Cultural Relativity and Universalism: Reevaluating Gender Rights in a Multicultural Context

Elene G. Mountis
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Those who are bold enough to advance before the age they live in, and to throw off, by the force of their own minds, the prejudices which the maturing reasons on the world will in time disavow, must learn to brave censure. We ought not to be too anxious respecting the opinion of others.

Mary Wollstonecraft, (1797)¹

I. Introduction

A tension between two analytical approaches which aim to strengthen human rights laws has divided the international community and has served as a barrier to the promotion of human rights. The first school of thought, Universalism, promotes the belief that all human beings are born with the same set of inherent human rights, guaranteed to them simply because they are human.²

¹ Mary Wollstonecraft, quoted in MARIAM GURKO, THE LADIES OF SENECA FALLS, THE BIRTH OF THE WOMAN'S RIGHTS MOVEMENT 15 (1976). Although stated long ago, Mary Wollstonecraft’s words continue to have meaning today for women in other nations, as well as women in the United States, who continue to struggle against the preconceived beliefs and values that have hindered the development of socially recognized women’s human rights.

Conversely, Cultural Relativists believe that human rights vary from culture to culture.\(^3\) Cultural Relativists maintain that an activity perceived as a human rights violation in one nation may be acceptable under the prevalent cultural beliefs in another.\(^4\) They argue that the cultural differences of certain societies cannot be reconciled with the Universalists’ belief in a universal norm for human rights; thus, different cultures have different definitions of what constitutes a “human right.”\(^5\) Moreover, Cultural Relativists argue that the Universalists’ perspective does not provide a better or more inclusive set of rights.\(^6\) In fact, many Cultural Relativists claim that their governments support extensive human rights protections.\(^7\)

The gap between these two perspectives has frustrated efforts to create uniform human rights protections. The effect has been especially damaging to the establishment of women’s rights. Universalists claim that Cultural Relativists use “culture” to justify the continued subjugation of women.\(^8\) This systematic dismissal of Cultural Relativism, however, simply glosses over a very important reality which cannot be easily overcome: women all over the world believe in and perpetuate the roles that culture, tradition, and religion demand that they play. Moreover, given the choice, many women would decide not to abandon the traditions that they were socialized to accept. Because the social institutions in many countries are based on patriarchal ideologies and provide no vehicles for social change, women become powerless to challenge oppressive traditions.

The Universalist (or Universalist/Western) strategy for creating human rights protections focuses on creating new international laws to give women a voice in society’s institutions.\(^9\) This strategy fails

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6. Id. at 95.
for two reasons. First, international laws are often plagued with ambiguity, creating ample opportunity for differing interpretations and manipulation of those laws. The Universalist approach encourages individual states to adopt international human rights laws as models for domestic legislation. Deeper investigation, however, reveals that many states ratify this legislation for political reasons, intending to interpret the legislation in ways much different than was originally intended. Consequently, the absence of a strong international enforcement mechanism to regulate state implementation invites corruption and non-adherence.

Secondly, the Universalist strategy fails by not working to understand the cultural practices and norms that discriminate against women. For example, culture often takes precedence over international law when those sworn to enforce these international human rights laws are unable to overcome their allegiances to ancient traditions and customs. Under these circumstances, where both local and international enforcement mechanisms functionally cease to exist, the impact of international human rights laws on women’s lives is diminished, if not totally extinguished. By not appreciating the enormous impact of cultural traditions, Universalists/Westerners cannot combat the evils that are committed against women every day.

This Article does not suggest that the cultural subjugation of women is a "justified" phenomenon or a burden that must continue to be shouldered by women in these countries. Instead, this Article proposes the utilization of existing social institutions and women’s organizations to promote gradual change in countries that would otherwise perceive the introduction of “women’s rights” as imperialism by Westerners. Change must be from within and cannot occur by way of imposition. Activists must be aware that, while they perceive Universalism as an important ideal, this view is not shared by all cultures. Other nations have their own ideals based on their cultural practices and traditions. Societies cling to these traditions as a source of identity and their people look to

10. See Rudolf Bystricky, The Universality of Rights In A World of Conflicting Ideologies, in INTERNATIONAL PROTECTION OF HUMAN RIGHTS 83, 87 (Asbjorn Eide and August Satou, ed., 1968). In fact, when the first instrument of international human rights, the Universal Declaration of Human Rights, was implemented, many believed that it was merely a set of “splendid sounding principles, which would remain dead letters.” Id. at 86.

them for a sense of belonging. However, this Article asserts that culture does not have to deny women freedom from oppression. Cultures may be reformed or gradually reinterpreted to provide women within these cultures with the protections that Western women have achieved after years of struggle and determination.

This Article proposes a practical approach to human rights which does not strictly adhere to either the Universalist or the Cultural Relativism approach. Instead, the Article discusses bridging the gap between these two approaches by accepting some of the tenets of each. The focus of this Article is on the potential of women to organize and to work within their cultures to achieve greater human rights for themselves. Part II of the Article is an illustration of certain culturally-engendered legal systems which demonstrate the tension between Universalism and Cultural Relativism.

Through case studies, this Article also discusses the failure of international “agreements.” Part III of the Article explores the American Women’s Movement at its inception and analyzes the approach taken to address the cultural and religious prejudices that existed in the United States in the nineteenth century. Based on that analysis, a proposal for the women in each of the earlier case studies follows. These proposals are founded on the basic assumption that women must organize, identify the practices or conditions that they deem unfavorable, and then attempt to educate other women and men to eliminate harmful practices. Part IV of this Article recognizes that women in the Western world feel compelled to assist non-Western women in their struggle against discriminatory customs and proposes the least intrusive method for channeling assistance in two main areas: the creation of domestic laws and policies which criminalize genital operations and the modification of refugee laws to provide a category for women fleeing gender-based persecution. Finally, Part V recognizes the importance of education, freedom, and tolerance in order to promote women’s rights globally.

II. Case studies

Throughout the world, women have been subjected to immeasurable forms of abuse including rape, forced prostitution, exclusion from the political process, forced motherhood, physical beatings, homicides, discrimination, and a host of genital-circumcis-
ing operations performed under often unsanitary conditions. These abuses are often "justified" by a society's cultural norms and customs. Ironically, women play the role of "keeper" of these traditions which perpetuate their inferior social status.

The international community, however, has recognized the plight of women and has taken legal measures to eliminate the unequal treatment of women. The 1980 Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter the Convention) recognized that women's issues have been lost in general human rights agreements and are in need of special, individualized attention. Through Article 5 of the Convention, the international community directly addresses the issue of harmful cultural practices. Article 5 provides that:

States Parties shall take all appropriate measures:
(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs 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. 

Another important provision, Article 2, targets cultural-gender discrimination by requiring the elimination of discriminatory legislation and customs. Article 2 states in pertinent part:

States Parties ... by all appropriate means and without delay undertake:
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

The Convention is the only treaty which explicitly mandates the eradication of harmful cultural practices against women.

15. Id. at art. 5.
16. Id. at art. 2.
The drafting of an international women's rights treaty initially appears to be a sign of progress. However, this Convention has not significantly changed women's lives.\(^\text{17}\) Specifically, Article 2 has led to considerable problems.\(^\text{18}\) Nations have taken one of three approaches to Article 2. Some nations have ratified the treaty with a "reservation," relieving them from the obligations of Article 2.\(^\text{19}\) Egypt, for example, ratified the treaty with the following reservation to Article 2: "The Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic Sharia'a."\(^\text{20}\) Such a reservation is quite common among Islamic states and results in limiting the effects of the Convention.\(^\text{21}\) Some states, including Iran, Saudi Arabia, Syria, and Lebanon, have refused to ratify the treaty, claiming that the treaty as a whole is antithetical to their nation's culture.\(^\text{22}\) Some states also perceive the treaty as an imperialist tool of Western Universalism.\(^\text{23}\) The way in which these nations have reacted to the Convention is not uncommon. In fact, other human rights treaties have met the same fate.\(^\text{24}\)

For instance, the Universal Declaration of Human Rights (hereinafter Declaration) includes anti-discrimination provisions requiring that all people are equal before the law.\(^\text{25}\) This Declar-

19. See infra notes 20-22 and accompanying text.
22. Id.
23. See Samuel P. Huntington, The Clash of Civilizations?, FOREIGN AFF. 23 (Summer 1993) for a discussion of this notion of cultural imperialism.
24. Interestingly, the CEDAW is among the most heavily reserved international agreements. Minor, supra note 18, at 144.
tion also prohibits torture and cruel, inhuman, or degrading treatment\(^2\) and establishes a right to freedom of movement.\(^2\)\(^7\) The International Covenant on Civil and Political Rights (hereinafter ICCPR) is another attempt at legal protections for women. Like the Declaration, ICCPR includes anti-discrimination provisions\(^2\)\(^8\) and also specifically mandates equality of civil and political rights between men and women.\(^2\)\(^9\) However, all of these provisions have been violated in the name of “culture.” The greatest irony is that while the Convention and ICCPR are legally binding only upon those states whose national legislatures have ratified it,\(^3\) the Declaration is not binding on the U.N. member states because it has never been presented for ratification.\(^3\)\(^1\)

The Convention and ICCPR are enforceable against the member states;\(^3\) however, they do not create rights for the female citizens of the member states.\(^3\) In any case where a violation of the Convention or ICCPR is asserted, that violation must have been committed by a U.N. member state if the party making the assertion is to be remedied.\(^3\)\(^4\) Since culturally based human rights violations often occur in the home by private individuals, this legal

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Philip R. Trimble, eds., 1991):  
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Id.

26. Id. at art. 5. This provision may be interpreted to prohibit the practice of genital operations, during which women are often forced to remain silent, suffering subsequent physical and psychological effects. Id. See infra notes 40-43 and accompanying text.

27. Id. at art. 13. This provision is violated by the Islamic practice which forbids women from leaving the home or traveling without either a male escort or written permission from a male guardian. Id. See infra note 113 and accompanying text.


29. Id. at 174. Article 3 of The International Convention on Civil and Political Rights states in pertinent part:  
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of civil and political rights set forth in the present Covenant.

Id.


31. Id.

32. Id.

33. Id.

34. Id.
limitation serves to dull the impact of these treaties and resolutions. The family and community members who commit acts of violence or discrimination are not targeted by such international legislation. Instead, the international community has relied upon state governments to create and enforce applicable legislation against such private individuals.\textsuperscript{35} Due to the private nature of the violations, however, reliance on local enforcement presents problems, especially since policemen and low level government officials have not escaped the impact of cultural biases. Consequently, attempts at legal redress have not been successful in assisting women. Some other method must be formulated to encourage the integration of international human rights laws into domestic legal agendas.

A. Genital Operations

The practice of genital operations is a prime example of harmful cultural traditions against women.\textsuperscript{36} These operations, common in African countries,\textsuperscript{37} take many forms, normally involving total or partial removal of the external female genitalia.\textsuperscript{38} One such form is a fairly “mild” type of operation which entails removal of the tip of the clitoris or clitoral prepuce.\textsuperscript{39} This version, which is most analogous to male circumcision, is required by some Islamic doctrine.\textsuperscript{40} Excision is another operation where

\begin{itemize}
\item \textsuperscript{35} While Article 17 of the Convention calls for the creation of a Committee to oversee the Convention's implementation in ratifying states, the Committee is relatively powerless and has not served as an adequate enforcement mechanism. For a discussion on the weakness of the Committee, see Minor, supra note 18.
\item \textsuperscript{36} See infra note 165, at 540. This procedure has also been referred to as female genital mutilation, clitoridectomy, infibulation, and female circumcision. \textit{Id.}
\item \textsuperscript{37} Note, \textit{What’s Culture Got To Do With It? Excising the Harmful Tradition of Female Circumcision}, supra note 2, at 1945 n.8. Genital operations take place in forty percent of Africa, in Gulf States, in Yemen, amongst Muslims in Indonesia and Malaysia, in Ganesha society and in Sri Lanka. \textit{Id.} \textit{See also} HANNA LIGHTFOOT-KLEIN, PRISONERS OF RITUAL: AN ODYSSEY INTO FEMALE GENITAL CIRCUMCISION IN AFRICA (1989).
\item \textsuperscript{38} Note, \textit{What’s Culture Got To Do With It? Excising the Harmful Tradition of Female Circumcision}, supra note 2, at 1946.
\item \textsuperscript{39} EFUA DORKENO, CUTTING THE ROSE, FEMALE GENITAL MUTILATION: THE PRACTICE AND ITS PREVENTION 5 (1994).
\item \textsuperscript{40} ASMA EL DAREER, WOMAN, WHY DO YOU WEEP? CIRCUMCISION AND ITS CONSEQUENCES 2 (1982). This type is referred to as the \textit{sunna}, which means following the tradition of the Prophet Mohammad. The prepuce of the clitoris is frequently burned away with the application of a heated stone or pearl. Unfortunately, when the family advises the midwife to perform the \textit{sunna}, she often performs a less mild form of the operation. Due to lack of information and
both the clitoris and the labia minora are removed.\textsuperscript{41} The third type, infibulation, goes a few steps further than excision to sew together the labia majora with thorns after removal of the labia minora and the clitoris.\textsuperscript{42} The woman's legs are then tied together so that scar tissue will form, sealing off the vaginal passage.\textsuperscript{43} A small piece of wood is inserted to provide a pinhole opening that is barely large enough for urine and menstrual fluid to flow.\textsuperscript{44} This opening is so small that intercourse and childbirth are extremely difficult and painful.\textsuperscript{45} Another operation is called introcision, which is a procedure whereby the vaginal opening is enlarged so as to facilitate sexual intercourse with young brides in villages that perform child marriages.\textsuperscript{46}

These operations are often performed by untrained nurse midwives.\textsuperscript{47} None of these midwives have received formal medical training,\textsuperscript{48} nor do they use sanitary equipment or follow sanitary education, many midwives espouse the misconception that the \textit{sunna} requires more than just removal of the clitoral prepuce. \textit{Id.} at 2.

\textsuperscript{41} Id. at 8.
\textsuperscript{42} Id. at 2. This procedure, which is the most extreme operation, is also referred to as the pharaonic. \textit{Id.} at 4.
\textsuperscript{43} Keloid scar tissue on the vulva is often so large that it prevents the woman's ability to walk. \textsc{Dorkenoo}, \textit{supra} note 39, at 16.

\textsuperscript{44} Note, \textit{What's Culture Got To Do With It? Excising the Harmful Tradition of Female Circumcision}, \textit{supra} note 38, at 1947.
\textsuperscript{45} Id. at 1948.
\textsuperscript{46} Id. at 1947.
\textsuperscript{47} Id. \textit{See, e.g., El Dareer}, \textit{Woman, supra} note 40, at 16. Description of the typical operation performed by an untrained midwife:

A hole in the ground was covered by a mat with an equivalent hole in the middle. The child was brought by her relatives who held her down by arms and legs; and one of them hid her face with a piece of cloth; the midwife sat facing the little girl. Without washing her hands she took a knife in her right hand and held all the external genitalia on the left and cut off the tissue while the girl was struggling and crying. The relatives [said] \ldots to drown the child's cries telling her that there was nothing to be afraid of, and that it would soon be over, and calling out the names of girls who had been brave. \ldots After she had taken all the tissue, the midwife put either acacia, iodine, or salt or some other local materials on the wound and pressed hard. The limbs were then bound in three places and she was carried to the bed - where she may stay for up to 40 days - by one of her relatives.

\textit{Id.}

procedures.\textsuperscript{49} They do not sterilize the equipment, and they often use the same instruments to perform several operations in succession, which leads to disease, infertility, or even death.\textsuperscript{50}

The suffering of girls and women does not end when the operation is completed. These societies are often very technically primitive and lack both medical personnel and proper medicine to apply to the wounds.\textsuperscript{51} Many of these women or girls may suffer extensive hemorrhaging and become infected, infertile, or die.\textsuperscript{52} If they survive, when pregnant, their babies may die in the womb or be born with some neurological deficiency, especially in the case of infibulated women.\textsuperscript{53} Childbirth is often difficult as the fetal head may be obstructed and this, combined with strong contractions, may cause perianal tears. If contractions are weak, the result can be fetal death.\textsuperscript{54} These women may also suffer psychological difficulties due to the trauma and pain experienced during the operation.\textsuperscript{55} The operations are performed without even a local anesthetic.\textsuperscript{56} In some cultures, women are not even told that they

\textsuperscript{49} Jill Smolowe, \textit{A Rite of Passage - Or Mutilation?} (tradition of female circumcision in Egypt and other parts of Africa) \textit{TIME}, Sept. 1994, at 65.

\textsuperscript{50} Wendy L. Patten & J. Andrew Ward, \textit{Recent Developments: Empowering Women To Stop AIDS in Côte D'Ivoire & Uganda}, 6 HARV. HUM. RTS. J. 210 (1993). AIDS is prevalent for women who are circumcised for two main reasons: (1) Sexual intercourse for an infibulated woman is much more difficult, which ultimately results in bleeding during sex. \textit{Id.} at 3; (2) A woman is forbidden from refusing her husband, even though she knows that he is HIV positive or has many extramarital partners. \textit{Id.} at 33.

\textsuperscript{51} The ointments used vary from region to region. In some areas, the practitioners apply \textit{malmal}, which is a substance taken from a local tree that is mixed with egg yolk and sugar. ANKE VAN DER KWAAK, \textit{Female Circumcision and Gender Identity: A Questionable Alliance}, SOC. SCI. MED. 779 (1992). In other areas, animal dung or mud is applied to the wounds in lieu of any known medication. Alison T. Slack, \textit{Female Circumcision: A Critical Appraisal}, 10 HUM. RTS. Q. 437, 442 (1988).


\textsuperscript{54} Toubia, \textit{supra} note 48, at 713.

\textsuperscript{55} \textit{Id.}

\textsuperscript{56} \textit{See} LIGHTFOOT-KLEIN, \textit{supra} note 37, at 36.
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will undergo an operation.\textsuperscript{57} They are simply snatched from their beds in the middle of the night without warning.\textsuperscript{58}

Depending on the culture, the operations are performed on babies, adolescent girls, women, girls immediately preceding marriage, or on women pregnant with their first child.\textsuperscript{59} Regardless of the operation performed, the instrument used, or the time chosen for performance of the operation, all of these customary practices are perceived as culturally necessary by the community.\textsuperscript{60} Elderly females in the various communities insist on the continuance of these practices as a way to maintain ethnic identity.\textsuperscript{61} Since many of the nations in which the operations are performed were once colonies of European nations, the desire to maintain cultural identity is very deep-rooted.\textsuperscript{62} Thus, submission to these practices is viewed as necessary for the attainment of cultural identity and an assured sense of belonging.\textsuperscript{63} Additionally, because these operations are prerequisites for marriage—since many men would not consider marrying a woman who has not undergone the surgery—submission to the practice is necessary for social survival.\textsuperscript{64}

\begin{itemize}
\item \textsuperscript{57} NAWAL EL SAADAWI, THE HIDDEN FACE OF EVE: WOMEN IN THE ARAB WORLD 8 (Dr. Sherif Hetata, trans. & ed. 1980). In an excerpt from this book, the author describes her own experience as a young Muslim, living in Egypt:
\begin{quote}
I was six years old that night when I lay in my bed, warm and peaceful . . . . I felt something move under the blankets, something like a huge hand, cold and rough, fumbling over my body, as though looking for something . . . . They carried me to the bathroom. It looked to me as though some thieves had broken into my room and kidnapped me from my bed. They were getting ready to cut my throat which was always what happened with disobedient girls like myself in the stories that my old rural grandmother was so fond of telling me.
\end{quote}

\textit{Id.} at 8.
\item \textsuperscript{58} \textit{Id.}
\item \textsuperscript{59} J.S. LA FONTAINE, INITIATION: RITUAL DRAMA AND SECRET KNOWLEDGE ACROSS THE WORLD 163 (1985). \textit{See also} Dr. Lilian Passmore Sanderson, \textit{Female Genital Mutilation: Excision and Infibulation; A Bibliography} (1986).
\item \textsuperscript{60} ESTHER K. HICKS, INFIBULATION: FEMALE MUTILATION IN ISLAMIC NORTHEASTERN AFRICA 13 (1993).
\item \textsuperscript{61} DORKENOOG, supra note 39, at 49-51.
\item \textsuperscript{62} See generally, Gunning, supra note 52, at 224.
\item \textsuperscript{63} Anna Funder, \textit{De Minimis Non Curat Lex: The Clitoris, Culture and the Law}, 3 TRANSNAT'L L. & CONTEMP. PROBS. 417, 436 (1993). \textit{See Smith, supra} note 30, at 2460-61. \textit{For a discussion of the traditional rites of passage, see ARNOLD VAN GENNEP, THE RITES OF PASSAGE 70-71} (1960) (furthering the notion that circumcision is a rite of separation and inclusion of primarily social significance, as opposed to physiological importance).
\item \textsuperscript{64} Dareer, \textit{supra} note 40, at 73-74.
\end{itemize}
The "necessity" of the practice of genital mutilation is supported by the need to maintain cultural norms. For instance, some cultures require that a woman's clitoris be removed when she is seven months pregnant with her first child, claiming that the infant would die or be spiritually injured if his head were to touch the clitoris during delivery. Others argue that the operations will ensure virginity. They argue that women have insatiable sexual desires which would lead to infidelity and threaten the family and the tribe. Some communities have even argued that Islam requires these operations to protect female chastity. The problem with these explanations is that many Islamic nations do not practice female genital operations and claim instead that the Koran promotes sexual pleasure for both men and women.

Some cultures have set forth a "hygiene argument," claiming that women are rendered cleaner by these operations. However, women who undergo these operations often suffer retention of urine and menstrual fluid in the vagina, which causes infection, odor, and discomfort. Other communities propose that these

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65. See generally, supra note 60.
66. Note: What's Culture Got To Do With It? Excising the Harmful Tradition of Female Circumcision, supra note 2, at 1950-51.
67. HICKS, supra note 60, at 13.
68. WALKER, supra note 53, at 294 (1993) (discussing the fact that women are told circumcision is done to preserve virginity). More specifically, women are told that if they are not circumcised their "unclean parts would grow so long they'd soon touch [their] thighs; [they'd] become masculine and arouse [themselves]." Id. at 23.
69. Smith, supra note 30, at 2471. The Darod of Somalia are a tribal group who practice infibulation for the purpose of controlling lustful female instincts. They posit the notion, based on Islamic teachings, that maintenance of the tribe and their social order is dependent upon family honor, without which, the tribe would disintegrate. They further believe that the family honor will be lost if females were to lose their virginity with someone other than their husbands on their wedding night. From these ideas stem the necessity to practice infibulation on women. Id.
70. Id. at 2472. Saudi Arabia, for instance, does not practice "female circumcision," and declares that Islam does not require such operations. Some Muslims who do perform genital operations believe that the Koran only requires the mildest form of operation, the *sunna*. Id.
71. Eugenie Anne Gifford, The Courage to Blaspheme: Confronting Barriers to Resisting Female Genital Mutilation, 4 UCLA WOMEN'S L.J. 329, 343-44 (1994). "For example, women are frequently told that if they are not mutilated, they will be plagued by malodorous discharge, exactly what they experience when they are cut." Id. at 344.
72. See, e.g., LIGHTFOOT-KLEIN, supra note 37, at 247 (describing personal accounts of women who underwent the operation). One woman claimed that she had suffered the pharaonic operation at the hands of an untrained midwife with no analgesic when she was age six. Id. at 247. As a consequence of the operation,
operations serve as a sort of rite of passage from childhood to adulthood, at which point the participants will become accepted members of the community. They assert that the entire operation is symbolic of the casting away of childhood and the acceptance of adulthood.

Many governments, under which these cultural practices thrive, have accepted these explanations for the apparent "necessity" of female genital mutilation—or they follow a policy of non-interference. They do not perceive the practice of genital operations on women as a human rights violation but merely as a harmless tradition. In some cultures, these practices are legally recognized. In Akwa Ibom, for instance; if two women are quarrelling and one woman makes a certain clicking sound with her tongue, indicating that the other has not been operated on, then the former woman may be fined if she is wrong. The fact that it is a grave insult to

she was unable to achieve penetration with her husband for four to five months. Then, when she gave birth to her children, she had to be cut again and reinfibulated to the size of a pin, which caused her to suffer again during repenetration. Another woman recalls that due to her operation, emptying her bladder consistently required an hour long struggle of forcing out the urine "drop-by-drop," even after she had married. Menstruation, too, caused her a great deal of pain, which eventually led her to seek medical treatment. Ultimately, she underwent an operation to cut her open, and was then able to pass the accumulated blood clots that were previously trapped inside her body.


74. Smith, supra note 30, at 2464. A description of the ritual of the Kikuyu tribe, in relevant part, is as follows:

A cowhide is spread on the ground and leaves of the mugumo are spread on it. Each girl sits on a hide, while female relatives and friends form a circle, several rows thick, around all of the girls. The sponsors, sitting behind, [hold] their legs interwoven with those of the initiates, so as to brace the initiates' legs and keep them separated. The initiates [lean] back against their sponsors, who [hold] them by the shoulders...[the girl's faces] turned to the sky...[the female operator...armed with a small Kikuyu razor...[with a deft stroke [hacks] off...the tip of the clitoris, and a bright patch of red immediately [appears], as the sponsors [hold] the [girl] more tightly.'

75. Slack, supra note 51, at 462-64.
76. Id.
77. Note, What's Culture Got To Do With It? Excising the Harmful Tradition of Female Circumcision, supra note 2, at 1950.
imply that another woman has not been circumcised indicates the social importance of the procedure. 

While other states have taken legal measures to eradicate the custom of genital operations, these are only empty gestures calculated to gain approval from the Western community. For example, both Kenya and Nigeria have ratified the Convention. Genital mutilations, however, continue to be performed in spite of those ratifications. Even if the countries' ratifications are based on a sincere desire to eliminate these harmful practices, because the operations take place in the private sphere, enforcement of the legal obligations imposed by the Convention are very difficult. Societal tolerance, specifically female tolerance, of these procedures also imposes insurmountable barriers to the effectiveness of any human rights agenda.

While these societies often espouse a Cultural Relativist perspective, Universalists (often Westerners) have loudly protested the continuance of these genital operations. The Universalists have consistently named "genital mutilation" as a prime example of culturally-based human rights violations against women. They argue that the international community deals with these practices only as a cultural issue, as opposed to an issue of human rights abuse. The Convention, for instance, attempts to address genital mutilation as a cultural practice that is harmful to women, instead of as a human rights abuse. The central cry of the Universalists' complaint is that culture has been used as a defense for the continued subjugation of women.

78. Sandra D. Lane and Robert A. Rubinstein, Judging the Other: Responding to Traditional Female Genital Surgeries, 26 HASTINGS CENTER REPORT 35 (1996).
80. Id. Other states whose citizens continue to practice genital operations despite state ratification on the Convention are the following: Burkina Faso, Egypt, Ethiopia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Senegal, Togo, and Uganda. Funder, supra note 63, at 435.
81. Lane, supra note 78, at 35. Western countries are normally referred to as Universalists and include the United States, France, Sweden, the Netherlands, and the United Kingdom, where this practice has increasingly been the subject of much debate and attention. Id.
82. Id. This practice has also been referred to as "torture," "a crime of gender," and "ritualized torturous abuse." Id.
83. Id.
84. Funder, supra note 63, at 418.
85. Hope Lewis, Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide, 8 HARV. HUM. RTS. J. 1, 1
B. Religiously-based Discrimination

Often as the pillar supporting cultural traditions, organized religion has been a source of discrimination against women. Islam, which is the basis of secular law in many Muslim states, encourages what Universalists claim to be human rights violations against women. Rejecting this Universalist-Western perspective, Islamic societies have supported a culturally relative concept of human rights. Their "human rights," Islamic societies argue, must be consistent with the principles of Islam.

The Islamic religion is derived from the teachings and the life of Muhammad, who declared himself a prophet at the age of forty. Islam purports that while Muhammad was alive, he received certain oral messages from God through Gabriel, which he orally transmitted to the people of Islam. These messages were then embodied in the Koran. In addition to these messages, however, the people often consulted the Prophet directly as situations needing resolution arose in the course of their lives. Once he died, he could no longer provide ready answers for the people. Thus, the elders and scholars decided to create the Hadith, which is a record of everything that the Prophet said and did. From this Hadith, the notion of Sunna (tradition) arose and

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87. JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 51-52 (1989).
88. Id. at 50-52.
93. Id.
has become an important factor in negotiating the rights of women. Also important in Muslim nations is the Sharia'a, which is a religiously-based secular law serving as the "supreme law of the land." Derived from a patriarchal interpretation of the Koran and Sunna, the Sharia'a provides men and women with gender specific roles, legal rights, and remedies. The human rights that Muslim nations afford their citizens cannot exceed those provided for in the Sharia'a.

Consequently, Islam has formed the basis for a culture in which gender-based differentiation is permitted and legally sanctioned by the Sharia'a. For instance, under the Sharia'a, women may only be married to one man at a time, and he must be a Muslim man. Not only do women normally have no authority to choose their spouse, but women are often forbidden to flirt or act provocatively outside of marriage. Marriage is often a contract or business deal between brides' fathers and future grooms. Thus, the marriage of young girls to men double their age is common, and marriage is often a loveless and frightening experience for many women.

The rules regarding marriage as they pertain to men are far less restrictive. Under Koranic law, at any given time, men may be married to as many as four wives, who may be Muslim, women have been warned that if they marry out of the Muslim faith, upon death their bodies will be dragged through the streets "on a stretcher pulled by pigs." Such women are treated as outcasts by their families and the society. The contractual nature of marriages is evidenced by the fact that the husband must pay a bride-price (mahr) to the wife.

95. For a discussion of Sunna, see WIEBKE WALTHER, WOMEN IN ISLAM 22-23 (1981).
96. See WOMEN IN ISLAMIC SOCIETIES: SOCIAL ATTITUDES AND HISTORICAL PERSPECTIVES (Bo Utas, ed. 1983).
99. Id. at 95.
100. CAMILLIA FAZWI EL-SOLH & JUDY MABRO, MUSLIM WOMEN'S CHOICES: RELIGIOUS BELIEF AND SOCIAL REALITY 57-64 (1994). Women have been warned that if they marry out of the Muslim faith, upon death their bodies will be dragged through the streets "on a stretcher pulled by pigs." Such women are treated as outcasts by their families and the society. Id. at 95.
101. Id. at 137.
102. Id. at 37-39, 59. The contractual nature of marriages is evidenced by the fact that the husband must pay a bride-price (mahr) to the wife.
Christian, or Jewish. Unlike women, men retain the authority to choose their spouses. Laws pertaining to divorce also discriminate between men and women. For instance, while men may divorce their wives at will without even resorting to the court system, women must have grounds to divorce their husbands. Upon divorce, the husband will normally be granted custody of any children, unless the children are very young. The wife, then, must leave the marital home, which is considered to belong to the husband, and return to her father's home in disgrace.

Based on the Koran's principle of male guardianship of their wives (Qawama), husbands are granted a right to beat their wives, if the wives do not submit to their will. Qawama has also been interpreted to mean that women are not permitted to hold public office or to have any supervisory position or authority over men. Women have also been forbidden to leave the home without first being granted permission from their husbands and to travel without a male relative serving as a chaperon. Some Fundamentalists go so far as to assert that women should not work.

105. Wing, supra note 104, at 159.
106. Engineer, supra note 97, at 98.
107. Id. at 127. A man need only pronounce the words "talaq, talaq, talaq" to effectuate a divorce.
108. Id. at 5. The wife's grounds for divorce usually include desertion, impiety, or some incurable sexual or mental disease. See El Saadawi, supra note 57, at 202.
109. John L. Esposito, Women in Muslim Family Law 37 (1982). Specifically, a woman is granted custody of her sons until they reach age seven, and of her daughters until they reach puberty, set at age nine, after which the father or one of his relatives takes custody. Id.
110. Wing, supra note 104, at 162.
111. Id. at 159.
112. Id.

I wanted to go to Beirut. Such an endeavor, in the past, required official permission for women intending to travel on their own. I applied for the exit permit. The man in charge there asked me for the permission of my guardian. 'I haven't got one', I said. 'My father is dead and all my brothers are younger than me. I have a young brother,' I added, 'who doesn't dare leave the house without asking me. You want him to give me his permission to travel?' He hesitated and said, 'But this is the law.' 'What law?' I almost screamed in his face. 'How am I to invent a guardian for myself when I am the head of the whole family?'

Id. at 35-36.
outside of the home at all because they are taking jobs away from men.\textsuperscript{114}

Based on Islamic law, women have been required to wear the traditional garb, including long skirts (\textit{jilbaab}) and veils or headscarves (\textit{hijab}).\textsuperscript{115} These garments serve a protective function, protecting women from male advances and from losing their modesty.\textsuperscript{116} In addition, the traditional garb shields men from female sexuality.\textsuperscript{117} By cloaking women in these dark and heavy clothes, men claim to be preserving female chastity, against which the family honor is measured.\textsuperscript{118} The concept of family honor is central to understanding the relationship between the sexes. For instance, in some areas, it is customary for the blood-stained underwear worn on the wedding night to be paraded around the community on a platter as evidence of the family honor.\textsuperscript{119} Women and young girls, suspected of having lost their virginity before marriage, have been killed by their brothers, uncles, fathers and mothers.\textsuperscript{120} These brutal crimes are not often punished.\textsuperscript{121} The bitter irony in these situations is that these destroyers of the family honor are often virgins after all.\textsuperscript{122}

\begin{itemize}
  \item One woman is quoted as having said "You never hear about veiled girls being raped." \textit{GERALDINE BROOKS, NINE PARTS OF DESIRE: THE HIDDEN WORLD OF ISLAMIC WOMEN} 9 (1995).
  \item \textit{Id.} at 24.
  \item A story of one girl found dead illustrates the problem with this notion of family honor:

  The police had discovered the dead body of a young pregnant girl. It was thought that she had been murdered to defend the 'honor' of her family as very often happens in such cases. However, when the body was dissected by a medico-legal expert in the mortuary, his report showed that the girl had not been pregnant. The swelling detected in her belly was . . . due to the accumulated menstrual flow held back by a thick unperforated hymen.

  Saadawi, \textit{supra} note 57, at 26.
  \item \textit{SHAABAN, supra} note 113, at 4-5. The author gives a personal account of the killing of a young pregnant girl, who was killed by her brother, and whose body was left out in the open, naked. According to the author, the girl's murderous brother, \textit{Aziz}, was only imprisoned for six months, and seemed proud of his crime of honor. \textit{Id.}
  \item MINAI, \textit{supra} note 103, at 147.
\end{itemize}
In some areas of the Middle East a fundamentalist movement has emerged and its advocates have assaulted women who do not wear the traditional garb.123 Such women have suffered attacks, stonings, and sprays with acid simply due to their refusal to wear the hijab.124 For instance, in 1991, the arrests of approximately 800 Iranian women who breached the dress code, and 375 who refused to veil, were legally justified as an act to preserve the social order.125

These laws and the subsequent fundamentalist acts of violence have fostered much criticism from the West. Muslims, in response, have characterized the Universalist approach to human rights as another attempt at Western imperialism and interference in the internal affairs of other sovereign nations.126 Muslim feminists, however, argue that Islam does not support the subjugation of women, even though the Shari'a has often been interpreted as promoting a patriarchal society and discrimination against women.127

From the Universalist perspective, the Islamic fundamentalists' acts of violence against nonconforming women are human rights violations.128 To Universalists, religion is perceived as merely an excuse for the continued subjugation of women.129 They argue that many Muslim nations have taken a Cultural Relativist approach to human rights simply to insulate themselves from

123. Jane I. Smith, Women in Islam, in TODAY'S WOMAN IN WORLD RELIGIONS 303, 314-15 (Arvind Sharma ed., 1994) [hereinafter Smith, Women in Islam]. This fundamentalist movement, such as in Iran, has led to forced veiling, segregation of women from men on buses, employment discrimination, and refusal by certain shop owners to allow unveiled women into their establishments. Id. at 314.
124. Wing, supra note 104, at 190-93.
125. Reisman, supra note 114, at 519.
126. Mayer, supra note 115, at 318. After the 1993 Human Rights Conference in Vienna, an Iranian Deputy Foreign Minister stated: “[Human] rights ha[ve] come to mean Western culture and that human rights is a tool [for Western powers] to whitewash their intervention and aggression against the weaker countries.” Id. at 318-19.
127. Id. at 323.
cism. Ultimately, Universalists believe that all people are entitled to a certain set of inherent human rights, many of which are protected by the international human rights agreements.

The West blames Islamic governments for the failure of these international agreements. For instance, the West has vocally criticized both the Egyptian and Libyan reservations to the Convention. By limiting the application of Article 2, the Egyptian reservation undermines the purpose of the Convention.

The Universalist/Western perspective fails to recognize, however, that many Muslim women have accepted their position in society and have not attempted to effectuate change. These women are socialized from a young age to believe that they are inferior to men. They are forced to hide behind their traditional garments and to shield the world from their “dangerous” sexuality. This notion of woman as seductress, coupled with the emphasis on female chastity, has led to greater repression of women in comparison to men. Women are perceived not only as evil, but also as incapable of higher education. Present-day Muslim women have higher illiteracy rates than Muslim men and are often denied the educational opportunities afforded to men.

C. Domestic Abuse

In order to illustrate the inadequate legal prohibitions against violence against women, an analysis of domestic violence is necessary. Domestic abuse is defined as including “acts of physical,
mental, and sexual violence . . . that occur within the 'family.'" For purposes of this Article, a woman's "family" may include her husband, blood relatives, boyfriend, or cohabitant. Although domestic abuse takes place in many forms and in different situations all over the world, this Article will addresses domestic abuse as it occurs in Latin America. Once again, the abuse of women in these nations is a direct result of legal and cultural attitudes.

A prime example of cultural protections which permit domestic abuse exists in Brazilian law. The "honor defense" allows men to murder, without legal rebuke, wives or girlfriends whom they suspect were unfaithful. This defense is based on the belief that a wife is her husband's property and her acts of adultery constitute an offense against her husband's honor and threaten the internal order of his life. While the "honor defense" is not legally recognized, the courts have consistently permitted this "defense" as a basis for acquittal. Indeed, when the Brazilian high court ruled in the Lopes case that "homicide is not an appropriate response to adultery," the husband/defendant was acquitted by the jury when the case was retried. The Lopes court bowed to cultural pressures, stating that "one decision of the Supreme Court does not necessarily form a national precedent."

In addition to the "honor defense," the doctrine of "privileged homicide" is also available to men seeking to escape punishment for the murder of their wives. Unlike the "honor defense,"

141. Hillary Charlesworth, What Are "Women's International Human Rights?" in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 72-73 (Rebecca Cook ed., 1994). This discrimination results, in part, due to the state's hesitance to interfere in the private realm of its people's lives. Id.
143. AMERICAS WATCH, CRIMINAL INJUSTICE: VIOLENCE AGAINST WOMEN IN BRAZIL 22 (1991) [hereinafter AMERICAS WATCH].
144. Charlesworth, supra note 141, at 72.
145. Id.
146. AMERICAS WATCH, supra 143, at 25.
147. Id. at 25-26.
148. This is also called the "violent emotion defense" and allows sentence mitigation, focusing primarily on the behavior of the victim as provoking the
"privileged homicide" is a legislatively based doctrine. Article 121, Section 1 of the Brazilian Penal Code permits a reduction of charges for men who claim that unjust provocation by their victims caused them to experience "violent emotions" and to commit murder. These crimes of passion have been considered "an accident in the life of a good man." "The violent emotions" exception is based on the theory that a man who murdered out of extreme passion is not likely to kill again, and thus, is not a threat to society.

The underlying theory to this defense, however, is flawed. Even though statutory language limits the application of the "violent emotions" exception to crimes of passion, courts have often used the exception despite evidence of premeditation. Consequently, men who premeditated the murder of their wives are treated as though they were not dangerous or as if the women provoked the murder. Like the "honor defense," the "privileged homicide" doctrine stems from the cultural belief of a man's dominance over his wife or girlfriend.

While the legal system in Chile does not expressly permit domestic murder, the laws do nothing to prevent such a result. In Chile, statistics state that fifty percent of all Chilean women have been subject to physical abuse by their male partners at some point during their lives. Further statistics report that twenty-five percent of all women are consistently beaten by their partners. These figures indicate that a grave domestic abuse problem exists in Chile; however, the Chilean legal system has failed to protect these victims of abuse. Although a woman may legally file many complaints, each based on separate instances of abuse, the legal system often fails to prosecute the abuser despite the physical evidence of abuse.

149. Culliton, supra note 140, at 516.
150. AMERICAS WATCH, supra note 143, at 27.
151. Id. at 30.
152. Quando A Vitima É Mulher (When the Victim is a Woman) 65-67 (CEDAC, 1987).
153. Id.
154. Id.
156. Culliton, supra note 140, at 517 n.45.
The Chilean legal system functionally prevents women from successfully prosecuting their cases by creating arbitrary bureaucratic requirements that must be met before their cases may be heard. For example, all women who report cases of abuse must be examined by the Instituti Medico-Legal. This association is charged with the responsibility of deciding whether or not the injuries are severe enough to satisfy the criminal code. This process has proven ineffective in that the Instituti consistently has refused to find that victims' injuries are severe enough to mandate prosecution. Because of the multitude of victims, the Instituti is not able to examine victims until at least one week after the incident of abuse. Consequently, the Instituti determines whether to proceed with legal action based on an examination of wounds that are not as severe as they were immediately after the incident of abuse. Once an injury has been deemed severe enough, the case may be brought to trial. However, even in the “extremely grave” or “grave” injury cases, which are defined as those involving death or permanent loss of some bodily function, only one quarter of all abusers are found guilty.

Also difficult is the private nature of these crimes. Traditionally, by respecting the sanctity of family privacy, states have been reluctant to intrude in family affairs. Police often will not intrude on violent domestic quarrels. Consequently, women have no place to turn for assistance.

While ineffective legal systems and the private nature of this violence have contributed to the difficulty of addressing the problem of domestic abuse, the most disturbing barrier to the eradication of this practice is its acceptance by women. The following excerpt, in the words of a Latina, illustrates the prevalent mentality amongst abused women:

157. Id. at 517.
158. Id.
159. Id. at 517-18.
160. Id. at 518.
161. Id.
162. Culliton, supra note 140, at 518.
163. Id. n.48. The Chilean Penal Code also sets forth a fourteen day rule, under which abuse that results in less than fourteen days of either hospitalization or loss of work will only be a misdemeanor, carrying no criminal sentence. Penal Code, Book II, Title VIII, arts. 395-399, Book III, Title iii, art. 49. Id.
164. Charlesworth, supra note 141, at 72-73.
After about two months he started... hitting me again. This time I was going to do something, so I told Yolanda, my best friend. She said, and I'll never forget it, "So what, you think my boyfriend doesn't hit me? That's how men are." It was like I was wrong or weak because I wanted to do something about it. Last time he got mad he threatened me with a knife. That really scared me.\textsuperscript{166}

Thus, Latinas often regard violence as a natural part of life, despite their fear and their suffering. Arguably, this acceptance is in part due to frustration with the practical absence of any legal remedy for domestic violence. Society has instructed these women that domestic abuse is acceptable and that women are powerless to end the suffering. Those brave women who do attempt to file charges often find themselves in an even more precarious situation when the "legal remedies" fail.\textsuperscript{167} Often the abuser, who is usually extremely angry that his victim has defied him, is free to return home. Most significantly, the legal systems give the abuser the message that his behavior will have no legal or societal consequences for him.

The CEDAW, a committee established through the Convention on the Elimination of All Forms of Discrimination Against Women, has interpreted the Convention to state that domestic abuse is a violation of human rights.\textsuperscript{168} In a Declaration, the CEDAW has determined that the definition of discrimination in article 1 of the Convention includes "gender based violence."\textsuperscript{169} Thus, for Universalists/Westerners, useful legislation already exists on the international level. CEDAW argues, therefore, that


\textsuperscript{167} Due to high illiteracy rates, most of these women are dependent on abusive husbands and cannot separate from them despite consistently abusive behavior. Emily MaFarquhar, et. al., \textit{The War Against Women}, U.S. NEWS \& WORLD REP., Mar. 28, 1994, at 42, 48.

\textsuperscript{168} Culliton, \textit{supra} note 140, at 511. See Convention, \textit{supra} note 14, at 1, art. 1. Art. 1 defines "discrimination" as follows:

\textbf{[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.}

\textit{Id.}

\textsuperscript{169} Culliton, \textit{supra} note 140, at 514 n.31.
international law could be used against those states whose legal systems have functionally tolerated domestic abuse.

III. Measures for Internal Women’s Movements

The Universalist/Western approach, however, fails in two significant ways. First, any focus on legal remedies alone overlooks the fact that laws have failed to effectuate change. Only where there is a significant change in how women are valued will international legislation support a movement towards equal treatment.

Second, the Universalists’ approach of imposing Western values ignores the positive impact of cultural difference and the negative effects of stripping a nation of its culture. In order for women globally to achieve a higher degree of human rights, they must create this change themselves through internal movements. Specifically, they must promote change in the values and beliefs of their fellow citizens.

In determining how to effect this tremendous change, women may look to the early Women’s Movement in the United States. Many of the difficulties overcome by American women from the late eighteenth century through the twentieth century are very similar to the same ones facing women in other countries all over the world today.

A. American Women’s Movement

A close historical study of the struggles of the early American Women’s Movement reveals that culture and religion significantly limited the human rights of women. American women initially had no legal identity. According to the legal authority Blackstone, a husband and wife were considered to be one person, and that person was the husband.\textsuperscript{170}

\textsuperscript{170} See Sir William Blackstone, Commentaries on the Laws of England (1765). In that book, Blackstone explains the relationship between husband and wife as follows:

By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs every thing... Upon this principle, of an union of person in husband and wife depend almost all the legal rights, duties and disabilities that either one of them acquires by the marriage.
Additionally, in the late eighteenth century through the mid-nineteenth century, American Protestant leaders were very vocal in their negative depictions of women. Women were taught that they were all descendants of Eve, who caused the sin and suffering of the world through her seduction of Adam. As Eve’s descendants, all women were to be ashamed and spend their lives in continuous penance for the evil that they brought into the world. The clergy posited the notion that God created women as weak creatures for their own protection; thus, the only appropriate activities for women included “unostentatious prayers” and “labors of piety and love.” These religious prejudices posed immense barriers to the women’s movement because of the importance of religion in this period of American history.

Ultimately, the most “paralyzing” barrier for early American women was their acceptance of their subordinate role in society. Although some women complained of their roles as idle domestics and wished for further education, few took action to change their situation. Deep-rooted beliefs first had to be overcome by women and then by the rest of society. With immense cultural institutions working to stifle their efforts, the pioneers of this period were clearly women of courage; but first they needed to organize for their cause.

The pioneers of the early American Women’s Movement initially formed charity and missionary associations, through which the poor, the sick, and the imprisoned received benevolent assistance. These women, acting in the name of God, formed fund raising societies, Sunday School societies, maternal societies, and charitable societies. The associations spent time in prisons teaching the word of God. They even established schools, in

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173. Gurko, supra note 1, at 10.
174. Id.
175. Id. at 39.
176. See infra note 191, at 156.
which women taught the students.\textsuperscript{179} The women's associations were fully supported by the Protestant Church and by most of society.\textsuperscript{180} Women had emerged into the public realm of society, but they had not yet exceeded the scope of "propriety."

With the advent of the Abolitionist Movement, however, the role of women's associations began to change. Working under the auspices of the larger Christian men's associations, women played an important role. It was through the Abolitionist Movement that women began to appear and speak publicly.\textsuperscript{181} Due to the criticism that they received for their public role, women became aware that, like Black Americans, women's rights needed to be promoted.\textsuperscript{182} Women, too, needed freedom from the chains that prevented them from having a voice in the government, the church, education, and all spheres of public life.\textsuperscript{183} This realization led to the first convention of women in 1848 at Seneca Falls, New York.\textsuperscript{184} Prominent women in attendance were Lucy Stone, Elizabeth Cady Stanton, and Susan B. Anthony.\textsuperscript{185} Although these women had no exact agenda, they had taken the first step. Most importantly, they had organized women in order to address issues that were important to them. They composed a "Declaration of Sentiments," setting forth both their grievances and the reforms that they planned to pursue.\textsuperscript{186} They advocated education for women and began to open all-women schools.\textsuperscript{187} Finally, they posited the notion that women deserve to have a voice in the laws that govern them and thus fought for women's suffrage.\textsuperscript{188} Because of this mobilization, conditions for women began to change.

In analyzing the contemporary women's rights situations in other countries, many of the barriers that Susan B. Anthony,

\footnotesize{
\begin{itemize}
\item \textsuperscript{179} For a history of education for women, see BERKIN, \textit{supra} note 170, at 177-201.
\item \textsuperscript{180} WOLOCH, \textit{supra} note 177, at 172. These activities took place in what has been coined the period of "moral reform." \textit{Id.} at 183.
\item \textsuperscript{181} \textit{Id.} at 183.
\item \textsuperscript{182} BILL SEVERN, \textit{The Right To Vote} 67 (1972).
\item \textsuperscript{183} See generally infra note 191.
\item \textsuperscript{185} See \textit{id.}
\item \textsuperscript{186} SEVERN, \textit{supra} note 182, at 68.
\item \textsuperscript{187} FLEXNER, \textit{supra} note 176, at 23-40 (discussing steps taken toward equal education for women).
\item \textsuperscript{188} SEVERN, \textit{supra} note 182, at 68-73.
\end{itemize}
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Lucretia Mott, and Francis Wright faced more than two centuries ago are burdening women globally today. Because of the similarities, women today should look to the struggle of women in Nineteenth century America in order to frame a general plan of “attack”. The key to any progress lies in organization, through which education and awareness for all women may be promoted. Women’s organizations, however, will only meet success if they make two important recognitions. First, regardless of their form, these organizations must be created by women and they must address issues specific to women in those societies. Second, these organizations must also recognize that changing the law alone will not change the values, beliefs, and cultural practices of their societies. To effectuate such a change, women must focus on chipping away at that part of culture which holds them prisoners.

B. **Internal versus External Influence**

The Early American women’s movement was successful in part because the movement was their own. Initiated by American women who forced their way into the public sphere of life, the change occurred internally and was not imposed by some other state or culture’s values. These women organized to discuss specifically those conditions which American women alone defined as unacceptable. Since American women were living under those conditions, they were the best suited to determine what they wanted to change.

Similarly, the women in the Islamic and South American case studies discussed in Part II must effectuate the changes that they deem necessary through solely internal movements. Outsiders, such as Universalists/Westerners, are not situated to determine the nature of the change that should take place in another culture. Moreover, imposed Western values are not easily internalized. Predictably, non-Western states fight against Western criticism of their customs by crying “imperialism” and “colonialism.” The notion of Universalism as a tool of Western imperialism has

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189. See discussion *infra* parts III.B, III.C.
resulted in a battle between *them* versus *us*, a battle in which ordinary citizens cling to their culture as a source of identity.

These circumstances, coupled with female acceptance and perpetuation of the harmful practices discussed in Part II, at times suggest that reform is impossible. Not all women in these cultures, however, have accepted the gender specific roles that their societies have required them to assume. Women in some cultures have already promoted agendas which advocate human rights for women. For example, Iranian women have organized to promote equality between women and men, the development of women's awareness of their rights, and the improvement of economic conditions for women. Organizations of Palestinian women were also formed for the purpose of fighting for the Palestinian state and assisting the Palestinian Liberation Organization. Later, other organizations were formed by college-educated women to promote the creation of better professional opportunities for women. As reforms are forthcoming, these organizations must focus on enhancing the equality of women in the public sphere.

In other countries, despite the absence of women's organizations, cultural customs are not completely accepted within all realms of the society. For instance, while women in certain regions of *La Côte d'Ivoire* continue the practice of genital circumcision, women in other parts of that country do not perpetuate the practice or feel that they are required to do so. Thus, it

193. Thomas Philipp, *Feminism and Nationalist Politics in Egypt*, in WOMEN IN THE MUSLIM WORLD 290 (Lois Beck and Nikki Keddie eds., 1978). In Egypt, for instance, the first women's organizations were founded before World War I.
195. Wing, *supra* note 104, at 163. The General Union of Palestinian Women was formed in 1964. *Id.*
196. *See* TABARI, *supra* note 194. Such organizations are the Women's Committee for Social Work, Palestine Federation of Women's Action Committees, the Palestine Federation of Women's Committees, and The Association of the Palestine Working Women's Committees, all of which combined to form the Higher Women's Council. *Id.*
197. This information is based on a personal interview that I was fortunate enough to conduct with a foreign exchange student for *La Côte D'Ivoire*. This particular young woman, who had been spared the operation, knew many women who had not been so fortunate. She did wish to remain anonymous, however, as she did not have any adversity to the practice itself and did not wish that our
appears that some change may take place through those women who have not lost their cultural identity because of their rejection of the genital operations. Perhaps these women will educate their fellow citizens and offer an alternative way of life through example.

Generally, women's organizations should follow a general pattern. Women should first organize to identify the conditions which they see as unfavorable. Then they must set goals and means for changing those conditions. One example is all-female schools, which go beyond teaching women to function in the family and towards empowering women to compete as equals in society. Through the schools and organizations, the agenda should include confronting women with the cultural myths which maintain their inferior positions. For example, through education, Muslim women may learn that Islam was not intended to subjugate women. They may be made aware that certain practices, which have recently sparked fundamentalist support in the form of violence, are actually the result of a misleading interpretation of Islamic doctrine.

A prime example is the Islamic teaching which has been interpreted to require that women wear the traditional *hijab*. *Hijab*, which means "curtain," means to place a barrier between two men. In the *Koran*, on the night of his marriage to Zaynab, the Prophet became impatient to be intimate with his new bride and he ended the wedding celebration. A few guests remained despite efforts to disperse the party and the Prophet became irritated. Muhammed then proclaimed that he had a revelation which declared that he needed his privacy; Muhammad advised his guests against overstaying their welcome. Accord-

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198. MERNISSI, supra note 94, at ix.
199. Id.
200. Id.
201. Id.
202. Id. This *surah* (chapter) has been translated as follows:

O ye who believe! Enter not the dwellings of the Prophet for a meal without waiting for the proper time, unless permission be granted you. But if ye are invited, enter, and, when your meal is ended, then disperse. Linger not for conversation. Lo! that would cause annoyance to the Prophet, and he would be shy of (asking) you (to go); but Allah is not shy of the truth. And when ye ask of them (the wives of the Prophet) anything, ask it of them from behind a curtain. That is purer for your hearts and for their hearts. And it is not for you to cause annoyance to the messenger of Allah, nor that ye should ever
ing to the story, as the Prophet had this revelation, he then pulled down a curtain between himself and the one man left in the bridal chamber.\textsuperscript{203} This curtain descended to provide the Prophet the privacy he needed to be intimate with his new bride.\textsuperscript{204}

This passage has been oddly interpreted today to require that Muslim women wear the hijab outside of the home. Certainly, this passage does not suggest that all women must be veiled. Indeed, one could argue that this Koranic verse is merely a statement about tact and privacy and is quite feasible.\textsuperscript{205}

Through reexamination and reinterpretation of religious doctrine, women may begin to question their culture. Women's education must be supplemented, however, with financial support so that women may have an alternative to the gender roles that society has assigned to them. For instance, women in many of the cultures that perform genital operations derive much of their social status and economic security as mothers and wives.\textsuperscript{206} Submission to the genital operations is often a prerequisite to marriage. Consequently, if women do not submit to the operations, they have no means of economic sustenance. By making alternative roles available to women, women will be more likely to reject these disfiguring operations. Moreover, with new alternatives women will begin to see their culture from a different perspective and the women's movements' objectives will be incrementally achieved.

C. The Role of Law

Only after cultural perspectives and values begin to change will any legal remedy make an impact. As illustrated in Part II of this Article, international action in the form of treaties has had minimal effect.\textsuperscript{207} While the existence of such legislation is not overtly harmful, international treaties are ineffectual when states and people blatantly disregard them. Consequently, in the absence of an effective enforcement mechanism, the international community would be better served by recognizing that legislating may not be the answer to the "problems" of culture. Culture cannot be legislated away.

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mARRY his wives after him. Lo! that in Allah's sight would be an enormity.

\textsuperscript{203} \textit{Id.}

\textsuperscript{204} \textsc{Walther, supra} note 95, at 40.

\textsuperscript{205} \textsc{Mernissi, supra} note 89, at 92.

\textsuperscript{206} \textsc{Hicks, supra} note 60, at 79.

\textsuperscript{207} \textsc{See supra} text accompanying notes 13-35.
Instead, legislation will follow a change in cultural mores. Because a state's legal system often reflects its citizen's beliefs, it follows that changes in beliefs will give rise to informed, pro-active legislation. Only at that point will legal remedies, whether on a domestic or international level, have any significant effect.

In the meantime, the international community, outraged at the condition of women around the world, is not expected to excuse itself completely from the struggle. Westerners and outsiders too may play a role in a supportive capacity. For example, the West may make resources available for internal movements. The international community may provide funding for women's organizations or for specific economic investment projects for women. Other states may also share ideas for programs to educate women about the medical dangers of genital operations or how to set up women's shelters. In short, the international community may assist new women's organizations in how to function and succeed. This external participation, however, must not be of a dominating nature; the movements must always be internally controlled if they are to succeed.

Once the movements begin to gain the support of both men and women, the organizations must lobby for domestic laws which reflect new human rights values. Only at this point will the international community's attempts at international human rights legislation begin to have a real impact.

IV. Measures For the Western World to Take in Addressing Human Rights for Women

While Western nations are limited in the way that they may directly effectuate change in other cultures, they may still play a significant role in the domestic treatment of culturally-based discrimination. Recently, French officials began to effectuate
change domestically by criminalizing genital operations. Because many Africans immigrate to France, the practice of genital operations has become a problem for French authorities, who deem the practice contrary to notions of decency and morality in France.\textsuperscript{209} To address this problem, French courts have used a pre-existing statute prohibiting child mutilation to criminalize genital operations.\textsuperscript{210} Under this statute, the French courts have prosecuted parents who have ordered the operations, as well as "surgeons" who have performed them.\textsuperscript{211} On March 7, 1991, for example, Aramata Keita, a Malian woman, was sentenced to five years in prison by French courts for performing six genital operations.\textsuperscript{212} Typically, in these types of cases, the parents and practitioners argue that they were simply adhering to the cultural practices of their homeland.\textsuperscript{213}

This Cultural Relativity argument, however, carries little weight. As a sovereign nation, France has the authority to create and maintain the laws that its courts and legislature deem to be appropriate and necessary. Those who live on French soil and benefit from French laws may not simply decide to disobey certain laws by asserting "culture" as a defense or as an exception to those laws. If France were to allow individuals to make these assertions, France would be limiting its sovereign power to legislate in France by permitting practices which are antithetical to French cultural and French legal philosophies.\textsuperscript{214} That is not to say that France should discourage non-Western cultural expression; however,

\begin{itemize}
\item \textsuperscript{209} See generally Kathryn Hone, \textit{Tackling Africa's Ritual of Female Circumcision}, IRISH TIMES, Oct. 12, 1994, at 10 (responding to estimated 4000 circumcisions a year in the Paris region; France has become the only country to prosecute those who perform the mutilations). \textit{Id.}
\item \textsuperscript{210} Rone Tempest, \textit{Ancient Traditions vs. The Law; Prosecutions of Two Immigrants for 'Female Circumcision' in France Highlight an Increasingly Common Cultural Clash. Customs in One Part of the World Are Viewed as Repulsive in Another}, L.A. TIMES, Feb. 18, 1993, at A1.
\item \textsuperscript{211} \textit{Id.}
\item \textsuperscript{212} \textit{Malian Woman Jailed in France for Practicing Female Circumcision}, REUTER, Mar. 8, 1991.
\item \textsuperscript{213} Bronwyn Winter, \textit{Women, the Law, and Cultural Relativism in France: The Case of Excision}, SIGNS 949-50 (Summer 1994). Their arguments are based on a statutory "irresistible force" defense, articulated in Article 64 of the French Penal Code. In addition to this argument, many lawyers have set forth a defense of ignorance, claiming that their immigrant clients were unable to understand the French language, the French Penal Code, or both.
\item \textsuperscript{214} Tempest, \textit{supra} note 210, at A1 (quoting French Minister of State for Social and Racial Integration, Kofi Yamgnane, as follows: "When we say 'liberty' in France, that means you don't mutilate people. You don't have that right. It may be one thing to do it in Africa, but not here.").
\end{itemize}
France has a duty to regulate the method of that expression where its effects are on often non-consenting minor girl children. Indeed, France arguably has an obligation to prevent Islamic children living in France from being submitted to medically unnecessary and potentially fatal operations in the name of culture.

Universalists/Westerners would agree with France's assertion, claiming that a duty exists because the operations are unjustifiable and in violation of international law. Even if the Universalist/Western perspective is rejected, however, France would not be justified in affording immigrant Muslim children a lesser degree of state protection from child mutilation simply because of their cultural backgrounds.²¹⁵

Cultural Relativists might prefer that France accept and permit the operations, but this position is completely inconsistent with the premise of cultural relativism which states that one set of human rights may not apply to all states due to cultural differences. Unlike African cultures, French culture and law does not tolerate the operations. Thus, to require France to allow the practice of genital operations amongst certain sub-cultures in France would be as imperialistic as forcing African states to cease their practice of the operations.

Despite this inconsistency, French defense attorneys, taking the Cultural Relativist position, have opposed the criminalization of genital operations in France and have argued that criminalizing these operations is entirely imperialistic and ethnocentric.²¹⁶ Many feminists would like these prosecutions to serve as a warning to African and Muslim nations.²¹⁷ Feminists recognize that when these French immigrant mothers travel to Africa with their children, their relatives pressure them into allowing the operations to be performed on their young daughters.²¹⁸ The hope of many feminists is that strict penalties upon return to France will deter these mothers from being so easily coerced.²¹⁹

²¹⁵ Normally, the parents in these genital “mutilation” cases are immigrants who bore children in France. Thus, these children are entitled to government protection.
²¹⁶ Winter, supra note 213, at 949-50.
²¹⁷ Tempest, supra note 210, at A1.
²¹⁸ Using this same reasoning, a French court recently blocked the deportation of a Guinean woman and her two daughters on the ground that, upon their deportation to Guinea, the daughters would be subjected to the “inhuman and degrading” operations. Court Blocks Deportation Due to Circumcision Fear, AGENCE FR.-PRESSE, June 12, 1996.
²¹⁹ Tempest, supra note 210, at A1.
Canada has also addressed the issue of culturally based gender abuse in its immigration laws. On March 9, 1993, the Canadian Immigration and Refugee Board\(^{220}\) issued the *Canadian Guidelines for Women Refugee Claimants* (hereinafter Guidelines) and announced that evidence of gender-related persecution would provide a basis for refugee status in Canada.\(^{221}\) The Guidelines first require the Refugee Board\(^{222}\) to determine the degree to which women making gender-related claims may rely on any of the five grounds for refugee status on the Convention Relating to the Status of Refugees.\(^{223}\) Under the Guidelines, a woman's fear of persecution from the country she is fleeing must stem from one of four types of gender-based persecution: (1) fear based on one of the five grounds in the Convention Relating to the Status of Refugees;\(^{224}\) (2) fear for reasons entirely related to kinship; (3) fear which is due to severe gender-based discrimination; and (4) fear resulting from failure to conform to laws and practices (customary and religious laws) which discriminate based on gender.\(^{225}\)

Once the Refugee Board identifies the type of the persecution that the applicant is asserting, the next step is to determine whether the violence the applicant has experienced or fears (1) violates a serious human right as provided for under certain international human rights agreements;\(^{226}\) and (2) results from a failure of the

\(^{220}\) The Canadian Immigration and Refugee Board, which is a governmental administrative agency, is responsible for determining eligibility for refugee status, deciding appeals, and conducting investigations on individuals believed to be removable. Kristine M. Fox, Note and Comment: Gender Persecution: Canadian Guidelines Offer a Model For Refugee Determination In The United States, 11 ARIZ. J. INT'L & COMP. L. 117, 134 n.124 (1994).


\(^{222}\) Immigration and Refugee Board, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, Women Refugee Claimants Fearing Gender-Related Persecution 5 (1993) [hereinafter Guidelines].


\(^{225}\) Guidelines, *supra* note 222.

\(^{226}\) Some of the human rights agreements mentioned in the Guidelines as references for the Refugee Board to use in determining the existence of human rights violations are: (1) The Universal Declaration of Human Rights, (2) The Convention on the Elimination of All Forms of Discrimination Against Women, and (3) The International Covenant on Economic, Social and Cultural Rights. *Id.*
state to provide protection. The third step outlined in the Guidelines involves a determination of whether an applicant has a "well-founded fear of persecution," which is decided by investigating the general human rights conditions in the applicant's country and comparing them to her claim. Throughout the investigation and consideration of an applicant's claim, the Refugee Board is expected to proceed with the utmost sensitivity so that women feel safe to discuss their suffering and receive the protection that they deserve.

The procedures set forth in the Guidelines have had positive results for women applying for refugee status in Canada. Under the Guidelines, women who have suffered domestic abuse and were denied assistance by authorities in their home countries, as well as women who have refused to abide by certain traditional practices, are eligible for refugee status in Canada. In the first year the Guidelines were in place, Canada granted asylum in 105 out of 150 gender-based cases involving arranged marriages, forced sterilizations and sexual violence. In one case, the Refugee Board ruled in favor of an Ecuadorean woman who suffered repeated physical abuse from her husband and was refused assistance by the Ecuadorean police. In another case, a woman named Khadra Farah and her two children were granted asylum because, if returned to Somalia, Farah's husband would be entitled to custody of the children and would require Farah's daughter to submit to a genital operation.

In a similar case in the United States, Immigration Judge Kendall Warren suspended the deportation of Lydia Oluloro because of the potential that her two daughters, who are U.S. citizens, would be operated on by Oluloro's family. Despite the outcome in this case, U.S. refugee laws do not include a

227. Id. at 7.
228. Id. at 8.
229. Id. at 9.
230. Id. See Jennifer Bingham Hull, Battered, Raped and Veiled: The New Sanctuary Seekers; Women Increasingly Are Asking for Asylum from Gender-Based Abuse, Forcing the U.S. To Re-examine its Immigration Policy, L.A. TIMES, Nov. 20, 1994, at 26.
231. Id.
provision for gender-related persecution. Instead, women seeking to immigrate to the United States due to gender-related persecution are limited to proving the existence of one of the five grounds enumerated in the Convention Relating to the Status of Refugees, upon which the U.S. Refugee Act of 1980 is based. Recently, however, human rights activists in the United States have been calling for reform of the refugee and asylum laws.

V. Conclusion

While this Article has analyzed the tension between Cultural Relativism and the ideals of Universalism/Westernism, it recognizes that no solution will be realized overnight. Because cultural attitudes and norms are not merely superficial, but instead lie deep within the social fabric of a nation, change will occur gradually. Once women's rights organizations are formed internally, they must work with older, as well as younger generations, to forge ahead for the promotion of women's rights.

This Article has also presented the difficulties of legal reform on cultural practices. While human rights and women's rights legislation exist, they often are not enforced because of cultural isolationism. Indeed, international agreements may never be of consequence if, domestically, women's movements support statutory concessions or protections that are not consistent with international legislation. The possibility exists that these domestic women's

235. Layli Miller Bashir, Female Genital Mutilation in the U.S.: An Examination of Criminal and Asylum Law, 4 AM. U.J. GENDER & L. 415, 437-39 (1996). In fact, despite the fact that an increasing number of immigrants who practice female genital operations are living in the United States, the practice has not been criminalized. Id. at 428. The I.N.S. may, however, begin to uniformly consider gender-based discrimination.

236. Fox, supra note 220, at 140.

237. While some positive charges have been made, there is much work to be done, particularly with respect to uniformity. This problem is illustrated with the following story. Two different women from Sierra Leone were abducted in their sleep, stripped naked, and their genitals were partially removed. Both women came to the United States and wished to remain, making a plea for asylum based on persecution. Despite the similarities in their experiences, one woman was permitted to stay by a judge in Arlington, Virginia, while the other was denied asylum by a judge in Baltimore, Maryland. The judge stated that the operation was necessary for tribal unity and did not rise to the level of "political persecution." Daliah Setareh, Women Escaping Genital Mutilation - Seeking Asylum in the United States, 6 UCLA WOMEN'S L.J. 123, 131-32 (1995). For further discussion on asylum in the United States, see Kristin E. Kandt, United States Asylum Law: Recognizing Persecution Based on Gender Using Canada as a Comparison, 9 GEO. IMMIGR. L.J. 137 (1995).
movements may develop a human rights agenda which diverges from the tenets important to the West, and may take on an entirely different focus. This is not to say, however, that this divergent agenda will be, in some way, deficient or inferior to that posited by the West, so long as the movement behind that agenda is internally initiated and furthered.

Recognizing this possibility, Western men and women must resist the impulse to impose their own beliefs upon women of other nations. As much as Westerners/Universalists would like to completely eradicate those conditions felt to be detrimental to the development of women, they must realize that they are not welcome interlopers. The West must step down from the pedestal of moral indignation and allow the women of these non-Western nations to promote their own kind of changes. The burden lies with those who are subjugated to release themselves from their chains.