

William & Mary Journal of Race, Gender, and Social Justice

Volume 19 (2012-2013)
Issue 3 *William & Mary Journal of Women and
the Law*

Article 4

May 2013

Slapping the Hand of Cultural Relativism: Female Genital Mutilation, Male Dominance, and Health as a Human Rights Framework

Preston D. Mitchum

Follow this and additional works at: <https://scholarship.law.wm.edu/wmjowl>



Part of the [Human Rights Law Commons](#), and the [Law and Gender Commons](#)

Repository Citation

Preston D. Mitchum, *Slapping the Hand of Cultural Relativism: Female Genital Mutilation, Male Dominance, and Health as a Human Rights Framework*, 19 Wm. & Mary J. Women & L. 585 (2013), <https://scholarship.law.wm.edu/wmjowl/vol19/iss3/4>

Copyright c 2013 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmjowl>

SLAPPING THE HAND OF CULTURAL RELATIVISM:
FEMALE GENITAL MUTILATION, MALE DOMINANCE,
AND HEALTH AS A HUMAN RIGHTS FRAMEWORK

PRESTON D. MITCHUM*

INTRODUCTION

- I. FEMALE GENITAL MUTILATION: RISK OF COMPLICATIONS AND JUSTIFICATIONS FOR THE CONTINUED PRACTICE
 - A. *Historical Practice of Female Genital Mutilation*
 - B. *Classifications of Female Genital Mutilation*
 - C. *Health Risks and Complications of Female Genital Mutilation*
 - D. *The Rationalization of Female Genital Mutilation: Why Some Advocates Actively Promote the Practice of Female Genital Mutilation*
 1. *Religious*
 2. *Sociological*
 3. *Aesthetic and Hygienic*
 4. *Psychosexual*
 - II. FEMALE GENITAL MUTILATION: THE REVOLVING DOOR OF HEALTH AND HUMAN RIGHTS
 - A. *Universal Declaration of Human Rights (UDHR)*
 - B. *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*
 - C. *International Covenant of Economic, Social, and Cultural Rights (ICESCR)*
 - III. THE NONSUBORDINATION (“DOMINANCE”) THEORY: FEMALE GENITAL MUTILATION AND THE SEXUAL VICTIMIZATION OF WOMEN
 - IV. DISREGARDING THE “OTHER” AND THE ELIMINATION OF “US” VERSUS “THEM” RHETORIC
- CONCLUSION

* J.D. North Carolina Central University School of Law, 2011; LL.M. in Law and Government, American University Washington College of Law, 2012. Mr. Mitchum is an advocate for racial-justice initiatives, LGBT rights, and gender discrimination. First, I would like to thank Professors Wendy Scott and Ann Shalleck for encouraging me to publish this article. Second, I would like to thank the *William & Mary Journal of Women and the Law* staff for their professionalism and expertise during the publication process. Lastly, this article is for advocates and activists who fight against patriarchy and sexism and promote the importance of health and human rights.

INTRODUCTION

Imagine being the parent of a young girl who is born into a culture that performs a medically “unnecessary” procedure as a rite of passage from “girlhood” to “womanhood.” Performing this procedure would guarantee that your daughter would live a semi-successful life, despite it possibly leading to medical complications, promoting male dominance, and negatively affecting her physical, mental, and emotional well-being. Unfortunately, in many parts of the world that perform Female Genital Mutilation (FGM) or Female Genital Surgery (FGS), parents are compelled to make this decision for their daughters.¹

Deciding to perform, or not perform, FGM leaves a parent with only two options, neither of which are *real* choices.² On one hand, forcing her to undergo this surgery may violate international human rights instruments because of the deprivation of her bodily integrity.³ On the other hand, the parents can allow their daughter to avoid the mutilation by protecting her personal autonomy, only to realize that she could encounter embarrassment, humiliation, and alienation for failing to undergo a culturally recognized tradition.⁴

The right to an individual’s bodily integrity is often recognized as one of the oldest fundamental rights in national and international jurisprudence.⁵ Although not explicitly articulated in the text of the United States Constitution, the right to autonomy is arguably protected in the Fourth Amendment, Eighth Amendment, and a penumbra of other constitutional guarantees.⁶ The notion of bodily integrity, however, is most often inferred from the Fourteenth Amendment.⁷ In *Washington v. Glucksberg*, for example, the Supreme Court of the United States held, “the ‘liberty’ specially protected by

1. See Leigh A. Trueblood, *Female Genital Mutilation: A Discussion of International Human Rights Instruments, Cultural Sovereignty and Dominance Theory*, 28 DEN. J. INT’L L. & POL’Y 437, 442 (2000).

2. See *Abbott Labs. v. Gardner*, 387 U.S. 136, 152 (1967) (“Either they must comply with the every time requirement and incur the costs of changing over their promotional material and labeling or they must follow their present course and risk prosecution.”) (citation omitted), *superseded by statute*, Pub. L. No. 94-574, 90 Stat. 2721, *as recognized in* *Califano v. Sanders*, 430 U.S. 99 (1977). The Court determined this is not a real choice. *Id.*

3. Tiffany Ballenger, *Female Genital Mutilation: Legal and Non-Legal Approaches to Eradication*, 9 J.L. & SOC. CHALLENGES 84, 98 (2008).

4. See *id.* at 90.

5. B. Jessie Hill, *The Constitutional Right to Make Medical Treatment Decisions: A Tale of Two Doctrines*, 68 TEX. L. REV. 277, 304 (2007).

6. *Id.* at 304–05. The concept of “bodily integrity” was originally derived from a previous article, Preston D. Mitchum, *Male Reproductive Autonomy: Unplanned Fatherhood and the Victory of Child Support*, 7 MODERN AM. ___ (2011).

7. U.S. CONST. amend. XIV, § 1.

the Due Process Clause includes the right[] . . . to bodily integrity.”⁸ The liberty interest espoused in *Glucksberg* protects men and women from unwarranted governmental intrusions and entitles women and young girls to bodily autonomy.⁹ When FGM is performed, however, it is oftentimes not done by government officials, but instead by community leaders, which pinpoints another fundamental difference between the West and other cultures.¹⁰

The process of FGM highlights many complex universal human rights and cultural relativism arguments including, but not limited to, perspective, creation, and acceptance.¹¹ Perhaps the most complex dilemma is the notion of “cultural relativism versus universality of human rights.”¹² This dichotomy of “bad” versus “good” has been hotly contested among human rights activists and scholars as either a violation of human rights or simply as not valuing cultural relativism.¹³ With the practice of FGM, it is essential to recognize the role of universality in shaping human rights standards.¹⁴ Recognizing the importance of cultural relativism, however, is also critical to having an accurate and honest discourse regarding why FGM has been viewed positively in various cultures.¹⁵ Although it is necessary to critically examine both arguments, it is also important to be cognizant of the prism that a world is viewed through and to take firm steps from there.

This article expounds its central claim in four parts. Part I discusses the historical practices of FGM, its process from most to least severe, and potential risks and complications related to health and human rights. Moreover, Part I examines the justifications behind FGM, and it explains various reasons why some cultural groups support and actively perform FGM, including religion, aesthetics, and psychosexuality, among others.

Part II explores the potential effects that performing FGM has on women’s health. Specifically, this part posits that FGM and the right to health should be considered in the broader context of

8. 521 U.S. 702, 720 (1997) (citing *Rochin v. California*, 342 U.S. 165 (1952)).

9. *See id.*

10. Valena Elizabeth Beety, *Reframing Asylum Standards for Mutilated Women*, 11 J. GENDER, RACE & JUST. 239, 245 (2008).

11. Pamela Goldberg, *Women, Health and Human Rights*, 9 PACE INT’L L. REV. 271, 271 (1997).

12. *Id.*

13. *See, e.g.*, Berta Esperanza Hernández-Truyol, *Women’s Rights as Human Rights—Rules, Realities and the Role of Culture: A Formula for Reform*, 21 BROOK. J. INT’L L. 605, 650–67 (1996) (discussing the impact of cultural relativism on the scope of universality of human rights).

14. *See id.* at 606.

15. *See Goldberg, supra* note 11, at 271.

international human rights laws, such as the Universal Declaration of Human Rights (UDHR),¹⁶ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁷ and the International Covenant of Economic, Social, and Cultural Rights (ICESCR).¹⁸

Part III of this Article examines the nonsubordination, or “dominance,” theory and the imbalance of power between men and women, and how it intertwines with feminist legal theory. Furthermore, Part III explores coerced sexualization and victimization of young girls and women, especially as it relates to male dominance and female subordination.

Part IV of this Article discusses how the perceived violation of internationally recognized human rights instruments can cause a manipulation of “other” cultures.¹⁹ Specifically, this part calls for an eradication of “us” versus “them” rhetoric and challenges many Westerners to understand their own gender-based discrimination before attempting to “slap the hand” of cultural relativism. Moreover, this part illustrates the “health as human rights” framework. Ultimately, this article hypothesizes that although from a “Western” point of view FGM may violate human rights law, it is important to recognize the value of cultural relativism and the respect for other cultures that are “different.” It is nevertheless dangerous to take such a neutral stance on issues like FGM; as such, while cultural relativism is a necessary discussion under a human rights framework, protecting universal human rights, especially of young girls and women, is essential for the eradication of subordination and male dominance.

I. FEMALE GENITAL MUTILATION: RISK OF COMPLICATIONS AND JUSTIFICATIONS FOR THE CONTINUED PRACTICE

International human rights law is based on the principle that every nation has a duty to respect the human rights of its citizens.²⁰

16. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948). The only precursor to this document in terms of modern-day origins of human rights protection is the Charter of the United Nations. U.N. Charter art. 1, para. 3.

17. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13.

18. International Covenant of Economic, Social, and Cultural Rights, *opened for signature* Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

19. By “other,” I am referring to non-Western cultures and the view that many Westerners have regarding cultures and experiences that are not like “theirs.” Specifically, this section will focus on the “other” of Africa.

20. Trueblood, *supra* note 1, at 437.

The international community has a responsibility to speak out against violations of this duty.²¹ Innate in this belief is the notion that there are universal human rights; however, one major problem international scholars recognize is that “the meaning of human rights depends upon the specific cultural context.”²²

This section includes information on the historical practices of FGM, the procedure and classifications of FGM, the risk of complications involved, and the justifications expressed by many cultures for its continued practice. Ultimately, the question remains whether cultural traditions and practices should outweigh male dominance and the risk of complications that women and young girls experience.

A. Historical Practice of Female Genital Mutilation

Approximately forty African and Middle Eastern countries engage in the practice of FGM.²³ However, prevalence rates significantly vary from country to country.²⁴ For example, nearly ninety-eight percent of Somalian women and young girls have undergone FGM, compared to less than one percent of Ugandan women.²⁵ Although not formally recognized, estimates indicate that FGM is a custom that originated over 2,500 years ago.²⁶

Approximately eighty to 100 million women and young girls have experienced having their external genitalia removed as a result of FGM.²⁷ Most girls go through this procedure when they are between the age of seven and ten.²⁸ It appears, however, that FGM is occurring at earlier ages in many countries to reduce suffering to these children and avoid the potential for governmental interference.²⁹ Experts estimate that this procedure affects over half of the women and young girls in Nigeria.³⁰

21. *Id.*

22. *Id.* at 438 (quoting Ved Nanda, *The Human Rights Era at Fifty: Looking Back and Looking Forward*, 5 WILLIAMETTE J. INT'L L. & DISP. RESOL. 69 (1997)).

23. Patricia Dysart Rudloff, *In re Oluloro: Risk of Female Genital Mutilation as “Extreme Hardship” in Immigration Proceedings*, 26 ST. MARY'S L.J. 877, 880 (1995).

24. See POPULATION REFERENCE BUREAU, FEMALE GENITAL MUTILATION/CUTTING: DATA AND TRENDS—UPDATE 2010 3 (2010), available at <http://www.prb.org/pdf10/fgm-wallchart2010.pdf> (“While in some countries there is little difference in prevalence between older women (ages 35 to 39) and younger women (ages 15 to 19), in others—such as Ethiopia, Côte d’Ivoire, and Kenya—the difference is significant. This may be a sign that the practice is being abandoned.”).

25. *Id.* at 2.

26. Linda Cipriani, *Gender and Persecution: Protecting Women Under International Refugee Law*, 7 GEO. IMMIGR. L.J. 511, 525–26 (1993).

27. Rudloff, *supra* note 23, at 880.

28. Trueblood, *supra* note 1, at 442.

29. *Id.*

30. Rudloff, *supra* note 23, at 880.

Most recently, the practice has been reported within immigrant communities in Europe, Canada, Australia, and the United States, despite those nations having regulations that specifically outlaw FGM.³¹ For example, according to 18 U.S.C.A. § 116, “whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.”³² Therefore, although not traditionally practiced, a person can consent to a similar circumcision once they have turned eighteen years old.³³ The only exception to this requirement is to protect the health of the person or for other medically necessary purposes.³⁴

FGM is a general term for a variety of surgical operations.³⁵ These operations involve partial or total removal of the female external genitalia, including the clitoris, labia, mons pubis (the fatty tissue over the pubic bone), and the urethral and vaginal openings.³⁶ This procedure is often referred to as “female circumcision,” which implies that it is similar to the male circumcision traditionally performed on male infants at birth.³⁷ However, the circumcision involved with FGM is more extensive, and it occasionally results in death.³⁸ Furthermore, this procedure often impairs a woman’s sexual and reproductive functions, which can make it impossible to become pregnant.³⁹

FGM is frequently performed by a respected elder in the community.⁴⁰ Recently, however, a trend has emerged in some Middle East countries where medical professionals are increasingly performing the procedure.⁴¹ Furthermore, FGM is practiced for a multitude of reasons, but most significantly, as “an important rite of passage into adulthood and into the community.”⁴² Traditionally, the initiation into adulthood is performed to remove the “masculine” part of the girl’s body, the clitoris.⁴³ Many supporters of FGM believe

31. Trueblood, *supra* note 1, at 441.

32. 18 U.S.C.A. § 116(a) (2010).

33. *See id.*

34. *Id.* § 116(b).

35. *See* Trueblood, *supra* note 1, at 442.

36. *Female Genital Mutilation*, WHO (Feb. 2012), <http://www.who.int/mediacentre/factsheets/fs241/en/>.

37. Trueblood, *supra* note 1, at 441.

38. *Id.* at 441–42.

39. *Id.* at 441, 444.

40. Beety, *supra* note 10, at 245.

41. POPULATION REFERENCE BUREAU, *supra* note 24, at 1.

42. Beety, *supra* note 10, at 245.

43. *Id.*

the excise of the clitoris will transform a girl into a woman.⁴⁴ FGM can occasionally be a dangerous procedure as it is performed without anesthetic and sometimes in unsanitary circumstances.⁴⁵ Numerous women and young girls are mutilated during the procedure with the same knife.⁴⁶ As a result, concerns about the spread of HIV have been directed to FGM, but that link has not been verified.⁴⁷

B. Classifications of Female Genital Mutilation

Generally, the tradition of excising external female genitalia varies depending on the culture.⁴⁸ The World Health Organization (WHO) has identified four common classifications of FGM: (1) clitoridectomy, (2) excision, (3) infibulation, and (4) unclassified/introcision.⁴⁹

The process of clitoridectomy “ranges from removal of a small part of the clitoris to removing the clitoris completely.”⁵⁰ In extremely rare cases, however, only the prepuce will be removed.⁵¹ The process of excision involves the “partial or total removal of the clitoris and labia minora, with or without excision of the labia majora.”⁵² The process of infibulation is the most severe form of FGM and is reported to be the most rarely practiced.⁵³ Infibulation involves the “narrowing of the vaginal opening through the creation of a covering seal.”⁵⁴ This process is so severe because the circumciser will remove “the entire clitoris, both the inner and outer lips of the labia, and stitch[] together the two sides of the vulva, leaving a small opening for the woman to urinate and menstruate.”⁵⁵ Lastly, the fourth procedure is indicated as an unclassified form of FGM.⁵⁶ This process, however, is reported as potentially damaging because it includes procedures to the external female genitalia, such as “prick-ing, piercing, incising, scraping and cauterizing the genital area.”⁵⁷

Eighty-five percent of FGMs are a result of clitoridectomy and excision operations.⁵⁸ Infibulation procedures, however, are common

44. *See id.*

45. *Id.*

46. *Id.*

47. *See id.* at 245.

48. Rudloff, *supra* note 23, at 880.

49. *Female Genital Mutilation*, *supra* note 36.

50. Beety, *supra* note 10, at 245.

51. *Female Genital Mutilation*, *supra* note 36. The prepuce is “the fold of skin surrounding the clitoris.” *Id.*

52. *Id.*

53. Beety, *supra* note 10, at 245.

54. *Female Genital Mutilation*, *supra* note 36.

55. Beety, *supra* note 10, at 245.

56. *Female Genital Mutilation*, *supra* note 36.

57. *Id.*

58. *See Trueblood*, *supra* note 1, at 442.

in Djibouti, Somalia, Sudan, and parts of Egypt, Ethiopia, Nigeria, and Kenya.⁵⁹ Unfortunately, these classifications have continued to cause increased childbirth complications and even maternal deaths.⁶⁰

C. Health Risks and Complications of Female Genital Mutilation

FGM poses serious mental and physical health risks for women and young girls, especially for those who have undergone the more extreme forms of genital mutilation.⁶¹ Generally, complications from FGM can “include severe pain, hemorrhage, tetanus, infection, infertility, cysts and abscesses, urinary incontinence, and psychological and sexual problems.”⁶² The complications of FGM on women’s health are extensive and can include urinary tract infections and, in some instances, death.⁶³ Although the numbers of girls who die from FGM are not known, the highest infant mortality rates are in countries that traditionally practice FGM.⁶⁴

Death may result from FGM because of the unsanitary method used by local practitioners and community leaders.⁶⁵ Often, practitioners use instruments such as razor blades or broken glass to perform the procedure.⁶⁶ Many of these instruments have not been disinfected but are still used to excise the woman’s clitoris.⁶⁷ After the procedure is performed, the practitioners are not equipped with antibiotics, thus potentially leaving the victim around a pool of blood.⁶⁸ In some regions in West Africa, dirt, ashes, or animal feces are placed into a wound to stop bleeding, which increases the risk of infections and uncontrolled hemorrhaging.⁶⁹

The consequences of undergoing FGM have short-term and long-term effects.⁷⁰ For example, some short-term effects are immediate physical problems, wound infection, tetanus, and urinal blockage.⁷¹ On the other hand, long-term effects include blocked menses, hardened scars, child morbidity, sexual dysfunction, and less reproductive rights.⁷² Specifically, research in Sudan exposed that “fifty

59. *Id.*

60. POPULATION REFERENCE BUREAU, *supra* note 24, at 1.

61. *Id.*

62. *Id.*

63. Trueblood, *supra* note 1, at 442.

64. *Id.*

65. *Id.* at 443.

66. *Id.*

67. *See id.*

68. *See id.*

69. Trueblood, *supra* note 1, at 443.

70. *Id.*

71. *Id.*

72. *Id.* at 443–44.

percent of women who had undergone FGM say that they do not enjoy sexual intercourse, but rather they accept it as their duty.”⁷³ Regrettably, this duty highlights subordination to men. FGM may be encompassed with this subordination.

*D. The Rationalization of Female Genital Mutilation:
Why Some Advocates Actively Promote the Practice of
Female Genital Mutilation*

Although this article ultimately concludes that the lack of medical necessity outweighs the cultural significance of FGM, cultural justifications are important as part of the human rights discourse. There are four main reasons advocates support this procedure: (1) religious, (2) sociological, (3) aesthetic and hygienic, and (4) psychosexual.⁷⁴ Because these principles only serve as a defense to the dangers of FGM, opponents should continue to voice their concern about the dangers of this procedure.

1. Religious

FGM is not an entirely Muslim practice; it is also practiced by secular and other religious groups.⁷⁵ Generally, Muslim communities practice FGM because of the belief that they are required to do so by their faith.⁷⁶ Religious scholars, however, have confirmed that the Koran does not mention FGM at all.⁷⁷ This still does not prevent religious leaders from asserting that it has a place in Islam.⁷⁸ In 1994, the Sheikh of Al-Azhar, Sunni Islam’s highest leader, persuaded the Egyptian Ministry of Health to issue a proclamation allowing hospitals in Egypt to perform FGM.⁷⁹ In 1997, however, the Sheikh changed his support in favor of the Egyptian Ministry of Health’s prohibition on FGM.⁸⁰ Today, many religious leaders continue to defend the practice, and religion continues to be a primary justification for FGM among some religious groups.⁸¹

2. Sociological

Many supporters argue that sociological reasons for FGM are the strongest because they are entrenched in the lives of women in

73. *Id.* at 445.

74. *See Female Genital Mutilation, supra* note 36.

75. Trueblood, *supra* note 1, at 445.

76. *Id.* at 445–46.

77. *Id.* at 446.

78. *Id.*

79. *Id.*

80. *Id.*

81. Trueblood, *supra* note 1, at 446.

Africa and Middle Eastern countries.⁸² In many countries, FGM is performed as a rite of passage from “girlhood” to “womanhood.”⁸³ As such, many ceremonies are accompanied by men and women from villages performing traditional song and dance.⁸⁴ Furthermore, the young girl undergoing the procedure will receive gifts, clothing, and food.⁸⁵

A young girl who does not undergo FGM may suffer long-term cultural consequences.⁸⁶ For example, the girl may be ostracized by her family and, in some instances, may not be able to marry.⁸⁷ Failure to suffer through the procedure can lead to various social pressures.⁸⁸ The most common illustration is in Uganda, where a woman “cannot speak in front of elders, hold any position of responsibility, or even marry” if she does not undergo the procedure.⁸⁹ Although there are social pressures, some women have decided not to compel their daughters to be mutilated.⁹⁰ According to Yurub, a Somali community leader who decided not to have her daughter circumcised, “Some women have challenged me but my husband supports and encourages me. I am confident in my decision and I am committed to it.”⁹¹

In order for FGM to be recognized as part of the nonsubordination theory, more people must take a stand, like Yurub, and recognize the problem this procedure has on the subordination of women. Unfortunately, however, most women who have been subjected to FGM strongly support it for their daughters.⁹² A woman perpetuating the subordination of her own daughters is a difficult notion for the Western culture to accept.⁹³ Women in the community have a large role, as they arrange for and perform the operation.⁹⁴

82. *Id.* at 446–47.

83. *Id.* at 447.

84. *Id.*

85. *Id.*

86. *See id.*

87. Trueblood, *supra* note 1, at 447.

88. *Id.*

89. *Id.*

90. *See* Denise Shepherd-Johnson, *Somali Communities Say ‘No’ to Female Genital Cutting*, UNICEF (Dec. 14, 2009), http://www.unicef.org/infobycountry/somalia_52125.html.

91. *Id.*

92. Trueblood, *supra* note 1, at 447–48.

93. *But see* IRIN, *RAZOR’S EDGE—THE CONTROVERSY OF FEMALE GENITAL MUTILATION* 3 (Mar. 1, 2005), *available at* <http://www.irinnews.org/pdf/in-depth/FGM-IRIN-In-Depth.pdf> (“All members of communities practi[c]ing FGM have a role in perpetuating it. Families of girls or women who undergo FGM support it because it makes their daughters marriageable—the operation ensures that their daughters will have ready suitors and a satisfactory bride price.”).

94. *Id.*

Typically, the mother or grandmother arranges the procedure, which only helps promote a system of patriarchy.⁹⁵

3. *Aesthetic and Hygienic*

Various cultures actively promote and perform FGM based on aesthetics and hygiene.⁹⁶ FGM-practicing societies believe that external female genitalia are “dirty” and not aesthetically pleasing.⁹⁷ Members of these cultures admire women who have their genitalia removed, and those who retain their genitalia are detested.⁹⁸ Moreover, FGM practicing societies have the idea of a “dirty” clitoris, and they believe that bad female odors can be eliminated by cutting the clitoris.⁹⁹ Interestingly, supporters, mostly men, believe retaining the clitoris can be harmful to men, and babies during the birthing process.¹⁰⁰ This is yet another example of the system of patriarchy that will only serve as a tool of female subordination and male dominance. As such, aesthetic reasons of beauty should not be justifications for why women are compelled to undergo FGM.

4. *Psychosexual*

The most blatant justification for subordination of women is psychosexual reasons.¹⁰¹ According to some FGM-practicing societies, “women are fundamentally sexual creatures and naturally promiscuous; thus the purpose of FGM is to prevent women from succumbing to these impulses and to protect them from the aggression of others.”¹⁰² Supporters of FGM argue that cutting the clitoris can reduce a woman’s sex drive so the husband can match his wife’s when they get older.¹⁰³ This is the clearest form of the nonsubordination theory encompassing FGM because instead of protecting women, men are concerned with being emasculated.¹⁰⁴

Supporters of FGM contend that the practice is “a cultural and social right that they choose to practice.”¹⁰⁵ As many women do, in

95. *See id.*

96. Trueblood, *supra* note 1, at 448.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *See id.*

102. Trueblood, *supra* note 1, at 448.

103. *See id.* at 448–49.

104. *See id.* at 449.

105. *Id.* at 453.

fact, support FGM, this argument can appear rational.¹⁰⁶ However, FGM deprives women of equal status in society and ensures that they will remain submissive to men.¹⁰⁷ For example:

[M]en used to hunt and whenever they left women behind, they were always uncertain of their faith towards going around with other men. To control this, they started circumcising their women. When that thing [the clitoris] is removed, there is a difference. If not removed, the woman will sleep with other men or not allow the husband to sleep. This can cause friction in the home because after a day's work, a man needs to have enough rest. So the woman must be circumcised to reduce her sexual urge.¹⁰⁸

When women and men refuse to speak out against FGM, this only glorifies a medically unnecessary process. A woman is not justified in compelling her daughter to undergo this process simply because she personally experienced it in her own youth. Solutions to FGM are complicated when cultural relativity is included, but they are extremely necessary in order to ensure women and young girls will not be subordinated under the umbrella of "male dominance."¹⁰⁹

II. FEMALE GENITAL MUTILATION: THE REVOLVING DOOR OF HEALTH AND HUMAN RIGHTS

FGM is estimated to affect between 85 and 114 million girls and women in Africa and other parts of the world.¹¹⁰ The earliest recognition of health as a human rights violation was in the constitution of the WHO.¹¹¹ According to the WHO, health is defined as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."¹¹² With this definition, the WHO has revealed that health has long been viewed "as an issue

106. *Id.*

107. *Id.*

108. Trueblood, *supra* note 1, at 449 (alteration in original) (quoting Joseph Kamah-Kanu, *Gambia: Young Gambian Mothers Dump Their Babies*, PANAFRICAN NEWS AGENCY (July 1, 1999), <http://allafrica.com/stories/199907010253.html>).

109. *See id.* at 462.

110. Special Rapporteur on the Traditional Practices Affecting the Health of Woman and Children. *Study on Traditional Practices Affecting the Health of Women and Children*, ESCOR, U.N. Doc. E/CN.4/Sub.2/1991/6 (July 5, 1991) (by Halima Embarek Warzazi); *see also* NAHID TOUBIA, FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION 9 (1993) (FGM is practiced as a manner of tradition in at least twenty-five countries in Africa, some including: Somalia, Djibouti, the northern part of the Sudan, and parts of Ethiopia).

111. Goldberg, *supra* note 11, at 272.

112. World Health Organization Constitution pmb., Apr. 7, 1948, 14 U.N.T.S. 185.

that encompasses a totality of factors and conditions in life.”¹¹³ Furthermore, the WHO recognizes that protecting the right to health should be an *affirmative* act as opposed to an absence of *negative* conditions.¹¹⁴

The WHO has adopted specific terms to identify the three predominant forms of FGM, ranging from “mild” to “extreme.”¹¹⁵ Initially, the term “female circumcision” was the most common name used by English-speaking Westerners and Africans.¹¹⁶ This term, however, began to change because of the parallels drawn between “female” and “male” circumcision when one was thought to be less damaging than the other, and thus, possibly not a violation of human rights.¹¹⁷ As such, the term “FGM” was adopted to emphasize the physical pain caused by the practice and to stress the importance of health as a human rights violation.¹¹⁸

Although terms like “operations” or “surgeries” can disregard the physical trauma associated with FGM, a debate is beginning to occur regarding modern forms of surgical modification and why it has not been subject to scrutiny.¹¹⁹ Nonetheless, it is important to recognize the potential health consequences and human rights violations that can occur in cultures practicing FGM.

A. Universal Declaration of Human Rights (UDHR)

The UDHR is the touchstone for internationally recognized human rights.¹²⁰ Pursuant to Article 25, everyone has “the right to a standard of living adequate for the health and well-being of himself [or herself] and of his [or her] family, including food, clothing, housing and medical care”¹²¹ Moreover, Article 5 reiterates that

113. Goldberg, *supra* note 11, at 272.

114. *Id.*

115. Hope Lewis, *Between Irua and “Female Genital Mutilation”: Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1, 5 (1995).

116. For an example of the use of the term “female circumcision,” see *id.* at 5 n.16 (“rejecting the term ‘female genital mutilation’ because it defeats ‘the purpose of this Note, which is to communicate, not to alienate’” (quoting Robyn Cerny Smith, Note, *Female Circumcision: Bringing Women’s Perspectives into the International Debate*, 65 S. CAL. L. REV. 2449, 2451 n.7 (1992))).

117. Lewis, *supra* note 115, at 6 (“Because the term ‘male circumcision’ generally is not thought to implicate human rights, the term is not regarded as useful by those who seek to define FG[M] as a human rights violation.”).

118. See *id.* at 7 n.21 (“An alternative interpretation of the use of ‘mutilation’ is that it focuses attention on damage to the health and well-being of survivors instead of on the culpability of the practitioners.”).

119. *Id.* at 7.

120. Goldberg, *supra* note 11, at 272.

121. Universal Declaration of Human Rights, *supra* note 16, at art. 25(1).

the right to health concerns many factors in the conditions of one's life, as opposed to the mere lack of diseases.¹²² Health is protected as a human rights interest, afforded to *all* people in every part of the world.¹²³ Protecting the right to health is not necessarily only about access to medicines but also involves an overall concern for social, mental, and physical well-being.¹²⁴

Pursuant to Article 25(2) of UDHR, “[m]otherhood and childhood are entitled to special care and assistance.”¹²⁵ Women who undergo FGM receive no beneficial health care, however, thus continuing the violation of international laws. Moreover, FGM-practicing communities “refuse to: treat gender equally; provide women equal opportunities to work, in marriage, or in regard to their own body”¹²⁶ When health is viewed in a wide-ranging context, it becomes clear that it is impossible to protect health without safeguarding basic human rights. For the purpose of this article, CEDAW and ICESCR will be discussed in providing a broader context for health and human rights.

B. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

In pertinent part, CEDAW mandates “States Parties to take all appropriate legislative and other measures to ‘suppress all forms of traffic in women and exploitation of the prostitution of women.’”¹²⁷ Article 12 in particular notes that parties “shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on the basis of equality of men and women, access to health care services”¹²⁸ Assuming that FGM is damaging to the reproductive system and is a complicated medical procedure, if health was encompassed in a broader human rights framework, women would be protected against compelled FGM procedures.

122. Goldberg, *supra* note 11, at 273.

123. *See id.*

124. *Id.*

125. Universal Declaration of Human Rights, *supra* note 16, at art. 25(2).

126. Trueblood, *supra* note 1, at 452.

127. ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* 64 (2010) (quoting Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 17, at art. 6); *see* Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT'L L. 643, 644 (1990) (discussing the meaning of ratification of this Convention with reservations).

128. Convention on the Elimination of all Forms of Discrimination Against Women, *supra* note 17, at art. 12(1).

In 1993, CEDAW issued a recommendation that categorized gender-based violence as infringing on women's human rights and fundamental freedoms.¹²⁹ Expanding the definition provided in Article 12, the recommendations articulated that this fundamental freedom included "the 'right to the highest standard attainable of physical and mental health.'"¹³⁰ As opposed to determining FGM to be a "bad" practice because of an "us versus them" mentality, human rights scholars should consider FGM as a violation of international instruments from the perspective of a "health as human rights" argument. Allowing for a change in conversation would be beneficial in two ways: (1) It would help to get rid of Westerners' "arrogant perception," and (2) it would appear less xenophobic.¹³¹

C. International Covenant of Economic, Social, and Cultural Rights (ICESCR)

Pursuant to the preamble of ICESCR, everyone enjoys a freedom from fear, which can only be achieved "if conditions are created whereby everyone may enjoy his [or her] economic, social and cultural rights, as well as his [or her] civil and political rights."¹³² In addition, ICESCR has furthered the purpose of the Charter of the United Nations "to promote universal respect for, and observance of, human rights and freedoms."¹³³ Many human rights activists and scholars believe FGM is a human rights violation because of the fear associated with girls on which it is performed.¹³⁴

The ICESCR contains articles similar to UDHR and CEDAW concerning the protection of health as a human right.¹³⁵ For example, ICESCR provides for the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health."¹³⁶ From the language provided, ICESCR establishes that health is a

129. Goldberg, *supra* note 11, at 274.

130. *Id.* (quoting Comm. on Elimination of Discrimination Against Women, General Recommendation 19 on its 11th Sess, Feb. 1994, U.N. Doc. HRI/GEN/1/Rev. 1 (July 29, 1994)).

131. See Isabelle R. Gunning, *Female Genital Surgeries and Multicultural Feminism: The Ties That Bind; The Differences That Distance*, 13 *THIRD WORLD LEGAL STUD.* 17, 19 (1994) (arguing that Westerners' approach to FGM problems is manipulating the voices of African women).

132. International Covenant of Economic, Social, and Cultural Rights, *supra* note 18, at pmb1.

133. *Id.*

134. See Trueblood, *supra* note 1, at 452.

135. Goldberg, *supra* note 11, at 275.

136. International Covenant on Economic, Social and Cultural Rights, *supra* note 18, at art. 12(1); see Goldberg, *supra* note 11, at 275.

protectable human right by expanding the right to health, both mental and physical, into the broader human rights framework.¹³⁷

Three critical issues are important when analyzing the cultural relativism versus human rights dichotomy. First is the role of the state when gender, cultural differences, and international human rights laws conflict. Second is the question of why human rights activists, many of whom follow Western traditions, attempt to eradicate FGM when their own culture has gender stereotypes that subordinate women. Third is whether cultural practices should continue to occur if a culture appears to violate international human rights instruments.¹³⁸ This article posits that *all* international human rights standards should exist irrespective of cultural norms, and as such, the latter question should be answered in the negative.

III. THE NONSUBORDINATION (“DOMINANCE”) THEORY: FEMALE GENITAL MUTILATION AND THE SEXUAL VICTIMIZATION OF WOMEN

For many years, women have been viewed as nothing more than sexual objects.¹³⁹ Unfortunately, women did not have a choice in this sexual objectification.¹⁴⁰ Around the world, the question people should begin to ask themselves is: “Why were women not involved in this decision-making process?” The answer becomes quite clear—because men were already there, and thus it was unnecessary for women to take part.¹⁴¹ Many scholars agree that women do not have the option to define their own experience.¹⁴² On the other hand, women are forced into their experience by their male counterparts, including sexualization and the reality therefrom.¹⁴³

It should come as no surprise that men tend to exert control and domination over women by controlling their sexuality.¹⁴⁴ A prime example of this dominance is through the procedure of FGM.¹⁴⁵ Feminist scholars believe “definitions of male and female are created

137. Goldberg, *supra* note 11, at 275.

138. See Guyora Binder, Comment, *Cultural Relativism and Cultural Imperialism in Human Rights Law*, 5 BUFF. HUM. RTS. L. REV. 211, 211 (1999) (providing a discussion “on the assumption that the legitimacy of international human rights law depends upon the existence and perspicuousness of fundamental principles of justice that transcend culture, society, and politics”).

139. See Ballenger, *supra* note 3, at 90.

140. *Id.*

141. *See id.* at 89.

142. *See id.* at 90.

143. *Id.*

144. *Id.* at 89.

145. *See* Trueblood, *supra* note 1, at 462.

through the erotization of dominance and submission, and these differences define each other.”¹⁴⁶ The nonsubordination theory relates to FGM because it leaves a woman with only two options.¹⁴⁷

First, the woman can surrender to the mutilation and deprive herself of the right to autonomy.¹⁴⁸ Second, the woman can evade the mutilation and suffer potential shame by her family, friends, and society.¹⁴⁹ Unfortunately, many women are compelled to the first option.¹⁵⁰ When viewed closely, the practice of FGM involves a woman, usually a child, choosing whether or not to undergo the mutilation.¹⁵¹ Regrettably, this does not involve a choice but rather “a decision [of] which evil to suffer.”¹⁵² FGM requires a woman to decide between two troublesome options. This decision ultimately leaves the woman with no real choice at all.

Women in FGM-practicing societies do not have a significant choice in deciding if they should undergo the potentially deadly procedure. Furthermore, FGM is a clear violation of an indispensable constitutional right of women and children—the right to dignity and liberty of their person.¹⁵³ As such, FGM should be prohibited in any practicing country because it affects reproductive rights and subordinates women into a lower class.

Typically, FGM “involves the cutting of a woman’s genitals, usually performed before puberty. It can take many forms, and is practiced mostly in Africa and some Middle Eastern countries.”¹⁵⁴ Consider this story of an eight-year-old girl who quickly lost her life at the hands of an excision practitioner:

[The] woman’s only tool for the FGM procedure was a well-used half of a razor blade, and the only painkillers she provided were sugar and powdered myrrh (an herb). After a short reading from the Koran to drive away evil spirits, one of the girl’s aunts was called upon to hold her firmly. Immobilized, she was placed on a stool with her legs spread apart. . . . Despite the young girl’s cries and supplications, the practitioner began her work, cutting

146. *Id.*

147. Ballenger, *supra* note 3, at 90. Oftentimes, the nonsubordination theory is referred to as the dominance theory because of the application of rules and practices that subordinates women to men. KATHARINE T. BARTLETT ET AL., *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* 533 (3d ed. 2002).

148. Ballenger, *supra* note 3, at 90.

149. *Id.*

150. *See* Trueblood, *supra* note 1, at 463–64.

151. *See id.* at 463.

152. *Id.*

153. Trueblood, *supra* note 1, at 464.

154. Ballenger, *supra* note 3, at 85.

away all the external genital organs—labia minora, clitoris and labia majora. Next, she sprinkled the wound with a mixture of sugar and myrrh, which was meant to stop the bleeding, and then used a scrap of cloth to tie the child's legs together in order to bring the two open parts of the wound together to heal. . . . The child continued to bleed profusely all that day and evening [until she ultimately died].¹⁵⁵

Although this story is not uncommon in Djibouti, it is worth mentioning because contrary to popular belief, the parents are not intending to harm their daughters.¹⁵⁶ Many parents, in fact, consider it as the tradition of their respective countries.¹⁵⁷ Furthermore, parents coerce their daughters to undergo this process because they believe it helps them prepare for the future.¹⁵⁸ Forcing a girl to undergo FGM, however, is neither a necessary part of raising a girl properly, nor is it a part of becoming a woman.¹⁵⁹ In the story of the eight-year-old, the life of a young girl was cut short because of a needless procedure. With proper education on feminism, autonomy, patriarchy, male dominance, and female subordination, FGM could be drastically reduced in practicing countries.¹⁶⁰

Feminism as a legal concept has focused on the unjust subordination and discrimination of women.¹⁶¹ Feminism maintains that politically, culturally, and socially, women have always been, and still are, oppressed, subordinated, devalued, and ignored.¹⁶² Furthermore, it has been argued that the exercise of power operates in such a manner “to the detriment of women.”¹⁶³ The disadvantage that women suffer is often viewed as a result of various systems of patriarchy.¹⁶⁴ This traditional notion of patriarchy is unjust and contravenes the purpose of feminist legal theory.¹⁶⁵ The ultimate purpose of feminist legal theory is to end restrictive and subordinate treatment of women.¹⁶⁶

155. *A Tragic Story About FGM and Girls in Djibouti*, UNICEF, http://www.unicef.org/djibouti/french/reallives_3061.html (last visited Mar. 23, 2013).

156. *Id.*

157. *Id.*

158. *Id.*

159. See *Female Genital Mutilation*, *supra* note 36.

160. UNICEF, *supra* note 155.

161. Nancy Levit, *Feminism for Men: Legal Ideology and the Construction of Maleness*, 43 UCLA L. REV. 1037, 1041 (1996).

162. *Id.*

163. *Id.* (quoting Martha L. Fineman, *Challenging Law, Establishing Difference: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 25, 29 (1990)).

164. *Id.*

165. *Id.*

166. Martha Minow, *Beyond Universality*, U. CHI. LEGAL F. 115, 116 (1989).

A nonsubordination perspective shifts the focus from sex-based difference to a sex-based subordination perspective.¹⁶⁷ This theory makes the inquiry of whether policies or practices have the effect of subordinating women to men.¹⁶⁸ The nonsubordination theory describes how the cultural and sexual domination of men structures social and legal relations between men and women.¹⁶⁹ Oftentimes, legal concepts crafted and put into effect by men operate to control patterns of behavior between genders.¹⁷⁰ As such, differences between genders are included in the larger system designed to legitimate women's subordination.¹⁷¹

Dominance theorists focus on the "male norm" as tradition in the law and society and that concept is universal and continues to be unopposed.¹⁷² Over the past decade, dominance feminism has helped women to see the systematic oppression that is continued under the guise of impartiality in law.¹⁷³ Dominance theorists have questioned the consequences of dominance-based portrayals for the way women are perceived by themselves as well as others.¹⁷⁴ Dominance and nonsubordination theories are controversial, not only in identifying coercion over women, but also in describing the targeting of women.¹⁷⁵ As one scholar noted, "women live in sexual objectification the way fish live in water. . . . [A]ll women live all the time under the shadow of the threat of sexual abuse."¹⁷⁶ The scholar asked, "what can life as a woman mean, what can sex mean, to targeted survivors in a rape culture?"¹⁷⁷ This question becomes crucial when determining the help women should be provided when they are subjected to the medically unnecessary FGM procedure.

One of the unfortunate realities where women are faced with this threat of abuse is in parts of Africa and some Middle Eastern countries.¹⁷⁸ Although many individuals are opposed to FGM, many traditional, cultural, and religious reasons have been espoused for maintaining the practice in certain areas.¹⁷⁹ As a result, dominance

167. BARTLETT ET AL., *supra* note 147, at 533.

168. *Id.*

169. Levit, *supra* note 161, at 1047–48.

170. *Id.*

171. *See id.* at 1048.

172. *Id.* at 1047–48.

173. Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304, 304 (1995).

174. *Id.*

175. *Id.* at 309.

176. *Id.* (quoting CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 149 (1990)).

177. *Id.*

178. *See* Ballenger, *supra* note 3, at 85.

179. *See id.* at 87–89.

feminists characterized women's sexuality as a construct of dictatorial influences¹⁸⁰—influences that are often “‘defined by men, forced on women, and constitutive of the meaning of gender.’”¹⁸¹

Under the nonsubordination theory, “women's legal subordination” is observed as the “ability of those with power—men—to identify their own point of view” systematically as universal “point-of-viewlessness.”¹⁸² Although the nonsubordination theory attempts to continue the imbalance of power of women, women should realize the influence behind their voice and speak out against FGM as a constitutional and international human rights violation.¹⁸³

FGM would not be the first challenge to dominance feminism.¹⁸⁴ The first challenge to dominance feminism surfaced from the “sex wars” debate of the 1980s.¹⁸⁵ During this time, feminist scholars and activists challenged the feminist anti-pornography movement.¹⁸⁶ In these videos, women were often depicted as submissive characters and subject to male sexual coercion.¹⁸⁷ Over time, more attention centered on women's sexual subjugation and into the nature of women's sexuality.¹⁸⁸ Women's rights were, and still are, significant. During the peak of the “sex wars” debate, dominance theorists were required to explore women's sexual satisfaction, or with FGM, their dissatisfaction.¹⁸⁹ The only practical solution to bring attention to this issue is to voice concerns about potential constitutional and international human rights violations.¹⁹⁰

The dominance theory has continued the imbalance of power between men and women. “During the late 1980s and early 1990s, dominance theory gained prominence as an explanation of and response to women's oppression.”¹⁹¹ As dominance theory became more evident, some feminists began doubting images used to portray women.¹⁹² These images normally centered on sexual victimization and resisted coercion.¹⁹³ The process of FGM causes women

180. Abrams, *supra* note 173, at 309.

181. *Id.* (quoting CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 128 (1990)).

182. BARTLETT ET AL., *supra* note 147, at 533.

183. See *Female Genital Mutilation*, *supra* note 36.

184. See Abrams, *supra* note 173, at 304.

185. *Id.*

186. See *id.* at 304–05.

187. *Id.*

188. See *id.* at 305.

189. See *id.*

190. See *Female Genital Mutilation*, *supra* note 36.

191. Abrams, *supra* note 173, at 324.

192. *Id.*

193. *Id.* at 325–26.

to “find ways to resist male supremacy and to expand their spheres of action”; however, they are never truly free of it.¹⁹⁴

FGM is a practice that demonstrates the “systematic victimization of women.”¹⁹⁵ Critics have argued that “to say women are victimized reinforces the stereotype that women ‘are’ victims.”¹⁹⁶ However, if women do not recognize their victimization, they are denying their subordination and thus will be unable to speak out against male dominance.¹⁹⁷ Therefore, to establish a connection between the dominance theory and FGM, more scholars must recognize its existence and then voice their concern about its volatile practice.

IV. DISREGARDING THE “OTHER” AND THE ELIMINATION OF “US” VERSUS “THEM” RHETORIC

The little girl . . . is immobilized in the sitting position on a low stool by at least three women: one of them with her arms tightly around the little girl’s chest; two others hold the child’s thighs apart by force . . . Then the old woman takes her razor and excises the clitoris. The infibulation follows: the operator cuts with her razor from top to bottom of the small lip and then scrapes the flesh from the inside of the large lip . . . The little girl is then tied up from her pelvis to her feet . . . The operation lasts from fifteen to twenty minutes according to the ability of the old woman and the resistance put up by the child.¹⁹⁸

This imagery illustrates how egregious some forms of FGM can be, but the question remains whether FGM should be analyzed differently if a culture performs it as a rite of passage. Cultural relativists seem to think so.

Ever since its inception, cultural relativists expressed hesitation with fully adopting a U.N. human rights system because of concerns that the West would impose cultural values on societies.¹⁹⁹ Cultural relativists often argued that “cultural behavior should be

194. *Id.* at 328.

195. *Id.* at 329 (quoting CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 220 (1990)).

196. *Id.*

197. Abrams, *supra* note 173, at 329.

198. Lewis, *supra* note 115, at 12 (quoting Special Rapporteur on the Traditional Practices Affecting the Health of Women and Children, *Rep. of the Working Group on Traditional Practices Affecting the Health of Women and Children*, ESCOR, U.N. Doc. E/CN.4/1986/42 (Feb. 4, 1986) (by Halima Embarek Warzazi)).

199. Am. Anthropological Ass’n, *Statement on Human Rights*, 49 AM. ANTHROPOLOGIST 539, 539 (1947). The American Anthropological Association raised concerns about the attempt to draft what would become the Universal Declaration of Human Rights in a 1947 submission to the U.N. Commission on Human Rights. *Id.*

judged only though culturally specific, rather than universal, norms and values.”²⁰⁰ Furthermore, critics of universalism have argued that the international human rights system has embraced Western beliefs and liberal notions of protecting human rights.²⁰¹ Human rights universalists seem to have disregarded the fact that human rights are defined differently by cultural relativists.²⁰² In addition to varying interpretations of human rights, Western and non-Western societies differ on the priorities of types of human rights.²⁰³ For instance, Westerners have prioritized first generation rights as most important while African scholars have categorized second generation rights as most important.²⁰⁴

Because of the dichotomy of first and second generational human rights, considering health as a human rights framework may prove to have troublesome and contradictory consequences for activists who oppose FGM.²⁰⁵

Many cultures, including the West, condone practices that are painful, medically unnecessary, and create health risks to girls and women.²⁰⁶ For example, human rights activists and scholars are not attempting to prevent women from “going under the knife,” bleaching skin, and tanning, yet these procedures have led to severe medical complications, including death. It cannot be answered whether undergoing a medically unnecessary surgery is less deserving of a human rights discussion because it was *chosen*, especially if *voluntarily* undergoing this procedure is a result of male domination and female subordination. If health is truly what human rights activists are aiming for it is also difficult to understand why many human rights activities are still opposed to FGM if the less severe procedure, known as “circumcision proper” in some practicing areas, was performed. These are all important questions that deserve answers, but it will be impossible to answer these questions if Westerners

200. Lewis, *supra* note 115, at 17.

201. See Josiah A.M. Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 HUM. RTS. Q. 309, 310 (1987) (discussing African conceptions of human rights); Minasse Haile, *Human Rights, Stability, and Development in Africa: Some Observations on Concept and Reality*, 24 VA. J. INT'L L. 575, 584–87 (1984) (discussing human rights in traditional African cultures).

202. Lewis, *supra* note 115, at 17–18.

203. *Id.* at 18 n.75.

204. See Burns H. Weston, *Human Rights*, in HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION 14, 18–19 (Richard P. Claude & Burns H. Weston eds., 2d ed. 1992). Scholars have categorized human rights into “generations.”*Id.* at 18 (“[T]he first generation of civil and political rights . . . [and] the second generation of economic, social, and cultural rights . . .”).

205. See Lewis, *supra* note 115, at 19.

206. *Id.*

automatically view the cultural relativism argument as a pretext for violating human rights.

CONCLUSION

This article does not attempt to propose a resolution of the tension between human rights activists and cultural relativists regarding FGM. While this article may not propose a particular resolution, it does highlight the impossibility of considering human rights without evaluating and critiquing cultural norms, be it religious, moral, or psychosexual. With this critique, it is essential not to disregard cultural practices as “wrong” simply because Western-adopted human rights consider it so. Nonetheless, cultural relativity needs to be critiqued and analyzed as well, especially if the culture is male-dominated, leads to the subordination of women, and causes health and human rights violations.

As it stands, women and children in FGM-practicing societies do not have a meaningful choice.²⁰⁷ They are faced with being socially ostracized or violating their own bodily integrity—*neither* of which are choices.²⁰⁸ Because of the lack of choice, FGM is a violation of women and young girls’ fundamental right to dignity, bodily integrity, and security of their person.²⁰⁹ Women across the world should be educated and allowed to participate in the representation of their own voices.²¹⁰ The current cultural, social, and political structures do not provide for that, and that must change now. After all, culture relativism is important, but universal “human rights” apply to *all*.

207. Trueblood, *supra* note 1, at 463.

208. *See id.*

209. *See id.*

210. *Id.*