The Ethnocentric Law:
Double standards in Western approaches to Female Genital Mutilation and Male Circumcision

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In the UK, female genital mutilation is viewed as unacceptable, and this is enshrined within the law, whereas male circumcision is widely practiced. This article sheds light on the similarities of the practices, how they both infringe upon fundamental human rights (especially for children who cannot consent), whilst focusing on the origins of these opinions. By investigating why these polarised opinions have come into existence, the ethnocentric views of cultural superiority shall be scrutinised in order to point out these blatant double standards. It will also outline how these practices need to be re-framed in the law and society's mind to allow for a more objective, culturally-sensitive, and human rights-focused approach. Why the double standards between female genital mutilation (FGM) and male circumcision (MC) are present shall be explored, whilst simultaneously analysing whether they should exist

This article will look at the reasons behind the double standards between female genital mutilation (FGM) and male circumcision (MC) and analyse the procedures, ultimately deciding whether they should exist. The main double standard that will be addressed is that of the incongruent treatment between FGM and MC due to ethnocentric perceptions, which leaves FGM disproportionately demonised, and MC unfairly ignored as a topic of human rights. It is necessary to look holistically at the extent of the double standards (for example by looking at cosmetic surgery). It shall be concluded that the differential treatment of FGM is unwarranted on various grounds, including the comparison of procedure, rationales, human rights violations and the effects in relation to FGM compared with MC. This exploration seeks not to purport whether MC or FGM is right or wrong, but to objectively assess whether the double standards in the treatment of these procedures is warranted, aiming to see past the 'impasse' of the current debate, which has caused little progress in ending possible abuse.[1] It shall be argued that the way forward is to reframe the entire system of FGM and MC, to allow for a more objective and culturally sensitive approach.

The current stance

Demographics - The focus

FGM is 'most prevalent in various parts of Africa, as well as among immigrant women and girls in Europe'[2] – bringing it to the attention of Western countries. MC is 'relatively more common in "the West"'[3] and largely affects neonates (for example, in 1999 eighty five percent of newborns in the US were circumcised),[4] making it a fairly routine occurrence in the Western world.

The world's view

Currently FGM faces 'international condemnation'.[5] Many countries globally have 'passed legislation prohibiting FGM'.[6] The debate is summarised by Dustin as

> 'polarised...between those who see...an abuse of women's health and human rights...and those who...see a double

[1] Lori Leonard, 'Interpreting Female Genital Cutting: Moving Beyond The Impasse' (2000) 11 Annual Review of Sex Research 158-191.
[2] Debra L DeLaet, 'Framing Male Circumcision as a Human Rights Issue? Contributions to the Debate Over the Universality of Human Rights' (2009) 8(4) Journal of Human Rights 405.
[3] ibid 406.
[4] Marie Fox and Michael Thompson, 'Short Changed? The Law and Ethics of Male Circumcision' (2005) 13 International Journal of Children's Rights 161-181.
[5] DeLaet (n 2) 405.
[6] ibid 406.

> standard on the part of Western campaigners who fail to challenge other unnecessary surgical interventions – such as male circumcision or cosmetic surgery – in their own communities.'[7]

Contrastingly, the 'virtual silence of the international community on the issue of MC suggests widespread global acceptance of this practice.'[8] The key issue to be addressed is whether this response is justified.

Are the double standards justified?

Comparing procedures

Contrary to what FGM 'misleadingly'[9] suggests, it '[does] not describe a single procedure, but... a wide range of practices which vary significantly in terms of their invasiveness' with four types.[10] The second involves a 'partial or total removal of the clitoris and labia minora, with or without excision of the labia majora'.[11] The third type is the most invasive 'narrowing of the vaginal orifice by cutting and bringing together the labia minora and/or the labia majora to create a type of seal, with or without excision of the clitoris' which is known as 'infibulation'.[12] The least invasive form being the fourth, with 'pricking, piercing, incising, and scraping...[There is]...no permanent alteration of the external genitalia'.[13]

The most significant type is the first because it is the 'most widely practiced globally' and 'involves the removal of the prepuce (outer skin) of the clitoris'.[14] 'This variant of female circumcision is most comparable to the predominant form of male circumcision'.[15] The principal MC type 'involves the removal of the male prepuce, the skin surrounding the glans, or head, of the penis'.[16] To add to the similarities in procedures, 'there are extremely invasive forms of male circumcision that are as harsh as infibulation'.[17] The law and commentaries treat the practices as very different but 'there are more similarities between the two practices than is typically acknowledged'.[18]

Comparing effects

The health consequences are similar for FGM and MC. Firstly, pain; '[h]istorically analgesia has not been used during various MC procedures'.[19] Due to the shift towards MC being medicalised, this is less prevalent. Yet, because of the banning of FGM, there has not been the same level of medicalisation, so this still remains a problem,[20] especially when FGM has often been carried out with 'kitchen knives, old razor blades, broken glass and sharp stones'.[21] This therefore explains the outrage and 'accusations of African 'barbarism"[22] but it seems unjust because firstly, MC was not historically medicalised either, and still is not medicalised in some traditional settings.[23] Plus, the blanket bans of FGM causes the lack of medicalisation which creates the problems of which the West complain.

Other effects of MC include the possibility of haemorrhage, urinary retention, and in rare cases, death.[24] Similarly, FGM can result in the same as well as other female-specific issues.[25] It should also be noted that, 'dangerous health implications are most likely associated with infibulation',[26] (which is not commonly practiced).[27] This makes it clear that the law 'tends to differentially construct harms, attaching weight to some, while downplaying others',[28] branding FGM as extremely risky. The total condemnation of FGM coupled with the acceptance of MC, based on health comparisons, is seemingly unjustified.

In terms of the sexual effects, both MC and FGM remove a part of the genitalia with receptors made for sexual pleasure,[29] which will affect sexual intercourse and is a violation of many human rights. FGM is heavily criticised for the restriction on women's sexual autonomy,[30] yet for men '[t]he prepuce plays an important role in the mechanical functioning of the penis during sexual acts'[31] and whether circumcision affects enjoyment of sexual intercourse is 'heavily disputed in...medical literature'.[32]

Similarly, the issue with FGM is that MC 'does not prevent men from achieving...orgasm. It is argued that 'the excision of the clitoris eliminates the possibility of...orgasm'.[33] This argument is undermined as it can be seen to exemplify an enforcement of Western norms because of the clitoris becoming a symbol of western women's liberation and ignores the plurality of sexuality.[34] There are two types of orgasm, clitoral and vaginal,[35] and 'African women have questioned western feminism's definition of sexual enjoyment as dependent on the clitoris and the assumption that the significance attached to sexual pleasure in Western cultures is universal'.[36] This illustrates why there may be such a demonization of FGM, but also why it may be unfair when considered from a relativist perspective. Not to

[7] Moira Dustin, 'Female Mutilation/Cutting in the UK: Challenging the Inconsistencies' (2010) 17(1) European Journal of Women's Studies 7.
[8] DeLaet (n 2) 406.
[9] Dustin (n 7) 8.
[10] DeLaet (n 2) 412.
[11] UNICEF, 'unicef.org' (Female Genital Mutilation/Cutting: A Statistical Exploration, July 2013) <www.unicef.org/publications/index_69875.html> accessed 13 December 2016.
[12] ibid.
[13] ibid.
[14] DeLaet (n 2) 413.
[15] ibid.
[16] DeLaet (n 2) 411.
[17] DeLaet (n 2) 404.
[18] ibid.
[19] DeLaet (n 2) 412.
[20] DeLaet (n 2) 413.
[21] Alison T. Slack, 'Female Circumcision: a Critical Appraisal' (1988) 10(4) Human Rights Quarterly 437–386.
[22] Lisa Wade, 'Learning from "Female Genital Mutilation" Lessons from 30 Years of Academic Discourse' (2011) 12(1) Ethnicities 26-49.
[23] DeLaet (n 2) 412.
[24] Circumcision Reference Library, 'cirp.org', (Complications from Circumcision, 2013) <http://www.cirp.org/library/complications/> accessed 23 December 2016.
[25] Slack (n 21) 450-455.
[26] DeLaet (n 2) 414.
[27] ibid 413.
[28] Fox and Thompson (n 4).
[29] Steve Scott, The Anatomy and Physiology of the Human Prepuce. In *Male Circumcision: Medical, Legal and Ethical Considerations in Pediatric Practice* (Kluwer and Prelnum 1999).
[30] Dustin (n 7) 10.
[31] John P Warren, Norm UK and the Medical Case Against Circumcision: A British Perspective in *Sexual Mutilations: A Human Tragedy* (New York Plenum Press 1997).
[32] Fox and Thompson (n 4) 168.
[33] DeLaet (n 2) 413.
[34] Richard A. Shweder, "What about Female Genital Mutilation?' and Why Understanding Culture Matters in the First Place' in *Engaging Cultural Differences: The Multicultural Challenge in Liberal Democracies* (New York: Russell Sage Foundation 2002).
[35] Dustin (n 7) 10.
[36] ibid.

mention, in a study, ninety percent of infibulated women could experience orgasm.[37] This illustrates that circumcision affects sexual pleasure for men and women, but it is nowhere near conclusive. There is a hugely disparate focus on the negative effects of FGM, without any regard for that of MC. This also begins to illustrate the presumptuous and ethnocentric nature of which anti-FGM campaigns approach this issue, which will be explored when discussing double standards.

Are the double standards justified?

The history and rationale behind the procedures must be explored to see whether the practices are significantly different and to briefly understand why double standards have developed as a result.

Cultural grounds

FGM is historically a cultural and religious procedure followed by Christians, Muslims, and one sect of Judaism,[38] and despite it not being a requirement in religious texts; it has been promoted for moral reasons on the grounds that it encourages the chastity of women.[39] It was also seen as a 'rite of passage for adolescent girls'.[40] Similarly, for MC the 'origins of the practice are cultural rather than medical' and is a 'ritual practice in both Judaism and Islam'.[41]

Furthermore, 'girls who have not undergone the procedure may not be considered good candidates for marriage'.[42] In a loose parallel, men in the Philippines said that a reason for becoming circumcised was that women enjoy having sexual intercourse with a circumcised man.[43] While FGM is criticised for being a restriction on women's autonomy, cultural expectations are being placed on both sexes. Despite the rationales behind the practices being largely similar, FGM is targeted for arcane reasoning which represents 'cultural inferiority' because it is 'restrictive to women'.[44] The response seems disproportionate since there is a similar feeling amongst men. Objectively, FGM and MC are both a characterisation of society's oppression of people in the form of the pressure to fit within cultural norms.

Medical grounds

With FGM, doctors in the UK as late as the 1950s[45] used it as 'treatment' for 'hysteria, lesbianism, masturbation and other so-called female deviances'.[46] Equally, MC was seen as a cure for 'restless sleep and bad digestion'[47] as well 'epilepsy...promiscuity...and cancer',[48] highlighting the parallel nature in the history of these procedures.

It was believed, with regard to both FGM and MC, that circumcision cured masturbation which was a 'well known' cause of 'insanity'.[49] At the time MC was hugely important due to the 'war on masturbation'[50] and circumcision was said to reduce male sexual desire.[51] Though both practices developed medical rationale, with MC the double standard developed when one medical justification continued to replace another.[52] MC being 'justified by medical necessity' became 'culturally entrenched',[53] whereas FGM became seen as 'medically unnecessary'.[54] Another double standard exists here because even though FGM does not have a medical justification, neither do the Jewish and Muslim practices of circumcision, which still remain, but they do not need extra justification to be accepted.

The amelioration of MC is shallow since anything that it may prevent is a 'relatively rare illness'.[55] Debra DeLaet points out that penile cancer, the risk of which can be lessened by MC, has a risk factor of one in one hundred thousand, whereas breast cancer has a risk factor of one in eight - but you do not see the routine removal of girls' breasts.[56] The only possible medical benefit that may warrant routine circumcision is that it may decrease the rate of HIV infection[57] but even with this it may cause more problems with complacency with use of condoms[58] and some studies even suggest that it increases susceptibility to HIV.[59]

Hence, with little research ever having been conducted on FGM (nationwide research in the UK only began in 2007),[60] and largely inconclusive evidence to prove the medical benefits of male circumcision; it is shocking that MC faces no opposition whilst FGM is a criminal offence. The history of MC with medical justifications has ameliorated the practice, resulting in widespread practice going largely unquestioned.

Human rights abuses

Comparing the practices from a human rights perspective, both MC and FGM represent a breach of bodily integrity. 'Although a right to bodily integrity is not explicitly identified in existing human rights treaties, it may be implied in prohibitions against torture and rights to privacy'.[61] MC cannot be ignored on human rights grounds as it breaches the same rights that anti-FGM campaigners protest against. This is especially a concern considering the inability of children to give consent.

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[37] Hanny Lightfoot-Klein, *Prisoners of Ritual: An Odyssey into Female Genital Circumcision in Africa* (Haworth Press 1989).
[38] Nahid F. Toubia, *'Female Genital Mutilation: A Call for Global Action'* (New York: Women Ink 1993).
[39] Slack (n 21) 445-446.
[40] DeLaet (n 2) 418-419.
[41] DeLeat (n 2) 415.
[42] DeLeat (n 2) 419.
[43] Romeo B Lee, 'Circumcision Practice in the Philippines: Community Based Study' (2005) 81(1) Sex Transm Infect 91.
[44] Wade (n 22); Dustin (n 7) 9.
[45] DeLaet (n 2) 419.
[46] Toubia (n 37) 21.
[47] L A Sayre, 'Partial Paralysis from Reflex Irritation, Caused by Congenital Phimosis and Adherent Prepuce' (1870) 23 Transactions of the American Medical Association 205-214.
[48] G P Miller, 'Circumcision: Cultural-Legal Analysis (2002) 9 Virginia Journal of Social Policy and the Law 497-537.
[49] Fox and Thompson (n 4) 8.
[50] ibid 9.
[51] R W Cockshut, 'Circumcision' (1935) 2 BMJ 764.
[52] Abu-Salieh, *Male & Female Circumcision: Among Jews, Christians and Muslims: Religious, Medical, Social and Legal Debate* (Shangri-La Publications 2001).
[53] DeLaet (n 2) 421.
[54] British Medical Association, 'Female Genital Mutilation: Caring for Patients and Safeguarding Children' Guidance from the British Medical Association (July 2011). < https://www.bma.org.uk/advice/employment/ethics/children-and-young-people/female-genital-mutilation> accessed 18 December 2016.
[55] DeLaet (n 2) 416.
[56] ibid.
[57] Toubia (n 37) 3.
[58] Delaet (n 2) 417.
[59] Robert Van Howe, Neonatal Circumcision and HIV Infection in *Male Circumcision:Medical, Legal and Ethical Considerations in Pediatric Practice* (Kluwer and Plenum, 1999) 31-36.
[60] Dustin (n 7) 18.
[61] Delaet (n 2) 412.

'**A relativistic double standard that masquerades as universalism**'[62]

The law's double standards

FGM and MC are relatively similar in their physical practice, their history, and rationales. Therefore the only thing dividing them seems to be the way they are perceived in the West.

This Western double standard is entrenched in the Female Genital Mutilation Act 2003. The law has created an 'us versus them' culture with an ethnocentric tone that illustrates the blinkered approach, and ignores the parallel human rights abuses created by MC (because MC is common within the Western world and therefore accepted). The FGM Act states that 'it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual'.[63] If one applied the definition of 'custom' to cosmetic surgery, genital piercing, hymen repair, or other directly similar procedures to FGM that are allowed within UK law, they would also be prohibited. What the law fails to see is that, by definition, their own practices represent their culture – but just a Western one; one that is, however, legal.

Baroness Gaitskell, during the debate of the 1985 Female Genital Circumcision Act, declared that 'such people are not in a position to teach us anything about sexual behaviour'.[64] This condescending attitude suggests that women from non-Western cultures have a 'group delusion' and 'do not have the same rights as members of the majority society to alter [their] body'.[65]

Unfamiliar cultural norms

'Like FGM/C, [breast enhancement, labia reduction and 'trimming] are therapeutically unnecessary surgeries carried out with the intention of making women fit a cultural norm'.[66] These procedures are freely accepted as ordinary because western culture is familiar with them. What is not considered is that it is directly comparable to FGM in the sense that FGM is also performed as a result of pressure from society to fit in. This illustrates the 'arrogant perception',[67] caused by fear or misunderstanding of the unfamiliar, that 'typifies Western criticism of other cultural practices' by assuming that there is one right way to do things. [68]

MC has not moved beyond this ignorance also due to discrimination on the grounds of traditional gender stereotypes. The silence on MC is because 'within the law the role of abuse victim is feminised'.[69]

> 'Debates concerning [female] bodies have often focused on their vulnerability to harm...By contrast, male bodies are typically constructed as safe, bounded and impermeable'.[70]

The failure to engage with the reality of the situation exemplifies how commentators have 'minimise[d] the harms inflicted on boys by circumcision with a concomitant propensity to exacerbate the risks occasioned by less invasive forms of female circumcision'.[71]

This all demonstrates how something as transient as perception can shape an entire legal approach, and lead to international discrimination.

Moving forward

A lot of change is required to remedy the double standards that underpin wider human rights abuses and discriminatory problems, and some of the ways this could be addressed shall be explored.

Language, transparency and objectivity

More research and objective exploration of this topic is necessary. It is proposed that FGM and MC are referred to as Female/Male Genital Procedures, which are characterised by the 'moderate' and most widely performed types of both operations. This is so as not to indulge the pejorative connotations created by using 'mutilation' or positive ones by using 'circumcision' in order to take a more neutral stance, whilst creating a new conceptualisation. In recognising different types of FGM through language, this may promote the recognition of nuances in the procedures and illustrate that blanket action is not appropriate.

When deciding what could be referred to as the 'mutilation' depends on where the line is drawn. It could be suggested that infibulation and the most extreme type of MC could be the FGM and Male Genital Mutilation.

A new legal path

i. Equal treatment of MC and FGM

To prevent discrimination and institutional racism, there cannot be double standards. This could mean banning MC and FGM altogether, although the backlash from religious and/or cultural groups could render this option unrealistic – and may cause black markets to open up, causing more human rights concerns. Hence, dividing up the procedures into distinct categories means that human rights abuses can be prevented from happening, whilst respecting cultural practices.

ii. Dividing up the different types of FGM/MC

Where can the line be drawn? In terms of inflicting this kind of injury, the case of *Brown* gives the ability to consent to reasonable surgical interference for a 'good reason'. [72] There could be a line forged out of this legal

[62] Delaet (n 2) 422.
[63] Female Genital Mutilation Act 2003, s5.
[64] Dustin (n 7) 13.
[65] ibid 16.
[66] ibid 12.
[67] Isabel R Gunning, 'Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries' (1992) 23(2) Columbia Human Rights Law Review 189-248.
[68] Dustin (n 7) 11.
[69] Fox and Thompson (n 4) 11.
[70] ibid.
[71] ibid.
[72] *R* v *Brown* [1994] 2 All ER 75.

reasoning, or further research, to justify banning the extreme versions of FGM/MC to protect human rights.

iii. A hybrid system

It must be noted that medical law favours autonomy. The *Wye Valley* case championed autonomy as the patient was allowed to leave his infected leg on, despite that resulting in death.[73] A patient's reasons for making a choice must be respected whether they are 'rational, irrational, unknown or even non-existent'.[74] Contrasting this with a case on circumcision, it was held that 'for [circumcision] to be ordered there would... have to be clear benefits... which would demonstrate that circumcision was in his interests notwithstanding the risks'.[75] Therefore, there are a lot of ethical and religious considerations which go beyond even the usual scope of medical law. It is possible that with medicine facilitating a cultural practice, a new hybrid system of decision-making is called for due to the religious and cultural aspects, and the benefits and risks being very different to typical situations.

iv. Drawing the line with children

With children, their 'bodies are constructed as potential and what is permitted by the law is determined by consideration of the future which the child embodies and without consideration of the present reality of the child'.[76] With this in mind, in order to keep consistency with the law's high regard for autonomy, it may be within the child's best interests (to not infringe bodily integrity and assume their future path by waiting until they are of the age of consent due to the non-therapeutic nature of the procedure. Drawing this specific distinction may prevent the abuses on children, whilst giving adults the freedom to exercise their own autonomy, without the extreme procedures.

The conclusion

To summarise, the polarised nature of the debates on FGM and MC have clouded the procedures' similarities and created unnecessary cultural divides that have manifested in double standards within attitudes and the law. Many factors, most notably ethnocentric attitudes, have caused other cultures' perspectives to be disregarded. This has left them unprotected from certain abuses and led to male children's rights being ignored.

As previously mentioned, a totally new approach is needed to remedy this. We live in a world that is 'fundamentally characterised by religious, cultural, ideological, political and other forms of difference',[77] and this has to be remembered. Ultimately what is needed is individuals being willing to change, transparency and education for all cultures. This will allow for an integrated approach, awareness of consent and abuse, as well as cultural sensitivity – all of which will be paramount in tackling these problems effectively. Human rights for adults and children, with regard to FGM and MC, can only be truly protected if a more objective, informed stance is taken.

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[77] Deleat (n 1) 424.

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