Contending with Culture: An Analysis of the Female Genital Mutilation Act of 1996

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Introduction

On September 30, 1996, President Clinton signed into law the Female Genital Mutilation Act. The Act is the first law passed by the United States that is designed to eliminate the age-old practice of female circumcision. It takes a two-pronged approach. The first prong criminalizes cir-


"[I]n today's newspaper, once again, we see it as an issue in a woman who was about to be deported with her two young daughters. It is very, very frightening. If they go back home, both of the children will be genitally mutilated. I hope we can pass the bill to make this illegal. I hope we can move to do everything we can in the world leadership community to put this awful barbaric practice to an end that kills so many young women every year needlessly."

Id. See also 141 Cong. Rec. H1751 (1995) (introducing HR 941, "A bill to amend title 18 United States Code, to carry out certain obligations of the United States under the International Covenant on Civil and Political Rights by prohibiting the practice of female circumcision.").


"whoever knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of another is guilty of a felony. Consent to the procedure by a minor on whom it is performed or by minor's parent is not a defense to a violation of this subdivision.

Minn. Stat. Ann. § 609.2245 (West Supp. 1995). The Minnesota law also requires that the commissioner of health conduct education, prevention, or outreach efforts in communities that practice female circumcision. Id. These state statutes mirror attempts by other countries that have grappled with the regulation of female circumcision among their immigrant populations. Internationally, the United Kingdom and Sweden have passed laws specifically prohibiting female circumcision. See Prohibition of Female Circumcision Act, 1985, ch. 38, 1 (Eng.) (excluding custom from the possible excuses); Karen Hughes, The Criminalization of Female Genital Mutilation in the United States, 4 J.L. & Pol'y 321, 334 (1995).

France has declared that female circumcision is illegal under its existing law. Article 312 of the French penal code criminalizes all violence against children resulting in mutilation. C. PEN., art. 312 (1993-1994). For extensive discussion of the criminalization of female circumcision in France, see Bronwyn Winter, Women, the Law and Cultural Relativism in France: The Case of Excision, 19 Signs 939 (1994). See also Isabelle Gunning, Female Genital Surgeries and Multicultural Feminism: The Ties that Bind; The Differences that Distance, in Third World Legal Studies 1994-95, at 17 (Samuel O. Gyandoh, Jr. ed., 1996) (assessing the merits of the then-proposed U.S. legislation).

Each of the laws mentioned above targets immigrant communities in Western countries or states. Part III.C of this Note analyzes the legal measures adopted by African countries where female circumcision is a traditional practice.
cumcision of a female under the age of eighteen in the United States.\(^5\) It provides that any person who "knowingly circumcises, excises, or infibulates" a female under the age of eighteen may be fined or imprisoned for up to five years.\(^6\) The Act's second prong, which is the focus of this Note, targets the practice of female circumcision outside of the United States. This part of the Act instructs U.S. representatives to the World Bank and other international financial institutions to withhold loan funds from nations which have a "known history" of such practice if these nations do not implement educational programs "designed to prevent the practice of female genital mutilation."\(^7\)

The Female Genital Mutilation Act recasts one of international law's most difficult issues, namely: how can "outsiders" — states and international institutions — work to put an end to a deeply entrenched cultural practice which violates the individual rights of women?\(^8\) More specifically, the Act raises the question: what role, if any, should law play in efforts to eradicate female circumcision?

The goal of this Note is to illuminate the complex challenges posed by the custom of female circumcision. This Note does not revisit the question of whether female circumcision is or is not a human rights violation.\(^9\) Rather, it focuses upon the eradication of the practice and the establishment of means to that end. This Note uses several methods to analyze the probability of success of the Female Genital Mutilation Act of 1996: it

\(^5\) See id.
\(^6\) Id.
\(^7\) 22 U.S.C. § 262K-2 stipulates:

a) LIMITATION — Beginning 1 year after September 30, 1996, the Secretary of the Treasury shall instruct the United States Executive Director of each international financial institution to use the voice and vote of the United States to oppose any loan or other utilization of the funds of their respective institution, other than to address basic human needs, for the government of any country which the Secretary of the Treasury determines —

1) has, as a cultural custom, a known history of the practice of female genital mutilation; and

2) has not taken steps to implement educational programs designed to prevent the practice of female genital mutilation.


\(^9\) While an increasing number of human rights scholars and international lawyers recognize that female circumcision is a human rights violation, there is no consensus on such a classification. See infra Parts I.B and II for a further explanation of the controversies surrounding this issue.
draws lessons from past efforts to eradicate female circumcision, both legal and non-legal; it discusses the mechanisms employed in these past efforts; and it compares female circumcision with two analogous cultural practices — the Indian practice of sati (or widow burning) and the Chinese practice of footbinding. These two practices constituted human rights violations against women. More importantly, both were deeply ingrained cultural practices at one time but more recently have been largely eradicated by means of broad-based campaigns opposing their practice. By comparing the effort to eradicate female circumcision with the largely successful efforts to end these two other deeply entrenched cultural practices, this Note addresses the potential obstacles to the new U.S. legislation and recommends a framework for the effective implementation of the law.

Part I of this Note provides background information about the practice of female circumcision, discusses the U.N. documents which provide the doctrinal foundation for the international campaign against female circumcision, and surveys the history of that campaign. Part II traces scholarship regarding the cultural relativist/universalist debate surrounding female circumcision. It also identifies the factors which make eradication of the practice particularly challenging. Part III analyzes the potential efficacy of the Female Genital Mutilation Act of 1996 as a mechanism for the eradication of female circumcision outside the United States. The first section of this Part analyzes sati and footbinding. The second section explores several failed legislative efforts by African nations to eliminate female circumcision and highlights several reasons for their failure. The next section focuses upon non-legal strategies that have been employed in the campaign against female circumcision. It identifies common characteristics of the strategies which have proven successful. The last section of Part III considers the Female Genital Mutilation Act's use of conditioned foreign aid as a sanction in light of previous experiences with conditioned aid.

Finally, having identified the strengths and potential limitations of the 1996 legislation, this Note offers several recommendations which incorporate lessons from the history of women's human rights generally, and from past experience with the campaign against female circumcision in particular.

I. The Factual and Doctrinal Background

The term “female circumcision” refers to a range of procedures which take place under a variety of circumstances. Many aspects of the practice remain controversial, including what to call it, what constitutes the practice, and what reasons lie behind it.

Some commentators object to the description of the practice as “female circumcision.” For them, the removal of all or part of a healthy

10. Nahid Toubia argues that the term “female circumcision” misleads those unfamiliar with the practices involved:

In the communities where FGM [female genital mutilation] takes place it is referred to as “female circumcision.” This term, however, implies an analogy to
organ from a female is a vastly different procedure from male circumcision, which removes the foreskin of the penis. These commentators believe that "female genital mutilation" is a more appropriate term for the practice. Others, particularly those who emphasize the importance of contextualizing the practice within a specific culture, argue that "female circumcision" is the only label which is adequately sensitive to the cultural pressures which constrain the choices of circumcised women and their circumcision-eligible daughters. This linguistic debate mirrors the controversy surrounding the practice itself.

A. The Practice

Female circumcision has existed for nearly 2,500 years. It is practiced in approximately forty countries around the world, twenty-eight of which are in Africa. According to the World Health Organization (WHO), the number of circumcised women and girls in Africa and in some parts of Asia increased to between 85 and 115 million in 1994. Additionally, an estimated two million girls are at risk of being circumcised each year. The majority of those affected live in Africa, however immigrant communities in Europe, Australia, Canada, and the United States increasingly practice female circumcision.

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non-mutilating male circumcision, which is not the case. Male circumcision is the cutting off of the foreskin from the tip of the penis without damaging the organ itself. The degree of cutting in female circumcision is anatomically much more extensive. The male equivalent of clitoridectomy (in which all or part of the clitoris is removed) would be the amputation of most of the penis. The male equivalent of infibulation (which involves not only clitoridectomy, but the removal or closing off of the sensitive tissue around the vagina) would be removal of all the penis, its roots of soft tissue, and part of the scrotal skin.


11. See e.g., Touibia, supra note 10, passim.

12. See Savanne, Why We Are Against the International Campaign, 40 INTL. CHILD WELFARE REV. 37 (1979); Kay Boulware-Miller, Female Circumcision: Challenges to the Practice as a Human Rights Violation, 8 HARV. WOMEN'S L. J. 155 (1985).

13. Recognizing that neither "female circumcision" nor "female genital mutilation" is a neutral term, other considerations should dictate the semantic choice. Since "female circumcision" is the term usually preferred by women in the communities that engage in the practice, this Note will use that term as a starting point for culturally sensitive efforts toward elimination of the practice.


15. The 28 nations include: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Cote d'Ivoire, Djibouti, Egypt, Ethiopia and Eritrea, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan (North), Tanzania, Togo, Uganda, and Zaire. See Touibia, supra note 10, at 25.


17. See id.
Both the type of circumcision and the age at which the practice is carried out vary from region to region. In some regions of West Africa, female circumcision tends to be performed on women between the ages of fourteen and fifteen, the time when young women reach sexual maturity.\(^{18}\) The procedure typically serves as a rite of passage into adulthood and is accompanied with elaborate celebratory rituals.\(^{19}\) In East Africa, where female circumcision relates more to the control of female sexuality than it does to adulthood, girls undergo the procedure when they are between the ages of seven and eight.\(^{20}\)

There are three basic categories of female circumcision, ranging in degree of severity. Circumcision proper, commonly referred to by ritual Muslims as “sunna circumcision,” is the least severe but is also the rarest.\(^{21}\) In this type of circumcision, the clitoral prepuce is removed, while the gland and body of the clitoris are left intact.\(^{22}\) In the second type of procedure, known as excision, the clitoris and the labia minora are removed.\(^{23}\) The third and most dangerous type of procedure, known as total infibulation or “Pharaonic circumcision,” involves the excision of the clitoris, the labia minora, and parts of the labia majora. This procedure leaves a woman with only a tiny posterior opening through which to pass urine and menstrual blood.\(^{24}\) Total infibulation creates a closed “hood of skin” so that recutting must occur prior to intercourse and with each childbirth. In countries such as Sudan, Somalia, and Djibouti, eighty to ninety percent of all female circumcision is total infibulation.\(^{25}\)

Female circumcision presents tremendous health hazards. Many girls die as a result of the procedure. Doctors in Sudan estimate that, in areas where antibiotics are not readily available, the procedure is fatal for approximately one-third of all girls subjected to the more extreme forms of female circumcision.\(^{26}\) Another factor contributing to the hazardousness of the procedure is the delicate tissue involved and the crude instruments

\(^{18}\) See id. at 23.

\(^{19}\) See id.

\(^{20}\) See id. But see Toubia, supra note 10, at 9 ("Most commonly, girls experience Female Genital Mutilation between four and eight years of age, at a time when they can be made aware of the social role expected of them as women."); Nahid Toubia, Female Circumcision as a Public Health Issue, 331 (11) New Eng. J. Med. 712 ("Girls are commonly circumcised between the ages of 4 and 10 years, but in some communities the procedure may be performed on infants, or it may be postponed until just before marriage or even after the birth of the first child.").

\(^{21}\) See Efua Dorkenoo & Scilla Elworthy, Female Genital Mutilation: Proposals For Change 7 (3d ed. 1992).


\(^{23}\) See id. at 3.

\(^{24}\) See Toubia, supra note 10, at 10.

\(^{25}\) See id. at 10-11. In some countries, total infibulation proper has been declared illegal and a slightly modified form of infibulation exists. See id. at 11. This modified procedure, and its effects and complications, are virtually identical to infibulation. See id.

that are often used to perform the operation. Kitchen knives, old razor blades, broken glass, and sharp stones are commonly used. Of those women and girls who survive the procedure, many face devastating health consequences including acute pain, shock, hemorrhaging, and infection. Apart from serious physical injury, "it is well known that [the] extensive and enduring pain" caused by female circumcision, "can create deep psychological wounds."

Having examined the practice itself, this Note now discusses the international legal framework for the anti-circumcision movement.

B. International Efforts to Eradicate Female Circumcision

1. International Legal Efforts

Fundamental human rights standards enunciated in the Universal Declaration of Human Rights and echoed in subsequent U.N. treaties and conventions provide a strong legal foundation for the campaign against female circumcision. States that sign the U.N. Charter oblige themselves to promote human rights and freedoms. By signing the Charter, a state recognizes that treatment of its citizens is a matter of international concern no longer insulated by state sovereignty.

Although female circumcision is not performed by the government upon one of its citizens, but by one private individual upon another, the trend in human rights law suggests that a private act can be a violation.

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27. See Slack, supra note 14, at 442.
28. See id. at 452-53 (describing the difficulties circumcised women face in menstruating and engaging in sexual activity).
29. Id. at 454. The health consequences of all forms of female circumcision can be serious. Although most long-term complications stem from infibulation, excision can lead to repeated infections, soreness, and intermittent bleeding. See Touba, supra note 10, at 14. In contrast to excision, the health complications from infibulation ordinarily persist for years after the procedure. The following are some of the common long-term complications:

- repeated urinary infection; stones in the urethra and the bladder due to obstruction and repeated infection, excessive growth of scar tissue at the site, which may become disfiguring...
- Dermoid cysts may form on the stitch line...
- Cysts have been reported from the size of a pea to as large as a grapefruit, and must be removed by surgery.

Id. An infibulated woman suffers excruciating pain during intercourse, since consummation of marriage requires that the scar be opened with a razor or knife. In addition, infibulation destroys much of the vulval nerve. One study among infibulated women found that few knew what an orgasm was. See World Health Organization, A Traditional Practice that Threatens Health — Female Circumcision, 40(1) WHO Chron. 31, 33 (1986).

31. U.N. CHARTER arts. 3, 55(c), 56.
33. See generally Dinah Shelton, State Responsibility for Covert and Indirect Forms of Violence, in HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY: A GLOBAL CHALLENGE 265 (Kathleen Mahoney & Paul Mahoney eds., 1993); Rebecca Cook, Accountability in International Law for Violations of Women's Rights By Non-State Actors, in RECONCEIVING REAL-
This emerging human rights trend imputes state involvement such that a government may violate international law through indirect "consent or acquiescence" to private acts as well as through its own action.\textsuperscript{34} State complicity in "private" violations is not established by random incidents which go unpunished by the state. Instead, it depends upon the verifiable existence of systematic deprivation.\textsuperscript{35} These developments confirm the position of many legal scholars that the distinction between public and private acts in the context of international law does not exist insofar as human rights violations are concerned. Rather, the real question is whether a particular act — private or public — is protected.\textsuperscript{36} In the case of female circumcision, a survey of international law suggests that the practice is not a protected act.

Several international directives preceded the Female Genital Mutilation Act, one of which is the 1948 Universal Declaration of Human Rights (UDHR).\textsuperscript{37} Article 5 of the UDHR declares that, "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."\textsuperscript{38} The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which followed and elaborated upon the UDHR, also forbids torture. It defines the term broadly enough to include the practice of female circumcision.\textsuperscript{39} According to the Convention, torture is:

\begin{quote}
[\textit{A}ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of . . .
\end{quote}

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\textsuperscript{34}See Gunning, \textit{supra} note 8, at 238; Shelton, \textit{supra} note 33, at 271 ("[B]reach includes both acts and omissions according to the type of conduct required by the rule in question"). Section 207 of the Restatement (Third) of the Foreign Relations Law of the United States provides that a State's responsibility extends to all violations of international law whether resulting from action or inaction. In \textit{Velasquez Rodriguez v. Honduras}, the Inter-American Court of Human Rights held that, under Article 1(1) of the American Convention, requiring the state to "ensure . . . the free and full exercise of . . . rights and freedoms," the Honduran government was responsible for politically motivated "disappearances" of citizens even though they were not conspicuously carried out by government officials. 28 I.L.M. 294, 323 (1989). The Court's holding established the principle of complicity. \textit{Id.}
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\textsuperscript{35}See Romany, \textit{supra} note 33, at 99-100.
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\textsuperscript{37}Universal Declaration of Human Rights, \textit{supra} note 30.
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\textsuperscript{38}Id. art. 5.
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\textsuperscript{39}Some authors disagree. See, e.g., L. Amede Obiora, \textit{Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision}, 47 \textit{Case W. Res. L. Rev.} 275, 277 (1996) [hereinafter \textit{Bridges and Barricades}] (arguing that the meaning of article 5 "is not self-evident" and that "conceptions of human dignity tend to be indeterminate and contingent, and what may appeal to one school as torture may be absolved or approved by another as culture").
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or with the consent or acquiescence of a public official or other person acting in an official capacity.\textsuperscript{40}

In addition, a series of human rights treaties establish an individual's right to corporal integrity, a right violated by female circumcision. Article 3 of the UDHR states that: "everyone has the right to liberty and the security of person."\textsuperscript{41} Article 2 of The Declaration on the Elimination of Violence Against Women specifically identifies "female genital mutilation" as a form of violence against women which must be condemned and eradicated by all States.\textsuperscript{42} The Declaration provides that States may not invoke custom, tradition, or religion in an attempt to evade its obligation to eliminate violent acts.\textsuperscript{43} It also requires that States' policies targeting the elimination of all forms of violence against women should include: development of domestic legislation punishing violence against women; adoption of preventative measures; and coordination of education programs geared toward the modification of cultural and social patterns such as female circumcision.\textsuperscript{44}

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is another human rights instrument that is vital to the international campaign against female circumcision.\textsuperscript{45} CEDAW specifically guarantees women a series of health rights including: the right to have one's health and reproduction protected,\textsuperscript{46} and specifically the right to adequate health care during pregnancy,\textsuperscript{47} and the right to have access to adequate health care generally.\textsuperscript{48} The Convention specifically condemns social and cultural practices which perpetuate gender inequality. Article 2 of CEDAW requires that States Parties "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women . . . ."\textsuperscript{49} Additionally, under article 5(a) of CEDAW, States Parties commit themselves to take all appropriate measures:

[T]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. . . . \textsuperscript{50}


\textsuperscript{41} Universal Declaration of Human Rights, supra note 30, art. 3.


\textsuperscript{43} See id. art. 4.

\textsuperscript{44} See id. arts. 4(d), 4(i), 4(j), 4(k).


\textsuperscript{46} Id. art. 11(1)(f).

\textsuperscript{47} Id. arts. 12(1), 14(2)(b).

\textsuperscript{48} Id. art. 12(2).

\textsuperscript{49} Id. art. 2(f).

\textsuperscript{50} Id. art. 5(a).
In 1990, the Committee on the Elimination of Discrimination Against Women, which was created by CEDAW, explicitly recognized the eradication of female circumcision as a major objective on the U.N. agenda. In its ninth session, the Committee recommended that States Parties take certain actions to eradicate the practice such as: collect and disseminate data; support women's organizations working at the national and local levels for the elimination of female circumcision; encourage politicians, professionals, religious, and other community leaders to influence public attitudes towards female circumcision; and conduct educational seminars to address the consequences of female circumcision. In addition, the Committee instructed States: to include in their national health policies strategies aimed at the eradication of female circumcision; to "invite assistance, information and advice" from organizations within or associated with the United Nations; and to include in their reports to the Committee the steps to eradicate female circumcision which their nation has taken thus far.

Because female circumcision is often performed on young girls, it may violate the rights of children. Article 19 of the Declaration of the Rights of the Child requires States "to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation." The Convention on the Rights of the Child specifically extended children's rights to protect them from harmful customary practices. Under the Convention, "States Parties ... shall seek to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children." Given the specific language of article 24, there is little doubt that female circumcision falls within the ambit of the Convention.

Having surveyed in this Part the major instruments of international law that lay the legal foundation for the campaign against female circumcision, the following Part addresses the international community's non-legal campaign against the practice.

2. The International Campaign

In 1979, the World Health Organization (WHO) initiated the first United Nations-sponsored forum to discuss the practice of female circumcision. In February 1979, the WHO Regional Office for the Eastern Mediterranean organized the Seminar on Traditional Practices Affecting the Health of

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52. Id.
54. Id. art. 24(3).
55. Id.
56. See Slack, supra note 14, at 466-67.
Women and Children. The Seminar took place in Khartoum, Sudan, and included representatives from ten countries which traditionally practice female circumcision. In August 1982, the WHO formally stated its position to the United Nations Commission on Human Rights. The WHO subsequently adopted the following recommendations of the Khartoum seminar:

- that governments should adopt clear national policies to abolish the practice, and to inform and educate the public about its harmfulness;
- that programmes to combat it should recognize its association with extremely adverse social and economic conditions, and should respond sensitively to women’s needs and problems;
- that the involvement of women’s organizations at the local level should be encouraged, since it is with them that awareness and commitment to change must begin.

The WHO position statement also unequivocally opposed the medicalization of female circumcision and suggested that health professionals should not perform the procedure under any circumstances. Several years later, the thirty-ninth session of the WHO Regional Committee for Africa in September 1989 resolved to communicate these recommendations to member states.

In 1984, the Inter-African Committee Against Traditional Practices Affecting the Health of Women and Children was established by delegates to the Conference on Traditional Practices organized by the U.N. Non-Governmental Organization Working Group on Traditional Practices. The Committee created national and regional anti-female circumcision networks with affiliates in twenty-three key African countries. In May 1984, the Economic and Social Council of the United Nations adopted a resolution ratifying the aims and purposes of the Committee.

In 1993, in Vienna, Austria, the World Conference on Human Rights issued a declaration that female circumcision is a form of violence against

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58. See DORKENOO & ELWORTHY, supra note 21, at 18. The countries involved were: Djibouti, Oman, Egypt, Somalia, South Yemen, Ethiopia, Kenya, Nigeria, Burkina, and Sudan. See id.

59. See id.

60. The World Health Organization is an international organization comprised of the health ministries of almost every country. The members assemble annually in Geneva at the WHO headquarters. WHO’s activities are carried out by its regional offices. Additional offices are located in every member country. WHO contains research departments which focus upon particular significant health concerns. Also, WHO publishes research and conference reports of WHO-sponsored seminars and professional conferences. See HOSKEN, supra note 10, at 330.


The United States supports the recommendations of the Khartoum seminar: that governments should adopt clear national policies to abolish female circumcision; and that governments should intensify educational programs to inform the public about the harmful effects of female circumcision. See id. at 31.

62. Id.

63. See id.

64. See DORKENOO & ELWORTHY, supra note 21, at 21.
women. In the same year, the World Health Assembly passed a resolution to establish national policies and programs in all member states geared toward the elimination of female circumcision. In April 1996, at its Fourth Meeting in Geneva, the Global Commission on Women’s Health, a group established under the auspices of the WHO, confirmed the international commitment of the United Nations to the eradication of female circumcision. The Commission also acknowledged the need to “counter attitudes among women themselves which serve to condone and perpetuate . . . the acceptance of female genital mutilation.”

Finally, female circumcision was addressed and condemned by the nations present at the 1995 Fourth World Conference at Beijing. The conference concluded that governments and international and non-governmental organizations should develop policies and programs to eliminate female genital mutilation. Another resolution of the Conference focused upon female circumcision in the context of “violence against the girl child.” This resolution directed governments and international and non-governmental organizations to enact legislation protecting girls from “genital mutilation.”

With an arsenal of treaties, conventions, and resolutions, the international campaign against female circumcision is well equipped doctrinally. However, the ambitious declarations in these documents can only be realized if they are effectively enforced. Lack of effective enforcement is the perennial obstacle to the realization and enjoyment of international legal rights. However, in the case of female circumcision, culture is an additional obstacle.

II. The Inextricability of the Individual and the Cultural: Female Circumcision in Cross-Cultural Perspective

It is impossible to develop an effective strategy to eradicate female circumcision without a basic understanding of the difficult theoretical issues involved. Underlying the debate is the tension present in many human rights initiatives between universalism and relativism. Since the begin-

68. Id. at 283.
69. According to Steiner and Alston, the tension between universalism and relativism is not a new one. However, it took on renewed vigor in light of the human rights movement's erosion of notions of sovereignty, domestic jurisdiction, and cultural autonomy that in an earlier period had enjoyed greater strength. Indeed, the advocates of cultural relativism often employ the ideas clustered around those notions to sustain stronger, more traditional ideas of state autonomy.

STEINER & ALSTON, supra note 8, at 192.

There is an on-going debate among scholars and policy practitioners regarding how to accommodate the practices of a particular culture without undermining the dictates of universal rights. Hopefully, this debate will prompt a balancing of the universal and the
ning of the human rights movement at the end of World War II, legal scholars have debated whether codified human rights norms should be applied universally to all cultures.70 Universalist scholars answer this question with a yes, reasoning that there are certain fundamental, inviolable rights that transcend all cultural boundaries.71 Cultural relativists,72 on the other hand, have long argued that human rights are not universal norms but instead are derived from a perspective biased by Western liberal individualism.73 Therefore, cultural relativists doubt that there are any universal rights to serve as the cornerstones of a universal international law. According to the relativist, so-called universal norms are merely an imposition of Western values upon non-Western peoples.74 In addition to defining human rights differently, the relativist argues that Western and non-Western societies prioritize different human rights differently.75 For

relative in the enforcement of human rights norms. On one side of the debate, universalists such as Jack Donnelly argue that the rise of industrialization, modernization, and Westernization has, "for better or for worse," separated the individual from the community, thereby mandating the recognition of universal human rights. Jack Donnelly, Universal Human Rights in Theory and Practice 159-60 (1989). In response to Donnelly's underlying assumption, relativist theorists question whether non-Western peoples view individual human rights with the same degree of inevitability. See L. Amede Obiora, Feminism, Globalism, and Culture, 4 Ind. J. Global Stud. 355, 402 (1997) (asking "is it obvious that the voices from below consider the individualistic bent of human rights inevitable?"). While globalization "is a universalizing process which creates common problems," legal mechanisms "run into complications when the set of norms and sanctions evolved to respond to the common incidence ignore the redeeming virtues of plural competing values [in order] to (re)produce Western hegemony." Id. at 402-03. In response to this danger, Pannikar suggests that: (1) other traditions should develop and fashion their own perspectives aligned with or in opposition to Western rights, and (2) an intermediate space should be found for criticism that seeks "mutual fecundation and enrichment." Raimundo Pannikar, Is the Notion of Human Rights a Western Concept?, 120 Diogenes 75, 82 (1982). While Pannikar's approach seeks to supplant international human rights standards with culture-specific human rights standards, An-Na'im argues that international human rights norms can be reconciled with individual cultural imperatives by reinterpreting those cultural imperatives. Abdullahi Ahmed An-Na'im, Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives, 3 Harv. Hum. Rts. J. 13 (1990). Premising his argument upon the idea that human rights violations reflect the lack of cultural legitimacy, An-Na'im argues that human rights activists should struggle to have their interpretations of the scriptural imperatives... accepted as valid and appropriate for application." Id. at 51. Focusing upon the status of women in Islamic cultures, An-Na'im argues that the Shari'a (the accepted version of Islamic law) should serve as the primary object of reinterpretation. See id.

70. See Steiner & Alston, supra note 8, at 192-93.
71. See id.
72. See generally id. at 166-255.
73. See Pannikar, supra note 69, at 75.
74. See id.
75. See generally Lewis, supra note 8. But see Fitnant Naa-Adjeley, Reclaiming the African Woman's Individuality: The Struggle Between Women's Reproductive Autonomy and African Society and Culture, 44 Am. U. L. Rev. 1351, 1364 (1995) (arguing that although "it is true that African culture involves a greater sense of group identity than some other peoples, one cannot argue that the African has no individual identity."). Existence of a group identity does not infer the loss of one's individual rights. See Bondzie-Simpson, A Critique of the African Charter on Human and People's Rights, quoted in id. at 1365 ("Group identity never means individual submergence, much less individual nonexistence.").
example, Western liberal human rights scholars tend to prioritize civil and political rights over social and cultural rights, while African human rights scholars tend to do the opposite.76

Consider the following relativist argument: "[N]orms of morality are relative to a given society; the ethical basis for international human rights is Western; therefore international norms should not be the basis of value judgments in other cultural contexts."77 This assertion is merely the beginning of the analysis. The relativist also rejects the Western commitment to the establishment of an international trans-cultural legal regime that seeks to impose a particular set of norms to regulate the way individual nations conduct their affairs vis-à-vis groups and individuals. Therefore, the relativist strikes at the very essence of the international legal regime.

Universalists argue that relativists' toleration of harmful cultural practices such as female circumcision perpetuates the violation of human rights and reinforces the subjugation of women.78 Many Western feminists have argued that relativist "cultural justifications" for female circumcision merely reinforce the male control of women's bodies.79 Western feminists dismiss the fervid anticipation precipitating the circumcision rite along with young girls' so-called desire to undergo the procedure as a product of false consciousness.80

Gayatri Spivak articulates the theoretical void that exists between the poles of radical relativism and universalism:

You pick up the universal that will give you the power to fight against the other side and what you are throwing away by doing that is your theoretical purity. Whereas the great custodians of the anti-universal are obliged therefore simply to act in the interest of a great narrative, the narrative of exploitation, while they keep themselves clean by not committing themselves to anything.81

Any attempt to resolve this dilemma requires a balance between universal theories and local, individual experience. Customary international law is

76. See Lewis, supra note 8, at 18. Higgins states that: [N]on Western states have argued that the very hierarchy of human rights established in [human rights] instruments privileges civil and political rights over economic, social, and cultural rights in a way that is biased toward both Western political traditions and the wealth of Western states relative to the rest of the world. Higgins, supra note 8, at 93.


78. See Higgins, supra note 8, at 112.


often criticized as being inattentive to cultural differences. Those agitating for the eradication of female circumcision must exhibit particular sensitivity if they want to temper that inattentiveness. One author's call for the development of "situated perspectives" seems to provide this temperance.

"Situated perspectives" compromise between universalism and relativism. Such an approach "encourages an awareness of the differences between women while also recognizing our commonalities." The approach resembles "positionality," another feminist legal method that attempts to reconcile seemingly contradictory "truths." Positionality does not rely upon the assumption that some fixed, discoverable, "real" truth exists. Rather, it recognizes the contingency of truth and holds that all knowledge is based upon experience. Positionality rejects the objectivity of truth and substitutes the assumption that "knowing" is both situated and incomplete. Individuals must not only acknowledge the limitations of their own perspectives but must also improve their knowledge by examining the perspectives of others. Thus, positionality "imposes a twin obligation to make commitments based on the current truths and values that have emerged from methods of feminism, and to be open to previously unseen perspectives that might alter these commitments."

In this debate, the universalists have largely prevailed. Prior to the proliferation of international laws targeting female circumcision, the debate focused upon the preliminary question of whether female circumcision is a legitimate practice. Prioritizing the cultural justifications for

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83. Charlesworth, supra note 81, at 12.
84. Id.
86. Anna Funder repudiates the assumption that truth is universal, arguing: Westerners are used to thinking that for something to be true, it must be universally applicable: the idea of culturally different value systems threatens the truth of our values. This is an unnecessary logic: the issue is how and in whose interests culture and rights work, not whether they are true. Anna Funder, De Minimis Non CURat Lex: The Clitoris, Culture, and the Law, 3 Transnat'l L. & Contemp. Probs. 417, 439 (1993).
87. See Bartlett, supra note 85, at 880.
88. According to Tracy Higgins, this contingency does not entail radical relativism. Higgins, supra note 8, at 107. Instead, she argues: The relativist laments if she believes it a precondition of political action . . . However, in the context of human rights, recognition that a particular standard is culturally contingent does not logically preclude its imposition cross-culturally as a principle of international law or a standard of evaluation. Id. By relinquishing universalist claims, one need not necessarily forego criticism or even human rights activism. Thus, while judgments can be made, they must "simply be made contingently." Id. at 108.
89. See Bartlett, supra note 85, at 883.
90. Id.
91. See Abdullahi Ahmed An-Na'tim, State Responsibility to Change Religious and Customary Laws, in Human Rights of Women 167-88 (Rebecca Cook ed., 1994); Boulware-Miller, supra note 12, at 157, n.18 (arguing that the embeddedness of the practice and
female circumcision, relativists argued that it was legitimate and opposed outside intervention of any kind. However, due to significant evolution of international attitude and doctrine, along with the groundswell of political opposition in this country that culminated in the passage of the Female Genital Mutilation Act, the debate over female circumcision has shifted from the issue of whether it is legitimate to the issue of how to eradicate it. Although the relativist/universalist debate had been resolved largely in favor of universalism, effecting lasting social change will require reconsideration of the cultural relativist's arguments. However, while relativist concerns should guide and inform strategy, they should not persuade reformers and policy makers to avoid intervention altogether.

Attentiveness to the cultural context of female circumcision is the philosophical starting point of any strategy for intervention. As Professor Obiora argues, “[w]hatever the subversive uses of culture have been, they are not sufficient grounds to deny the validity of arguments for cultural sensitivity.” Recognizing how rooted some cultural imperatives are does not entail the subjugation of the individual rights of women to the interests of their larger socio-cultural group. Rather, this recognition identifies “the objective constraints of socio-legal reform and [thereby] enhance[s] the prospects” for effectively strategizing eradication of the practice.

Whichever approach one adopts, universal or relativist, one realization seems fundamental: while the current global environment leads to a tension between universalism and relativism, human rights efforts will fail if imposed as “coerced homogeneity.” As Professor Obiora concludes, “people are not likely to pledge allegiance to distant and imposing regimes, whatever the importance, unless the regimes are connected to arrangements that reflect the identity of implicated populations.”

A. The Search for Meaning: The Challenges of Cultural Embeddedness

Female circumcision is deeply embedded in a matrix of beliefs, values, and attitudes which both shape and provide functional significance to the practice. As Professor Obiora argues:

An outsider who has the advantage of distance . . . might be tempted to dismiss the practice as irrational. . . . Participants who are more steeped in the indigenous psychosocial context are more prone to holistic appraisals

the “consensual” nature of the practice problematize its characterization as a human rights violation). One leading Western anti-circumcision crusader argues that Western feminists have an obligation to intervene:

I feel that my own personal sense of dignity and worth as a woman and human being is under attack by these mutilations, inflicted on helpless children for no other reason than that they are female. . . . I find it impossible, indeed absurd, to work for feminist goals, for human rights, for justice and equality, while ignoring senseless attacks on the essence of the female personality, which these operations represent.

Hosken, supra note 10, at 14.
92. Bridges and Barricades, supra note 39, at 377-78.
93. Id. at 378.
94. Obiora, supra note 69, at 406.
95. Id.
and less enchanted with the worship of rationality. Accordingly, they may perceive the significance and efficacy of female circumcision differently.96

The persistence of the various types of female circumcision indicates that the practice is an intricately embedded practice "perpetuated by people who must perceive . . . [it] as beneficial and necessary to family and economic organisation."97

While the meaning of any given cultural practice is largely subjective and constantly dynamic, members of cultures that practice female circumcision give several reasons for the procedure. In many societies, it signifies a child's coming of age.98 In communities where female circumcision is a rite of passage, one "is not simply born a 'woman.'"99 Rather, an individual's family and friends will regard her as truly female only after she is circumcised.100 This rite of passage is marked by the variety of ceremonies and festivities which accompany the procedure. For example, in Man, on the Côte d'Ivoire, the circumcised girl's rite of passage culminates in a day of celebration and is accompanied by bountiful gifts, the praise of the community, and a large feast.101 Similarly, the Sande initiation process lasts several months during which time the newly circumcised girl is kept in seclusion and taught the secrets of successful motherhood.102 Although the specifics of the rite of passage may differ from culture to culture, cross-culturally, circumcision integrates the young woman into a particular community, and thereby serves as a mark of group identity and status.103

As with all time-honored cultural practices, tradition is the major justification for the practice of female circumcision.104 Since female circumcision has established itself as the norm for women in the cultures which practice it, failure to undergo the procedure renders women and girls social outcasts.105 The practice goes unquestioned in nations such as Sudan, where the incidence of female circumcision is high. Strong pressure to conform to tradition is evidenced by the community's perception of the uncircumcised woman. For example, when questioning members of a Sudanese community, one survey found that the expression "son of an uncircumcised mother" is one of the most derogatory insults.106 One father of a Yacouba girl recently explained: "If your daughter has not been excised, the father is not allowed to speak at village meetings . . . It is an obligation. We have done it, we do it and we will continue to do it."107

96. Bridges and Barricades, supra note 39, at 295.
98. See id. at 47.
99. Bridges and Barricades, supra note 39, at 295.
100. See id.
102. See Carol MacCormack, Biological Events and Cultural Control, 3 Signs 98 (1977).
103. See Bridges and Barricades, supra note 39, at 295.
105. See id.; Dugger, supra note 3, at A6.
106. Dugger, supra note 3, at 6.
107. Id.
Thus, failure to follow tradition and circumcise one's daughter results in diminished social status.

Religion is another common justification for the practice of female circumcision. Many Muslims believe that circumcision is a religious commandment.\footnote{109} Circumcision for men is a tradition of the Islamic faith.\footnote{109} In the Hadith, Mohammed said, "Islam is the religion of purity," and one of the five ways in which a man can attain purity is through circumcision.\footnote{110} For women, however, there is no explicit mandate, only an implicit suggestion that circumcision "is an ordinance in men and an embellishment in women."\footnote{111} However, regardless of whether female circumcision is or is not part of the Islamic mandate, the belief that circumcision is something that God has mandated plays an important role in its persistence.

Additionally, many cultures perceive female circumcision as the only means of achieving feminine beauty and cleanliness.\footnote{112} In a study by Dareer, subjects described an uncircumcised girl as "dirty and impure."\footnote{113} Translated literally, \textit{tahur}, the Sudanese term for female circumcision, means purity and cleanliness.\footnote{114} In the 1940s, some ethnologists reported that the Meru of Kenya considered circumcision to be a necessary act of purification. Similarly, the Sande continue to justify female circumcision on grounds of cleanliness.\footnote{115}

In cultures that circumcise, the common belief is that circumcision is an integral part of femininity. As one author explains, "[p]erhaps the most important rationale for female circumcision is that, because it is such an ancient and commonly practiced tradition, reduced or infibulated genitals are simply considered normal."\footnote{116} In many cultures where female circumcision is prevalent, tradition forbids a man from marrying an uncircumcised woman.\footnote{117} In response to the mere suggestion of an uncircumcised girl, one Yacouba father replied, "No man in the village will marry her."\footnote{118} Part of this rationale derives from the link between female circumcision and the preservation of female virginity.\footnote{119} Some of the explanations for circumcision which resemble this line of argument include:

\begin{itemize}
\item \textit{Reduced but do not destroy.}\footnote{114}
\item \textit{Sunna proper}, the most minor form, where only the excess skin covering the clitoris is excised, leaving the clitoris itself intact.\footnote{115}
\item \textit{Suggested by Islam is sunna proper}, the most minor form, where only the excess skin covering the clitoris is excised, leaving the clitoris itself intact.\footnote{115}
\item \textit{The type of circumcision merely "suggested" by Islam is sunna proper}, the most minor form, where only the excess skin covering the clitoris is excised, leaving the clitoris itself intact.\footnote{115}
\item \textit{Suggested by Islam is sunna proper}, the most minor form, where only the excess skin covering the clitoris is excised, leaving the clitoris itself intact.\footnote{115}
\item \textit{Suggested by Islam is sunna proper}, the most minor form, where only the excess skin covering the clitoris is excised, leaving the clitoris itself intact.\footnote{115}
\end{itemize}
"[c]ircumcision preserves the girl's honour," and "[c]ircumcision is a protection." According to several practicing cultures, female circumcision limits sexual promiscuity and ensures that marriageable young women will not "wander about looking for men." Thus, in Sudanese society, where women view marriage as mandatory, and women's economic realities depend upon it, one cannot afford to forego the procedure.

Many sources suggest that the stigma associated with not being circumcised attaches early. This stigma compels a girl to undergo the operation. An unexcised girl is often ridiculed, if not despised. Her peers ask, *el beydourha menao* ("who wants her?") and *el beyaresha meno* ("who marries her?"). Because of this stigma, many highly educated men and women in communities where circumcision persists characterize excision as an irrational practice but continue to have their daughters circumcised. Faced with these cultural, religious, economic, and societal pressures, both mothers and daughters within circumcising cultures usually "consent" to the procedure. In fact, most of the midwives who perform the procedure are women. This apparent consent complicates the eradication campaign. A recent New York Times article captured this complexity:

Twelve-year-old Marthe Bleau was then playing across the courtyard. . . . For her, womanhood beckons. And genital cutting is the portal she must walk through to enter it. "I feel my friends are better than me because they have been cut down there," she had said earlier, her hands twisting in her lap. "It's very difficult, but I want to do it."

Taken together, these strong societal pressures present real challenges to eradication efforts. The next section looks at particular strategies that may help overcome the cultural embeddedness of female circumcision.

### B. The Challenges Facing Efforts to Eradicate Female Circumcision and the Need for Careful Strategizing

Eradication efforts are likely to falter if the targeted population believes that such efforts ignore the voices of local African women. The campaign against female circumcision will fail if it is perceived as an imperialist attempt to save non-Westerners from their "peculiar customs." Though one may easily dismiss female circumcision as "false consciousness,"

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120. *Id.*
121. *Id.*
122. See *id.* at 73, 74. But see *Bridges and Barricades*, *supra* note 39, at 318 (refuting the "economic dependence" argument by highlighting the inapplicability of this Western construct to African cultures: "[c]laims of acute economic dependence are not borne out in reality; since economic marginalization in the African context is a social reality for both men and women, economic activity is a compelling necessity, and a tradition, for women.").
123. See Boulware-Miller, *supra* note 12, at 167.
124. *See id.*
125. See *Sanderson*, *supra* note 97, at 49.
127. "False consciousness" is an assumption which underlies much of radical feminist thought. *See generally* CATHERINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987). Radical feminist theory emphasizes the universal existence of
the failure to engage African women in dialogue on their own terms and within the context of their cultural realities will do little to change their beliefs or behavior.\textsuperscript{128}

To many African women, Western interest in circumcision seems paternalistic and is a reminder of a "bygone era of colonial domination."\textsuperscript{129} One commentator has argued that:

The furor in the US over female circumcision, where it has taken on the prominence of a \textit{cause celebre}, is hardly surprising. There is always something or other which American women . . . feel bound to take up on behalf of women world-wide, in much the same way as their government sees itself as the world's policeman. . . . The patronizing and maternalistic attitude is what many of us find totally unacceptable.\textsuperscript{130}

Given the history of Western colonialism in many of the nations in which circumcision is practiced, this perception of imperialism is especially offensive. African feminists have often reacted with bitter resentment to non-Africans' condemnation of the practice.\textsuperscript{131} Clearly, ethnocentric eradication efforts which devalue the intelligence and cultural integrity of a patriarchy. \textit{See id.} In doing so, radical feminist scholars such as Catherine MacKinnon argue that subjugated women's failure to recognize their oppression is merely a function of their own ignorance. \textit{See id.} Just as critical race scholars have argued against the essentialist tendencies of radical feminist thought, so too have African women with respect to the campaign against female circumcision. \textit{See generally Patricia Hill Collins, Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment} (1990).

128. L. Amede Obiora recognizes that "freedom lies in the ability to choose and fulfill one's desires," but argues that, while it is important to reject paternalism, "it would seem that in convenient circumstances, some feminists are quick to impose certain choices on other women under the pretext that patriarchal hegemony and conditioning insidiously constitute and constrain these women's choices." \textit{Bridges and Barricades, supra} note 39, at 314. Therefore, characterizing indigenous women as victims of false consciousness "is not only myopic; on some level it is inexcusably afeminist." \textit{Id.} at 313-14.


We have been colonised by this Western world and we have, let's say, something against them. That means we don't want them to overwhelm our lives anymore . . . I want to collaborate with them. But I don't think I can be in the same group with them to fight something in my own country, because I will feel, "Here they go again, colonisation." But I love being asked by people working on female circumcision, "What are the specifics in Mali?" And suggesting "Why don't you do that in Mali?" Suggesting means that I can say no, or yes. . . . That's the kind of working relationship I want between white and black women on the topic of female circumcision.

\textit{Id.}


131. \textit{See} Gunning, \textit{supra} note 8, at 225. Gunning quotes one African feminist who opines that: "The African, like all peoples of the world, likes to make even bitter criticism against his country and people but finds it difficult to tolerate that others do it, especially at a time when Africa tries to find its own identity and unity." \textit{Id.} (quoting Pelayo Correa, Excision, WHO/EMRO Technical Publication Seminar on Traditional Practices Affecting the Health of Women and Children in Africa 56 (1984)).
different community will provoke resistance to, rather than facilitate, change.\textsuperscript{132} Thus, reformers must avoid alienating their audience and must recognize the fact that manipulation of women's bodies is not unique to African cultures but occurs in Western cultures as well.\textsuperscript{133}

A position statement by the Association of African Women for Research and Development (AAWORD) explains the potential negative effects of a poorly structured eradication campaign.\textsuperscript{134} AAWORD stated that:

This new [anti-circumcision] crusade of the West has been led out of the moral and cultural prejudices of Judeo-Christian Western society: aggressiveness, ignorance or even contempt, paternalism and activism are the elements which have infuriated and then shocked many people of good will. In trying to reach their own public, the new crusaders have fallen back on sensationalism, and have become insensitive to the dignity of the very women they want to 'save.' . . . And in their conviction that this is a 'just cause,' they have forgotten that these women from a different race and a different culture are also human beings, and that solidarity can only exist alongside self-affirmation and mutual respect.\textsuperscript{135}

The campaign against female circumcision cannot succeed unless it is understood in the context of oppression, poverty, and cultural history. Western "outsiders" can facilitate this approach by eliciting and relying upon the active participation of African women.

Isabelle Gunning acknowledges cultural relativism, but is dedicated to the eradication of female circumcision. She argues that "[t]he problem is not that the surgeries are presented as a negative practice detrimental to women. Rather, the problem is the manner of expression."\textsuperscript{136} Gunning argues that Westerners should adopt a respectful approach which she labels the "world-traveling" approach. It has three main aspects:

1) Seeing oneself in historical context. One must look at female circumcision as a practice that is rooted in societal attitudes which exist even in Western cultures.

\textsuperscript{132} See Bridges and Barricades, supra note 39, at 58 (arguing that campaigns which replicate the historical dynamic of colonialism will provoke "righteous indignation" and "engender cultural resistance").\textsuperscript{133} See TOUBIA, supra note 10, at 43. Several critics of the unsituated approach argue that those who condemn female circumcision as "barbaric" cannot genuinely argue that its horrific effects are readily distinguishable from Western mutilative practices. Cosmetic surgery and breast implants are just a couple of parallels. Bridges and Barricades, supra note 39, at 318-22. However, "there is one very important difference between [female genital mutilation] and ways in which women alter their bodies in other cultures: [female genital mutilation] is mainly performed on children, with or without their consent." TOUBIA, supra note 10, at 37.\textsuperscript{134} Association of African Women for Research and Development (AAWORD), A Statement on Genital Mutilation, in THIRD WORLD-SECOND SEX: WOMEN'S STRUGGLES AND NATIONAL LIBERATION 217 (Miranda Davies ed., 1983). AAWORD is a group of African women researchers committed to the abolition of female circumcision.\textsuperscript{135} Id.\textsuperscript{136} Gunning, supra note 8, at 194.
2) Seeing oneself as the "other" sees you. One must understand how Western women are perceived by women in the Third World, particularly in light of history.

3) Seeing the other in her own context. One must acknowledge that female circumcision is a practice which is situated within a much larger web of cultural practices. Gunning argues that, by employing such an approach, the difficulty of enforcing international human rights law may, in the context of female circumcision, work as its ultimate strength. Weak enforcement mechanisms allow for the flexibility necessary for a culturally sensitive campaign. Although Gunning's argument is effective in building consensus and fostering communication, her approach, if taken to the extreme, may leave us with volumes of dialogue but little progress. Recognition and criticism of imperialistic approaches is essential. Communication with, and activism shaped by, African women will serve as the cornerstone for permanent change. However, a radical relativist approach which overemphasizes cultural sensitivity ignores law's potential as an instrument for social change.

The benefits of traditional legal methods include: explicit as well as symbolic sanction, practical enforcement mechanisms, and expeditious compliance. Weaving the relativists' valid concerns into positive law will enable the campaign against female circumcision to benefit from the strengths of both approaches. The international prong of the Female Genital Mutilation Act of 1996 embodies such a hybrid formulation. The Act sanctions governments that do not educate their citizens about the harmful effects of the practice. Like all laws, the Act coerces in order to expedite compliance. However, it differs from typical laws because it requires aid recipients to educate their people. Education, unlike law in most circumstances, is a mechanism with the potential to transform a culture and to change minds. Therefore, if the educational programs effectively engage the "traditionalist female," the Female Genital Mutilation Act will have ade-

137. Id. at 205-27.

138. See id.

139. Ann Anagnost identifies the dilemma faced by individuals who wish to protect women's rights without contributing to colonial discourse. She argues that "avoiding the Scylla of colonial discourse" must be weighed against avoiding "the Charybdis of an extreme relativist position which makes anything that fits into the 'integral fabric' of a culture justifiable in those terms." Ann Anagnost, Transformations of Gender in Modern China, in GENDER AND ANTHROPOLOGY 313, 329 (Sandra Morgen ed., 1989).

140. Particularly in the context of international law, compliance with legal rules is tempered by "rule skepticism." According to Lawrence Friedman, "rule skepticism" means either "(1) that some pretended rules are not the true operating rules; or (2) that some rules are unreal in the sense that they are varied, misused, or ignored as they are applied and that those who apply rules actually govern in their discretion using the rules as mere handles or shams." Lawrence Friedman, Legal Rules and the Process of Social Change, 19 STAN. L. REV. 786, 789 (1967). Recognizing this variance in compliance, Obiora argues that a "positive shift in a target population's attitude to, or knowledge and perception of, legal and legislative resources generates the requisite impulse for compliance with, and enforcement of law." L. Amede Obiora, Kindling the Domain of Social Reform Through Law: A Case Study, THIRD WORLD LEGAL STUD. 106 (1994).

quately fused the strengths of relativist arguments with the advantages of law.

The degree to which the theoretical perspectives of relativism and universalism should shape practical strategy in the campaign against female circumcision can only be evaluated by taking a step back. The following Parts assess the likelihood of the Act’s success by comparing female circumcision with two other previously prevalent culturally embedded practices.

III. A Look At Two Other Cultural Practices: Using History to Shape Strategy

As the previous Parts demonstrate, recognizing the embeddedness of the practice of female circumcision is the first step in strategizing for its eradication. Female circumcision has significant cultural meaning and is inextricably intertwined with millions of women's notions of womanhood, adulthood, marriage, and cultural identity. Notwithstanding this difference, female circumcision is reminiscent of other harmful practices previously justified on cultural grounds, but which, for the most part, no longer exist. The following Parts examine two such practices — footbinding in China and widow burning, or sati, in India. By examining these practices and the factors leading to their demise, this Part identifies several elements necessary for the eradication of female circumcision. This Part then examines the Female Genital Mutilation Act of 1996 in light of those elements.

A. Chinese Footbinding

Widely practiced by all classes under the Ming (1368-1644) and Ch'ing (1644-1911) dynasties, footbinding dates back at least as far as 1130 A.D. Footbinding is the traditional Chinese custom of using artificial means to stunt the normal growth of a woman’s feet. The procedure deforms both the shape and size of the foot. Bandages, approximately two inches wide and ten feet long, were wrapped forcefully around the foot, starting from the inside of the instep. The bandages were then carried over the small toes, so as to force them toward the sole, and wrapped around the heel. The person applying the bandages, often the mother of the child, repeated the pattern with the entire bandage. The girl’s foot endured

142. To date, few American writers have studied Chinese footbinding. This neglect is, at least in part, due to the lack of sources in the English language. The majority of historical records of the practice are in Chinese. This Part of the Note, therefore, draws from the work of two widely used English secondary historical resources along with multiple primary historical sources written by Western missionaries in the late 1800s and early 1900s.


144. See id.


146. See id.
unremitting pressure, since the toes were forced to bend under and into the sole and the sole and the heel were forced as close together as possible.\textsuperscript{147} The age at which a girl's feet were bound ranged between five and seven, when her prepubescent bones were still flexible.\textsuperscript{148}

Like female circumcision today, Chinese footbinding was embedded in a web of cultural meaning. Failure to bind one's feet resulted in diminished status and led to social rejection.\textsuperscript{149} Footbinding played a large role in identifying oneself as an attractive female.\textsuperscript{150} Mothers repeatedly told their daughters that footbinding was necessary in order to find a respectable husband.\textsuperscript{151} Through the stories conveyed by their elders, Chinese girls quickly learned that a woman's physical beauty depended more upon having bound feet than upon any other "God-given" physical attribute.\textsuperscript{152}

As one missionary reported in the Chinese Recorder, "[d]ifferent nations vary in their ideas of beauty. . . . The Chinese think small feet beauty, par excellence."\textsuperscript{153} The prospective mother-in-law had the task of selecting her son's bride, and her primary criterion was the discipline exemplified by her bound feet.\textsuperscript{154} As a result, diligently binding one's feet upheld the family's reputation.\textsuperscript{155} A daughter soon "learned that she carried her family's reputation or face in the bind of her feet, and that her family's face, whether that of her own family or one into which she married, belonged to the male heads."\textsuperscript{156} By binding the feet tight enough so as to break the four toes, bend them backwards, and immobilize the woman, footbinding symbolized female dependence and subservience.\textsuperscript{157} Like female circumcision, footbinding ensured women's sexual fidelity and limited their self determination.\textsuperscript{158} Before the eradication of footbinding, only prostitutes and slaves had "natural feet," and a bridegroom who discovered that his

\textsuperscript{147} See id.
\textsuperscript{148} See C. Fred Blake, Foot-Binding in Neo-Confucian China, 9 SIGNS 676, 681 (1994).
\textsuperscript{149} See \textsc{levy}, supra note 145, at 272.
\textsuperscript{150} See \textsc{levy}, supra note 145, at 277.
\textsuperscript{151} See C. Fred Blake, Foot-Binding in Neo-Confucian China, 9 SIGNS 676, 681 (1994).
\textsuperscript{152} See \textsc{levy}, supra note 145, at 272.
\textsuperscript{153} See Levy, supra note 145, at 272.
\textsuperscript{154} See \textsc{levy}, supra note 145, at 272.
\textsuperscript{155} See \textsc{levy}, supra note 145, at 272.
\textsuperscript{156} See \textsc{levy}, supra note 145, at 272.
\textsuperscript{157} See \textsc{levy}, supra note 145, at 272.
\textsuperscript{158} See \textsc{levy}, supra note 145, at 272.
new bride did not have “golden lilies” was, according to societal mores, justified in canceling the marriage and returning his bride to her family.\textsuperscript{159}

Almost as old as the practice itself was opposition to the practice. The next section details the opposition movements against footbinding that eventually led to its eradication.

1. \textit{Forces That Led to Footbinding’s Demise}

The earliest anti-footbinding spokesman on record is a Sung dynasty (960-1279) literatus named Ch’\textquoteleft e Jo-Shui who has been cited as having said: “I don’t know when footbinding began. Children not yet four or five years old, innocent and without crime, are caused to suffer limitless pain. What is the use of binding and restraining [the feet in this way]?”\textsuperscript{160} Despite this and other protests, no official action was taken to eradicate footbinding until about four centuries later, during the Manchu dynasty. Even then, however, anti-footbinding efforts were largely unsuccessful.\textsuperscript{161} Conquering China in the seventeenth century, the Manchus targeted footbinding by fiat.\textsuperscript{162} However, their efforts to abolish footbinding took place in an era when public opinion supported the practice; Chinese men viewed the bound foot as the mark of femininity and women had neither independence nor authority.\textsuperscript{163}

In 1642, the Manchus issued penalties for those who bound their feet, but these laws did not significantly change people’s behavior. By 1645, women with bound feet were barred from the imperial harem.\textsuperscript{164} Binding the feet of any daughter born after 1662 was sanctioned by penalties upon the father.\textsuperscript{165} If a male state official had a daughter with bound feet, he could be fired and flogged forty times.\textsuperscript{166} Those who were commoners could be exiled.\textsuperscript{167} However, three years after the Manchu-initiated effort, the leaders recognized the law’s failure to eliminate the culturally ingrained custom\textsuperscript{168} and rescinded the decree.\textsuperscript{169} Manchu women themselves began binding their feet.\textsuperscript{170}

From the 18th century onward, political thinkers joined in the campaign against footbinding.\textsuperscript{171} Opposition to footbinding gained increasing support as the larger movement for reform and women’s rights gained acceptance.\textsuperscript{172} K’ang Yu-wei fought for the abolition of the practice in Kwangtung Province in 1882, however, his efforts were largely ineffec-

\textsuperscript{159} See Ross, \textit{supra} note 146, at 178.
\textsuperscript{160} Levy, \textit{supra} note 145, at 65.
\textsuperscript{161} See id. at 68.
\textsuperscript{162} See id. at 65.
\textsuperscript{163} See id. at 66.
\textsuperscript{164} See id.
\textsuperscript{165} See id.
\textsuperscript{166} See id.
\textsuperscript{167} See id. at 68.
\textsuperscript{168} See id. at 67.
\textsuperscript{169} See id.
\textsuperscript{170} See id.
\textsuperscript{171} See id. at 68.
\textsuperscript{172} See id. at 71.
Years later, in 1894, his brother, K'ang Kuang-jen established an Unbound Foot Association at Canton. Kuang-jen's primary argument against footbinding was that it had impeded China's efforts to join the modern world. His argument had little to do with women's rights and much to do with foreign relations:

All countries have international relations, so that if one commits the slightest error the others ridicule and look down on it. . . . China is narrow and crowded, has opium addicts and streets lined with beggars. Foreigners laugh at us for these things and criticize us for being barbarians. There is nothing which makes us objects of ridicule so much as footbinding.

Similarly, Kuang-jen argued that bound feet impaired the poor's performance of their menial tasks, and that the "barbaric" practice caused the wealthy woman to bear weak offspring.

Gradually, through his speeches, writing, and the work of the Unbound Foot Association, K'ang Yu-wei's association grew to over ten thousand followers. Natural foot societies emerged both in urban and rural areas. Members of the societies were required not to bind their daughter's feet and vowed that their sons would marry only women with unbound feet. Much like the publicity campaign currently employed by the Inter-African Committee in its campaign against female circumcision, the anti-footbinding societies held educational meetings, published songs, and garnered the support of public officials.

The anti-footbinding societies made several arguments against the practice. They claimed that, apart from the pain and physical torture it caused, the procedure created tremendous inconvenience. For example, a natural-footed woman was able to purchase medicine for her elderly parents in half the time required by a woman with bound feet. Crusaders against footbinding also invoked religious doctrine in condemnation of the practice. Confucius, they argued, urged people to "change wrong to right," implying that Confucius himself considered footbinding to be a wrong that needed righting. Also, footbinding societies popularized the

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173. See id.
174. See id.
175. See id. at 72.
176. Id.
177. See id. K'ang-jen's argument against the practice stressed the collective weakening of the Chinese people: "I look at Europeans and Americans, so strong and vigorous because their mothers do not bind feet and therefore have strong offspring. Now that we must compete with other nations, to transmit weak offspring is perilous." Id.
178. See id. at 74.
179. See id.
180. See id.
181. See infra notes 408-22 and accompanying text.
182. See Levy, supra note 145, at 74.
183. See id.; Drucker, supra note 143, at 192.
185. See id. at 75.
186. Id. at 75.
187. See id.
anti-footbinding movement by creating memorable slogans, such as "I can work easily" and "Goddess Kuanyin is also large-footed." 188

The Western missionary movement also played an important role in the campaign against Chinese footbinding. 189 Western women missionaries used their schools to oppose the practice. 190 In 1867, a Hangchow mission school required that all students who were provided with free board and clothing unbind their feet. 191 In 1872, the Peking boarding school of the American Methodist Episcopal Church, headed by Mary Porter Gamewell, denied admittance to any student who did not have "natural feet." 192 Gamewell believed that footbinding was a sin. 193 Other missionaries, however, claimed that such a forceful approach was coercive, condescending, and an unacceptable intrusion upon Chinese culture. 194 Like the relativist critics of the present-day anti-circumcision movement, Gamewell's critics argued that the "matter be left to the individual consciences of Chinese Christians." 195 Besides restricting admission to students with "natural feet," the missionaries formed anti-footbinding societies which required members' children to marry only the sons and daughters of other members. 196 During the 1890s, when Chinese public opinion seemed to be shifting against footbinding, missionary efforts intensified. In one instance, Chinese and Western anti-footbinding advocates addressed approximately 1000 female silk factory employees, educating them about the dangers of footbinding. 197

On April 2, 1895, ten Western women of different nationalities established the influential T'ien tsu hui (Natural Foot Society), a nondenominational and international umbrella organization. 198 One commentator has noted that "[i]f missionary work was chiefly responsible for the achievement of the anti-footbinding movement in the 1890's and 1900's, the T'ien tsu hui was the centre around which all the anti-footbinding efforts worked." 199 Mrs. Archibald Little, the wife of an English merchant residing in Chungking, was the leader of the Society. 200 The group's primary focus was the non-Christian Chinese elite because they had the most polit-

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188. Id. Others in the list of "Ten Delights of Natural Feet" are: "I have freedom, and my parents don't worry about my foot size. I can visit my parents whenever I want, even though they live far away. When my husband is away, I can take care of anything which occurs at home." Id. at 75-76.
189. See Drucker, supra note 143, at 183.
190. See id. at 186.
191. See id. at 187.
192. See id.
193. See id.
194. See id.
195. Id.
196. See id.
197. See MRS. ARCHIBALD LITTLE, INTIMATE CHINA 159 (1899).
198. See Alicia Little, Summary of Work Done By the Tien Tsu Hui, THE CHINESE RECORDER 32-34 (1907).
200. See Drucker, supra note 143, at 189.
ical power\textsuperscript{201} and the lower classes would emulate their conduct.\textsuperscript{202} In November 1896, with the cooperation of the International Women's Union, the Natural Foot Society prepared an appeal and sent it to the Empress Dowager.\textsuperscript{203} The appeal was rejected.\textsuperscript{204} Despite this rejection, the T'ien tsu hui asked the government to impose the following sanctions: 1) fining violators, 2) withholding promotion from officials who did not comply, 3) depriving bound-foot wives of their husband's rank, and 4) refusing to recognize the legitimacy of bound-foot daughters.\textsuperscript{205} The requests were rebuffed.

Apart from lobbying at the Ch'ing court, the Natural Foot Society dedicated itself to changing public opinion. Part of this effort targeted influential community leaders in China, particularly officials, civil service examinees, and students.\textsuperscript{206} The Society communicated via publications, speaking engagements, pamphlets, and open meetings.\textsuperscript{207} In a letter in The Chinese Recorder reporting on the anti-footbinding campaign's accomplishments, Mrs. Archibald Little listed the means by which the Society disseminated its message across the countryside:

Over a million of tracts, leaflets, and placards have been printed and circulated from Shanghai, without counting those printed for our Society in Tientsin, Chungking, Yun-nan-fu, Chen-tu and Sianfu. Books have been distributed at the various examination centres to the students, and many communications on the subject have been addressed to the newspapers... Placards have been put up along the thoroughfares... as well as along the coast line...\textsuperscript{208}

The Society also hosted essay competitions in which it awarded prizes to the participant with the most inventive anti-footbinding campaign strategy.\textsuperscript{209} In addition, the Society compiled and distributed literature and poetry in which influential Chinese men and women condemned the practice.\textsuperscript{210}

In 1902, after persistent lobbying by the T'ien tsu hui, the Empress Dowager publicly denounced footbinding.\textsuperscript{211} Her decree legitimized the anti-footbinding movement and encouraged non-Christian Chinese to join it.\textsuperscript{212} In addition, the Natural Foot Society sent memorials and letters to Viceroy and independent governors, all of whom responded by issuing proclamations against footbinding.\textsuperscript{213} Public denunciation and condemnation by Chinese political leaders stoked the anti-footbinding campaign

\textsuperscript{201} See id.
\textsuperscript{202} See id.
\textsuperscript{203} See id.; Little, supra note 198, at 32-34; Little, supra note 197, at 106.
\textsuperscript{204} See Drucker, supra note 143, at 189.
\textsuperscript{205} See id.
\textsuperscript{206} See id. at 189-90.
\textsuperscript{207} See id. at 190; Little, supra note 198, at 33.
\textsuperscript{208} Little, supra note 198, at 33.
\textsuperscript{209} See Drucker, supra note 143, at 190.
\textsuperscript{210} See id. at 190.
\textsuperscript{211} See Drucker, supra note 143, at 197.
\textsuperscript{212} See id.
\textsuperscript{213} See Little, supra note 198, at 32.
and provided additional opportunities for action. For example, when the Viceroy of Hupeh, Chang-chih-tung, condemned footbinding, the Natural Foot Society immediately placarded the cities of his two provinces with his condemnation.\textsuperscript{214} The Governor of Hunan went one step further by forbidding footbinding, while the Viceroy of Chihli commanded his subordinates to discourage footbinding in their respective districts.\textsuperscript{215} In light of this political support, the President of the Society addressed audiences in many cities.\textsuperscript{216}

In addition to garnering support from political leaders, religious figures provided an important source of support. Duke Kung Hui-chung, a lineal descendant of Confucius, publicly announced his alignment with the missionary anti-footbinding movement: “I have always had my unquiet thoughts about footbinding. . . . Yet I could not venture to say so publicly. Now there are wise daughters from foreign lands, who have initiated a truly noble enterprise. . . . They aim at extinguishing a pernicious custom.”\textsuperscript{217} However, the most effective anti-footbinding statement prompted by the efforts of the T‘ien tsu hui was the Suifu Appeal.\textsuperscript{218}

The Suifu Appeal collected the missionaries’ arguments against footbinding, but, because it was written by a Chinese man, it situated the campaign against footbinding within the cultural and social context of the Chinese people.\textsuperscript{219} Mr. Chou, the author, argued that the practice was an act of disobedience to Emperor Shun-chih (1644-1662) who had pronounced footbinding illegal.\textsuperscript{220} Also the Appeal argued that footbinding was sacrilegious, because those who bound their daughter’s feet ignored Confucius’ teaching that people should respect and never injure their bodies.\textsuperscript{221} Chou compared China to other countries where women did not bind their feet. Instead of torturing their daughters, Chou argued, parents should teach them the five womanly virtues.\textsuperscript{222} The Appeal then went on to criticize footbinding’s unnecessary pain: “It makes the daughters cry day and night, aching with pain. It is a hundred times as bad a punishment as robbers get.”\textsuperscript{223} Responding to the argument that the practice should continue because it is based upon tradition, Chou replied, “I do not

\textsuperscript{214} See Little, supra note 197, at 155-56.
\textsuperscript{215} See id.
\textsuperscript{216} See Little, supra note 198, at 32.
\textsuperscript{217} Little, supra note 197, at 156.
\textsuperscript{218} See id. at 154.
\textsuperscript{219} In her book, Little recognized the enormous influence of the Suifu Appeal. She observed that:
As showing the Chinese view of the matter, it may interest some to read a rough sketch of the famous Suifu Appeal, that has had such an awakening influence over China. It is not at all what English would write; but there is no doubt that it does appeal to the hearts of Chinese.
\textsuperscript{220} See id.
\textsuperscript{221} See id.
\textsuperscript{222} See id. at 60.
\textsuperscript{223} Id. at 160-61.
think much of respect for ancestors.” Lastly, the Appeal urged abolition because of practical economic concerns. Put simply, Chou stated that stronger women make for a stronger, more productive nation. The Suifu Appeal framed the campaign against footbinding within the socio-cultural context of the affected community.

By 1908, Chinese public opinion had shifted against footbinding and government leaders had condemned the practice. The T’ien tsu hui transferred its leadership from its original Western missionaries to a group of Chinese women dedicated to the cause. Under Chinese leadership, the Natural Foot Society continued its active educational efforts, disseminating pamphlets, edicts, proclamations, placards, and poems written in literary Chinese, Mandarin, and regional dialects. This literature argued for the abolition of footbinding by highlighting the unnecessary suffering resulting from the practice and by describing the health hazards caused by foot-binding — which included ulceration, gangrene, and death. In addition, much of the literature warned its readers of footbinding’s detrimental consequences to foreign relations. By comparing footbinding to the physical mutilations of “savage tribes,” the literature argued, Westerners would continue to identify the Chinese as a “backward” culture.

In 1911, public support for the anti-footbinding campaign reached its apex and the new Nationalist government officially banned footbinding. The law, bolstered by the support of the Chinese people, was tremendously successful. The China Mission Year Book reported: “In Shanghai, shoe stores have recently adopted such signs as ‘Grown Large,’ ‘Treading the new,’ ‘As Heaven made it.’ These signs show that there is a demand for natural foot shoes.”

Several factors contributed to the cultural shift away from footbinding. The most important of these involved changes in the base of knowledge and information held by the potential participants in the practice. Two primary factors were the increase in the education of females and the power of the printing press. In addition, young Chinese men who received Western-influenced educations rejected the practice which their male forebears had so revered. In time, true societal change occurred. Chinese men and women no longer viewed footbinding as a prerequisite to marriage. As Mary Ninde Gamewell, the missionary who first denied school admission to bound-foot girls, wrote in 1919: “[I]n the large port cities there are increasing numbers of young men who would not consent

224. Id. at 161.
225. See id.
226. See Little, supra note 198, at 33-34; Drucker, supra note 143, at 191.
227. See Ross, supra note 146, at 180-81.
228. See id. at 181.
229. See id.
230. Id.
231. See Drucker, supra note 143, at 198.
233. See Drucker, supra note 143, at 198.
234. See id.
to marry a girl with bound feet."\textsuperscript{235} One study of a Yunnan town in 1941-
43 found that, while all women over thirty years of age had bound their
feet, comparatively fewer women below the age of thirty had done so.\textsuperscript{236}

2. Lessons and Applications

Analysis of the anti-footbinding campaign in China can inform the cam-
paign against female circumcision. The cultural embeddedness of Chinese
footbinding mirrors the cultural embeddedness of female circumcision.\textsuperscript{237}
Like the justifications for female circumcision, the rationales for footbind-
ing included cultural conceptions of femininity, notions of marriageability
and social acceptance, and cultural identity. Moreover, the controversy
between Gamewell and the other missionaries who disagreed with her par-
allels the debate about the legitimacy of Western intervention in the cam-
paign against female circumcision. The success of Gamewell’s imperialist
tactics indicates that foreign intervention to prevent female circumcision
could be effective.

However, Gamewell’s forceful interventionist efforts were not success-
ful on their own. While Western missionary efforts accelerated the eradi-
cation campaign and the political will of the populace for reform, the
eradication of footbinding did not occur simply through the rules, laws,
and edicts of “outsiders.” Rather, the success of the anti-footbinding cam-
paign derived from its educational and integrationist approach. The anti-
footbinding campaign first had to be perceived by the Chinese people as a
Chinese, not a Western, movement. The incidence of the practice declined
only once public opinion had shifted. Only when the anti-footbinding
campaign was cast in a nationalist context was positive law effective. Influ-
enced by the Natural Foot Society, the author of the Suifu Appeal crafted
his arguments from his own experience. He incorporated a religious argu-
ment against footbinding, claiming that Confucianism condemned the
practice, and he appealed to the practical obstacles presented by footbind-
ing. Lastly, he acknowledged the concerns of traditionalists by urging par-
ents to teach their daughters the “womanly virtues” as a symbolic
alternative to footbinding.

Viewed in light of the footbinding movement, the Female Genital Muti-
lation Act holds enormous potential for the eradication of female circumci-
sion. However, this potential can only be realized through intelligent
implementation. Despite relativist criticism of the Act’s coerciveness, such
outside pressure is analogous to that exerted by the missionaries in China
at the end of the 19th and early 20th century. As enacted, the Act is distin-
guishable from the unsuccessful legal efforts imposed during the Manchu
dynasty. Although the Manchus issued legislation which penalized fathers

\textsuperscript{235} Mary Ninde Gamewell, New Life Currents in China 179 (1919).
\textsuperscript{236} See Helen Foster Snow, Women in Modern China 18 (1967).
\textsuperscript{237} As one missionary reported in 1911: “In China, innovators must face insult and
abuse. A girl with natural feet venturing on the streets . . . had her clothes nearly torn
from her back.” Ross, supra note 146, at 180. See also supra notes 96-126 and accompa-
nying text.
— both professionally and physically — the failure of the Manchu legislation reveals the inadequacy of laws which have no popular support. The Act, by mandating the implementation of educational programs, recognizes the importance of education as a means toward building the necessary popular support for the cause.

The implementation of the Act presents the greatest challenge to the campaign because eradication of the practice depends upon whether and how the educational programs are carried out. In this respect, the efforts of the Natural Foot Society are extremely important. The Society's emphasis on changing the public's attitude toward footbinding transformed public opinion and garnered the support of political and social leaders. Just as the Natural Foot Society targeted the non-Christian Chinese elite, the group which exerted political and social control over China, so too must the individuals involved in implementing the Act target respected community leaders. Once these leaders join the campaign against female circumcision, the campaign must publicize the leader's opposition to better persuade the general populace. As the Natural Foot Society took advantage of Chang-chih-tung's political stand against footbinding and publicized his condemnation, the education provided for in the Female Genital Mutilation Act should seize upon the statements of political leaders and use them as opportunities for action.

In addition, like the anti-footbinding movement in China, the Female Genital Mutilation Act's educational campaign must spread information through various forms of media. Education efforts should include: traditional workshops or classes; information on the health hazards of female circumcision in the form of pamphlets, poems, literature, books, and placards; and popular songs and slogans.

The Female Genital Mutilation Act will work most effectively if the educational efforts are crafted by and for African people. Educational efforts against female circumcision which merely lecture on the health consequences and ignore the cultural context will make little progress. For that reason, educational programs should be placed within the hands of those African women who condemn the practice, but who have the advantage of cultural membership. This will tailor educational efforts to the needs of the African peoples and strengthen the message.

One further observation of the anti-footbinding campaign illustrates the Act's potential for success. In China, national legislation against footbinding was effective only after years of education and resulting attitudinal change. Once public opinion had shifted, the 1911 law was supported and enforced. Consequently, the hybrid nature of the prohibitive Act provides the push and the tools for social change. Whether the targeted nations will pass laws in the future is not a concern of the Female Genital Mutilation Act. However, based on the Chinese experience, once educational efforts shift public opinion, nations may adopt their own legislation with the support of their political and religious leadership, and, most importantly, of their people.
Footbinding is not the only deeply embedded cultural practice that has been successfully reformed. Another example is widow burning in India.

B. Sati — Widow Burning in India

She who follows her husband in death dwells in heaven for as many years as there are hairs on the human body.

-Parasara samhita

Sati is the Hindu practice of widow burning, the immolation of the living widow on the funeral pyre of her dead husband. Although sati has come to mean the act of widow burning, the term originally connoted a virtuous or pious woman. Derived from the word, sat, meaning truth, a sati referred to a woman who was “true to her ideals.” Applied to a widow, however, the word sati now describes a woman who sacrifices herself on her deceased husband’s funeral pyre out of loyalty and love.

The original mythological Sati was the daughter of Daksha, who was the son of Brahma, creator of the universe. Sati was married to Shiva, another of the Trinity. As the story goes, one day Daksha was performing a grand sacrificial ceremony and invited everyone except his son-in-law. Humiliated for her husband and outraged at this insult, Sati “invoked a yogic fire and was reduced to ashes.”

Over the years, readers understood Sati's voluntary act as a divine act of wifely devotion. Gradually, this story evolved into the belief that any woman who emulates Sati by sacrificing her own body through immolation should be venerated.

Like female circumcision, widow burning has historically been justified on religious grounds. However, Hinduism is based upon a collection of scriptural writings which span four thousand years. Consequently, there is no single, supreme Hindu text, and “it is possible to assert with equal vehemence that the scriptures do, and do not, sanction

239. See LATA MANI, CONTENTIOUS TRADITIONS: THE DEBATE ON SATI IN COLONIAL INDIA 16 (1989).
240. See NARASIMHAN, supra note 238, at 11.
241. Id.
243. See NARASIMHAN, supra note 238, at 11. According to Hindu scripture, the Trinity includes Shiva, Brahma and Vishnu. See id.
244. See id.
245. Id.
246. See id.
247. See id.
249. See id. The corpus of texts begin in the second millennium B.C. and extend into the second millennium A.D. Id.
widow burning." Various Hindu texts have been used by activists on both sides of the issue to construct arguments condemning or upholding the practice on religious grounds.

Up until 700 A.D., there is no reference to sati in the Brahmana literature. In the Vedic texts, despite repeated references to funeral procedures, widow burning is never mentioned. In fact, some scholars have interpreted the Atharva-Veda as advocating widow remarriage. Of course, such a suggestion is clearly contradictory to sati. Manusmriti, written by Manu, the ultimate law-giver in the Hindu tradition, never mentions sati. Sati was first mentioned, but not mandated, during the Vishnusmriti period; the scripture highlights celibacy and immolation as the two alternate routes available to a Hindu widow. The Nirmayasindu later declared sati to be the widow's essential duty.

The Puranas, a set of eighteen texts, the first of which was written during the sixth century, further command the practice of sati: “Tell the faithful wife of the greatest duty of women; she is loyal and pure who burns herself with her husband’s corpse. Should the husband die on a journey, holding his sandals to her breast let her pass into the flames.” The Puranas then describe the procedure in great detail: After having bathed, the widow dresses herself in clean clothing, sips water from her hands and looks eastward and westward while the Brahmana utters the mystic word OM. Bowing to one of the gods, the widow then recites a prayer, and after circling the pyre three times, ascends it.

During the second half of this millennium, religious leaders and their followers came to deify those women who became satis. One Hindu law-maker, Shankaracharya of Puri, stated:

She should go near her husband’s pyre, with flowers, fruit, etc. . . . give the symbols of her fortunate marital status to other fortunate women then placing a pearl in her mouth, should pray to Agni, the fire god, and enter the flames. At the moment of her entering the fire, Brahmans should chant mantras, to the effect that this woman who is entering the flames should be

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250. Narasimhan, supra note 238, at 26. As one writer observed, “[the] question is not whether there is support in the books for sati, but how authoritative these references are and how much weight they command.” Id.

251. See id. at 12.

252. See id. at 13.

253. See id. at 14. In the Rig-Veda, the widow was instructed first to lie down beside her husband’s body and then to arise and lead a life of prosperity, surrounded by children and filled with wealth. See id.

254. See id. at 16.

255. See id. at 17.

256. See id. at 18.

257. Id. at 21.

258. See id.

259. See id. at 21-22.

awarded with entry into heaven via her husband's pyre.\textsuperscript{261}

Despite such religious support for sati, many scholars have argued that the Gita, considered by many adherents to be the supreme Hindu ethical edict, prohibits actions which are based entirely upon the expectation of future rewards.\textsuperscript{262} Thus, self-immolation in the hope of a "good afterlife" would be immoral.\textsuperscript{263} However, whether sati is or is not mandated by the Hindu scriptures, like female circumcision and Chinese footbinding, it became embedded in the practicing culture's fabric. This embeddedness, regardless of its textual grounding, presented a significant barrier to its eradication.

As with female circumcision, proponents of sati argued that the woman's consent shielded the practice from legitimate intervention.\textsuperscript{264} However, as apparent in the context of female circumcision, the woman's consent to the practice was obtained, at least in part, by the tremendous cultural pressures upon her. For many centuries, widows in India were expected to burn themselves to death. Partly, this is because widows were perceived as worthless. They had extremely low social status. Even if societal pressures did not induce the widow to burn herself, however, relatives and on-lookers often coerced, threatened, and physically forced the widow upon her husband's funeral pyre.\textsuperscript{265} Frequently, a widow's free will was compromised by mind-numbing drugs.\textsuperscript{266} One observer of a sati ceremony recounted:

\textsuperscript{261} Narasimhan, \textit{supra} note 238, at 24. However, this same text also contained references to the widow's duties following her husband's death. Therefore, the religious texts failed to reconcile the contradictions inherent in the Hindu documents which supposedly embraced sati wholeheartedly. \textit{See id.}

\textsuperscript{262} \textit{See id.} at 27.

\textsuperscript{263} \textit{See id.} Rammohun Roy, the most prominent anti-sati crusader, invoked this argument. One commentator noted that:

The Smith texts stated that a widow who performed sati secured herself a place in heaven. In response, Roy argued that, under the Gita's doctrine of niskama karma, an action performed in search of a reward is inferior to one performed with no such expectation. Therefore, Roy argued that, because sati was a reward-seeking act, it contradicted the Hindu religion.

\textit{Sharma, \textit{supra} note 248, at 67-68. For additional discussion of Roy's scriptural arguments, see infra text accompanying notes 303-15.}

\textsuperscript{264} \textit{See Narasimhan, \textit{supra} note 238, at 103. Opponents of a legal ban on sati argue that sati is always voluntary, and that legal interference with this choice constitutes an "encroachment on her fundamental right." Id. As a result, the Nizamat Adalat, or criminal court, instructed magistrates to decipher the demeanor of the widow prior to her ascending the pyre. The goal in doing so was to interfere only in cases where coercion was present. Consequently, magistrates recorded their observations of "acceptable" sati as those in which the widow "voluntarily" sacrificed herself of her own "free will." \textit{See Mani, \textit{supra} note 239, at 126. Implicit in this classification, of course, was the assumption that consensual sacrifice did in fact exist and that such immolation was a lawful, if not a venerable, act.}

\textsuperscript{265} \textit{See Mani, \textit{supra} note 239, at 127.}

\textsuperscript{266} \textit{See Daly, \textit{supra} note 79, at 116. See also Santosh Singh, A Passion For Flames 76 (1989) (discussing the use of drugs as a means of coercion). "Even drugs are administered to the widow to deprive her of her self control under intoxication, and thereby she is made to give her consent to become a sati." Id.}
As the wind drove the fierce fire upon her, she shook her arms and limbs as if in agony; at length she started up and approached the side to escape. A Hindu, one of the police who had been placed near the pile to see if she had fair play and should not be burned by force, raised his sword to strike her, and the poor wretch shrank back into the flames.267

Suggestions that the act was voluntary are countered by accounts of violent physical coercion. Thomas Twining, a civil servant of the East India Company in the early nineteenth century, witnessed the immolation of a twenty-year-old woman.268 Observing her preparing to proceed onto the pyre, he tried to convince her to change her mind, but before he could do so, she was lifted onto the pyre, tied down, and, the conspirators set the pyre afire.269 However, even absent physical force, it is "absurd and worse than absurd to say these sacrifices [were] voluntary, because in some instances they appear[ed] to be so; in those instances, the victims chose death because they thought it more tolerable than the infamy which was their only alternative."270 In many cases, the influence of male relatives played a large role in the "decision" to go forward with the practice.271 For example, in 1824, the Moorshidabad court found that male relatives of the widow had coerced her to commit sati in order to gain her husband's property.272

Perhaps the strongest motivational factor for those Hindu women who "voluntarily" committed sati was fear of the alternative — life as an Indian widow. As Raja Rammohun Roy, a leading social reformer of the early nineteenth century, explained, the prevalence of sati in Bengal was largely attributable to the existence of polygamy and the unbearable circumstances in which widows were left.273 As in the case of female circumcision, justifying sati by asserting that the woman consents to it denies the socio-cultural realities which compromised freely given consent. The following Part examines the legal and extra-legal forces which led to the eradication of sati and then reexamines the Female Genital Mutilation Act in light of these historical lessons.

267. Narasimhan, supra note 238, at 79.
268. See id. at 80.
269. See id.
271. See id.
272. See id.
273. See id. Upon the death of her husband, a widow was not permitted to remarry. Moreover, since Hindu society viewed her as the cause of her husband's death, the "decision" to continue living guaranteed a painful existence. See Daly, supra note 79, at 115. Consider her options: on one hand, a widow who lived faced physical, financial, social and psychological difficulties for the rest of her life; on the other hand, a widow who committed sati received veneration and glory from all of the members of her community. Thus, "[f]or an ordinary, mortal woman with normal human weaknesses for whom sexual vulnerability adds an extra dimension of handicaps, the odds are loaded hopelessly against a rational response." Narasimhan, supra note 238, at 105.
1. Forces that Led to Sati's Demise

The history of India, like the history of Africa, has been heavily influenced by Western colonization. At the start of Britain's colonization of India, the British had a policy of non-interference with the Indian culture. This policy of non-intervention is effectively the same as the modern day relativist argument against Western involvement in the anti-circumcision campaign. However, although the effects are parallel, the rationales underlying non-intervention in the two contexts are distinct. While non-intervention in the context of female circumcision often sounds in the name of cultural preservation, non-intervention in the context of sati was often an attempt on the part of British colonizers to maintain political stability and prevent a "native uprising." Beginning with the rule of Lord Warren Hastings as Governor-General, the British recognized that Indian society could only stay intact if left alone. Consequently, colonizers altered Hindu or Muslim religious customs, laws, or traditions as little as possible. Pitt's India Act of 1784 codified the British policy of non-interference in Indian religious matters.

In 1805, Lord Wellesley, the Governor-General of India, referred the question of sati to the Court of Nizamat Adalat in an attempt to determine whether the government could rightfully adopt measures to eradicate sati. The court enlisted Pandit Ghuesham Surmon to deliver a religious opinion on the "sati question." Citing religious texts, he determined that widow burning had deep roots in the Hindu religion, and, therefore advocated the continuance of sati based upon religious mandates. However, he stated that sati should not be performed if the widow was: pregnant, pubescent, the mother of an infant, unclean due to menstruation, or under the influence of drugs. In 1812, after accepting the recommendations of the Court of Nizamat Adalat, the British government set forth the following policy on sati: "The course which the British Government should follow according to the principle of religious toleration, is to allow the practice in these cases in which it is countenanced by their religion, and to prevent it in others in which it is by the same authority prohibited."

In the Circulars of 1812, the Government continued its policy of limited intervention. Distinguishing between legal and illegal sati, the British pursued a policy of religious tolerance by aligning the law with the dictates of the Hindu religion. Illegal sati included those instances in which a widow: a) committed the act under compulsion, b) was drugged or intoxicated.

274. See Mani, supra note 239, at 119.
275. See DATTA, supra note 242, at 21.
276. See id. at 93-95.
277. See id. at 20.
278. See id. at 21.
279. See id. at 22.
280. See id. at 24.
281. See id.
282. Id.
283. See id. at 25.
cated, or c) was pregnant at the time or had a child who could not be cared for otherwise. The police were directed to arrest individuals who committed or aided in illegal sati.

Unfortunately, several defects in the Circular Orders rendered the legal measures ineffective. Even when the police did arrive at the scene of a sati, it was virtually impossible for the police to determine whether the act was illegal. A widow's pregnancy, the age of any surviving child or children, whether she was drugged, and whether she was coerced were largely indeterminable. Also, the Circular Orders of 1812 actually promoted the practice of sati because a police officer's presence at the immolations was perceived as governmental authorization. In fact, records of the administration revealed that the number of satis per year doubled between the years 1815 and 1818.

In 1817, the British revised the Circular Orders of 1812, and demanded that a widow contemplating self-immolation report to the police prior to the act. Also, under this new order, a magistrate had the power to imprison and fine widows who had not reported their plans. However, because imposing penalties was left to the discretion of individual magistrates who were loath to punish such conduct, enforcement was rare. In addition, the police did not face disciplinary action if they did not comply with the regulations and, because many officers were Hindu, they permitted immolations to proceed. By the 1820s, British officials questioned the efficacy of the Circular Orders and shifted back to a policy of non-intervention. Motivated largely by their interest in the stability of British rule and their desire to prevent colonial disaffection, the British Government in India adopted a cautious policy of public education.

In the meantime, Baptist missionaries had an enormous influence in

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284. See id.
285. See id.
286. See id. at 28-29. See also NARASIMHAN, supra note 238, at 65-66.
287. See DATTA, supra note 242, at 28.
288. See NARASIMHAN, supra note 238, at 62. Even the Nizamat Adalat later admitted that the regulation actually augmented rather than diminished the practice, and that sati was in fact performed with fewer reservations because the officer's presence at the ritual was perceived as a sign of governmental endorsement. See id. at 62-63.
289. See id.
290. See id. at 63.
291. See DATTA, supra note 242, at 31.
292. See NARASIMHAN, supra note 238, at 63.
293. See id. at 64.
294. See DATTA, supra note 242, at 44.
295. See id. at 48. Amherst singled out the following reasons for a policy of non-interference:

(1) the difficulties of guaging [sic] the fanatical spirit of Hindus who observed the practice of suttee with tenacity, (2) the force of enlightened Hindu public opinion in Bengal which was not yet sufficiently advanced to recognise the propriety of abolishing the rite, and (3) a fear of shaking the confidence in British rule which had been inspired due to the scrupulous regard the British paid the Hindu sentiment by their policy of religious neutrality.
efforts to eradicate *sati*. These missionaries were particularly effective at gathering statistics as well as collecting eye-witness accounts of *sati* from around India. *The Friend of India*, a publication of the Baptist missionaries, provided detailed accounts which served as invaluable tools in the campaign against widow burning. The Baptist missionaries' largest roles were as educators and information providers. Over three decades, the missionaries disseminated propaganda on the dangers of *sati*. This consciousness-raising campaign gradually transformed public attitudes. It was this shift in public attitude, along with the work of reformer Rammohun Roy, that paved the way for later legislative attempts to eradicate *sati*.

Rammohun Roy, a wealthy Bengalese Brahmin intellectual, brought a transformative approach to the campaign against *sati*. Roy dedicated himself to the abolition of *sati* shortly after he witnessed the immolation of his brother's wife. Following this incident, Roy published two pamphlets, one in Bengali and the other in English, arguing for the eradication of the practice. In constructing his argument against *sati*, Roy cited thirteen verses from the *Bhagavadgita*:

> The Gita is not a rare work, and you are not unacquainted with it. Why then do you constantly mislead women unacquainted with the Sastras, to follow a debased path, by holding out to them as temptations the pleasures of futurity, in defiance of all the Sastras, and merely to please the ignorant?

By citing the Hindu scriptures, Roy attempted to dispel the common myth of the sanctity of the *sati* ritual. He engaged supporters of *sati* by speaking to them within the context of their religious beliefs and cultural understandings. He argued, both in his writings and through speeches, that the religious texts cited in favor of *sati* were, in fact, contrary to Hinduism. Roy thereby provided an alternative interpretation of religious principles to traditionalists who defended *sati* on religious grounds.

*Id. at 48-49.*

296. See *id.* at 71-80.
297. See *id.* at 76.
298. See *id.* at 76. See also, *e.g.*, *Friend of India*, Oct. 1819, at 473-76.
299. See *Datta*, *supra* note 242, at 77.
300. See *id.* at 77-80.
301. See *id.* at 79-80.
303. See *Narasimhan*, *supra* note 238, at 68.
304. See *id.*. The first pamphlet, published in 1818, was entitled, "Conference Between an Advocate for and an Opponent of the Practice of Burning Widows Alive." See *id.*. The second, appearing in 1820, entitled "A Second Conference Between an Advocate for and an Opponent of the Practice of Burning Widows Alive," see *Mang*, *supra* note 239, at 135 n.15, argued that *sati* was not condoned by the Hindu religion. See *id.*
306. See *id.* at 68; *Datta*, *supra* note 242, at 125.
The *Indian Gazette*, commenting upon the powerful impact of Roy's efforts, stated: "[we doubt not] that Raja Rammohun Roy's writings have been the means of saving some lives. We understand that there are now many respectable natives convinced by his arguments." Like the Suifu Appeal which was effective in the campaign against Chinese footbinding, Roy's tracts proved to be successful in the movement against *sati* because they were: 1) written by a member of the affected culture, and 2) written with a consciousness of, and sensitivity to, the cultural and religious context of the practicing group. Despite Roy's firm commitment to the abolition of *sati*, he was vehemently opposed to any form of legal coercion.

Similar to the arguments of relativists in the campaign against female circumcision, Roy feared that use of legal coercion would amount to imperialistic control of the Indian people by the British. This, in turn, would lead to resentment rather than social change. Ironically, despite Roy's aversion to legal prohibition of *sati*, it was his efforts which laid the groundwork for the passage of the first effective piece of anti-*sati* legislation.

On November 8, 1829, Lord Bentinck, the Governor-General, announced his decision to abolish *sati*. Bentinck presented his decision to pursue a legislative solution as if it were an inevitable reaction to popular opinion. Painting himself as a mere representative, he listed the judges of the Court of Nizamat Adalat, the two Superintendents of Police, Walter Ever and Charles Barwell, and a number of other British officials as supporters of his impending action. In his announcement, Lord Bentinck informed his readers that he had solicited the opinion of top army officers to ensure that there would not be an uprising in response to such a decree.

With the support of his counselors, Lord William Bentinck passed Regulation XVII in December 1829 declaring the practice of *sati*, whether voluntary or involuntary, illegal and punishable by the criminal courts. The regulation was entitled, "A Regulation for declaring the practice of suttee or burning or burying alive, of the widows of Hindus, illegal, and pun-

308. *See* *Azariah*, *supra* note 270, at 241.
309. Roy's argument against legal intervention was based upon the following line of reasoning:
   While the British were contending for power, they deemed it politic to allow universal toleration and to respect our religion, but having obtained the supremacy their first act was the violation of the profession and the next will probably be, like the Muhammadan conquerors, to force on us their own religion.
310. *See* id.
311. *See* id. at 240-41; *Datta*, *supra* note 242, at 110.
312. *See* *Datta*, *supra* note 242, at 240.
313. *See* *Narasimhan*, *supra* note 238, at 69.
314. *See* id.
The Act differed from past legislative attempts in one crucial respect: it punished every sati as a criminal act, eliminating the previous distinction between illegal and legal sati. In its preamble, the Act incorporated the idea of religious tolerance by arguing that sati was not justified by Hindu doctrine. First, the law declared all land owners, farmers, rent collectors, and others “especially accountable for the immediate communication to the officers of the nearest police station, of any intended sacrifice.” Willful neglect in doing so rendered one liable for fines up to 200 rupees or imprisonment for up to six months. Second, all persons convicted of aiding or abetting a sati, “whether voluntary or not,” were guilty of homicide. The penalty, which could be either fine or imprisonment, was left to the court’s discretion. Moreover, the aider or abettor could not defend himself by claiming that he or she was “desired by the party sacrificed to assist.” Shortly after its passage, a group of orthodox Hindus challenged the 1829 Act on grounds of unjustifiable religious interference, but, the case was ultimately dismissed, the proclamation was signed in 1932, and sati was finally legally prohibited. Despite fears of bitter defiance of the law by traditionalists, the regulation virtually eliminated all cases of sati within Bengal.

The abrupt abolition of sati ignited a forceful backlash. In 1857, the nationalist movement viewed the legislative prohibition of sati as an imperialistic attempt to destroy the cultural integrity of India. Similar sentiments may explain the sporadic reappearances of sati during the remainder of the century. Although stray incidents of widow burning occurred in the years following the Act of 1829, the number of satis occurring was small when compared to the number before the practice was criminalized.

Although sati was criminalized early in the 19th century, the latter half of the twentieth century witnessed a resurgence of the practice.

316. See id.
317. See id.
318. Id.
319. See id.
320. See id.
321. Id.
322. See Narasimhan, supra note 238, at 71.
323. See id.
324. See Singh, supra note 266, at 77.
325. See Azariah, supra note 270, at 244.
326. See Datta, supra note 242, at 147.
327. See Narasimhan, supra note 238, at 71-73.
328. From the time at which the British began keeping records of sati in 1815 until the time of Bentick’s abolition of the practice in 1929, a total of 7,941 widows had burned in Bengal alone. Of course, this figure does not include the incidents of sati that went unreported. Narasimhan, supra note 238, at 70. Following the law’s passage, sati occurred only occasionally. See id. at 71.
329. Since 1947, when India became an independent and secular republic, approximately forty cases of sati have been reported. See Veena Talwar Oldenburg, The Roop Kanwar Case: Feminist Responses, in Sati, The Blessing and The Curse, supra note 260, at 101. As one author noted, “[s]ati is now a very infrequent occurrence, but the idea of sati seems as powerful now as ever it was.” John Stratton Hawley, Introduction, in id. at
The most notorious incident is the case of Roop Kanwar, a young, educated widow who perished on the flames of her husband's funeral pyre in Deorala, India, on September 1, 1987. Following Kanwar's death, some Indians responded with hostility towards Western critics of the practice's resurgence. Responding to the rhetoric of women's rights groups, one editorial in the Hindi daily *Jansatta* defended *sati* on cultural grounds:

Roop Kanwar did not become a *sati* because someone threatened her. . . . She purposely followed the tradition of *sati* which is found in the Rajput families of Rajasthan. . . . It is quite natural that her self-sacrifice should become the centre of reverence and worship. This therefore cannot be called a question of women's civil rights or sexual discrimination. It is a matter of a society's religious and social beliefs.

With news of Kanwar's "miraculous" *sati*, thousands organized in preparation for the *chunari* ceremony, a ritual held on the thirteenth day after the cremation, when a red veil is placed on a trident at the site. Daily, 10,000 pilgrims arrived at Kanwar's home in Deorala, India, in trucks, buses, camel carts, and by foot. Kanwar's bedroom within her marital home was consecrated as a pilgrimage site.

Though there had been random incidents of *sati*, after the passage of the 1829 legislation onward, Roop Kanwar's immolation prompted much political debate. Indian feminist groups' vigorous protest of the Indian government's non-interference and acquiescence in Kanwar's death ultimately resulted in the passage of new legislation. The Rajasthan Sati (Prevention) Ordinance criminalized *sati*, making it punishable with imprisonment ranging from one to five years and a fine of 5,000 to 20,000 rupees. The law also outlawed the glorification of *sati*. Those who, either directly or indirectly, abetted in *sati* faced a death sentence or life imprisonment along with a fine. Shortly afterward, the union government introduced its own version of the Rajasthan Ordinance called the Commission of Sati (Prevention) Act of 1987.

Despite legislative attempts to eradicate widow burning, the Dharma Raksha Samiti, a pro-*sati* orthodox group, vigorously opposed the legisla-
At the one-year anniversary of Kanwar’s immolation, the Dharma Raksha Samiti prepared for a celebratory commemoration of the event. In an attempt to circumvent the glorification restrictions of the legislation, the observers used ambiguous language, avoiding usage of the word sati. Their ceremony consisted of 4,000 people, half of them women. Thus, although the frequency of sati indicates that the practice has been largely eradicated, the immolation of Roop Kanwar, along with the public’s veneration of the deed indicates that sati still has deep roots in Indian culture.

2. Lessons and Applications

As with female circumcision, the firm entrenchment of widow burning as a cultural practice presented significant barriers to its eradication. Whereas female circumcision signifies womanhood, sati signifies wifely devotion. As discussed earlier, cultural notions of femininity and attempts to limit sexual promiscuity perpetuate the practice of female circumcision. Similarly, cultural notions of a wife’s role and women’s identity ensured the continuance of sati and elevated the status of the woman who practiced it from a valueless widow to a god-like creature. Additionally, religion serves as a fundamental justification for both practices.

The Circular Order of 1812 failed largely because it tried to draw an unfavorable distinction between legal and non-legal sati. This failure in the early 1800s has mixed implications for the success of the Female Genital Mutilation Act today. The Act avoids the danger of drawing a distinction between legal and illegal means of carrying out the practice by including all three types (circumcision, excision, and infibulation) in its definition. However, like the discretionary enforcement of the Circular Order of 1812, the Female Genital Mutilation Act confers a great deal of discretion upon those overseeing the mandated educational programs. Since the people coordinating the educational programs are members of the affected cultures, commitment to cultural beliefs may overshadow commitment to the Act’s enforcement. As a result, responsibility for the Act’s implementation should lie only in the hands of local people who are dedicated to the practice’s eradication.

341. See id. at 77.
342. See id.
343. See id.
344. See id.
345. See Datta, supra note 242, at 234. Despite public outrage, the “voices raised in the defense of sati are just as strong as they were in the nineteenth century.” Hawley, supra note 329, at 4.
346. Comparing female genital mutilation to sati, there is one important difference that will have an impact on efforts to eradicate the former practice: sati is a practice that draws its cultural significance from its very public nature. The ceremonies, processions, community participants and spectators define sati, and give the practice its cultural meaning. Female circumcision, on the other hand, occurs in private, often secretly. The secretive nature of the ritual makes it much more difficult to target. Although female circumcision is often accompanied by public ceremonies, eradication efforts may simply eliminate the ceremonies and drive the practice underground.
As with the anti-footbinding movement in China, the anti-sati movement owed its success to a gradual transformation in public opinion achieved through education and information campaigns. The Indian people changed their behavior only after Western missionaries and Rammohun Roy changed the public's attitudes about the practice. The Western missionaries' use of media in the anti-footbinding movement is analogous to the Baptist missionaries' use of The Friend of India as a powerful instrument in the campaign against widow burning. The educational efforts of the missionaries in India contributed to a change in cultural norms. The educational mandate of the Female Genital Mutilation Act recognizes that changing people's attitudes is necessary for the eradication of female circumcision.

Rammohun Roy's influence in the anti-sati movement illustrates the importance of local leadership in a campaign against an embedded cultural practice such as sati or female circumcision. As a member of the Indian culture, Roy engaged proponents of sati with arguments based on the Indian people's religion and culture. Like the author of the Suifu Appeal during the anti-footbinding movement, Roy countered the religious justifications in favor of the practice by drawing upon his scholarly knowledge of Hindu texts. His efforts, combined with those of the missionaries, laid the foundation for the successful legislative abolition of sati in 1829. Through its hybrid approach, the Female Genital Mutilation Act effectively has incorporated the lessons of the Suifu Appeal and Rammohun Roy. Education is typically a local phenomenon. By mandating educational programs, the Act encourages local leadership of the eradication movement.

The recent resurgence of sati highlights one of the possible limitations of the Female Genital Mutilation Act. Nandy has stated that: "Colonialism has to try to discredit the cultures of the colonized to validate the colonial or quasi-colonial social relationships that it itself has created." When colonial governments are perceived by the colonized as oppressive and invasive, practices which are closely identified with the culture of the colonized such as widow burning and female circumcision may persist as a form of resistance. If reassertion of culture is the explanation for the recent resurgence of sati, then legal coercion imposed by outside nations may only result in disaster. For, if the Female Genital Mutilation Act of 1996 is perceived by the people of the twenty-eight affected African nations as simply another colonialist design, then the law may do more harm than good and may only further entrench the practice.

An alternative interpretation of the resurgence of sati provides an additional insight into the Female Genital Mutilation Act of 1996. That the Roop Kanwar incident occurred after missionary and indigenous education does not diminish the importance of grassroots eradication efforts.

347. See supra notes 304-07 and accompanying text.
Rather, it presents a caveat for the implementation of the Act. Although education is effective in transforming social behavior and laying the groundwork for legal change, long-term change may require sustained education. Put differently, the missionary work of the early 1800s was not sufficient to guarantee total eradication. Continual information dissemination and education may be necessary to prevent deeply ingrained cultural beliefs from re-emerging. Such observations suggest that the anti-circumcision campaign will require long-term efforts.

Having looked for useful lessons in two campaigns to eradicate cultural practices analogous to female circumcision, the next section draws some useful conclusions from past efforts by African countries to legally prohibit female circumcision.

C. Past Attempts to Legally Prohibit Female Circumcision in African Nations

Several African nations have attempted to eradicate female circumcision by making it illegal. These attempts have largely failed. In the majority of instances, this is because the laws resulted from European pressure and were not the products of domestic campaigns. As the following Parts detail, the ineffectiveness of past African legal efforts is attributable primarily to resistance created either by actual colonial rule or by the imposition of laws by outside forces perceived as the equivalent of colonizers.

1. Kenya

The earliest attempt at legal prohibition of female circumcision dates back to the beginning of British colonialism in Kenya.349 In 1906, the Church of Scotland sought to eliminate female circumcision by having it outlawed.350 However, this effort was perceived by native Kenyans as outsider coercion, prompting a renewed attachment to the practice.351 Performed in secrecy, female circumcision became a symbol of cultural resistance.352 Instead of fostering any type of reform, the colonizers' law further entrenched the practice in Kenyan culture.353

In 1915, the Church of Scotland Mission increased its anti-circumcision advocacy by establishing a rule forbidding excision of school children.354 Any boarder who left school to undergo excision was suspended for at least eighteen months.355 From 1918 to 1930, the Kenya Missionary Council campaigned for anti-circumcision legislation with the support of humanitarian groups such as the Anti-Slavery Society in Britain.356
At a time when Kenyans were just beginning to learn about the dangerous health consequences of circumcision, their favorable disposition to change was quashed by overzealous missionary efforts.\textsuperscript{357} Between 1929 and 1930, the controversy over female circumcision reached its climax. During this period, Kenyan opposition to the eradication campaign intensified. This was because the campaign was viewed as an attempt prompted by the colonizers' racism to interfere with Kenyan cultural freedom and beliefs.\textsuperscript{358} Increased nationalism led to the formation of indigenous independent churches and schools. The Kikuyu\textsuperscript{359} garnered support by establishing the Kikuyu Central Association, a political group which fought for the continuation of female circumcision.\textsuperscript{360} In 1929, the Association publicly declared its support for female circumcision.\textsuperscript{361} Soon the battle over female circumcision was intertwined with the issue of Kenya's political independence.\textsuperscript{362} To the nationalists, abolition of female circumcision signified abolition of Kenyan culture and pride.\textsuperscript{363} Under the post-colonial presidency of Jomo Kenyatta, opposition to the efforts to make female circumcision illegal was encouraged on the grounds that the practice maintained the integrity of Kikuyu society.\textsuperscript{364} The linkage of female circumcision with Kenyan nationalism in response to the mostly Western anti-circumcision efforts illustrates how a campaign imposed from outside a culture can in fact have an opposite effect to that intended.

In 1982, Kenyan President Moi condemned female circumcision, arguing for criminalization of the practice.\textsuperscript{365} However, despite Moi's opposition to female circumcision, female circumcision is still legal and commonly practiced in Kenya.\textsuperscript{366}

2. Sudan

Sudanese efforts to abolish circumcision began in 1924 when the Director of Intelligence and the Director of the Sudan Medical Services addressed

\textsuperscript{357} See J.A. Sequeria, \textit{Female Circumcision and Infibulation}, 3 \textit{Lancet} 1054 (1931).

\textsuperscript{358} See Obiora, \textit{supra} note 85, at 59. Such perceptions led indigenous parents to circumcise their daughters at any cost, often allowing unskilled individuals to perform the operation with harmful, often deadly, consequences. See Jomo Kenyatta, \textit{Facing Mount Kenya: The Tribal Life of the Gikuyu} (1965).

\textsuperscript{359} The Kikuyu or Gikuyu are a tribe of Kenya. See Kenyatta, \textit{supra} note 358, at 65.

\textsuperscript{360} See id. at 67.

\textsuperscript{361} See id.

\textsuperscript{362} See id.

\textsuperscript{363} See id.

\textsuperscript{364} See id.

\textsuperscript{365} See Hosken, \textit{supra} note 10, at 156. Moi stated that his administration would not allow female circumcision because it constituted a form of child abuse. He condemned those individuals who performed circumcision, asserting that they were motivated by monetary gain. \textit{Id}.

\textsuperscript{366} See Slack, \textit{supra} note 14, at 477. See also Touba, \textit{supra} note 10, at 44; Hosken, \textit{supra} note 10, at 176. A survey performed in a girls' high school in the Tharaka region, east of Mount Kenya, found that 97 out of 97 girls were circumcised. Another survey compiled by a teacher at the school estimated that approximately 90-95 percent of the girls in the region of Kenya west of Mount Kenya are circumcised. \textit{Id}.
the issue.\textsuperscript{367} The fruit of their efforts was an informational circular issued by the government.\textsuperscript{368} In addition, the chief of the Islamic Court urged the issuance of a \textit{fetwa}, or religious decree, prohibiting circumcision. However, the \textit{fetwa} was opposed by other religious leaders and ultimately had no effect.\textsuperscript{369} The opposition argued that official religious condemnation was unnecessary since Muslims already knew that Pharaonic circumcision conflicted with Islamic teachings.\textsuperscript{370}

Late in the 1930s, a British Member of Parliament argued for the abolition of female circumcision in Sudan, insisting that a law be passed by the British colonial administration there.\textsuperscript{371} The colonial government, however, was hesitant to outlaw the practice. It feared that the Sudanese would interpret stringent legislation as an attempt to meddle with a Sudanese affair. The administration also feared that imposition of a law forbidding female circumcision could diminish indigenous political support for "the more vital issues of social and political reform."\textsuperscript{372} Thus, no law was passed. Some years later, in 1946, the British administration added an amendment to Section 284(A) of the Sudanese Penal Code, stating that anyone found guilty of committing female circumcision not of the \textit{sunna} type would be punished with up to five years imprisonment and/or receive a fine.\textsuperscript{373} The law read: "Whoever voluntarily causes hurt to the external genital organs of a woman is said, save as hereinafter accepted, to commit unlawful circumcision . . . It is not an offense against this section merely to remove the free and projecting part of the clitoris."\textsuperscript{374}

Local reactions to this amendment were almost universally critical. For example, Mahmoud M. Taha, considered to be a proponent of equal rights for women, actually fought against the legislation prohibiting circumcision, despite its effects upon women's health.\textsuperscript{375} Though philosophically and politically against female circumcision, Taha vehemently opposed colonialism, and perceived the British-imposed law as a covert attempt to temper the pride of the Sudanese people and to rob them of their culture.\textsuperscript{376} Immediately following the announcement of the law's passage, many individuals had the practice performed secretly.\textsuperscript{377} "\textit{Tahur El Fasolia}," referred to the process by which parents furtively brought their daughters to the midwives at night to be circumcised in a group with no

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\item 367. See \textit{Dareer}, supra note 104, at 92.
\item 368. See \textit{id}.
\item 369. See \textit{id}.
\item 370. See \textit{id}.
\item 371. See \textit{id} at 93.
\item 372. \textit{id}.
\item 373. \textit{Sanderson}, supra note 97, at 91-92.
\item 376. See \textit{id} at 152.
\item 377. See \textit{Dareer}, supra note 104, at 95.
\end{itemize}
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celebration or ceremony following the procedure.\textsuperscript{378}

Although feared at its introduction, the Sudanese Penal Code amendment quickly lost any force.\textsuperscript{379} Immediately following its adoption, cases were reported regularly, however, after a short time, enforcement efforts ceased.\textsuperscript{380} In the rare event that the law was invoked, a midwife would be punished locally by the health authorities, at which time they would simply warn her or withdraw her license.\textsuperscript{381} However, these cases were so rare that the Code was effectively a "paper law."\textsuperscript{382}

Procedural technicalities also sapped the law of its force.\textsuperscript{383} The Code of Criminal Procedure (1974) places Section 284(A) within a group of crimes which can only be tried when sanctioned by a particular group of officials.\textsuperscript{384} Before a magistrate or court can hear a case of female circumcision, the Commissioner of the Province must bring charges.\textsuperscript{385} Because the office of Commissioner of the Province is located in the capital of his respective province, local enforcement is a challenge.\textsuperscript{386} Considering the transportation problems in a large country like Sudan, the likelihood of the Commissioner actually bringing the charges is virtually non-existent.\textsuperscript{387} By attaching these procedural requirements, the framers virtually ensured the law's non-enforcement.\textsuperscript{388}

Section 284(A) was abolished in 1983 when new laws were passed which supposedly sought to incorporate Islamic law.\textsuperscript{389} An explicit legal ban on female circumcision was also omitted from the 1991 Sudanese Penal Code.\textsuperscript{390} As a result, currently there is no Sudanese law specifically targeting female circumcision.\textsuperscript{391}

3. Egypt

Apart from Sudan and Kenya, Egypt is the only other African nation that has specifically addressed female circumcision through law.\textsuperscript{392} In 1959, in response to a resolution by the Minister of Public Health, an all-male committee was formed to investigate the issue of female circumcision.\textsuperscript{393} In 1959, the committee issued a resolution recommending that only partial clitoridectomy be permitted and only with the consent of a physician.\textsuperscript{394}

\begin{thebibliography}{99}
\bibitem{378} See id.
\bibitem{379} See id. at 96.
\bibitem{380} See id.
\bibitem{381} See id.
\bibitem{382} Id.
\bibitem{383} See id.
\bibitem{384} See id. at 152.
\bibitem{385} See id. at 153.
\bibitem{386} See id. at 153.
\bibitem{387} See id.
\bibitem{388} See id.
\bibitem{389} See Touba, supra note 10, at 45.
\bibitem{390} See id.
\bibitem{391} See id.
\bibitem{392} See id. at 45-46.
\bibitem{393} See Hosken, supra note 10, at 131.
\bibitem{394} See id.
\end{thebibliography}
The resolution read:

Circumcision as performed at present is physiologically harmful for girls whether before or after marriage. . . . Therefore, the committee sees the necessity to proceed with the Khafd operation in the following order:
1. It is absolutely forbidden for others than doctors to perform the operation.
2. For those who desire circumcision, the operation should be partial and not total clitoridectomy, in accordance with the by-laws to be formulated at a later stage.\footnote{395}

While admirable in its intent, the 1959 resolution was ineffective because it did not provide for the punishment of violators.

Nineteen years after the passage of the resolution, the Egyptian government issued "Facts on Female Circumcision."\footnote{396} It supplemented the 1959 resolution and stated that "[f]emale circumcision is forbidden in the public health units for scientific and health reasons. It is not permitted for certified dayas to perform any surgical operation including female circumcision."\footnote{397} The report submitted by the Egyptian delegation to the 1979 World Health Organization Seminar in Khartoum referred to the Egyptian resolution. However, the resolution seems to have had a minimal impact.\footnote{398} Although doctors often treat the hemorrhaging children who have just been circumcised and rushed to the hospital, they rarely report these cases.\footnote{399} In the minority of cases where doctors do file reports to the government, officials seldom investigate or take any further action.\footnote{400} Once the parents are scolded by the police, "the case is closed."\footnote{401} Because police and doctors are not committed to eradication of the practice, legal and regulatory efforts in Egypt have proven to be ineffective and female circumcision is regularly practiced.\footnote{402}

4. Analysis of Past Legal Efforts Within African Nations

An analysis of past legal efforts within African nations underscores several lessons applicable to the current campaign against female circumcision. Such analysis also offers several insights in predicting the efficacy of the Female Genital Mutilation Act of 1996.

Laws targeting female circumcision will not work if they are imposed by outsiders and are not embraced, or even supported, by local people within the culture. In Kenya and Sudan, where anti-circumcision laws were initiated by colonial regimes and were not supplemented by any education or information, not only was the law ineffective, but, in some cases, the law

\footnote{395}{\textit{Id.}}
\footnote{396}{See \textit{id.} at 132.}
\footnote{397}{\textit{Id.}}
\footnote{398}{See \textit{id.}}
\footnote{399}{See \textit{id.}}
\footnote{400}{See \textit{id.}}
\footnote{401}{Mary Assaad, \textit{Female Circumcision in Egypt; Current Research and Social Implications}, World Health Organization Seminar, Traditional Practices Affecting the Health of Women and Children 18 (1979).}
\footnote{402}{See Hosken, \textit{supra} note 10, at 129; Toubita, \textit{supra} note 10, at 10.}
further entrenched the practice. In Kenya, the nationalist movement clung to female circumcision as a symbol of cultural resistance. In Sudan, the indigenous people had the practice performed “underground” despite colonial legal dictates. In both nations, the anti-circumcision law failed because it was perceived as imperialistic.

The Female Genital Mutilation Act is a U.S. law that targets female circumcision in African nations. Since the Act imposes requirements upon currently independent, but previously colonized sovereigns, it resembles the imperialistic legal efforts of past years. Therefore, if not carried out properly, the Female Genital Mutilation Act has the potential to increase, rather than decrease, the incidence of female circumcision. By examining prior successful grassroots education efforts, the following section identifies several substantive requirements essential to the efficacy of the Act.

D. Non-Legal Efforts That Have Worked

Considering the failure of past legal efforts outlined in the preceding section, many organizations have approached the eradication of female circumcision by using non-legal means. The Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) is a non-governmental organization dedicated to grassroots reform. In order to understand the strategy adopted by the IAC, it is important to understand the context within which the IAC developed.

The international debate over strategy began with the 1979 WHO regional seminar held in Khartoum. Eager to eliminate the practice of female circumcision, participants at the WHO seminar adopted a strategy characterized as a “frontal assault.” The seminar’s call for rapid abolition generated a great deal of antagonism from its African participants. Many of the forceful committee members were criticized for their approach on the grounds that culturally insensitive efforts would lead to a great deal of resentment. In order to bring about lasting change, critics argued, leadership would have to come from within Africa. Engaging African women in dialogue would ensure that the movement’s approach to educational and other issues central to eradication resonated with and was responsive to African women’s experiences.

In February 1984, an NGO-inspired seminar in Dakar, Senegal, sponsored by the government of Senagal, UNFPA (United Nations Fund for Population Activities), UNICEF, and WHO, culminated in the formation of the Inter-African Committee. The IAC included 100 representatives from twenty African nations. The goal of the IAC was to formulate national and

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404. See id. at 92.
405. Id.
406. See id. at 92-93.
407. See id. at 93.
408. See id. at 93.
409. See id.
410. See id.
international efforts to eradicate female circumcision.\footnote{See id. Gradually the IAC's focus broadened to include a variety of traditional practices that adversely affect the health of women and children. See id.} To a certain extent, these goals have been met. In 1991, in one of a series of new reports on traditional practices, Mrs. Halima Embarek Warzazi, Chair of the U.N. Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, discussed a remarkable attitudinal change brought about by the IAC's massive consciousness-raising campaign.\footnote{See Seminar on Traditional Practices, supra note 22, at 36.} She noted that the organization's efforts resulted in "noticeable progress" in public awareness surrounding female circumcision. She also noted that, due to the IAC's efforts, governments had become more willing to implement measures targeting the practice, and that the IAC had "succeeded in breaking the taboo about harmful traditional practices through education and information."\footnote{Id.}

In 1990, the IAC targeted female circumcision through a number of non-legal means.\footnote{See Report of the United Nations Seminar on Traditional Practices Affecting the Health of Women and Children, Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities, 43d Sess., Provisional Agenda Item 4, at 27-28, U.N. Doc. E/ CN.4/Sub.2/1991/48 [hereinafter Seminar on Traditional Practices 1991/48].} As a 1991 U.N. Report explains, the IAC developed its plan of action based upon its belief that education is the best means of "changing the social attitudes underpinning traditional practices."\footnote{Id. at 27.} With education as its primary means to promote change, the IAC's plan of action includes the following: disseminating information, providing education at all levels of schooling, creating awareness of the adverse health impacts of the practice, and mobilizing large groups of people through training and outreach programs.\footnote{See id. at 94-97.}

The IAC's structure helps it to spread its message; it consists of twenty-four national affiliates. Within each of these, IAC-organized information and training campaigns are designed to educate community heads and leaders of public opinion so that they can discuss the harmful effects of female circumcision with their communities.\footnote{See id.} Among the IAC's most vital allies are traditional birth attendants, religious leaders, professional bodies, and associations of market women.\footnote{See Welch, supra note 403, at 96.} It is the IAC's philosophy that education of community leaders will result in the sweeping change in public attitude that will, in turn, generate the political will necessary for legislative action as well as the support necessary for its enforcement.\footnote{See id.}

Apart from the IAC, National Committees on Traditional Practices have made enormous grassroots mobilization efforts. For example, the National Committee on Traditional Practices in Nigeria, established in 1985, has facilitated workshops, seminars and media campaigns which

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\footnote{411. See id. Gradually the IAC's focus broadened to include a variety of traditional practices that adversely affect the health of women and children. See id.} \footnote{412. See Seminar on Traditional Practices, supra note 22, at 36.} \footnote{413. Id.} \footnote{414. See Report of the United Nations Seminar on Traditional Practices Affecting the Health of Women and Children, Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities, 43d Sess., Provisional Agenda Item 4, at 27-28, U.N. Doc. E/ CN.4/Sub.2/1991/48 [hereinafter Seminar on Traditional Practices 1991/48].} \footnote{415. Id. at 27.} \footnote{416. See id. at 94-97.} \footnote{417. See id.} \footnote{418. See Welch, supra note 403, at 96.} \footnote{419. See id.}
sensitize the public, traditional leaders, and practitioners.\footnote{420}{See id.} The National Committee has also distributed posters about female circumcision, which include information in a number of local languages, to be placed in local health clinics.\footnote{421}{See id.}

Grassroots mobilization has produced significant gains in Ghana where a National Committee to Combat Traditional Practices Affecting the Health of Women and Children has combined its efforts with the National Council on Women and Development (NCWD).\footnote{422}{See id. at 21.} These groups have organized numerous seminars for circumcisers, nurses, doctors, and the general public.\footnote{423}{See id.} In 1987, following just three years of the IAC's action, a pilot survey conducted in Bawku, revealed that ninety-seven percent of the interviewed women above the age of forty-seven had been circumcised while forty-eight percent of the girls under twenty had not been circumcised.\footnote{424}{See id.} Also, by combining their efforts, the NCWD and the National Committee in Ghana designed retraining projects in which educators encourage circumcisers to abandon their vocation by providing them with alternative sources of income.\footnote{425}{See id.} The most recent edition of the Hosken Report states that: "to gain international support and attention for Female Genital Mutilation, the IAC as an African organization working with and for African women is unique and has accomplished more than anyone connected with this issue could hope for — given the problems."\footnote{426}{Hosken, supra note 10, at 7.}

The grassroots efforts described above illustrate the enormous potential for the Female Genital Mutilation Act. The Act incorporates the understanding that non-legal means, particularly education, may be the most effective tool in the campaign against female circumcision. The Act does not demand the enforcement of national anti-circumcision laws. Rather, the law's construction implicitly assumes that education facilitates the eradication of an embedded cultural practice, and that long-term change requires just the type of grassroots efforts advocated by the Inter-African Committee.

Although the educational component of the Female Genital Mutilation Act is less coercive than most sanctions, the method of withholding loans fits into the mold of a coercive human rights enforcement mechanism — aid conditionality. The following section examines the Act in light of past experience with conditioned aid both in the human rights and political contexts.

E. Methods of Persuasion: Conditioned Aid

The Female Genital Mutilation Act of 1996 is an unusual hybrid in the world of human rights enforcement. On the one hand, the Act acknowl-
edges that education can be used to change deeply embedded attitudes.\textsuperscript{427} On the other hand, the Act recognizes that the eradication of female circumcision will not occur without some sort of pressure. In regions where the practice has existed for centuries, change will not come easily. Consequently, the Female Genital Mutilation Act of 1996 uses conditioned aid to prompt education. Therefore, the logic behind the Act is that: by pressuring the targeted nations to implement educational programs, a change in the public's attitude towards female circumcision will result which, in turn, will lead to both an end in the practice itself and to support for national laws against female circumcision.

Conditionality, by definition, includes the offering of a benefit if and only if the receiving nation acts according to the donor's desires.\textsuperscript{428} Usually, donors use conditionality to create long-lasting reform in the recipient nation's policies and laws.\textsuperscript{429} Ordinarily, the donor views the requested changes as "intrinsically in the interests of the receiving government, or at least in the interests of the people of the receiving country."\textsuperscript{430} The power of conditioning aid depends upon the wealth and power of the targeted nation. Clearly, those nations desperately dependent upon economic aid will change their behavior much more readily than those nations which are not as economically dependent.\textsuperscript{431} Because the twenty-eight African nations targeted by the Female Genital Mutilation Act are, for the most part, impoverished and highly dependent upon aid money, the Act's provision for conditioned aid will likely have a significant effect on the policies of those nations.

Since the demise of communism in the Soviet Union and Eastern Europe, the international agenda has evolved considerably. Many new issues formerly obscured by Cold War priorities now demand heightened attention: environmental protection, respect for human rights, improved governance, progress toward democracy, and anti-poverty development strategies.\textsuperscript{432} This shift in international priorities requires the changing of national policies, attitudes, and behaviors. As a result, international bodies have struggled over which means most appropriately promote extraterritorial reforms.\textsuperscript{433} The mechanism used and debated about most frequently is conditionality which has been defined as "the extent and ways in which aid donors can appropriately and effectively link aid to specific noneconomic policy reforms [by the donee]."\textsuperscript{434} The trend toward conditionality reflects a decline in the authoritativeness of state sovereignty as a
boundary protecting a state's right to decide its own internal policy.\textsuperscript{435}
Gradually, this boundary is eroding and nations are urging other nations
to alter their domestic policies in order to comply with international
norms.\textsuperscript{436}

The history of conditionality has proven that compliance depends
upon a number of factors. The first factor is the level of U.S. commitment
to the issue prompting the conditioning of the aid.\textsuperscript{437} One U.S. legislative
effort that uses conditioned aid as a means to curb international human
rights violations is Section 502B of the Foreign Assistance Act of 1961.
Section 502B prohibits security assistance to "any country the government
of which engages in a consistent pattern of gross violations of internationally
recognized human rights."\textsuperscript{438} Another example is Section 701 of the
International Financial Assistance Act of 1977 which instructs the U.S.
government, by means of its voice and vote in the multilateral development
banks, to "advance the cause of human rights, including by seeking to
channel assistance toward countries other than those whose governments
engage in a pattern of gross violations of internationally recognized human
rights."\textsuperscript{439}

Implementation of laws against human rights violations depends
upon U.S. executive and legislative commitment to the underlying issue,
which in the case of Section 502B was human rights. Therefore, success is
less likely when the issue conflicts with other foreign policy goals or
between the branches of government.\textsuperscript{440} The case of El Salvador is an
example of the failure of the United States to encourage human rights
because of a conflict between Congress and the executive branch.\textsuperscript{441} In the
early 1980s, Congress passed a law ending military aid to El Salvador due
to pervasive human rights violations by that nation. Congress did, how-
ever, provide that aid could continue if the president certified that human
rights violations were declining.\textsuperscript{442} From January 1981 to July 1983,
despite blatant repression in El Salvador, President Reagan signed the certi-
fication every six months.\textsuperscript{443} By 1990, when aid was denied because six
Jesuit priests and two witnesses were executed, the United States had pro-
vided close to $1 billion in military assistance to El Salvador.\textsuperscript{444}

Such examples of past U.S. experiences with human rights policy sug-
gest that the Female Genital Mutilation Act of 1996 will only work if the
commitment of both Congress and the Executive is strong enough to out-
weigh other foreign policy concerns. Unless the representatives to the
World Bank make eradication of female circumcision a high priority, other

\textsuperscript{435} See id. at 7.
\textsuperscript{436} See id.
\textsuperscript{437} See id. at 26-33.
\textsuperscript{440} See NELSON & EGLINTON, supra note 428, at 26-33.
\textsuperscript{441} See id. at 29.
\textsuperscript{442} See id.
\textsuperscript{443} See id.
\textsuperscript{444} See id.
economic or foreign policy considerations may block the law’s implementation.

Apart from U.S. commitment to implementation, compliance depends upon the type of policy reform that the donors encourage.\(^{445}\) Compliance rates are highest for measures that can be executed by a small number of officials whose efforts can subsequently be monitored.\(^{446}\) Although the actual practice of female circumcision is clandestine and its occurrence is dispersed, the Female Genital Mutilation Act avoids this potential obstacle to enforcement by focusing, not on the instances of the practice itself, but upon the existence of education programs geared toward its eradication. In that way, the Act is much easier for government agencies in the aid-receiving nation to supervise and coordinate. The fact that education is local poses some enforcement challenge, but the fact that education takes place in public and not in private mitigates this difficulty.

Another factor to consider is that compliance with conditioned aid regimes is ordinarily high for short-term, “single shot” measures, as opposed to those which require long-term continuous, integrated efforts.\(^{447}\) Recognizing this, the Female Genital Mutilation Act stands upon tenuous ground. Although the actual initiation of educational programs requires a short-term act, such educational efforts clearly will fail if not constantly monitored, developed, and shaped to fit the needs and integrate the voices of people within the communities affected. In order for the educational programs to be effective, the government agencies developing the education programs must consult with community leaders and individuals. Nelson and Eglinton argue that “Implementing such a condition requires extensive institutional innovation and sensitivity as well as commitment on the part of central and local officials.”\(^{448}\) The high level of coordination required is not consistent with the limited regulatory capacity of a typical conditional aid compliance scheme.

Considered in light of the literature on conditioned aid, the success of the Female Genital Mutilation Act of 1996 depends upon a number of variables. The complexity of an integrated, culturally-sensitive education program targeted both at leaders and at the general public requires the commitment of a great deal of resources. The nations affected by the legislation are highly dependent upon aid.\(^{449}\) Therefore, there is a strong incen-

\(^{445}\) See id. at 34-35.

\(^{446}\) See id. at 35.

\(^{447}\) See id. Nelson and Eglinton warn that the logic underlying compliance with conditional aid applies equally to economic and political reforms. Id. They argue that: [A] condition requiring the release of political prisoners can be carried out by a decision of top political leaders: conditionality might be appropriate. But if human rights are being violated by dozens of largely autonomous vigilante groups, bands of marauding soldiers, or warring ethnic groups, central government officials may well lack the power to contain them. In such cases conditionality is probably futile. Id. at 36.

\(^{448}\) Id.

\(^{449}\) See id. at 53. “Because so many African nations are small and almost all are poor, they are also more uniformly aid-dependent and more subject to donor leverage.” Id.
tive for those nations to meet the conditions upon the aid.

What is much more questionable is the content of the educational programs put in place. Because a comprehensive education program requires an enormous amount of long-term, coordinated community action, the success of the Female Genital Mutilation Act depends upon whether or not each nation's implementation efforts integrate the lessons of the campaign against sati, footbinding, and the Inter-African Committee's grassroots education efforts.\textsuperscript{450}

A Formula for Change: Recommendations and Conclusions

The Female Genital Mutilation Act of 1996 represents an innovative approach in the international campaign against female circumcision. The hybrid nature of the Act mandates education within a legal framework. The foregoing sections analyzed the probability of the Act's success from different historical, empirical, and legal perspectives. Parts I and II provided the necessary theoretical framework. Parts III.A and III.B examined the campaigns against footbinding in China and widow burning in India and applied the lessons of each of these campaigns against entrenched cultural practices to the campaign against female circumcision. Part III.C analyzed the failed legal attempts to eradicate female circumcision in Africa, and Part III.D drew insights from previously successful grassroots eradication efforts. Lastly, Part III.E analyzed the Female Genital Mutilation Act in light of prior experience with conditioned aid. Taken together, the foregoing analysis suggests that the Female Genital Mutilation Act holds significant promise, but its ultimate impact depends upon several variables.

First, the anti-circumcision campaign must gradually transform public opinion about the practice through widespread education. Analysis of the movements against footbinding in China and widow burning in India illustrates the importance of a far-reaching educational campaign. In China, the success of the anti-footbinding movement derived from its grassroots educational approach. Education took the form of speeches, essay competitions, poetry, seminars, and the dissemination of pamphlets. The Unbound Foot Association organized groups of crusaders who opposed the practice on grounds of health, religion, and inconvenience. By utilizing multiple forms of media, the Natural Foot Society generated a sweeping change in public attitude. Similarly, the Baptist missionaries in India organized a massive education campaign. The \textit{Friend of India}, a missionary journal, argued against sati and Western missionaries disseminated propaganda on the negative consequences of the practice.

Second, the Female Genital Mutilation Act will not succeed if it is perceived as being imposed by Western nations. The failure of prior legal efforts in Kenya, Sudan, and Egypt illustrate the potential dangers such a perception poses to the Female Genital Mutilation Act. In each of these cases, legal efforts were not effective because people within these nations

\textsuperscript{450} See supra parts III.A, III.C.
perceived the laws as imperialistic attempts by outsiders to alter or destroy their indigenous culture. In Kenya, legal efforts pushed the practice underground and nationalism deepened the practice's cultural significance. Efforts in Sudan, Egypt, and Kenya failed because they were perceived by local people as yet another example of colonialist oppression. The failure to engage the perspective of people within the affected cultures led to further entrenchment of the practice that reformers sought to eradicate. The Female Genital Mutilation Act must avoid being characterized as imperialistic. This can be avoided if those responsible for implementing the Act's educational programs appeal to local people and enlist the leadership of individuals from the affected African nations.

Third, educational efforts must be designed by and for members of the affected cultures. Drawing from the theories of the relativists as well as the concrete lessons of China, India, and the Inter-African Committee, the Act's educational programs must utilize the resources of local individuals. Due to their personal understanding of the indigenous culture, members of the affected communities can most effectively frame the campaign within its cultural context. As members of the native culture, Chou, the author of the Suifu Appeal, and Rammohun Roy, were able to identify the circumstances blocking eradication and structure their messages in response to those circumstances. Religion, tradition, aesthetics, and marriageability all serve as powerful justifications for the maintenance of the practice of female circumcision.\footnote{451. See supra Part II.}

But, those forces are not insurmountable. In the anti-sati campaign, Rammohun Roy focused on religion as his primary weapon in the educational campaign. Through careful study of Hindu scriptures, Roy discredited the religious justifications for sati. With religion serving as a major justification for the continuance of female circumcision, arguments espoused by those familiar with the Muslim religion which are grounded in Muslim texts may prove to be particularly persuasive. In addition to educating community members on the physical health consequences of female circumcision, eradication efforts should focus on the culturally embedded rationales that have heretofore kept the practice in place. This can only be done with the leadership of "insiders."

Fourth, educational efforts should target the leadership of the affected communities. The Inter-African Committee, the most successful force in the campaign against female circumcision, structures its efforts around the basic philosophy that community leaders are the key to long-term change. In this respect, the efforts of the Natural Foot Society in China are also extremely informative. Just as the Natural Foot Society targeted the non-Christian elite, the group that exerted political and social control over China, so too must the implementors of the Female Genital Mutilation Act of 1996 target the elites of the nations they work in. Once leaders join the campaign against female circumcision, implementors must publicize the leader's opposition to the practice. Just as the Natural Foot Society took advantage of Viceroy Chang-chih-tung's political stand against footbinding
and publicized his condemnation, the implementors of the Act should seize upon the anti-circumcision statements of political leaders and use them as opportunities for action. By targeting religious figures, political leaders, and others in positions of power, the Female Genital Mutilation Act may lead to a sweeping change in public attitudes. In turn, this change may generate the political will necessary to bring about legislative action and to sustain eradication over the long term.

Fifth, educational campaigns should be designed with the long term goal of laying the foundation for legal prohibition and permanent eradication. In both India and China, legislative efforts were only embraced by citizens and enforced by lawmakers once the movement to eradicate the respective practices had transformed into an indigenous movement. In China, national legislation against footbinding was effective only after years of education had brought about popular attitudinal change. When a law was passed banning footbinding in 1911, it was not only supported but enforced. Similarly, the Indian Circular Orders were ineffective when imposed prior to a shift in public opinion. But the work of the Baptist missionaries and Rammohun Roy paved the way for Governor-General Bentinck's anti-sati regulation in 1829. Like the Female Genital Mutilation Act, both of these instances involved Western interference, but it was the shift in public opinion which preceded the legislation that led to their eradication.

Lastly, the success of the Female Genital Mutilation Act of 1996 depends upon sustained and coordinated long-term commitment. As the literature on conditioned aid reveals, the mechanism employed by the Act holds promise insofar as the recipient nations are highly dependent upon aid money. However, in the past, conditioned aid has reaped greater success with "one shot" measures than with efforts requiring continuous supervision and coordination. As a result, the success of the Act depends upon the level of U.S. commitment to its implementation. U.S. politicians must put pressure on representatives to the World Bank, and the United States should provide additional funds and resources once the educational programs are in place.

This last point speaks to one of the lessons of the anti-sati campaign. Despite the anti-sati legislation passed in 1829, the recent resurgence of sati highlights the importance of sustained education. Continual information dissemination and education may be necessary to prevent deeply ingrained cultural beliefs from re-emerging. Therefore, assuming that the Female Genital Mutilation Act achieves a transformation in cultural beliefs and behavior, education must continue, even after the twenty-eight African nations pass effective anti-circumcision laws. For, although education is powerful, one must continually contend with culture.