that is, curb the sexual appetite of women, a necessary element of purity which is a value treasured in most traditional societies, even those that do not practice FGR.\textsuperscript{116} Aziza’s overriding concern is to prevent sexual promiscuity on the part of her daughters and ensure their cleanliness, both necessary for marriageability in FGR communities.\textsuperscript{117}

From its earliest beginning, the campaign to end FGR cast the practice as an oppressive tradition directed against women. Attempts by scholars of different ideological persuasions to correct this impression have largely fallen on deaf ears. It is against this background that the following perspective becomes critical. Pushing back the frontiers of what she ostensibly saw as distorted perception, Suaad was unmistakable in her support of FGR:

Many people in the Sudan are starting to change their views about the circumcision of girls. They tell us that it is painful and violent. My own view is that there’s no difference between boy’s circumcision and girl’s circumcision. Both are painful, so how come they’re not saying boys’ circumcision is also violent? . . . I don’t support ending this custom because I don’t believe in the new message. I am one hundred percent behind pharaonic circumcision. My reasons are simple: sex with an infibulated woman is more enjoyable than with uncircumcised or sunna circumcised woman. When the vaginal opening is narrow and tight, the woman enjoys the friction, and the man enjoys a long intercourse rather than [hit and run] . . . In the beginning when my daughter was six years old, I decided to give her sunna because I was almost brainwashed by some people. A year later, I changed my mind when it became clear to me that sunna circumcision was very mild, and in appearance she looked as if she were uncircumcised. I brought her to the midwife to perform infibulation. My main motive was that the

\textsuperscript{115 Id. at 125-26.}
\textsuperscript{116 Abusharaf, \textit{Virtuous Cuts}, supra note 1, at 124.}
\textsuperscript{117 Id. at 124-27.}
genital area did not look nice with the sunna. Infibulation is smoother and much nicer looking than having big labia. The other reason is that sex is better with pharaonic. My daughter is married and she did not suffer from anything. As a grandmother now, my infibulation did not eliminate my desire to have sex even at this age. People say that if you cut the clitoris you don’t enjoy sex, but we can say to the same people: do you think if your tongue is removed you will stop feeling hungry? The same with sex. These people need to know that if a woman has a good husband, sex can be good even if she is circumcised, and can be very bad if she is uncircumcised and has a selfish husband. The issue is a good marriage. Now I have sex almost five times a week. It is very enjoyable and I know too about orgasm, that indescribable sense of pleasure that gives one the feeling of touching the sky. It makes one shiver.118

This commentary speaks directly to substantive issues in the FGR polemic. While many cultures would accept both sunna and pharaonic circumcision as equally adequate in terms of purity, cleanliness, and aesthetic beauty, as the two previous commentaries suggest, it is clear that to some, nothing short of infibulation is good enough. Infibulation, or pharaonic circumcision, is preferred over sunna because after the sunna procedure the genitalia looks uncircumcised. For people in this camp, the question is not whether circumcision will continue, but what type should be practiced.

There is also the question of whether FGR inhibits sexual enjoyment and satisfaction. Mainstream literature reports that women that have undergone FGR lose the desire to have sex, do not enjoy sex, and cannot attain orgasm.119 However, as Suaad’s experience shows, women who undergo pharaonic-type circumcision do enjoy sex, as she had sexual intercourse nearly five times per week, and can regularly achieve orgasm.120 Her experience is consistent with a number of recent studies refuting the claim that FGR destroys sexuality in women.121

In FGR discourse, women are usually portrayed as sexually repressed.122 They

118 Id. at 127-28.
119 See Frances A. Althaus, Female Circumcision: Rite of Passage or Violation of Rights?, 23 INT’L FAM. PLAN. PERSP. 130, 135 (1997) (stating that FGR reduces women’s ability to enjoy sex).
120 Abusharaf, Virtuous Cuts, supra note 1, at 127-28.
121 See infra note 195.
122 See generally Statement by African Women Are Free to Choose (AWA-FC), Washington DC, USA, The Patriotic Vanguard (Feb. 20, 2009),
have sex out of a duty to their husbands, not to satisfy their individual sexual needs.\textsuperscript{123} Does this comport with the experiences of circumcised women? The testimonies we have uncovered – of circumcised women themselves – do not bear this out. This is Najat’s view:

I want to say to everyone who does not prefer circumcision that it gives women a lot of power in the household. For example, if she has a fight or if she wants her husband to do something for her, her circumcision will allow her to take control and be able to refrain from sex for a long time until she brings him to see the problem exactly from her view. I don’t think that uncircumcised women can do that; those women, when they fight with men, maybe two days later after a fight, if the man touches them, they become aroused and immediately forget the problems just to have sex. That is why in Sudanese families, women are very, very strong . . . My view about circumcision of women is that I don’t have a problem with the pain experienced. I think the pain goes away, but the relationship between men and women become very equal and strong. Circumcision gives a woman that power.\textsuperscript{124}

For anyone interested in gender equality, Najat’s analysis will be particularly refreshing. In most FGR-practicing societies, economic power usually resides with the male head of household.\textsuperscript{125} In the vast majority of cases, women tend to domestic duties and take care of the family while men work outside the home. As breadwinners, men are expected to attain to the daily needs of their wives. The dependence structure resulting from this arrangement invariably breeds unequal power relationships which,

http://www.thepatrioticvanguard.com/article.php3?id_article=3752 (stating that African women are seen as sexually repressed). “Today, to the extent that the descendants of these women view themselves as sexually liberated (calling attention to their external clitoris as the phallic symbol of theirs and so all women’s liberation and autonomy) they project their fears of past repression onto circumcised African women, who given their deliberate excision of the external clitoris, are conveniently marked as sexually repressed and passive.” \textit{Id.}

\textsuperscript{123} See generally Agnes Kainett Kisai, \textit{FGM: Maasai Women Speak Out}, CULTURAL SURVIVAL Q. (May 7, 2010), http://www.culturalsurvival.org/publications/cultural-survival-quarterly/kenya/fgm-maasai-women-speak-out (finding FGR reduces desire for sex). “Another important belief among the Maasai is that the rite has an ability to reduce the woman’s desire for sex, making her less likely to engage in pre-marital sex or adultery.” \textit{Id.}

\textsuperscript{124} See Abusharaf, \textit{Virtuous Cuts}, supra note 1, at 130.

\textsuperscript{125} See generally Sharmon Lynnette Monagan, \textit{Patriarchy: Perpetuating the Practice of Female Genital Mutilation}, 2 J. ALTERNATIVE PERSP. SOC. SC. 160 (2010) (discussing household roles in FGR societies). A woman is primarily responsible for the household, in which the man is deemed as the head. \textit{Id.} at 163.
when abused, accentuates female vulnerability. Firm control of sexual desire, the type that typically flows from circumcision, democratizes this dynamic by better positioning women to negotiate favorable treatment with their spouses. This is real female empowerment, an affirmation of the feminist credo that collective and individual skills, expertise, and even natural assets, should be deployed toward improving the lot of women. An African anthropologist, herself circumcised, according to the tradition of her Kono ethnic group, sums up this aspect of FGR: “So, contrary to much of the rhetoric of the anti-FGM campaigns, the female sex and female sexuality are not oppressed in, through or by these ritual practices, [instead] female sexuality and reproductive powers are celebrated and reified . . .” explaining why circumcised Kono girls and women were able to speak “in positive, almost reverential terms, about the practice, their bodies and the experience of womanhood.”

Marriageability is the strongest motivation for FGR. Marriage is one of the most sacred and respected institutions in traditional societies. This institution is protected by imbuing girls with the capability to exercise sexual restraint – a necessity for chastity and preservation of virginity, and a prerequisite for marriage in most FGR-practicing societies. For a woman to be married at the same time as her contemporaries is a source of pride and joy for both the woman and her family. The reverse attracts shame and ridicule; hence FGR, seen as a guarantee of future happiness, measured by being, and remaining, married, by inhibiting excessive sexual desire, is conceived as an obligation on the part of the family, particularly mothers. As Faiza, a fifty-five year old mother, elucidates:

I chose pharaonic circumcision for my two daughters. I thought of their future. The woman who is circumcised behaves in a way that forces people around her to respect her. But a woman who is not circumcised cannot enjoy the same status. Men respect women who have self-respect and who do not get involved in sexual relations. We know that when a woman gets married, this background is important.

126 See Ahmadu, Disputing the Myth, supra note 33, at 14 (depicting FGR as a “symbolic representation of matriarchal power”).
127 Id. at 14-15.
128 Althaus, supra note 119, at 131-32 (finding chance at marriageability higher when female circumcised). “Thus, a practice that is justified as making girls marriageable and safeguarding their fertility may actually increase the risk of marital dissolution and subfertility.” Id. at 131.
If a woman protects her virginity, she becomes highly valued and [praiseworthy] by the whole community . . . Pharaonic circumcision ensures the woman’s strong place in the family. She is very trustworthy because she does not allow men to take advantage of her. She is her own person, even for the man she is married to. This is a source of respect and I think it is more important than how painful it is. The wound heals, but the relationship remains strong. By preserving her reputation, a woman will become powerful and respected by members of the community. Look at other countries. Premarital sex is common in places where women are uncircumcised, which not only undermines the reputation of the woman, but taints the entire lineage by her uncontrolled sexuality and lack of control.130

For practitioners, the link between FGR, marital prospect, and family stability is self-evident. Reward from circumcision does not cease upon marriage, but continues throughout the life of the woman, aiding her in being strong and respected in her husband’s family as a result of being in complete control of her sexuality. “Here,” writes Abusharaf, “ritual becomes a mirror for larger conceptions of what constitutes morality, good behavior, and sexuality.”131

So what is the significance of the testimonies of the Douroshab women to the FGR debate? The researcher brought to life the other side of the controversy – the primacy of real women’s interests. Animating the voice of the silent majority is especially critical because whether circumcision is banished from the global list of permissible cultural practices is of little or no consequence to those who now proselytize the international community on the basis of questionable data vis-à-vis women whose past, present, and future well-being are inextricably linked to this practice.132 These women’s perspectives, for some incomprehensible reason, are routinely dismissed as products of “false consciousness,”133 “outdated customs, attitudes and male

130 See Abusharaf, Virtuous Cuts, supra note 1, at 131-32.
131 Id. at 131.
132 See id. at 209 (discussing Douroshab women’s support in FGR). “Of course, the ritual becomes an important affirmation of one generation of women’s authority over another; however, as the narratives below will show, this authority should not be dismissed as an expression of false consciousness in which women perpetuate their own subjugation.” Id.
133 See Nnamuchi, “Circumcision” or “Mutilation?”, supra note 13, at 104. Nnamuchi defines “false consciousness” as “the idea that although on the surface an act appears voluntary, the perceived voluntariness was, in fact, a byproduct of some conditioning, which may be economic, religious or cultural, that leads one to unexaminedly accept something, even if harmful to him or her, as normal; the corollary is that an individual without the same conditioning would likely find the
prejudice"\textsuperscript{134} or "prisoners of ritual."\textsuperscript{135} Yet, the truth is that there is no evidence that their perspectives, as ably represented by the interviewees in the 2001 study, are anything but products of a well-informed analysis regarding the possible risks and benefits of the procedure, an analysis derived from what they themselves experienced (their own operation) and continue to experience (via their daughters, nieces and other relatives).\textsuperscript{136}


\textsuperscript{135} See Hanny Lightfoot-Klein, Prisoners of Ritual: An Odyssey Into Female Genital Circumcision in Africa 40, 75 (Harrington Park Press, Inc., 1989) (referring to women who approve of FGR as "prisoners of ritual," and explaining how they believe that FGR increases their femininity).

\textsuperscript{136} The depiction of women who approve of, or submit to, circumcision as lacking free will or agency, although common in FGR literature, is without foundation. Yet, it has been quite easy to be dismissive of the views of millions of indigenous women who approve of FGR on that basis—a perpetuation of the colonial perception of Africa as a bastion of primitive, ill-informed savages in need of a benevolent "savior." Operating from the premise that "those who practice [FGR] are, generally speaking, kept ignorant of its real dangers—the breakdown of the spirit and the body and the spread of disease . . .," Alice Walker presents a contemptible example of the "we" (enlightened) versus "them" (primitive/ignorant) attitude that obfuscates real and productive dialogue. See Walker & Parmar, supra note 1, at 25. Recounting an interview of a circumcised mother intent on circumcising her four-year-old daughter, Walker writes:

\begin{quote}
You know, I said, that the removal of sexual organs lessens sexual response and destroys or severely diminishes a woman's enjoyment. Well, she replied, my sex life is perfectly satisfactory, thank you very much! (How would you know, though, I thought.) I said a heartfelt Good for you!, slapped her palm, and let it go. At least this group doesn't infibulate.
\end{quote}

\textit{Id.} at 44. How would she know, indeed? The fact that the interviewee is circumcised — and, therefore, had first-hand experience of the advantages and downsides of the procedure — is an irrelevant consideration, in the eyes of one (Walker) whose sole experience is derived from second-hand sources, regurgitation of other people's experiences. See also Lightfoot-Klein, supra note 135, at 1-15. Supporters of FGR are described as "men and women entrapped in an antiquated ritual, dating heaven only knows how far back into history, unable to free themselves from its centuries-old enmeshment, all of them its prisoners." \textit{Id.}

But what about the views of women whose intellectual credentials are beyond reproach, those who are as "enlightened" as much as any Western anti-FGR crusader but, nevertheless, embrace FGR? Although many of these brilliant minds have for one reason or the other chosen to remain silent, a handful of them have lent strong voices to defend their cultural heritage. The most vocal and unapologetic emissary of this new breed, an anthropologist whose scholarship on the cultural and ideological explanation of circumcision sums up the frustration of everyone in FGR communities whose voices have fallen by the way side, was quite explicit:
Indeed, the conclusion of the author of a 1991 study on motives behind

Coming from an ethnic group in which female (and male) initiation and “circumcision” are institutionalized and a central feature of culture and society and having myself undergone this traditional process of becoming a “woman,” I find it increasingly challenging to reconcile my own experiences with prevailing global discourse on female “circumcision.”

Ahmadu, *Rites and Wrongs*, supra note 33, at 283. See also Michelle Goldberg, *Rights Versus Rites: When it comes to the Lives of Women Around the Globe, Do Local Traditions Ever Trump Human Rights?*, AMERICAN PROSPECT, April 17, 2009, at http://prospect.org/article/rights-versus-rites (last visited Mar. 29, 2013). In reference to Ahmadu’s membership of the powerful Bundu female secret society under whose aegis FGR is performed in her native country, explaining that “[s]o in a sense it’s your right. It is your privilege. And if you don’t, then you are being denied your right. For me, it was something I was very excited to belong to . . . it was a question of when, not if.”

*Id.*

For avoidance of doubt, let it be on record that although Ahmadu defends her right with other willing women to partake of circumcision, she does not hold herself out as an FGR evangelist. In none of her writings did she ever advocate circumcision for anyone but her “coalition of the willing.” Instead, her bone of contention is that circumcision and the initiation ritual that accompanies it have largely been misunderstood, that “insider” knowledge which is vital to objective unbiased assessment of the practice has been relegated to the background in crafting global response to the practice. Is she also a victim of self consciousness or suffering from self-victimization? See also Fuambai S. Ahmadu, *Ain’t I A Woman Too?: Challenging Myths of Sexual Dysfunction in Circumcised Women*, in TRANSCULTURAL BODIES: FEMALE GENITAL CUTTING IN GLOBAL CONTEXT 278-310 (Ylva Hernlund & Bettina Shell-Duncan eds., 2007); Fuambai S. Ahmadu, *Hurray for Bondo Women in Kailahun*, THE PATRIOTIC VANGUARD, March 13, 2008, http://www.thepatrioticvanguard.com/article.php3?id_article=2434.

In her discussion of FGR, Karen Engle lays down some background information which is very helpful in understanding the tendency in some circles to ascribe “false consciousness” to girls and women claiming entitlement to circumcision. Engle distinguishes between two distinct feminist blocks. See Karen Engle, *Female Subjects of Public International Law: Human Rights and the Exotic Other Female*, 26 NEW ENG. L. REV. 1509, 1523-26 (1992). The first group, which she terms “liberal (tolerant) feminists,” is primarily interested in enlarging women’s choices, whereas the concern of the second group (radical feminists) is with increasing women’s power. *Id.* at 1524. Enlarging women’s choices implies being agreeable to the possibility that women’s needs are culturally contextualized and may not be homogeneous in all cases. *Id.* It also means being accepting and sensitive to the desire of what Engel describes as the “Exotic Other Female” (woman in FGR-practicing communities) to engage in the practice of her culture. *Id.* On the other hand, radical feminists are heavily invested in blunting gender power differentials (their central mission), a goal they believe is best attained by homogenizing women’s views and desires. *Id.* at 1524-25. The fact that women defenders of FGR fall outside radical feminism’s monolithic or essentialist construct of women explains why their views on circumcision are easily, though wrongly, dismissed as “mere products of false consciousness.” *Id.* at 1525.
circumcision was correct, that "[i]n order to tackle a problem which is deeply integrated in a socio-cultural network," such as FGR, "it is necessary to have better knowledge about individual experiences and attitudes to the practice." Of the 290 respondents in this study, 88 percent had pharaonic circumcision or excision while the rest were circumcised with clitoridectomy (6.5 percent) and sunna (5.5 percent). Although the women studied represent a young (median age was 22 years) and very educated class (literacy rate of 89 percent compared to approximately 50 percent for the general population), the exact demographic portrayed in activist literature as most likely to oppose FGR, all of them were unapologetic in their support of FGR. They all indicated that they would circumcise their daughters. In addition to religion, the women expressed as their motives for supporting the practice: preservation of virginity until marriage, hygiene, and tradition. Note the similarity between the rationales expressed by respondents in this study and the previous one. To discount the weight of these perspectives and attitudes in formulating national and international responses to FGR, well-grounded as they are in these women’s cosmology, is indefensible.

To conclude this section, we return to the question raised by Abusharaf which was mentioned previously but not explicitly addressed – and that is, whether circumcision is, in reality, a vicious act of mutilation or defensible as a virtuous act of purity and rectitude. If FGR is a cruel, mutilatory, and injurious act inflicted on women, “an excuse for male barbarism and domination,” then it would be extremely difficult to defend it as a legitimate cultural practice. To think of FGR in these highly negative and pejorative terms, cautions Shweder:

You must believe that African parents (mothers and fathers) are either (a) monsters (“mutilators” of their children) or (b) fools (who are incredibly ignorant of the health consequences of their own child rearing practices and the best interests of their children); or (c) prisoners of an insufferably dangerous tradition that they themselves would like to escape, if only they could find a way out, or else (d) that African women are weak and passive and live under the patriarchal

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138 *Id.*
139 *Id.*
140 *Id.*
141 *Id.*
142 See Abusharaf, *Virtuous Cuts*, supra note 1, at 104.
143 Ahmadu, *Disputing the Myth*, supra note 33, at 15.
thumb of cruel, loathsome or barbaric African men.\textsuperscript{144}

Do the various statements referenced above support this view of African parents or women? Hardly. Instead, the experiences and reflections of the respondents are profoundly consistent with the natural yearnings and aspirations of parents to develop, as far as possible, the kind of structure that would ensure seamless transition to adulthood for their offspring. This underscores the extraordinary sacrifices, made by uneducated individuals, to provide at least basic education for their children. They realize that education, by improving knowledge and assuring higher social status, significantly improves overall well-being, security, and happiness. The rationale behind FGR is even stronger, and that is, full-fledged membership of the community, a status upon which very crucial privileges and benefits depend.\textsuperscript{145} As for those who would condemn FGR as African primitivism and barbarity,\textsuperscript{146} Sulkin asks, is it so “different from us forcing a child to undergo the inconvenience and pain of putting braces on to straighten their teeth?”\textsuperscript{147} His response: “[i]n both cases, parents and experts feel it is a healthy practice that enhances aesthetics, and is done for the child’s benefit.”\textsuperscript{148} Moreover, as Chief Justice Burger explains, underlying the legal “concept of the family” is the notion “that parents possess what a child lacks in maturity, experience and judgment” and “the natural bonds of affection leads parents to act in the best interests of their children.”\textsuperscript{149} Therefore, one can make a case that reasonable parents, convinced, usually through their own experiences, that a particular action or situation is beneficial, would naturally make arrangement for their children to partake of that action or situation. It is quintessential parental love, an unquenchable and unswayable desire that transcends culture, race, and creed. It is a universally shared value that frowns upon situations or conditions that might harm children, and this is the sole reason this paper posits that the distinction between radical and less invasive types of FGR is key to the question of legitimacy of parental consent to the procedure. Until the science is well-

\textsuperscript{146} See NAHID TOUBIA, WOMEN AND HEALTH IN SUDAN 101 (1988). In her work, Toubia bemoans the Western portrayal of FGR as “irrefutable evidence of the barbarism and vulgarity of underdeveloped countries . . . [and] the primitiveness of Arabs, Muslims and Africans all in one blow.” \textit{Id}.
\textsuperscript{147} See Sulkin, \textit{supra} note 74, at 19.
\textsuperscript{148} \textit{Id}.
established, only the less invasive types would, in our view, be appropriate for children. The benefits clearly outweigh the risks.

IV. Parental Duty to Prevent Harm to Children

A. Where Arental Right Ends and Culpability Begins

The Convention on the Rights of the Child ("CRC") imposes an obligation on State parties to the treaty to adopt appropriate legislative and administrative measures to ensure such protection and care as is necessary for the well-being of children. The exercise of this power is made subject to the rights and duties of parents, legal guardians, or other individuals responsible for the children. Specifically, parents are assigned the primary responsibility for the upbringing and development of their children. Parental power to raise children in accordance with what the parent considers to be in the child's best interest is not only a rule of international law, but is also enshrined in domestic legal frameworks. In the United States, for instance, this responsibility is codified in the Constitution and case law. As the cases below demonstrate, most claims coming before the courts in the United States seeking validation of the parental right to rear children free of unnecessary interference by the state have been filed under the Due Process Clause of the Fourteenth Amendment, buttressed in some cases with an additional constitutional right. The Due Process Clause of the Fourteenth Amendment stipulates: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those

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151 Id.
152 Id. at art. 18(1).
153 Id.
154 U.S. CONST. amend. XIV, § 1.
privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.\textsuperscript{155}

There, a state law prohibiting the teaching in any private or public school of any modern language, except English, to a child who has not successfully attained and passed the eighth grade was held to have violated the liberty guaranteed by the Fourteenth Amendment.\textsuperscript{156} Remarkably the Court emphasized that “it is the natural duty of the parent to give his children education suitable to their station in life, and nearly all the States, including Nebraska, enforce this obligation by compulsory laws.”\textsuperscript{157}

Precisely how far states may go in enforcing this obligation through the coercive force of the law was one of the underlying issues the Supreme Court had to grapple with in a subsequent case decided in 1972. In Wisconsin v. Yoder the Court considered whether a Wisconsin statute which required all parents to send their children to school at least until age 16 contravened the First Amendment by imposing punishment upon parents who, for religious reasons, refused to send their children to school.\textsuperscript{158} Respondents, members of the Old Order Amish religion and the Conservative Amish Mennonite Church, withheld their children from school to protect them from the decadent and immoral influences outside their religious community.\textsuperscript{159} The Court held that while the interest of the state in universal education is highly regarded, the interest is subject to a balancing process when, as in this case, it “impinges on fundamental rights and interests,

\textsuperscript{155} Meyer v. Nebraska, 262 U.S. 390, 399 (1923). \textit{See also} Adkins v. Children's Hospital, 261 U.S. 525 (1923) (finding fixed wages for female employees unconstitutional due to interference of labor contracts); Truax v. Corrigan, 257 U.S. 312 (1921) (finding violation of equal protection of the law); Adams v. Tanner, 244 U. S. 590 (1917) (finding lack of due process in oppressive legislative attempts to interfere with employment); Truax v. Raich, 239 U.S. 33 (1915) (finding due process violation in restricting percentage of aliens allowed to work in certain businesses); Chicago, Burlington & Quincy R.R. Co. v. McGuire, 219 U.S. 549 (1911) (finding no violation of due process involving railroad's liberty interests); Twining v. New Jersey, 211 U.S. 78 (1908) (deciding exemption from self-incrimination not part of due process concept); Lochner v. New York, 198 U.S. 45 (1905) (finding general right to contract a fundamental liberty protected by due process); Allgeyer v. Louisiana, 165 U.S. 578 (1897) (holding that citizens may contract outside the limits and jurisdiction of that state); Yick Wo v. Hopkins, 118 U.S. 356 (1886) (finding discrimination against nationality violation of due process); Butchers' Union Co. v. Crescent City Co., 111 U.S. 746 (1884) (finding no violation of due process in contract dispute); Slaughter-House Cases, 83 U.S. 36 (1872) (finding police power appropriate and no constitutional violation).

\textsuperscript{156} Meyer, 262 U.S. at 399.

\textsuperscript{157} Id. at 400.

\textsuperscript{158} Wisconsin v. Yoder, 406 U.S. 205, 205 (1972).

\textsuperscript{159} Id. (explaining that Amish didn't send children to school after eighth grade, but instead send children to vocational training).
such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children...”

While, for very good reasons, parents enjoy wide latitude in determining and pursuing interests they consider congruent with the well-being and security of their children, they are, nonetheless, not at liberty to make decisions that would detrimentally impact the children. Under normal circumstances, the court would step in to protect the right of parents to raise their children according to the dictates of their parental conscience. The best interest of the children is always the guiding principle. On the other hand, where there is evidence that this right has been or is at the risk of being abused, the court will step in to protect the children. In other words, the right of parents to raise their children is not absolute. It may be abridged where non-intervention by the State will expose the child to unnecessary risk or harm. Prince v. Massachusetts is a seminal case on the exercise of parental rights versus the best interest principle or, in this case particularly, where parental rights end and culpability begins.

Sarah Prince was convicted under Massachusetts’ Child Labor Law which bars children from selling or offering for sale any merchandise, including newspapers, magazines, and periodicals in any street or public place. At the time of her conviction,

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160 Id. at 214. See also Pierce v. Society of Sisters, 268 U.S. 510, 532-34 (1925).

161 See generally Dillon T. Kramer, Legal Rights of Children § 28:1 (2d ed. 2012) (“[P]arents have a constitutionally protected right to raise and care for their children, but that such a right is not free from intervention by the state when the best interests of the child require such intervention... the right is not absolute”).

162 Id.

163 Id.

164 Id. “[I]n proper cases, the state may place restrictions upon parents in their treatment of their children... in extreme cases, the state may either temporarily or permanently deprive parents of control over their children if that is in the best interests of the children.” Id.

165 Id. In Massachusetts, for example, a Juvenile court may intervene where a parent risks a child’s health by refusing medical treatment or demanding a course of inappropriate treatment. 44A Roderick L. Ireland, Juvenile Law § 3.16, at 102-08 (West 2006).

166 See Wisconsin v. Yoder, 406 U.S. at 230. The Court held that Wisconsin could not compel Amish parents to send their children to public school. Id. In rendering this decision, the Court cited the Free Exercise Clause of the First Amendment and the principle of religious freedom. Id. However, the Court also noted, however, that this case was not one involving physical or mental harm to the children, thus implying that the state’s intervention may have been appropriate if such risk of harm existed. Id.

167 See generally Prince v. Massachusetts, 321 U.S. 158 (1944) (ruling parental rights are not absolute and can be restricted if doing so is in interests of child’s welfare).

168 Id. at 159-62.
Prince was the aunt and custodian of Betty M. Simmons, a nine-year-old girl. The conviction stemmed from the fact that Prince had supplied her niece with copies of "Watch Tower" and "Consolation" pamphlets and allowed her to sell them on the streets of downtown Brockton, Massachusetts. Prince appealed her conviction on the ground that the conviction violated her First Amendment right to religious liberty as applied to the States by the Fourteenth Amendment and her parental right to raise her children according to the dictates of her conscience. Moreover, the child's presence on the street with her aunt, distributing or offering to distribute pamphlets, did not expose the child to any harm. Further, even if the child was exposed to some harm, the harm was no greater than that experienced by other children engaged in non-prohibited activities at the same time and place. Therefore, argued Prince, the statute must be struck down as unconstitutional.

In rejecting these arguments, the Court noted that the State's sphere of authority over children's activities is broader than the authority over the actions of adults, especially in matters of employment or public activities. The Court reasoned that "[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies" and the state "may secure this against impeding restraints and dangers within a broad range of selection." While in agreement that the presence of parents may lessen the likelihood that some harm a particular statute seeks to prevent will occur, the Court, nevertheless, declared that such presence could not avert all such harm. The Court held that the authority of the Commonwealth to prevent child labor, and thereby shield children from harm, trumps the constitutional right of the parents:

Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.

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169 Id. at 159.
170 Id. at 162.
171 Id. at 163.
172 Prince, 321 U.S. at 167.
173 Id. at 167.
174 Id.
175 Id. at 170.
176 Id.
177 Prince, 321 U.S. at 169.
178 Id. at 170.
This decision is significant for one critical reason. It drew the line where the relationship between parents and children ceases to be a private matter and becomes a public concern, worthy of State intervention. The relevance of this case, however, depends on whether or not FGR is considered a benign or harmful procedure — whether the likelihood of harm exceeds the expected benefits. The reason the appeal in Prince failed was because the prohibited conduct exposed children to unjustifiable harm. Therefore, for FGR to fall within the kind of practices worthy of prohibition, it must be shown to be harmful to children in some substantial or material respect. This is one of the highly contested dimensions of the cultural practice.

B. FGR and Harm to children: An Evaluation of the Evidence

The following health complications have been linked to FGR: pain, trauma, hemorrhage, difficulty urinating, painful menstruation, painful sexual intercourse (dyspareunia), sexual dysfunction, infections from contaminated instruments, increased risk of HIV transmission from the use of unsterilized instruments on multiple individuals, unintended labia fusion, proliferation of scar tissue at the site (keloid), and infertility. The claim that adverse consequences are inevitable for women who submit to FGR has been the subject of very scathing attacks. For some authors, the problem with this list is that it fails to distinguish the risks according to the type of circumcision when, in fact, each of the different forms of FGR has specific risks. Shell-Duncan and a colleague worry that very serious cases specific to infibulation are generalized to apply to all types of FGR and used to promote abolition campaign.

In 1999, Harvard public health scholar and former WHO consultant Carla Obermeyer undertook what, until this day, remains the most comprehensive and authoritative review of the literature on FGR. After reviewing all the articles (her search yielded 435 articles, including all sources in English and French), Obermeyer

179 Id. at 170-71.
180 Id.
181 Id. at 168.
182 See generally WORLD HEALTH ORGANIZATION, ELIMINATING FEMALE GENITAL MUTILATION, supra note 2, at 33–35; MARTHA NUSSSBAUM, SEX AND SOCIAL JUSTICE 120 (1999).
183 See supra note 17 (acknowledging deficiencies in available data); infra note 193 (noting lack of studies showing female genital surgery as detrimental).
184 See infra note 193.
185 Bettina Shell-Duncan & Ylva Hernlund, Female “Circumcision” in Africa: Dimensions of the Practice and Debates, in FEMALE “CIRCUMCISION” IN AFRICA, supra note 1, at 15.
186 Carla Makhlof Obermeyer, Female Genital Surgeries: The Known, the Unknown, and the Unknowable, 13 MED. ANTHROPOLOGY. Q. 79, 81 (1999).
came to the following conclusion:

On the basis of the vast literature on the harmful effects of genital surgeries, one might have anticipated finding a wealth of studies that document considerable increases in mortality and morbidity. This review could find no incontrovertible evidence on mortality, and the rate of medical complications suggests that they are the exception rather than the rule.  

As to the relevance of this finding, the author continues, "[t]his should be cause to ponder, because it suggests a discrepancy between the forceful rhetoric, which depicts female genital surgeries as causing death and disease, and the large numbers of women who, voluntarily or under pressure, undergo these procedures."  

Another landmark study was undertaken by Linda Morrison and colleagues in 2001. The study, which aimed to investigate the association between FGR and reproductive morbidity in Gambia, found that morbidities such as infertility, anemia, damage to the perineum or anus, vulval tumors, painful sex, prolapse, and so forth have no significant association with FGR. As a result, the authors advise activists that by "basing health information on sound data rather than implying that severe long-term health consequences are common," they "are likely to make their claims more credible to practi[c]ing communities and therefore more effective."  

Although research findings abound debunking virtually all the major claims that have been furnished about the harmful health consequences of FGR, there is hardly any evidence that advocacy groups are retreating from attacking the practice on health grounds. This strikes some scholars as absurd. Focusing specifically on the use of the

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187 Id. at 92.
188 Id. See also Carla Makhlov Obermeyer, The Consequences of Female Circumcision for Health and Sexuality: An Update on the Evidence, 7 CULT. HEALTH & SEX. 443, 458 (2005). Although studies reveal some negative health conditions that are associated with FGR, for many of these conditions, evidence of statistically significant association is lacking. Id.
189 Linda Morison et al., The Long-Term Reproductive Health Consequences of Female Genital Cutting in Rural Gambia: A Community-Based Survey, 6 TROP. MED. & INT’L HEALTH. 643 (2001).
190 Id.
191 Id. at 651.
192 Id.
193 See generally Birgitta Essén et al., Is There an Association Between Female Circumcision and Perinatal Death?, 80 BULL. WORLD HEALTH ORG. 629, 630 (2002) (finding that none of the perinatal deaths in study had any relationship to circumcision); Birgitta Essén et al., No Association between Female Circumcision and Prolonged Labor: A Case Control Study of Immigrant Women Giving Birth in Sweden, 121 EUR. J. OBSTETRICS & GYNECOLOGY & REPROD. BIOLOGY 182, 185 (2005)
term "mutilation" to describe FGR, Ahmadu worries that "[t]he problem with the representation of various forms of female circumcision as 'mutilation' is that the term, among other things, presupposes some irreversible and serious harm," while, indeed, the "[claim] is not supported by current medical research on female circumcision."194

Another area that has attracted heated debate is the claim that FGR interferes with sexual health. But here, again, there is a wealth of scientific studies repudiating the claim.195 Moreover, in her review of available FGR literature, Obermeyer reports:

"Studies that systematically investigate the sexual feelings of women (finding no causal link between FGR and obstructed/prolonged labor); Andrew Browning et al., The Relationship Between Female Genital Cutting and Obstetric Fistulae, 115 OBSTETRICS & GYNECOLOGY 578, 580–82 (2010) (reporting there is no causality between FGR and obstetric fistulae – study limited to types I and II); S. Wuestet al., Effects of Female Genital Mutilation on Birth Outcomes in Switzerland, 116 BRIT. J. OBSTETRICS & GYNAECOLOGY 1204, 1204 (2009) (finding, in comparison to control group, there is no difference in duration of labor for women who were subjected to FGR); Amber Peterman & Kiersten Johnson, Incontinence and Trauma: Sexual Violence, Female Genital Cutting and Proxy Measures of Gynecological Fistula, 68 SOC. SCI. & MED. 971, 971–79 (2009) (finding no association between genital cutting and fistula formation from obstructed labor); S. De Silva, Obstetric Sequelae of Female Circumcision, 32 EUR. J. OBSTETRICS & GYNECOLOGY & REPROD. BIOLOGY 233, 233–40 (1989); Abdulrahim A. Rouzi et al, The Use of Intrapartum Defibulation in Women with Female Genital Mutilation, 108 BRIT. J. OBSTETRICS & GYNAECOLOGY 949, 949–51 (2001) (finding no evidence that infibulated women require more cesarean delivery than non-infibulated women); Elise Klouman, Rachel Manongi & Knut-Inge Klepp, Self-Reported and Observed Female Genital Cutting in Rural Tanzania: Associated Demographic Factors, HIV and Sexually Transmitted Infections, 10 TROPICAL MED. & INT’L HEALTH 105, 105–115 (2005) (finding no evidence of causal link between FGR and infertility, HIV infection, syphilis, and other STIs)."

194 Ahmadu, Disputing the Myth, supra note 33, at 15.

195 See, e.g., Uche Megafu, Female Ritual Circumcision in Africa: An Investigation of the Presumed Benefits among Ibos of Nigeria, 60 EAST AFR. MED. J. 793, 795 (1983) (finding that removal of clitoris does not stifle sexual urge); Lucrezia Catania, et al., Pleasure and Orgasm in Women with Female Genital Mutilation/Cutting (FGM/C), 4 J. SEX MED. 1666, 1670-73 (2007) (finding that, in most cases, circumcision women, including those that were infibulated, achieved orgasm and that circumcision does not detrimentally impact the ability to enjoy sex); F. E. Okonofua et al., The Association Between Female Genital Cutting and Correlates of Sexual and Gynaecological Morbidity in Edo State, Nigeria,109 BRIT. J. OBSTETRICS & GYNAECOLOGY, 1089, 1089 (2002). This study found that no statistically significant difference existed between women who underwent FGR and those that did not in terms of frequency of sexual arousal, sexual intercourse, or frequency of orgasmic experience during sex. Id. The study also warned that “female genital cutting cannot be justified by arguments that suggest that it reduces sexual activity in women . . .” Id. See also Shell-Duncan et al., supra note 1, at 117 (documenting conflicting studies on whether FGR interferes with sexual desire and orgasmic experience); id at 118 (finding that some women—women who actually had sexual experience prior to being circumcised—enjoyed sex better after circumcision).
and men in societies where genital surgeries are found are rare, and the scant information that is available calls into question the assertion that female genital surgeries are fundamentally antithetical to women's sexuality and incompatible with sexual enjoyment.196

At this juncture one might ask: what is the effect of all these claims and counter claims on individuals in FGR-practicing communities? While the previous section documented positive feelings by women who themselves were circumcised and would readily submit their daughters to the procedure, there is a more recent study which reports somewhat contradictory findings. An 18-year-old woman respondent in this study believes FGR “is not a good thing” – a conclusion that is based on her belief that the procedure exposes a woman to death, sterility, diseases, or loss of clitoris.197 Others voice opposition to FGR on the ground that it causes pain and other complications, such as HIV (from using unsterilized equipments), adversely effects sexual pleasure, and could lead to fistulae problems.198

Significantly, the author of the study reports that the respondents often attribute the negative consequences they identified to incompetence or malpractice on the part of traditional circumcisers.199 This is critical because if, as the women claim, the problem is incompetence on the part of service providers, then the solution could be to recruit better skilled practitioners or perform the operation in health facilities.200 So why are the testimonies of these women powerfully at odds with the experiences of the women in the previous section? Aside from concern about the skill of local circumcisers, there is one key distinction in the two sociocultural environments. Although FGR is a criminal offense in both countries, Burkina Faso actually enforces the law,201 unlike Sudan where the previous study was conducted.202 The way the author saw it, “[s]he respondents

196 Obermeyer, Female Genital Surgeries, supra note 186, at 95.
197 Jirovsky, supra note 1, at 88.
198 Id.
199 Id.
200 Id.
201 Id. See also DESERT FLOWER FOUNDATION, Prevalence of FGM and Legal Situation (2010), http://www.desertflowerfoundation.org/wp-content/uploads/Prevalence-of-FGM-and-Legal-Situation.pdf (last visited Mar. 29, 2013) (reporting that more than 60 people have been convicted under country’s 1996 anti-FGR statute).
usually took a standpoint against [FGR], using arguments they had got either from campaigns or their peers.” This could be interpreted to mean that the views expressed by the respondents were not the product of independent thought; instead, their perspectives seemed to have been colored by depictions and claims contained in anti-FGR propaganda. It is immaterial that they base their knowledge, in part, on information obtained from their peers, as the latter were also subject to the overpowering influence of media campaign by anti-FGR activists. As the author further explains, the disapproval she found “shows these [eradication] campaigns work insofar as people have a certain awareness of the negative consequences.” Whether the momentum can be sustained is an empirical question that cannot be addressed here, but it suffices to state that the perceived bent toward abolition may be transient as some of the respondents who are opposed to FGR on the basis of the perception filtered through the lenses of abolition campaigners are strongly accepting of medicalization as a “cure” for their discomfort. The same 18 year-old woman interviewed previously was unequivocal in her support:

With the boys there are no bad consequences. But the girls have consequences due to excision. They have to establish a law for all kids, that boys and girls are equal. That they all get excised in hospital. Then you can avoid that same old women excise girls with rusty knives which brings diseases.

This is a classic medicalization argument which, although pushed by girls and women whose lives are directly affected by FGR, has been rejected outright by WHO and a host of organizations, scholars and activists. This is certainly not the place to

203 Jirovsky, supra note 1, at 88.
204 See Sulkin, supra note 74, at 19 (clarifying that problem is with falsely representing FGR). Often FGR is misrepresented as mutilatory and stifling of orgasm, resulting in some cases, as in the study being discussed, the affected women actually coming to accept the information as gospel truth, sort of self-fulfilling prophecies. Id. This explains why, upon being exposed to media onslaught against FGR, women in diaspora suddenly “come to think of themselves as mutilated and their circumcision rituals as necessarily traumatizing violations, and blame sexual troubles on their modifications” even though they enjoyed normal and sexually fulfilling lives in their native countries. Id.

205 Jirovsky, supra note 1, at 88.
206 Id.
207 Id.
wade into FGR medicalization controversy,\textsuperscript{209} except to add that the acceptance of the medicalization paradigm by people who are seemingly against continuation of FGR suggests a retreat from extirpation calls once the root cause of their disenchantment is excised. That is, the problem is not with FGR \textit{per se}, but its aftermath. If this is correct, it then means that insider voices, as a group, are clearly at variance with the eradication movement sponsored and propagated mostly by outsiders.\textsuperscript{210} For this reason, the inevitable conclusion must be that harmful health consequences claimed to result from FGR cannot be relied upon as a basis to deny parents the right to nurture and raise their children in ways the former believe best prepares the latter to meet numerous challenges they are bound to confront as they mature into adults.

V. Legal Framework Relating to Circumcision and Its Pitfall

In a 1987 essay, critical of international human rights movement for what she considered insufficient attention to the plight and human rights of women, sociologist and legal scholar Riane Eisler evokes the kind of condescending attitude that has been attributed to Western scholars who claim expert knowledge of FGR, but appreciate neither the sociocultural undertone of the "rites of passage" nor, in any substantive way, give consideration to the fact that the procedure does have deep "intrinsic worth for [its participants]."\textsuperscript{211} Eisler asserts:

\begin{quote}
[T]here are those who still argue [that] for the international human rights agencies to press for the enactment and enforcement of laws prohibiting genital mutilation would be improper interference with ethnic traditions, constituting merely one more forms of "Western
\end{quote}


\textsuperscript{209} Obiajulu Nnamuchi, \textit{The Goose and the Gander: A Jurisprudential Defense of Medicalization of Female Genital Ritual} (forthcoming 2013) (addressing the FGR medicalization controversy in greater detail).

\textsuperscript{210} The woeful failure of anti-FGR statutes to force abandonment of the practice can be blamed on, \textit{inter alia}, resistance occasioned by strong feeling on the part of affected communities that outsiders are meddling in their internal affairs, an unjustifiable attack on their culture and themselves. \textit{See What's Culture Got To Do With It}, \textit{supra} note 41, at 1953-54. For example, the law banning infibulation in the Sudan failed principally because the law was "seen as a threat against national solidarity, cultural and social values." \textit{Id}. at 1954.

\textsuperscript{211} \textit{See} Robyn Cerny Smith, \textit{Note, Female Circumcision: Bringing Women's Perspectives Into the International Debate}, 65 \textsc{S. Cal. L. Rev.} 2449, 2479-80 (1992).
cultural imperialism."²¹²

Still ostensibly at a loss as to why anyone, not the least girls and women who had been circumcised, would rationalize FGR on the basis of culture, she continues:

All institutionalized behavior, including cannibalism and slavery, are cultural traditions. And surely no human rights advocate, or for that matter anyone else, would today dare to justify cannibalism or slavery – which were once also hallowed ethnic traditions in certain cultures – on cultural or traditional grounds.²¹³

There are at least two problems with this postulation. Eisler’s dismissive attitude toward people who would urge deference to culturally-centered practices, such as FGR, puts her solidly in the camp of those who cannot accept the idea that lucid women would in fact voluntarily undergo FGR. As everyone seriously interested in the politicization and ideological stratification of circumcision have realized, mainstream scholarship on the subject is overwhelmingly dominated by individuals with this mindset. Viewing them as “radical feminists,” legal scholar Karen Engle claims that because of their preoccupation with increasing women’s power, such feminists tend to be intolerant of diverging views or desires.²¹⁴ Immersed in this frame of mind,²¹⁵ they are quick to impute false consciousness or self-victimization to women making choices that fall outside what they consider the dominant (feminist) construct of woman.²¹⁶ Yet, as most of the testimonies documented in Part III of this discourse amply show, to argue that all women who choose FGR are somehow coerced or ill-informed about the choices they had made demonstrates a depth of ignorance that is simply unfathomable. Even in “primitive” societies, there is some level of individual freedom or autonomy that is constitutive of their cosmology and tradition. This liberty accounts for the high

²¹² Eisler, supra note 39, at 296.
²¹³ Id.
²¹⁴ Engle, supra note 136, at 1524.
²¹⁵ The full ramification of this sort of mind frame is captured in the retreat of a legal scholar from a “know it all” attitude:

Yet my own desires to fit the practice [of FGR] neatly into a feminist version of the category “human rights violation” led me toward an arrogant attitude that ultimately rendered those African feminists already engaged in a struggle within their cultures over the practice as either invisible or as stereotyped victims with a great need for yet another Western (if racially correct) savior.

Gunning, supra note 30, at 198.
²¹⁶ Engle, supra note 136, at 1524.
number of individuals that have excelled and continue to excel in their independently and carefully chosen fields of endeavor in these societies. Bestowment of honors and special privileges, such as chieftaincy titles, upon select high achievers, both men and women, in these communities is testamentary to the absence of communal attempt to blunt individual choices and differences.

The second problem is linked with the first; both derive from lack of proper appreciation and understanding of the sociocultural context of FGR. Practitioners of FGR would be highly offended by the insensitivity implicit in analogizing what they hold as a revered cultural rite to heinous and morally reprehensible acts like slavery and cannibalism. If not for any other reason, the thesis advanced in this paper is centrally premised on individual autonomy, the right of all human beings to determine their individual good— to make choices the individual believes best protect his or her interests and to shield those choices from encroachment by others. Culture and autonomy are merged in this celebration of female sex and sexuality, reinforcing and supporting each other.

Indeed, attempts were made to validate cannibalism and slavery on “cultural or traditional grounds” but no serious human rights advocate has ever justified those atrocious practices on the principle of autonomy. Moreover, there is no recorded history where, in ordinary times, a mother submitted her daughter to cannibalism or slavery on the basis of the mother’s idealized notion of what constituted the best interest of the child. Thus Eisler’s postulation stands in sharp contrast to the claim advanced in this paper, and is a major dividing line between a legitimate, consent-driven, cultural practice, such as FGR, and illegitimate, nonconsensual ones like slavery and cannibalism. It is this crucial distinction that scholars like Eisler, along with national legislative frameworks in most countries, for one reason or another, seemingly overlook.

A classic illustration of this sort of ill-informed domestic anti-FGR regime is the United States Criminalization of Female Genital Mutilation Act, § 116— Female Genital

217 Eisler, supra note 39, at 296.
218 The term “mutually reinforcing” aims to emphasize that although, in the final analysis, FGR remains a culturally prescribed event, the decision to embrace it is, in many cases, autonomously driven. For instance, Ahmadu, who subsequently became an anthropologist, was in the final year of her college education in the United States when she voluntarily decided to be circumcised in her native Sierra Leone. See Ahmadu, Rites and Wrongs, supra note 33, at 289-94. Ahmadu’s personal experiences— having undergone FGR and personally witnessed quite a substantial number of circumcision ceremonies— convinced her that rather than “coercion and subjugation,” most women in her native community who submit to FGR “do so because they want to.” Id. at 301. In other words, for these women, it was a matter of choice and nothing more. See id.
Mutilation, which stipulates:

(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both. (Italics supplied).

(b) A surgical operation is not a violation of this section if the operation is—

(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

(c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.219

A reading of the debate preceding the enactment of this legislation sheds some light on the concerns of legislators. According to Senator Reid of Nevada, speaking in support of the statute:

What troubles me most about this reality is that [FGR] is most often performed on children, young girls under the age of 18, at an age at which a child cannot give consent. A child does not have the ability to consent or understand the significance and the consequence of this ritual, certainly what effect it will have on her life and health and certainly not on her dignity.220

There is no doubt that this concern is representative of the mindset of most of legislators, otherwise the statute could not have been enacted in its current form, if at all. The difficulty with this sort of reasoning, reasoning akin to that of Eisler, as quoted above, is threefold. First, it is based on a total misconstruction of the cosmology of, and relationships in, societies where FGR is the norm. This explains why the law deems as immaterial the belief that the practice is an essential cultural requirement. Second is the assumption, unfounded as it is, that grave health consequences await all circumcised children – an assumption that was strongly rebutted in Part IV of this discourse. And, third, it substitutes its own conception of the good life for that of practicing communities. Because each of these issues has been discussed at length in the preceding sections, we need not repeat them here. But suffice it to conclude this section with an eloquent explanation offered by a Sudanese-born gynecologist, practicing in Boston, Massachusetts, and involved in outreach to immigrant women who have undergone FGR:

I find that people do it because of a deeply ingrained belief that they are protecting their daughters. This is not done to be hurtful, but out of love. The parents do it because they think this is necessary to ensure that their daughters will get married. They love their children. These are the same parents who in time of war or famine, will give up their food so that the children will be fed.

Although an ardent opponent of FGR, Nawal Nour speaks from in-depth knowledge gleaned from the patient-physician bonds she has developed and nurtured over the years with people for whom circumcision is an in-eliminable part of their cultural identity. Her view, which is a reflection of this experience, seems to be more in tune with reality than the notions of legislators on Capitol Hill, comprised mostly of middle-aged White males. This brings us full circle to a very interesting question, namely, how do we reconcile the claim that FGR is injurious or harmful to health with

221 See Ahmadu, Rites and Wrongs, supra note 33, at 284. Disputable health effects of [FGR] are rejected as a reason for the aversion of some scholars to the practice, instead blaming the "deeply imbedded Western cultural assumptions regarding women's bodies and their sexuality." Id.


224 Id.

224 See Shweder, supra note 33, at 227-28. It is lamentable that the enactment of this statute was not preceded by any public hearings or expert testimony, including that of the African female immigrants, whose conduct the law seeks to regulate. Id.
the position advanced by practitioners that it is part and parcel of their right to practice their culture?

The CRC, the most widely ratified human rights treaty, instantiates this paradox. Article 30 stipulates that a child “shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture . . . ” That is, in countries where FGR is a cultural norm, children in that country shall have the right to be circumcised. However, consider the curious provision found in Article 24(3) which requires State parties to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.” So, what to do, since the major platform under which opposition forces coalesce is the idea that FGR prejudicially affects children’s health?

The difficulty in this case, unlike other properly maligned cultural practices, such as slavery and cannibalism, to use Eisler’s illustration, is that when parents submit their daughters to circumcision, they are motivated by noble and unassailable intentions. Parents act out of love, genuinely intending to protect their daughters from being considered social misfits, with all the negative consequences that will entail; they never intend to harm, injure, or violate the physical or psychosocial health or integrity of their daughters. But it does not follow that good intention, as potent a

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226 CRC, supra note 150, at Art. 30. A similar provision encouraging children to participate in their culture’s activities is found in Article 12 (2) of the ACRWC.

227 CRC, supra note 150, at Art. 24(3). Compare with Article 1(3) of the ACRWC. See ACRWC, supra note 97, at Art. 1(3) (“[A]ny custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged”).

228 See Dreifus, supra note 222 (explaining parents choose to circumcise their daughters because of a belief it is truly in their daughter’s best interest).

229 Kay Boulware-Miller, Female Circumcision: Challenges to the Practice as a Human Rights Violation, 8 HARV. WOMEN’S L.J. 155, 166 (1985).

[To] challenge female circumcision as a violation of the rights of the child suggests that women who permit the operation are incompetent and abusive mothers who, in some ways, do not love their children . . . [w]hile women may
defense as it sometimes is, trumps all other considerations. A suggestion has been made that the point at which a practice ceases to be justifiable by culture and becomes a human rights violation is when the practice results in harm or death of innocent people.\(^{230}\) It is at this point that people in other cultures would be justified in trying to change or abolish the harmful cultural practice.\(^{231}\) Regarding FGR, therefore, the inevitable submission must be that with respect to the less severe types, since little or no harm results from the procedure, they constitute legitimate cultural practices that parents are at liberty to choose for their daughters.

VI. Conclusion

This discourse risks being misconstrued as a surreptitious endeavor to justify all forms of FGR. Such a conclusion, however, would be monumentally incorrect. My aim has been to strike an appropriate balance between securing the interests of children, both in terms of ensuring their well-being within their culture and protecting them from harm.

This paper's endorsement of pricking, hoodectomy, piercing, and incision – termed "less invasive forms" – rests on the fact that they are largely ceremonial and they entail minimal or zero adverse health consequences while serving the same function as the more severe versions.\(^ {232}\) Moreover, any risk associated with the procedure is clearly not wish to see their daughters harmed, they may also feel strongly that they should be able to rear their children according to their own cultural norms and traditions.”

\(^ {230}\) Slack, supra note 17, at 467-69.

\(^ {231}\) Id. at 468.

\(^ {232}\) The endorsement of these specific forms of FGR seem to be a very reasonable compromise between two polar opposite views: the abolition-now group and practitioners of circumcision. See Muteshi & Sass, Female Genital Mutilation in Africa: An Analysis of Current Abandonment Approaches, PROGRAM FOR APPROPRIATE TECHNOLOGY IN HEALTH 7-8 (December 2005), available at http://www.path.org/publications/files/CP_fgm_combnd_rpt.pdf. These less invasive forms of FGR exist as an interim measure until the practice dies, as we believe it eventually will. See id. In fact, the “funeral procession” for FGR has already begun. I.O. Orubuloye, Pat Caldwell & John C. Caldwell, Female “Circumcision” Among the Yoruba of Southwestern Nigeria: The Beginning of Change, in FEMALE “CIRCUMCISION” IN AFRICA, supra note 1, at 50 (finding an increase in the proportion of uncircumcised females between older generations and later ones). In rapidly developing countries throughout Africa and the Arab world, FGR is on the decline. Id. Similarly, although Egypt leads other nations in terms of prevalence, the number of women submitting to FGR is falling – from 97 percent in 1998 to 95.8 percent in 2005. See WHO, FEMALE GENITAL MUTILATION: AN OVERVIEW, Geneva (1998), available at
outweighed by the benefit.\textsuperscript{233} What remains then is the difficult question of how to pilot a shift to the particular type of circumcision espoused by this discourse.\textsuperscript{234} The insistence of cultural aficionados, in some parts of Sudan, for instance, on infibulation as the only true FGR and, in some cases, re-circumcising girls previously subjected to sunna, in a bid to be compliant with strict requirement of culture, signals a tough battle ahead.\textsuperscript{235}

https://apps.who.int/dsa/cat98/fgmbook.htm. In Kenya, the number of girls (aged 15–19) being circumcised is declining (26 percent) compared to older women (35 years old and above), at 50 percent. See Njue & Askew, supra note 16. Why? It is trite that tradition and culture, indeed communal bond, thrive best in an environment where people live in close proximity to each other, such as in clans and villages. See Rhoda E. Howard, Group Versus Individual Identity in the African Debate on Human Rights, in HUMAN RIGHTS IN AFRICA: CROSS CULTURAL PERSPECTIVES, supra note 25, at 159-65. The cohesiveness and conformity, along with the sense of belonging and oneness pervading these communal settings are crucial factors that have combined to sustain the practice through the ages. See id. Over the years, however, the glue that hitherto held the people together and the confidence reposed in the invincibility of communal life have been seriously eroded. See id. Identifiable culprits are urbanization and globalization. See id. In place of culturally homogeneous kindred and clansmen arose neighbors and associates from distant lands whose worldviews are, in many cases, quite different. The socialization resulting from these new relationships is bound to produce powerful cross-fertilization of beliefs and practices, with many falling by the wayside. The more intense and sustained these are, the more problematic it will be for traditionalists to cling to controversial practices such as FGR.

\textsuperscript{233} Muteshi, supra note 232, at 86.

\textsuperscript{234} This is just one dimension of the problem. Previous attempts at forging a middle ground that would appeal to both practitioners and opponents were utter failures. In the Netherlands, a panel constituted by the Ministry of Welfare, Health and Culture recommended incisions or ritual perforation of the clitoral hood, which it considered a better alternative to infibulation, but the recommendation was jettisoned as a result of pressure from powerful forces in the eradication camp. See Henrietta Boss, Problem of Female Circumcision in Holland, JERUSALEM POST, at Features, May 10, 1992; Women: Dutch Government Ends Debate on Circumcision Proposal, INT’L PRESS SERV., Nov, 11, 1992. See also Carol M. Ostrom, Hospital Debates Issue of Circumcising Muslim Girls, TIMES-PICAYUNE, Sept. 29, 1996, at A14; Hospital Won’t Circumcise Girls, SEATTLE TIMES, Dec. 5, 1996, http://community.seattletimes.nwsource.com/archive/?date=19961205&slug=2363272; Obiora, supra note 17, at 284–85. See Doriane L. Coleman, The Seattle Compromise: Multicultural Sensitivity and Americanization, 47 DUKE L.J. 717 (1998). An agreement that would have resulted in performance of sunna circumcision by physicians at Harborview Medical Center (Seattle, Washington) was shelved at the insistence of eradication activists. Id. at 754-60.

But if recent experience is of any importance, it is that the battle is not insuperable. To illustrate, although Abagusii people of Western Kenya traditionally practiced clitoridectomy, they are increasingly shifting to pricking or nicking of the tip of the clitoris, a procedure nurses in the area dub “psychological circumcision.” Would other FGR be willing to toe this path? Serious research is clearly needed in this area, especially on how to convince additional communities to move in a similar direction. Criminalization, as a deterrent, is simply not the answer; it is a wholly inappropriate response, particularly in circumstances, as in this case, where compliance with the dictates of criminal law will assuredly imperil the future of affected children.

There is no denying that when, in 1925, the Supreme Court decided *Pierce v. Society of Sisters*, not one of the nine Justices was thinking of FGR. At the time, neither the United States nor the international community considered FGR a serious threat to human rights. Yet, the canonical statement of the Court in that case speaks powerfully to the criminalization fervor currently gripping the world:

> The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children . . . The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Although the United States Supreme Court did not specify what exactly it meant by “additional obligations,” it is reasonable to surmise that the Court was referring to the kind of obligation that attaches only to fully self-conscious, mature, rational, and free persons – that is, moral obligations. It is only when one becomes a person, by attaining an appropriate level of moral maturity, that the individual can assume such obligations. The process by which an individual becomes a person or attains personhood, and assumes responsibility for moral obligations, in African morality is “an ontological transformation, which is set in motion upon birth, through transition

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237 *See* *Pierce v. Society of Sisters*, 268 U.S. 510, 510 (1925)
238 *Id.* at 535.
239 The term “moral obligations,” as used here, implies a constellation of all forms of obligations that depend on moral maturity for their performance – essentially all obligations required of right thinking adult human beings. Morality, in this context, does not have any religious connotation; in fact, it is irreligious and grounds obligations in secular as well as non-secular worlds.
240 Differently put, not everyone is a person. Encapsulated within this taxonomy are less fully developed individuals – fetuses, children, and those that are intellectually disabled.
to moral beingness and continuing throughout one's life.\textsuperscript{241}

As far as Africans are concerned, the only way to attain personhood is through incorporation into the community.\textsuperscript{242} This is the essence of African cosmology. Incorporation is a “social and ritual transformation” which occurs following the immersion and instruction of the individual into the social rules of the community.\textsuperscript{243} All the investments parents deploy toward the education, health, religious upbringing, and so forth of their children are geared toward this goal of community incorporation. The same holds true for FGR. As Ahmadu trenchantly remarks, in reference to Kono people, “a woman is a woman by virtue of the fact that she has been initiated and nothing else.”\textsuperscript{244} In other words, initiation is not only a prerequisite for marriage, in the vast majority of practicing societies, it is also a “necessary condition of becoming a woman” and entitlement to all the benefits that status entails.\textsuperscript{245} These benefits include recognition as adults and authority figures in individual households and the broader community, the right to marry and establish a family, including socially sanctioned


\textsuperscript{243} Id. at 179 –180; see also D.A. Masolo, Western and African Communitarianism: A Comparison, in A Companion to African Philosophy 491–92 (Kwasi Wiredu ed., 2004). The transformation process is a formalized period of moral instruction given to young ones during initiation rituals, circumcision, and other cultural ceremonies, each of them considered an essential step to adulthood. Id.; see also Lynn Thomas, ‘Ngaiana (I Will Circumcise Myself)’: Lessons from Colonial Campaigns to Ban Excision in Meru, Kenya, in Female “Circumcision” in Africa, supra note 1, at 137–38 (reporting that circumcision in Meru (Kenya) spans several months during which time initiates are instructed on how to conduct themselves like women); Abusharaf, Revisiting Feminist Discourses on Infibulation: Responses from Sudanese Feminists, supra note 1, at 153 (noting, as an importance of circumcision, the belief that it ensures “the transmission as well as the maintenance of cultural ethos” in the community); Johnson, supra note 55, at 215–18 (distinguishing between circumcision (the physical act of genital cutting) and initiation, the latter she describes as a seclusionary period during which moral education, particularly “rules of etiquette governing inter-gender and intergenerational communication and behaviour” is transmitted to the initiates); id. at 222 (describing the learning process among initiates in Mandinga as coming to “know the eye” – a reference to the moral instruction whereby the initiates are taught the proper and culturally appropriate way to act in relation to their age and gender).

\textsuperscript{244} Ahmadu, Rites and Wrongs, supra note 33, at 307.

\textsuperscript{245} Janice Boddy, Womb as Oasis: The Symbolic Context of Pharaonic Circumcision in Rural Northern Sudan, 9 AM. ETHNOLOGIST 682, 683 (1982); see also Shell-Duncan, et al., supra note 1, at 121. Among the Rendille of Northern Kenya, a female, regardless of age, can never be regarded as a woman or legitimately bear children in absence of circumcision. Id.
procreation, and so forth. The centrality of circumcision to personhood is captured quite eloquently in this rather stark defense of the practice offered to an uncircumcised Western researcher a few years ago: "[i]n your place this might be fine, but for Rendille women, circumcision is what separates us from animals." More specifically, in Okiek, Kenya, "genital modification and the bravery and self-control displayed during the operation" have been identified "as constitutive experiences of . . . personhood.

As to what precisely constitutes the essential elements of personhood (for women) and how the community aids in this project, Abusharaf explains that "[v]irginity and its preservation through [FGR] becomes not only the liability and obligation of the community toward its women but emerges as an assurance of the woman's marriageability and future wellbeing." In amplifying this salient point, Sudanese legal scholar Asma Abdel Halim adds, "[t]he community believes that in delivering a virgin bride to the husband, the community has preserved its honor." This is the rich cultural context from which FGR derives its true meaning but which, due to what might be termed "imperial rationalization," has been deliberately ignored by crusaders against the practice.

246 Ahmadu, Rites and Wrongs, supra note 33, at 301. Further benefits of FGR include the right to: (a) be involved in meetings pertaining to women's issues, (b) speak as a woman or as a representative of other women, and (c) receive information concerning the women's secret society responsible for initiation and circumcision (Bundu). Id.

247 Shell-Duncan, et al., supra note 1, at 115.


249 Abusharaf, Revisiting Feminist Discourses on Infibulation: Responses from Sudanese Feminists, supra note 1, at 154. See also Engle, supra note 136, at 1510. The importance of FGR lies not only in the fact that it "serves largely as a prerequisite, if not a direct rite of passage, to a girl's adulthood, or womanhood," but also that failure to participate in the ritual is likely to lead to denial of the possibility of marriage and foreclosure of important privileges in the community. Id.


251 What I have in mind in employing the term "imperial rationalization" approximates a description, applied to the relationship between European colonialists and native Africans, of the enormously false rationalizations that were advanced for the disdainful and contemptuous denigration of African culture and tradition in the heydays of colonialism:

European and North American attitudes that viewed many even less harmful indigenous customs in Africa as "barbaric" or "uncivilized" were not based on universally accepted values but are now understood to have been ethnocentric and often calculated attempts to justify actions and attitudes that were racist, ethnocentric and exploitative.

See GRUENBAUM, THE FEMALE CIRCUMCISION CONTROVERSY, supra note 1, at 16. Has
A reasonable conclusion to draw from the preceding analysis seems to be that when parents submit their children to circumcision, they do so to pave the way for eventual recognition of the children as persons, equals with others in key areas of communal life, with all the associated benefits. By being culturally compliant, these parents are shielding their daughters from being “denigrated, ostracized and rejected as potential spouses” or considered any less than their circumcised contemporaries.

Consider this illustration: Although the right to marry is a basic human right, protected by the full force of the law and enforced by the State, this right does not really mean much unless, at the appropriate time, no community-sanctioned barriers operate to prevent intending couples from actually getting married. It is this barrier that FGR seeks to obliterate in practicing communities. All the underlying assumptions, rationales, and justifications for FGR, whether based on chastity, preservation of virginity, or aesthetic concerns, are consistent with the aspiration to marry and have children. The force of the law is to clothe this vital aspiration to marry with de jure recognition as a human right. But that is not enough. In these communities, circumcision ensures a de facto operationalization of the right via necessary parental actions.

anything changed since the demise of colonialism in Africa? At least in terms of how unfamiliar African customs and traditions are perceived or responded to by Western powers, there has been no change, except perhaps that instead of incarceration or death penalty as punishment, more ingenious ways have been devised to compel desired action. A stark illustration of this changed relationship is a revelation that leading development institutions such as the World Bank, International Monetary Fund and USAID, upon which cash-strapped third world nations rely for survival, are conditioning loan receipts upon behavior tailored to satisfy major contributors, most of them Western powers. See Melissa Parker, Rethinking Female Circumcision, 65 AFRICA: J. INT’L AFR. INST. 506 (1995) (reporting that recent IMF loan to Burkina Faso was tied to agreement on part of government to intensify efforts to end FGR). 252 See Sulkin, supra note 74, at 18–19. See also Ahmadu, Rites and Wrongs, supra note 33, at 301. It is cited as the reason Kono women in diaspora want to circumcise their daughters, the need for their daughters not only to “enjoy the same legal rights as other women,” but more importantly, “to ‘fit’ into Kono society and be respected among their peers and the entire community of women...” Id. 253 Loving v. Virginia, 388 U.S. 1, 12 (1967) (“[F]reedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival”); Skinner v. Oklahoma, 316 U.S. 535, 541 (1942); Zablocki v. Redhail, 434 U.S. 374 (1978) (affirming that to marry is an important fundamental right of an individual); Griswold v. Connecticut, 381 U.S. 479, 486 (1965) (holding that right to marry is incorporated in privacy guarantees of Constitution). For an applicable international framework, see the United Nation’s International Covenant on Civil and Political Rights. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316, at 52 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, Art. 23 (“[T]he right of men and women of marriageable age to marry and to found a family shall be recognized”).
In discussing practical difficulties involved in abolishing FGR, political scientist Gerry Mackie opines that FGR “would continue because any family abandoning it on its own would ruin the futures of its daughters.”\textsuperscript{254} This raises the question as to which mother would want to ruin the future of her daughters, particularly when it could be avoided and the means to do so are available. The only productive way to effect a change, to refuse to circumcise one’s daughter and yet not ruin her future, is to encourage enough families to abandon FGR at once.\textsuperscript{255} Until then, a decision to circumcise one’s daughter, as a means to ensuring her future security and happiness (the driving force behind FGR) is powerfully consistent with the daughter’s best interest. This is precisely the reason for the woeful failure of anti-FGR mobilizations and legal frameworks to turn people against the practice.\textsuperscript{256} In fact, rather than abandonment, there is evidence that girls from societies which traditionally did not practice FGR are beginning to imitate their neighbors.\textsuperscript{257} Why? Could it be that these people knew

\textsuperscript{254} Gerry Mackie, \textit{Female Genital Cutting: The Beginning of the End in FEMALE “CIRCUMCISION” IN AFRICA}, supra note 1, at 253-55. For an instance of what is meant by ruining a daughter’s future, in the context of FGR, see Njue & Askew, supra, note 16, at 8 (reporting an explanation by a clan elder, “[I]f an Abagusii girl [Kenya] is not circumcised, she can never be married and she is never let to stay with others who have been circumcised. She’s isolated . . .”).

\textsuperscript{255} Mackie, supra note 254, at 255.

\textsuperscript{256} Thomas, supra note 243, at 129-50. Following promulgation of a law in 1956 banning clitoridectomy in Meru (Kenya), thousands of adolescent girls defied the ban by circumcising themselves even though they knew that they would be caught and punished. \textit{Id. See also} Abusharaf, \textit{Revisiting Feminist Discourses on Infibulation: Responses from Sudanese Feminists}, supra note 1, at 164 (discussing the Sudanese people’s scepticism and reluctance toward the ban on infibulation and clitoridectomy because of colonial involvement in its initiation); Johnson, supra note 55, at 231 (reporting that towards the end of her ethnographic research in Guinea Bissau, women in the town of Mansoa responded to a threat to ban FGR by organizing what she describes as “the largest girls’ initiation ceremony in the history of the Oio region” of the country). All these evoke a remarkable observation made nearly three decades ago, “[f]or any law to grow and be productive, it must be rooted in the culture and tradition as well as the realities of the people for whom it is made.” G.O. Olusanya, \textit{African Charter on Human and Peoples’ Rights, History and Development}, Paper Presented at the Seminar Marking the Centenary of Legal Profession in Nigeria, Lagos, Feb. 21, 1986, \textit{cited} in Olusola Ojo, \textit{Understanding Human Rights in Africa}, Paper Presented at the Preparatory Conference on Human Rights: Individual Rights or Collective Rights, University of Limburg, Maastricht, Netherlands, Sept. 18–20, 1987, 10. \textit{See also} Schwartz, supra note 25, at 369 (explaining the futility in attempting to regulate human conduct through the coercive force of law that is not rooted in the cultural norms of the people). Because such laws are not home-grown (but rather sponsored by, and packaged under the auspices of, foreign organizations or governments) and, perhaps most damaging, sharply conflict with the ideals and expectations of the people whose conduct is targeted, most anti-FGR legislative frameworks suffer irreparable and insurmountable congenital defects. \textit{Id.}

\textsuperscript{257} Leonard, supra note 76, at 184 (reporting that even though girls and women in Myabé
something different? Is it the result of an awareness that the usually grim depictions of FGR in mainstream media and activist literature are at variance with reality? Judging by the narratives and perspectives discussed previously, the response to these questions must be unquestionably affirmative. Otherwise, how does one explain the "cries of joy and [applause]" at the circumcision and coming-out ceremonies in these communities? It has been suggested that in contradistinction to somber depictions of FGR, the "rite of passage and initiation into womanhood" is a joyous event, accompanied by ceremonies and festivities.

The dichotomy between representations in mainstream literature and the

(Southeastern Chad) voluntarily elect to be circumcised, the procedure is not a prerequisite for marriage among their people and there is no evidence that men prefer circumcised women). To those who find it incredible that a rational woman would willingly submit to FGR, the attitude of these women presents a welcome relief. See id. at 181–91. Although the vast majority of parents in Myabé are opposed to FGR and their daughters' participation in the ritual, the girls themselves, nevertheless, remain undeterred. Id. at 185. Anticipating a charge of false consciousness, self-victimization or coercion, or so it seemed, Leonard asked questions of the girls that touched on personal agency, individual choices, and respect for the right and choice of others. Id. The reaction of one of the respondents (who was circumcised) was quite telling, "[y]ou don't have right to say anything to your sister because you yourself went voluntarily, so you shouldn't come back and say anything." Id. at 186. Driving this point home, another interviewee, this time an uncircumcised woman, added, "[e]verything is voluntary. I didn't go, and if my friends make fun of me it means little to me. I'm already old. Maybe my daughter will go, but I won't force her." Id. at 186–87.

258 Id. at 186.

259 Abusharaf, Revisiting Feminist Discourses on Infibulation: Responses from Sudanese Feminists, supra note 1, at 153 (describing Sudanese experience). Similar observations have been recorded in respect to the people of Rendille (Northern Kenya), Kono (Sierra Leone), and a vast majority of affected societies. See Shell-Duncan, et al., supra note 1, at 115 (describing their amazement "at the bravery of the newly cut bride and the joyous celebration that ensued"); Ahmadu, Disputing the Myth, supra note 33, at 14–15 (2009). The joy in partaking of FGR is captured in this testimony of a 45 year-old Sudanese Woman:

When I was little, about six years old, I could not wait to be circumcised. I recall that I used to beg my mother constantly to bring me to the midwife's place to circumcise me. I still remember that my mother used to tell me to wait till my little sister is a bit older so that we can be circumcised together. I was really thinking about the gifts and the golden jewellery, the henna and the party. Waiting was like a lifetime. Personally, I think that I would have died at that point, if my mother did not have me circumcised.

Abusharaf, Revisiting Feminist Discourses on Infibulation: Responses from Sudanese Feminists, supra note 1, at 153; see GRUENBAUM, THE FEMALE CIRCUMCISION CONTROVERSY, supra note 1, at 37–39 (describing circumcision party in As-Sajjana neighborhood Khartoum, Sudan).
experiences of girls and women from FGR-practicing societies rests squarely on the elitist attitudes of eradication advocates which has completely hijacked, and continues to shape, the global FGR debate.260 Despite the "end of colonial rule," laments Shweder in

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260 Barrett Breitung's incisive analysis is illustrative. See Interpretation and Eradication: National and International Responses to Female Circumcision, 10 EMORY INT'L L. REV. 657, 661 (1996). Of cultural relativists who, he asserts, purport to seek dialogue with FGR practitioners, he writes:

[B]ecause they believe that female circumcision must eventually be eradicated, these advocates do not, in any meaningful sense, seek dialogue or consensus with supporters of circumcision. Instead they attempt a discussion on the best way to eliminate the practice. This position, while reflecting the difficulty in addressing competing and differing cultural values, is intellectually dishonest when compared against those voices who openly state that female circumcision must end.

Id. at 660-61. In other words, what Breitung seems to be saying is that the distinction between cultural relativists' and universalists' approaches to FGR is not ideologically driven. Instead, their differences center on strategy; meaning that even though relativists and universalists employ different analytical tools, the goal remains the same: eradication. And this is solely because, as far as FGR is concerned, the two groups are in agreement that such "reprehensible" Afrocentric practice must be stopped irrespective of what the primarily affected individuals say or do. To buttress this claim, he continues, rather emphatically:

In the end, no Western writer or cultural observer is ambivalent toward or supportive in any way of the continuation or spread of female circumcision . . .

But while most commentators clearly advocate its eradication, others [relativists] are not able to admit openly that their efforts lead to the same goal, assuming they are aware of this fact. Their position paints them in an intellectual corner of either bad faith or ignorance.

Id. at 685.

This view, homogenizing Western scholars as united in opposition to circumcision, is widespread. Indeed, for most of these intellectuals, it is unimaginable that an "informed" mind (those in the know about the supposed health risks stemming from FGR) would support its continuation. Janice Boddy, for instance, was of the opinion that no serious scholar would be "so theoretically myopic or inhumane as to advocate [FGR] continuance." Janice Boddy, Body Politics: Continuing the Anti-Circumcision Crusade, 5 MED. ANTHROPOLOGY Q. 15, 16 (1991). Although Boddy, Breitung, and others with similar mentality are motivated by different considerations, the problem with their conclusions is the implicit denial of heterogeneity in thought amongst people that study gender, sex, and sexuality in Europe and North America—that the practice must be extirpated. This is wrong. It discounts contrary voices, urging tolerance, and respect for autonomously expressed preferences of individuals who wish to partake of FGR. See, e.g., Shweder, supra note 33, at 247 (admonishing that "[o]ur cherished ideals of tolerance, including the ideal of having a "choice," would not amount to very much if all they consisted of was our willingness to eat each other's foods and to grant each other permission to
a recent work, "many First World intellectuals still think of Africa as the Dark Continent and imagine that genital surgery is a Dark Age practice supported mainly by those who are unenlightened, uneducated, ignorant, and unsophisticated." Remaining resolute in the face of failed "we" (civilized) and "them" (primitive) sociocultural dynamics is counterproductive. Instead, we should heed the counsel of Sulkin. Although primarily concerned about anthropologists, his view transcends disciplinary and methodological boundaries – he believes that instead of adopting an unyielding condemnatory stance against a practice we do not understand, we should pay attention to what the people themselves "say and do" about the practice.

What Sulkin is clearly articulating is an invitation to listen to and privilege the voices of girls and women whose lives are primarily impacted by FGR over any preconceived notions others might entertain about the practice. Such humility has great benefits. Writes an ostensibly repentant Sulkin, after listening to a passionate presentation by a colleague (anthropologist) who voluntarily underwent FGR in her native country, "...I can no longer condemn the practices of genital cutting in general, nor would I be willing to sign a zero-tolerance petition." This statement evokes a different house of worship for a couple of hours on the weekend); Sulkin, supra note 74, at 18 n. 4 (declaring his neutrality "about the disappearance or further spread of [FGR] ..." but cautioning, "[i]f they are to disappear, let it not be as a result of impositions from powerful outsiders with unquestioning faith in their own understandings of personhood, cosmology and sociality"); Ahmatu, Disputing the Myth, supra note 33, at 17 (contending that rational adult women in Africa should be at liberty to "decide for themselves what to do with their bodies"); Nnamuchi, Hands off My Pudendum, supra note 34, at 267-71 (emphasizing that "so long as the individual is adequately informed and her decisional capacity is not compromised in any discernible way, she is at liberty to accept or refuse medical intervention" of any type, including FGR, and critiquing extant human rights’ absolutist bent toward criminalization, irrespective of consent on the part of the woman, as “a startling development in international legal discourse ...”).

261 Shweder, supra note 33, at 229-30.
262 GRUENBAUM, THE FEMALE CIRCUMCISION CONTROVERSY, supra note 1, at 29 (cautioning against notion that Western culture is right and other cultures are wrong). “An elitist and ethnocentric attitude does not offer much hope for productive dialogue and mutual understanding.” Id. at 17.
263 Sulkin, supra note 74.
265 Sulkin, supra note 74, at 19; see Abusharaf, Revisiting Feminist Discourses on Infibulation: Responses from Sudanese Feminists, supra note 1, at 164. Listening to female perspectives is "not only a pressing political issue," but also provides "the only path for the formulation of a sound anti-circumcision policy." Id.
266 Sulkin, supra note 74, at 19.
fundamental precept of human rights, namely, that autonomously expressed preferences of individuals must be respected even if such preferences are diametrically opposed to the moral sensibilities of third parties. And this is so, irrespective of the manner the preferences were expressed — in person or through a proxy, as in parental consent to less invasive or benign forms of FGR on behalf of their children.267

267 Prince v. Massachusetts, 321 U.S. 158, 165-66 (1994). Ultimately, the decision as to whether to submit to FGR or otherwise, as a catechism of human rights teaches, rests on choice — even if, as in this case, the choice is to be made by parents. Under this theory, I aim to argue that the principle of autonomy is the bedrock of all human rights — underpinning, as it does, key human rights concepts such as the right to individual self-determination, respect for human dignity, and liberty and security of the person. In this sense, Jack Donnelly’s delineation of liberalism from other traditions on the basis of the former’s “threelfold commitment to autonomy, equality, and the protection of these values through natural or human rights” could be interpreted as validating the primacy of autonomy in human rights theory and praxis since without respect for the principle of autonomy, there would, of course, be nothing like human equality or any other human right. See Jack Donnelly, Human Rights and Western Liberalism, in HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES, supra note 25, at 31-32. But autonomy is not only treasured in liberal thought; it enjoys high status also in non-liberal traditions. The difference is a matter of degree of emphasis. See Leonard supra, notes 76 and 257 and accompanying text (documenting voluntary submission to FGR in Chad as an instance of autonomy or its expression). Therefore, the most productive lenses through which to evaluate FGR are through insights gleaned from the idea of man and woman as autonomous entities. As autonomous beings, the only constraint upon their liberty or action is that harm results to no third party; otherwise the liberty inhering in them to act as they please is unlimited, including the liberty to opt for “foolish” things — as some consider circumcision. Nonetheless, the force of this liberty dims exceedingly, and rightly so, when one is acting for the benefit of another. Whereas it is permissible for an individual to advance her ends, even through hazardous means, she may not expose another person to similar hazard. This is the reason lucid women are justifiably within their right to choose infibulation or other more radical versions of FGR (assuming there is one) for themselves, but not for their children. Indeed, the holding that “[p]arents may be free to become martyrs themselves,” but enjoy no right to submit their children to martyrdom articulated a legal, as well as an ethical, injunction. See Prince, 321 U.S. at 170. These considerations compellingly, we think, underscore the thesis of this paper, that those types of FGR that are free of serious deleterious health hazards are legally and ethically permissible for parents to choose for their children, and this choice is encapsulated within the parental right to raise children according to the dictates of their culture and tradition.