

**Interconnected Cuttings: What Intersex Surgery Can Tell Us About  
Female Genital Cutting, and Vice Versa**

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- I. Intro
  - A. Thanks to David Cruz for org'g – imp issues all law profs shd be aware of – will become one of most visible civil rts movements of the 21<sup>st</sup> c
  - B. Int'd in different U.S. policies towards genital cutting, and assumptions informing those policies. Also int'd in dynamics of coalition-building among subordinated groups, & how various kinds of privilege prevent subord'd groups from forming coalitions w/ each other.
  - C. Intersex cutting & the African practice of female genital cutting are treated strikingly diff'ly in the country. The former is criminally proscribed, the latter is part of regular medical practice. I'm int'd in exploring how this inconsistency in pub policy can persist, & in examining what implications the treatment of each of these practices – both of which I would like to eliminate – has for treatment of the other.
  - D. Intersex issues int'g fr coalitional persepc b/c they seem to implicate the concerns of many different groups:
    - 1. patients' rights orgs
    - 2. disability rights orgs
    - 3. feminist orgs
    - 4. probably others
    - 5. yet queer community seems to be the main one that has really embraced intersex issues (& indivs) at this point – even tho, for many intersex folks, the parallels are far from exact
  - E. Anti-FGC Movement's Attitudes Twds Intersex
    - 1. The mainstream feminist community – in particular the mainstream movement vs FGC – has been strikingly unwilling to embrace the intersex cause; folks who have rebuffed overtures by Cheryl Chase/ISNA include: Ellen Goodman, Patricia Schroeder, etc.
    - 2. Like disempowered groups often do, they take a “not our problem” stance twds intersex issues [cf feminist

groups saying homophobia is “not their problem” (Betty Friedan re “lavender menace”); gay groups (eg, HRC) often say racism is “not their problem,” (& even trans issues), etc.]

F. My arg today:

1. The 2 types of cutting are sufficiently similar that their differential rx is v problematic, and
2. Feminists work to eliminate intersex surgery as well as FGC -- not only b/c it's the right thing to do but also b/c it wd actually *benefit* both the anti-FGC movement & the broader f'ist movemt of wh it's a part
3. I can only touch on these pts today; those int'd in more detailed rx might look my article pub'd last yr in Harv CR-CL L Rev.

## II. Movement against FGC

A. Intro: seems like natural ally for intersex activists: parallels obvious: both = harmful genital cutting used to enforce cultural norms re proper roles – and bodies – of women & men.

B. A quick cataloguing of mainstream args vs FGC reveals that same args apply to both. :

1. Results in: harmful physical & psychological consequences -- so does intersex cutting<sup>1</sup>
2. Causes impaired sexual functioning & violation of sexual autonomy (of children) – as does intersex “Rx”<sup>2</sup>
3. Performed for cultural, not medical, reasons [move below:reinforcing heteronormativity]

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<sup>1</sup> (a) Physical: scarring, incontinence, serious infection, infertility (all are also produced by intersex surgery); analogized to child sexual abuse & rape (key to opposition to intersex surgery & physical therapy that follows it, such as vaginal dilation) (young people experience those procedures as violations)

(b) Emotional: FGC is depicted as a demeaning ritual that can produce depression, shame, & suicidal inclinations – all present in some intersex indivs as well

<sup>2</sup> FGC often causes loss of sexual function, as does intersex surgery (not surprising, since both involve cutting the clitoris) Both surgeries change the bodies of children before they are old enough to decide for themselves (violating their autonomy) //

- (a) Mainstream opponents of FGC acknowledge it as a “cultural” practice, but reject a cultural relativist defense of it. Eg, Representative Patricia Schroeder, principal author of the federal bill criminalizing FGC: “FGM has long been excused as a cultural and religious difference. Such a designation ignores the pain, trauma, infections and serious long-term psychological and physical effects that women who have been mutilated cope with.” (thus, status of FGC as a cultural practice is outweighed by the universal human rights that they see as violated by that practice)
- (b) Same arg clearly applies to intersex cutting: it shd *also* be seen as a culturally-based practice -- & one that serves a disciplinary role, constructing & enforcing both patriarchal gender norms
  - (i) Physicians’ preoccupation w/ stigma that person w/ ambiguous genitalia might suffer is equivalent to FGC practitioners’ conviction that W who don’t undergo the surgery will be ostracized & no one will want to marry them.<sup>3</sup>
  - (ii) If the need to conform to cultural norms isn’t enough in the 1<sup>st</sup> context, it shdn’t be enuf in the 2d either.

#### 4. FGC as gender subordination

- (a) FGC context: forced virginity; sexual double standards (patriarchal domination)
- (b) Intersex: intersex treatment protocols also enforce patriarchal gender norms:
  - (i) Impose patriarchal understandings of human sexuality (see, FAusto-Sterling, Kessler) (focus on penetration & penetrability) //

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<sup>3</sup> Strikingly, even the particular concerns surrounding stigma are the same. One of the beliefs that supports female genital cutting is the conviction that, without it, at adolescence the clitoris of the child will grow to embarrassingly large dimensions. KOSO-THOMAS. As is discussed further below, this preoccupation with the size of the clitoris is a chief motivator of Western physicians treating intersex individuals as well.

[[ female = ability to be penetrated, male = ability to penetrate (so child w/ small penis must be a girl; child labeled a girl must have a vagina constructed for her); this reflects & reinforces patriarchal gender norms of female sexual passivity ]]

(ii) Reflect sexist insensitivity to harm suffered by females

“Most medical intersex management is a form of violence based on a sexist devaluing of female pain and female sexuality.

Doctors consider the prospect of growing up male with a small penis to be a worse alternative than living as a female without a clitoris, ovaries, or sexual gratification.”

(Cheryl Chase)

Thus, rx protocols enforce the same desexualized, passivized, penetrative model of female sexuality that has been used for centuries to justify sexual violence against women. (“no means yes,” etc.)

(iii) Enforce gender binarism & a cult of perfect masculinity (in which less-than-“perfect” anatomy is tolerated in female children but not male children) Both = part of sys that devalues females

[[ In policing the boundaries of gender, rx protocols:

+ use mutually exclusive phallic criteria (so, indivs w/ small phallises must be assigned as female, & females w/ large clitorises must have them reduced) -- & this reinforces binary gender norms that define the sexes as diametrically opposed, fundamentally different (norms often deployed to harm women)

+ also turn any child w/o perfect male anatomical features into a girl, tolerating the presence of anomalous features in females but not males); this devalues females (& burdens

males as well – no crying, no imperfect penises) ]]

- (iv) Enforce pronatalist assumptions about women's social roles: emphasizing female fertility over female sexual gratification<sup>4</sup> (& male sexual gratification over fertility)
- (v) In summary, then, intersex surgery – like FGC – creates male superiority [[through reinforcing opposing, negative stereotypes of women]], exerts control over women's sexuality [[by enforcing a norm of female sexual inactivity and passivity,]] and consigns women to the traditional roles of sex object and mother (through pronatalist protocols that emphasize penetrability and female fertility over female sexual gratification).

- 5. As Julie has discussed, intersex cutting is also heteronormative. I haven't seen disc of whether FGC also is, so this may suggest that there are even *more* reasons to oppose intersex cutting than FGC
- 6. Segue: despite these parallel critiques, anti-FGC folks still unreceptive...

### C. Possible Explanations for Resistance

- 1. See intersex as fundamentally different. Eg, might argue that FGC *creates* physical probs, whereas intersex cutting *corrects* them.<sup>5</sup> But intersex cutting is

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<sup>4</sup> Chase, *supra* note 1, at 130. Fausto-Sterling quotes the following rule: "Genetic females should always be raised as females, preserving reproductive potential, regardless of how severely the patients are virilized. In the genetic male, however, the gender of assignment is based on the infant's anatomy, predominantly the size of the phallus." [not on fertility] FAUSTO-STERLING, at 57 (*citing* P.K. Donahoe, D.M. Powell, et al., *Clinical Management of Intersex Abnormalities*, 28 CUR. PROBS. IN SURGERY 513, 527 (1991)).

<sup>5</sup> Also: one activist told Chase her group wasn't interested in "biological exceptions"). But this view is seriously undermined by the extensive literature revealing intersex cutting to be gender normalizing surgery (rather than legitimate "treatment" of biological "conditions")

actually *not* so easily understood as repairing abnormal bodies.

(a) The *reality* is that bodies distribute themselves along a continuum b/t “male” & “female.” We *think* of sex as binary (only M&F, no overlap), but is that really accurate? Perhaps intersex surgery just reinforces that illusion; it enforces this binary gender/sex ideology that’s been imposed on a much messier natural state.

(b) Docs who do intersex cutting in some sense admit this: Suzanne Kessler study – they say to parents that they’re *determining* the (pre-existing) sex, but they admit privately that they’re actually *assigning* it. Many bodies just *aren’t* (flawed) male or female, but something else. [between...] [F-S: “either/or, neither/both”]

(c) Disab studies lit provides some int’g insights here

(i) Disability  $\neq$  something that resides in the individual

= product of society

(ii) Eg: Minow – wheelchair use is a disability primarily b/c we don’t design sidewalks & doorways to accommodate wheelchairs; otherwise wd be not much more imp than eye color (not to overstate it...)

(d) Intersex parallel: intersex genitalia are a disability only b/c we define physical normalcy & sexual intimacy to exclude & stigmatize them.

(i) Our defs of physical normalcy use binary def of sex that excludes the intersexed (M & W as only two models). Alice Dreger: modern med sees intersex people as failed M & W, rather than as something altogether different (few “true hermaphrodites”), thereby reinforcing the notion sex is binary. (Thus, disab rts theorist Shelly Tremain has arg’d that

intersex conditions not only aren't *disabilities*, they aren't even *impairments* – they don't represent bodily abnormalities at all, b/c our very *defs* of abnormality are socially constructed.)

- (ii) Our defs of sexual intimacy also exclude the intersexed: penetrative sex as the fdn. (Yet anecdotal ev suggests otherwise (happy men w/ micropenises & very happy (!) women w/ large clits) F-S describes a W who could penetrate her female partner! [[Think about binary sex categories in terms of that!]])
- (iii) Most intersex genitals are “abnormal” – constitute a “disability” that needs “fixing” -- only b/c we've labeled them as such.

(e) NB, I'm NOT saying: shd label these kids “it” or “other.” Rather, ok to assign social sex, but not ok to perform surgery. Let them decide when old enough to.

- 2. Fear of controversial issues – might hurt them politically. Ultimately, I'll argue that this is erroneous – based on shortsighted und'g of ints of anti-FGC movemt.
- 3. I'd propose a 3d possible explanation -- & my arg is that, once it's considered, the first explanation -- fear of political ramifications of taking on the intersex issue – is revealed to be unfounded: embracing the intersex cause would actually *strengthen* the broader f'ist movement

#### D. My Explanation

- 1. Resistance of mainstream f'ist movement to intersex issues is due to white exceptionalism
- 2. Discourse used in much mainstream anti-FGC literature deploys “othering” tropes of ignorance, barbarism &

savagery that stem from – and reinforce – EuroAmerican images of Africans as captives of uncivilized cultures who need to be “educated” by enlightened Westerners. (No time for examples today.)<sup>6</sup>

3. Not surprisingly, the media also takes this tone re FGC, & also fails to draw the connection b/t it & intersex cutting. Eg, NYT piece just lst wk, NYT (in series re women in Africa): sees FGC as product of “clash” b/t women’s rts (“modern mores”) & Afr culture (traditionalism). Implication: We’re civilized, they’re not. Their culture is patriarchal, ours isn’t. ZERO re intersex cutting.
4. NB: Several Western critics of mainstream anti-FGC discourse (Clare Robertson, Isabelle Gunning, & others) have ptd out these problems, & noted the imp of wkg w/ indigenous anti-FGC activists.
5. Mainstream positioning [as superior “educators” of Africans] explains resistance to intersex cause: to acknowledge our own cultural genital cutting wd be to lose the position of moral superiority from which they speak.
6. Irony: ultimately hurts their cause.

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<sup>6</sup> (a) Paul Wellstone (champion of progressive causes!): “[I]t is difficult ... to acknowledge that this form of child abuse could take place in our communities – in a nation which considers itself civilized.” (Read: US=civilized; Africa =barbaric)

(b) Columnist Abe Rosenthal (big opponent): FGC is “rooted in superstitious contempt of women so deep that its victims, their mothers and daughters pay homage to the knife that mutilates them.”

(c) Columnist Ellen Goodman: FGC “happens only in places where ancient ritual still overwhelms reason,” places where “women are taught that mutilation is the price of belonging.” – I’m sure that by “mutilation” she *doesn’t* mean to include liposuction, breast augmentation, or (the new fad in this country) labia reconstruction – the types of bodily adjustments many W feel are req’d for gender acceptance in *this* society. Even if she doesn’t approve of those procedures, I doubt she’d describe them as examples of ritual overwhelming reason.

\*\*\*\*\* Here’s what one of these critics (wkg in Calif) had to say about the anti-FGC bills that have been passed across the nation: “The bills are of cynical and symbolic value. A vote for such a bill was a way for conservatives who had little interest in women or people of color, as shown by voting records, to claim concern for racial and gender issues. Moreover, the vote often provided an opportunity to make a comfortable speech, safely denouncing African culture and people. At the California and federal level that meant an opportunity to label Africans as the most egregious of child abusers.”

- (a) the stigmatizing racialization of Africans that their discourse reinforces hurts the very women they want to help African women & the continuation of intersex cutting made possible by their silence hurts their own broader feminist cause (by reinforcing patriarchal gender norms, as I already discussed).
- (b) [[Moreover, embracing the intersex cause would free anti-FGC activists from the false choice between cultural relativism and feminism – a choice that has led to pejorative characterizations of African “cultures” in order to justify dismissing them in favor of women’s health interests. Once the two sides of the culture/science binary [“we have science, they have culture”] are deconstructed, the conflict that mainstream anti-FGC discourse draws between respect for other cultures and protection of women’s equality dissipates. The female genital cutting issue reveals itself as posing not a conflict between two societies (one “feminist,” the other “patriarchal”), but rather a conflict between *opponents* of genital cutting and *proponents* of such disciplinary gender practices, in both societies.]]
- (c) But mainstream anti-FGC activists seem unable to recognize all these benefits of opposing intersex surgery. Their race privilege blinds them to the commonality of interest that they share w/ intersex activists, and thus has the ironic effect of *reinforcing* their gender subordination.

Bottom line: Better for mainstream anti-FGC f’ists to *embrace* intersex cause, rather than abjure it.

- III. Regulatory Implications of the Similarity – a couple of comments
  - A. For consistency reasons alone, anti-FGC feminists should embrace the intersex cause. It’s simply fundamentally inconsistent to criminalize FGC (as we currently do – by federal statute (& many in the states, too)) & allow intersex cutting to go completely unregulated.

- B. Thus, comparing the two practices raises implications re the criminalization of FGC. Unless proponents of that approach are also willing to label Western physicians who perform intersex surgery as felons, their position is open to critique.
- C. In other words, if we resist concluding that Western docs who treat the intersexed are ignorant, primitive, backward people who need educating by those from more enlightened cultures, then we should similarly resist those sorts of unsympathetic images of practitioners of female genital surgery.
- D. In formulating policy proposals at this point, transition may be the biggest problem: Now that we live in a society where FGC is a felony and intersex surgeries continue unabated, is it possible (eg) to adopt an educational approach to both? How would we introduce an educational approach to FGC to a culture already steeped in the rhetoric of moral condemnation? Yet as long as criminally punishing surgeons seems unlikely -- & perhaps unappealing as well -- the treatment of the two types of genital cutting will remain asymmetrical -- unless we repeal the anti-FGC statute, also an unlikely scenario.