

MARTHA NUSSBAUM'S *CAPABILITY ARGUMENT*;
OPPRESSION, AND FEMALE GENITAL
MUTILATION

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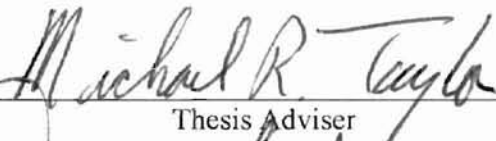
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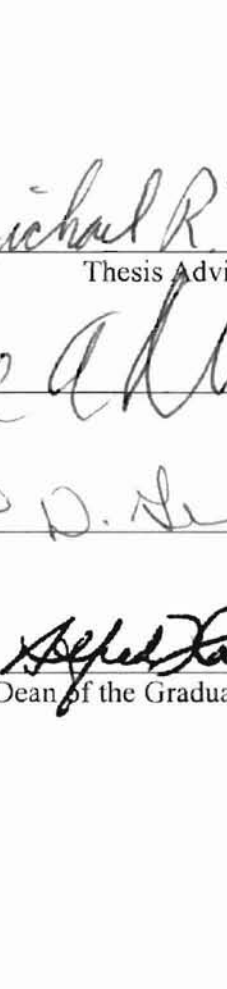

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CHAPTER ONE

INTRODUCTION

FGM [female genital mutilation] is an issue that concerns women and men who believe in equality, dignity and fairness to all human beings, regardless of gender, race, religion or ethnic identity....It represents a human tragedy and must not be used to set Africans against non-Africans, one religious group against another, or even women against men.¹

Female genital mutilation² has caused a great deal of controversy. Cultural exchanges and immigration have brought much attention to FGM. This attention has quickly spread from the Immigration and Naturalization Services, who deal with the refugees who flee their country in hopes of escaping FGM, to ethicists, social and cultural theorists, and lawmakers. Many Western countries have passed laws against FGM; the United States Congress made FGM a felony in September of 1996. Some philosophers have argued that banning FGM in the case of adult women unjustly infringes on their rights in liberal democratic societies, where much emphasis is put on choosing one's own vision of the good. Others have argued that FGM must be banned because it is a violation of human rights. Who is right here? The issue is one of how we can negotiate our shared humanity and cultural diversity without imposing Western ideologies on the entire world. Many would argue that cultures have the right to autonomously choose what their norms should be.

¹ Nahid Toubia. *Female Genital Mutilation: A Call for Global Action* (New York: UNICEF, 1995), p. 7.

² The terms circumcision, clitoridectomy, or excision are also used to refer to female genital mutilation.

I argue that female genital mutilation is an oppressive practice because it destroys what Martha Nussbaum calls a *fundamental human capability*, based on *one's membership in a group* (women), and it should be actively undermined.

In chapter two, I will give an overview of three kinds of FGM, the psychological and physical harms that FGM leaves behind, and the reasons given to justify FGM. I try to show why these reasons fail as adequate justifications and explore less harmful ways to achieve the intended results of FGM; if there are less harmful ways to achieve these results, then, all else equal, one is morally obligated to choose the least harmful alternative. I hold that not everyone who supports FGM is morally culpable; intentions play a critical role in moral culpability even when an act brings about harmful consequences. The parent who demands FGM for his daughters may, under certain conditions, act with good intentions; and if the harm that follows from such a decision is not due to negligence, such a parent would not be morally culpable. It should not be inferred, however, that moral culpability is therefore absent; if those in power know about the actual consequences of FGM and fail to disseminate this information at the local level, then they are morally responsible for any harmful consequences in such situations.

In chapter three, I give reasons for why I believe FGM is wrong. I show that FGM is an oppressive practice and anyone who knowingly supports it is, to the extent that he is in a reasonable position to do something about it, morally responsible for supporting an oppressive practice and the evils that follow from it. People become more culpable as they become increasingly knowledgeable about the harms that FGM leaves behind or fail to acquire such knowledge if it is readily available. I suggest education for the communities that support FGM and explain why such education is not merely another form of Western imperialism.

In chapter four I deal with relativist and anti-paternalist concerns. I contend that it is morally legitimate to criticize other cultures. Some traditional practices, such as FGM, have been around for a long time. Many are ignorant of its harms and side effects and need to be educated about them. This takes us to the point about paternalism. By developing educational programs, international law and other practices designed to eliminate the tradition of FGM, cultural autonomy could be said to be undermined. I hold that FGM is not merely a time honored tradition; it inflicts needless harm and is a human rights violation. I argue that FGM destroys a basic human capability and so it must be actively opposed. The opportunity for development of basic human capabilities must not be destroyed. Suicide, slavery and FGM are all examples of actions that, in a moral community--here an emerging global community-- must be opposed and, if possible, prevented.

I will start by setting out Martha Nussbaum's capability argument and explaining the role that it plays in my view; I then explain what I mean by oppression.

Martha Nussbaum's Capability Argument

Martha Nussbaum argues that there are certain human capabilities that ought not be destroyed or undermined. FGM destroys a basic human functional capability that Nussbaum calls *Bodily Integrity*, and since, according to Nussbaum, these basic human functional capabilities are crucial for participation in a human way of life, their destruction without adequate justification is immoral. Bodily integrity involves "...having one's bodily boundaries treated as sovereign, i.e. having opportunities for sexual satisfaction and for choice in matters of reproduction."³ The following items appear on Nussbaum's list of

³ Martha C. Nussbaum, *Women and Human Development* (WHD), (New York: Cambridge University Press, 2000) p. 78.

basic capabilities: (1-3) Life, Bodily Health, and Bodily Integrity. These include not dying prematurely and living a life that's worth living--having good health and being adequately nourished. (4, 6) Senses, Imagination, and Thought, and Practical Reason; these include being able to use one's senses in an informed and educated way and being able to choose one's good based on considerations of practical reason. (5,7-10) Emotions, Affiliation, Other Species, Play, and Control over one's political and material Environment. This group of capabilities cover the social aspects of one's life. Nussbaum contends that a flourishing human life includes relationships with other members of society and the freedom and opportunity for economic and political participation. People should be able to choose their own good given their capabilities.⁴ Nussbaum proposes these capabilities "as a foundation for basic political principles that should underwrite constitutional guarantees."⁵ The capabilities are important in human flourishing and some are central and necessary to human life. Others should be there in case people choose to develop them. That does not mean that every person develops all of these capabilities but that they should have the choice to do so. The capabilities and opportunities to develop them ought not be taken away because, all else equal, a life that lacks any of these capabilities is a life that is not as good as it could otherwise be.

Why these capabilities and not others? Nussbaum argues that these capabilities are important for two reasons: First, The fundamental justification for these capabilities is that they are intuitive. By this she means that they are very plausible candidates for the kind of human characteristics that are essential to a thriving and flourishing life. She adds,

The intuitive idea behind the approach is twofold: first, that certain functions are particularly central in human life, in the sense that their presence or absence is typically understood to be a mark of the presence or

⁴ *ibid*, p. 78-80.

⁵ *idib*, p. 71.

absence of human life; and second, that there is something that it is to do these functions in a truly human way, not merely an [non-human] animal way.⁶

By *truly human*, Nussbaum means a life that is "*worthy* of a human being."⁷ In her view each person counts as an end in herself and not merely as a part of a whole. Each individual is worthy of having each of these capabilities.

The second argument Nussbaum gives for choosing these capabilities is that they have strong claims to being able to fit into an *overlapping consensus* among members of different cultures. There may be other capabilities that we could consider or add to the list, but these are the ones that stand an excellent chance of generating widespread cross-cultural agreement that could serve to initiate an overlapping consensus regardless of any other beliefs one may have. Nussbaum explains,

By 'overlapping consensus' I mean what John Rawls means: that people may sign on to this conception as the freestanding moral core of a political conception, without accepting any particular metaphysical view of the world, any particular comprehensive ethical or religious view, or even any particular view of the person or human nature.⁸

The overlapping consensus proposed by Nussbaum is a continuation of what John Rawls calls an "overlapping consensus of reasonable comprehensive doctrines".⁹

A reasonable comprehensive doctrine is one that can be held in a certain way; reasonableness is, according to Rawls, first and foremost a virtue, and as a virtue, it is something that is practiced by persons. Reasonable people are those who attempt to make proper use of their political power. According to Rawls,

Our exercise of political power is proper only when we sincerely believe

⁶ *ibid*, p. 71-72.

⁷ *ibid*, p. 73.

⁸ *ibid*, p. 76.

⁹ John Rawls, *The Laws of Peoples* (Massachusetts: Harvard University Press, 2000), p. 172.

that the reasons we would offer for our political actions--were we to state them as government officials--are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons.¹⁰

Reasonable persons, in other words, are those who sincerely attempt to satisfy the criteria of reciprocity. Those who satisfy the criteria of reciprocity make proposals in the sincere belief that what is proposed can be accepted by others as well. The sincere belief that others will have a reason to accept one's reasons or proposals is among the criteria for reciprocity. Hitler's idea of Jewish inferiority would not meet the criteria of reciprocity because he could not reasonably and sincerely suppose that his beliefs, policies, and actions aimed at the Jews could be acceptable to them. Genocide would not count as a part of a reasonable overlapping consensus of comprehensive doctrines.

The second criteria is "the willingness to recognize the burdens of judgment and to accept their consequences."¹¹ The burdens of judgment specify conditions that make rational agreement unobtainable in some situations, even when all persons remain rational and reasonable and committed to arriving at consensus. In other words, due to the burdens of judgment, there will be occasions on which even the most rational and reasonable people will be unable to reach agreement. The burdens of judgment make it hard, sometimes impossible, to come to rational agreement about difficult moral situations.¹² Honest discussion among reasonable people lead to toleration when people disagree and find that such disagreement is an unavoidable element of a liberal democratic community. People may disagree concerning their comprehensive conceptions of good, and citizens learn to accept this disagreement as part of what is involved in living in a liberal democratic society.¹³

¹⁰ *ibid*, p. 137.

¹¹ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 49.

¹² *ibid*, p. 56. We do that in our everyday life.

¹³ Rawls, *The Law of peoples*, p. 59.

Rawls further explains what he means by "reasonable doctrine". He says,

Thus, all reasonable doctrines affirm such a society with its corresponding political institutions: equal basic human rights and liberties for all citizens, including liberty of conscience and the freedom of religion. On the other hand, comprehensive doctrines that cannot support such a democratic society are not reasonable.¹⁴

Rawls holds that individuals that do not take reciprocity as a criteria for serious political proposals are not reasonable; I extend this idea and assume that Nussbaum would not accept a society's inability to enter into a reasonable overlapping consensus as grounds for undermining the consensus. The Germans did not allow freedom of conscience and religion to the Jews but they could not have sincerely believed that the Jews had reasons to willingly accept that limitation. This makes insisting on the Nazi's comprehensive conception unacceptable; it is not a reasonable comprehensive doctrine. It cannot be seriously proposed by those who possess the virtue of reasonableness, because it violates the requirement of reciprocity.

Intuitively and through the idea of an overlapping consensus of reasonable comprehensive conceptions of what makes for a flourishing human life, Nussbaum develops an argument for the basic human capabilities and argues that to have a fully good human life one must have the opportunity to develop each of these capabilities. The goal of politics ought to include the protection and promotion of the capabilities of each person and such protection and promotion should be understood to be part of what justice requires.¹⁵ I will use Nussbaum's capability argument to develop and help support my case that FGM is wrong because it systematically and irrevocably destroys a basic human capability.

¹⁴ *ibid*, p. 172-173.

¹⁵ Nussbaum, WHD, p. 74.

Oppression

I hold that the practice of FGM is oppressive. It is oppressive because it destroys a basic human functioning capability and it does so based on membership in a group. When people's fundamental capabilities are systematically destroyed or suppressed based on their membership in a group, and the group is despised, marginalized, or is kept from enjoying the benefits or power or status that other members of the society enjoy, this is a form of oppression. According Marilyn Frye, "to recognize a person as oppressed, one has to see that individual as belonging to a group of a certain sort."¹⁶ One is not oppressed, then, as Sally, Juan, Jim or Winifred; one is oppressed as a woman, a Hispanic, or a disabled person. Oppression is social, political or economic and it is systematic; psychological oppression may follow as a result. In cases of psychological oppression, oppressive forces become internalized and the oppressed become their own oppressors. However, the ultimate root of psychological oppression is political. Frye puts it this way,

The experience of oppressed people is that the living of one's life is confined and shaped by forces and barriers which are not accidental or occasional and hence avoidable, but are systematically related to each other in such a way as to catch one between and among them and restrict or penalize motion in any direction. It is the experience of being caged in: all avenues, in every direction, are blocked or booby trapped.¹⁷

The source of social-political oppression may not be obvious; Frye asks us to imagine a bird cage where the arrangement of the wires that keep the bird in are not seen to be related as a structured whole. The "cageness of the birdcase is a macroscopic phenomenon...."¹⁸ If we see only one wire we will not understand how it could trap the bird, but if we stepped back and took a wider perspective, we could clearly see the other wires that are

¹⁶ Marilyn Frye, "Oppression" in *Social Justice in a Diverse Society*, edited by Rita C. Manning and Rene Trujillo (California: Mayfield Publishing Company, 1996), p. 122.

¹⁷ *ibid*, p. 121.

¹⁸ *ibid*, p. 122.

intertwined and related to one another in such a way as to stop the bird from flying away. It is “a network of forces and barriers which are systematically related and which conspire to the immobilization, reduction and molding of women and the lives we live.”¹⁹

The bird is physically closed in by the wires, and those wires are analogous to the forces we find in the world of oppression, provided that we take the time and make the effort to identify and relate them in the right way. When this is done, it can be seen that these forces are arranged in such a way as to insure the inferior status of the oppressed group. Young women are encouraged not to go out alone at night because they are women, but men don't get this sort of encouragement because they are “boys”. That could imply that women are not capable of taking care of themselves. Aggression in women is often looked on as a vice, while aggression in men is considered a virtue and sign of masculinity. In the workplace women are paid noticeably less than men and once they get close to the top jobs, the “glass ceiling” often acts as a barrier preventing them from getting to the top executive positions. Unpaid maternity leave reduces household income at the time when a family needs it most and pressure is on the mother to go back to work as soon as possible. Lack of adequate, affordable childcare facilities is an issue, and usually the burdens of childcare tend to be left to the female to deal with. After all, if women fail to be all that the popular media encourages them to be, they fail as women. These are all signs of an oppressive community.

Still, many do not consider women as a category of the oppressed.²⁰ I suggest this is simply another sign of oppression itself. Women learn to adapt to the requirements that men have set for them and women who do not accept those masculine social expectations will have to face penalties that are often severe. In the case of FGM, women who do not

¹⁹ *ibid*, p. 122.

²⁰ *ibid*, p. 122.

undergo FGM are considered poor marriage partners, “sluts”, and often have to settle for what the community dishes out to them.

Forms of systematic, institutionalized social and political oppression may be internalized by members of oppressed groups. By various means the oppressed internalize political and social expectations and become their own oppressors. Sandra Lee Bartky calls this sort of oppression psychological oppression. She discusses several different categories of psychological oppression; stereotyping, sexual objectification, and alienation, among others.²¹ Alienation happens when women are separated from basic characteristics that make important contributions to their development as human beings. Women are categorized and treated in ways that leave them alienated from themselves and their needs as human beings--as ends with dignity and worth. Sexual objectification occurs when a woman's sexual parts are distinguished from the rest of her personality and treated as though they entirely define her personhood or are the most important features of her personhood.²² Stereotypes often portray women to be childlike. Women are “more intuitive than rational, more spontaneous than deliberate, close to nature, and less capable of substantial cultural accomplishment.”²³ Often stereotypes will lead to the sort of attitudes that are expected of the stereotyped--whether they are good or bad. If women are stereotyped to be childlike and incapable of making decisions, they may internalize that stereotype as a part of themselves and thereby become their own oppressors.

Supporters of FGM often see women as mere objects to be valued primarily for the services that they can provide. Once women internalize such a view they may define themselves within the boundaries set for them by the men of their culture. I hold that any

²¹ Sandra Lee Bartky, "On Psychological Oppression" in *Social Justice in a Diverse Society*, edited by Rita C. Manning and Rene' Trujillo (California: Mayfield Publishing Company, 1996), p. 127.

²² *ibid*, p. 129-130.

²³ Bartky, *On Psychological Oppression*, p. 128.

practice that systematically and unjustifiably limits people, deprives them of the benefits routinely enjoyed by others, or assigns them to inferior status, and does those things because of their membership in a group, is oppressive. Oppression is not always obvious; it often requires close analysis and careful observation of the society's treatment of its people. When a group is politically or economically held down, often the members of that group internalize the means of oppression and become their own oppressors. I will show how this applies to FGM in the upcoming chapters.

CHAPTER TWO

A REVIEW OF FEMALE GENITAL MUTILATION

In this chapter I give an overview of Female Genital Mutilation (FGM) and the main reasons given for why some want to keep this tradition alive. I consider their reasons and argue that these are often based on false beliefs, and when they are not they still fail as adequate justifications for the continuation of FGM. FGM is practiced in about 26 North African Tribes and some southern Arabic countries. About 80 million women have undergone this procedure and two to five million people undergo it each year. There are three types of FGM.

Type 1 circumcision involves pricking or removing the clitoral hood, or prepuce. This is the least mutilating type and should not preclude sexual orgasms in later life, unlike other forms. In the southern Arabian countries Type 1 circumcision is commonly practiced. In African countries, however, Type 1 circumcision is often not regarded as genuine circumcision. Only 3 percent of the women in one east African survey had this type of circumcision, and none in another where all the women surveyed had been circumcised.

Type 2, or intermediary, circumcision involves removal of the clitoris and most or all of the labia minora.

In Type 3 circumcision, or infibulation, the clitoris, labia minora, and parts of the labia majora are removed. The gaping wound to the vulva is stitched tightly closed, leaving a tiny opening so that the woman can pass urine and menstrual flow.

In some African countries most young girls between infancy and 10 years of age have Type 3 circumcision. Traditional practitioners often use sharpened or hot stones, razors, or knives, frequently without anesthesia or

antibiotics. In many communities thorns are used to stitch the wound closed, and a twig is inserted to keep an opening. The girls legs may be bound for a month or more while the scar heals.²⁴

Of the three types mentioned here, Type 3 is the most widely practiced. Three-fourths of the women in Africa have type 2 or 3 circumcision done on them. Though Type 1 seems virtually harmless, some of the side effects are the same as Type 2 and 3.

Some side effects of FGM are immediate and others are long term. Immediate physical pain is certain, since it is usually done without anesthesia; this is followed by bleeding, conditions conducive to, and frequently causing, infection, and shock, the degree of which is usually determined by the type of circumcision. Infections are frequent because circumcision is generally done under unsanitary conditions. Hemorrhage can be either primary, from injuries to arteries or veins, or secondary, or a result of infection. Inability to urinate and other long term complications such as chronic pelvic infections often occur. Scarring makes penetration difficult and intercourse painful. Cysts may form requiring surgical repairs, and if the drainage hole is too small menstrual complications will occur as well. Sally Sheldon and Stephen Wilkinson point out that "there is a broad (though not complete) consensus that even comparatively mild forms of female genital mutilation normally result in decreased sexual pleasure for the women or, at worst, any form of intercourse being extremely painful."²⁵

Psychological complications are also common among women who undergo FGM.²⁶

Psychological harms resulting from the procedure are not to be taken lightly. Before the

²⁴ Loretta M. Kopelman, "Female Circumcision/Genital Mutilation and Ethical Relativism" in *Moral Relativism*. (New York: Oxford University Press, 2001), p. 309-310. A fourth Type of FGM that is rarely practiced has also been reported where the vaginal opening is enlarged by tearing it downward, cutting the perineum. Hamid Rushwan, "Female Circumcision" in *World Health*. April-May, 24-25, 1990.

²⁵ Sally Sheldon and Stephen Wilkinson, "Female Genital Mutilation And Cosmetic Surgery: Regulating non-therapeutic Body Modification" in *Bioethics*. Vol. 12, number 4. (October). (Oxford: Blackwell Publisher, 1998), p. 266.

²⁶ Kopelman, p. 310.

ceremony the young girls know that they are going to be circumcised. The initial anxiety about undergoing circumcision is followed by helplessness as five people hold the girl down while her genitalia is cut. FGM and sexual oppression of this kind contributes to psychological oppression in several ways. To start with,

1) in societies where women are perceived solely as daughters, wives, mothers and widowed, their identity is defined exclusively in terms of their relationship to men, they have no rights, and they are not considered to have any value in themselves.²⁷ Such categorization from early childhood keeps virtually all women from forming expectations of a better situation for themselves. FGM contributes to and reinforces this categorization of women. One way in which it does this is by creating conditions that make likely the acquisition of the psychological trait of learned helplessness.

2) FGM and its larger context leads to an unnecessary and profound experience of belittlement and helplessness that can leave psychologically traumatic effects.

Posttraumatic Stress Disorder (PTSD) could also be another side effect of such trauma.

According to *Diagnostic and Statistical Manual of Mental Disorders IV*, PTSD develops under an extremely traumatic situation:

Posttraumatic Stress Disorder is the development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other threat to one's physical integrity;...The person's response to the event must involve intense fear, helplessness, or horror....persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness....²⁸

Most the symptoms listed above are present in the women who go through FGM--fear and helplessness are emotions that lead to PTSD. Given these criteria established by the

²⁷ Nussbaum, *Women and Human Development*, p. 2.

²⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition, DSM-IV-TR, (Washington DC: R. R. Donnelly and Sons Company, 2000), p. 463-464.

American Psychiatric Association, it can be expected that women who undergo FGM are likely to suffer from psychological complications.

3) FGM contributes to the experiences of alienation and objectification. Sexual objectification and alienation are mutually reinforcing and both contribute to the practice of FGM and are a means of psychological oppression. Women in FGM-practicing countries are victims of sexual objectification. They are often seen as mere tools for use by others or as caregivers for men and children, and problems arise when this is *all* that these women are taken to be. When this happens, they are reduced to being a mere means to be used by others. A person becomes sexually objectified when her personality is not considered; instead, her sexuality is taken to represent her. A woman who undergoes FGM, is often believed to be only a sexual object and her personality is not considered. Perhaps she is not the kind of person who would even consider cheating on her spouse, but that is irrelevant; her sexuality defines her as someone who could not be loyal without the intervention afforded by FGM. She is defined merely by her sexuality, not her person, and she is used as a tool for the benefit of others. Seeing and using a person in such a way is sexual objectification, and when it becomes internalized by those objectified, it is a form of psychological oppression.

Women are, through undergoing FGM, alienated from a part of their biological makeup that is necessary for the practice of some of the basic human capabilities. FGM alienates women from the part of their being that is necessary for choice in reproduction, sexual pleasure, and intimacy--their person is divided between a being with certain duties and a person who is forbidden "activities thought to be essential to a fully human existence."²⁹ Since women have to get married to have any social standing or economic

²⁹ Bartky, *On Psychological Oppression*, p. 133

resources in FGM-practicing cultures, they have little choice in the matter.

4) Stereotyping is another factor that leads to psychological oppression.

Uncircumcised women are thought to be "whores and sluts", whose behavior stands in need of control. Often it is simply assumed that the only or best way to ensure that they will not become "whores or sluts" is to have their sexual organs removed by undergoing FGM. However, those stereotypes of whorishness or sluttishness, if strong enough, may make women believe such things of themselves. These stereotypes may become internalized and some young women might even look forward to FGM, as is sometimes the case, because they come to believe that it will save them from a whorish, sluttish life.

There are several reasons given to support FGM. Some of the common reasons encountered for why girls should be circumcised are:

- (1) Circumcision meets a religious requirement,
- (2) Circumcision preserves group identity,
- (3) Circumcision helps to maintain cleanness and health,
- (4) Circumcision preserves virginity and family honor and prevents immorality,
- (5) Circumcision furthers marriage goals including greater sexual pleasure for men.

These are the reasons that are usually given to justify FGM. I will consider these reasons to determine whether they justify the practice of circumcision. I hold throughout that *prima facie* it is wrong to perform an act that results in harm if a less harmful alternative is available.

(1) Many of the FGM practicing countries are Muslim and they claim that FGM is a religious requirement, but the Koran does not require it.³⁰ Asma El Dareer writes:

Circumcision of women is not explicitly enjoined in the Koran, but there are two implicit sayings of the Prophet Mohammed: Circumcision is an ordinance in men and an embellishment in women and, reportedly Mohammed said to Om Attiya, a woman who circumcised girls in El

³⁰ Kopelman, p. 314.

Medina [the Muslims's Holy City], Do not go deep. It is more illuminating to the face and more enjoyable to the husband. Another version says, Reduce but do not destroy. This is enjoyable to the woman and preferable to the man. But there is nothing in the Koran to suggest that the prophet commanded that women be circumcised. He advised that it was important to both sexes that very little should be taken.³¹

It is not an essential requirement of Islam that women be circumcised. Any very weighty reason against circumcision can override the religious reason for the practice. FGM dates back to the time of the pharaohs and it is not practiced in all Muslim countries. Many Muslim organizations have banned this practice.³²

FGM is not an essential feature of the religion, and it destroys a basic human capability on the basis of religious claims. This is comparable to using the *Old Testament* to justify slavery³³, executing people for working on Sundays³⁴, and cursing one's mother or father³⁵. Martha Nussbaum suggests that certain kinds of physical harm override religious claims:

We should refuse to give deference to religion when its practices harm people in the areas covered by the major capabilities. Obviously problematic will be practices involving harm to non-members of the religion;... practices involving harms to coreligionists will also be problematic, where they significantly infringe a central capability-- particularly where there is reason to doubt the voluntariness of the practice.³⁶

In most situations in which FGM is practiced, the "voluntariness" of those who undergo it may be open to significant doubt. Women might not "voluntarily" undergo FGM, if they had alternatives that would give them the same social status, respect and social standing

³¹ Asma El Dareer, *Women, Why Do You Weep? Circumcision and Its Consequences*. (London: Zed Press, 1982), p. 72.

³² Martha C. Nussbaum, *Sex and Social Justice (SSJ)*, (Oxford: Oxford University Press, 1999), p. 120.

³³ *Old Testament*, Deuteronomy.

³⁴ *Old Testament*, Exodus 31:14.

³⁵ *Old Testament*, Leviticus 20:9.

³⁶ Nussbaum, WHD, p. 192.

that FGM does. Religion does not give us an adequate reason for FGM--it is not an essential part of the religion and FGM inflicts harm by destroying a basic human capability, and subjecting those who undergo it to significant physical risks and undesirable long-term effects.

The second reason given in favor of FGM is that it helps preserve group identity; without it young girls cannot be initiated into womanhood. Many cultures have ways to symbolize this passage to adulthood; so there are alternative ways of achieving this end. If we can find ways that do not cause physical or psychological harms, then we should institute those in place of FGM, which does cause such harm. A less harmful ritual could serve as a way of preserving tribal identity. In Kenya, for example, some villages have come up with a different ceremony to celebrate the introduction to womanhood.³⁷ These villages have set up educational programs to teach women about their bodies and the changes that they undergo during pregnancy. This year-long seminar eventually leads women to talk and learn about their bodies. Many think that they are now able to celebrate womanhood without agony and pain. So there are alternative ways to achieve tribal identity that work just as well without the dangerous and undesirable side-effects of FGM. If there are alternative acts that would lead to the same intended results and one causes less harm, we ought to choose the act that is less harmful. There are less harmful ways of achieving this aim of FGM; therefore we are morally obligated to adopt these less harmful alternatives instead.

Third, the belief that FGM advances health and hygiene is incompatible with what modern medicine has to say on the subject. Severe side effects result from FGM. It can lead to shock, infertility, infections, incontinence, maternal-fetal complications, and

³⁷ UNICEF: Tostan (The non-governmental organization to ban FGM.)

protracted labor [and also in some cases death]. The tiny hole left for blood and urine to pass is a constant source of infection.³⁸ Scarring often leads to difficulty in consummating marriage and makes sexual intercourse permanently painful. Female genital mutilation does not lead to cleanliness and better health; it does just the opposite. Education is needed here to convey the multiple hazards of this procedure. Many women do not know about the side effects of FGM and consequently they have come to look forward to it as their initiation into full womanhood. This justification for FGM shows a direct contradiction between what is intended (cleanliness) and what the results are. We are presented with a false belief here.

Fourth, FGM is practiced to ensure virginity before marriage and fidelity thereafter, which men believe is a good thing. But according to Olayinka Koso-Thomas, this is no foolproof way to ensure either virginity or fidelity. Although the procedure makes orgasm impossible, some women continually seek different partners because they are left unsatisfied by their previous sexual experiences.³⁹ Also, as El Dareer points out, FGM does not ensure virginity before marriage. Many women pretend to be virgins by getting stitched up tightly again.⁴⁰ Opposing FGM is not the same as condoning adultery; rather it involves respecting women's ability to sustain loving and responsive relationships that put men in a situation where they'll be more likely to treat women with affection, dignity and respect.⁴¹ Further, this justification may promote psychological forms of oppression by reinforcing the tendency of girls to see themselves exclusively as daughters, wives and mothers and as lacking value in themselves. The same points about physical and

³⁸ Daphne Williams Ntiri, "Circumcision and Health among Rural Women of Southern Somalia as part of a Family Life Survey" in *Health Care for women International* 14, no. 3 (May-June): 215-216, 1993

³⁹ Olayinka Koso-Thomas, *The Circumcision of Women*. (London: Zed Press, 1987).

⁴⁰ El Dareer, 1982.

⁴¹ Nussbaum gives an example of the Indian man who said that he respects his wife so differently now--after she had got an education--She is so much more articulate in expressing herself (WHD, p. 43).

psychological harm as made above apply here as well. Even if FGM did achieve the goal of preserving virginity and promoting fidelity, we should find less harmful ways to achieve these goals that don't involve the destruction of sexual intimacy.

Fifth, FGM furthers marriage goals including greater sexual pleasure for men. It is widely believed that infibulation makes women more attractive and also gives more pleasure to men. However, many men of the same culture have reported enjoying sex with un mutilated women even more than with mutilated ones.⁴² This reason is yet another example of treating women as objects for the pleasure of males. Raquiya H.D. Adballa notes that in some regions the practice is followed by putting "salt into the vagina after childbirth... [because this] induces the narrowing of the vagina... to restore the vagina to its former shape and size makes intercourse more pleasurable for the husband."⁴³ Some of these cultures treat women as objects for the pleasure of males, as this statement clearly shows. To survive in many of these cultures women must get married, and to make them more marriageable, women are pressured into undergoing FGM.⁴⁴ However, as Kopelman points out, FGM contributes to the "high mortality rate among mothers, fetuses and children. Far from promoting the goals of marriage, it causes difficulty in consummating marriage, infertility [due to infection]⁴⁵, prolonged and obstructed labor, morbidity and mortality."⁴⁶ Sheldon and Wilkinson add that "It also seems probable that serious psychological harm may result from the procedure...."⁴⁷ Certainly none of the side effects of FGM could be a contribution to the happiness of the family and marriage.

⁴² Kopelman, p. 316.

⁴³ Raquiya H.D. Adballa, *Sisters in Affliction: Circumcision and Infibulation of Women in Africa*, (London: Zed Press, 1982), p. 16.

⁴⁴ Koso-Thomas, 1987.

⁴⁵ Sheldon and Wilkinson, p. 266.

⁴⁶ Kopelman, p. 316-317.

⁴⁷ Sheldon and Wilkinson, p. 266.

So far, I have considered some of the harms associated with FGM; but is it possible that it could be practiced with good intentions? I consider some cases in the next section.

What about good intentions?

Considering the harms and side effects of FGM, is a father⁴⁸ necessarily uncaring, and a morally culpable agent of oppression, if he decides that his daughter must undergo the procedure? Is such a father morally culpable? In the context of an *ethic of care*, could he be a *caring father*?

Intentions play a major role in ethical systems, but truly caring parents would consider the consequences of their decisions concerning their children. If so, then are ignorant people culpable when they act on good intentions but the outcome of their action is not morally good? Philippa Foot answers this way,

...we observe that it is primarily by his intentions that a man's moral disposition are judged. If he does something unintentionally, this is usually irrelevant to our estimate of virtue. But of course this thesis must be qualified, because failures in performance rather than intention may show a lack of virtue. This will be so when, for instance, one man brings harm to another without realizing he is doing it, but where his ignorance is itself culpable. Sometimes in such cases there will be a previous act or omission to which we can point as the source of the ignorance.⁴⁹

Weakness of character, being cowardly in going against norms and, as Foot points out, ignorance are often psychological excuses for committing evil acts and avoiding the

⁴⁸ I should mention here that the mother's opinion is typically irrelevant and does not count here; in FGM practicing societies if a mother is against FGM it does not stop the men from arranging to circumcise their daughters (Nussbaum, SSJ, p. 124). Psychological oppression is seen in women's complacency when they get to a point where women actually support FGM. In some cases women may fail to respond to this demand and stop their daughters from being harmed. In the extent that they can and don't do anything to save their daughters, they are morally questionable.

⁴⁹ Philippa Foot, *Virtues and Vices in Virtue Ethics*. Edited by Roger Crisp and Michael Slote. (Oxford University Press: New York, 1997), p. 165.

responsibility for social evils. Foot suggests that some information is simply common knowledge, available to anyone who cares to know. This may be true in many cases but not all. Further, I suggest that another factor must be added to availability of information and that is one's ability to understand and respond to the information that's available. We don't consider a retarded person culpable when she takes the fish out of the fishtank to pet it and in the process kills the fish. She is simply incapable of interpreting or understanding the implications of her actions.

There are at least two types of ignorance here that divide our first case into two: 1) ignorance of the consequences where there is absolutely no other source of information available but what the community accepts and there are virtually no other ways that one can gather the information needed to make the right decision, and 2) the person is acting in ignorance but has information easily available and does not take the trouble to investigate. In order to answer the question of who is morally culpable, I consider the following three scenarios.

(1) Imagine that the father's intentions are good but he is ignorant of the harmful consequences (side effects). He considers the five reasons discussed above and opts for circumcising his daughter. He believes this is the only way that his daughter could gain normal social status. He wants her to be able to find a suitable mate (in some cases, any mate) who will provide for her basic needs.

Consider the first option. The father is caring (working with good intentions) and ignorant of the (true) consequences of the action. He has no way of attaining information that would lead him to a correct assessment of the kinds of harms that FGM causes and so he arranges for his daughter's circumcision. He has endorsed an immoral act, but due to his

ignorance he is not morally culpable. This scenario is possible although it probably rarely obtains. The relevant information is now widely disseminated. Abdalla remarks, "there is no longer any reason, given the present state of progress in science, to tolerate confusion and ignorance about reproduction and women's sexuality."⁵⁰ The information is available for most people who are willing to take the time to find out. Education is the right way to deal with these cases of ignorance.

For Aristotle practical wisdom is a critical component of how one decides the right thing to do.⁵¹ Foot notes that practical wisdom

...is connected with the will in the following way. To begin with it presupposes good ends: the man who is wise does not merely know *how* to do good things such as looking after his children well, or strengthening someone in trouble, but must also want to do them. And then wisdom, in so far as it consists of knowledge which anyone can gain in the course of an ordinary life, is available to anyone who really wants it.⁵²

Foot suggests that someone who is caring, must consider the consequences as well as good intentions. As mentioned in the latter case, one could be ignorant and culpable--ignorance alone does not lead to moral innocence, since it is often the result of negligence. Consider this situation; a mother has a sick child. The child has been ill for a long time and the mother is looking for a cure. She, by advice of a newspaper advertisement, decides to use an untested, inexpensive, herbal Chinese medicine. The child shows a severe reaction to the herbal medication and gets even worse. The mother's intentions are good, but she was ignorant of her child's reaction to the herbs. I hold that she is morally culpable due to negligence. She at least could have considered sharing her plans with the child's doctor before deciding to go along with an unreliable source. So good intentions do not necessarily

⁵⁰ Abdalla, *Sisters in Affliction: Circumcision and Infibulation of Women in Africa*, 1982.

⁵¹ Aristotle, *Nicomachean Ethics*, 1140^a, lines 25-30.

⁵² Foot, *Virtues and Vices*, p. 167.

make for moral innocence when actions lead to harmful consequences. That depends on what information is available and what this information means in that situation.

(2) The second scenario deals with the situation where the father is aware of all of the physical and psychological harms done and still decides to demand his daughter's circumcision because he believes that the social gains outweigh the harms done. He wants her to find a suitable mate (in some cases, any mate) who will take good care of her; so having this in mind, he decides to arrange for her circumcision. This individual seems more interested in following social norms than deciding on the basis of what is truly moral. Cultural practices, though influential, are not infallible and the possibility of their falsity or harmfulness should be considered. Caring parents would defy social norms to protect their children. It should not be necessary to give up a basic functioning capability as a trade off for social gains. Is having a husband the best thing for a daughter? It might be in situations where without a husband the woman may starve to death. If this is the case then what should a *caring* parent do? A caring parent will find a way to protest against, question or attack the institution, educate it, move the children elsewhere. A caring parent will try to challenge the system, especially in cases in which he knows the consequences of his decision to circumcise his daughter. It is not so clear here that the father is not culpable. Caring involves a critical attitude toward cultural traditions when they incorporate forms of immorality. Socrates argues in the *Apology* that we should be critical of the norms of our society because often times the majority are corrupt.⁵³ Improving the youth is a sign of caring, and that's done by challenging practices that are morally questionable no matter how many people believe in them. A caring parent would question

⁵³ Plato, *Apology*, 24d-25c.

the cultural norms and do what is necessary to keep his daughter from undergoing FGM. He is morally culpable for making a decision in favor of circumcision because he is aware of all the harms done. He is knowingly supporting a harmful, oppressive practice. The daughter is not only losing the capacity for sexual pleasure; she is physically and emotionally endangered in many different ways.

(3) Lastly, I will consider the case in which the father is aware of all of the physical and psychological harms involved, and chooses circumcision for his daughter. In this case, the father, concerned with his prestige and social status, demands his daughter's circumcision. In this case the father is uncaring. His daughter may have the opportunities for a marriage mate without being circumcised but his image would be negatively affected by not having his daughter circumcised. He is using his daughter as a means to improve his own status. His action shows a lack of concern for his daughter's wellbeing. He sacrifices one of his daughter's basic functioning capabilities and endangers her life or health in order to gain status for himself. This exchange cannot be morally justified. A caring father would challenge the society and its norms or at least actively attempt to subvert them in his daughter's case. One cannot justifiably sacrifice another's capabilities for one's social status.

In Summary

Some activists in FGM-practicing cultures want an immediate ban, others encourage Type 1 circumcision in order to "wean people away from Type 2 and Type 3 by substitution." According to American Medical Association and World Health Organization, it would be best to ban all types of female circumcision since Type 1 is still

hazardous, especially in the case of infants.⁵⁴ Kopelman holds that there is wide agreement that education may be the most important means to eradicate FGM.⁵⁵ In many villages in Africa, mainly in Kenya, a group called “Tostan” has been able to eradicate FGM by educating men and women about the hazards of this procedure. Repetition is crucial in these educational endeavors, because in these societies women's sexuality is not a subject of everyday conversation. Therefore, it takes a long time to get these women to open up to the ideas and participate in learning about their bodies and the physical and psychological harm that FGM leaves in its wake. A truly caring and informed parent would not allow his daughter to undergo FGM unless perhaps her life depended on it. If we are faced with two choices for action and one causes more harm than the other, we are obligated to choose the one that causes less harm. There are alternatives to FGM that lead to the intended results and cause far less or no harm, so we should do those instead.

⁵⁴ Kopelman, p. 323.

⁵⁵ *ibid*, p. 323.

CHAPTER THREE

WHY IS FEMALE GENITAL MUTILATION WRONG?

Cultures that practice female genital mutilation should abandon this tradition.¹ In many African countries female genital mutilation (FGM) is quite common in spite of the fact that most of those countries have laws against it.² FGM is a painful experience and many young women and girls die in the process;³ still, some women have come to look forward to the procedure, and one wonders why. Certainly not for the sensation they get from it but rather for the social gains--by going through excision, the female takes the first step towards *womanhood*. Although some of this is done to girls as young as four years old the majority are in their teens and a few are adults.⁴ The fundamental societal motive for FGM is simple: It is widely agreed, among men in such cultures, that FGM leads to more committed and dependable marriages. The belief is that women's sexuality must be controlled for the stability of the family; "It is [done] to ensure virginity before marriage and sexual fidelity after it by decreasing female sexual pleasure and, in the case of infibulation, by rendering penetrative intercourse impossible"⁵ Women's beliefs concerning the issue are irrelevant. Since many of these cultures are male dominated, women's voices

¹ FGM is practiced in many Islamic and non-Islamic countries. In some countries as in Kenya this procedure is done merely as an introduction to womanhood. In other places such as in Islamic countries FGM is done to assure virginity before marriage and to stop adultery after marriage. In the former case, the motives don't seem to be caring motives at all. The motives seem to be merely following an evil tradition.

² Nussbaum, SSJ, p. 120.

³ *ibid*, p. 118.

⁴ *ibid*, p. 118.

⁵ Sheldon and Wilkinson, p. 27.

are rarely heard.⁶¹ Many women have opposed FGM; those who support it are often people whose economic well-being depends on the procedure.

I contend that viewing and treating women in the manner required by FGM is oppressive because it suppresses, destroys, or unjustifiably interferes with development of fundamental human capabilities. Concerning oppression, Bartky holds: "to be denied an autonomous choice of self, forbidden cultural expression and condemned to the immanence of mere bodily being is to be cut off from the sorts of activities that define what it is to be human."⁶² I will use the observations of chapter one concerning Nussbaum's approach to demonstrate that FGM fulfills these criteria.

I hold the view that women are unjustly deprived of a basic human capability due to their membership in a group. The group in question is defined on the basis of sex.

According to Marilyn Frye,

[Oppression] has to do with your membership in some category understood as a natural or physical category. The inhabitant of the cage [of the oppressed] is not an individual but a group, all those of a certain category [as in the case of being a Jew during WWII]. If an individual is oppressed, it is in virtue of being a member of a group or category of people that is systematically reduced, molded, immobilized.⁶³

Not everything that "frustrates or limits a person is oppressive and not every harm or damage is due to oppression."⁶⁴ When someone is the victim of kidnapping and rape, s/he is a victim of a crime, and it would be odd to describe her/him as oppressed rather than as a victim of criminal activity. Parents have control over their children and keep them from some of the things that the children want to do but we don't for this reason consider the parents to be oppressors. Someone who is injured in a hunting accident is not oppressed

⁶¹ *ibid*, p. 127.

⁶² Bartky, *On Psychological Oppression*, p. 133.

⁶³ Frye, *Oppression*, p. 122.

⁶⁴ *ibid*, p. 123.

though he may be in a state of excruciating pain or incapacity. His pain or incapacity is not inflicted on him in virtue of his membership in any particular group. However, this is certainly not the case with FGM. The pain is inflicted on someone because she is a woman--that is, because of her membership in this particular group.

In contexts in which FGM is widely practiced women are seen as an inferior group. Nussbaum claims that cultures that practice FGM often portray women as "childish and whorish."⁶⁵ Women simply are, on this view incapable of controlling their own sexuality in a socially acceptable manner and so it must be externally controlled. Women's sexuality is treated as a source of the destruction of the family. Young children are not capable of safely handling weapons, so their access to such items must be carefully controlled by others. Women are treated the same concerning their sexuality, which must be controlled--as a responsible guardian would keep deadly weapons away from children. Just as a child could quickly cause lethal harm if given a deadly weapon, a woman who is given opportunities to develop her sexuality will become a "whore". Conceived in this way, the level of friendship and intimacy in a relationship is on shaky ground at best, and FGM can (and frequently does) keep the relationship from becoming a full, humanly successful one due to the fact that one of the individuals involved is assumed to be in some respects inferior to the other and not deserving of the same capabilities.

The reasons given to support the practice of FGM fail as justifications. FGM is falsely held to be (1) the best or perhaps even the *only* way to be rid of adultery and achieve family stability or (2) the preferred method for introduction to womanhood (which overlooks other more humane options). Many cultures have less dangerous and harmful, not to mention oppressive, traditions to introduce young men and women into

⁶⁵ Nussbaum, SSJ, p. 125.

adulthood.⁶⁶ American Indian tribes send their young on a quest; in the pacific islands, they tattoo the boys as a sign of manhood, and the Jewish culture does this by means of a festivity called *bar mitzvah*. None of these actions leave the child mutilated and in agony-- nothing is done that would lead to permanent, irreversible damage that may annihilate a capacity to participate in or enjoy a fundamental human activity as is the case with FGM. Tradition alone does not justify the psychological, emotional and physical harm that FGM causes. If it is known that a traditional practice causes substantial harm and there are other alternatives readily available, then from a moral point of view the traditional practice should be replaced by the less harmful alternative. At the very least, an appeal to tradition should not be taken to establish a sufficient reason for the continuance of the practice.

A number of problems arise from the idea that FGM is the best or perhaps the only way to be rid of adultery. FGM is clearly not a necessary condition for committed relationships. All else equal, uncircumcised women lead a life that is of much higher quality. In relationships where the couple are lovers in the fullest sense there is often deeper care and closeness between them due to their mutual loyalty, affection, intimacy and friendship--this is a better, more noble, way to secure fidelity than is FGM. It is better and more noble because each of the parties is worthy of fidelity, which is different from fidelity secured by diminishing another person's basic capability. In chapter one I suggested that FGM doesn't necessarily secure the blessing of virginity or fidelity and that sometimes it leads to promiscuity due to women's unsatisfying experience. Perhaps FGM works some of the time, as building fidelity based on love and care does, but the latter

⁶⁶ In chapter two I responded to the reasons given for FGM and suggested that *prima facie*, if two acts achieve the same goal, and one causes more harm than other, we are morally obligated to do what is less harmful.

would start the family on strong foundations that people can build on and not mutilate the physical being of one of the partners in order to ensure that she is worthy of trust. A woman's dignity and sense of self-worth is diminished if she is *only* looked at as a caregiver, mother, daughter and wife, and these are often the only qualities of womanhood that are considered when FGM is at issue. Looking at an individual in terms of the roles that she plays in a society does not harm her, what's harmful is if those roles are taken to exhaustively define who she is--not one who is valuable in her own self but rather someone whose entire being is understood to consist of the services she renders to others--primarily men. She is taken to have no inherent value in herself.

The trauma of FGM often undermines a woman's self-confidence and self-actualization and initiates forms of psychological oppression. Joyce Mitchell Cook explains psychological oppression this way:

To be psychologically oppressed is to be weighed down in your mind; it is to have a harsh dominion exercised over your self-esteem. The psychologically oppressed become their own oppressors; they come to exercise harsh dominion over their own self-esteem. Differently put, psychological oppression can be regarded as the internalization of intimations of inferiority.⁶⁷

Society perceives these women solely as daughters, wives, mothers and widowed, their identity invariably defined in terms of their relationship to men and they have no rights and no access to any rights or value.⁶⁸ "Those women have been systematically taught that [t]he function of [a woman] is the service to men and men's interest as men define them, which includes the bearing and rearing of children."⁶⁹ Such categorization from early

⁶⁷ Joyce Mitchell Cook, paper delivered at Philosophy and the Black Liberation Struggle Conference, University of Illinois, Chicago Circle. November 19-20, 1970.

⁶⁸ Nussbaum, WHD, p. 2. Though there are many activist groups in many different countries helping and educating the masses, the individual girl does not have much hope of being the one who is not mutilated.

⁶⁹ Bartky, *On Psychological Oppression*, p. 128.

childhood keeps virtually all women from any expectations of a better situation for themselves.

What gives a person confidence is setting goals and achieving them. In FGM-practicing cultures it is assumed that women are not going to achieve fidelity on their own no matter who they are or what character traits they have. This means that, generally speaking, women cannot control their own minds and bodies. If it is uniformly assumed that a woman has no ability to control her own body, how can it be expected that such women would come to believe that they have such control? Given the assumptions underlying FGM, the confidence is not likely to be present that would foster the development of self-control or autonomy. Women may believe that undergoing FGM is the only way that they can control their sexuality and achieve self-worth, and others perceive them as having worth as a marriage partner or mother only if they are suitably circumcised. In so far as women are seen by others in this way, they are perceived not to have value in themselves, and they may come to believe this themselves. If they do so, they may become women who are far less confident and self-assured than they would otherwise be. It is true that social acceptance could give one assurance and confidence as well, but it is gained by having to give up a part of one's own body. Many of us could relate to a time when an illness or injury would not heal, and left us feeling depressed and helpless. Such feelings of depression and helplessness are common psychological side effects of FGM. As a young woman put it, "to be circumcised is having a terminal illness that lasts a lifetime."⁷⁰ It should not be surprising that a circumcised woman would suffer long term psychological problems.

If FGM were the only way to be worthy of marriage, one might wonder about the

⁷⁰ Nussbaum, SSJ, p. 124.

level of love and care involved in such relationships, or even the desire to have such relationships. Suppose a woman is willing to have a sexual relationship with a man who enjoys the act, but it causes her great pain. Her partner is clearly aware of this. She may want to be a mother and this is the only way that they can have a child. He causes her harm (pain) for a higher good of procreating.

A different case is represented by the man who gets sexual pleasures from the relationship and displays no concern towards his lover's pains or pleasures. The only goal to be achieved is his pleasure. A wife in societies that resort to FGM is often in such a situation; it is part of a woman's duties to provide her husband with sexual services. She simply cannot refuse his desires, and he experiences no cultural encouragement to take her suffering into account. In such circumstances, a woman might willingly fulfill her duties, but would hardly be likely to look forward to doing so; and a man who insists on sexual intimacy in such circumstances is guilty of a lack of concern for his partner's wellbeing. Though this sort of demeaning attitude towards women is not unheard of in non-FGM practicing societies, FGM is a further contributing factor here. In such cases she is merely a means to sexual pleasure. Intimacy, love and care may not be a part of this experience for her and he does not concern himself with this lack of intimacy, love and care in their marriage. Intercourse is usually painful for circumcised women and this fact does not affect his sexual demands in any relevant way. Her person is reduced to a mere object to satisfy his desire regardless of the price she has to pay.

There is a parallel between this lack of concern and the psychology of rape. Rapists don't take into account the kinds of psychological experiential harms that they bring about in their victims, which include not only the person raped but also others who care for this person. Men who advocate FGM are often similar in two parallel ways:

1) Many fathers who decide to have their daughters subjected to FGM are not concerned about the physical or psychological harm it brings about. Such a father often has his concern centered on the social prestige of his family and the material or social goods gained for the family he rules. The mother's opinion is considered irrelevant and does not count here; in FGM practicing societies, if a mother is against FGM it does not stop the men from arranging to circumcise their daughters.⁷¹ 2) When a man willingly enters into a relationship for no other goal than his own pleasure, with a woman who is circumcised, knowing that she not only does not get any physical pleasure from him but is also hurt by the act (or worse, he would not even consider a relationship with an uncircumcised female), he is not centrally concerned with the harm that he causes her. Both (1) and (2) fail to take adequate account of the physical and psychological harm these women go through because of the demands put on them by men. In both cases the women are treated as a "mere means" to securing some masculine desire. Her humanity is not taken into account. It is the attitude that it is permissible to use another human being as a mere means to sexual pleasure that makes this similar to the psychology of the rapist.

Female genital mutilation is morally suspect not only because it detracts from the "fullness" of a relationship, whatever the male's intentions may be; it also prevents a human being from legitimately extending and exploring her life to the fullest. For these women the quality of life, or at least the potential for having a fulfilling sexual life, will always be inferior to the uncircumcised females or the men of those societies. While a father who decides that his daughter must be circumcised may be caring as far as her social

⁷¹ *ibid*, 124. (And, as mentioned in chapter two, as much as women support this practice, it shows the intense level of internalizing oppression and to some extent that those women could do something about it and didn't may be morally responsible.

life is concerned, he *knowingly* overlooks her private sphere and her personal being.⁷² What is being overlooked or not understood is that by circumcising his daughter, he is putting her in a situation inferior to her future mate with respect to the capacity to experience pleasurable sexual relations and to make that pleasure integral to the bond of love and activity of reproduction. This could perhaps be due to misinformation about the benefits of FGM and again, when one is misinformed about an important issue, the choices made based on that information are often flawed.⁷³ Often due to misinformation or the misunderstanding of information, she is being circumcised.

Women are all too often assigned by men to service roles and refused any inherent value of their own. Frye emphasizes this point when she says,

There is a woman's place, a sector, which is inhabited by women of all classes and races, and it is not defined by geographical boundaries but by function. The function is the service of men and men's interests as men define them, which includes the bearing and rearing of children.⁷⁴

Her wellbeing as a valuable creature in her own right is not considered. It is important to remember that sexual dissatisfaction and inadequacy are not the only side effects of FGM, which is inflicted with little concern for the overall wellbeing of those being mutilated. More than one basic capability is lost or seriously affected as a result of undergoing FGM. This is not a matter to be taken lightly.⁷⁵

⁷² *ibid.*, p. 44. Nussbaum distinguishes between three kinds of capabilities that must be considered in our analysis of having a good life. The one that is being taken away here is of the second kind the "internal capability: states of the person herself that are, as far as the person herself is concerned, sufficient conditions for the exercises of the requisite functions. A woman who has not suffered genital mutilation has the internal capability for sexual pleasure;..."

⁷³ See chapter two. The misinformation could be that "FGM is the only way to keep tribal identity, FGM leads to good health, that this is the only way to be introduced to womanhood, or that FGM is a religious requirement." I argued that the reasons given are false and false beliefs do lead to actions that are faulty and/or morally suspect.

⁷⁴ Frye, *On Oppression*, p. 123

⁷⁵ Those lost or effected capabilities are, "life, bodily health, bodily integrity, emotions" and perhaps "play." "Practical reason", the capability to choose one's human good is also oppressed as one undergoes FGM.

Nussbaum contends that if any one of the basic human capabilities is destroyed, then that life is potentially not as good a life as it could have been if one had the potential and opportunity to develop each of those capabilities. So, opportunity, even if one is not interested in it or aware of it, contributes to a good life.⁷⁶ This does not mean that everyone develops each of their capabilities but that everyone should be given the opportunity to do so if they so choose. Some functioning of some of these capabilities are essential in development of other capabilities.⁷⁷ Where FGM is practiced the women's social betterment comes from the destruction of one of the basic human capabilities that contributes to a flourishing human life. The destruction of a basic capability, and the consequent diminishment of potential for the fundamental human experience of intimate sexual love is due to the fact that one is a member of a certain class--a distinguishable group known as females. This is oppression; add to it the physical and psychological harms that are nearly certain consequences of FGM, and it is oppression of the most egregious kind.

The destruction of a basic human capability should not be thought of as a trade-off; social gains are not the same as basic capabilities and one cannot be properly traded for the other. They are radically different. Given Nussbaum's view of basic human capabilities and their violation and Bartky's understanding of oppression, which involves "being cut off from the sorts of activities that define what it is to be human"⁷⁸, there can be no doubt that FGM is an oppressive practice. Women are systematically and unnecessarily cut off from a part of what it is to be human. This is done to them *because* they are women, and it is done for the *benefit* of men. Even the so-called "social benefits"

⁷⁶ People can get educated about these opportunities though at one time in their lives they were ignorant of their existence.

⁷⁷ Nussbaum, WHD, p. 78-80.

⁷⁸ Bartky, *On Psychological Oppression*, p. 133.

that are conferred on them as a result of FGM, such as economic dependency, marriageability, motherhood, and homemaker work to the benefit of men. Given what is done to who, and who benefits from the doing, there can be little doubt concerning the oppressive nature of FGM.

It must be noted that not everyone who lacks a capability is oppressed--for instance a group of handicapped children--only the ones that have a capability taken away from them or diminished because of their membership in a group--in this case, women.⁷⁹ I am not suggesting that each person will pursue each and every one of the basic capabilities, but they should be properly available to individuals who choose to pursue them. Nussbaum adds "The central capabilities are not just instrumental to further pursuits: they are held to have value in themselves, in making the life that includes them fully human."⁸⁰

The most relevant of Nussbaum's *Basic Human Functional Capabilities* for our purposes is:

Bodily Integrity [which means] Being able to move freely from place to place, being able to be secure against violent assault, including sexual assault, marital rape, and domestic violence, having opportunities for sexual satisfaction and for choice in matters of reproduction.⁸¹

In communities where FGM is practiced part of the capability referred to by *Bodily Integrity* is intentionally destroyed and, all else equal, "a life that lacks any one of these

⁷⁹ Frye, *On Oppression*, p. 123-124 This is not to say that handicapped children are not oppressed, or that they could not be oppressed because of their lack of capability(ies). I only mean that the fact that they lack these capabilities is not a symptom of oppression. It is a result of the "natural lottery". FGM is a product of the "social lottery"; it is both a result of oppression and results in oppression. Of course, handicapped children could lack some capabilities due to lack of available resources that would allow them to develop those capabilities. In those cases, lack of capability would be a form of oppression if the resources were easily supplied.

⁸⁰ Nussbaum, WHD, p. 74.

⁸¹ Nussbaum, SSJ, p. 41.

capabilities, no matter what else it has, will fall short of being a good human life."⁸² Therefore, even if these women achieve higher social status than the ones who are not circumcised they will be unable to choose something the realization of which may contribute to a *fully good human life*.⁸³ For instance, *all else equal*, a tennis player who loses his legs in a car wreck could indeed lead a good life but not as *fully* a good one because he is not able to run in a field of flowers or continue playing tennis, or undertake any other activities that require the case of fully developed, functioning legs, though none of the other goods have been taken away from him.⁸⁴ Nussbaum points out that her list "...is a list of *separate components*. We cannot satisfy the need for one of them by giving a larger amount of another one. All are of central importance and all are distinct in quality."⁸⁵ A fully good human life requires that a person be able to make decisions about which of the capabilities they will develop; FGM insures that such decision-making is unavailable in some important respects to one group of persons; namely women.

Sexual oppression has effects other than the ones which are immediately observable and the psychological effects of FGM are far from insignificant. They initially begin when women are assigned their expected role in the society through the act of FGM. Everything else is secondary to that role, if it has any importance at all. Those women have learned to see themselves solely in terms of what men want and demand from them-- and as mentioned earlier many men would not even consider becoming involved with a

⁸² Ibid. p. 42.

⁸³ Women in FGM-practicing communities could and many do exchange security against sexual assault, or any other violence by giving up the opportunity for sexual pleasures but when that happens, one must be alarmed about the situation--Nussbaum claims that a "tragedy" has happened here. We should not have to give up what makes us humans to gain social good (Nussbaum, WHD, p. 81).

⁸⁴ This disaster could make him improve the quality of his life by deciding to become enlightened in some spiritual way or become a kinder person but that is the case where all else is not equal. He has changed the way he thinks about his life and what matters in life. If he remains in the same mind set, he could be destroyed by what has happened to him.

⁸⁵ Nussbaum, WHD, p. 81.

woman who has not been circumcised. The idea is that properly brought up and *prepared* females are all circumcised and hence ready to perform their services as wives, mothers and objects of sexual release. Both sexual objectification and stereotyping are at play here. Bartky says of the former:

A person is sexually objectified when her sexual parts or sexual functions are separated out from the rest of her personality and reduced to the status of mere instruments or else regarded as if they were capable of representing her. On this definition, then, the prostitute would be a victim of sexual objectification, as would the *playboy* bunny, the female breeder [as circumcised women] and the bathing beauty.⁸⁶

These women are being identified exclusively in terms of their sexuality, and if what Bartky holds is right then such identification is oppressive. An instance of this is the way the girls in Kenya are treated. Stephanie Welsh claims that in Kenya when a girl is circumcised she has no *right* to refuse intercourse with any man. A woman is reduced merely to *an instrument* of pleasure for men. This sort of objectification is not only undignified for a woman but also can lead to damaging physical consequences such as unwanted pregnancies and possibly, death.⁸⁷

Marriageable women are stereotyped in that they are not supposed to care about sexuality or anything outside the home, the family, and household chores. Uncircumcised women are stereotyped as wanton, undisciplined and incapable of self-control. They are seen as poor marriage prospects and unreliable mothers. There is a convincing reason why circumcised (marriageable) women might have little interest in sex; the ability to enjoy sexual pleasure has been taken away from them. If the capabilities have not been taken away, with the right stimuli women will be able to experience sexual pleasure. Many women in FGM-practicing cultures do not even believe that they are missing out on

⁸⁶ Bartky, *On Psychological Oppression*, p. 129-130.

⁸⁷ Stephanie Welsh, *The Right of Passage*, Pulitzer Prize winner 1996.

something. They believe that the only pleasure to be had for a woman is through giving her husband pleasure and that women are incapable of sexual pleasure even without excision.⁸⁸ Perhaps some uncircumcised women have the same belief but they might be proven wrong if given the right stimuli.

These stereotypes, as well as others, are not only inaccurate and reprehensible; as Bartky remarks, they are "psychologically oppressive" in two ways:

First, it can hardly be expected that those who hold a set of stereotyped beliefs about the sort of person I am will understand my needs or even respect my rights. Second, suppose that I, the object of some stereotype, believe in it myself--for why should I not believe what everyone else believes? I may then find it difficult to achieve what existentialists call an authentic choice of self, or what some psychologists have regarded as a state of self-actualization.⁸⁹

In other words, the person stereotyped may internalize the stereotype and the alienation. If she does, then such internalization makes authentic choice much more difficult than it otherwise would be. When this happens the oppressed become their own oppressors. Virtually none of women who are circumcised think about their future in terms of their education, the establishment of a career, or other autonomous achievements beyond the role of wife/mother. This is so mainly because they have been raised to believe that the most important things are male-centered; to be a daughter, a wife, and then a mother of a husband's children. In such cases women come to see themselves as an extension of the will of others, and so may become submissive and incapable of making decisions. If their husbands abandon them or if they are widowed or if their husbands decide to take in another wife (regardless of the wife's disapproval) they don't have the psychological ability, the autonomous clarity of purpose to make decisions for themselves. Their society

⁸⁸ Kopelman, p. 316.

⁸⁹ Bartky, *On Oppression*, p. 128.

only reinforces this incapacity. Many of these women end up being treated as a burden to their husbands families or throw themselves on the mercy of their own families to care for them and their children, the very image of a dead-end, failed life.⁹⁰ An example of this sort of oppression is seen in many widowed women; some in India, where the idea of caste is still influential (although FGM is not practiced in India), are not allowed to work to feed themselves and it is an abomination to even consider remarrying.

Psychological oppression, though often difficult to detect, is highly likely when a basic biological capability has been taken away from women by brute force (in virtually all cases) and there was nothing they could do to prevent it from happening.⁹¹ These women are often characterized by what psychologists call *learned helplessness*, and this form of psychological oppression often results from FGM (although FGM is, of course, not the only cause). Psychologist Martin E.P. Seligman confirms the effects of learned helplessness.⁹² In his research he concludes that in 70% of cases when humans encounter one situation where they are helpless and nothing they do makes any difference, they will generalize that helpless attitude to relevantly similar situations--in this case in dealing with male authority figures where anything they try seems unlikely to make a difference in their lives.

Bartky presumably would consider women who undergo FGM to be prime candidates for *alienation*. She explains what she means by alienation;

Alienation occurs in each case when activities which not only belong to the domain of the self but define, in large measure, the proper functioning of this self, fall under the control of others. To be a victim of alienation is to have a part of one's being stolen by another. [She further comments,]

⁹⁰ In India it could even worse for them. They could actually become cremated along with their deceased husbands (Nussbaum, WHD, p. 192).

⁹¹ Depending of how the child is resisting it takes the help of 4 or 5 grown adult men or women to hold these children down while their genitals are being mutilated (Nussbaum, SSJ, p. 118).

⁹² Martin E.P. Seligman, *Learned Optimism* (New York: Simon & Schuster Inc., 1990), p. 15, 23-25.

psychic alienation involve[s] a splitting off of human functions from the human person, a forbidding of activities thought to be essential to a fully human existence.⁹³

To be alienated, according to Bartky, is to have part of one's human functioning taken away. Women who undergo FGM have a part of their human functioning taken away from them, because the capability necessary to such functioning has been destroyed.

FGM and its larger inseparable context leads to an unnecessary and profound experience of belittlement and helplessness that can hardly fail to leave psychologically traumatic effects. Helplessness, according to Nel Noddings, is a sign of moral evil.⁹⁴ Supporting a practice that promotes the destruction of a basic human capability and one that promotes alienation and the resulting sense of incapacity fosters a sense of helplessness. Anyone who knowingly does not stop or try not to be a part of a practice that's seen to be a moral evil is, to the extent that they are capable of changing it, responsible for the evil.⁹⁵ Protest and refusal to participate in an evil practice is available to most men, and men in FGM-practicing societies who do little or nothing to rectify the situation must be assigned some responsibility for its continuation. It is mainly the men's demand that secures a cultural niche for FGM. Imagine that the demand was reversed so that men refused to marry a woman who is circumcised. Suppose that they consider FGM immoral and unnecessary. If this happened FGM would not remain a part of this world for long. The only remaining motive for it would be the economic incentive that a few women have who are paid for performing the operation. But no one pays for a service that

⁹³ Bartky, *On Oppression*, p. 133.

⁹⁴ Nel Noddings, "Education and the Transformation of Consciousness: Educating for a morality of Evil" in *Social Justice in a Diverse Society*, edited by Rita Manning and Rene' Trujillo (California: Mayfield Publishing Company, 1996), p. 360.

⁹⁵ Noddings suggest that helplessness is a sign of evil. However, not all helplessness is evil. I could feel helpless in the fact that I cannot get to work on time but this does not necessarily make it an immoral act. What makes an act such as FGM immoral is the fact that the helplessness that results from it occurs as a result of an avoidable intentional social practice (already established), and that's why the helplessness is evil.

no one wants.

The stakes are very high; every year two million young women and girls ages 4-15 go through FGM.⁹⁶ This results in a total of about 120 million women who are currently living with mutilated bodies as a result of FGM.⁹⁷ Given that in these societies there is not much for women to accomplish outside of marriage and their relationship with men, as long as fathers believe that FGM enhances their daughters marriageability they will keep mutilating their daughters. As in all intentional social injustice, those predominantly responsible are those with power or influence. It was with the help of men in the United States that laws were changed so that women and other minority groups gained the right to vote. Men in FGM practicing societies (and those in other societies with influence) who are not trying to change these evils are themselves morally responsible in so far as they could do something and neglect to do so. Noddings asserts:

When we acknowledge that pain, separation, and helplessness are the basic states of consciousness associated with evil and that moral evil consists in inducing, sustaining, or failing to relieve these conditions, we can no longer ignore that we do think on and intend evil when we perform such acts.⁹⁸

Pain, separation, and helplessness, then are signs of moral evil. All of these signs accompany FGM, and so it is a good candidate for a practice that is evil.

Pain results from the actual procedure itself, and from the consequent physical and psychological conditions that occur due to FGM. Helplessness in relationships is common; initially finding one's fate (to be cut or not to be cut) in the hands of men. Physical helplessness while one is held down by strong others during the procedure. Finally, the helplessness that results from generalizing these early experiences to

⁹⁶ Rachels, p. 31.

⁹⁷ Toubia, *Female Genital Mutilation: A Call for Global Action*, p. 25.

⁹⁸ Noddings, *Education and the Transformation of Consciousness: Educating for a Morality of Evil*, p. 360.

relationships with men in general. Separation, in the most literal sense, from part of one's own body, and from the physical pleasure that can result from that part. Separation from the forms of intimacy and bonding that such pleasure is a part of, and which is not easily achieved (at least for many people) when such pleasure is missing. Pain, separation, and helplessness all inflicted on one at the hands of others, and all because she is a woman. All done in order to make her more serviceable, more attractive, to others. This is evil; this is oppression. If this were visited on any other group it would instantly be recognized for exactly what it is; but those who are quick to recognize oppression based on race or disability are all too often slow (I don't just mean that it takes them a long time; I mean mentally sluggish) to recognize it when it is based on gender. In the final analysis, given the psychological and physical damage that FGM leaves behind as a result of taking away one's basic capabilities for full potential for human flourishing, it can be concluded that FGM is immoral and all who "knowingly" support it are, to some extent, morally blameworthy.⁹⁹

Granted FGM improves a woman's social status, we don't want to forget about the fundamental human capacities, private and personal pleasures and the psychological integrity that it undermines. A part of having a lover is the sexual pleasure that one receives from one's partner. Women who have their genitals mutilated do not and cannot have a complete intimate relationship as equal partners in the give and take of sexual pleasure. FGM destroys one of the necessary conditions for bodily integrity, in the sense in which this is taken to be a basic human capability.

Women will always be sexually oppressed in FGM practicing societies even if as a result of the procedure they become socially better off. The society might acknowledge

⁹⁹ For more detail on this see chapter two, section: "What about good intentions?".

them as superior to or more desirable than the uncircumcised but not as equal and dignified and worthy members of the society. Nussbaum reminds us of this in answer to critics who charge us with Western imperialism.

And what we are going to say is: there are universal obligations to protect human functioning and its dignity, and that the dignity of women is equal to that of men. If that involves assault on many local traditions, both Western and non-Western, so much the better, because any tradition that denies these things is unjust.¹⁰⁰

There is, however, a concern about what Nussbaum sets forth here. One may point out that while a culture may involve unjust practices, many members have come to define themselves in terms of that particular culture. Practices such as FGM might be defended as necessary for continuation of cultural identity.

Will Kymlicka suggests that while "membership in a rich and secure culture"¹⁰¹ is essential for development of the self, we should also bear in mind that "to inhibit people from questioning their inherited social roles can condemn them to unsatisfying, even oppressive lives."¹⁰² Kymlicka is right in his understanding of the development of the self among people with very strong traditions; he is equally correct to point out the need to be concerned if these roles are oppressive.

Some cultures condemn even the questioning of those roles and so many members are unable to consider a different life for themselves. In such cases they may even be unaware that alternatives exist. Susan Moller Okin challenges the ability of such optionless cultures to make the bases of self-respect available to all members:

For surely self-respect and self-esteem require more than simple membership in a viable culture. Surely it is *not* enough, for one to be able to

¹⁰⁰ Nussbaum, SSJ, p. 30.

¹⁰¹ Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1989), p. 165.

¹⁰² Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), p. 92

question ones inherited social roles and to have the capacity to make choices about the life one wants to lead, that ones culture be protected. At least as important to the development of self-respect and self-esteem is *our place within our culture*. And at least as important to our capacity to question our social roles is *whether our culture instills in and enforces particular social roles on us*. To the extent that their culture is patriarchal, in both these respects, the healthy development of girls is endangered.¹⁰³

Okin and Kymlicka hold that being able to question social roles is an important part of self-respect.¹⁰⁴ Being able to question those roles *and* have the option to do otherwise is what Okin contends is necessary to overcome oppressive practices. Her point is that merely recognizing oppression is not enough; mere recognition will not ensure the "healthy development of girls." Many do recognize the oppressive nature of FGM but have no opportunity to effectively resist the practice.

An extremely important part of Okin's discussion aims to show that sex discrimination cannot be adequately grasped merely from the perspective of the public realm; the private must also be considered. Laws may have little effect on the way people are treated in the private domain, but society should protect women from being abused in public and in private. Women should be able to make decisions in both realms. Many women do not believe that they actually have the possibility of choosing differently, and they "freely choose" to undergo FGM believing it to be the *only* way to gain social status, get married, secure the blessings of family life, and become a woman and therefore be taken seriously. According to Nussbaum, regardless of what people choose, laws should protect their basic human capabilities, and this includes protection from the norms that govern the private realm.¹⁰⁵ Cultural norms should at least strive to be equally protective of males and

¹⁰³ Susan Moller Okin, "Is multiculturalism Bad for Women?" in *Is Multiculturalism Bad for Women?* edited by Joshua Cohen and Matthew Howard. (Princeton: Princeton University Press, 1999).

¹⁰⁴ As Nussbaum points out, to decide one's place in society and to choose our place in a society is also one of the basic human functioning capabilities

¹⁰⁵ Nussbaum, WHD, p. 115. This is what Nussbaum calls "adaptive preferences."

females and such protection is lacking in FGM-practicing cultures.

The argument as developed so far

Lets review what has been suggested so far.

p1) There are no plausible internal moral objections to having *bodily integrity*, which includes capability to develop one's sexuality.

By "internal objection" I mean that there is nothing that is inherently wrong with developing one's sexuality. There is an internal objection against murder for mere amusement. The act is in itself wrong. One may wonder why, if there are no internal objections against sexual development, some women choose to be mutilated? Here Nussbaum's conception of "adaptive preferences" can help us to better understand such choices. An adaptive preference is a choice or desire which results when individuals "adjust their desire to the way of life they know....Adaptive preferences are formed without one's control or awareness, by a causal mechanism that isn't of one's choosing."¹⁰⁶ When a person chooses a self-harm, or indicates a preference that reduces one's capability to flourish in some basic respect, we may be well advised to ask ourselves if this preference is an adaptation to immoral conditions that unjustly constrain or inhibit the range of possibilities open to persons.

We would do well to take a skeptical attitude (at least initially) concerning how well-considered, informed, and autonomous such a preference is. Suicide is certainly one of those cases. One may ask if this choice is well-informed and is indeed good for the person making it? Would she make the same decision if she had all the facts, the freedom to choose differently, and could seriously entertain other options? Most of the women who suffer FGM are not given much if any education, and many don't know that choices like

¹⁰⁶ *ibid*, p. 136-137.

staying in an abusive relationship, FGM, or staying in a unsanitary environment are not good for them and are highly likely to cause them serious undeserved harm.¹⁰⁷ As one woman put it; "this is just how things are."¹⁰⁸ To merely tell a helpless and oppressed woman that she has choices is not enough to make those choices appear as realistic options. Nussbaum points out that women must often be helped to make the right choices "not only by giving them new information but by enhancing their sense of their own possibilities and worth."¹⁰⁹ If a person does not believe she has value and is worthy of improving, she will not do anything to change her circumstances for the better. People who change their lives for the better usually believe that they are deserving of a better life than they have. This idea along with the opportunity and means for improvement will motivate them to discover and develop their possibilities.

Many people believe that regardless of what they do, the quality of their lives will not improve. They don't see any point in trying to change anything; doing so is, in their view, merely a recipe for frustration and wasted effort. This does not mean that certain people just simply do not care about their quality of life--quite the contrary. But they see no chance of doing anything that could realistically lead to improvement. Such lack of vision or imagination is often a manifestation of learned helplessness. Once one is educated about choices *and* given the tools to see those choices as meaningful possible realities that are not undeserved, they have a much better chance of actually leading their lives to the fullest and making better choices that avoid unnecessary self-harm. A critical first step toward a better life then is to know one's value and self-worth. People who stay in abusing relationships frequently do not see themselves as worthy of better treatment. As

¹⁰⁷ This could apply to some of the male and female proponents of FGM.

¹⁰⁸ Nussbaum, WHD, p. 124.

¹⁰⁹ *ibid*, p. 126.

one woman puts it, "A daughter born/ To husband or death/ She's already gone."¹¹⁰ So, apparently, the only way to escape abuse is to escape men. As long as women regard themselves as inferior to and dependent on men, there is little to be done to improve the quality of their lives if those lives suffer at the hands of men. Steps leading to recognition of greater self-worth and the possibility of securing better living conditions comes from seeing that improvement is possible. Nussbaum tells of organizations like Self-Employed Women's Association of India, which shows women videos of "women doing daring new things and thereby gaining confidence that they can do things too." This has helped many Indian women to widen their horizons, try new things, and no longer remain passive victims of the oppressive forces of their culture.¹¹¹

The second premise is,

p2) There are no plausible external objections to developing one's sexuality. The traditional objection that FGM is needed for committed relationships is simply wrong. Fidelity can be achieved in a relationship without women having to be physically abused.

By "External objection" I mean an action being wrong due to the consequences of that action. There is nothing inherently wrong with wearing sport bras to church but family members may object as a result of the distractions it produces or misunderstandings that could lead to immoral lustful thoughts in some people. Thus they may bring external objections to bear on sporting such attire in inappropriate circumstances. Noddings reminds us that we can teach female children virtues, such as respect and care for themselves and others. They could learn to develop relationships with people based on mutual care and love and come to know why these things matter.

¹¹⁰ Told by a battered woman (Nussbaum, WHD, p. 2).

¹¹¹ *ibid*, p. 126.

Teaching dignity and mutual respect is perhaps the most effective way to assure that our sons and daughters practice fidelity. Women who undergo FGM could still sometimes commit adultery for many reasons (financial, revenge or all sorts of other reasons). But with the right outlook about relationships and marriage we could expect very successful results. There are far better, less oppressive, painful, and harmful ways of achieving stability in the family than FGM.

Internal and external objections exhaust the foreseeable range of objections to allowing women functional sexual development based on their capabilities. It follows that,

c1) Therefore there are no plausible moral justifications for denial of the capacity for sexual development in a relationship given that there are no plausible internal or external moral objections to doing so.

This does not mean that choosing to become a nun is an immoral choice. A nun chooses that life and coercion or oppression need be no part of such a choice. She is not pushed into the choice by being forcibly deprived of a basic human capability. Instead, it might be an example of what psychologists refer to as *self-actualization*. Further, she retains the right and the ability to overturn that choice.

The denial of fundamental choices to exercise basic human capacities is what's at issue here. The society is not responsible--at least directly--for an individual deciding to become celibate if she plausibly could have chosen otherwise. What the society is responsible for is preventing the destruction of her capabilities and her opportunities to develop them. As mentioned earlier one must have the potential for extending the

capabilities, in a *real* sense of having.¹¹² Not all of these capabilities need be put into function. The moral responsibility of people toward one another is to avoid foreclosing on the opportunities to develop basic human capabilities and let individuals make their own choices about which ones they want to develop.

FGM is unnecessary for purposes of introduction to womanhood; there are alternatives that would not have such harmful effects and would confer benefits on girls. In countries where activist groups have educated young girls about the harms of FGM and the benefits of not submitting to it, many young women are refusing it and fleeing the tribes where it is practiced. Though this seems like a moral good in our eyes, it does represent a loss of a tradition. In response to such resistance some families have pushed back the age of circumcision to four years.¹¹³ This is a tragic side effect of education, but many other tribes have come to find alternatives to FGM to deal with this issue of coming of age. For instance, in some places in Kenya women go through "seclusion" for several days where they learn about the meaning of becoming a woman, an adult and a parent. They learn about their health, physical and psychological. When the days of seclusion are over, the traditional celebration that conventionally follows the circumcision starts; now however the girls are not suffering in pain, and so can concentrate on the full value of their achievement and its recognition. They are well educated about their transition and are looking forward to what awaits them.¹¹⁴

¹¹² As Nussbaum points out, when in India the government made some laws for women's education, many didn't take it very seriously because they didn't believe that it would do them any good. As a matter of fact, they saw it as just another way to make their husbands mad at them. Those rights and choices were not real to those women (WHD, p. 43). It needs to be mentioned that FGM is illegal in most of the countries in which it is practiced but these regulations are for the most part ignored. All too often women don't really believe that those laws could do them any good, and they are right. Once someone has been circumcised the laws cannot recover what is lost for her. What has to be done is to better educate the people who practice it.

¹¹³ This is a sign of an ineffective law. The laws against FGM need better enforcement, part of which could include stiffer penalties.

¹¹⁴ Eve Ensler, the author of *Vagina Monologue*, in an interview about her trip to Africa.

My conclusion is,

c2) Therefore, there is no justification for Female Genital Mutilation.

In Summary

I have attempted to demonstrate that female genital mutilation is wrong due to its oppressive nature. In doing so, I have concentrated on the psychological harm of FGM and the learned helplessness that results from this tradition. I have argued, with Noddings, that the helplessness, separation, and pain that result from FGM point to a real evil. When evil is recognized as such, anyone who knowingly supports it, or allows it to pass unchallenged is in part morally responsible. If men are aware of the FGM supporting traditions in their tribes and know what such practices lead to, the claim of ignorance is no longer relevant. FGM leads to unconscionable consequences. I have concentrated on Nussbaum's capability argument applied to the act and effects (physical and psychological) of FGM. Nussbaum's list of *central human functional capabilities* ought to be respected and not violated and to the extent that it is, as in the case of FGM, it is oppressive. Each and every human being should have the potential to take his or her capabilities to the level that they desire. Nussbaum's approach as deployed here allows people to make such choices in a meaningful way, to knowingly act as they wish, as long as they do not destroy the conditions for human flourishing of others. FGM systematically undermines and destroys a basic human capability on the basis of one's membership in a group (women), to the detriment of the members of that group, and so is oppressive. The underlying assumptions about FGM are unacceptable--that women are not capable of controlling their sexuality. Stereotyping, alienation, and sexual objectification are other practices that contribute to making FGM psychologically

oppressive. There are no morally justifiable reasons for FGM and a multitude of reasons against it; female genital mutilation is an oppressive practice and is morally wrong.

CHAPTER FOUR

CONCERNS OF RELATIVIST AND ANTI-PATERNALIST

SECTION ONE: ON RELATIVISM

The criticism of the practices of other cultures may be charged with overlooking the point of relativism or be labeled as paternalistic; a relativist or anti-paternalist might take such criticisms to indicate intolerance and/or unjustifiable interference with the autonomy of other cultures. Given that cultures are manifestly different and frequently operate under different standards, absolute values may seem non-existent. These differences are sometimes taken as evidence for moral relativism, and some might claim that to condemn FGM outside of the cultures that practice it is either ethnocentric or at least mistaken. I will discuss two forms of relativism, *descriptive* and *normative*, consider how they might be used to justify FGM, and then argue that these views do not succeed in their justificatory role. While I do not intend to demonstrate that no moral standards have their basis in culture, it is my position that not all do; the moral illegitimacy of slavery and FGM are examples of non-culturally relative moral constraints. If I succeed, this should suffice to shift the burden of proof to those who hold a favorable position towards cultural relativism concerning all moral standards.

Descriptive and Normative Relativism

First I will discuss descriptive relativism, which is, as the name suggests, a view

that holds that morality varies from culture to culture. No universally shared moral standards have been found, so it is concluded that morality is relative to culture.

Descriptive relativism is based on observations made by those who have looked beyond their own culture, and the diversity they find is taken to show that there are no objective moral standards. Ruth Benedict articulates the argument for descriptive relativism as follows;

p1) If there were objective morality then we would have a shared universal standard.

p2) There are no universal shared standards.

Therefore, there is no objective moral standard.¹¹⁵

With this argument Benedict contends that since cultures have different sets of norms, morality is relative to a particular culture or group. Paul Taylor adds the observation that people are not born with innate ideas of morality; children learn ideas of right and wrong. If that's the case then society teaches morality and we might be led to believe that this is the only way that morality is established. Because different cultures teach different moralities, such a view could also support a version of moral relativism.¹¹⁶

Granted that cultures are different and there are different standards of action in different societies, we are still not entitled to conclude that there are no shared moral principles. Kenya women (or women in any other society) might defend FGM on grounds other than the simple assertion "*that's how we do things*" or, if challenged, this explanation may be followed by referring to a further goal such as increased cleanliness or improving the chances of making a good marriage.¹¹⁷ If people in a society that does not practice FGM are asked why their men don't support this practice, they might answer

¹¹⁵ Ruth Benedict, "A Defense of Ethical Relativism" in *Ethical Theory: Classical and Contemporary Readings*, 3rd edition. Edited by Louis P. Pojman (California: Wadsworth Publishing Company, 1998). p. 39.

¹¹⁶ Taylor, p. 148.

¹¹⁷ *ibid*, p. 147-150.

with reasons that go beyond a mere appeal to their culture. Such a response might go something like “*We don't practice FGM because we are against the sort of physical or psychological harms that result from it.*” This goes beyond ethnocentric assumptions about the superiority of the local culture to invoke standards of health and human functioning that could arguably apply to all human beings. Taylor makes this point clear when he writes:

Facts about ethnocentrism and the causal dependence of an individual's beliefs upon his society's moral code do not count as evidence against the view that there is a universal ultimate principle which everyone would refer to in giving a final justification for his society's standards and rules, if he were challenged to do so.¹¹⁸

People often refer to a further principle, goal, purpose, or aim to justify their actions and these may be shared among cultures. In the above example the standard is related to biological health, but there may be other standards as well.

James Rachels suggests that cultures are not actually as different as Benedict would have us believe. Instead they share some basic moral principles. He gives the following example to clarify his view: Cannibalism is considered to be morally unacceptable in our society. Suppose there is a culture that believes people can reincarnate into animal bodies. In this culture, eating animals is looked on as cannibalism. In these two cultures, though they share some important values, the actions could be radically different—in one culture they kill animals for consumption and in the other, they forbid eating meat though both believe that it is wrong to eat people. Once members of the culture that believe in reincarnation are asked about their beliefs concerning vegetarianism or cannibalism, a reason can be given that goes beyond their culture.¹¹⁹ It goes something like

¹¹⁸ *ibid.* 151

¹¹⁹ James Rachels, *Elements of Moral Philosophy*, 3rd edition. (United States of America: McGraw-Hill Companies, 1999), p. 27-28.

this; “*We don't eat people because we think it is wrong to do so. An animal can be a person; therefore we don't eat animals.*” Again members of both cultures agree that it is wrong to eat persons, and so to this extent their values converge. What we have here is not so much a difference over values as a conflict that is better construed as ontological.¹²⁰ The issue is whether the souls of persons can be reincarnated as animals, not whether cannibalism is wrong. In view of this example, even if Benedict is right in her observation about differences in ways of living, this difference does not necessarily justify the inference of different values from differences in practice. Differences in practice do not count as decisive evidence against the existence of universal moral principles or standards; by themselves, such differences do not provide adequate justification for descriptive relativism.

The second form of relativism is *normative* relativism, which I take to be the main argument in support of the practice of FGM. The statement “What is right in one society may be wrong in another”, is a widely used expression of what is meant by cultural relativism. This statement could be understood to mean that in one society, a moral practice or standard is “*actually*” right and in another it’s “*actually*” wrong. According to Taylor the normative relativist asserts,

A moral standard or rule is correctly applicable only to the members of the particular society which has adopted the standard or rule as part of its actual moral code. He therefore thinks it is illegitimate to judge the character or conduct of those outside the society by such a standard or rule. Anyone who uses the norms of one society as the basis for judging the character or conduct of persons in another society is consequently in error.¹²¹

So, for people like us who live outside of the FGM-practicing cultures it would be wrong to make any judgment condemning (or commending) FGM because those judgments would

¹²⁰ Ontology can incorporate values; it is not necessarily exclusive of values.

¹²¹ Taylor, p. 151-152.

be based on our society's standards. Kopelman points out that if normative relativism is right then neither we nor any international groups such as the World Health Organization can make moral claims across cultures that would have moral standing. Such claims would simply be expressions of our own cultural preferences.¹²²

It is important to notice that normative relative judgments, nevertheless, sometimes rely on cognitive claims. Two societies might differ about the cause of a disease, whether it is evil spirits or bacteria; they do not, however, have equally correct accounts of diseases. Modern medicine has reached a point where the cause of disease can sometimes be empirically demonstrated. In such situations, when all else remains equal one explanation is the correct one, and the other is faulty. Competing views about the cause of disease *can* sometimes be evaluated as true or false. If the purpose of knowing the cause of disease is to preserve the lives of sick individuals, or restore them to physical health, then the account of disease given by Western medicine will likely succeed better than the alternative account. Since cognitive claims can sometimes be shown to be true or false, if such a claim is used to support the acceptability of a moral position, then normative relativism can be shown to be open to serious challenge. When the cognitive claim that is asserted to justify the moral position is shown to be false, the moral position that it supports will have been shown to be ungrounded. At least this will be so if there are no other reasons that lend support to the position.

If a reason given for FGM is that it keeps women clean and healthy (a cognitive claim), that claim can be shown to be false, and so the moral claim based on it is seriously weakened. Kopelman points out,

Moral judgments can be evaluated at least in terms of their consistency and their relation to stable evidence, like medical or scientific findings. By this

¹²² Kopelman, p. 312.

means certain moral claims can be challenged, even where we have different cultural values, and the practice of female circumcision/genital mutilation shown to be wrong.¹²³

The example given above has to do with a misconception concerning what is conducive to health and cleanliness. The reason given for justifying FGM could be, in this case, a result of ignorance.¹²⁴

To clarify my view consider the following argument that might be given by supporters of FGM who believe that FGM leads to health and cleanliness:

p1) We are morally permitted to act in ways that cause pain if they prevent future harm.

p2) a. Root canals cause immediate pain but prevent future harm.

b. FGM causes causes pain but leads to good health and prevents future harm, as do root canals.

c) a. Root canals are permissible.

b. FGM is permissible.

(p1) is the guiding principle here. We are morally permitted to act in the way that is minimally harmful if it prevents substantial future harm. When cases of vaccination or root canal are considered, the truth of this premise is intuitive; but now consider (p1)'s approach to FGM. (p2.b) is false here, not the moral standards expressed in (p1). FGM does not lead to good health and so (C.b) does not follow. Hence, supporters of FGM cannot use this reasoning as a basis for justifying FGM--it relies on a false belief.

Therefore, some justifications for FGM can be shown to be faulty by challenging the

¹²³ *ibid.*, p. 309.

¹²⁴ The assumption here is that one leaves room for growing in their beliefs, which leads her to act as she does. Suppose I believe that I must go north to Oklahoma City, after going there and reaching Kansas, I learn that it is not the right way to go to Oklahoma City. I could hold on to my ignorant belief and keep going north and not get there or I can grow with the new knowledge. The same can be said in the case of FGM. If we can show that FGM does not lead to cleanness, then reasons as such are no longer justifications for such acts. At this point what we are left with is emotivism--morality gets reduced to whatever feeling one may have and even within a culture individuals cannot agree and well end up with individuals preferences where again FGM cannot be justified and existence of cultures and societies would become virtually impossible.

supposed facts that are called on to support moral claims. Education is the appropriate way to go about correcting false cognitive beliefs. When the motives for the practice of FGM are cleanliness and preventing infections due to lack of cleanliness, it can be demonstrated that FGM causes just the results that it is employed to avoid. The practice could be abolished if everyone agreed that FGM causes infection instead of preventing it, and there are no further considerations supporting the practice.

Is education a form of imperialism?

Some believe, however, that the whole idea of education of this sort is flawed because it is founded on a form of imperialism, a kind of colonization of the mind. They decry imposing Western beliefs on the non-Western world and argue that educating people is just another way that the West extends its power. They hold that this imposition could lead to the destruction of other cultures and societies. However, such a view fails to take sufficiently seriously the health and autonomy of women in these cultures. Many women around the world live in unsanitary situations and some die as a result. Under such conditions FGM subjects women to enormous risks. The women of such cultures sometimes falsely blame the victims for their deaths. When a girl dies as the result of severe bleeding or infection she is held to be someone who deserved to die.¹²⁵ The unsanitary conditions that caused the death may not be taken into account because they are seen as normal background conditions. The lives of many women could be saved if they were educated about their bodies and what their bodies are put through (besides the immediate pain) while and after they undergo FGM. Women who support FGM because

¹²⁵ The girls who die as a result of FGM are considered to be witches, or possess bad spirits or it is held that they must not be virgins--any of these reasons alone is considered to be the reason for the girls' death.

they believe it promotes cleanliness or health are unaware that what they believe is false and that it may be a form of mystification used to justify FGM.¹²⁶ If women knew that the procedure was indeed as dangerous and oppressive as it is, they would not blame themselves when bad results ensue, or feel guilty about opposing it.

According to Bartky, women in the United States have only recently learned to identify much of their own source of unhappiness as resulting from oppression. She puts it this way:

Women are only now learning to identify and struggle against the forces that have laid these psychic burdens upon us. More often than not, we live out this struggle, which is really a struggle against oppression, in a mystified way: What we are enduring we believe to be entirely intrapsychic in character, the result of immaturity, maladjustment, or even neurosis.¹²⁷

It is appropriate to educate people concerning oppression, and education as a defense against mystification and oppression is not merely a Western intrusion. To argue that it is inappropriate to educate women about oppression is like saying that it is inappropriate to educate the abused spouse against being beaten.

FGM is oppressive and dangerous and to oppose it is not a sign of immaturity, maladjustment, or desire for promiscuity; nor is to educate people concerning FGM a form of colonization. The goal is simply to give information about the physical and psychological harm of FGM, thus allowing women to autonomously decide which capabilities to develop given this information. Making choices is a universal capability and education enables people to make informed choices. If this is so, then education concerning the facts about FGM is legitimate. Men and women of FGM-practicing cultures have been

¹²⁶ It is unlikely in today's "global village" that every member of a given culture is ignorant of the facts concerning the link between FGM, morbidity, and mortality. It is far more likely that some, who are in a better position to know (usually men) suppress this knowledge in order to consolidate their control over others (in this case, most assuredly, women).

¹²⁷ Bartky, *On Psychological Oppression*, p. 129.

kept from learning about female body and the harms and side effects of FGM.¹²⁸ If given the correct information about FGM, these women could choose differently than they do now. It is mostly in virtue of false cultural teaching that many still support FGM. Women can and do internalize incoherent, dysfunctional, or false beliefs or ideas from their culture and as result, may imagine that personal inadequacies or evil characteristics explain their inability to satisfy cultural values and expectations. In this way, women can become their own oppressors.

Martha Nussbaum and Development of an International Law

Martha Nussbaum develops the view that meaningful moral dialogue, evaluation, and criticism can cut across cultures. For those who take the introduction to Western ideas or ideals to be a violent imposition on a non-Western way of thinking and living, proposing a form of international feminism, as Nussbaum does, is nothing less than an arrogant intrusion. Hilary Charlesworth points out in support of this claim that “The development of international law relied on European ideals as universals and these standards were imposed by colonialism and conquest.”¹²⁹ Such imposition, often by force and nearly always to the detriment of colonized people, has left in its wake considerable suspicion of Western universal values. When universal values are applied to matters having to do with sex, gender, and family life, the response is often that we have yet another case of colonization, but on a different front. When nontraditional values are applied to the lives of women, showing them to be endangered or oppressed, the suspicion

¹²⁸ Sia Amma, An FGM survivor, activist and strong supporter of banning FGM and educating African men and women of its hazards. She is also the writer of the play "In Search of My clitoris".

¹²⁹ Anthony Anghie, "Universality and the Concept of Governance in International Law", in *Legitimate Governance in Africa*, ed. E.K. Quashigah and O.C. Okafor, (The Hague: Kluwer Law International, 1999), pp. 21-40, pp. 31-33.

arises that these values are being applied paternalistically and without regard for cultural autonomy or that “danger” and “oppression” have no clear cross-cultural meaning. To tell women to change what they care about from husbands, home and children to caring about things such as their own wellbeing, potential for sexual pleasures or intimacy, and education could lead to chaos and ultimately the breakdown of the family in some cultures.

Nussbaum does not claim that traditional roles are inherently bad or unworthy of respect (even in Western culture). She contends that women's choices should be informed choices. Cleanliness and hygiene, when given as reasons in support of FGM, are false; women who make decisions based on those false beliefs are misinformed, and such misinformation is an inadequate basis for choice in any genuine sense. True, women in the West may not be the happiest of women--not that the “happiest woman” can be measured--but many are able to make choices about their career, mate, education, and the number of children that they will have. Having options will indeed lead to some confusion and anxiety. That's one result of having options; they are there to be decided upon and decisions can be a source of anxiety. Such anxiety may diminish happiness, but there are worse forms of misery than unhappiness resulting from the surfeit of options. Nussbaum writes:

We should say, first, that if divorce and career difficulties are painful, as they surely are, they are a lot less painful than being unable to work when one is starving because one will be beaten if one goes outdoors, or being unable to leave an abusive marriage because of illiteracy and lack of employment skills.¹³⁰

Women who have no options other than being mothers and wives and having their genitals mutilated may suffer less anxiety because they don't have to make decisions about these

¹³⁰ Nussbaum, WHD, p. 42.

matters, but they may suffer worse harms from malnutrition, starvation, injury, or death. Death is rarely a choice a person would relish when it is due to involuntary starvation or injury received at the hands of others. It is a terrible experience for most people if they must undergo divorce or lose their job but it is arguably more terrible to have a part of ones body lopped off without one's consent. Female genital mutilation results in immediate physical pain, but it extends beyond this; it is a cause of many future physical and psychological harms.

Anne Phillips suggests that "Nussbaum's version of feminist internationalism is built on the significance of choice in liberal philosophy, and yet there is the implication that the choice of inequality would be irrational in some way."¹³¹ Phillips contends here that Nussbaum denies the morality of what Rawls calls "decent hierarchical people."¹³² Nussbaum, however, need not accept such an implication. What she does hold is that acceptable inequality should be a result of informed, educated, uncoerced choice. It is logically possible that informed, educated, and free women might choose for themselves a condition of inequality and an illiberal social and political way of life. They might do this in order to maintain and participate in a way of life that they see as valuable.¹³³

We may not know what it means for an indigenous person to be self-determined, but we do know that it can be achieved only if one has the opportunity to do so. When a woman feels content with having no formal education, no legal rights of divorce, no choice

¹³¹ Anne Phillips, *Feminism and Liberalism Revisited: Has Martha Nussbaum Got It Right?* (Paper presented at the Workshop on Feminist and Social Political Theory, Australian National University, Canberra, March 28, 2000). Upcoming publication in *Constellations*, Vol. 8, No. 2, June 2001. pp. 249-266.

¹³² Rawls, *Law of Peoples*, p. 59-61. Decent peoples are non-liberal societies whose "basic institutions meet certain specified conditions of political right and justice and lead its people to honor a reasonable and just law for the society of Peoples...." Decent people do not deny human rights, they "recognize and protect those rights."

¹³³ However, it is highly unlikely that women who are fully informed, in possession of skills and information that virtually assures their capacity for economic self-sufficiency, and unconstrained by arbitrary barriers imposed by others, will choose conditions that assure their own inferiority to any significant degree.

to resist FGM, when she will likely be beaten if she seeks employment, or starve if she rejects the conditions imposed on her by her husband, we may be pardoned for some initial incredulity concerning what she means by contentment and what it takes to discontent her.¹³⁴ Does she have a choice? How much worse does the situation have to get before she stops being grateful that she has even this much? Choices under some (usually abominable) conditions will inevitably lead to overwhelming or infringing the rights of those doing the choosing. I will reliably choose, for example, to cough up money in order to save my life when offered the choice by a thug with a knife at my throat. Such conditions ought to be suspect, and often should not be permitted to obtain; and if they do in fact obtain, they should be taken as evidence that choice in such circumstances is hardly meaningful. If a woman believes herself to be the proper object of an honor killing, we should not be quick to accept this as being her authentic choice; it depends, at least in part, on what alternatives she believes are available. Further, we ought not to condone those who kill her because they merely implement her “choice.”

Choices to improve ones life should be available; at the least we ought to have rights prohibiting unjustifiable limitation with respect to our fundamental human capabilities. A highly educated parent might decide to stay home and take care of his children. This, we may suppose, is an informed, uncoerced choice. His children are more important to him than anything else and having this chance to stay home is a happy decision in his life. Most importantly, in view of his educational attainments, we may suppose other options are available to him. The case of the candidate for FGM is certainly not usually one of this kind. Often these women do not see any options that promise to make their lives better. The parent who makes an informed decision and chooses to stay

¹³⁴ Nussbaum, WHD, p. 42-43.

home with the children is not remaining in a situation that is harmful due to a lack of better opportunities.

Charlesworth also brings an objection against Nussbaum's concern for the political and civil rights of women of the third world and her project of establishing laws to protect them. She puts it this way:

The search for universal women's predicaments can obscure differences among women and homogenize women's experiences. Feminists from the developing world often charge Western feminists with being overly concerned with the acquisition of civil and political rights while ignoring the significance of economic and social rights, such as the right to food and to housing, or collective rights such as the right to self-determination and development.¹³⁵

I think Charlesworth is mistaken in supposing that rights to food and housing or collective rights are not taken into account when talking about "universal women's predicaments." The kind of rights Charlesworth recognizes a need for, such as rights to food and shelter, or self-determination or development, could remain purely formal unless the opportunity to develop the capacities necessary to make the exercise of such rights meaningful is assured. Nussbaum points out that the government cannot ensure that everyone gets food all the time but the government can create and promote policies, institutions, and programs that make it possible for people to be able to secure the skills and develop the capacities that enable them to get food.¹³⁶ The opportunities to develop such capacities and acquire such skills mainly come by education, the right to choose ones career and so forth. Charlesworth's *collective rights* are respected and accounted for in the Central Human Functional Capabilities approach. Indeed on Nussbaum's view these rights must not be

¹³⁵ Hilary Charlesworth, "Martha Nussbaum's Feminist Internationalism" in *Ethics* 111 (October 2000). p. 73

¹³⁶ Nussbaum, WHD, p. 82.

violated as long as their practice does not violate any other person's ability to develop their capabilities.¹³⁷

¹³⁷ Nussbaum, WDH, p. 78-80.

SECTION TWO: ON PATERNALISM

Female genital mutilation is a practice that has caused considerable controversy. Some people are working hard to stop this practice while others argue that it is inappropriate to demand of other cultures that they abandon their traditions. The latter may believe that members of the culture in question are in a better position than we are to know what is good for them and so they should decide for themselves whether to continue to practice FGM. To suggest that they be prevented from following their traditions is taken to be disrespectful of their cultural autonomy. Intervention on the supposition that we know better than they do what is good for them is thought to be paternalistic.

The fundamental intuition behind paternalism can be illustrated by the example of a parent telling her child to wear a helmet while riding a bicycle. The child may not want to wear the helmet but the truth is that the parent *knows better*; wearing a helmet could keep one from getting severely brain damaged in case of a bicycle accident. The mother substitutes her judgment for that of the child, believing that she knows better than he does what is good for him. Given the bicycle helmet example, there are some occasions where paternalism seems to be justified. I will discuss some reasons for supposing that the view that I articulate is not in general paternalistic and then I will go on to argue that not in all cases do individuals know what is good for them--going back to the case where a parent requires her child to wear a helmet while bicycling. However, many hold that while such parental oversight is justified, when the child turns into an adult it is not justified to take the autonomy of not wearing a helmet away, though the same thing can be said about the importance of wearing helmets.

A formal definition of paternalism is provided by Seana Shiffrin:

Paternalism by A toward B may be characterized as behavior (whether

- through action or through omission)
- (a) aimed to have (or to avoid) an effect on B or her sphere of legitimate agency
 - (b) that involves that substitution of A's judgment or agency for B's
 - (c) directed at B's own interests or matters that legitimately lie within B's control
 - (d) undertaken on the grounds that compared to B's judgment or agency with respect to those interests or other matters, A regards her judgment or agency to be (or as likely to be), in some respect, superior to B's.¹³⁸

So paternalism involves substituting one's own judgment or agency for another when that judgment or agency is in the rightful domain of the other on the grounds that such substitution is for the other's own good. An important issue here is how much a person is to be allowed to decide for himself. Forcing an eight-year-old child to put warm clothes on to play outside on a cold day is not considered an infringement on his autonomous choice but the helmet law for the adult is.

Not all acts that keep people from doing what they want to do are paternalistic. The United Nations sets out laws against war crimes, genocide, murder, rape, etc., and they are not paternalistic. Such illegal acts infringe upon the ability of the victim to develop basic human capabilities and harms the victim's life, bodily integrity, dignity and self-respect. Should one say that to prohibit or prevent murder or rape takes away from the autonomy of the offenders to choose for themselves? Laws against FGM are not paternalistic for the same reason that laws against rape or murder are not when they are established to protect one from being harmed by another person. Rape, murder and FGM are all instances of acts that inflict harm on another.

According to Nussbaum, the argument from paternalism "says that when we use a

¹³⁸Seana Valentine Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation", in *Philosophy and Public Affairs*. Vol., 29, Number 3. (Princeton University Press, Summer 2000). p. 218-219.

set of universal norms as benchmarks for the world's various societies, telling people what is good for them, we show too little respect for peoples freedom as agents."¹³⁹ Universal norms would have to condemn some acts as unacceptable. Paternalism here works at the cultural level where policies are recommended to or imposed on a culture or when a culture's laws, policies, or practices are condemned. An example would be a country that violates a human right. The United Nations Universal Declaration of Human Rights states that people should have the right to freedom of religion.¹⁴⁰ Countries such as Iran tolerate some religions but not others. Suppose some nation, say the United States, tried to impose religious tolerance on the government of Iran. This could be considered paternalistic if it is the case that we in the United States take ourselves to know better than Iran what relations between religion and the state would be best for Iran despite the fact that Iran believes differently concerning the matter.

Some religions and cultures believe that they see an inherent inequality among men and women, which goes beyond biological differences. Many people take those differences to establish that women are inferior to men. Women, according to this account, must be controlled and submit to the judgment of men. Such societies may try to justify taking away dignity, self-respect and rights from females in order to achieve their higher goal of being superior or attaining their religious ends. Though history and tradition does not change easily, it is possible, as it has been for the most part in the West, to develop laws to protect women, children or other human beings whose basic human rights are violated. Paternalism involves imposing one's good on another in the belief that we know what is best for her. In the case of FGM, if I condemn a culture for doing this to their women, I do so on the grounds that women are being harmed by others and that this harm results from

¹³⁹Nussbaum, WHD, p. 51.

¹⁴⁰United Nations Universal Declaration of Human Rights, 1948, Article 18.

an oppressive practice; one that takes its place in a structure of other practices all of which harm women and prevent them from enjoying status and worth on the same level as other, more privileged groups. Women deserve protection from others who would inflict their good on her--so we should prevent other people from taking her interests in their hands and acting as though they know what is best for her. Paternalism is not imposed by intervening to protect human rights; rather paternalism is being practiced by people who believe that circumcision is good for women even when women do not believe so or want it for themselves. Far from being another victim of the West, these women are the victims of a tradition that violates their basic human rights. Martha Nussbaum agrees that "many existing value systems are themselves highly paternalistic, particularly towards women. They tell them what to do, claiming that they are promoting women's good."¹⁴¹ What I advocate so far is protection, not paternalism.

In *On Liberty* John Stuart Mill justifies intervention in a persons actions only when those actions become "other regarding"; such acts harm another and that's the only time that interference is justified. Laws protecting the right to develop basic human capabilities are not paternalistic. According to Mill self-regarding acts are those that others cannot justly interfere with, since such acts affect only the agent.¹⁴² Those acts could include drinking, over-eating, not wearing a helmet while biking, suicide or even willingly choosing to undergo FGM and many other acts that seem to affect only one person, the individual who does them. I would go further than Mill and argue that laws can legitimately protect people from self-inflicted harm in *some* situations. If a woman "chooses" to undergo FGM, it is justifiable to take steps to make sure that she knows the

¹⁴¹ Nussbaum, WHD, p. 52.

¹⁴² John Stuart Mill, "On Liberty" in *Social Ethics: Morality and Social Policy*, 4th edition. Edited by Thomas A. Mappes and Jane S. Zembaty (New York: McGraw-Hill Inc., 1992). p. 256.

kind of capability that she will lose for the rest of her life and that she will not be able to ever develop the sexual capabilities that depend for their exercise on the biological prerequisite that will be destroyed; nor will she be able to take back the psychological and physical harms caused by undergoing this procedure. The same side effects, but more severe, can be seen in cases in which the woman is unwilling. It is not likely that a woman who knows what she will be losing will choose to be mutilated. These people are, for the most part, being harmed.

Earlier I gave a definition of paternalism. Protecting rights is not paternalism. However, what I suggested in the last paragraph goes beyond protecting rights; it conforms with the definition of paternalism given in (b) "paternalism by A toward B may be characterized as behavior that involves the substitution of A's judgment or agency for B's." This would certainly be justified in the case of children, because they have not had enough experience to have developed the powers of judgment or competence required to make a meaningful choice. But there are paternalistic laws concerning adults as well; laws permitting restraint of suicidal behavior or selling oneself into slavery, for example.

One may wonder where the lines are to be drawn when making paternalistic laws? Should we stop at suicide or selling oneself into slavery? Or at the laws prohibiting a person from selling his organs? I suggest that any activity that destroys a basic human capability can be justifiably interfered with. Suicide and FGM are examples of acts where the damage caused is irreversible, and interference with such acts is justifiable even though the parties involved are making a choice to take those matters into their own hands. The inclination to intervene in these events often stems from the belief that the people making the decision to undertake these sort of actions have probably not fully thought through the consequences of their actions, or are acting on the basis of ignorance, misinformation, or

diminished capacities. The practice of FGM is similar to suicide in this way. They both not only take away a basic human capability; but also a biologically necessary condition for practicing the basic human capabilities. These individuals may be treated paternalistically, because their competence to make the right decisions for themselves is in doubt. This may be done justifiably on at least a temporary basis. There should be laws to protect women from making a decision to harm themselves based on ignorance diminished capacities, misinformation, or lack of perceived options due to enculturation. A limited form of paternalism can be justified with regard to actions that destroy the biological conditions needed to practice our basic human capabilities; such actions can be justly interfered with.

Suppose a woman chooses to undergo genital mutilation and she is aware of the consequences and realizes the immediate and future physical and psychological harm she may suffer. I am inclined to say that she must not be allowed to go through the procedure. In this case as well as cases such as suicide, selling oneself into slavery, or selling one's organs, there is no way to bring back what has been given up; the damage done is irremediable. When someone takes an oath of celibacy, they could still develop their sexual capabilities if they changed their mind or their conditions of life changed radically or unexpectedly. In FGM as well as these other cases, there is no such opportunity.¹⁴³ So, we should at the least initially stop these people from harming themselves and educate them about their other options as we do in cases of suicide or selling one's organs.¹⁴⁴ If they still want to undergo FGM, we must prevent them as we prevent suicidal people or people

¹⁴³ Nussbaum, WHD, p. 94.

¹⁴⁴ Banning alone does not keep people from practicing FGM, as mentioned in the last chapter, many FGM-practicing societies have laws against FGM. What needs to be done is a combination of banning it and educating people against it--just as laws against teenage drinking does not keep the teenagers from drinking. There needs to be more.

who want to sell themselves into slavery from carrying through on their intentions.

Considering this issue, Nussbaum writes:

...it seems plausible for governments to ban female genital mutilation, even when practiced by adults without coercion: for, in addition to long-term health risks, the practice involves the permanent removal of the capability for most sexual pleasure, although individuals should of course be free to choose not to have sexual pleasure if they prefer not to.¹⁴⁵

On the same grounds, the irreversibility of the action and the health hazards involved, the government outlaws, suicide, organ selling or selling oneself to slavery as well.

The appropriate response to FGM has been the subject of much debate; some have argued that FGM is analogous to cosmetic surgery. Charlesworth remarks,

Some international lawyers have argued that female genital mutilation is morally comparable to cosmetic surgery undertaken by women in the developed world, and they have replaced the pejorative terminology 'mutilation' with 'surgery'. Others have rejected such parallels and argued for international legal prohibition.¹⁴⁶

Charlesworth suggests that FGM is comparable to cosmetic surgery. I beg to differ. FGM is generally done on children, under unsanitary conditions. The majority of people undergoing cosmetic surgery are consenting adults and it is done under sterile conditions where there is comparatively little pain and minimal chance of death by infection. Since cosmetic surgery is done in the developed countries under conditions established by modern medicine and antibiotics are readily accessible there is much less risk than in tribes where FGM is practiced. Some parents of girls who do not stop bleeding or have long term infections that do not go away, in desperate attempts to save their children, take them to clinics where often it is too late and there is little that can be done. Cosmetic surgery, unlike FGM, is also done under anesthesia and the individuals going through it do

¹⁴⁵ Nussbaum, WHD, p. 94.

¹⁴⁶ Charlesworth, p. 72-73.

not encounter unbearable pain and suffering in the process. Furthermore, it is an autonomous choice to undergo cosmetic surgery--no one is pinned down by four or five people as is often the case with FGM. Even if freely chosen, this is not a sufficient reason to morally legitimize FGM under such abysmal conditions. To make choices that are harmful to oneself may be a sign of ignorance about ones options in life or internalization of oppressive beliefs within one's culture.

Furthermore, it is questionable whether such easy acceptance of cosmetic surgery is a good thing. It appears that cosmetic surgery may in some cases be a part of society's oppressive influence on woman. Women are pressured to look a certain way in order to be fully sexually accepted by society--especially the male component of society. Perhaps cosmetic surgery helps women in finding mates that they are happier with, or generates the self-confidence needed to look for such a mate. This sort of categorization of women suggests that women who don't have culturally approved breast development are not worthy of being in a satisfying relationship and therefore should settle for less, which again leads to psychological oppression by reinforcing a stereotype and by indicating that what is really worthwhile in a woman can be determined by her cup size.

Sally Sheldon and Stephen Wilkinson, Female Genital Mutilation and Cosmetic Surgery

Sally Sheldon and Stephen Wilkinson have argued that Western society resembles FGM practicing societies in some ways. They draw an analogy between Western women who go through cosmetic surgeries and claim that it is morally indistinguishable from FGM in cases of adult women.¹⁴⁷ They suggest that "the Western liberal democracies have traditionally espoused the aim of protecting the freedom of action of the competent adult

¹⁴⁷ Sheldon and Wilkinson, p. 264-265.

provided that she does no harm to others."¹⁴⁸ Although this is true, such protection is far from unconditional, even if no harm to others is likely. Such freedom of action is generally repudiated when it comes to suicide, selling oneself into slavery, selling one's organs, uncontrolled use of drugs, and many other cases. The principle that Sheldon and Wilkinson are relying on is highly restricted, and such restriction indicates that autonomy, although surely an important value, is not a supreme value that can be supposed to automatically override other important values, such as the opportunity to develop one's capabilities.

Sheldon and Wilkinson's idea is that if women are able to freely choose to undergo cosmetic surgery then they should also be able to choose to undergo FGM. Like their nonwestern counterparts, Western women "mutilate" their bodies so that they can be physically more accepted in the society and have more choices in choosing their mates--thus gaining status. The dilemma Sheldon and Wilkinson suggest is this: Either cosmetic surgery in the West is immoral, or FGM is not immoral. Since most of us accept the practice of cosmetic surgery, we are led to conclude that FGM is not morally suspect, first impressions aside. Sheldon and Wilkinson consider four arguments against FGM and suggest that cosmetic surgery is not different in any relevant way. If one is to be banned, so should the other one. Those arguments are

- (i) that no woman could validly consent to female genital mutilation,
- (ii) that female genital mutilation is an oppressive and sexist practice;
- (iii) that female genital mutilation should be banned because it involves the intentional infliction of injury;
- (iv) that female genital mutilation should be banned because it causes offense.¹⁴⁹

I will consider their responses to these objections. They contend that the arguments for (i)

¹⁴⁸ *ibid.*, p. 265.

¹⁴⁹ *ibid.*, p. 271.

and (ii) are not sound and (iii) and (iv) do not supply adequate reasons for banning FGM.¹⁵⁰

(i) consent

Sheldon and Wilkinson argue that a rational woman may "consent" to FGM based on "important social consequences." Women who undergo FGM in their home countries, where FGM is practiced, are not usually asked to consent. Even when they do consent, it is arguable that their agreement should not be construed as consent, because they may not see any other way to secure a decent quality of life. Such women give up a basic human capability for social gains; given their situation, their choice may be rational but not exactly a free choice. It is as though one consents to becoming a slave because the alternative is a Nazi death camp. Though we may consider the choice to be rational, it is certainly not a choice that would be made if other reasonably desirable options were available (for instance to be neither a slave nor an inmate of a death camp). The mere fact that society makes the choice of FGM available and offers powerful inducements for choosing it is itself questionable. It isn't just that powerful inducements are offered. It is that often it is the *only* means available to secure marriage, family life, and economic viability. Such exclusivity shows that these are not merely "inducements"; such arm-twisting is oppressive. The oppression is particularly noisome since the levers used to force the choice are themselves conditions for a flourishing form of human life.

If one is said to consent to FGM in a situation where the refusal would mean that one must choose between economic viability and cultural affiliation, this can hardly be described as a situation of uncoerced consent. Thomas Mappes puts it nicely; "The

¹⁵⁰ *ibid*, p. 263.

person who makes a threat attempts to gain compliance by attaching an undesirable consequence to the alternative of noncompliance. This person attempts to *coerce* consent.¹⁵¹ By refusing FGM, women are taking chances of losing cultural affiliation and economic viability (#7 in the capability list) both of which are basic human capabilities. Bodily integrity (#2 on the basic capabilities list) and play (#9 on the basic capability list) depend on a degree of economic well-being.¹⁵² A person who does not “consent” may be forced to choose between basic human capabilities. To determine if one’s choice was coerced Mappes suggests that we ask the following question; “Does the proposal in question have the effect of making a person *worse off upon noncompliance*?”¹⁵³ Consent obtained under conditions in which noncompliance results in the withholding of the opportunity to exercise a basic human capability clearly makes the person worse off. Such consent is obtained under coercion by means of threat. Mappes puts it this way,

It is important to realize, however, that a person can also be effectively coerced by being threatened with the withholding of something (in some cases, what we would call a “benefit”) to which the person is entitled.¹⁵⁴

The choice of undergoing FGM, is a forced choice between basic human capabilities; bodily integrity (FGM), bodily health and play, (economic viability), or affiliation. This could not be an uncoerced choice since either choice the woman makes she loses a basic human capability.

(ii) an oppressive practice

Sheldon and Wilkinson argue that "it seems inconsistent to legislate against female genital

¹⁵¹ Thomas A. Mappes, “Sexual Morality and the Concept of Using Another Person” in *Social Ethics: Morality and Social Policy*, 4th edition. Edited by Thomas A. Mappes and Jane S. Zembaty (New York: McGraw-Hill Inc., 1992), p. 209.

¹⁵² Nussbaum, WHD, p. 78-80.

¹⁵³ Mappes, p. 209

¹⁵⁴ *ibid*, p. 209-210.

mutilation but not cosmetic surgery"¹⁵⁵ since both are "oppressive masculinist ideologies of feminine...."¹⁵⁶ The comparison drawn here does indicate an oppressive element. If FGM is taken to be merely a cosmetic issue, then women lose a basic human functioning capability in order to be "more physically attractive"; if by undergoing cosmetic surgery one destroys a basic human capability, then it appears that we would have grounds for intervention in these forms of cosmetic surgery.

A common reason why men consider women who undergo FGM to be more desirable is because they are supposedly more committed to their marriage and children. This suggests that circumcised women possess virtues of loyalty and commitment, and that they are faithful solely because they have undergone FGM. So it seems that women cannot control their own sexuality and that their "deadly weapon" (their genitalia), must be disarmed. Such reasons result in viewing women as "whorish and childish", untrustworthy, and requiring external control by males. To view women in this light is demeaning. Women are stereotyped, sexually objectified and alienated when viewed in this way.

Cosmetic surgery is not always done to please other people, and on Sheldon and Wilkinson's account, neither is FGM. As Sheldon and Wilkinson point out, some cosmetic surgery does indeed sometimes improve one's "mental health, in which case it again seems to be deliberately health-affecting."¹⁵⁷ Although some cosmetic surgery may be merely to make women more attractive to men, it may also be done solely for one's own satisfaction and mental health. Suppose a person is born with no upper lip. That deficiency could be emotionally harmful to them. Sheldon and Wilkinson agree that this sort of cosmetic

¹⁵⁵ Sheldon and Wilkinson, p. 274.

¹⁵⁶ Kathy Davis, "Remaking the she-devil: a critical look at feminist approaches to beauty" in *Hypatia* 6. (1991), p. 25.

¹⁵⁷ Sheldon and Wilkinson, p. 269.

surgery is not the same as FGM.¹⁵⁸ FGM takes away the means necessary to practice one's basic human capabilities, whereas most forms of cosmetic surgery do not. This makes the harm of FGM of a different order than the consequences of most plastic surgery.

(iii) the injury argument

In this section Sheldon and Wilkinson define what constitutes injury. They use Clouser, Culver and Gert's definition:

Individuals have a malady if and only if they have a condition, other than their rational beliefs and desires, such that they are incurring, or are at a significantly increased risk of incurring, a harm or evil (death, pain, disability, loss of freedom, or loss of pleasure) in the absence of a distinct sustaining cause.¹⁵⁹

Sheldon and Wilkinson concentrate mainly on the harm that is caused by the "loss of pleasure" and argue that there are cases of FGM that may not cause loss of pleasure. First it must be mentioned that out of two to five million girls who undergo circumcision every year only 3% of them undergo "sunna"¹⁶⁰, which is the only type of female genital mutilation that may not involve necessary/permanent injury.¹⁶¹ However, the other 97% undergo Type 2 and 3 that involve serious physical and psychological side effects. Sheldon and Wilkinson do not put any emphasis on other consequences that may be considered harmful; never being able to develop many aspects of sexuality, or the kind of intimate personal relationships that depend on that development; nor do they consider other psychological harms that may follow from FGM. There are some choices that

¹⁵⁸ *ibid.*, p. 268.

¹⁵⁹ Danny k. Clouser, and Charles Culver, and Bernard Gert, "Malady" in *What Disease?*, ed. James Humber and Robert Almeder (New Jersey: Human Press, 1997), p. 90.

¹⁶⁰ Sheldon and Wilkinson, p. 266 and Kopelman, p. 310.

¹⁶¹ Sheldon and Wilkinson, p. 276.

society should not allow its citizens to make. Would the fact that, in certain kinds of societies, slavery confers considerable benefits on the slaves, including life, justify the practice? It is simply an evil choice for the slaves to have to make. FGM is another of these evil choices when it is necessary to secure benefits of marriage, family, and economic viability. Cosmetic surgery that would take away one's ability to develop their basic capabilities may fall into the same category.

There is not a lesser harm involved for women if they consent to undergoing FGM in a Western country. Sheldon and Wilkinson consider cases when a greater harm is at stake; in such cases they claim that we may choose the lesser harm.

A and B are soldiers in a highly dangerous combat situation. Their chances of being seriously injured or killed in battle are extremely high. B asks A to shoot her. That way, B gets to be taken to a hospital in a safe area and her chances of serious injury or death will be dramatically reduced.¹⁶²

There are two things that can be said about this scenario; 1) it is not so clear that what "B" is doing is always morally acceptable. Suppose this is a just war and the just outcome of the war depends on everyone involved staying in combat. "B" may have a chance to reduce serious injury but he might endanger the lives of others by abandoning his position. 2) if we take this situation to be as simple as Sheldon and Wilkinson want it to be, B is justified, no matter what harms may follow. Uncircumcised women in Western society have options of getting married or any other path that they choose to take but they too may be forced into choosing between bodily integrity and affiliation--if one refuses to undergo FGM, then she takes the chance of being rejected by her community, regardless of whether she is in her home-country or the Western world. If she goes through FGM, then she would lose the capability of bodily integrity, some forms of sexual

¹⁶² Sheldon and Wilkinson, p. 279.

intimacy, and play. The scenario that they set here may be analogous to a woman's situation in an FGM-practicing society but then, the argument from consent is irrelevant because women in those societies are not asked to give consent, they are forced to undergo FGM as children or young adults. Even in cases in which their consent is forthcoming, it has already been argued that such consent is coerced.

The context of these arguments is crucial in each case and must not be taken lightly. If women are in a situation where they have an uncoerced choice, if they don't choose FGM they encounter no great harm. In Western societies FGM is not a necessary means to gaining significant social benefits. If the woman is in a situation where she is seriously socially harmed by not undergoing FGM, then she is in an FGM-practicing society where she does not have the choice of undergoing FGM or not; it is done to her as a child or a young teen regardless of her agreement or disagreement--it is just an integral part of the structure of oppression.

If a woman must suffer the loss of cultural affiliation in order to avoid FGM, that is a harm, and not an insignificant one. But it doesn't follow that she she ought to submit to an oppressive and alienating practice. The fault here lies with cultural practices that force the choice between fundamental human capabilities, and these traditions should be opposed and resisted.

(iv) argument from offense

I agree with Sheldon and Wilkinson that just because an action is "reasonably and

rationally" offensive,¹⁶³ it does not give adequate reason to justify banning it. "For since (we presume) it would be unreasonable to be seriously offended by the existence of geriatric sex, arguments from reasonable offense would not justify banning it [geriatric sex]."¹⁶⁴ Sheldon and Wilkinson suggest that our society is "extremely tolerant of cosmetic surgery."¹⁶⁵ Perhaps we should ban the kind of cosmetic surgeries that destroy or suppresses a basic human capability. Some cosmetic surgery as well as FGM is wrong even if does not "offend" anyone.

So, unlike what Sheldon and Wilkinson suggest, FGM is not generally analogous to cosmetic surgery and to the extent that it is, it highlights the immorality of cosmetic surgery. The government should set laws to protect women from FGM and in cases where women actually "choose" to undergo FGM, they should be restrained.

In Summary

Arguments for normative and descriptive relativism are flawed. Moral principles may be more often shared among cultures than is obvious. When cultural practices are questioned replies can, and usually do, go beyond what cultures dictate; at times these explanations may refer to or invoke some widely shared or universal principle or standard. Reasons given for FGM are often counted as important because it is believed that FGM will achieve some further good such as health and cleanliness or fidelity. Those higher goods are often not achieved or even achievable by means of FGM and when they are achieved the benefits are so costly as to make other alternatives morally preferable.

Sometimes this can be demonstrated by means of compelling evidence. Though the ideas

¹⁶³ To be reasonably and rationally offensive refers to the kind of actions that we can be seriously offended by. For instance we cannot be seriously offended by "geriatric sex" and so it is unreasonable to ban it. *ibid.*, p. 282.

¹⁶⁴ *ibid.*, p. 282.

¹⁶⁵ *ibid.*, p. 284.

of self-determination and recognition without consideration of gender may seem Western, what's at issues is the right not to be severed from ones basic human functional capabilities. It is about assuring that human beings are not separated from their capabilities and retain the capacity to act on these capabilities as they see fit so long as their choices do not infringe on other peoples rights. When people are separated from their basic human capabilities, or those capabilities are destroyed or systematically suppressed on the basis of sex, such separation, destruction, or suppression is oppressive. Neither education nor the development of international law need be seen as merely Western ideology forced on other cultures. Women can still practice their traditional roles in their respective societies, not out of threat of harm or lack of options, but by informed educated choice. Others should not be permitted to destroy the fundamental capabilities of women. This is so even though women may claim to be content in that situation since the situation could be made still worse. International law could set the stage for individuals to enjoy their human rights by protecting the opportunity to develop the capacities necessary to make the practice of such rights meaningful.¹⁶⁶ At the very least, it can help to curb the ambitions of those who would attempt to destroy women's capabilities or the opportunity to develop them.

At the level of culture, I am suggesting an international law that would protect everyone's right as human beings. If cultures are interfered with on the basis of such law it is only to protect *all* members of that culture. It is to protect people's human rights. This I take not to be paternalism at all. Paternalism is interfering with ones legitimate decision or actions concerning her own good. I go further and suggest that laws should protect all members of the society in some cases even from themselves. Helmet and seat belt laws are

¹⁶⁶ Nussbaum suggest that rights come about by possessing capability (WHD, p. 98). If one has the capability to see, then they have the right to do so (as long as that does not infringe on other people's exercise of capabilities). In her view to give a man the right to abortion is meaningless because men do not have the capability to exercise this right.

examples of such laws. If it is justified to interfere with one's decision if that decision could lead to immediate, irreversible consequences each time that act is done--such as suicide or selling one's organs--then it is justified to have laws against FGM. Smoking is not one of them, the injury resulting from brain damage, a very real consequence that could follow from refusing to wear a helmet, is. FGM is not usually analogous to cosmetic surgery and to the extent that it is, it shows the immorality of cosmetic surgery and not the moral acceptability of female genital mutilation. Cosmetic surgery could be used to improve mental health in some situations while the only psychological effects that FGM leaves behind in an individual who undergoes it are negative ones.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

I have argued that female genital mutilation is a physically and psychologically oppressive practice because it destroys a *fundamental human capability*, based on *one's membership in a group* (in this case women), and it must be actively undermined. I have given an overview of FGM, its harms and side effects and the reasons given in support of it and have argued that those reasons don't hold as justifications for destroying a basic human capability. There are less harmful ways of achieving the same goals, in those cases in which the goals are worth preserving, and if this is the case, we are morally obligated to do that instead. In some cases the goals themselves are not worth preserving, because they incorporate significant elements of oppression. In such cases, the goals should be either extensively modified or given up entirely.

I have further argued that cultural relativism does not give adequate grounds for tolerance of FGM and that traditions, though strong, are not infallible. Cultures may be more alike than different at times. I have given some examples of shared principles and put the burden of proof on the supporters of relativism. I have also responded to the objections that might be raised against my view by those opposed to any form of paternalism. I concluded that to legally ban FGM is not unjustified paternalism. On the contrary FGM is a violation of human rights and intrusion in its practice is justified even in the case of consenting individuals. The concern is that many women who choose to undergo FGM are expressing adaptive preferences which may be the result of

misinformation or lack of options due to an oppressive environment. I have argued that FGM should be banned and even those women who consent should not be allowed to undergo circumcision. If the laws against suicide and selling oneself into slavery, or selling one's organs, are justified, then laws to protect people from mutilating their genitalia are justified as well. In all of these cases a basic functioning capability is lost. Such laws are there to protect individuals from selling themselves to slavery, selling their body parts, committing suicide or using illicit drugs. On the same grounds the laws should protect and deter people from undergoing FGM. Autonomy is not necessarily assumed to be the highest good here; it is one (very important) value among others. Just laws against suicide, FGM and selling one's body parts demonstrate that autonomy is not a supreme value and does not necessarily override all others. Autonomy must be balanced against other values.

While legal injunctions are important, education plays the key role in terminating this practice. The sort of education I have in mind is not another form of Western imperialism. What is recommended instead is providing the communities with information about women's bodies and the physical and psychological harms that FGM causes. Neither education nor the development of international law need be seen as merely the imposition of Western ideology on other cultures. International law sets the stage for individuals to enjoy their human rights by protecting the opportunity to develop the capacities necessary to make the practice of such rights meaningful. At the very least, it can help to curb the ambitions of those who would attempt to destroy women's capabilities or the opportunity to develop them. Moreover, we have seen that when one knows all the side effects of FGM and still support it merely because it is a cultural norm, this may make that person morally culpable.

A major issue here has to do with how much the capability argument allows for

legitimate diversity. At the level of culture, I am suggesting an international law that would protect everyone's basic rights as human beings. If cultures are interfered with on the basis of such law it is only to protect all members of that culture. Though the ideas of self-determination and recognition without consideration of gender are embraced by the West, these are not merely Western cultural constraints. What's at issues is the human right not to be severed from ones basic human functional capabilities. Cultures can remain highly diverse as long as their practices do not undermine a basic capability. Each culture places different kinds of emphasis on each of the capabilities and that's an important aspect of what makes for diverse cultures. The idea behind the human capabilities argument is not a covert "fascism"--our way or the highway--rather it is a way of protecting everyone's dignity and self-respect and establishing the grounds for the development of the basic human capabilities in culturally diverse ways. If the only way that cultures can remain diverse is by undermining women's basic human capabilities, we should do away with such diversity. But clearly, cultures can and do remain diverse while at the same time respecting basic human capabilities.

I have also acknowledged that many countries have laws against FGM, but FGM is still widely practiced. In addition to education, better enforcement of the current laws is part of the solution. Many of these countries are not financially in a situation where they can provide better or more police or other agents that could devote more time or effort to enforcing the laws against FGM. I believe that international recognition of the evil, harmful, and oppressive nature of FGM, of the kind afforded by international law, is an essential factor in undermining this practice. International aid in the form of personnel, equipment and money to help organizations that are currently fighting against FGM is important. Charitable donations to such organizations can also be of help. Again, the most

effective method at this point is widespread education concerning the harms and side effects of FGM and ways that women can effectively oppose it. Even if the laws are enforced after the young girl has been mutilated, there is nothing that they can do for the girl--a basic human capability is already forever lost. What is the most effective is educating both women and men in alternative ways (that are not oppressive) of achieving their goals so everyone can fully share in the sexual intimacy so often constitutive of love and friendship.

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