

The United States, FGM, and Global Rights to Bodily Integrity  
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My paper discusses certain U.S. policies related to the universal human right to bodily integrity. This right is usually discussed in the context of protecting individuals from torture, but it extends well beyond that. My discussion of bodily integrity covers those practices known generally as circumcision, including those commonly referred to as female genital mutilation or FGM. What are these practices? Strictly speaking, circumcision refers to a particular type of surgical genital modification, but as a collective term it refers to any procedure that modifies the normal structure of the genitals in some way. These procedures vary quite widely, from dramatic surgeries that remove major portions of the genitals, significantly altering their structure and function, to relatively simple procedures that don't change the genitals very much at all. These procedures are primarily performed on children, and are carried out in many different parts of the world, for a wide variety of reasons, including but not limited to religion, cultural beliefs, and social beliefs. It is important to stress that the only thing that these procedures necessarily have in common is that they are perpetrated on the genitals.

Bodily integrity is among the rights enumerated in the international treaties and declarations that define universal human rights. The removal of healthy tissue from any individual without their consent violates the physical integrity of their being. When it comes to the millions of children circumcised every year, the decision is typically not made by the child, but rather by their parents. The parent is not the child, however, and

the child's right to have their physical integrity respected is not abrogated by their parent's right to make decisions on their behalf. That is to say that parents do not have the right to violate their children's rights.

The permanent modification of children's genitals without their consent has not been universally recognized as a human rights violation. However, the genital modification of females has emerged as an international human rights and public health priority. While FGM has been explicitly identified as a violation of bodily integrity,<sup>i</sup> male circumcision has not. Why is this issue constructed in gender specific terms? Why is FGM a global human rights violation, but not MGM? MGM is allowed to be performed by doctors, but FGM is not. There are legal bans on FGM in many nations, but MGM is allowed by every nation in the world. Why is this?

Before I set about answering this question, I want to make my own position on these issues clear. I believe that there is no justification for the routine modification of any child's genitals in any way for any reason. Every individual has an absolute right to the integrity of their body. In principle this is easy to understand; in practice, however, such absolutes have limited usefulness. The world is a very complex place. So while it may be very easy to proclaim that every child has the right to an intact body, actually engaging the practice of childhood genital modification is very complicated. I say this because I want to be clear that I am not defending nor condoning FGM when I am critical of the global anti-FGM campaign.

So, to the question of why FGM is seen as a human rights violation, while MGM is not. The conventional wisdom holds that male circumcision is not mutilating in the same way that female circumcision is, that it does not carry the same risks, nor the same

negative consequences.<sup>ii</sup> A review of available data shows that this is clearly not the case; removing tissue from the genitals of developing boys often causes problems. However, this attitude that male circumcision is harmless, is consistent with Western cultural values and practices, while any such procedures performed on girls is totally alien to Western cultural values. There is too much variability in the types of procedures performed for generalizations about either sex to be useful. The question of whether it's worse for girls or for boy is a wrongly conceived question. It is a vast oversimplification to propose categorically that girls are always harmed by genital surgery and that boys never are. The fact of the matter is that what's done to some girls is worse than what's done to some boys, and what's done to some boys is worse than what's done to some girls. By collapsing all of the many different types of procedures performed into a single set for each sex, categories are created that do not accurately describe any situation that actually occurs anywhere in the world.

There are contexts in which it is appropriate to refer to these practices collectively. This kind of generalization is key to the conception of human rights as universal. Because human rights are universal, the type or degree of violation is immaterial; everyone is entitled to their bodily integrity. The particulars of a given procedure are irrelevant if that procedure is performed on a non-consenting individual, such as a child. This kind of universalism has been applied to FGM, so that FGM is considered a violation of rights no matter the extent of the procedure or the context in which it is performed. However, involuntary MGM is categorically not considered to be a human rights violation, no matter the extent nor the context of the procedure. This brings us back then to the question: why is FGM identified as a rights violation, while

MGM is not? While not consistent with universal human rights, this conception is consistent with Western cultural values, and it allows Western cultural behaviors to continue unchallenged.

The policy on FGM promoted by the international public health agencies can be described as “zero-tolerance,” because they call for legal measures to ban the practice of FGM and they oppose allowing medical professionals to perform the practice. These same agencies are silent on male genital operations. There are no laws prohibiting childhood male genital surgeries anywhere in the world, and there are no agencies calling for such laws. The U.S. policy on FGM typifies this position. U.S. policy on FGM is constituted by a series of legislative actions contained in laws regulating immigration. The first such law passed required a study to determine the population at risk within the U.S., educational outreach to this population, and training materials for healthcare providers on how to deal with FGM. Elsewhere, in the Immigrant Responsibility Act of 1996, are criminal penalties for any adult who “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.” The statute qualifies that a procedure “necessary to the health of the person on whom it is performed” is allowed; however it also directs that “no account shall be taken of the effect on the person on whom the operation is to be performed of any belief...that the operation is required as a matter of custom or ritual.”<sup>1</sup> Elsewhere in this same legislation is the requirement that the Immigration and Naturalization Service provide information on the negative consequences and legal liabilities of FGM to individuals entering the country from nations where it is practiced. The U.S Department of State has declared its right to refuse

asylum to refugees who have performed the operations preemptively to avoid prosecution under U.S. law. In other legislation, the United States ordered international financial institutions to oppose non-humanitarian loans to nations that had not adopted national policies towards the eradication of FGM.<sup>2</sup>

The gendered construction of this issue is based on ethnocentric assumptions about the difference between the genital cutting of boys and of girls. This suggests that the current global anti-FGM campaign is deeply rooted in the modernization paradigm that has driven so many other campaigns designed to make non-Westerners more like Westerners. Any campaign premised on Western values, carried out by Westerners, and targeted at non-Westerners should be inherently suspect, given the problematic history of this pattern throughout the world.

Like so many other dominant paradigms, the current western model of genital cutting is being reproduced around the world: girls are damaged by genital cutting, but boys are not. It's okay for doctors to cut boys, but it's not okay for doctors to cut girls. These standards are being enforced on people all over the world. It is especially problematic in those communities where FGM is targeted for action, while MGM is allowed to go on unquestioned. The medicalization of male circumcision is widespread in the west, and increasingly present in Asia and the Pacific, where American NGO's and churches include the genital cutting of boys for ritual purposes in the services provided by western doctors at free clinics.

Language is often a means for mobilizing ideology, and this issue is no exception. The phrase male genital mutilation is not found anywhere in the mainstream human rights or medical literature. The adoption of the word mutilation in official policy

language and national legislation to describe procedures performed on females continually reinforces and legitimizes the Western value that anything done to female genitals is detrimental, while everything done to male genitals is okay. Again and again, scholars have pointed out that this kind of discourse is counter-productive when it comes to persuading people to change their behavior. But the activist elements that endorse the treatment of FGM as a universal category insist on calling it such, and refuse to acknowledge that it is in any way related to the issue of MGM. This refusal to associate the two practices is one of the most glaring examples of how a Western perspective dominates this issue. Virtually every cultural group known to practice FGM also practices MGM. In some cases, the procedures are closely related in the practitioners' minds, as when they are each part of an initiation ceremony that everybody goes through. Dismissing local understandings in favor of a supposedly enlightened Western view of things is a venerable tradition of both the colonial enterprise and the development enterprise, and in both cases it tends to create more problems than it solves.

There is a small inter-disciplinary movement that is committed to constructing this issue in truly universal terms. However, the WHO, UNICEF, UNFPA, and the overwhelming majority of NGO's, including Amnesty International, continue to operate under the assumption that FGM is always a problem and MGM is never a problem. This persists despite of the philosophical inconsistency with universal rights and an overwhelming preponderance of evidence showing that MGM carries significant risks and no benefits. There is no doubt that the anti-FGM campaign has saved many girls from needless suffering. But there is also no doubt that this campaign is no more than an

artifact of the modernization paradigm that is continually working to impose Western standards and practices on the rest of the world.

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<sup>1</sup>18 USCA sect. 116

<sup>2</sup>22 USCS sect. 262k-2