

important source of legitimation for those seeking the expansion of democracy. But in Europe, this contradiction never fully matured. An agile and accommodating political class and unprecedented influence saw to that.

In Africa, prevailing objective conditions will press matters much further particularly the question of empowerment. In all probability, the em-

powerment of people will become the primary issue. Once this happens, the social contradictions will be immensely sharpened and the idea of human rights will become an asset of great value to radical social transformation. I cannot help thinking that Africa is where the critical issues in human rights will be fought out and where the idea will finally be consummated or betrayed.

REVIEW AND DISCUSSION QUESTIONS

1. How does Ake describe Western conceptions of human rights?
2. Why does Ake think Africa should not focus on human rights?
3. What is the African conception of human rights? How does it differ from the Western conception?
4. What economic assumptions does Ake make in claiming that the Western conception of human rights is incompatible with economic development? Do you agree?

What's Culture Got to Do with It? Excising the Harmful Tradition of Female Circumcision

Editors, *Harvard Law Review*

Human rights are controversial: sometimes people disagree about particular rights; other times they doubt that such rights exist at all, claiming that morality and rights are relative to a particular culture. The author of this essay disputes the cultural relativist's skepticism about the existence of universal human rights, arguing instead that universal moral standards exist and, furthermore, that the African practice of female circumcision violates the human rights of African women. The author first explores the legal and philosophical basis for condemning the practice and then responds to each of the "traditionalist" cultural arguments offered in its defense. This article was written by Harvard Law School students and published in the *Harvard Law Review*.

The film was graphic and riveting. A baby girl was being administered to by a traditional medical practitioner. As he tattooed a lizard on the abdomen of the child, the little girl wailed plaintively: "Maami, maami, maami!"

But there was no 'maami' to rescue her. Marks had already been engraved on her cheeks which were covered by a black substance. As the traditional medical man worked, he would stop periodically to wash the area of

operation with water from a nearby basin and he would inspect his work, oblivious to the wails of the child.

The tattoo practitioner then turned to the next task. He sharpened a crude, circular blade on a grinding stone which he had earlier washed off with water from the same basin. The girl was thrust to him with her chubby legs spread-eagled in front of him. He quickly grasped and excised her clitoris, a part of the external female genitalia.

The wailing that had taken place earlier was mild compared to the screams that erupted from the little girl's mouth at that point. Receiving the crying child, the mother looked at her baby apprehensively but also with some measure of pride. Her child, it would appear, had passed some milestone.¹

This film of a traditional medicine man scarring and circumcising an infant girl does not depict a fictional event or a birth ritual performed centuries ago and long since discontinued. The videotaped event took place recently in Ajegunle, an impoverished community in Lagos, Nigeria. If all went "well" with the procedure, the little girl in the film will grow up blissfully unaware of the trauma and pain she experienced at such a tender age. She will be regarded in her village as a "normal" girl and a virtuous woman. When she is old enough, her parents will be offered the appropriate "bride price," and she will marry a man who will expect that she has been circumcised in accordance with this deeply entrenched tradition.

If complications develop, however, the little girl might become one of the thousands of African children who die annually from tetanus infections as a result of such procedures. If she survives, she may suffer severe hemorrhaging or experience dysuria (painful urination) and dysmenorrhoea (painful menstruation) due to pelvic congestion. By the time she is ready to bear children, scar tissue may block the birth canal or cause other complications during labor, possibly resulting in an intrauterine fetal death.

Despite the frequency and seriousness of these complications, the traditional practice of female circumcision has received scant attention from the Nigerian government or from the governments of the other twenty-five countries on the African continent where female circumcision is practiced. Policymakers remain indifferent to this "silent emergency that continues to menace at least

eighty million women and young girls."² Although statistical data on morbidity and mortality from female circumcision is difficult to procure, the known side effects and complications are severe enough to merit government intervention. Due to the lack of authoritative governmental intervention, non-governmental organizations, such as the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC), have undertaken concrete efforts to abolish female circumcision, as well as other harmful practices such as body scarring, early-childhood marriage, and nutritional taboos.

Informed by first-hand accounts of the personal experiences of women in Nigeria, this Note presents the devastating health consequences of female circumcision, but analyzes the practice primarily from a human rights perspective. It argues that, although human nature is necessarily defined by cultural contexts, the decisions regarding which customs will be preserved in the name of culture or tradition must be oriented toward the promotion and protection of universal human rights in order to have legitimacy in any contemporary society. Part I introduces the types of circumcision commonly practiced and discusses their post-operative effects. Part II presents and critiques the prevalent reasons for the continuation of the practice among certain ethnic groups in Nigeria. Part III argues for the legal eradication of female circumcision, and uses the Nigerian Constitution and selected international human rights instruments as a foundation. Part IV addresses the theory of cultural relativism as it applies to female circumcision and concludes that the promotion of universal human rights is not a mutually exclusive alternative to the maintenance of cultural identity and tradition.

I. TYPES OF CIRCUMCISION AND THEIR EFFECTS

The term "female circumcision" refers to several genital operations that entail incision, and usually removal, of part or all of the female external genitalia, which is composed of the clitoris and the clitoral prepuce, the labia majora (large lips of the vagina), and the labia minora (small lips of the

vagina). Clitoridectomy, the form of female circumcision that is most comparable to its male counterpart, involves removal of the clitoral prepuce or tip of the clitoris. In Muslim countries, this "mild" form of circumcision is also known as "sunna," which means tradition. In excision, the entire clitoris and the labia minora are removed, which leaves the labia majora intact and the remainder of the vulva unsutured. In "pharaonic circumcision" or infibulation, the sides of the labia majora are sewn together with thorns after the clitoris and the labia minora are removed. The woman's legs are then bound together from thigh to ankle for several weeks to allow scar tissue to form. Complete occlusion is prevented by inserting a splinter of wood or a matchstick, which preserves a small orifice through which urine and menstrual fluid can pass. Introcision refers to a procedure in which the perineum is cut to enlarge the vaginal opening. These "gishiri" cuts, typically performed in early childhood, are intended to facilitate sexual penetration of young girls in communities where child marriage is widely practiced.

Female circumcision is usually performed by "traditional surgeons," or "traditional birth attendants." In parts of northern Nigeria, the procedure may also be performed by the village barber, although typically the practitioner is a woman. The surgical instruments used include razor blades, iron knives, and pieces of cut glass, or similarly constructed home-made tools. Usually the operations are performed without anaesthesia and under conditions that are not sterile. Indeed, "[m]any of the traditional practitioners handle several babies in succession using the same blade." After the operation, the incision is treated daily with a native soap, palm oil, vaseline, kerosene, or even engine oil.

In Nigeria, the over 250 ethnic groups differ in their use of the methods described above. Similarly, there is widespread variation in the age at which the operation is performed. Regardless of the age at which circumcision is performed, the consequences of the operation are often more severe than expected. The degree of hygiene under which the operation is performed, the expertise of the practitioner, the general health of the girl or woman being circumcised, and the amount of struggling she does will all influence the outcome. Immediate effects can include intense pain,

shock, hemorrhage, retention of urine and menstrual discharge, fever, tetanus, and genital infection. The girl or woman may die if a major blood vessel is cut and she cannot reach a medical facility equipped to deal with such emergencies.

For many women, however, the detrimental effects of circumcision do not immediately appear. Thus, the parents, patient, or medical practitioner may see no causal connection between the procedure and the post-operative ailments that can materialize intermittently during later years. These include reproductive tract infections that sometimes are severe enough to cause infertility, urinary tract infections, cysts, and the formation of obstructive genital scar tissue.

Inevitably, the consummation of marriage or the occasion of first intercourse is a painful ordeal for an infibulated woman. If the vaginal opening is too small for penetration, another incision must be made to enlarge the opening. The small opening and scar tissue create even more difficulties during childbirth. Obstructed labor may result in hemorrhaging, tearing of perineal tissue, and eventually a prolapsed uterus. For the baby, such a prolonged and difficult delivery is life-threatening; the infant may be stillborn, or if it survives, it may suffer brain damage from a lack of oxygen during the difficult delivery.

Female circumcision also inflicts psychological wounds. Indeed, it is traumatizing to read about, let alone experience, the suffering of a woman or young girl whose "life-giving canal is stitched up amid blood and fear and secrecy, while she is forcibly held down, and told that if she screams she will cause the death of her mother, or bring shame on her family." Although ceremonial circumcision is typically preceded by singing, dancing, and celebration, adolescent girls often suffer severe operative anxiety, experience traumatizing terror during the procedure, and feel betrayed afterwards by the mother or female relative who urged or forced them to undergo the operation.

II. JUSTIFYING FEMALE CIRCUMCISION IN NIGERIA

Proponents of female circumcision in Nigeria offer several reasons for the continuation of the

practice.³ Such reasons include the maintenance of tradition, the promotion of social and political cohesion, the enhancement of fertility, the fulfillment of religious requirements, the prevention of promiscuity, the preservation of virginity, the maintenance of feminine hygiene, and the pursuit of aesthetics. Identical or closely related justifications are offered by those who adhere to the tradition throughout Africa.

A. Tradition

... Tradition—the reluctance to break with age-old practices that symbolize the shared heritage of a particular ethnic group—is the most frequent reason that diverse ethnic groups cling fiercely to a practice that inflicts significant pain and suffering on women and children.

In some communities, circumcision is the traditional ritual that confers full social acceptability and integration into the community upon females. The ability to identify with one's heritage and to enjoy recognition as a full member of one's ethnic group, with just claim to its social privileges and benefits, is very important to most African families. For many women and young girls, circumcision satisfies this deep-seated need "to belong" and ensures that they will not be ostracized. . . .

Although the maintenance of a group's cultural identity and the promotion of social and political cohesion are legitimate objectives, the right to belong—to contribute to and participate in one's community as a full member—should not be conditioned on a price of human suffering. Such a requirement puts women and young girls in the unjust position of having to jeopardize either their right to health and bodily integrity or the esteem privilege of social acceptance. . . .

B. The Enhancement of Fertility

In the Isoko and Urhobo communities of the Delta state, women are circumcised during the advanced stages of their first pregnancy. The legend behind the tradition of circumcising pregnant women is that if the first-born baby's head touches the clitoris during childbirth, the child will die. A related myth is that, if left uncircumcised, the clitoris will "cause symbolic or spiritual injury to the baby."

When confronted with the fact that uncircumcised women carry their babies to term and have normal, unobstructed deliveries, traditional birth attendants who perform clitoridectomies still insist that these procedures are a prerequisite to a safe delivery. When they are informed that medical reports confirm that circumcision often causes infertility and is even more dangerous during pregnancy, some traditional practitioners retort, "Modern doctors may say what they like. We have never experienced any problem whatsoever with this thing."⁴ Furthermore, they claim that "this is what our culture demands. It was handed over to us by our forefathers. We cannot afford not to circumcise our women."⁵

In light of the compelling veracity and force of the medical arguments against female circumcision, the above responses from adherents to the practice seem to be at odds with the facts. Moreover, their responses lead to one question: can ethnic groups that are genuinely concerned about cultural continuity afford to adhere to a tradition that endangers the fertility of women and young girls, the life-giving sources of society? Probably not.

C. Religion

Adherence to religious doctrine is another widely given but misplaced justification for female circumcision in Nigeria. The dominant formal religions practiced in Nigeria are Christianity and Islam. Although the Bible discusses male circumcision, neither Christian nor Islamic doctrine requires female circumcision. Religious leaders who advocate the practice seem to adopt an ill-conceived transitive rationale in which religious ideals are displaced onto the medical procedure. The argument begins with the premise that modesty and virginity are highly valued in traditional African societies and that the same virtues are prescribed by the Bible and the Koran. Next, proponents argue that female circumcision is intended to prevent promiscuity and to preserve the chastity of young girls until they marry by removing an organ that is believed to cause women to become over-sexed. Therefore, female circumcision is required by tradition, and more importantly in this context, by religious doctrine. Not surprisingly,

those who insist that the practice is a religious requirement never cite textual verses that verify the alleged religious requirements.

Aside from the fact that the religious justification for female circumcision rests on an insufficient doctrinal foundation, the argument ultimately misuses religion as an instrument of fear, oppression, and exploitation. A religion that is authentic in the principles it represents "aims at truth, equality, justice, love and a healthy wholesome life for all people, whether men or women."⁶ In contrast, the argument that circumcision is a religious requirement casts religion in the role of mandating mutilation, amputation, and infirmity of otherwise healthy female reproductive organs. The latter characterization is the complete antithesis of the ideals that religion should promote.

D. Preventing Promiscuity

In addition to the religious arguments in favor of chastity, advocates point to the prevention of promiscuity as a separate and distinct reason to continue the practice of female circumcision. Because the clitoris is believed to provoke women to make uncontrollable sexual demands on their husbands—demands that will drive a woman to seek extra-marital affairs if her husband does not meet them—removal of the clitoris is presumed to be beneficial for women and for society. This justification is flawed in that it incorrectly assumes that the sexual control and subjugation of women is beneficial to them and necessary for a harmonious society. It also implies that men have no responsibility or control over their own sexual behavior. Although the so-called promiscuous female certainly has multiple male partners in any traditional African society, custom does not dictate varying degrees of male circumcision, from circumcision in its mildest form to castration, as a means of ensuring male fidelity.

At best, the practice of circumcising women and young girls reinforces the mistaken notion that women should see their sexual impulses in terms of what suits men. In reality, female circumcision is a life-threatening form of subjugation when performed on women and a form of child abuse when performed on an infant or child. Superstition regarding the elimination of sexually

promiscuous behavior is an unacceptable justification for subjugation and abuse.

E. Cleanliness and Aesthetics

Supporters of female circumcision also offer feminine hygiene and aesthetics as justifications for the practice. These arguments are no more persuasive than those based on the enhancement of fertility. Circumcision simply does not make women and young girls cleaner. To the contrary, circumcision's post-operative health consequences such as urine retention and the accumulation of menstrual blood in the vagina lead to discomfort, infection, and odors more offensive than those caused by normal hormonal secretions. Furthermore, the idea that circumcision makes the vulva aesthetically more appealing—that circumcision should be performed as a type of cosmetic surgery—is at best arbitrary, and at worst absurd. If, as the saying goes, "beauty is in the eye of the beholder," then the post-operative scarification that results can hardly be perceived universally as beautiful. The keloid stump that develops after the clitoris has been excised and the long scar that seals the vagina after infibulation are in fact, in the eyes of some individuals, extremely unattractive. This is not to say that Western notions of physical beauty should be the standard for the rest of the world, but instead to challenge the sincerity of those who insist that "true" conceptions of beauty and femininity necessarily exclude the woman who is not circumcised, excised, infibulated, or introcised.

III. THE LEGAL MANDATE TO ERADICATE FEMALE CIRCUMCISION

In any argument against a practice as deeply embedded in a culture as female circumcision is in Nigerian society, the strategic thrust of the argument should be based on texts that Nigeria has adopted and endorsed. Arguments and solutions based on such texts are likely to be heeded and enforced, because these texts were affirmatively—and in some instances democratically—approved by the Nigerian people. In contrast, suggestions that local traditions should be abandoned in order

to comply with external norms are likely to be counterproductive and to elicit indignation and resistance to change. Thus, the Constitution of Nigeria, as well as international instruments endorsed by Nigeria, including the African Charter on Human and Peoples' Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, can and should be drawn upon to provide the basis for a legal mandate to eradicate female circumcision.

A. The Constitution of Nigeria

Chapter IV of the Constitution of Nigeria delineates the "fundamental rights" of Nigerian citizens. It states that "[e]very person has a right to life, and no one shall be deprived intentionally of his life."⁷ Further, "[e]very individual is entitled to respect for the dignity of his person, and accordingly—no person shall be subjected to torture or to inhuman or degrading treatment."⁸ In light of the explicit language in these provisions, Nigerians need look no further than their own constitution for an injunction against female circumcision as a violation of women's and children's constitutional rights.

B. The African Charter on Human and Peoples' Rights

The practice of female circumcision also contravenes the spirit and substance of many international instruments to which Nigeria is a signatory. In 1983, Nigeria ratified the African Charter on Human and Peoples' Rights,⁹ which contains several articles that can be interpreted to proscribe female circumcision. Article 4 declares that "[e]very human being shall be entitled to respect for his life and the integrity of his person."¹⁰ Article 5 prohibits "[a]ll forms of exploitation and degradation of man particularly . . . torture, cruel, inhuman or degrading punishment and treatment."¹¹ Article 16 proclaims that "[e]very individual shall have the right to enjoy the best attainable state of physical and mental health,"¹² and article 18 requires the state to "ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."¹³

Significantly, the African Charter also recognizes the importance of African culture and tradition. Article 17 states that "[e]very individual may freely take part in the cultural life of his community. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State."¹⁴ In addition, article 29 establishes the duty "[t]o preserve and strengthen positive African cultural values in . . . relations with other members of the society."¹⁵ Although it is possible to construe these provisions as a directive to respect the tradition of female circumcision, such an interpretation flatly contradicts the tenor of the document's preamble.¹⁶ It strains logic to argue that, in the name of "tradition," a document whose purpose is to "promote and protect human and peoples' rights"¹⁷ would endorse a practice like female circumcision—a practice that results in the torture and mutilation of half of the population that the document aims to protect. Indeed, traditions to be preserved should be limited to those that embody "positive African cultural values."¹⁸

C. The Convention on the Elimination of All Forms of Discrimination Against Women

Nigeria has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW is an important human rights instrument in the international anticircumcision campaign, because it calls for an end to both gender discrimination in general and to social and cultural customs based on the idea of the inferiority or superiority of either of the sexes. . . .

IV. ENGAGING THE TRADITIONALIST FEMALE'S CULTURAL ARGUMENT

. . . Part of the difficulty in engaging the Traditionalist Female is that she is not simply one woman who speaks with one voice. Instead, the Traditionalist Female represents several women who speak with myriad voices and who offer complex and sometimes conflicting explanations for their shared viewpoints. . . . The task is further

complicated when *they* becomes *us*, and *us* is *we*, and *we* is the collective *me*, and *me* is *I*, an individual who feels a sense of attachment and responsibility as her sister's keeper. Based upon a belief in the persuasive power of global sisterhood, this Note endorses the culture of resistance to the ongoing practice of harmful traditions. It is from this perspective and this political stance that this Note respectfully engages, and attempts to understand, the Traditionalist Female. This Part addresses the proponents of female circumcision who invoke claims of cultural relativism and ethnocentrism in defense of the practice and is informed by actual personal observations of and conversations with Traditionalist Females in Nigeria (and their male counterparts).

The Nigerian Traditionalist Female argues that what is held to be a fundamental right at a given time in one society may be regarded as anti-social at a different time or in a different society. Moreover, those persons who are opposed to a particular practice or custom have no right to impose their value judgments on autonomous individuals who have different viewpoints and values. This relativist argument, however, is less convincing in the context of human rights. The premise that the morality and the personality of an individual are shaped by the culture and the history of a given society does not negate the philosophical theory that human rights, defined literally as the rights to which one is entitled simply by virtue of being human, are universal by definition. So although human nature is necessarily culturally relative in that it is determined to some extent by social rules and mores, human rights are universal entitlements that are grounded in cross-culturally recognized moral values.

Incidentally, the cultural argument advanced by the Traditionalist Female uncomfortably parallels the invocation of culture or ethnicity as a "defense" or excuse for violence, injustice, and a host of other social ills. When cast in this light, the cultural argument is patently offensive, but this misrepresentation is directly analogous to the Traditionalist Female's use of African culture to defend human rights abuses. There is nothing inherently "ethnic" or specifically Nigerian about injustice or violence, and this is also true for human rights abuses

that are unjust or violent, whether they take the form of arbitrary arrests and detention, torture, or the circumcision of girls and women. Thus, "culture" and "ethnicity" should not be used as defenses to human rights abuses, because "[cultural values and cultural practice are as legitimately subject to criticism from a human rights perspective as any structural aspect of a society."¹⁹ Even well-established and ongoing cultural practices are subject to universal human rights limitations.

Of course, the cultural relativist will object to the theory of universal human rights, so it is important to examine what is meant by "culture" when it is used as a defense for harmful traditions. Most advocates of female circumcision appear to equate culture with history and tradition, but they fail to recognize the many ways in which their present actions and lifestyles reinforce a notion of culture that comprises not only the traditional, but the contemporary as well. This concept of culture, which this Note adopts, is a dynamic notion, not a static one. African culture incorporates things pre-colonial, colonial, and contemporary, as well as things social, economic, and political, and things both individual and collective. If culture is the group identifier and cohesive element that ethnocentrists profess it to be, culture must be inherently dynamic in order to bond several generations of an ethnic group.

Due to the dynamic nature of culture, changes must be channeled so that they do not result in the extinction of the traditional culture. On the other hand, practices, beliefs, and lifestyles passed down through several generations of an ethnic group need to be re-examined periodically in light of contemporary values and knowledge, in order to ascertain whether the customs deserve to be perpetuated. During the discussions that preceded the drafting of the African Charter, several African leaders commented on the ability to "find inspiration in those . . . traditions that are good and positive" and the desire to reflect "traditions which deserve to be preserved . . . in order to complete the global international effort made to reinforce respect for human rights."²⁰ Perhaps the best reason to maintain a given traditional practice is that the original justifications for its existence continue to validate its persistence today. This paradigm lends

a sense of contemporary legitimacy to those traditional practices that have been preserved.

One custom that is still readily apparent in Nigerian society today is the tendency of Yoruba women to kneel and men to prostrate as a sign of respect when greeting an elder. Another custom involves mothers suspending their babies on their backs in a pouch of wrapped cloth in a manner which enables them to carry out their work routines while they maintain constant physical association with the child. Traditional engagement and wedding ceremonies, which frame the marriage not only as a contract between the two individuals, but also as a contract between the families of the marrying pair, are also customary. Each of these customs, although it manifests adherence to traditional beliefs and lifestyles, also has contemporary legitimacy because of its practical utility and because it reinforces shared values in modern society in a manner that is neither physically nor mentally injurious.

Conversely, those practices that have neither factual, historical validity nor contemporary legitimacy in terms of societal values, and that furthermore inflict harm and injury on their adherents, must be abandoned. Consider for comparative purposes the racial and religious discrimination that has been widely practiced around the world but that is not widely defended today. The reasons which may have once justified these practices are

no longer accepted as valid. Specifically, the once widely held belief that Africans were brought to America from an uncivilized continent and were sub-human savages fit to be nothing more than slaves, as well as the belief that Jews in Nazi Germany were less human and less deserving of the rights endowed to all human beings than non-Jewish German citizens, are and always have been myths. The depth of the tradition of chattel slavery in American history or anti-Semitism in Nazi Germany would be no defense for the maintenance of these atrocities today.

Similarly, the fact that female circumcision is an age-old custom practiced for generations by several ethnic groups does not legitimate its persistence today. Arguments based on the control of female sexuality, aesthetics, and cleanliness do not reinforce ideals and beliefs that are widely held in modern society. The arguments that espouse the adherence to religious requirements and the enhancement of fertility are based on myths that cannot validate either the initial existence or the continued persistence of an undeniably harmful tradition. Thus, although in other contexts there are legitimate claims to ethnicity and cultural continuity, arguments along these lines in defense of female circumcision more likely cloak pretextual justifications based on manipulations of a dying, lost, or even mythical cultural past.

NOTES

1. Harriet Lawrence, Excising a Harmful Tradition, *Guardian*, June 11, 1992, p. 9.
2. See Berhane Ras-Work, "Traditional Practices That Inflict Disability," in *Women and Disability* 23, (1991) note 8, p. 23 ed. Esther Boylan.
3. It is estimated that at least 50% of the women in Nigeria have undergone some form of circumcision.
4. Sam Eferaro, "Why We Circumcise Our Pregnant Women," *Vanguard*, Jan. 19, 1993, p. 11.
5. *Id.*, p. 10.
6. Nawal El Saadawi, *The Hidden Face of Eve: Women in the Arab World* 41, ed. and trans. Sherif Hetata (1980).
7. Constitution of the Federal Republic of Nig. (Enactment) Act ch. IV, p. 30(1).
8. *Id.*, p. 31(1)(a).
9. See International Comm'n. of Jurists, Human and Peoples' Rights in Africa and the African Charter 94 (1986) [hereinafter Human and Peoples' Rights].
10. African Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58 [hereinafter African Charter], reprinted in *Basic Documents Supplement to International Law* 509, ed. Louis Henkin, Richard C. Pugh, Oscar Schachter, and Hans Smit (1987) [hereinafter Basic Documents], p. 511.
11. *Id.* art. 5, reprinted in Basic Documents, *supra* note 11, p. 511.
12. *Id.* art. 16(1), reprinted in Basic Documents, *supra* note 11, p. 513.
13. *Id.* art. 18(3), reprinted in Basic Documents, *supra* note 11, p. 514.

14. Id. art. 17(2), (3), reprinted in *Basic Documents*, supra note 10, p. 514.
15. Id. art. 29(7), reprinted in *Basic Documents*, supra note 11, p. 517.
16. Id. pmb., reprinted in *Basic Documents*, supra note 11, p. 509-10.
17. Id., reprinted in *Basic Documents*, supra note 11, p. 510.
18. Id. art. 29(7), reprinted in *Basic Documents*, supra note 11, p. 517 (emphasis added).
19. Rhoda E. Howard, *Human Rights In Commonwealth Africa* (1986), p. 16.
20. *Human and Peoples' Rights*, supra note 10, p. 25 (emphasis added) (internal quotations omitted).

REVIEW AND DISCUSSION QUESTIONS

1. What are the main arguments offered in defense of female circumcision?
2. How does the author respond to the arguments mentioned in the previous question?
3. Describe the strategy the author recommends to those who hope to eliminate the practice.
4. How does the author characterize the "relativist" argument offered on behalf of the Nigerian Traditionalist Female position?
5. Why does the author reject the cultural relativist's defense of circumcision?
6. What cultural practices does the author think should not be criticized? On what basis are these distinguished from female circumcision?
7. Which moral theory does the author of this article most closely reflect? Explain.

Trying Out One's New Sword

Mary Midgley

Moral isolationism, according to Mary Midgley, is the familiar position that respect and tolerance demand that members of one culture not criticize other cultures. Rejecting that position, she argues that it is little more than an internally inconsistent version of "immoralism." Nor, she claims, does it accurately describe the ways in which cultures are formed and changed. Using an ancient Samurai custom as an example, she suggests various ways in which cultures can, in fact, be criticized.

All of us are, more or less, in trouble today about trying to understand cultures strange to us. We hear constantly of alien customs. We see changes in our lifetime which would have astonished our parents. I want to discuss here one very short way of dealing with this difficulty, a drastic way which many people now theoretically favor. It consists in

simply denying that we can ever understand any culture except our own well enough to make judgments about it. Those who recommend this hold that the world is sharply divided into separate societies, sealed units, each with its own system of thought. They feel that the respect and tolerance due from one system to another forbids us ever

to take up a critical position to any other culture. Moral judgment, they suggest, is a kind of coinage valid only in its country of origin.

I shall call this position "moral isolationism." I shall suggest that it is certainly not forced upon us, and indeed that it makes no sense at all. People usually take it up because they think it is a respectful attitude to other cultures. In fact, however, it is not respectful. Nobody can respect what is entirely unintelligible to them. To respect someone, we have to know enough about him to make a *favorable* judgment, however general and tentative. And we do understand people in other cultures to this extent. Otherwise a great mass of our most valuable thinking would be paralysed.

To show this, I shall take a remote example, because we shall probably find it easier to think calmly about it than we should with a contemporary one, such as female circumcision in Africa or the Chinese Cultural Revolution. The principles involved will still be the same. My example is this. There is, it seems, a verb in classical Japanese which means "to try out one's new sword on a chance wayfarer." (The word is *tsujigiri*, literally "crossroads-cut.") A samurai sword had to be tried out because, if it was to work properly, it had to slice through someone at a single blow, from the shoulder to the opposite flank. Otherwise, the warrior bungled his stroke. This could injure his honour, offend his ancestors, and even let down his emperor. So tests were needed, and wayfarers had to be expended. Any wayfarer would do—provided, of course, that he was not another Samurai. Scientists will recognize a familiar problem about the rights of experimental subjects.

Now when we hear of a custom like this, we may well reflect that we simply do not understand it; and therefore are not qualified to criticize it at all, because we are not members of that culture. But we are not members of any other culture either, except our own. So we extend the principle to cover all extraneous cultures, and we seem therefore to be moral isolationists. But this is, as we shall see, an impossible position. Let us ask what it would involve.

We must ask first: Does the isolating barrier work both ways? Are people in other cultures equally unable to criticize us? This question struck me sharply when I read a remark in *The Guardian*

by an anthropologist about a South American Indian who had been taken into a Brazilian town for an operation, which saved his life. When he came back to his village, he made several highly critical remarks about the white Brazilians' way of life. They may very well have been justified. But the interesting point was that the anthropologist called these remarks "a damning indictment of Western civilization." Now the Indian had been in that town about two weeks. Was he in a position to deliver a damning indictment? Would we ourselves be qualified to deliver such an indictment on the Samurai, provided we could spend two weeks in ancient Japan? What do we really think about this?

My own impression is that we believe that outsiders can, in principle, deliver perfectly good indictments—only, it usually takes more than two weeks to make them damning. Understanding has degrees. It is not a slapdash yes-or-no matter. Intelligent outsiders can progress in it, and in some ways will be at an advantage over the locals. But if this is so, it must clearly apply to ourselves as much as anybody else.

Our next question is this: Does the isolating barrier between cultures block praise as well as blame? If I want to say that the Samurai culture has many virtues, or to praise the South American Indians, am I prevented from doing that by my outside status? Now, we certainly do need to praise other societies in this way. But it is hardly possible that we could praise them effectively if we could not, in principle, criticize them. Our praise would be worthless if it rested on definite grounds, if it did not flow from some understanding. Certainly we may need to praise things which we do not *fully* understand. We say "there's something very good here, but I can't quite make out what it is yet." This happens when we want to learn from strangers. And we can learn from strangers. But to do this we have to distinguish between those strangers who are worth learning from and those who are not. Can we then judge which is which?

This brings us to our third question: What is involved in judging? Now plainly there is no question here of sitting on a bench in a red robe and sentencing people. Judging simply means forming an opinion, and expressing it if it is called for. Is there anything wrong about this? Naturally, we ought to avoid forming—and expressing—*crude*