

Tolerating the Intolerable: The Case of Female Genital Mutilation

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Recently, when a hospital in Seattle revealed its plans to design a medically safe clitoridectomy, the public reacted with such outrage that the plans were abandoned. In the Boston area, doctors at the African Women's Health Practice (part of the obstetrics and gynecology department at Brigham and Women's Hospital) champion efforts to ban the practice globally but at the same time treat Somali immigrants suffering complications from the procedure.

A little known legislative act, passed in 1996, makes performing clitoridectomy on underage persons in the US illegal, implying that adults are free to undergo the procedure. At the same time, however, US policy condemns the practice in other countries. The US has granted asylum to some who have fled their home countries in fear that the surgery would be forced upon them. In a celebrated decision, the US Immigration Appeal Court in 1996 granted political asylum to Fauziya Kassinga, a nineteen-year-old citizen of Togo, who had been sheltered from forced clitoridectomy by her father, a wealthy businessman, until his death.

In advocating a policy that condemns the practice abroad, the US seems at least in part to rely on the view held by international human rights organizations and the United Nations. They call for an end to female circumcision worldwide, insisting that it is a violation of women's human rights. (Some assert that "female circumcision" is a

euphemism and insist that the practice more precisely be described as “female genital mutilation.” This chapter hereafter refers to the practice as FC/FGM.) International human rights advocates and some liberal philosophers insist that one standard must be applied in all places: because FC/FGM violates human rights, it must be banned both abroad and in the US.

But not everyone agrees with this single-standard approach, and some support a different single standard. Cultural relativists, for instance, insist that one should tolerate both abroad and at home *any* practice that is meaningful to a culture—and thus FC/FGM should be accepted worldwide. Complicating matters further, American public sentiment at times seems to reject both views, and instead expresses support for a dual standard: the public seems to want to prohibit FC/FGM in liberal societies, but it is reluctant to intervene in other societies where the practice is part of the culture.

Not only does the apparent inconsistency in the domestic and international positions of the US require explanation, but its inconsistent position also raises a broader question. One must ask what a liberal constitutional state—such as the US—should do when cultural customs offensive to the liberal conscience and values of (most of) its citizens are practiced either in countries *outside* its jurisdiction or in minority communities *within* it. This question will become an increasingly salient public policy issue since, as the community of emigres expands, those who value controversial traditions will want to practice them in an adopted country.

This chapter rejects the notion that a single standard applies in all cases, and explores yet another possibility, suggested by the 1996 legislation. The chapter makes the case for a dual standard. That is, one can reasonably support international efforts for a global ban on FC/FGM, while at the same time urging toleration of the ritual in liberal democratic societies.

To make this case, the chapter first presents a hypothetical scenario to bring to light an ambiguity in the 1996 legislative act concerning the US position toward FC/FGM. The chapter then outlines the arguments for two very different and incompatible attitudes toward FC/FGM. Human rights advocates argue for a global ban on FC/FGM, while cultural relativists insist that the practice should be tolerated. The chapter next turns to two accounts of liberalism, and here too conclusions differ. Liberal feminism supports a ban on FC/FGM; a second liberal argument, sometimes termed “liberal

cosmopolitanism," favors toleration of the practice in other cultures but allows for its ban in liberal societies. Critically examining these philosophical positions allows one to reasonably support the reverse of the liberal cosmopolitan standard—that is, liberal states *should oppose FC/FGM practiced abroad but tolerate it at home.*

Dual Standards at Home and Abroad

The World Health Organization has distinguished four types of FC/FGM, ranging from the most thorough excision of female genitalia to a less drastic ritual cutting. Depending on what type of FC/FGM is performed, the immediate health consequences of the procedure can include such complications as pain and bleeding that can lead to hemorrhage and even death. Long-term consequences can include irreversible loss of the clitoris, and possibly the outer and inner labia. Chronic infection, infertility, difficult pregnancy and childbirth, as well as painful sexual intercourse and menstruation are also common permanent effects of the procedure.

To better understand the complex ethical issues and often conflicting sentiments that surround FC/FGM, consider the following scenario. Imagine X, an adult female citizen of the United States, who strongly desires to assert her cultural affiliation and believes that by undergoing FC/FGM she signals her fidelity to a notion of female chastity and ideal womanhood shared by her community. (For the sake of argument, it is irrelevant whether X was born into, has inherited, or has converted to the tradition.) Along with other like-minded persons—most likely first or second generation immigrants from countries where FC/FGM is widely practiced—she hopes to establish the tradition in her adopted country.

To bring the salient elements of the case into stark relief, one must allow three further assumptions. First, one must accept that X is of a normal frame of mind, i.e., she is psychologically fit and suffers from no recognizable psychological disorder involving, for instance, impulses for self-mutilation. She also is capable of understanding general health information and making day-to-day decisions. Second, it is important to assume that, in theory if not in practical application, X—like all women in the US—enjoys full constitutional rights and has recourse to legal protection from persecution if she chooses not to undergo FC/FGM or if she wants to leave her cultural group. She also enjoys a full range of socioeconomic opportunities, including the free-

dom to marry the person of her choice. (We may further assume that adults in the larger society are generally reluctant to choose circumcised women as wives or sexual partners. Thus, X understands that undergoing FC/FGM means that her choice of partners may be limited to those who share her traditional values.) One must assume, finally, that X enjoys access to medical technology and facilities that allow her doctors to perform the procedure safely and with minimal adverse health consequences. Presented in this way, the case of X raises the following question: Should the liberal society tolerate X's choice to undergo FC/FGM and refrain from intervening with those who assist in the surgery?

Although no woman has relied on the US courts to assert her right to undergo the procedure, the 1996 "Federal Prohibition of Female Genital Mutilation Act" denies FC/FGM only to women under eighteen years of age. But the Act raises many questions. It authorizes US representatives at international financial institutions to "use the voice and vote of the United States to oppose any loan or other utilization of the funds of their respective institution, other than to address basic human needs" for any government or country, which "(1) has, as a cultural custom, a known history of the practice of female genital mutilation; and (2) has not taken steps to implement educational programs designed to prevent the practice of female genital mutilation." The Act mandates that the US refuse loans to countries in which FC/FGM is commonplace but offers no assistance for programs aimed at empowering women and girls. The Act is also too blunt, drawing no distinction between surgeries performed on women and those performed on minors.

As important, it is hard to know how to apply the Act to the US domestic scene. Were X to rely on the Act to support her desire to pursue FC/FGM in the US, a firestorm would likely result. The Act is absolute in its condemnation of the practice abroad, but little thought seems to have been given to defending its implicit permission for adults in the US. The remainder of this chapter argues that there exist morally plausible considerations that support the dual standard suggested in the 1996 Act. That is, X should be permitted to choose FC/FGM in liberal constitutional states, while the procedure ought to be prohibited in countries where basic rights are in jeopardy and women are systematically discriminated against and subjugated. To make this case, it is useful first to turn to two philosophical positions that insist on a single standard: international human rights advocates

support a worldwide ban on FC/FGM; cultural relativists contend that the practice should be tolerated globally.

The International Human Rights Argument for Global Prohibition of FC/FGM

In advocating a global ban on FC/FGM, the international human rights camp does *not* stress that the practice offends the liberal moral conscience, nor does it insist that FC/FGM is an extension of cultural beliefs about female inferiority and subjugation. Instead, it contends that FC/FGM is an act of violence—often forced upon girls and women—which threatens lives and health. It insists that the practice violates the basic right to be free from degrading, cruel, and inhumane treatment.

The human rights camp has a convincing case, particularly when one realizes that FC/FGM is routinely forced on girls as young as four or five years old, and the practice is sustained through social coercion. Most would conclude that young girls cannot offer their free consent based on a full understanding of the consequences of the procedure. Though older girls might better understand the health consequences of the ritual, their dependence on their family, friends, and a social network—the same group that also demands that they undergo FC/FGM—effectively bars them from offering their free consent.

The issue of informed consent is a complicated one, however. In general, parents should be trusted to make decisions to promote the well-being of their children. Those who choose FC/FGM for a daughter often consider the ritual necessary to secure her social acceptance and socioeconomic security. (It is also common for parents and relatives to restrain girls during the procedure and to hunt for them if they escape.) Adults who elect to undergo FC/FGM prior to their marriage, or after the birth of their first child, may also see the surgery as a means to secure their social status. However, to argue that these instances represent informed or free actions ignores the fact that those who refuse the procedure—for themselves or their female relatives—are guaranteed an equally, or more, painful life of economic deprivation and social ostracism.

One cannot be said to have real choices if the options are so few and so bleak. So long as the basic political and social structures of some societies remain patriarchal—girls and women continue to face unequal access to education, are allowed only restricted employment

outside the home (if employment is allowed at all), and must rely on marriage and motherhood for their livelihood—decisions to undergo FC/FGM are not freely made.

However, no one—citizens of liberal states included—enjoys complete freedom of choice. In the US, for instance, the choice to diet or undergo cosmetic surgery is undoubtedly conditioned by dominant social (and often media-driven) notions of beauty, and thus these “choices” also are not made in complete freedom. But there is a morally significant difference between *having no choice* about one’s basic security and life prospects without undergoing FC/FGM on the one hand and, on the other, *finding it difficult* to resist or escape from the pressure of socially dominant notions of beauty. Women in the US can live good lives without surrendering to such social pressures, but women in many societies who escape FC/FGM are denied socioeconomic security and fear that their choice will be overturned by force.

Another critique of the conventional approach by human rights groups is that legal bans on FC/FGM have proven ineffective in the absence of measures to address the inequities that perpetuate the practice in the first place. Although the governments of the Sudan and Egypt banned FC/FGM in the 1940s and 1950s, one finds little evidence of decline in the number of procedures performed, or of improvement in the legal and socioeconomic status of women. Today, from 60% to 90% of all women and girls undergo FC/FGM in those African countries where the practice is traditional, *regardless whether the practice is legal or not*. Further, prosecution of those who take part in FC/FGM only compounds the problem, driving the practice underground to be performed in unsafe conditions.

An effective campaign against FC/FGM on human rights grounds requires the recognition that undesirable consequences of the practice are worsened by the absence of structural protection of women’s basic rights. Such practices can be called “structure sensitive,” and FC/FGM is but one example of a structure-sensitive practice. Although not all structure-sensitive practices violate the basic rights of women, all *structure-insensitive* practices do. Widow burning, honor killing, wartime rape and marital rape, domestic violence, and female infanticide, for instance, constitute serious and direct violations of women’s vital human rights wherever they occur. Their harms are not mitigated by general political, social, economic, or structural conditions. (US courts at times have accepted a “cultural defense” in cases involving, for instance, the murder of wives by jeal-

ous husbands, or the arranged marriages of underage daughters. Such defenses are problematic because they tolerate practices that involve the violation of basic rights, despite the fact that the societies in which these harms occur guarantee those basic rights.) This article contends that FC/FGM is a structure-sensitive practice whose effects can be mitigated in a liberal society. To make this case, however, it is important to examine another approach to FC/FGM—that of the cultural relativist.

The Cultural Relativist Argument for Unconditional Tolerance of FC/FGM

Cultural relativists insist that traditional practices must be understood in cultural context, a crucial element ignored by the human rights camp. University of Chicago anthropologist Richard A. Shweder, for instance, along with a team of legal and cultural scholars, has advocated the broadest tolerance of cultural differences in the United States and elsewhere. Shweder and his colleagues propose fundamental changes to American law in order to accommodate numerous practices—including FC/FGM—so long as they can be demonstrated to promote some social or cultural good.

Cultural relativists claim that any attempt to criminalize cultural practices such as FC/FGM in the US is nothing but an “official attempt to force compliance with the cultural norms of American middle class life.” Since American liberal moral norms stem from the value systems of many cultures, no single system can claim priority on modernity, progress, and rationality, or insist that it exercises a culturally neutral point of view.

But the cultural relativist urges toleration of many practices—in other societies as well as in minority communities within liberal societies—even though they may seem offensive from a “Western” point of view. The cultural relativist also draws no distinctions between structure-sensitive and structure-insensitive practices. Their position inevitably leads to the view that not only is FC/FGM tolerable but so are, perhaps, widow burning, honor killing, and female infanticide—any practice, in fact, so long as it has cultural or religious roots.

But the relativist call for tolerating other cultures has trouble contending with disputes about a practice that arise *within* a culture. For instance, members of the same communities that are home to FC/FGM commonly condemn the ritual. Since the 1960s, doctors in

the Sudan, Somalia, and Nigeria have documented and publicized the harmful consequences of the procedure. Arguing that the practice deviates from their own religious norms, local scholars and activists challenge interpretations of the Koran or hadith (sayings attributed to the prophet Muhammad) that support FC/FGM in Islamic societies. In Egypt, for instance, opponents of FC/FGM ask how parents can obey the command of the Koran to protect their children, who are God's blessings, and yet subject their daughters to the pain and medical risk of FC/FGM. Others wonder why a woman's genitalia must be excised, since her anatomy is God's creation. Opponents also argue that since FC/FGM jeopardizes a woman's health, it cannot be considered a *sunna*, or good religious action. They argue that the ritual violates the command of the Islamic faith to seek the welfare of all its adherents.

Since intra-cultural disputes are common, the "outsider" must decide *whose* values or interests in the divided cultural community should be tolerated. But in choosing to tolerate the majority view, one risks recognizing a locally dominant faction, which likely can enforce controversial practices and subjugate the vulnerable. As important, the cultural relativist who urges toleration of any culturally based practice within a liberal society endangers the very existence of that society. While tolerance is a value that has shaped the liberal constitutional structure of the US, a liberal society is *not* obliged to tolerate practices incompatible with it. If FC/FGM harms basic liberal constitutional institutions, then the state's commitment to tolerance must become a lesser priority. Advocating unbounded toleration compromises the commitment of liberal states to secure the lives and equal liberties of citizens.

How Morally Significant Are Cultural Boundaries?

Both the international human rights perspective and the cultural relativist support applying a single standard in their treatment of cultural practices in liberal and nonliberal societies (although they reach different conclusions about *what* that standard should be). However, both views are too doctrinaire in their understanding of the moral significance of cultural boundaries—human rights advocates tend to argue that claims to cultural relevancy *in no way* inform the morality of a practice; cultural relativists insist that cultural relevancy is the *most important* consideration.

Another view recognizes that cultural differences between liberal and nonliberal societies are morally significant, and consequently liberal moral standards *in some circumstances* must be suspended in judging cultural practices. Two liberal political philosophers, John Rawls and Michael Walzer, have developed versions of "liberal cosmopolitanism," which (simplified here because of space considerations) espouse this view.

Both are reluctant to allow liberal states to intervene in societies with illiberal practices, unless those practices violate basic, or "urgent" human rights. For them "basic" or "urgent" rights include the right to life and basic liberties, and the freedom from slavery, genocide, and mass expulsion. So long as no violation of this kind occurs, Rawls and Walzer counsel the liberal state to tolerate the cultural practices of other societies, even if those practices would—or should—be prohibited according to liberal constitutional standards. According to this approach, while US intervention in sovereign states practicing genocide is permissible, coercive policies intended to extinguish cultural practices are objectionable. Those holding this view thus might oppose withholding loans to countries with no programs for educating women about FC/FGM—precisely what is advocated in the 1996 law.

In urging toleration of practices abroad that one might not tolerate at home, Rawls and Walzer recognize that one's own (liberal) culture might not be able to discern or understand the moral judgments of other cultures. But neither thinker would accept that a culture could offer any kind of moral justification for the violation of human rights. This reveals that their view is actually based on a context-based assessment of harms. Structure-sensitive practices such as FC/FGM can lead to grave violations of basic human rights in countries where these rights are not secure. But the harms of such practices are likely to be minor where these rights are systematically safeguarded. What renders FC/FGM tolerable or intolerable from a cosmopolitan liberal perspective has little to do with some kind of *cultural* justification; rather, the extent of harm resulting from FC/FGM—and whether those harms rise to the level of basic rights violations—depend, to a large extent, on the different basic political structures in these societies.

Liberal Feminist Arguments for Intolerance

It is important at this juncture to examine a second kind of liberal argument, one that is in tension with the Rawls-Walzer liberal cosmopolitan account. Some liberal feminists argue that even the most “enlightened” practice of FC/FGM is entirely inconsistent with the support of women’s equal rights and liberties. These feminists insist that any cultural community that practices sex-based discrimination cannot enjoy support from a liberal constitutional state, and such practices cannot be tolerated abroad. FC/FGM is particularly deplorable, in their view, because sexist beliefs underlie the practice. Supporters of FC/FGM commonly point to the necessity of controlling female sexuality and upholding patriarchal society. Further, the procedure is often performed at men’s insistence. The liberal feminist contends that, for women to enjoy human rights as equal human beings, one must interfere with illiberal or sexist practices *wherever* they occur—even in liberal societies.

Susan Okin, for instance, argues that nonliberal cultures and subcultures should either become extinct or rid themselves of their sexist practices. For Okin, multiculturalism is laudable in a liberal democracy *only if* its minority subcultures can survive such reforms. However, critics of Okin’s view routinely suggest that the list of practices she would see abolished is too far-reaching and indiscriminating. She is also criticized for offering no way to morally rank such practices as wearing head scarves or veils, forced child marriage, FC/FGM, polygamy, wife beating, widow burning, and honor killing. Although all of these practices are sexist, critics are troubled by the suggestion that no line can be drawn between *tolerable* sexist and illiberal practices and *intolerable* ones.

According to this view, furthermore, sexist and illiberal practices are no less morally objectionable simply because women *themselves* choose to take part in them. The choice of X to undergo FC/FGM is as morally objectionable as if others coerced her into undergoing the procedure. In fact, the list of practices impermissible for X is extensive—it is also morally unacceptable for her to take part in such sex trades as pornography or prostitution, for her to choose breast augmentation, or for her to diet in hopes of attaining a (likely patriarchally dictated) standard of beauty.

This view challenges the distinction that the nineteenth century moral philosopher John Stuart Mill famously drew between those

illiberal practices that harm others and infringe on their liberties without their informed consent, and those that do not. Liberal feminists such as Okin insist that sexist practices are bad for women—regardless of what any particular woman believes is good or meaningful for *herself*. Their view rests on an understanding that the moral worth of a human life is defined by autonomy, individual freedom, and gender equality, and thus a life shaped by sexist beliefs is unworthy of the respect of a liberal state. According to this view, in choosing FC/FGM, X accepts her dehumanization, and she perpetuates a belief system that justifies the social control over women and limits the exercise of their full potential.

Both feminist liberals and political liberals value equal constitutional protection of basic liberties for all citizens. But once those basic liberties are secure, the political liberal urges toleration of illiberal views and practices, while the feminist parts company and insists that illiberal practices have no place in a liberal state, which should promote the morally worthy life defined by liberal values.

A Reasonable Dual Standard

Applying the positions presented thus far to the case of X, the hypothetical woman who resides in a liberal society and seeks to undergo FC/FGM, one finds:

1. The **international human rights advocate** argues that FC/FGM violates women's human rights and therefore the practice should be banned in liberal and nonliberal societies alike.

2. Arguing that traditional practices must be understood in cultural context, the **cultural relativist** argues for toleration of FC/FGM in both liberal and nonliberal societies.

3. The **liberal cosmopolitan** is reluctant to justify international intervention to end illiberal (sex-discriminatory) practices in nonliberal societies, so long as no "urgent" human rights are violated; a ban on illiberal practices in liberal societies is permissible.

4. The **liberal feminist** opposes sex-discriminatory practices such as FC/FGM, arguing that these practices have no place in a liberal society.

Political liberalism allows for yet another approach. This approach is based on the recognition that reasonable persons, who enjoy freedom of conscience and expression, will always disagree about conceptions of human nature and notions of the good. Liberal

states should allow citizens to practice what they believe so long as their practices do not undermine the basic liberal constitutional structure of the society. By inference, the liberal state should safeguard children from undergoing FC/FGM, since minors cannot offer their informed consent. The liberal state also has an interest in encouraging in girls a sense of their equality, in order that they exercise their equal rights and fulfill their responsibilities as adult citizens. FC/FGM would undermine their developing sense of equal worth. Similar points have been made in strictly enforcing laws banning child pornography and child prostitution in this country, while at the same time laws banning adult prostitution often lack enforcement, indicating a degree of state tolerance.

Applied to the case of X, this understanding of FC/FGM would allow her to decide whether to undergo the procedure—so long as she has full access to medical information, safe medical facilities, and her full range of basic rights are secure. The liberal state must also protect her from physical coercion to undergo FC/FGM, and it must provide the socioeconomic securities that prevent women from “choosing” FC/FGM out of desperation.

This brand of political liberal would not support elimination of public funding to the minority community within a liberal society that allows—but does not coerce—members to practice FC/FGM. The political liberal would not support a ban on the practice, which would communicate to members of the community that their beliefs are not worthy of respect by the liberal state and the society at large. Yet this form of liberalism could—without contradiction—at the same time advocate banning FC/FGM in countries lacking institutional protection of basic, or “urgent,” rights.

The case for treating differently FC/FGM internationally and domestically illustrates the importance of taking a structure-sensitive approach to illiberal cultural practices. One must look at the broader circumstances in which a practice is embedded to accurately discern the harm that results from that practice. Consider the difference between FC/FGM and male circumcision. Although both practices seem to fulfill a similar cultural role—as a rite of passage, and to celebrate entry into a community, for instance—and both demand irreversible physical alterations to the body, the two practices are very different. Male circumcision is usually accompanied by brief pain, only rarely harms health, and carries no irreversible loss of sexual or reproductive function. It also does not subjugate men to women or

take from men control of their sexuality. Arguing for toleration of FC/FGM worldwide based on the fact that circumcision of males is also a permissible practice ignores a crucial difference between the two practices. Male circumcision is *not* structure sensitive, and its harms are likely to be minor in societies *with* or *without* the structural protection of basic rights. FC/FGM is structure sensitive, and its harms can be magnified when women lack basic rights.

In liberal societies, the harms of FC/FGM can be mitigated. One could argue that adult FC/FGM is comparable to another accepted practice—cosmetic surgery. In this case, individuals (ideally) make informed choices, and the procedure is likely to result in some harm. Yet, one's decision to undergo cosmetic surgery (or FC/FGM) harms no one else, and it does not compromise the liberal state's interest in safeguarding equal basic liberties. However, X's decision is not ethically equivalent to choosing to wear a headscarf, entering into a polygamous marriage, or choosing celibacy (by becoming a nun, for example)—in these cases a woman's decision is reversible and her social compromises need not be permanent. But X's choice to undergo FC/FGM, which involves permanent physical and social changes—just as cosmetic surgery does—should be permitted in a liberal society.

This chapter has made the case that liberal societies should tolerate those illiberal practices that do not violate basic rights, and thus the 1996 Act's dual standard is defensible. It is important to note that X—or any women residing in a liberal society—might consider that FC/FGM is unnecessary for the cultural purposes that it was meant to serve. Certainly, if the meaning of the ritual is to acknowledge the importance of chastity and devotion to husband and children, then other symbolic ceremonies could sufficiently express a woman's commitment to these values. Cultural communities could abandon the traditional practice of FC/FGM and develop other rituals to celebrate rites of passage and to make good-faith pledges. The sincerity of these pledges need not require the disabling of women (or men). And maiming a woman offers no guarantee of her chastity—especially if *she* no longer believes in its value.

The encouraging news is that, as options and opportunities open to women, the socioeconomic incentives for undergoing FC/FGM will disappear. Resistance by women in patriarchal communities also promises to continue. Liberal states can best help women in patriarchal societies and minority communities by supporting insti-

tution building and capability-development programs that seek to secure the rights of women and to empower girls. Such measures support domestic initiatives for change within cultural and subcultural communities. Although liberal states should support efforts to ban practices such as FC/FGM in societies that do not protect basic rights, liberal states can afford to tolerate such practices when basic rights are secure. So long as citizens make informed decisions about practices in a way that does not undermine the protection of basic liberties and rights, liberal states should treat these undertakings as expressions of belief and faith.

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Sources

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