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# **FEMALE GENITAL SURGERIES AND MULTICULTURAL FEMINISM: THE TIES THAT BIND; THE DIFFERENCES THAT DISTANCE**

Isabelle R. Gunning\*

## **I. Introduction**

Several years ago I wrote an article on female genital surgeries.<sup>1</sup> Although in part, my purpose was to inform about the surgeries, my main objective was to propose a three-part approach to multicultural feminist dialogue that attempts to elucidate both the ties and the distances between women of varying backgrounds. I located myself as an African-American feminist, but also and most important, as a Western feminist,<sup>2</sup> and asked other Western feminists to work through the three steps in approaching "culturally challenging" practices like

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\*Professor of Law, Southwestern University School of Law. I want to thank the organizers of and participants at the Third World Legal Scholars panel at which I presented my first female genital surgeries article and out of which this article grew. Special thanks goes to Professor Penny Andrews for organizing the panel and for corraling me into actually putting thoughts to paper.

I also need to thank some special friends and colleagues who took the time to encourage and critique an earlier draft of this work; my heartfelt thanks to Professors Taunya Banks, Inderpal Grewal, Caren Kaplan and Leslye Obiora. I also thank my friend and mate, Pamela Snowden, for her thoughtful and helpful comments.

I also thank my research assistant, Pamela Benford. In addition, my work was financially supported by a summer research grant from the dean's fund at the Southwestern University School of Law.

<sup>1</sup>Isabelle R. Gunning, *Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (1992).

<sup>2</sup>When I characterize myself as a "Western" feminist, I am engaged in a struggle of coming to terms with terms. We all have inherited certain socially and historically constructed terms and categories within which we may fit with a greater or lesser degree of comfort. I was born and raised in the United States. I, like many African-Americans, have felt both a personal and political alienation from the United States and Western political and cultural approaches generally. Politically and personally I identify with people of color in the United States and also internationally, in particular, working class people of color and specifically with African people and people of African ancestry throughout the diaspora. While I see, claim and struggle for an identification with African feminists and other feminists of color, I continue in this context to describe myself as "Western" out of a recognition that I cannot eradicate all the historical, cultural and class ties I have with Western culture. I am optimistic enough to believe that through dialogue and activity, I and other people of similar views and goals can re-categorize ourselves in different ways. But I do not believe that even that "end result" will transform me or conflate me into an African woman from, for example, a surgery performing country on the continent.

female genital surgeries (FGS).<sup>3</sup> The approach involves: 1) understanding one's own historical context; 2) appreciating how the "other" might perceive you especially as regards the colonial/imperial heritage that Western feminists have been bequeathed; and, 3) recognizing the complexities of the life and circumstances of the "other" women in her particular context.

Since the publication of that piece, I have had the opportunity to present and discuss the article on several occasions. Sometimes, I have been asked to discuss the three-part approach directly and I have been engaged in spirited discussions on the layers of gendered, racial, class, and national mythologies through which we, as feminists, must battle and penetrate in order even to begin to see each other with any clarity. These discussions have caused me to re-examine and further problematize my own "Western-ness" and to re-explore and further deepen my understandings of differences. On other occasions I have been invited to speak as an "expert" on the surgeries. These situations are often more difficult because despite my introductory remarks about the surgeries as a patriarchal practice that must be eliminated from women's lives, my attempts to nuance and contextualize the approaches of Western feminists and the lives and concerns of non-Western feminists are often misinterpreted as the mark of a "collaborator." "Well, are you for or against the surgeries?" I am asked as I attempt to reject an "oppositional consciousness model of resistance."<sup>4</sup>

The concern raised in these latter situations, what a "good" feminist is to "do" about the surgeries, is becoming an ever more

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<sup>3</sup>It bears emphasizing that the phrase "female genital surgeries" embraces a number or range of procedures from the most extreme and most decried form, infibulation, to milder forms, generally called "sunna" which may involve not excisions but scarring. Gunning, *supra* note 1 at 194-95.

<sup>4</sup>I borrow the phrase "oppositional consciousness model of resistance" from Caren Kaplan in an article in which she posits the dangers of oversimplification and homogenization involved with an uncritical and acontextual attachment to identity politics and "conventional terms of political struggle." See, Caren Kaplan, *A World Without Boundaries: The Body Shop's Transnational Geographics*, 43 SOCIAL TEXTS 45, 48 (1995). Kaplan describes and explores in greater detail the requirements of what she calls "transnational feminism" (she is quite critical of my own preferred term "multicultural") in several articles she has written with her frequent collaborator Inderpal Grewal. See, Caren Kaplan and Inderpal Grewal, *Transnational Feminist Cultural Studies: Beyond the Marxism/Poststructuralism/Feminism Divide*, 2 POSITIONS 430 (1994) and Inderpal Grewal and Caren Kaplan, *Introduction: Transnational Feminist Practices and Questions of Postmodernity*, in SCATTERED HEGEMONIES 1 (Inderpal Grewal and Caren Kaplan eds., 1994).

important question.<sup>5</sup> In recent years several movies and television programs have exposed and explored FGS and made it more of a topic for American news editorials and feminist discussion. American law is suggested as an appropriate forum for combatting the practice through proposed federal legislation and creative application of already existing immigration law. In this article, I want to explore some of the issues raised by these changes. Initially I will discuss how the popularization of FGS has raised questions on how the issue is framed, how Westerners and non-Westerners are represented in the popular consciousness. I will then explore the positives and pitfalls of using the legal system in combatting the surgeries.

## II. Western Perspectives on FGS Reform and the Manipulation of African Women's Voices

Much of the information about FGS disseminated in popular culture embodies the problem I have elsewhere characterized as "arrogant perception."<sup>6</sup> The problem is not that the surgeries are presented as a negative, a patriarchal practice detrimental to women. That they are. Rather, the problem is the manner of expression. Typically the approach aggrandizes Western culture by ignoring our own patriarchal practices which damage women, both in the country and abroad; conversely the approach tends to denigrate all other cultures, typically African, virtually in their entirety. Still, there are points where the approach of using the monolithic and "good" us versus the monolithic and "bad" then breaks down.

For example, A.M. Rosenthal recently wrote an editorial column for the *New York Times* in which he proposes a "dream" or plan to "bring about the end of a system of torture."<sup>7</sup> That "system of

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<sup>5</sup>The challenge of what to do has been raised by at least one young African-American feminist scholar doing some recent human rights analysis on FGS. See Hope Lewis, *Between "Irua" and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1 (1995). In her thoughtful piece, Lewis notes "An ineffective theoretical condemnation of FGS may be just as objectionable as a draconian, imperialist attempt to coerce the eradication of FGS." *Id.* at 54.

<sup>6</sup>See Gunning, *supra* note 1, at 199.

<sup>7</sup>A.M. Rosenthal, *On My Mind: The Possible Dream*, N.Y. TIMES, June 13, 1995, at A25. Mr. Rosenthal has written a number of editorials denouncing the surgeries. See e.g., A.M. Rosenthal, *On My Mind: Female Genital Mutilation*, N.Y. TIMES, December 24, 1993, at A27; A.M. Rosenthal, *On My Mind: Female Genital Torture*, N.Y. TIMES, November 12, 1993, at A33; A.M. Rosenthal, *On My Mind:*

torture," which he describes as being "common in about 30 African countries" is female genital "mutilation." To describe the surgeries as a system of torture as opposed to an ugly piece of a much larger, more complex cultural fabric and system is more than a value judgment. It so magnifies and amplifies one aspect of an organic and multiple layered system of organization that it denigrates the other aspects that are positive. Moreover, by focusing on the practice as it is performed in African countries and ignoring FGS' existence not only in Arab and Asian countries but in our own American history, he accesses an ugly set of racialized representations, myths, that have been formulated in the American psyche since the birth of the nation when the founding fathers had to justify the enslavement of African people. The representation of African peoples as "barbaric," "savage," "ignorant," "less than us," is magnified by his use of the term "native" customs or "native" elites as he recounts the excuses for why many have refused to acknowledge FGS as an international problem. The use of the term "native" to describe indigenous peoples, other people in their own homelands, echoes in the national consciousness with the old Tarzan movies. "Native" much like words like "tribes" and tribalism" seem to always be attached to peoples of color, notably Africans and Native Americans, and rarely to whites like Serbs and Bosnians or Irish and English.

And much like the old Tarzan movies and their ilk where the great white man solves the problems of the poor ignorant helpless native, much too much is made of Westerners "solving " this problem for African women and men. The dream of ending this torture is easily realized, according to Rosenthal, because "[a]ll it demands is the will of the American people and their Congress." It is not clear that we, as American people, trust our Congress to solve our **own** complex and multifaceted problems, but the implication is left that African problems lack such thorniness. To his credit, he does acknowledge that there are

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*The Torture Continues*, N.Y. TIMES, July 27, 1994, at A13; A.M. Rosenthal, *Female Genital Torture*, SACRAMENTO BEE, January 2, 1993, at B4; and A.M. Rosenthal, *On My Mind: Female Genital Torture*, N.Y. TIMES, December 29, 1992, at A15. Other American columnists have joined him in editorializing about the surgeries. See e.g. William Raspberry, *Women and a Brutal "Tradition,"* THE WASHINGTON POST, November 8, 1993 at A21 and Judy Mann, *Women Launching Effort to Halt Barbaric Mutilation Ritual*, ROCKY MOUNTAIN NEWS, January 31, 1994, at A26.

"brave women" in Africa who are engaged in a grass roots struggle to eradicate the surgeries, although their mention comes after the Western heroes: the first to receive kudos are congressional representatives and immigration officials and the next set are those women who, though not entirely Western—"African or foreign"—"fight from the west."

Not enough is made of the strength and capacity of African people, especially African women, to battle against their own problems. The fact that African feminists have not yet won the battle against FGS is not a reflection of their lack of will, strength or intelligence. It is a measure of the strength of patriarchy, indeed patriarchies. To be sure, European colonial powers have some history of entering Africa and then enacting colonial laws which attempted to abolish the surgeries. But the larger impact of colonialism and imperialism, Western patriarchy, has been to undermine and destabilize African lives, while simultaneously reconstructing and nurturing African patriarchy in a combination that doubly impacts on the lives of African women in a negative manner.

Rosenthal does end by proposing in his plan that the monies the United States Congress allocate towards the eradication of the surgeries be used by a commission that is run by "the people who know most ... African and American women who have made the struggle their goal and have shown they can lead." As much as I as an American feminist might like to be "blessed" by "half of humanity"—the prediction that Rosenthal makes if we Americans will just take up this burden—I am still hesitant about my own abilities to fully understand the complexities and ramifications of the context of FGS such that I—or any other American feminist—should be the "leaders." We, as Americans, male and female, love to imagine ourselves the leaders, at the forefront, with everyone else following behind. The thought that "other" peoples might have the same aspirations and rights seems hard to grasp: why not an image of African women at the helm with Americans following, filled with suggestions and ideas to be sure, but recognizing that we have no monopoly on expertise here and respecting the wisdom and abilities of our sister feminists?

I do not mean to denigrate or deny the sincerity, will or skill of American or other Western feminists (or even of myself). But as an old friend of mine used to say "a good woman has to know her limitations." We as Western feminists must be constantly mindful of

the fact that our sincerity and vision are continually being impeded and clouded by our own historical context and perspective. While we are wise to reject the notion that African or "other" women are so different and distant from us that we have nothing to say or share, we would be all too arrogant and even imperialistic to assume that these "others" are so exactly like us such that our judgments can be easily substituted for theirs. One example of the difficulties is the work of the Pulitzer Prize winning author, Alice Walker.

Alice Walker has done an intense fictionalized account of a woman who has the surgeries performed upon her<sup>8</sup> and collaborated with award-winning filmmaker Pratibha Parmar on a movie and a related book on FGS both called *Warrior Marks*.<sup>9</sup> *Warrior Marks*, the film and the book, have perhaps received more publicity than the earlier novel and have clearly contributed to the increasing visibility of the problem of FGS in this country. The strengths of the movie and book are that African women themselves are profiled. While Walker does "star" in the film, the conflicted agony of mothers, who have themselves been circumcised, and intend to have the surgeries performed on their daughters is portrayed as is the valor and determination of African feminists who are intent upon eradicating the surgeries from their cultures. Walker's "starring" in the film has been a point of controversy. Some see her personalization of the situation of African women by analogizing her own blindness—Walker was apparently blinded in one eye by her own brother as a child—to the surgeries and the sense of familial betrayal that she felt at her parents' silence over her injury as equatable with the familial complicity involved in the continuation of the surgeries as inappropriate.<sup>10</sup> The concern, perhaps, is that Walker aggrandizes herself by making such comparisons. Why not let the true women warriors, the African women involved, be portrayed as the heroes of their own lives and "star." This point of allowing the African women involved with the

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<sup>8</sup>ALICE WALKER, *POSSESSING THE SECRET OF JOY* (1992).

<sup>9</sup>ALICE WALKER AND PRATIBHA PARMAR, *WARRIOR MARKS: FEMALE GENITAL MUTILATION AND THE SEXUAL BLINDING OF WOMEN* (1993).

<sup>10</sup>This point was flagged for me by several participants, notably Inderpal Grewal and Caren Kaplan, at a conference on *Questions of Women, Culture and Difference* sponsored by the University of Washington, Seattle, Washington, May 17-18, 1995.

struggle against the surgeries to "star" is a vital one. Surely a major thrust of all feminist (or womanist<sup>11</sup>) work is to undermine Western patriarchal notions of the concept of women, especially African women. As one African feminist scholar has noted about African peoples imagery generally, "A primary aim of African cinema has been to reintroduce the African into history...since for approximately four centuries Africans have been expelled from its domain by capitalism, colonialism and imperialism."<sup>12</sup> Maintaining the stereotypical and racist imagery of Africans and especially of African women risks "self-sabotage by hampering rather than advancing the struggle against all forms of genital mutilation and the 'sexual blinding of women'."<sup>13</sup>

There are some defensible aspects of Walker's approach that I feel it important to mention.<sup>14</sup> First, it is a cinematic technique to employ a "hero" with whom the targeted audience—in this case Americans—can identify as a way of personally engaging the audience with the film's subject matter.<sup>15</sup> And while Walker's own injury may pale in

<sup>11</sup>ALICE WALKER, *IN SEARCH OF OUR MOTHER'S GARDENS*, xi (1983). Walker defines "womanist" as a "black feminist or feminist of color."

<sup>12</sup>Kagendo Murungi, *Get Away From My Genitals!: A Commentary on Warrior Marks*, 2 *INTERSTICES* 11, 13 (Spring, 1994) (quoting Ntongela Masilela).

<sup>13</sup>*Id.* at 11.

<sup>14</sup>I am injecting myself with the use of the phrase "I feel" deliberately. I have found in my discussions with other feminists, especially feminists of color from Africa and other "Third World" countries, that I have felt less anger and outrage at Walker's work than they have. Clearly whatever stereotypical categorizations I have endured as an African-American though similar have not been on par with that experienced by Third World women. I sense that as an African-American woman who, like Walker, makes a personal and political identification with Africa and the Third World generally, I resonate with the desire I perceive in Walker to redefine and recharacterize herself in a way that rejects the racism, colonialism, imperialism, sexism and homophobia of Western culture, and rather connects with a range of people who are oppressed by the dominant Western ideology, especially African women. I understand this impulse in Walker, a "weakness" in this context because of the ways it has caused her to conflate important differences in her desire to identify, perhaps because I share it. Still I feel the hope for those of us African-American feminists to create a true "sisterhood" with our African sisters is through a more complex understanding of both the ties that bind us and the differences that distance us.

<sup>15</sup>This is a common defense but not an entirely satisfactory one. In both film studies and literary studies a debate continues on the negative aspects of using "heroes" for targeted audiences to identify with and consequently be guided through unfamiliar terrain. See, e.g., Wilton Martinez, *Who Constructs Anthropological Knowledge? Toward a Theory of Ethnographic Film Spectatorship*, in *FILM AS ETHNOGRAPHY* 131-61 (Peter Ian Crawford & David Turton eds., 1992); and JAMES CLIFFORD, *THE PRECIPITANT OF CULTURE: TWENTIETH CENTURY ETHNOGRAPHY, LITERATURE AND ART*, 21-56 (1989). What negative stereotypes or ideological formations will be reinvigorated through the process of "identifying" with the hero however sympathetically she will introduce us to the exotics? I am reminded of the controversy surrounding the film *Mississippi Burning*. This was a film whose makers intended to decry the violent activities of the Ku Klux Klan and other white supremacist groups against civil rights



comparison to the damage done by the surgeries, her analogy does have the virtue of at least alluding to the fact that the surgeries do not stand alone, in these cultures only, as societal damage done to women. Second, it apparently was not easy to get women who were involved with FGS, in one manner or another, to appear on camera. Some of this fear must have come from the taboo nature of the surgeries in surgery-performing societies: it is always dangerous to break social taboos. But some of the fear, too, must have come from a healthy suspicion of just what these "Westerners" would do in representing this one aspect of their lives.<sup>16</sup>

Beyond Walker's prominent appearance in the movie and book, there are other concerns with her portrayal of the people involved with the surgery. Some examples from an excerpt from the book which appeared in *MS. MAGAZINE* reveal some of these concerns.<sup>17</sup> In the excerpt, it is hard to see Walker's appreciation for the culture in which she has entered when she describes the circumciser she meets in terms that suggest she is the epitome of the mothers and grandparents she initially describes as being in "complicity." Her description mocks the status of this woman within her culture by discussing her crown of

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activists in the south. The makers clearly viewed their target audience as white and so created a white "hero," portrayed by actor Gene Hackman, for them to identify with. But in creating this hero with whom some viewers could identify, the makers wholly distorted the history of the civil and human rights struggle in this country. Hackman is created as a Federal Bureau of Investigation (FBI) officer who is supportive of the civil rights movement, when in fact the FBI made all attempts to infiltrate and undermine the movement. Moreover, Hackman's white, male, government "hero" overshadows the true Black, white, male, female, *anti-government*, liberal and progressive peoples who in fact did risk and in some cases lost their lives in the struggle. The film then caused a stir in the civil rights community because despite the good intentions of the makers and Hackman himself, the historical distortions, racial stereotypes and ideological messages that were employed in order to allow this "identification" with the hero to occur overwhelmed whatever good messages the makers intended to convey. See ELLA SHOHAT & ROBERT STAM, *UNTHINKING EUROCENTRISM: MULTICULTURALISM AND THE MEDIA* (1994).

<sup>16</sup>I am aware that Parmar is both a Kenyan by birth and of Indian heritage. I would still argue that her cosmopolitan life journey and the dominant Western character of her companions probably marked her and the project as one done by "foreigners," specifically Westerners. Moreover, as a factual matter, the Walker-Parmar crew had no prior connections or contacts with the women they attempted to interview and or the ones who ultimately agreed to be interviewed. The project was not the result of some longstanding collaborative feminist project that could establish trust and understanding between and amongst all the women warriors involved. Indeed, since it was not clear until late which particular African country they would be able to film in, the crew knew little about the language, history or politics of the parts of Gambia in which they spent their two weeks filming. See Caren Kaplan, *Remarks Before the Society for Cinema Studies Conference: March 3, 1995*, at 4-6 (copy on file with author).

<sup>17</sup>Alice Walker, *A Legacy of Betrayal*, *MS. MAGAZINE*, Nov./Dec. 1993, at 55.

authority in quotation marks, focusing in on the "gunk" under her fingernails and dismissing the gold jewelry which are apparent marks of her stature as "very cheap." Walker later goes on to suggest that the only "real link" that African women have with their Egyptian heritage is the surgeries. As if there is nothing else of value in African/Egyptian culture. I think it is hard for other women, even feminists to hear legitimate critiques of *some* of the practices of their culture when the criticism is wrapped in apparent disdain for all that they value. We begin to sound dangerously like the old and still vital imperialist: what we have is great, or at least defensible, what you have is worthless.

While Walker and Parmar's work has increased concern and discussion about the surgeries, and I certainly do not doubt their sincerity in creating the movie and book, their approach has been searingly criticized by some African feminists. Seble Dawit, a human rights lawyer in New York City, and Salem Mekuria, a filmmaker and teacher at Wellesley College, wrote an article for the *New York Times* on behalf of several African feminists long active in the fight to abolish the surgeries in which they took "great exception to the recent Western focus on female genital mutilation in Africa, most notably by the novelist Alice Walker."<sup>18</sup> They attack Walker and Parmar for portraying Africans in a monolithic way they see as "common in Western depictions." They take issue with what they characterize as a portrayal of African women and girls as without personality waiting for Walker the "heroine-savior" to rescue them from the circumciser (who the authors acknowledge as respected village elders) who have been transformed by the film into "slit-eyed murderers." The isolation of the surgeries as "the gender oppression to end all gender oppressions" is viewed as a way to minimize the surgeries as one particular example of gender oppressions and rather transform it into an "emotive lens through which to view personal pain" as well as "a gauge by which to measure distance between the West and the rest of humanity." They end by raising, with the resentment of the silenced, the problematic of so identifying with the "similarities" or ties that do connect us as women that we lose sight of our own perspectives and

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<sup>18</sup>Seble Dawit and Salem Mekuria, *The West Just Doesn't Get It: Let Africans Fight Genital Mutilation*, N.Y. TIMES, Dec. 7, 1993, at A27.

the necessary distances and overwhelm the voice of those "others." "Neither Alice Walker nor any of us here can speak for them [hundreds of African women on the continent who are working to eradicate the surgeries]; but if we have the power and the resources, we can create room for them to speak, and to speak with us as well."

In fairness to Walker, some African feminists who are long-time combatants against the surgeries were consultants to the movie/book and other groups have lauded the work. The Inter-African Committee Against Harmful Traditional Practices congratulated her efforts at the movie's Washington, D.C. premiere. Moreover, Walker has used funds from the screenings to provide support and room for the unsung heroes to work and speak. Walker's sincerity, commitment and even courage are not, in my mind, in doubt. But for Walker to provide the "room" for non-Western feminists to speak along with the money and publicity must also come an attack on the "established binaries of civilized-barbaric, free-unfree,...West-non-West...urban-rural and America-Africa."<sup>19</sup> Walker cannot employ the monolithic, static stereotypes of Africa and her peoples as a way to reach Western audiences without simultaneously reinvigorating those very destructive myths. In breathing more life into the myths, non-Western feminists are further constrained in their attempts to present themselves and their struggles in accurate and complex ways.

Some of the programs that have been done on FGS have focused on African women themselves and the message is much more clearly one of how African women have the courage and the strength to take on their own societies. One such program was done by the ABC news program *Day One* in 1993.<sup>20</sup> The segment itself makes no attempt to historicalize the surgeries by, for example, mentioning the use of the surgeries in the United States on non-immigrant American women in the last century. It also does not, deliberately, contextualize the practice as one of any number of patriarchal practices that are detrimental to women. It does, though, provide a series of interviews, done by correspondent Sheila MacVicar, of African women who are

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<sup>19</sup>Inderpal Grewal, *Female Clitoridectomy, Warrior Marks and Human Rights in the Post-Cold War Era*, 10-11 (Presentation to the Society for Cinema Studies, Mar. 3, 1995) (on file with author).

<sup>20</sup>ABC, *Day One*, Sept. 20, 1993 (transcript obtained through LEXIS/NEXIS).

described as "a handful of extraordinary women [who] are trying to stop it." Ms. Safia Singeteh, the founder of a Gambian organization "dedicated to the health and welfare of women" is interviewed and she does provide the particular cultural context for the surgeries. She talks about the fears that women, mothers, have that if they do not circumcise their daughters, the daughters will become outcasts. She herself notes that her grass roots organizing against the surgeries has been met with some death threats.

Along with Ms. Singeteh, are a Somalian-American family who relate their personal debate on whether to have their young daughters circumcised. Both husband and wife, father and mother, agonize between their own sense of the "normalcy" of having the surgeries done and the pain and possible sexual deprivation they would inflict: the husband, Hassan, notes that he just "automatically assumed that she [his wife, Yasmin] would be circumcised...that she would be a virgin"; and the wife, Yasmin, notes that "there is nothing different about my sexuality." Their concern is, as Yasmin put it, "betraying my culture and maybe that they will be different." And MacVicar flags for the viewers that "these parents only want to do what is best for their children." Ultimately she notes, the family decided not to have the surgeries performed, "but this is a very courageous decision because it means defying the wishes of their family, both in the United States and in Somalia."

The segment ends with the show anchor, Forest Sawyer, moderating a panel of experts who are to explain "what's to be done about it?" in all too little time. The experts are James Grant, the executive director of the United Nations Children's Fund (UNICEF), Efua Dorkenoo, a Ghanaian woman who directs the London-based International Foundation for Women's Health Research and Development, Sharon Kotok, the United States State Department Officer in charge of international women's programs and Nahid Toubia, a Sudanese obstetrician living in New York who has long been active against the surgeries. The all too brief panel discussion largely involves Sawyer "trashing" both Grant and Kotok for the lack of resources and attention paid by UNICEF and the United States to the problem. With Dorkenoo providing him with a challenge to Grant's assertion that sufficient funds are provided to organizations combatting the surgeries, Sawyer accuses him of being "disingenuous when you

say that money is not really an issue"; and when Grant slides himself off the "hot seat" by pointing to the "landmark breakthrough by the Convention of the Rights of the Child which the great majority of African countries have now ratified—and I might put as a footnote the U.S. is one of only a handful of countries that have not yet ratified the convention," Sawyer happily turns to and on Kotok ("Let the United States answer this"). After quoting language from the Convention he pointedly asks, "Why does the United States have to labor over such a fairly simple document?...Well what's wrong with this one? I mean what do you have to think about here?" Ms. Kotok had little to say in response.

What was buried in the panel "discussion" was an inadvertent contextualizing of the practice. Grant tries to defend the minimal amount of money devoted by UNICEF to the eradication of the surgeries by underscoring the difficulty of changing cultural behavior. He notes that the issue of breast implants in the United States is "a very barbaric custom." Sawyer, not surprisingly, responds that it "hardly...compares," but Dr. Toubia is quick to point out that mutilating our bodies is a cross-cultural phenomenon that involves "comply[ing] with a certain social definition of being a woman." Further buried, as Sawyer quickly maneuvered the panel discussion into a focus on the "United States must lead..." was any examination of the approach that African feminists have been taking in their underfunded efforts to combat the surgeries. Both Singeteh, from the interviews, and Dorkenoo, from the panel, were involved with organizations which focused on women's health issues in a broad sense. Rather than target FGS as the "gender oppression to end all gender oppressions," these women have situated their educational efforts within a panoply of women's health issues.

There has also been at least one documentary film done by a circumcised woman herself. Soraya Mire, a young Somalian filmmaker, produced *Fire Eyes* with the financial assistance of philanthropist Laurence Rockefeller, Kodak, singer Michael Jackson, and *Warrior Marks'* Alice Walker.<sup>21</sup> This is not a film that I have

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<sup>21</sup>Renee Tawa, *Shattering the Silence*, L.A. TIMES, Mar. 12, 1995, at E1.

seen. From all accounts it is powerful. Powerful enough that Mire received death threats in May of 1994 and was "lambasted" by some Somali immigrants. Others of her fellow Somalians have been inspired to dialogue and speak out.<sup>22</sup> The voices of survivor/resistors like Mire need to be heard and supported in their speaking. But I do have concerns on how we, as Westerners, as Americans, listen to these voices. My fears harken back to two concerns raised by Dawit and Merkuria in their critique of Walker. They note that to isolate the surgeries as the most heinous, "the gender oppression to end all gender oppressions" transforms the surgeries into a symbol. The symbol is dual: as "an emotive lens through which to view personal pain" and as "a gauge by which to measure the distance between the West and the rest of humanity." The symbol is dual and contradictory. The "emotive lens" suggests that Mire's articulation of her pain is so like our own, or like what we imagine our pain would be like, that we assume too much about our ties and connectedness with her or any other woman who has endured the surgeries. Now that we "have" her, we can speak for all women combatting the surgeries and ignore the more critical voices, like Dawit and Merkuria, who demand much more of us in recognizing both ties and distance. On the other hand, to view this young voice as a symbol of just how singularly awful the surgeries are, is to distance ourselves enormously. Now our own failures at home—to target breast implants or starvation dieting crazes or to confront the racism and classism so rampant in the American feminism movement—can be viewed as not so bad in the face of what "these" folks and "their men" do.

I do not pretend to have covered all the media images of FGS. But these examples do expose and explore the representational issues that the discussion around FGS has unearthed. There are bright moments and sincere hearts, but there is still a continuing struggle to avoid the monolithic and unidimensional portrayals of both "us" and "them" that too often barely masks hierarchical notions of which cultures are "really good" and which are "really bad." This problem is further exacerbated when one explores the idea of using the American legal system as a way to combat the surgeries.

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<sup>22</sup>*Id.*

### III. The Female Genital Mutilation Act

In late 1993 Representative Patricia Schroeder (D-CO) introduced the Federal Prohibition of Female Genital Mutilation Act of 1994 on the floor of the United States House of Representatives.<sup>23</sup> A companion bill on the Senate side was introduced by Senators Harry Reid (D-NV), Carol Moseley-Braun (D-IL), and Paul D. Wellstone (D-MN).<sup>24</sup> No bill was enacted, but the bill has been reintroduced this year.<sup>25</sup> What the proposed Federal Female Genital Mutilation (FGM) Act would do is make it a felonious crime, punishable by a fine or imprisonment for up to five years, to perform the surgeries on a minor. No violation would occur if the procedure is "necessary for the health" of the patient *and* "is performed by medical professionals." Specifically, the Act notes no violation would occur if the surgeries are "performed on a person (sic) in labor or just giving birth." The Act also would make it a misdemeanor to deny medical treatment to anyone who has had the surgeries done or to request that the surgeries be performed on another. The Act further would direct the Secretary of Health and Human Services to compile data on the numbers of women who have had the surgeries done—both in the U.S. and abroad—with a particular focus on children and to identify the communities which practice FGS in the U.S. such that educational activities to inform people of the health risks would be designed and implemented. The proposed educational efforts would be done in collaboration with "representatives of ethnic groups and representatives of organizations which have expertise in prevention of FGM."

As is evident from the text of the proposed Act, the focus of concern is on children, girls under the age of eighteen, having the surgeries performed. Indeed, in the remarks made during the introduction of the Act, the surgeries are described as "a horrific form of child abuse as well as a human rights violation."<sup>26</sup> The imagery here is not of conflicted parents, although mention is made of the great

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<sup>23</sup>H.R. 7546, 103 Cong., 1st Sess. (1993).

<sup>24</sup>S. 2501, 103 Cong., 2d. Sess. (1994).

<sup>25</sup>H.R. 1695, 104 Cong., 1st Sess. (1995).

<sup>26</sup>140 CONG. REC. S14242-44 (1994) (statement of Sen. Wellstone).

societal pressures to perform the ritual. Rather the stories cited focus on the image of young children, bound or held down, and screaming. The particular story which motivated the Senate to pass a related resolution<sup>27</sup> which preceded the Act's introduction involved two men, an atypical situation, holding down a ten-year-old girl as a cable news crew filmed the event. Other representational language was more contextualized. Senator Moseley-Braun was clear that the surgeries are "tied to the status of women in the community" and that the social and economic costs of not circumcising are real, "no women, anywhere, should have to undergo this kind of mutilation, not to get a husband, not to put food on the table, not for any reason."<sup>28</sup> Senator Reid noted that the success of the campaign to eradicate the surgeries rested upon the efforts of African and Middle Eastern women at the grass roots level: "The women of Africa and the Middle East and the world are standing up. But they need help against tremendous pressure and defiance to fight for the health and dignity of their sisters, friends, mothers and daughters."<sup>29</sup>

What would be the impact of having such a federal crime enacted? Obviously all the ramifications cannot be predicted, but some results may not be as the congressional sponsors intended. One gets the impression as one reads the account of the Egyptian men who held down and spread the legs of a little girl on film, that the Act's sponsors envision perhaps these men as the likely criminals to be targeted. Or when Senator Reid notes that a constituent wrote him to say that her gynecologist "told me that a colleague of his in Los Angeles regularly performed this ritual legally,"<sup>30</sup> one imagines that Reid sees unscrupulous medical personnel as the likely targets. However, it may be that it will be immigrant African and Middle Eastern women, traditional circumcisers, who will be arrested and prosecuted. The conflicts involved with trying and imprisoning women in the name of liberating women from a patriarchal practice has confronted French feminists in recent years and is instructive.

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<sup>27</sup>S. Res. 263, 103rd Cong., 2d Sess. (1994) (enacted).

<sup>28</sup>140 CONG. REC. 114245 (1994) (statement of Sen. Moseley-Braun).

<sup>29</sup>140 CONG. REC. S13101 (1994) (statement of Sen. Reid).

<sup>30</sup>104 CONG. REC. S14242-3 (1994) (statement of Sen. Reid).



Bronwyn Winter has written an incisive article on the criminalization of the surgeries or "excisions" in France where she locates the trials and the public debates surrounding them within a larger bipolar debate between universalism and cultural relativism wherein real women are pawns, symbols whose real lives are subordinated to abstract political discourse: "[t]his extreme polarization...has kept women out of the picture except as images to be manipulated."<sup>31</sup>

The first French trial on excision occurred in November 1979, as a result of an excision that led to the death of the young girl, and similar trials have continued with increasing frequency.<sup>32</sup> Initially, excisions were handled as misdemeanor cases, handled in "police court," where the sentences, usually suspended, were for a term of one year. Eventually, after a second death, public outcry and lobbying on the part of some feminist organizations, excisions have been treated as felonies, handled in "criminal court," where sentences have exceeded one year and reached as high as five years.<sup>33</sup> Defendants have included traditional female circumcisers (*exciseuse*) and parents. The heaviest sentence imposed, so far, was handed down to an *exciseuse*, five years of actual imprisonment.<sup>34</sup> Parents have been tried together, but fathers, who plead ignorance despite the fact that they typically exert a large degree of social and financial control over the household, tend to be viewed by the courts as having less responsibility than mothers and mothers are more often "in the dock" by themselves.<sup>35</sup>

Whether or not the excisions should be treated as criminal matters has split the progressive and feminist communities in France. The cultural relativists who defend the actual women who are charged, either in political discourse or at trial, tend to be white male Westerners who perceive themselves as progressive and left-wing.<sup>36</sup> Their pleas for cultural tolerance invoke the language of the European

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<sup>31</sup>Bronwyn Winter, *Women, the Law and Cultural Relativism in France: the Case of Excision*, 19 SIGNS 939 (Summer 1994).

<sup>32</sup>*Id.* at 944.

<sup>33</sup>*Id.* at 944-945.

<sup>34</sup>*Id.* at 947.

<sup>35</sup>*Id.* at 963-64.

<sup>36</sup>*Id.* at 959-60.

anti-racist movement<sup>37</sup> but the heart of their defense involves combining both a racist representation of African women—they are too ignorant to know better and too simple minded to take responsibility<sup>38</sup>—with a familiar patriarchal plea to respect the privacy of the family.<sup>39</sup> These approaches cause Winter to question the "progressiveness" of these cultural relativist white men. The question is sharpened when she notes that the trials often include the relativists' "bashing" feminists.<sup>40</sup>

French feminists have been divided by the issue as well. The pro-trial feminists have been the most visible since France has a *partie civile* action which allows private parties and groups to take an active part in public prosecutions.<sup>41</sup> These feminists want to use the legal system to pressure those who practice the surgeries to stop. Anti-trial feminists, although also anti-excision, focus on grass-roots organizing and educating of the immigrant women who practice the excisions. Winter, notes that the pro-trial feminists see it as "unfortunate" that the people targeted turn out to be mainly women, but for Winter it is not "unfortunate" but rather an "inadequate [position] within the present context."<sup>42</sup> Winter sees the pro-trial feminists as claiming that their actions benefit women; yet when confronted with facts that indicate that their actions harm the very women they claim to want to help, their response is "too bad" as opposed to "I need to re-think my plan." Winter argues for a "re-thinking of the plan" based upon a fuller understanding of the contexts within which *all* women, especially immigrant women, live. Winter expresses some surprise at the pro-trial feminists' reliance upon a legal system which by design excludes the complex and multifaceted reality of women.<sup>43</sup> And while she does acknowledge that some of the pro-trial feminists are sensitive to the

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<sup>37</sup>*Id.* at 954.

<sup>38</sup>*Id.* at 948-50.

<sup>39</sup>*Id.* at 959-60.

<sup>40</sup>*Id.* at 961. Winter notes that left-leaning intellectuals have used the trials as another forum within which to simplify feminist thought and to criticize it for either paying too much attention to sexual difference or too little attention to sexual or cultural difference. The French media has apparently been quite accessible for these critics to engage in a "backlash of all sorts."

<sup>41</sup>*Id.* at 944-45, note 11.

<sup>42</sup>*Id.* at 971.

<sup>43</sup>*Id.* at 962 (noting that the concept of "individual" used in Western courts typically excludes women's specific reality as well as class and social conditions).

difficulties in using the law, she does suggest that the pro-trial feminists themselves may be guilty of ignoring the complex realities of these immigrant women's lives. The isolation of these women—the inadequacy of support systems relating to information on French literacy skills, health care, legal rights, job training and women's support networks—are all important facets of the real, "flesh and blood" lives of immigrant women which the legal system, and consequently the pro-trial feminists, ignore. This is not an irony for Winter, it is a disservice to women.

Winter acknowledges that the court system is an arena within which to battle presumed notions of political and ideological neutrality and even concedes that feminists may want and need, sometimes, to "bend the law as far as possible in women's favor."<sup>44</sup> However, Winter determines that the criminalization of the excisions does not bend the law in women's favor. The abstract representational debate that results in the courtroom is too far removed from the authentic context of women's lives: "No one is interested in the root of the problem, the social process involved."<sup>45</sup> Winter argues that not only must feminist principles, the right to physical integrity and sociosexual autonomy, derive from women's experiences but they also must connect and serve women's lives. She then states that the use of the legal system to eradicate excision in France lacks a "concrete connection" with the immigrant women allegedly being helped; a posture Winter rejects concluding that feminist principles "become meaningless if they no longer serve the real-life women in whose names they have been elaborated."<sup>46</sup> For Winter, a feminism whose lofty principles when applied actually damage the lives of women has lost sight of the ultimate goal of feminism, i.e. to improve the lives of all women.

Some of the problems and tensions that Winter has identified in France seem very likely to emerge in the American context if the surgeries are criminalized. Fundamentally, Winter includes the American legal system in her basic criticism of feminists' use of the

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<sup>44</sup>*Id.* at 967.

<sup>45</sup>*Id.* at 971.

<sup>46</sup>*Id.* at 972.

law when she notes that "Western legal systems, based as they are on a concept of the individual that not only excludes women's specific reality as women but also fails to account for differences in social, cultural, and economic conditions that will affect how the system operates, can at the very best provide only a partial solution to what is fundamentally a political and cultural problem."<sup>47</sup> American legal scholars, of course, have made similar criticisms about the American legal system. We have our own history of the use of racialized representations of the "simple native" or "noble savage." We continue to dichotomize life into "public" and "private" spheres which leave issues regarding the safety of women and children inadequately protected. Consequently, one can easily imagine that criminalization of the surgeries in this country could well produce an American version of cultural relativist experts and "ethnopsychiatrists."<sup>48</sup> If the proposed legislation results in the prosecution of immigrant women, as opposed to Western trained medical personnel, one would surely expect a split in the American feminists communities.

The proposed federal bill imagines culturally sensitive education as a major part of the bill. The contours of the reality of the educational component could be all important. The most obvious concerns are who will be the chosen "representatives of ethnic groups and representatives of organizations which have expertise in the prevention of FGM" and how well will such educational efforts be funded. My concerns regarding the "representatives" focus again on Western feminists interested in the eradication of FGS. In France an underfunded educational campaign had preceded and currently accompanies the criminalization of the surgeries. Winter suggests that some of the French pro-trial feminists exhibit either an indifference to the educational component or an oversimplification of what such an

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<sup>47</sup>*Id.* at 962.

<sup>48</sup>Perhaps we will also find that, like in France, the bulk of the cultural relativist experts will be left-leaning white men. Winter suggests that the cultural relativist defenders are motivated by a desire "to assume a new position of intellectual and political power...." *Id.* at 959. White American liberal and left-leaning men accustomed, as all white American men are, to having their ideas, perspectives and positions at the center of any debate or discourse, may also be feeling weary of their perceived marginalization. Feminist scholars, critical race scholars and "queer" theorists have produced the "cutting edge" scholarship in recent years. The surgeries in France appear to have provided a multilayered complex site around which these tensions within the progressive community could erupt. A similar phenomenon could conceivably occur in the United States.

educational campaign involves. She suggests that the isolation that immigrant women experience in France—an isolation that is arguably much greater than what they would experience in their own countries where family and neighbors are an integral part of the larger and familiar cultural fabric—is not easily comprehended by native or white French women. Isolation suggests more than just an inability to speak French or to find a doctor who could explain the necessity of not performing the surgeries on one's daughter in one's language. It suggests the absence of intimate others, friends, relatives, neighbors, who understand one's situation and reaffirm one's sense of self and value. This need that we all have may be underestimated by Western feminists whose own cultural experience emphasizes "rugged" individualism.

This unquestioned individualism is one Western cultural aspect that may not be shared by the more communitarian ethnic communities in which organizations find themselves providing educational support.<sup>49</sup> It is certainly not the only difference. I have chosen it probably because I recognize the tendency as a weakness in myself, thanks to the generous and honest comments of feminist colleagues. It is an example of any number of presumptions and cultural perspectives that must be unmasked in order to make concrete connections with women from different cultural contexts. For the federal bill, the ability of Western feminists involved in the eradication of the surgeries to recognize both connections and differences will likely mark the success or failure of any educational effort.

The other concern with the proposed federal bill is funding. My fear is that it could become analogous to the current move to prosecute addict mothers for child abuse.<sup>50</sup> There was a time, for example, when I practiced as a public defender over ten years ago, when criminal statutes were invoked against addicts for drug possession but

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<sup>49</sup>For a discussion of the communitarian tradition in Africa as well as the tensions created between this tradition and Western liberal notions of individualism, see Adrien Katherine Wing, *Communitarianism vs. Individualism: Constitutionalism in Namibia and South Africa*, 11 WIS. INT'L. L.J. 295 (1993).

<sup>50</sup>See, e.g., Dorothy Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991); Lynn Paltrow, *When Becoming Pregnant Is A Crime*, 9 CRIM. J. ETHICS 41 (1990); and Dwight Greene, *Abusive Prosecutors: Gender, Race and Class Discretion and the Prosecution of Drug-Addicted Mothers*, 39 BUFF. L. REV. 737 (1991).

there was some understanding in the law and legal system of the physical and psychological aspects of addiction and, to a lesser extent, the social and economic conditions, in my context the poverty, that impact on drug addicts. It was not unusual for convictions to result in placements in drug rehabilitation programs. As the political climate has changed, decreasing funds remain for such programs. Our "war on drugs," rather than focus on major drug distributors at home and abroad, has armed and aimed its big guns on poor addicts, largely those of color, and prison is seen as the singular solution.<sup>51</sup> It is in this changed political climate that addict mothers, who never had much access to rehabilitation programs anyway, since most specifically excluded pregnant women,<sup>52</sup> find themselves under attack. And still resources are not allocated to get at the root of the problem. At a time when the dominant political discourse of well-off white Americans can only be characterized as "hateful" towards other "fellow" Americans, I fear that there will be little sensitivity or compassion afforded "foreigners." We are already in the grips of virulent anti-immigrant sentiments that are recycled and reaffirmed through the media. The representations of immigrants, especially but far from exclusively undocumented or "illegals," as dangers to and stains upon the national culture already exists and is operational. The bill, if passed, could, through underfunding, produce too few results in an unrealistically short period of time and then the shift could be towards prosecution, through the federal bill and perhaps through state child abuse statutes, as the sole solution.

#### IV. Immigration Consequences

The criminalization of the surgeries, especially if widespread enough to encompass the kinds of people—mothers, circumcisers—targeted in France could have other effects not apparently common in France, i.e. deportation problems. The Immigration and Naturalization

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<sup>51</sup>See, e.g., Myrna Raeder, *Gender and Sentencing: Single Moms, Battered Women and Other Sex-Based Anomalies in the Gender Free World of the Federal Sentencing Guidelines*, 20 PEPP. L. REV. 905. Professor Raeder explores the impact of the federal sentencing guidelines on women, and notes that the impact of increased prison time for drug offenses, especially, has particularly impacted on poor, minority women.

<sup>52</sup>See Roberts, *supra* notes 50, 147, at 1448.

Act makes an alien deportable if she or he has been convicted of certain types of crimes.<sup>53</sup> An immigrant convicted of a crime of moral turpitude is deportable if the crime was committed within five years after his/her date of entry and the sentence suspended or imposed is greater than one year; if more than one crime involving moral turpitude is committed, no limitations on the period of time one has lived in the country or the amount of prison time imposed are followed. Whether the proposed federal bill creates a crime of "moral turpitude" is an open question. The issue of what constitutes a crime of moral turpitude, and whether the immigration statutes invoking this language are unconstitutional because of the "void for vagueness" doctrine, have plagued the courts and immigration law teachers for years.<sup>54</sup> There is no satisfactory definition of crime of moral turpitude, although the Supreme Court has resolved the constitutional question in the immigration context, in part, by noting that the "void for vagueness" doctrine is used to warn individuals of the *criminal* consequences of particular acts they commit.<sup>55</sup> Courts struggling with the definition focus on the inherent nature of the act as opposed to the conduct of the perpetrator or the extent to which "the violations are generally considered essentially immoral [by moral standards prevailing in contemporary society]."<sup>56</sup> Will an act that has been characterized as an "horrific form of child abuse and a human rights violation" be a crime of moral turpitude? If the answer turns out to be "yes," then traditional immigrant circumcisers and parents, mothers perhaps most particularly, will be subject not only to criminal prosecution and imprisonment but also to banishment from the country. Conceivably, this could occur even if there was no conviction. If the commission of the surgeries is considered a crime of moral turpitude, then "admitting having committed" the crime would make one excludable, i.e. one who

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<sup>53</sup>Immigration and Naturalization Act § 241(2) (8 U.S.C.A. Sec. 1251 (1990)).

<sup>54</sup>*See, e.g.*, THOMAS ALENIKOFF, DAVID MARTIN AND HIROSHI MOTOMURA, IMMIGRATION: PROCESS AND POLICY, 549-59 (3rd ed. 1995).

<sup>55</sup>*Jordan v De George*, 342 U.S. 223 (1951). Void for vagueness doctrine focuses on the unfairness of punishing someone for conduct when the criminal statute in question is unclear or "vague" as to what conduct is actually prohibited. American courts cling to the notion that deportation is *not* punishment and therefore immigration laws are not *criminal* laws.

<sup>56</sup>*Id.* at 230-31. *See also*, *Fong Yue Ting v. U.S.*, 149 U.S. 698, 730 (1893).

could be prevented from entering the country.<sup>57</sup> Even if one made a successful entry, the deportation statutes make "any alien who at the time of entry...was within one or more of the classes of aliens excludable by law...deportable."<sup>58</sup> Thus an admission that one has committed a crime of moral turpitude means one should never have been allowed to enter the country in the first place; and one's original "inadmissability" is itself grounds for deportation now.

The INA also makes deportable any alien convicted of an "aggravated felony." Originally, language on "aggravated felons" was designed to reach drug traffickers as part of the "war on drugs" but has since expanded to include a range of serious crimes including "crimes of violence."<sup>59</sup> The statutory definition of a crime of violence is "an offense that has as an element the use, attempted use or threatened use of physical force against the person or property of another...."<sup>60</sup> The performance of the surgeries, as a crime, could easily fit into the category of aggravated felonies and thereby subject convicted immigrant women to deportation largely without the benefit of any of the typical forms of relief from deportation.<sup>61</sup>

The specific statutory interpretation accorded the language in the proposed federal bill and related immigration statutes will likely follow the rise or (hopeful) fall of anti-immigrant sentiment in this country. But even the more sympathetic interpretations of current or proposed laws, in the immigration context, involve the original problem that I have been exploring, i.e. it is common in the immigration/refugee context for monolithic, unidimensional representations of the good "us," the U.S., versus the bad "them," to be employed. Professor Inderpal Grewal, in a presentation discussing these "established binaries," explicates the two dominant discourses invoked in the immigration/refugee courts: "1) that the U.S. is 'freer' and more democratic than other countries, and 2) that Asian cultures are, unlike the U.S., inimical to women."<sup>62</sup> Grewal discusses the problematic of navigating between these two dominant discourses in the larger context

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<sup>57</sup>Immigration and Naturalization Act § 212(2)(A)(I) (8 U.S.C.A. § 1182 (1990)).

<sup>58</sup>Immigration and Naturalization Act § 241(a)(1)(A) (8 U.S.C.A. § 1251 (1990)).

<sup>59</sup>IMMIGRATION: PROCESS AND POLICY, *supra* note 52, at 559-61.

<sup>60</sup>*Id.* at 560.

<sup>61</sup>*Id.*

<sup>62</sup>Grewal, *supra* note 11, at 1.



of United States and European self-construction in the post-Cold War era. She notes that immigration and refugee laws function to demarcate the boundaries and naturalness of the nation-state concept in a world where nations are not naturally formed but created and constructed through force and imperialistic imposition. She continues by remarking that these laws, by designating some people as "others," define a racially pure notion of the true America: "In the case of the U.S., every refugee and immigrant comes to signify U.S. democratic freedom that is in conjunction with the imagined racial homogeneity of a 'host' country radiating its purity against an impure heterogeneity. As signifiers of the borders of this nation, certain refugees and immigrants are used to narrate this white nation."<sup>63</sup> This constructed racialized nationalism permeates immigration/refugee laws, but also infects human rights discourses, and the debate and struggle to include women's rights in a concept of human rights. The various simplistic dichotomies involving the "good" West versus the "bad" other encourage analyses both in the human rights and feminists contexts which ignore issues of racism and imperialism as well as poverty and economic restructuring.<sup>64</sup> Grewal's incisive and broad contextualization reveals how the use of simple and binary representations of Westerners and "others" reverberates with and reinforces a wide range of political conceptualizations beyond the particular forum or text at issue. For example, she connects the racist, anti-immigrant sentiment currently existing in the U.S. (in particular in my home state of California) with a certain imagery about the pure civilized host Americans being overrun by the barbaric foreign hordes; this imagery she sees as employed and concretized in two texts which I discussed earlier, Rosenthal's editorial, and Walker and Parmar's *Warrior Marks*. Although none of the authors, perhaps, intended to reinvent the old and still vital imperialistic imagery, their various allusions to the notion of these "others" bringing their barbaric and horrifying practices to our shores resonates with those conceptions.<sup>65</sup>

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<sup>63</sup>*Id.* at 4.

<sup>64</sup>*Id.* at 5-6.

<sup>65</sup>*Id.* at 9-10.

Grewal's analysis, thus, clarifies the problem of using or "bending" immigration/refugee laws to benefit women. The laws employ a certain racialized, imperial rhetoric and framework and thereby make it difficult to articulate the needs and circumstances of immigrant women without employing the very terms one wants to combat. This problem is exemplified in the highly publicized immigration/refugee case of Lydia Oluloro. This is the Portland, Oregon case involving a Nigerian woman who requested suspension of deportation or asylum because of her fear that if she returned to Nigeria her two young U.S. citizen daughters would be forced to endure the surgeries.<sup>66</sup> Oluloro's lawyer, Tilman Hasche, mounted a vigorous and successful defense to her deportation, but, in doing so, relied upon the monolithic, racialized representations at issue. Hasche's memorandum, Respondent's Summation At Close of Hearing, is exemplary.<sup>67</sup> Although the surgeries are somewhat contextualized when Hasche underscores that they are performed "*out of love for their children*" (emphasis in text),<sup>68</sup> the main and initial characterization is totally consistent with the civilized-barbaric oppositional imagery; they are described as "a brutal, gruesome ritual that violates the most fundamental notions of decency and civilization at the heart of this Republic."<sup>69</sup> This distance between "us" in the civilized West and those barbaric Yoruba of Nigeria is emphasized at several points, in tortured ways. Hasche notes that while the situation in Nigeria is improving, "women in Nigeria are forced to endure second class citizenship and are subject to myriad legal, social and economic disabilities...to this date Nigerian law and society...discriminate against women with respect to divorce, inheritance, widowhood rights, and reproductive rights; and tolerate domestic violence against women."<sup>70</sup> To be sure, there are differences between the U.S. and Nigeria, and perhaps when Hasche flags the continued existence of laws allowing child marriage and polygamy which are outlawed in the U.S., that is a valid distinction. But the great distance between "us" and "them" seems quite tortured when one

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<sup>66</sup>Timothy Egan, *An Ancient Ritual and a Mother's Asylum Plea*, N.Y. TIMES, Mar. 4, 1994, at A25.

<sup>67</sup>In the Matter of Lydia Omowunmi Oluloro (File No. A72 147 491) Respondent's Summation At Close Of Hearing, U.S. Dept. of Justice, EOIR (Mar. 3, 1994) (on file with author).

<sup>68</sup>*Id.* at 5.

<sup>69</sup>*Id.* at 1.

<sup>70</sup>*Id.* at 4.

is well aware that in the U.S. women tend to become impoverished through divorce; we are quickly seeing our reproductive rights eroded; and we continue to battle against the indifference of American police forces and society when it comes to domestic violence.

The immigration judge, Kendall Warren, rejected Oluloro's plea for asylum but did grant her withholding of deportation. Judge Warren accepted the representations to him on FGS and described it as a procedure used "in some cultures" notably "male dominated patriarchal societies to repress women's status and sexuality."<sup>71</sup> He did not appear to be aware that the U.S. was one such culture that has practiced the surgeries nor did he acknowledge that we too constitute a "male-dominated patriarchal society." Judge Warren did not wholly buy into the notion of Oluloro as a unidimensional ignorant native woman. He noted, in remarking that she was not so innocent as her lawyer portrayed her when she committed various fraudulent acts in order to stay in the country, that "she is an educated and intelligent woman and seemed to have a clear understanding of all the issues in this case and was very articulate in expressing her feelings and thoughts."<sup>72</sup> However, her humanity, individuality and strength are wiped out because she is "a member of the Yoruba tribe where the husband is boss...."<sup>73</sup> The judge's analysis of why Oluloro might have felt pressured to lie did not rest upon her unfamiliarity with U.S. customs and laws, her social isolation in a new and different culture and country, her financial dependence upon her husband or her fear of the physical and sexual violence that her husband perpetrated upon her.<sup>74</sup> These circumstances could pressure any woman, or person, regardless of race or culture, to take extreme measures to protect herself and her children. The judge, instead, focused on "tribalism." It is as if the pressure of a Yoruba husband is somehow greater than

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<sup>71</sup>In the Matter of Lydia Omowunmi Oluloro (File No. A72 147 491), U.S. Dept of Justice EOIR, Oral Decision of the Immigration Judge (March 23, 1994) at 2-3 (on file with author).

<sup>72</sup>*Id.* at 19.

<sup>73</sup>*Id.* at 20.

<sup>74</sup>Respondent's Summation at Close of Hearing, *supra* note 65, at 8-10.

the pressure of a John Fedders.<sup>75</sup> The "othering" of this form of the patriarchal practice of male domination of women allows the judge to "forgive" Oluloro her fraudulent behavior which might have otherwise prevented her from being granted relief. It is actually hard to imagine how a judge could honestly contextualize and represent the situation of a woman like Oluloro and still "bend" the law in a way that would help her by allowing her to stay in the country. After all, if Judge Warren were to acknowledge the similarities and connections between the two patriarchal cultures, American and Nigerian-Yoruba (by focusing not on any particular patriarchal practice like FGS or specific ethnic methods of expressing misogyny but rather on the broader question of domestic violence and male domination) it is not clear he could then characterize returning to Nigeria as constituting an "extreme hardship" as immigration law requires.

The racialized binary oppositional representation was an essential aspect of the discourse involved in Oluloro's case. Neither her attorney nor the judge involved had much room to break free of the parameters of the discourse, not if she were to be allowed to have her own wishes granted, i.e. to stay in the United States.

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<sup>75</sup>John Fedders was the Securities and Exchange Commission enforcement director during the Reagan administration who admitted to beating his wife during their marriage. Jerry Knight & Victoria Churchville, *SEC Enforcement Chief Beat Wife Repeatedly, Court Told*, WASH. POST, Feb. 26, 1985, at A1. Although Fedders received support from his boss, SEC chair John Shad for doing an "outstanding job"; and despite the fact that then President Reagan, who vowed in his 1984 State of the Union address to combat family abuse, exerted no pressure or comment indicating disapproval, Fedders did resign from his position as a result of these revelations. Robert L. Jackson & Zack Nauth, *Fedders Resigns As SEC Chief of Enforcement, Apologizes to Agency*, L.A. TIMES, Feb. 27, 1985, at D1. The secret life Charlotte Fedders revealed underneath the storybook, Catholic marriage had its parallels with the life Lydia Oluloro lived. Charlotte Fedders was also in a situation where "the husband was boss." As one friend of the Fedders family noted, "when it came to getting married, he [John] didn't propose to her, he told her they were getting married." Alison Muscatone, *Marriage Has a Dark Side: Charlotte Fedders Is Changed As Dreams Turn To Violence*, WASH. POST, Feb. 26, 1985, at A6. Fedders herself noted that "...a domineering man is what I was used to." *Id.* Fedders was also financially dependent upon her ambitious, former college basketball player husband, John, and found herself emotionally isolated within the abusive relationship although clearly, unlike Oluloro, she and John were members of the dominant and privileged class, race and ethnic (if not religious) groups in the United States. *Id.* Her consequent low self-esteem lead her to endure numerous beatings resulting in "...a broken ear drum, wrenched neck, several black eyes [and] many, many bruises. Once he even beat [her] around the abdomen when [she] was pregnant with [their] first baby." Knight & Churchville, at A1.

### V. Unconscious Western Arrogance and Thinking About Legal Reform

When I presented my original article at the conference which generated this current work, I was gently challenged on my emphasis on the need for women to be economically independent. It was suggested to me that "independence" was a peculiarly Western notion, and that non-Western, communitarian-like cultures were more likely to view interdependence as the antidote to dependence. One of my main critics, Professor Maivan Clech Lam, has written an incisive article in which, among other telling points, she elucidates her comments to me.<sup>76</sup> In her article, Lam relates a story in which she and a friend, another non-Western woman of color, find themselves needing to take the subway home late at night in New York City.<sup>77</sup> She and her friend ask an African-American male acquaintance to accompany them, and a white woman, who none of them know, asks to accompany them as well. After entering the dark and deserted subway station, Lam turns to her male companion to thank him for being with them and remarks, "[y]ou realize how dependent we are on you for our safety." Whereupon, the white woman turns on Lam to scream at her that she should be ashamed for saying such a thing.

Lam analyzes this outburst as self-sufficient individualism "a conspicuous feature of Protestant capitalist culture in which, inescapably, white U.S. feminism sits."<sup>78</sup> It is an "extreme

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<sup>76</sup>Maivan Clech Lam, *Feeling Foreign in Feminism*, 19 SIGNS 1994, at 865.

The focus of my earlier article and remarks was in fact on *economic* independence and to a large extent Professor Lam's stories in her article focus on *social* interdependence. I do not mean to suggest that Lam's personal accounts are not intended to implicate broader social and political relationships in a larger cultural context. Neither one of us could discuss economic relationships or social relationships as if either would be isolated from the other. However, my own concerns with women's economic independence, though culturally bounded and perhaps, in part, blinded, are meant to suggest that all women within our respective cultures need a certain "distance." Any work that women do, if it has any social value, will interrelate with other activity in an interdependent fashion. What women need is a range of choices of socially valued and, consequently, economically viable activity from which to choose. Every woman should be able to engage in economic activity that allows her to provide for herself and her children (if she chooses to have any) such that she can choose amongst a range of men to marry or interact with or, indeed, against marrying any man or anyone and still be able to survive.

<sup>77</sup>*Id.* at 868.

<sup>78</sup>*Id.* at 877.

atomization or social disengagement" which Lam remarks causes Western feminists to withdraw into themselves in the face of gender injustice rather than to engage and ally with others. She notes that women in other cultures do not approach social relationships in that way. For some, Lam notes it is crisis, war conditions, that require that women depend upon others for their physical and psychic survival. For others, dependency is accepted from a "settled sense of security." Their cultures, unlike Western cultures, rely upon on a duty of mutual support "whether in an egalitarian or hierarchical context...." While Lam finds the reaction of the particular white woman understandable, she is highly critical. In part, Lam argues, even if well-to-do white women can, in fact, withdraw, that is far from the transformative power and effect that an engaged and multicultural feminism could conceivably have on the larger society.

More than that, Lam notes that this unquestioned attachment to individualism is ultimately "an aversion to admitting personal limitations and dependencies...."<sup>79</sup> In essence, Lam accuses Western feminists of being in denial about our own realities; she characterizes the reaction, quite accurately it seems, as a view that "emanate[s] from the realm of magic." In a move that may, in part, account for the negative reaction her early submission received from the regular editorial board of the journal in which it was published,<sup>80</sup> Lam employs traditional Western anthropological concepts that are generally reserved for simple colored people and clearly points out that the phenomenon of "magic" is alive and well amongst complex, hi-tech white women. "This [magical] realm, by anthropological convention, is a world in which linguistic and ritual formulas are thought to have specific, determinate, potent and generally fearsome consequences."<sup>81</sup> When Lam recalls the fury and intensity of the unknown white woman's reaction to her invocation of the word "depend" in a context in which it seemed fairly obvious that the dependency was a reality, she can only imagine that for this woman, and other Western feminists

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<sup>79</sup>*Id.* at 879.

<sup>80</sup>Lam, *supra* note 76, at 883-84. This is the beginning of what Lam labelled "Coda," what she wrote in response to the criticism rather than change the actual text of her original piece.

<sup>81</sup>*Id.* at 879.

like her, the very utterance of certain words have dire consequences in her mind alone, what Lam calls "the magical theory of feminism."<sup>82</sup>

My own experience with grappling with my own subconscious arrogance and perspective, with re-defining and re-aligning myself has been and continues to be rewarding. But it has also been and continues to be an on-going process of dialogue (and sometimes struggle) with other feminists. Reflecting upon my own process and growth causes me to suggest a caution regarding this proposed FGM legislation.

One question to ask about the FGM Act is "what is its purpose?" or "what is the point?" Is it designed, in fact, to prevent children from being subjected to the surgeries? Or is the legislation designed to be a symbol: a message to the world, or perhaps only to each other, that regardless of whether we can actually solve problems of sexism and patriarchal control either at home or abroad, we can certainly be on record as against this particular practice. The very fact that the FGM Act simultaneously criminalizes the surgeries and initiates research on the extent of the problem criminalized suggests that the motivations are largely symbolic. We do not know the particulars, the context of the problem at home, yet we have already determined what the "solution" is.

I would like to see the FGM Act passed *only* in terms of its research component, i.e. the compilation of data on the numbers of women and children in the U.S. who have had the surgeries performed, the identification of the communities which practice FGS in the U.S., and the creation of anti-FGS educational activities and materials. As the Act proposes, these efforts should be done with "representatives of ethnic groups and...organizations which have expertise in the prevention of FGM." The experts we should turn to are those African feminists who have long experience in combatting the surgeries. The Act's language suggests that the educational effort would revolve around informing people of the health risks attendant to FGS. But more than information on health risks needs to be part of the campaign. A more fundamental question will be how are *any* of the health needs

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<sup>82</sup>*Id.* at 880.

of the women and children in the identified communities being met? And if they are not being met, how will they be serviced? More than just health needs will have to be a part of this educational effort if it has any chance of being successful. How are immigrant women and children connecting linguistically, educationally, economically and socially with each other and with other "indigenous" American communities? A serious anti-FGM campaign cannot isolate itself from the other aspects of the lives of the people in the targeted communities. Such a comprehensive research and educational approach needs to precede criminalization legislation which risks penalizing, again, the very women we claim to want to help.

## **VI. Conclusion**

My concerns in this article have been with exploring the representation of Westerners and non-Westerners in the popular consciousness through the popularization of FGS. American culture has a long history and tradition of racialized and racist "us"-"them" imagery which intertwines with our colonial/imperial heritage. The popular discussions of FGS access, augment and reinvigorate much of the history and mythology. Our legal system codifies and enshrines these oppositional images. While we as feminists ought not become paralyzed in the face of the need to combat and eradicate FGS and all culturally dictated mutilations of women, it does become essential that we be mindful of the context within which we battle and engage and the tools we use to reach our goals. We need to search for and create imagery and language which contextualizes and empowers, rather than cling uncritically to the familiar. The law is more than a powerful referent in our lives, it does exert power over our lives. But we need always be mindful of its limitations. And the categorizations and definitions that the legal system may require us to use to improve the life of one particular woman, like Oluloro, can never become the defining categories of our analyses. They are fictions that we may be forced to use. But our larger struggle around FGS must confront the far more complex and multifaceted connections and distances between us and our sisters.



