The despotism of custom is everywhere the standing hindrance to human advancement, being in unceasing antagonism to that disposition to aim at something better than customary, which is called, according to circumstances, the spirit of liberty, or that of progress or improvement. John Stuart Mill, *On Liberty*, 78.

**Introduction.** Concern over the practice of female genital cutting (FGC) is prominent in international human rights discourse. Some of that discussion makes no effort to understand or respect the persons involved in FGC – and some expresses exaggerated and undifferentiated understandings of a practice that varies in form and meaning. Several recent essays emphasize the usually benign motives of those involved – Gruenbaum (2001), Gunning (1991-1992), Mackie (1996), Parker (1995), Walley (2002). A few writers compose a revisionist trend who variously minimize the human rights or health harms of FGC – Ahmadu (2000), Greer (2000), Kratz (1994), Obiora (1997), Obermeyer (1999), Shweder (2000, 2002). Shweder characterizes the international human rights concern as imperial liberalism, and holds that cultural pluralism demands toleration of the practice. He opposes the U.S. law that prohibits FGC of persons under 18, and wants international agencies to cease working to end the practice. These normative claims are constructed on an erroneous factual platform: he suggests that FGC generally is a minimally harmful practice and that it is essential to the cultural identities of practicing groups.

I seek to counter that revisionist trend. In related work, I challenge Obermeyer’s suggestions that FGC is often of minimal harm (Mackie 2003), and in further work I plan to address what I contend are Shweder’s misconceptions about the cultures of FGC. Here, I shall concentrate on two normative questions: What is the harm of female genital cutting? and What is the proper liberal response to FGC? My views do not define the answers to these questions, but stake out positions in an ongoing discussion.

First, I shall provide some background on FGC, and on the concepts of harm and consent in political theory. Then we will investigate what, if anything, is harmful about female genital cutting. After establishing harm, we ask what are the proper liberal responses to FGC.
**Background.** In 1996 I published in the *American Sociological Review* a comparative-historical and game-theoretic analysis of footbinding in China and female genital cutting (FGC) in Africa (see Mackie 1996, 2000, 2003). I outlined six parallels between the two practices. Each is nearly universal in an intramarrying group, has been persistent for centuries, was originally intended to encourage fidelity and chastity, is said to be necessary for proper marriage, is said to be done because it is the tradition, and is practiced even by those who oppose it. At about the age of eight, the typical Han Chinese mother would bend the toes under her daughter’s feet, force the sole to the heel, and tightly wrap the girl’s foot so that as she matured her feet remained tiny, perhaps a mere five inches in length. The practice was painful, dangerous, and disabling. Footbinding was almost universally practiced for a thousand years, but ended in urban China in less than a generation, around the beginning of the 20th century (it ended later in remote areas, but wherever it ended, it ended suddenly and permanently).

FGC affects perhaps 136 million women in 28 countries in Africa. Clitoridectomy involves the removal with the aid of a sharp instrument of part or all of the clitoris, and excision the removal of the clitoris as well as part or all of the labia minora. Infibulation includes clitoridectomy and excision and adds incision or removal of the inner walls of the labia majora and their adhesion. Potential health complications are numerous and sometimes severe (Mackie 2003). FGC likely has harmful sexual and psychological consequences as well.

I argued that the observed features of these two practices, and the end of footbinding, are best explained by an adaptation of the game theorist Thomas Schelling’s (1960, 1978) model of coordination as convention. In both China and Northeast Africa long ago there were highly stratified empires in which emperor and elite maintained many female consorts. Footbinding, by documentary evidence, and FGC, by hypothesis, were first adopted at the top of the stratification pyramid to control the fidelity of multiple women held in imperial female slavery. These paternity-confidence mechanisms were then adopted by families in lower strata, so as to marry into higher strata. Eventually, the practice becomes an essential sign of marriageability throughout the empire and throughout all but the poorest strata. It becomes nearly universal within any one intramarrying group because those who forego the practice do not marry or marry poorly.
It persists after originating imperial conditions have faded – just as driving on the left persists in England and driving on the right in France whatever were the originating acts – because no one family can give it up on their own. It persists even among those who oppose it, for the same reason. If the practice is such a convention, then the only way to give it up is a coordinated abandonment by a critical mass of the families in the intramarrying group.

The usual story about cultural regularities is that they are slow to change. Anti-FGC reformers today and antifootbinding reformers at the end of the 19th century each predict that abandonment of the practice would take hundreds of years of effort. How and why did footbinding end swiftly and decisively? The antifootbinding reformers formed natural-foot societies, whose members publicly pledged not to bind their daughters’ feet nor to let their sons marry women with bound feet. Such public pledges or joint declarations are almost sufficient to end the practice, in my view. The problem is that if only one family renounces footbinding their daughters are thereby rendered unmarriageable. The pledge association solves this problem: if enough families abandon footbinding together then their children can marry one another. I constructed a detailed but accessible game-theoretic model which seems to account for the observed features of the antifootbinding societies. It turns out that initial mobilization of a critical mass – well short of a majority – of an intramarrying population is sufficient to bring along the remainder of the population, and that after convention shift there is little temptation to revert. Without an understanding of the underlying mechanism, the abrupt end of such an entrenched practice by means of a mere public declaration would seem to be nearly miraculous.

In my 1996 article, I predicted that the methods used to end footbinding in China would be fruitful in helping end FGC in Africa. In 1998 I read in the newspaper that a village in Senegal had the year before declared an end to FGC in their intramarrying group, that neighboring villages later joined in the pledge, and that villages far away in another ethnic group had undergone the same process. It seemed to me that these developments might be consistent with my theoretical predictions. At the end of 1998 I visited Senegal for two weeks, and the responsible nongovernmental organization Tostan (www.tostan.org), which conducts literacy-plus basic education programs. I interviewed a variety of officials
as well as people in nine villages including two which had not yet joined the reform process. Observations and interviews were consistent with the convention hypothesis. In an intramarrying group, initially a critical mass is mobilized, which then recruits the remainder of the population. Demba Diawara, an innovative leader of the movement, explained to me that in order to safeguard daughters’ marriageability, it is necessary to involve all the families whose children marry one another, win them over, and then organize a public event which declares that as of this moment the practice is abandoned.

I did 30 days of field investigations in Senegal and Guinea (Conakry) in June of 2004. I visited about 20 rural sites, at all stages of the declaration and postdeclaration process. I interviewed about 75 villagers, abandonment organizers and leaders, local religious and political leaders, leaders of women’s groups, local journalists, and public officials. I attended the public declaration of Medina Samba Kande on May 30, where about 1000 people were present, including local and national officials and journalists, religious leaders, ethnic leaders, local leaders, a large delegation of Tostan participants from Guinea, dancers, musicians, and where 192 representatives from 96 villages made a solemn pledge that no girl in their communities would ever again undergo the harmful practice of FGC. Also, in the Fall of 2004 I began to work with staff in UNICEF headquarters, participating in a week-long expert consultation on FGC abandonment, and joining a team that will draft a proposal that would adapt the process in a major Africa-wide effort.

The spread of abandonments by organized contagion since 1998 is also consistent with the hypothesis. Since the first abandonments in 1997 and 1998, there have been 17 declarations involving 1,367 villages with a total population of about 600,000, about 28% of practicing villages in the country, according to Tostan. Tostan and its claims have been repeatedly evaluated by its donors, such as UNICEF (Plante, Samb, and Samarai 2002), and independently by the Population Council (Diop et al., 2004). More rigorous evaluations and surveys are desirable, and are planned by UNICEF. Further declarations are pending, the process is accelerating, and Tostan officials believe that almost the whole country will have abandoned within five years. An identical project has been initiated in Guinea, funded by U.S. Agency for International Development. Other methods of abandonment across Africa – reeducate the cutters, alternative initiation rites, wait for
modernization, criminal prohibition, education – have had little or no
effect (education does change attitudes, but not behavior, as predicted by the
convention hypothesis).

The promise of the convention hypothesis is recognized by specialists
in the field. Shell-Duncan and Hernlund (2000, 36): "Mackie's model and
the Tostan project involve rapid change once a convention shift is on place. .
. . the Tostan initiative is arguably the most promising initiative for
eliminating FGC." Gruenbaum (2001, 193): "Gerry Mackie has offered a
stimulating exploration of strategies for coping with risk in changing social
practices in his comparison of the process of ending footbinding in China
and what it would take to end infibulation in Africa. . . . The pledge society
could work in Africa." Johnsdotter (2002, 101): "I have found the model of
...Gerry Mackie ... to be the theoretical perspective most suitable to
understand the empirical data in this thesis.” James and Robertson (2002,
78, 105), in a volume devoted to criticism of liberal imperialism and
American cultural insensitivity on FGC, report favorably on the Tostan
abandonments as not involving such errors. Hayford (2004), in an analysis
of high quality demographic and health survey data from Kenya, finds that
more variation in cessation is explained by the convention hypothesis than
by modernization theories.

Harm and Consent. What should a liberal society do about FGC?
Answers fall on a spectrum, ranging from doing nothing, to nonevaluative
education, to evaluative education, to regulation, to coercive prohibition.
John Stuart Mill (1991/1859, 14) proposes the harm principle as a limit on
the power of the liberal society over the individual:

the only purpose for which power can be rightfully exercised
over any member of a civilized community, against his will, is
to prevent harm to others. His own good, either physical or
moral, is not sufficient warrant.

The harm principle applies only to adults, and, according to Mill, only
to “civilized” communities, not to immature communities where benevolent
despotism is justified. The latter imperial liberalism is rejected in theory by
liberals today, but unfortunately is still sometimes applied in practice. Mill
also observes that social tyranny is more formidable than many kinds of
political oppression (9). He does not suggest that the state regulate public
opinion, a remedy as bad as the wrong, but he does advocate a “strong barrier of moral conviction” against the forces of social conformism (19). Further, one should have the liberty to express an unfavorable opinion on the self-regarding faults of others, and to act in certain ways on such an opinion, for example, by avoiding association with them (86). However, those who commit acts that harm others, and the dispositions that lead to such acts, deserve moral reprobation, and in grave cases moral retribution and punishment, says Mill (87).

There are controversies about the precise content of the harm principle, and how best to ground it in alternative ethical theories, but resolving those controversies is not my purpose here. All we need is an appreciation of the principle sufficient for the practical application at hand. Hence, I shall rely on Feinberg’s recent treatment of the topic. Here is Feinberg’s (1984, 26) statement of the harm principle:

It is always a good reason in support of penal legislation that it would probably be effective in preventing (eliminating, reducing) harm to persons other than the actor (the one prohibited from acting) and there is probably no other means that is equally effective at no greater cost to other values.

The clause following and is often elided, and that can lead to confusion in application of the harm principle.

According to Feinberg (1984), interests can be set back by impersonal nature or by bad luck, or can be invaded by other humans, singly, or in collectives. Harm, as it is used in the harm principle, is the thwarting, the setting back, the defeating of an interest, as a consequence of wrongful acts or omissions by other humans. Invasion of interest need not be wrongful, for example, legitimate undercutting of prices, competition for jobs, or disappointed courtship, and other justified or excused conduct. A harm thus not only sets back an interest, but also violates a right. A right is a valid claim against another’s conduct, supported by decisive reasons. There can be wrongs that are not harms on balance because they are bring about advancements of interest that outweigh the setback, and rarely, when a right is violated but no interest is thereby set back, there are wrongs that are not harms. If one gives valid consent to conduct that would otherwise have been harmful, the conduct is not wrongful, and thus is not a harm. Transitory
hurts do not count as harms. Minor or trivial harms count as harms, but below a threshold do not count for purposes of the harm principle, that is, if interference is likely to cause more harm than it prevents. Where a harm is uncertain, the greater the magnitude of risk of the harm (a product of the gravity of the harm and the probability of the harm) the less reasonable is it to accept the risk.

Feinberg distinguishes welfare interests and ulterior interests. Ulterior interests are a person’s more ultimate goals and aspirations, such as to build a house, raise a family, win political office, write a novel, and so on. Welfare interests, in contrast, are those necessary means to more ultimate goals, of a kind shared by almost everyone, such as continuance of one’s life, physical health, “the integrity and normal functioning of one’s body” (1984, 37) and others, such as the absence of pain and disfigurement, intellectual acuity and emotional stability, and a tolerable social and physical environment. Most ulterior interests are not directly invadable, but may be indirectly invaded via welfare interests. Unjustified invasion of a person’s welfare interests is a serious harm, according to Feinberg. Additionally, although there is a close connection between a person’s interests and her wants, a person may fail to want what is in her interest. Whatever promotes a welfare interest is good for a person whatever her beliefs and wants might be (1984, 42). For example, if a person falsely believed that smoking is good for her health, she would want to smoke even though it is in her interest not to smoke. Also, according to Feinberg, a person may want X because it promotes interest Y, but not want X because it impedes stronger interest Z, and thus, on balance, forebear from X.

According to Rawls (1971, 93), “whatever one’s system of ends, primary goods are necessary means.” Some of them, such as health and vigor are natural goods, others, such as rights and liberties, powers and opportunities, income and wealth, are social primary goods. The basic structure of society is to be organized such that primary goods are distributed according to Rawls’ two principles of justice. The first principle of justice, lexically prior to the second, is that “each person is to have an equal right to the most extensive total system of basic equal liberties compatible with a similar system of liberty for all” (302). Sen’s (DATE) basic capability approach provides yet a third conceptual map of roughly the same territory. For Sen a capability reflects alternative combinations of functionings a person can achieve; there are elementary functions strongly
valued by all, such as nourishment and health; and the freedom to lead different types of life is reflected in the person’s capability set. For my purposes, any one of these approaches would do; what is expressed in the language of one could be translated into the language of another.

For Mill (1991/1859, 16, emphasis added), the region of human liberty comprehends “all that portion of a person’s life and conduct which affects only himself, or if it also affects others, only with their free, voluntary, and undeceived consent and participation. Feinberg (1984, 115-117) cites the principle: Volenti non fit injuria – “To one who has consented no wrong has been done.” Consent is valid, however, only when the subject is “a competent and unimpaired adult who has not been threatened, misled, or lied to about relevant facts, nor manipulated by subtle forms of conditioning” (1984, 116). A perfectly voluntary choice would require that the chooser be competent, for example, not an infant; that she does not choose under coercion or duress, for example, she is not forced to choose a lesser evil; that she does not choose because of some more subtle manipulation; that she does not choose because of ignorance or mistaken belief; and that she does not choose in circumstances that are temporarily distorting (1986, 115). Very few choices satisfy this ideal standard; voluntariness is a matter of degree. Feinberg offers principles to assess the degree of voluntariness required: “1. The more risky the conduct the greater the degree of voluntariness required if the conduct is to be permitted. . . . 2. The more irrevocable the risked harm, the greater the degree of voluntariness required if it is to be permitted” (1986, 118-120).

Harm of FGC. What, if anything, is harmful about female genital cutting?

In summary, my answer is that the harm is the irreversible and nontrivial reduction of a valued human capacity in the absence of meaningful consent (adapted from Nussbaum 2000). Adherents’ discourse about FGC indicates that the reduction of sexual capacity is often one of its intended consequences. Adverse health complications are an additional harm associated with FGC. The adherents of FGC, in my view, are mistaken rather than blameworthy.

Literary and journalistic discussions of FGC, such as Germaine Greer’s (2000), count it as a modification of women’s bodies, together with cosmetic surgery, dieting, compulsive self-injury, piercing and tattooing; or
more narrowly, as some kind of cutting of women’s genitals, such as surgery on infants born to ambiguous gender, transgender surgery among adults, adult cosmetic surgery on the genitals, unnecessary obstetric and gynecological surgeries, and extreme genital piercing; or confound it with male circumcision. I have no quarrel with the idea that European-origin societies commit wrongs comparable to FGC, many wrongs that deserve to be remedied. Classifications such as Greer’s, however, are based on photographic resemblance, and do not capture the purposive features of the various practices. Someone sticks a knife in my gut: in one instance, it’s a villain trying to take my life, and in another instance it’s a surgeon to whom I’ve given consent to try to save my life.

To begin, the most prominent feature of FGC is that it is carried out in the absence of meaningful consent. The age of treatment varies between groups (but little within groups): from several weeks after the girl’s birth to after the birth of the woman’s first child. In most groups it is done at some age of dependence, typically with little or no ceremony. In some groups it is done shortly before leaving the natal family, typically with some or much ceremony, in order to establish marriageability, and sometimes adulthood as well. In a very few groups, it happens upon or after marriage. We must be careful to distinguish the three cases. 1. Dependence. The child at an age of dependence is clearly incapable of granting meaningful consent to FGC; the child typically is not informed of the implications, and if informed would be unable to evaluate them. 2. Marginal Dependence. The child on the eve of leaving the natal family may be more informed about the implications of the cutting, and may be better able to understand them (and may not be possessed of such information or understanding), but her apparent consent, if any, would be meaningless due to another consideration: the penalty for foregoing the practice is exclusion from the status of marriageability, and sometimes of adulthood. The normal age of marriage varies from group to group, and may be quite low, so that this case might include girls cut at age 12. 3. Independence. FGC upon marriage or after birth of first child resembles the second case, but is not quite so egregious because of the greater age and autonomy of the subjects and because the penalties for noncompliance may not be as severe (perhaps marital difficulties and social ostracism).

The mere absence of the child’s consent is not enough to establish the harmfulness of FGC, however. Parents and similar caregivers commonly
license practices that cause pain, danger, or hardship on children: medical and dental procedures, stringent education, challenging outdoor adventures. Generally, such painful, dangerous, and difficult events are intended to enhance the eventual capabilities of the person. FGC is a predictable reduction, not an enhancement, of human capacity (the less severe the practice, the less the reduction, the more severe the more the reduction, but a reduction nonetheless). Suppose, however, that parents in traditional circumstances strictly supervise a dependent daughter’s behavior so as to prohibit the exercise of her sexual capacity, against her wishes, on the view that her future is best assured by avoiding pregnancy and pursuing either education, a good marriage, or both. It is not obvious that this reversible reduction of the exercise of her sexual capacity is harmful; some would consider it, quite literally, virtuous. It is the irreversible reduction of the capacity itself that we are concerned about.

Elsewhere, Feinberg (1980) proposes that the child has a right to an open future. The child’s future adult autonomy rights are held in trust for her in the present. “Respect for the child’s future autonomy, as an adult, often requires preventing his free choice now” (127), such as requiring schooling in the place of perpetual play. This formulation does not seem to provide clearcut guidance for reform in the case of a child being raised in an area where FGC is nearly universal. There, parents face a tragic choice: close off the child’s ability to choose sexual pleasure as an adult, or close off the child’s ability to choose marriage as an adult (to choose FGC as an adult typically would put one behind in marriage competition). Either way, parents act to close off an important aspect of the future, and must choose the lesser evil. Perhaps we can say that parents have an obligation to widen the child’s future, to help organize and to participate in collective action to escape the tragic convention. That is exactly how sensitized parents reacted in most Tostan villages in Senegal, suggesting that it may not be farfetched to assign such an obligation.

In the case of marginal dependence, a girl still may not be fully informed of the implications of the practice, which amounts to a lack of consent. If she were fully informed she would still face the following choice: undergo FGC or be denied the status of marriageability (and sometimes that of adulthood as well). Noncoercive social disapproval does not necessarily damage a person’s autonomy. We think it is good if someone acts with integrity in defiance of unjustified social disapproval.

Women who are not excised face immediate divorce (Somalia) or forcible excision (most communities). As initiates, girls are sworn into secrecy so that the pain and the ordeals associated with the procedure of FGM will not be discussed, especially with unexcised women (Kenya and Sierra Leone). Songs and poems are used to deride unexcised girls (most communities). The fear of the unknown through punishment by God, ancestral curses, and other supernatural powers is instilled in them.

Social disapproval for foregoing FGC can become frankly coercive – confinements, beatings, and so on – or otherwise might be so extreme as to amount to coercion. The denial of marriage (and sometimes of adulthood) is not an active punishment, but nevertheless passively excludes the target from some of the most basic goods of life, and thus amounts to social coercion. Recall Feinberg’s advice that greater voluntariness is required if either the harm done is greater, or the harm done is irrevocable. All the more so, then, if both.

It may be that some or even many would freely choose FGC in the absence of social coercion, but their willingness does not justify social coercion against those who would otherwise forego the practice. As for the case of independence, if fully informed adults in the absence of coercion choose to undergo FGC, then there is a presumption that they should be free to do so. I conjecture that in the absence of social coercion, the practice would rapidly die out among adults. One piece of evidence for that conjecture is that there are multiple reports from all over the FGC zone that age of cutting is in decline in many groups because older girls resist the practice even in the face of social coercion.

I say, following Nussbaum (2000), that the harm of FGC is to the capacity rather than to the exercise of the capacity. It may very well be that a properly consenting adult would choose to forego the exercise of a human capacity. A priest or a nun might take a vow of chastity, for example, and that would be none of our business. The irreversible reduction of capacity is a matter of concern, however. It is well known that European Christians once castrated boys so as to have tenors in the church choir. The practice
was plainly wrong, because consent was defective. Self-castration by a consenting male adult is not a noticeable event in our societies, and, so far as I know, is not prohibited by law. Consenting or purportedly consenting self-castration was known to Roman society, and was a capital crime in Roman law. Some rich Romans wanted male slaves who would not impregnate females in the household; some wanted passive male sexual partners who by castration were not culturally male. Even though purportedly voluntary, power and wealth overwhelmed the victim’s autonomy; and perhaps more importantly the existence of a purportedly voluntary practice also served to disguise nonconsenting castrations, often of children. I surmise that this motivated the Roman prohibition of self-castration. It might be argued that FGC should not be allowed for consenting adults, as such a permission for a genuinely autonomous few could operate to disguise harms done to the nonautonomous many.

That FGC is an irreversible and nontrivial reduction of human capacity carried out in the absence of meaningful consent is sufficient to establish its harm. Groups which practice FGC offer reasons for the practice, and reports of such discourses almost always include statements by some that the intention (among other intentions) is to reduce human capacity, to control female sexuality. FGC also variably entails a number of health complications. We should be sure to have a differentiated and unexaggerated understanding of those complications: the less severe or the more hygienic the cutting, the fewer the complications; the more severe or the less hygienic the cutting, the greater the complications, up to death. Adverse complications are an additional harm associated with FGC. Adherents of FGC frequently do not attribute the occurrence of complications to the practice. To the extent that complications are expected they are regretted, but adherents typically do not intend the complications (except in a minority of groups where the pain and fear of treatment is intended as part of an initiation rite).

FGC is intended by its adherents to establish marriageability (or more rarely, also adulthood) in the context the people inhabit. Each of the adherents possesses a self-fulfilling belief that FGC is a necessary prerequisite of marriage. They are caught in a tragic situation wherein a smaller wrong (reduction of capacity in the absence of consent, medical complications) – FGC – is perpetrated in order to avoid a larger harm – unmarriageability. Arguably, it would be a wrong as well for a parent not to
prepare a daughter for marriage in a context where marriage is the exclusive mode of flourishing (not to prepare a daughter for adulthood would be as wrong). Thus, in their original state, the adherents are mistaken rather than blameworthy, in my view. They were not responsible for the unpalatable origins of FGC in antiquity; they were born into the practice; for them it is natural and unavoidable. Their mistake is to believe that FGC is the inalterable prerequisite of marriageability (or also adulthood). Another common mistake is that because the practice of FGC is nearly universal within the intramarrying group, adherents often do not associate complications with the cutting.

It takes several steps to overcome these mistakes. First, it is necessary to realize that the alternative of going uncut is possible, that other groups do not do FGC, and that other groups have coordinated on the abandonment of FGC and did not suffer harms but rather enjoyed benefits as a consequence. Second, it is necessary to realize that there is a causal connection between cutting and complications. Third, it is necessary that a critical mass within the intramarrying group organize to coordinate abandonment of FGC, thereby terminating the self-fulfilling belief that FGC is a prerequisite of marriageability. The mistakes associated with FGC must be overcome in a context of local public deliberation. Criminal prohibitions issued by distant powers or harsh moralistic propaganda do not work to overcome such mistakes, and rather may work to entrench them. In moral terms, blame would not apply until such deliberative activities were exhausted without result, and then would only apply to individuals who blocked abandonment. In practical terms, for outsiders to attribute blame in these circumstances serves no useful purpose.

Iris Marion Young’s (2004) recent treatment of responsibility and structural injustice is mostly applicable to the present question. She considers the case of Sandy, a single mother who is about to become homeless, not due to any personal or moral failing, and not due to any bad luck, but rather as a consequence of a structural social injustice intended by no one. “Structured social action and interaction often have collective results that no one intends and which may even be counter to the best intentions of the actors” (8). She thinks that the liability model of responsibility, our standard model and suitable for cases of individually culpable injustice in small-scale interactions, should be supplemented by her proposed social-connection model of responsibility, more suitable for
structural social injustice. The liability model seeks to mark out and isolate those to be held responsible, but, she says, “blame is usually inappropriate and counterproductive when we seek to assign responsibility with respect to structural injustice” (15). A second difference is that the liability model identifies and compensates deviations from baseline, but the social-connection model identifies an unjust baseline. Third, the liability model is backward looking, and the connection model is forward looking: “The point is not to look back at who did it, but rather to look forward to an intervention in the process that will change it” (20). Field experience with FGC abandonment suggests that blaming and singling out culprits provokes reactance and entrenchment of the practice. The Tostan process does not blame, does not single out culprits, precisely is forward-looking and affirmative of good health and human rights, and leads to mass abandonments of the practice.

Liberal Responses. Developed liberal societies, perhaps because they are developed and liberal, tend to be immigrant-receiving countries. The countries of FGC are underdeveloped liberal societies or nonliberal societies, and tend to be immigrant-sending countries. There is an additional fact of great importance: the liberal, immigrant-receiving countries tend to be former imperial powers, some would call them presently neoimperialist powers, and the countries of FGC tend to be former colonies or were otherwise subordinated.

We need to consider liberal responses to FGC in five locations. First, the response in more developed liberal societies to immigrant cultural minorities who practice FGC. Second, the response of individuals and organizations in international civil society. Third, state-to-state responses, specifically actions by the more developed or postimperialist states directed towards the less developed or postcolonial states. Fourth, actions by states where FGC is indigenous. Fifth, actions by practicing groups inside those states.

Feinberg’s formulation of the harm principle is useful for practical application. First, it is always a good reason in support of penal legislation that it would probably be effective in preventing harm to others. It is a good reason, but not necessarily a conclusive reason: there might be other reasons that, on balance, recommend against criminal prohibition. Second, there is probably no other means that is equally effective at no greater cost to other
values. The method that somehow most reduces harm at least cost to other values is to be preferred. If noncoercive methods to reduce the harm are as effective or are more effective than penal legislation, then they should be favored. The point is a simple one, but horror at harms done, combined with misunderstanding of adherents’ purposes, might tempt us to enact for expressive purposes a criminal prohibition in place of noncoercive methods that more effectively reduce harm. Moreover, the effectiveness of penal legislation may differ from one political context to another.

In more developed liberal societies, I suggest that criminal prohibition of FGC of girls under 18 is probably more justified than are qualified or permissive approaches. Liberal multiculturalists who advocate expansive accommodation of cultural pluralism – presumably Kymlicka (1995), certainly Parekh (2000) and Carens (2000) – would endorse this position, because of the absence of meaningful consent. Recognition of the fact that FGC is sustained by reciprocal expectations within a marriage market, and of the fact that the child is living in a multicultural society suggest two additional reasons in support of criminal prohibition. First, although there are intramarrying ethnic enclaves, the freedom to marry outside the enclave much weakens the stability of the practice, and a criminal prohibition thus would probably be effective in hastening its abandonment. Second, a child cut in the practicing country likely has her marriage horizons broadened, but a child cut in a nonpracticing country has her marriage horizons narrowed; thus, FGC is a greater harm to the girl in the typical immigrant-receiving country than in the typical immigrant-sending country.

Shweder believes that less severe forms of FGC should be allowed at ages somewhere between prepubescence and 18. There is no sharp line between childhood and adulthood, but the age of majority in our developed liberal society is 18 for many purposes and 21 for all. For example, Oregon prohibits nipple and genital piercing of persons under 18 even with parental consent. Maybe our comparatively late ages of majority are related to the general need for lengthy education to prepare for life in our complex society. In any case, to establish an age of majority lower than the norm of 18 for consent to FGC would require special justification. Suppose that FGC is required for marriage, and that the girl or her parents wish her to marry under the age of 18. I propose that this reason is not sufficient to depart from the norm of 18 for presumption of consent. First, to reiterate, FGC is an irreversible and nontrivial reduction of a valued human capacity. Second,
if social pressure amounts to coercion over the age of 18, it is more likely to amount to coercion under the age of 18. Third, Shweder’s cure – a regulatory regime that would license different forms of the practice at different ages for different cultural groups, necessarily with powers of inspection and enforcement – would likely be worse than the disease.

Zealous prosecution, for example, as in France, using the testimony of a daughter to imprison her mother, seems too destructive of other values, except in the worst cases, perhaps for a third-party excisor. Where family members are concerned, suspended sentences or light symbolic penalties seem more appropriate. If the liberal state’s concern is for the welfare of the child, then programs of education and care are as important as the formal prohibition. Experience in the UK has shown that the development of protocols for health, education, and social work agencies, and active delivery of services by those agencies, is also required to minimize the practice and its negative consequences. Here are some examples. In many individual cases, simple education about expectations in the new country is required. Health personnel need both medical and sociological training. Social workers must help cut girls manage courtship relations in multicultural high schools. Neither a suitably enforced law nor a suite of social services is sufficient on its own, but both together are more effective than alternatives.

Criminal prohibition of FGC of persons over 18 who are possibly exposed to social coercion might seem desirable. There are problems though. I do not see how a law and regulatory regime could be crafted that would practically be able to distinguish between impermissible social coercion and permissible social pressure or even between social coercion and complete freedom of action. Further, since adult members of the cultural majority are permitted to undergo plastic surgeries in response to perceived social pressures, it comes close to offending the values of cultural pluralism and equal treatment to prohibit adult members of a cultural minority from FGC. True, plastic surgery leaves unchanged or improves human capacity, and FGC reduces human capacity. But consider extreme genital piercing, or minority sexual practices, that might compromise capacity; these seem to be followed in response to idiosyncratic personal and social pressures, yet they are not legally prohibited. To one who has consented no wrong has been done. I suggest that it is safe in a liberal cosmopolitan society to permit individuals over 18 to choose FGC (to coerce by violence or threat of violence someone over 18 into FGC should be a
crime. A practice that is transmitted forcibly on children
generation after generation is much more entrenched than a practice that is
freely chosen by adults. As I said before, there is evidence that the older the
female, the more resistance to FGC. Although some early-generation
immigrants aspire to cultural endogamy for their children, often there are
high rates of interethnic marriage by the third generation. FGC persists
because of expectations on the marriage market; and once the marriage
market is interethnic the practice loses all appeal.

Contrast the American prohibition of FGC on females under 18 to the
British prohibition of FGC at all ages. The American prohibition focuses on
the issue of consent. There is no question that FGC is and will be
discouraged in the USA, despite the implicit permission for those 18 and
over. I presume that the British law would, for consenting adults, permit
genital piercing, permit genital alteration for purposes of cosmetic surgery,
but would prohibit genital alteration for traditional purposes by individuals
from certain ethnic groups. The British prohibition focuses on the issue of
purpose; it provides an exemption at any age for the physical or mental
health of the mother, except if the mental health concern is motivated by a
belief that the treatment is “required as a matter of custom or ritual.” The
prohibition seems to be impractical: a person might procure the cutting by
swearing that the purpose is not to satisfy cultural tradition. The prohibition
is also uncomfortably close to ethnic discrimination. Parekh (2000, 279),
who resides in the UK, proposes that FGC should be banned for adults, but
that there should be granted “exceptions when the demand for it is genuinely
voluntary and based on deeply held moral beliefs.” Carens’ (2000, 148)
tentative view is that such a ban interferes too much with the right people
ought to have to conduct their lives in accordance with their own convictions
and cultural commitments.” My position is a little different. It seems to me
that a regulatory regime of granting exceptions to a ban would excite
fruitless controversy among those granted exception, those denied exception,
and those who, for good or bad reasons, oppose the practice altogether. I
surmise, with respect to FGC for consenting adults, that permission and
prohibition would be about equally effective in promoting the eventual end
of the practice. Thus, since prohibition would interfere with properly
consenting choice, permission would be preferable.

Next, what are the responsibilities of individuals and organizations in
international civil society? Some of the discourse about FGC is
ethnocentric, and fails to understand and respect the people involved in the practice. This is both wrong and ineffective. Additionally, some discourse conveys undifferentiated and exaggerated views on the consequences of FGC, which again is a failing of understanding and respect. Such wrongs and errors should be avoided; perhaps that can’t be expected among casual newspaper readers or writers of high-school papers, but it is certainly required among those who prominently comment on and organize to support abandonment of the practice. There is an objectionable imperialist history shaping the relations between concerned peoples. In the past European Christendom considered its way of life superior, at best attempted to extinguish spiritually the peoples in its imperial domains, and at worst extinguished them physically. The soldiers and the missionaries justified their assimilate-or-die attitude by appealing to a white man’s burden, a civilizing mission. One of the justifications of British rule over India, for example, was indignation over disturbing cultural practices such as sati, self-immolation of widows. Ahmed (1992) reports that the British consul-general of Egypt, Lord Cromer, defended British rule as a means to save Muslim women from veiling and sex segregation, but at home was founder and president of the Men’s League for Opposition to Women’s Suffrage. In Australia right now claims to native title are met with irrelevant Anglo-Australian responses about aboriginal treatment of women. International human rights discourse is today’s equivalent of civilizing imperialism; which is not to say that it is wrong. It is to say that positions taken should be informed by critical reflection about the past and present configurations of power.

There are opposite errors, it seems to me. Some western critics of FGC seem to be applying irrational negative projections on the other, but some western defenders of the practice seem to be applying irrational positive projections on the other – the noble savage syndrome. Particularly, a few persons trained as anthropologists treat us to romanticized and inaccurate celebrations of vivid and meaningful initiation rites – but FGC is not an initiation rite across much of its range. FGC is explained as a ritual, or as a ceremony, but this is merely explanation by redescription: opium causes drowsiness because of its dormitive virtues. What we do is motivated by reasons, but they engage in unreasoned ritual or ceremony and that explains the puzzle of FGC. Johnsdotter (2002, 186), who found that the convention hypothesis best explains her detailed ethnographic investigation
of Somalis in Swedish exile, says that the culturalist account misleads both popular and academic opinion:

Female circumcision has to be understood as a strategy, and not an end in itself. . . . The culturalist view, claiming that people who “have” a certain culture are bound to stick to their tradition, disregards the flexibility inherent in social life. Somalis do not have their daughters circumcised simply because of some mechanical tradition. They have their daughters circumcised because they are convinced that this is the best option for their daughters in the long run.

She confirms that changed circumstances in the new country lead to abandonment of the old practice.

Understanding and respect do not preclude disagreement. Indeed, it is condescending to maintain that the traditions, attitudes and practices in western cultures are open to criticism, scrutiny, and change, but that people in certain other cultures are not disposed to reflective consideration and organized change. Walley suggests that both the relativist position, which puts cultural pluralism above all else, and the ethnocentric position that paints adherents as backwards and inferior, are based on colonialist views of culture as a hardened entity. The relativist position wrongly sees cultures as “bounded, discrete units defined by ahistorical ‘traditions’ or ‘customs’” and closely associates women with tradition (41). “In using an uncritical notion of ‘culture,’ do we in fact create the same sense of difference, or estrangement from each other’s lives and worlds, that is also generated in the flagrantly ethnocentric literature that opposes female genital operations?” she asks (43).

Now for state-to-state actions, particularly from postimperial states to the postcolonial states. Although FGC is a violation of human rights, FGC would not justify war against a state where it is practiced. The response would be grossly disproportionate, not to mention ineffective. I will not develop the point here, although it might deserve elaboration in terms of the works on normative political theory and international relations.

What about actions short of war? In fact, parallel to the criminal prohibition in 1996, the U.S. Congress passed appropriations language that requires withdrawal of loan or grant aid (other than to address basic human
needs) from countries that have a cultural custom of FGC and that have not implemented educational programs designed to prevent the practice. There is evidence that loan aid has been premised on this condition. I think it would be good for the U.S. to provide funds for educational programs on FGC, and it has. Education, properly designed education, to date seems to be the only method which has worked to bring the practice to an end. I am not sure about forcing countries to provide educational programs as a condition of other loan or grant aid.

Additionally, annual State Department Human Rights Reports keep a scorecard on whether or not affected countries have passed criminal prohibitions of FGC. The reports are utterly silent about educational efforts or about any actual decline in incidence of the practice. Some international human rights organizations also follow the lawyerly strategy of measuring progress in terms of laws passed. By that yardstick, victory is at hand: FGC is against the laws or policies of almost all affected countries, and every year more countries go from policies against to criminal laws against the practice. But this progress is entirely imaginary; nothing has changed in real world. FGC is a valued practice that can only change by reasoned persuasion and voluntary abandonment. Except for the abandonments in Senegal that follow from a well-designed education program, FGC persists and may even expand in numbers year by year. Krotoszynski (Reference), a law professor raised in the U.S. south compares FGC legislation to the Civil War Amendments to the U.S. Constitution: fine-sounding, but without effect. “If history is any guide,” he writes, “attempts at legal prohibition in the absence of educational campaigns and/or efforts to ameliorate the cultural impact of prohibition are doomed to failure.”

It seems that the background assumptions of many westerners advocating criminal prohibition are, first, a state with strong capacity, easily able to enforce new laws, and, second, issues, such as rape or mayhem, where the large majority depletes the unequivocally harmful acts of a deviant minority. But those assumptions don’t hold for most of the states where FGC is found. Even in orderly states, much of practical governance is by traditional and local methods, where innovation must be motivated. More importantly, the criminal prohibition applies to the vast majority of people, who believe they are doing FGC for the good of their children, including the citizens and officials otherwise informally and formally responsible for enforcing the law.
It is not just that the criminal prohibitions are ineffective. The opinion of the majority of people who closely study FGC, including both those who are more or less neutral about its continuation and those who work to promote its end, is that premature criminal prohibitions do harm. They do harm by driving the practice underground; so that when girls suffer complications of bleeding or infection there is fear of seeking medical attention. Criminalizing the practice damages education programs, because people are more reluctant to debate candidly the merits of continuing or abandoning the practice in their intramarrying group. The organization of a coordinated abandonment – the only proven method of cessation – is compromised if people fear to admit publicly that they carry on the practice. Distantly inspired criminalization also provokes reactance – a motivational state directed at the restoration of freedom – in practicing populations. Suppose that your family follows a certain tradition because everyone believes it is the right thing to do, and then that some distant power acts to prohibit your tradition without much explanation. Are you now more willing or less willing to consider reasons for abandoning the practice?

Focus by western citizens and states on enacting and enforcing criminal prohibitions in practicing countries also diverts scarce attention and resources from the practical question of actually ending FGC. It creates an illusion of progress, when actually there is none.

FGC is only one of many health problems for affected African women, and for many it is not the most important. Africa is a heterogeneous continent, but generally problems of uneven development, of governance, and of war and foreign interventions are paramount. Generally, major health issues for women include basic education for women and children, health and hygiene information, contagious diseases, vaccination, AIDS prevention and treatment, clean water, nutrition, reproductive, obstetric, and maternal health, medical services and supplies, income, and so forth. To say that FGC is not the most important problem does not mean that it is not an important problem. A recent technical meeting in Cairo concluded that FGC abandonment is most effective in the context of integrated programs that address the broad range of women’s human rights and health needs. Integrated programs of education and mobilization should, where FGC is practiced, include attention to that practice. The Tostan program in Senegal is successful in promoting multiple improvements, with FGC as the breakthrough item. Additionally, western interest in FGC can be used to
educate and involve the western public in broader health and human rights needs of African women.

Consider now states which contain groups that practice FGC. They, with the assistance of international agencies, have a responsibility to promote the human rights and health of women. Attention to education and organization on FGC within an integrated program is desirable. Criminal prohibition of FGC should not be prematurely imposed. That should come at the end of a long process of sensitization and abandonments across the country, as a genuine democratic development, rather than an imposition by international or national elites. A law prohibiting footbinding was adopted as a consequence of the Nationalist Revolution in 1911, 17 years after the first major agitations and abandonment of the practice in Shanghai, and five years after the vast majority of urban China had abandoned it. The law followed years of education and organization, and mass changes in attitudes and behaviors. The law formally confirmed and anchored a social change that had already taken place (incidentally, after it was passed, there were complaints that it was sometimes enforced insensitively in the remote countryside). The Manchus had banned footbinding several times previously; the Manchu bans were not preceded by social change and were utterly without effect.

Finally, consider intramarrying groups that practice FGC. I have already said that they are mistaken rather than blameworthy, and that they have to go through several steps to find the way out of their tragic convention. Suppose that they complete all these steps, resolve on coordinated abandonment, and after proper deliberation enact a public pledge to abandon the practice. Suppose that the decision roughly approximates to traditional methods of collective decision-making and roughly approximates to democratic norms, such that the issue has been fully deliberated, and a large majority resolves on an end to the practice. What may the group do about recalcitrants, those who publicly resolved on an end but who plan to continue clandestinely, or those few who would never go along with the decision? I propose that the group may delegate an agency to monitor compliance with the resolution and that it may apply social pressures and other methods conventionally used to enforce local collective decisions. Otherwise, a few recalcitrants might gather doubters and perhaps eventually reverse the convention shift, to the detriment of the vast majority. The group already has local methods of governance, and
those methods should apply to this issue as to any other. The equivalent of penal legislation would be justified by reference to the harm principle, for the reasons already discussed.

**Conclusion.** A revisionist academic trend challenges the harmfulness of the practice of female genital cutting. I seek to explain what is harmful about the practice, and what responses are proper for the liberal. My normative analysis is built on an explanatory foundation. Prior game-theoretic and comparative-historical analysis proposes that the practice is a convention in Schelling’s sense, held in place by reciprocal expectations in the marriage market. This convention hypothesis predicted that adaptation of methods used to end footbinding in China would work to help end FGC, and the prediction seems to be supported in Senegal.

The liberal state may enact penal legislation only to prevent wrongful harm to others, according to the harm principle. No wrong is done when an adult genuinely consents to an action. FGC is harmful because it is the irreversible and nontrivial reduction of a valued human capacity in the absence of meaningful consent. I consider liberal responses to FGC in several locations. Most importantly, I propose that criminal prohibition of FGC of minors is probably both right and effective in developed liberal societies with immigrant cultural minorities, but may be wrong and most probably is ineffective in societies where FGC is indigenous.
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