Female Genital Mutilation:
An Analysis through Capability Approach and
Cultural Relativism

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Abstract

Female Genital Mutilation is a cultural and historical practice engrained in the African Culture. This practice is part of the African Rite of Passage; where a young girl passes on from being a child into being a grown woman. According to Martha Nussbaums’s Capability Approach this practice undermines the woman and violates her rights as a human being, on the other hand Melville Herskovits’ Cultural Relativist theory encourages acceptance and respect of the various cultures and their beliefs; thus making female genital mutilation a cultural tradition that should be respected like any other tradition around the world.
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Chapter 1:

1.1 Introduction:

Female genital mutilation is a common practice throughout many African countries in the past couple of centuries. The practice is an important part of the daily life of many people living in these countries and is highly implemented in the society. In many of these countries, like for example Mali, undergoing fgm is a requirement for social acceptance for most girls and women in the country. Due to the medical consequences that a girl or woman’s body can suffer after undergoing fgm, and due to the main fact that it is mostly a procedure that is done without the girl or woman’s consent, there is a big on-going debate on whether fgm can be considered a human rights violation, or a traditional practice that is respected due to its historical and cultural value. Mali was chosen as a focus in the thesis in order to give the reader a general view of the situation of fgm. Mali was chosen as the backdrop of the research because the occurrence of fgm is most prominent in that country and therefore researching fgm was more accessible and widely available. A specific country was chosen as the backdrop instead of explaining fgm in general in order to give the reader a sense of importance in Malian cultural tradition for strong social cohesion. Focusing on Malian cultural tradition was more suitable for the nature of the analysis of the thesis.

1.2 Aim and Research Problem:

The purpose of this research is to discover the roots and background of fgm in Africa, what cultural and religious beliefs make this practice wildly spread in different parts in Africa. Moreover, this paper discusses whether fgm is simply and traditional cultural practice or if it is a human rights violation. Is the view of fgm being an hr violation mainly a Western imposed idea? And if that is the case, then why these values should be imposed on African states? These questions are merely guiding questions that will be guiding our research and the discussion leading up to our research questions.
1.3 Research Questions:

Our research questions for this paper are the following:

1. What are the implications for the capability approach according to Martha Nussbaum and cultural relativism according to Herskovits on female genital mutilation?

2. What are the arguments for and against the capability approach and cultural relativism when related to Female Genital Mutilation?

1.4 Theories, Method and Material:

In order to discuss these questions we decided to have a theoretical discussion based on two authors with opposing theories and their own respective views on these theories. The first author is Martha Nussbaum with her theory the capability approach, Nussbaum argues for the universality of human rights in her theory. On the other hand this thesis will discuss Herskovits view on cultural relativism. Both theories that the authors present will give a superseding analysis of the question of whether fgm is an African rite of passage or a human rights violation. With the first research question we seek to analyze how Martha Nussbaum’s Capability Approach and its views would apply on the practice of fgm. How would she view fgm, through the belief of the universality of hr? On the opposing side, how would Herskovits view fgm with his cultural relative theory? The second research question seeks to discuss the pros and cons with each respective theory, what flaws and strengths exist in the two theoretical views. In the following section we will present the method and methodology that were found most fitting for this paper, method explains the way that we conduct our research and how this thesis will be written. The methodology is the science of viewing and understanding the world, both method and methodology are important as they are the backbone of any paper, giving it the structure that is needed for writing the paper and the guiding tools of how we can research and view the problem that we analyze. We chose the capability approach theory because it is directly applicable to the functioning of women in their specific culture. Nussbaum specifically relates her perspective of the capability approach to women whom have undergone fgm. Therefore, we
felt the theory was directly applicable. We chose the theory of cultural relativism for the thesis because this theory is a well-known theory that has been used many times to support the occurrence of difference in cultures. Herskovits, in his theory, states that morality is relative to culture, therefore, his theory is applicable to fgm because the occurrences of fgm specifically derives from traditions formed by cultures. Morality differs across various cultures, fgm and the perspective of it, can vary from culture to culture and from belief to belief.

Method:

Qualitative Content Analysis:

This method was found being the most relevant due to the fact that we will be analyzing the texts written by Martha Nussbaum and Melville Herskovits. This thesis seeks to investigate the ideas behind these two opposing authors; whom are representing two different theories and have opposing views on cultural identity. Qualitative content analysis gives the analyst the role of understanding the context of the text they intend to read. In the process of analyzing the researcher must find the relevance of the text to their research, the researcher must as well piece the text together in order for the analyst to get a proper interpretation of the text he is analyzing. As mentioned before the analysis in this thesis analysis is based on researching and understanding what the two respective authors believe, furthermore we seek to explain fgm through these authors’ eyes. In order to give a full analysis and a proper explanation of Martha Nussbaum’s theory of capability approach and Melville Herskovits cultural relativist theory we will need to use the method presented above; what will be done is comprehending the texts and creating an assumption from our analysis of these texts, based on this assumption we can apply the two theorists views on the issue of fgm with regards to our research questions.¹

Methodology:

Constructivism:

There are three main methodologies of research in social and political science. These being: naturalism, constructivism and scientific realism. The methodology that was chosen for this paper is Constructivism. In this section of the paper the methodology of choice will be explained in depth, reasons for its choice and how it will be applied on our research.

Constructivism as an approach was developed out of criticism of Naturalism; a once dominant methodology in the field of social science is now challenged by Constructivism.\(^2\) Constructivism in itself as a methodology has a core belief that every individual views the same thing but they perceive it differently, this difference in perception could stem from characteristics such as age, gender or race; other factors could be culture or language. Max Weber, a German philosopher and sociologist explains it with these words “We are cultural beings, endowed with the capacity and the will to take a deliberate attitude towards the world and to lend it significance.” In addition to the factors mentioned above; constructivists believe that reason and experience are the epistemological tools that make the design the individual’s view of the world. However, reason and experience are affected by the factors and characteristics mentioned above.\(^3\)

The ‘Truth’ for the Constructivists is always a truth with some force behind it, it is always biased; therefore there is no absolute truth and one cannot claim that the complete truth is one’s own. When saying that the ‘truth’ always has some power behind it, the constructivists define this by explaining that some ‘truths’ are more true than others due to the power, interests and identities that may lie behind these claimed truths.\(^4\)

There are many notorious scholars whom have a Constructivist view on social sciences; these being Immanuel Kant, David Hume and William Whewell. These scholars give a more in-
depth view of Constructivism with regards to its epistemological and ontological approach in social sciences; these explanations they provide will be discussed in more detail in the following section. According to Whewell our knowledge and understanding of social phenomena is formed by our history, societies, ideas and language, therefore different individuals views differ. Moreover, due to the views presented above by Whewell, some Constructivists claim that there is no truth out there to attain, meaning that in this world there are only parts of truth.⁵

According to Moses and Knutsen in their book (Ways of Knowing) there is a difference between the social and natural world, what Constructivists mean is that Man, Stone and Birds differ from each other. Humans are more complex creatures with their different motives and actions which tend to be more complicated and complex. Constructivists in general emphasize the role of the community around us in forming our views and opinions.⁶ For Constructivists, they have a clearly different ontological view from the Naturalists. For them the world is not free from our senses, for example in the social world; there are many social constructed worlds created by humans.⁷

Constructivism has an independent view on the methods of research and scientific science. Whewell argues that acquiring scientific knowledge hangs on ideas and perception, this means that the scientific knowledge we acquire in this world is affected by the preconditioned ideas that we possess; which in return affects our perception of the world. It is therefore a requirement for the constructivist to have foreknowledge before a research project. Still some constructivists argue that even though there is a “real world” out there, scientists do not have guaranteed access to it. This is due to the fact that this world is buried under layers of conceptual and contextual meaning, therefore neither our perceptions nor our human reasoning allow us to have access to the real world. The British Sociologist Anthony Giddens argues that for social scientists, unlike natural scientists; they are part of the social world that they analyse. Due to this fact Giddens says that there needs to be a second level of ‘Hermeneutic understanding’ for the

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social scientists, this means that there needs to be an interpretive and dialectical between social scientific knowledge and human practices.\(^8\)

The reason for choosing this methodology above others is due to the nature of constructivism that is explained in the previous paragraphs. Constructivism is very relevant to our research and what the paper seeks to investigate, as this paper will be conducting its research on the basis of theory analysis. We will put two opposing theoretical views belonging to two different authors and interpreting their different views with regards to the question of FGM being an HR violation or a rite of passage. This methodology explains exactly the huge differences that exist between different social worlds and the reasons behind them, it deals with the approach scholars and social scientists should have towards accessing knowledge in the real world, which is very important to understand when applying Nussbaum and Herskovits’ theories on our research questions. It is important to be able to connect the knowledge contained in Nussbaum’s ‘Capability Approach’ and Herskovits’ ‘Cultural Relativism’ on fgm as a social practice in Africa.

**Materials Used:**

This thesis will relied on scientific books that explain method and methodology in detail in order to find the appropriate and fitting ones for our research for our more factual based section of the thesis we will be relying on world organization websites like WHO and the UN including their facts and articles that explain fgm and its characteristics and its international legal status. As for the actual analysis we are mainly concentrating on Martha Nussbaum and Melville Herskovits’ own personal texts as well as books written by different authors that explain Nussbaum’s and Herskovits’ approaches.

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1.5 Delimitations:

This paper will not analyze the practical role of the state or any regional body or the international organizations. We will not have an analysis on the state role nor will the thesis analyze the legal state progress in ratifying agreements on an international or regional level. This paper will mention facts that surround the state role, legal conventions and the role of organizations only for the purpose of the theoretical analysis in the paper.

1.6 Chapter Outline:

This paper aims to give a background on Female Genital Mutilation; therefore there will be a section which discusses the cultural and historical reasons behind the practice, this will be done while concentrating on Mali in order to have a specific country for the reader to refer the analysis to. The second section of the thesis will discuss from a theoretical perspective whether fgm is simply an African rite of passage or a human rights violation, this theoretical discussion will be maintained through Martha Nussbaum’s Capability Approach and Melville Herskovits view on Cultural Relativism.
Chapter 2:

2.1 Factual and Historical Background:

What is female genital mutilation?

According to the World Health Organization (WHO) the definition of the act of female genital mutilation are “all procedures involving partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.”

What are the different types of female genital mutilation?

Depending on different cultures, traditions and environments, different types of fgm are practiced. Female genital mutilation is divided into 4 different types:

Type 1 also known as clitoridectomy, is the “partial or total removal of the clitoris and/or the prepuce.”

Type 2; excision is the “partial or total removal of the clitoris and the labia minora.”

Type 3; infibulation, is when all or almost all of the external parts of the female genitalia are removed, to then stitch, or close the vaginal opening.

Type 4; or unclassified, is any other procedure that is harmful to the female genitals and that is not committed for medical purposes.

Female Genital Mutilation in Culture

When talking about different countries, like for example Mali and its culture, it is important to mention that Mali has a large variety of ethnic groups. While Mali is divided in over 10 minority

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9 World Health Organization “Global strategy to stop health-care providers from performing female genital mutilation” WHO Press, Switzerland (2010) Page 1
10 WHO, 2010, P.1
11 WHO, 2010, P.1
12 WHO, 2010, P.2
groups, the majority of them share similar traditions and beliefs, though the largest and most dominant ethnic group in Mali is the Bambara, a group in which fgm is seen as a common practice. Around 90% of the population in Mali practices Islam\textsuperscript{13} and even though the religion does not forbid fgm, it still does not encourage it, and there is no mention of it in the Qur’an.\textsuperscript{14}

There are various beliefs within these ethnic groups that are involved in the practicing of fgm. In the Bambara and Dogon culture, it is believed that while in labor, if the clitoris touches the baby’s head, then the child will die. It is also believed that if a man has intercourse with an un-circumcised woman, the man may be killed with a poison secreted from the woman’s clitoris. It is another deep belief that the female will always have a male part in her body (clitoris), and the male will always have a female part in his body (fore skin), which should be removed to make clear the sex of the person.\textsuperscript{15}

In the Malian culture, and many other cultures that practice this procedure, it is very common for a man to refuse to marry a woman if she hasn’t undergone fgm, claiming that she is unclean, and perhaps not a virgin. It would also be considered as marrying a child, since fgm is also (depending on the ethnic group) considered a rite of passage, where a girl passes a being a child to being an adult, a woman. There is also a lot of social pressure towards the girls and the girl’s family, which often ends up in the families getting the procedure done on their daughters, without previous knowledge or information of the consequences it could bring. It is very common for the procedure to be a decision of the family, instead of the girl’s; though they might not always be forced; they often do not have any choice, or are not old enough to understand the situation.\textsuperscript{16}

The reasons for making girls and women undergo fgm vary from culture to culture, and country to country, though a lot of common causes can be found in most of these cultures.

\textsuperscript{14} \textbf{Imad-ad-Dean Ahmad}, “Female Genital Mutilation: An Islamic Perspective”, Minaret of Freedom Institute, Bethesda, 2000. Available at: http://www.minaret.org/fgm-pamphlet.htm
\textsuperscript{15} \textbf{UNHCR “Mali: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)” United States Department of State, 2001}
\textsuperscript{16} \textbf{Frances A. Althaus}, International Family Planning Perspectives, volume 23 “Female Circumcision: Rite of Passage or Violation of Rights?” 1997. Available at: http://www.guttmacher.org/pubs/journals/2313097.html
Female genital mutilation is often believed to reduce a woman’s sexual desire, which will help in preserving her virginity as long as possible, until marriage, and perhaps also avoid infidelity after marriage, since when a woman has undergone infibulation, it is common for intercourse to be painful, and not pleasing at all, and therefore stopping her sexual desire. It is also commonly considered amongst cultures, that a girl or woman that has undergone fgm is more beautiful, it is not only a tradition mainly based on beliefs but it is also a way of controlling, women, and making them more aesthetically beautiful to their eyes.\textsuperscript{17}

2.2 Practice

The World Health Organization’s ‘Strategy to stop healthcare providers from performing FGM’ showed that in Africa, more than 90 million women and girls over the age of 10 were estimated to have undergone the procedure, and about 3 million girls are at risk every year of undergoing fgm.\textsuperscript{18}

As a cultural and religious practice, fgm is very common. In Mali for example, it is estimated that 96% of women living in rural areas, and 92% living in urban areas, have undergone female genital mutilation, in its varieties. Also, a research survey done by the United States Agency for International Development showed that 93.7 percent of the 9,704 women they interviewed, between the ages of 15 to 49, had undergone the procedure, again, in its varieties\textsuperscript{19}. In a study concerning family planning done in 1999, it was found that of the women and girls in Mali that had undergone the procedure, 74% of them had undergone type 2, excision.\textsuperscript{20}

As stated earlier, fgm crosses religious and cultural borders and is prevalent in the different ethnic groups. These groups’ religions vary from Muslims, to Christians and Animists,

\textsuperscript{17} World Health Organization, Fact Sheet N’241 on Female Genital Mutilation, 2012. Available at: http://www.who.int/mediacentre/factsheets/fs241/en/
\textsuperscript{18} WHO, 2010, P.3
\textsuperscript{19} UNHCR, 2001. See previous reference 7.
\textsuperscript{20} Jones H, Diop N, Askew I, and Kaboré I. “Female Genital Cutting Practices in Burkina Faso and Mali and Their Negative Health Outcomes” 1999, Pages 223-224
and yet the practice is still commonly found in all of them, on over 95% of the women and girls living there.  

### 2.3 Action Taken against Female Genital Mutilation

**Legal Action:**

As of today, Mali still does not have any law banning fgm; though a Personal and Family Code passed in 2011 that forbids “the impairment of a person’s physical integrity, even in the context of a religious or traditional practice, when this is harmful to the person’s health.” One could say that this makes room for a possibility of the implementation of a law against female genital mutilation. Though there is not any binding law that forbids the procedure, the Malian community has faced some changes regarding the implementation and perceiving of fgm. Education on the negative health effects of fgm in women has been implemented by the national and international community, and as of 2011, 21 villages had already announced their commitment to abandon the practice. The national policy still does not recognize fgm as a health problem officially.  

Mali started a plan called “National Programme to Fight FGM/C”, which created a trainee project, where public medical workers in Mali got trained to treat health problems caused by FGM, adding up to 121 medical workers in all of Mali that can now treat these complications. This program was funded by UNICEF.

In 2005 Mali ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. Many other countries that also have female genital mutilation as a common practice have also ratified this Protocol, such as Gambia, Mauritania, Burkina Faso,

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21 UNHCR, 2001  
Djibouti, Guinea-Bissau and more; though the level of implementation varies from country to country. Of this Protocol, these articles can be or are related to FGM:

Article 2 – Elimination of Discrimination against Women, it says that the State Parties should ensure that there is an implementation of “national legislative measures to prohibit all forms of harmful practices which endanger the health and general well-being of women and girls”.24

Article 5 – Elimination of Harmful Practices, actually mentions FGM. This article says that State Parties should condemn harmful practices that do not respect the fundamental rights of girls and women, and to take all the appropriate measures to ensure the “prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.”25

Article 14 of this Protocol talks about the health and reproductive rights of a woman, which specifies that the woman should have the right to control her fertility26, which is often damaged by FGM, as will be explained later.

Even though Mali has not implemented any law that prohibits and condemns it, the government of Mali stated that the practice “may” be considered as prohibited under Articles 166 and 171 of the Penal code, which refers to “voluntary strikes or wounds and harmful experimental treatments”27

As stated earlier, the following of the Protocol previously mentioned varies from country to country. Other countries in Africa have already done a further following to the Protocol, like

25 Protocol to the ACHPR, Article 5. See previous reference.
26 Protocol to the ACHPR, Article14. See previous reference.
27 UNHCR, 2001
for example Guinea-Bissau, where since July of 2011 the practicing of fgm has been criminalized, and is punished with 5 years in prison.\textsuperscript{28}

There are also other countries, like Eritrea, that even though they have not ratified the Protocol, they have taken legal and social action against fgm. In Eritrea, when a girl is born, the local committee visits the family’s house, to warn them against the procedure of fgm, and the father is then made responsible for making sure that the procedure isn’t done; if the law is violated, the committee has to report it to the police and the justice officials for legal action to be taken.\textsuperscript{29}

**Social Action:**

Since 1991 Ms. Fatoumata Siré Diakité, a feminist activist in Mali, founded APDF (association pour le progrès et la défense des droits des femmes), which stands for “Association for the Progress and Defense of Women’s Rights” and it is now the largest NGO working on the issues of girls and women in Mali. One of APDF’s main objectives in their fight to defend women’s rights is to “Fight outdated and harmful traditional practices done to women/girls, especially FGM”\textsuperscript{30}. One of Diakité’s most outstanding works with APDF, was when she was working with fgm practitioners, teaching them about the consequences and effects that the procedure could have on the girl’s and women’s bodies, which most practitioners actually had no knowledge about, and were shocked when doctor’s actually explained them the scientific facts. By doing this, 40 of the women that were part of the project, announced that they were quitting the practice, which was above the expectations that the association had when starting this project. These women not only abandoned the practice, but joined Diakité’s association and are now working by spreading their knowledge about the consequences of fgm with other practitioners in Mali\textsuperscript{31}. Various men and women in the Malian society are now getting more knowledge about the practice, other than what their beliefs state, which has made the social perception of fgm

\textsuperscript{28} UNFPA, 2011, Page 2.
\textsuperscript{29} UNFPA, 2011, Page 3.
\textsuperscript{30} APDF “Association pour le Progrès et la Défense des Droits des Femmes” Available at: http://www.apdf.org.ml/
\textsuperscript{31} UN Women, UN Entity for Gender Equality and the Empowerment of Women, November 2000. Available at: http://www.unifem.org/gender_issues/voices_from_the_field/storyefc2.html
change by small steps. As stated earlier, by 2011 in Mali, 21 villages had already announced their commitment to abandon the practice.

In the social media of Mali a lot of action has been taken already, for example, 121 radio programs have discussed fgm on national radio, reaching to 271,000 listeners. There were also radio spots meant to raise awareness on the topic, and encourage abandonment of the practice. Due to the fact that there has been awareness spread on radio programs, which often talk about the medical problems that could arise after undergoing fgm, every time there are more girls and women seeking medical help and advice regarding the procedure. There have also been written articles released talking about fgm; some journalists in Mali have been trained by workshops to publish accurately about the subject.³²

2.4 Female Genital Mutilation on a Woman’s Health

Fgm is a practice that removes or changes the natural state of a girl or woman’s genitalia, which naturally will have side effects on their bodies. It interferes with the natural functioning of the body and can cause short and long term reactions and consequences, physically and emotionally.

Fgm is often and mostly practiced without any use of anesthetics or disinfected instruments, it is also often practiced by practitioners that have little or no knowledge about human anatomy or medical knowledge. It is highly risky and dangerous for a girl’s body and health, and may cause permanent psychological damage, like shock, and permanent or long term physical damage, like hemorrhages, infections on the wound, urinary tract infections, lack or a much reduced ability to have sexual pleasure and severe pain from damaged nerve endings. In the same study in family planning that was previously mentioned, done in 1999, it was found that out of all the women in Mali that had suffered some sort of complication after undergoing the procedure, 52% of them had suffered hemorrhaging.³³

When performed in an unclean environment, and without sterile instruments, a woman can develop an infection after undergoing fgm. This infection can be extremely dangerous and

may cause long term consequences if not treated fast. It is also common to develop abscesses due to the infection.

More severe types of mutilation, like infibulation (type 3) may cause permanent damage like infertility, reproductive tract infections, and lifelong complications when it comes to a woman’s sexual and reproductive life. This type of mutilation also causes constant surgery, meaning constant risk of a woman’s health. Infibulation, like explained before, is the procedure where the vaginal opening is stitched closed, which needs to be cut open later, to allow intercourse and childbirth. A lot of times, the woman’s vagina is stitched closed again after childbirth, but may need to be open again afterwards for the same reasons. This puts the woman at great risk multiple times on her life, since she’s undergoing surgeries often, which a lot of times are not done in a safe and sterile environment. It is also very dangerous for the woman and for the child when a woman goes in labor before her vagina is open again.\textsuperscript{34}

Infibulation does not only cause the woman to have a lot of surgeries, but her health is severely compromised, due to the fact that her vaginal opening is closed up. When a woman is menstruating, her menstrual flow may be blocked; causing reproductive tract infections that may lead to low fertility or even sterility. “One early study estimated that 20-25\% of cases of sterility in northern Sudan can be linked to infibulation”\textsuperscript{35} It is also common for stones to form in the urethra and bladder since the urethral opening is closed, which leads to obstruction and infection. Women that have undergone infibulations are almost two and a half times more likely to suffer some sort of gynecological complications than women that underwent type 2, excision.\textsuperscript{36}

\textsuperscript{34} WHO, 2012, see reference 9.
\textsuperscript{35} Frances A. Althaus, International Family Planning Perspectives, volume 23 “Female Circumcision: Rite of Passage or Violation of Rights?” Guttmacher Institute, 1997. Available at: http://www.guttmacher.org/pubs/journals/2313097.html
\textsuperscript{36} Jones H, et al. 1999. Page 224
Chapter 3: Theoretical Analysis

3.1 Martha Nussbaum and the Capability Approach

The capability approach, first coined by Amartya Sen within the field of economics, is a theoretical framework that focuses on the development, justice and well-being of all humans. It contains two primary normative claims, one being the freedom to attain complete well-being and the other is the ability to attain well-being through the capabilities of humans. More specifically, it is the ability for humans to be what they reason to hold some value towards the quality of one’s life. Philosopher, Martha Nussbaum, did not pioneer the approach; however, she helped develop it within the field of social science along with the influence of other leading social scientists and humanists.

Nussbaum’s perspective of the capability approach reasons that the well-being of people greatly depends on their freedom to do and to be whatever they desire. This approach constitutes a life where people have the choice, the resources and the opportunities that would give them a life they can lead themselves based on their own terms. She explains the differences between capabilities as “basic”, “internal”, and “combined”. The term “basic capabilities” refers to the resources essential for further developing other capabilities. An example of this would be the capability to use speech for communicating; this capability is highly dependent on the fostering of others in newborns that gives them the tools to advance in further development. “Internal capabilities” she describes are environments that are sufficient enough to exercise essential
functions and “combined capabilities” are internal capabilities combined with sufficient “external conditions for the exercise of the function”.

What sets humans apart from other species in the world, according to Nussbaum, are a set of traits and needs that are essential to being human and when any one of these needs are withheld, it is easy to see the quality for any human reduced to less-than human. With this in mind, Nussbaum developed a list of “central human functional capabilities” that focus on the development of all humans and more specifically women in particular. She emphasizes the capabilities of women more than men because of the historical and modern standing women have in relation to their human rights. Women, as well as girls over the world, are often seen as not equal to men economically, politically or culturally. The list is a mixture of the three types of capabilities mentioned in the paragraph above.

**Nussbaum’s List of Ten Central Human Functional Capabilities**

- **life** (the ability to live a full length of a human life uninterrupted by premature death due to the lack of fulfillment of their potential as humans)
- **bodily health** (access to good health which includes female reproductive health, nourishment and shelter. People who are not provided these health standards are not living up to their capabilities)
- **bodily integrity** (a woman’s body is treated as sovereign which requires securing from assault, domestic violence, freedom of choice in reproduction and freedom of sexual fulfillments; those who are not free to partake in these standards are living a less than human life)

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Available at: [http://ir.lawnet.fordham.edu/flr/vol66/iss2/2](http://ir.lawnet.fordham.edu/flr/vol66/iss2/2)
senses, imagination and thought (the ability to live creatively through reason and imagination by using the senses learned from sufficient education and the support of others)

emotions (the ability to have attachments, feel love for others as well as grieve over others, experience longing, gratefulness and anger; and those who do not have the ability to sense these emotions are less than human)

practical reason (the ability to differentiate between actions that prove to be wrong or right and those who are unable to differentiate between them are living a less than human life)

affiliation (this entails the ability to relate to other human beings which is important to the understanding between right and wrong doings, and those unable to “relate” are not living up to a basic human life)

other species (people living a full human life are able to harmonize with other species such as plants and animals)

play (in order to live a human life, one must be able to laugh and enjoy recreational activities)

control over one’s environment (this entails one’s ability to have influence in political happenings as well as change their environment such as a person’s living situation)

Nussbaum reasons that the list is necessary in full in order to realize a life uninterrupted by depravity that may sacrifice the dignity of a human being, and a life that human beings should be living fully. Basically, she states that each one of these capabilities are essential moral entitlements and all human beings across the globe have a right to demand such capabilities from ones government in order to live a fully functioning life. However, she also recognizes that these capabilities will vary depending on how each state translates them according to policies and implementation. Nussbaum states that the list she created takes into account the various voices that have helped mold the list into what it is now and that the list is open-ended to change, in order to take into account the opinions of others globally. It is a type of overlapping consensus

that represents very diverse views of what a human life should be like. It is the essence of the contents of the list that differentiates humans from other species. An example of a situation Nussbaum gives that takes into account how a person should consider the approach, is that there is a vast difference between a person who has plenty of food and has the decision to not eat it than a person that does not have a choice and is left to starve. It is in that difference that she strongly points out the respect for human rights in the capabilities approach

The Capability Approach and Female Genital Mutilation

There are many aspects of female genital mutilation that deprive women of many capabilities mentioned in Nussbaum’s list. A woman who chooses not to partake in sexual satisfaction for example, a woman that chooses celibacy is very different than a woman who is forced into genital mutilation in order to prevent her from going astray and fulfill herself sexually. Nussbaum, through her list, speaks against the practice of female genital mutilation because it deprives women of the opportunity to decide what their sexual life may entail and completely removes the decision to attain celibacy if that is what that woman considers a life of value.

Undergoing genital mutilation is risky to a woman’s health and can cause long-term physical damage, which then risks living a full length of a human life. That is to say, undergoing fgm may cause premature death in the case of the inability to treat infections. For example the practice often times causes hemorrhages, infections, urinary tract infections and severe pain from nerve damage. Most commonly many women that undergo genital mutilation are from countries with very little access to health care facilities, due to the fact that most of them are in very long travel distances from them, and lack access to educated health care professionals, which means the dangers mentioned above could have life threatening consequences that lead to premature death. According to Nussbaum, the health and life threatening risk commonly associated with the practice of fgm, is causing these women to live a less-than-human life.

The consequences of the practice could deprive a woman of her capability of pursuing complete bodily health. It can be argued that according to Nussbaum, a woman’s body must be completely healthy, giving her the ability to move freely and reproduce. A woman that has undergone fgm may not have the capability to reproduce due to long term damages from infections of the reproductive system and a woman that cannot freely reproduce is living a less-than human life. Equally, a woman that is in long-term pain due to nerve damage may be unable to move freely at her own will and is living a less-than human life.

A woman’s emotions could be greatly shaped by the fact she has undergone fgm. The practice may even cause permanent damage to a woman’s mental health. It can greatly cause permanent psychological damage to a woman; that may negatively influence her ability to properly feel love if she is weary against those whom have forced her to undergo the procedure, often times by inexperienced family members. This could impair her capability to have attachments to people she could have otherwise trusted before the procedure. A woman’s experience of longing and her ability to feel gratitude towards others could be negatively affected if she feels frightened towards men or women who have caused her harm before, during or after the procedure. It can be deducted that a woman who cannot easily love, is not living a life that is completely human.

Most women of the world do not undergo fgm and it’s because of this that women who have undergone fgm are unable to relate to and understand most women of the world. This may deprive a woman who has undergone fgm of the affiliation capability. That is to say, if a woman is unable to relate to other women of the world, than they are less than human.

Women who have been unlucky enough to have mutilated genitals with severe permanent damages to their nerve endings possibly cannot enjoy the capability of playing. More specifically, a physical impairment could remove all possibilities to play and enjoy life with others with recreational activities due to the inability to move of her own free will.

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The capability to have control over one’s environment is greatly reduced for women from fgm prone countries. Although some women undergo the procedure by choice, most are forced by family members, due to the pressure of culture and society. Forcing a person to do something is removing the capability of controlling one’s environment, and instead of the environment being a common place of trust and high standards of healthful living, it can be argued as a place that is risky and dangerous to a woman’s health. The environment for women with fgm in their future is a hostile one, and makes it difficult for them to function with the central human capabilities that Nussbaum states are essential to a fully functioning human. It can be deduced that the nature of fgm forces a woman to be seen by society as an object of affection to the one she marries and to her family, and not as a person who deserves equal loving fulfillment in return, but instead just a person meant for reproduction.

3.2 Melville Herskovits and Cultural Relativism

Franz Boas first introduced cultural relativism to anthropological research in the beginning of the 20th century. Melville Herskovits helped popularize the principle through his book *Man and His Works* in the 40’s. The principle was partly a response to Western ethnocentrism, in which one people believe that their culture is the most accurate and righteous, and as a result, spread their beliefs towards other different peoples. Although cultural relativism first functioned from Boas’ epistemological study for understanding physics and geography, it later developed as a tool for methodological research in the field of anthropology to understand various aspects of cultures’ preferences like tastes in food, music, and religious beliefs.

Herskovits developed his view on cultural relativism during his work with African studies and international affairs during which time he realized the principle as a highly significant contribution to society made by anthropologists. He defined cultural relativism, in his book *Man and His Works*, as “evaluations of cultures are relative to the cultural background out of which they arise, judgments are based on experience, and experience is

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interpreted by each individual in terms of his own enculturation⁴³. “That is to say, that one should not place any culture with higher or lower rankings, and doing so would be considered ethnocentrism. He reasoned that primitive people’s cultures and philosophies are just as complex as any other culture with different ways of developing. The only real approach that any culture can use to bring their lives forward is the skill to survive. Survival is what every culture has in common and every person thinks their way of survival is the best way. However, he argues that every culture’s approach to life is just as good as any other approach and all approaches to the quality of one’s life should be respected.

As a method, cultural relativism embraces the attitude of science that, in studying a certain culture, one should always seek to achieve the highest degree of objectivity conceivable. In doing so, one does not judge the behaviors of that culture and logic for that behavior, so as to not seek to change people’s behavior. Instead, the researcher should simply aim to understand the logic of that behavior that arises from the culture, in order to fully capture the essence of that culture, free from preconceptions.⁴⁴ Herskovits explains the very core of cultural relativism as:

“..The social disciple that comes of the respect for differences – of mutual respect. Emphasis on the worth of many ways of life, not one, is an affirmation of the values in each culture. Such emphasis seeks to understand and to harmonize goals, not to judge and destroy those that do not dovetail with our own. Cultural history teaches that, important as it is to discern and study the parallelisms in human civilizations, it is no less important to discern and study the different ways man has devised to fulfill his needs⁴⁵.”

That is to say, it does not matter what that way of life for each culture entails, one still needs to respect that other way of life even if it goes against all philosophy of the observer. This means to emphasize the importance of allowing each culture to develop independently of outside influences in order to preserve the differences between each people. Outside interference in a society or culture will create irreversible ramifications in the individual psychology of the cultural practitioners. Cultural relativism views cultures or societies as semi-closed systems where cultural institutions have evolved through time and have their logical connections with other institutions. Thus, interfering with one institution will have reverberations in others such as individual psychologies, trade, political structures, etc.

**Cultural Relativism and Female Genital Mutilation**

Looking into the timeline of events that have occurred in places like Mali where fgm still commonly occurs, it is easy to see the strong western influence in combating fgm. The African Union ratified the Protocol of the Rights of Women to the African Charter of Human and Peoples Rights (ACHPR) in response to the United Nations Fifth Millennium Goal in year 2000. Originally, the protocol was meant to combat maternal mortality rates, however, it also strengthened the rights of women and helped to control and indirectly ban all forms of fgm.

It can be noted that according to Herskovits’ ethnocentric ideas of the historical aspect of the West and Africa, the United Nations (UN) has major influences of how Sub-Saharan African human rights function. In support of Herskovits ethnocentric perspectives, it may be noted that the United Nation’s Declaration of Human Rights was written to mimic the United States’ Constitution therefore causing to spread Western ideas of human rights. The Protocol of the Rights of Women denotes strong senses of liberties of value and freedom that are of western origins. When taking into account the timeline of events, a deduction can be made that by looking at where the African Union’s inspiration of strengthening women’s rights may have originated from; there are strong western influences throughout African human rights policies.
When looking at how the African Union planned to ban all forms of fgm it is clear their intentions in Article 5 of the ACHPRs:

“States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including: b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.”

Although the article states the banning of fgm, it does not directly make the practice illegal, instead only recommends it to legislation. However, recommending the banning of fgm through legislation is still a major influence in African culture. When applying Herskovits’ perspective of cultural relativism to fgm it can be seen as a negative influence in the sense that it can cause irreversible changes in African culture and according to his perspective, is a form of western ethnocentrism in Africa. Functioning members of society in Africa have become influenced by changes in policy, which then trickled down to changes in their own cultures. In other words, imposing the illegality of fgm will interfere with how the individuals within the culture experience themselves as functioning members of that culture. Making fgm illegal may take away a culturally legitimate way of creating an adult female that is culturally prepared for marriage. Marriage in these cultures is a very vital, social adhesive and strengthening bond within the families and clans, ensuring social cohesion. Thus, outlawing such practices without consent may affect the social cohesion, which could possibly lead to a sanctified cultural violence.

Herskovits expresses the dire need to respect other cultures in order to preserve their authenticity and ability to develop in their own right. By imposing legislation on African countries that may outlaw practices deriving from African tradition and moral rights; outlawing

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46 Protocol to the African Charter of Human and Peoples Rights on the Rights of Women in Africa, Article 5.a
fgm could be seen as an outside influence that may change how cultures that practice fgm develop. Having outside interferences in what that culture may or may not do, changes that society or clans ability to mature independently. In Herskovits’ perspective, the act of imposing the protocol of women’s rights is disrespecting the cultures that practice fgm and not allowing cultures to develop freely. The protocol changes the internal structure of African societies by judging those practices as wrong which then alters the philosophy of how African men and women think upon the practice of fgm. The changes in philosophy can then change culture or religion, which then changes cultural or religious practices and or traditions.

3.3 Weaknesses of the Capability Approach and Female Genital Mutilation

After having analyzed Herskovits’ perspective of cultural relativism and applying it to the practice of fgm, we realized that Nussbaum’s perspective of the capability approach seems to have a few major weaknesses within the scope of human rights. Nussbaum does not take into account, in her list of ten central human functional capabilities, humans that are disabled and are naturally unable to perform the capabilities. By her definition of a human in her list, does Nussbaum consider disabled people less than human? Or does her list of capabilities only apply to people who are fully functioning? Nussbaum also does not explain exactly if she considers children as fully functioning humans or just humans with the possibility to become fully functioning humans. In her book, “Frontiers of Justice: Disability, Nationality, Species Membership,” Nussbaum states that in order to fully realize the capabilities of disabled people, one would have to developed what she calls a “Difference Principle.” In this principle, she explains that for every single capability, one would need to consider economic inequalities, for example, in the case of a disabled person; getting care would be a major role in the person’s ability to achieve certain capabilities. Nussbaum continues that this suggestion to cater to the disabled is too elaborate and possibly hard to imagine. This is a weakness in her list because she mentions the importance of considering the disabled however, maintains the lists simplicity and states a possibility of further developing the principle.
Nussbaum’s capability approach lacks cultural sensitivity; that is the act of being aware of the differences between other cultures to one’s own. Cultural sensitivity holds some importance globally because what one may find acceptable in one culture may be extremely unacceptable and rude in another culture. In the case of fgm, most Malians find fgm to be ingrained into maintaining the integrity of their cultural traditions and, at the same time, other cultures find it to be an extreme case of a human rights violation. A person who is culturally sensitive to cultures that practice fgm would be free of prejudices and preconceptions and instead would attempt to learn from the practice and its origins. Nussbaum’s perspective of the capability approach does not take into account the importance of what tradition may hold in the quality of life that people choose to lead. In her perspective, Nussbaum is defining a woman that has undergone fgm to be living a less-than human life; however, to the woman that has undergone fgm, it may seem a logical step to transition to a fully functioning woman of her society or clan.

Overall, Nussbaum does not address in detail in her list, how she defines humans that are born with disabilities, however, she seems to consider them people that are less-than human which could be held as untrue in the perspective of some cultures. She does not clearly define children as whether they are, or are not living a less-than human life in her list. Basically, her perspective is lacking sensitivity to the differences between humans as well as their cultures. She does not take into account that a woman may also decide on her own terms to undergo fgm in order to become a functioning member of society and instead defines women with mutilated genitals as less-than human which seems to be, according to Herskovits’ perspective of cultural relativism, a very Western ethnocentric way of viewing other cultures.

3.4 Weakness of Cultural Relativism and Female Genital Mutilation

A weakness in applying completely cultural relativism is that it is difficult to take an individual stand against something that could be seen as a human rights violation, like fgm. When one is unable to take a stand against a human rights violation globally, this act could lead to nihilism. Nihilism suggests a general despair when there is a lack of norms, laws or regulations in the
global sense. When life is without intentional meaning or inherent value instilled in people worldwide, morality would not inherently exist and many human rights violations could occur continually. For example, in the case of the Holocaust in which millions of people were murdered, if there was no sense of morality, many more millions of people could be eradicated for similar reasons in various parts of the world due to a lack of international laws and regulations that derive from morality.

When discussing cultural relativism, it may seem satisfactory to respect the differences of humans in the scope of language, culture and traditional practices. However, it does not hold its weight when discussing real evils like genocide or slavery. When taking fgm into consideration, it can be seen as an evil if the woman or girl in question was forced against her will into the procedure and left to die because of complications during or after the procedure due to a lack of educated health professionals and health care facilities.

3.5 Overall Analysis of the Perspectives

Nussbaum makes a strong point that a human right is ultimately a choice made by the human in question however, does not apply this viewpoint towards fgm and rejects the whole practice entirely. After researching Herskovits’ perspective of cultural relativism, it made us question the lack of cultural sensitivity Nussbaum’s perspective of the capability approach has towards women who choose on their own accord to undergo fgm. If a woman chooses to mutilate her genitals, it is her right to do so. The concern then is the proper implementation of sanitary facilities and professional health care workers. When researching Herskovits’ perspective of cultural relativity to fgm, it occurred to us that it lacked some basic morality. Basically, one would have to accept people who may be suffering or dying in order to allow that culture to develop free from interference.

4. Conclusion
In conclusion this thesis discussed the issue of fgm in a theoretical context and in order to back up the analysis we gave factual based information on fgm with regards to African culture and history. This has been done specifically with Mali in focus in order to narrow down the facts. The method of choice was the qualitative content analysis, as its view on the role of the researcher was the most applicable to our research. Our methodological choice for the paper was the Constructivist methodology; this methodology has a complex view on the individual interpretation of the society and the differences in human interpretation of a certain truth. It also provides its own analysis of how the researcher should access “knowledge”, this being that the researcher needs to have foreknowledge before any research project in order to conduct proper research.

Female genital mutilation is a practice that varies in its characteristics and procedure depending on the surrounding in which it is performed. The procedure is divided into 4 different types and each of these is differently performed depending on the culture and beliefs of the girl and woman’s family and society. Most of these beliefs aren’t factual or scientifically based. The procedure is also common amongst cultures that aim to keep a woman from having sex before marriage, and after marriage, to keep her from being unfaithful to her husband. The practice is extremely popular and common in certain countries in Africa, and as previously mentioned, most women in rural and urban areas in Mali have undergone fgm.

Fgm often causes negative medical consequences on a girl or a woman’s body, and also often causes severe trauma and psychological damage. This could be considered a reason to make the practice illegal, but yet a lot of countries, Mali included, have not passed any legislation that concerns the legal status fgm, even after they ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, and the procedure is still commonly practiced. Although some social action has been taken and it appears to be that as time goes on, more and more people in some African cultures are taking a stand against the practice. There is also more medical knowledge on the issue, and more education is being held in some of these countries, in order to teach people about its possible consequences.
The thesis research focuses on analyzing literature by both Nussbaum and Herskovits on the Capability Approach and Cultural Relativism with the intention to discuss two disagreeing sides of the practice of fgm. Nussbaum strongly argues that in order for a person to live a worthy and fully human life, all ten of the Central Human Functional Capabilities have to be realized. The practice of fgm is deterring women from living a fully human life because it is dangerous to their health and bodily integrity. Fgm may even be a cause for premature death due to unsanitary practices by untrained people. Most importantly, the human rights violation lies in the fact that many women do not choose to undergo fgm and instead are forced into it by their family members. It is in the difference between choice and force that Nussbaum strongly depicts a human capability rather than a human rights violation.

Herskovits holds a similarly strong argument that supports not exactly the practice of fgm but the right for cultures to develop on their own accord. He maintains that having respect for differences is of the utmost importance in order for cultures to be able to fully realize themselves. In the case of fgm, current interferences with policies that affect the practice within African cultures and clans will irreversibly change their social cohesion. That is to say, changing policy could change a culture’s ability to transform girls into women who are culturally prepared for marriage. Overall, both perspectives have points that are strong in the case of fgm. All cultures should be respected, at the same time; the choice to undergo fgm should ultimately be in the hands of the individual.

This thesis does not aim to provide a “Yes or No” answer as we believe that fgm is a cultural practice which is important in certain cultures in Africa and we recognize that preserving certain cultural practices is important to these specific cultures and its people. On the other hand taking in consideration Nussbaum’s views and the negative consequences that a girl or a woman can go through after undergoing fgm, we reached the conclusion that this procedure may affect the quality of a woman’s life and it should be considered that some sort of action should be taken in order to make sure that a woman’s life quality is not negatively affected by the beliefs of her culture and society. Therefore a merge between the two theories could provide a solution in which the culture is respected and the woman’s rights are not undermined. We do realize though,
that such solution is highly idealistic, and is most likely hard to achieve, due to the strong
cultural beliefs that surround fgm, and to the fact that fgm is often going to affect a woman’s life
quality even if it is performed in the safest of environments.

There is a big contradiction between these two theories, because by respecting a certain
cultural practice there might be some negative effect to the people, while if we change a cultural
practice due to its negative effects on certain people, it might undermine the culture itself.

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