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### Female Genital Cutting, The Veil, and Democracy: Navigating Cultural Politics in Human Rights Discourse

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## **Female Genital Cutting, The Veil, and Democracy: Navigating Cultural Politics in Human Rights Discourse**

**Andrew Flachs**

Recently I joined the table for an extended family dinner. Talking as we ate, the family began by addressing safe, neutral topics like cooking, gardening, and the weather. Inevitably, as the night progressed and the food diminished, the conversation turned to politics. Our discussion narrowed on national security when my cousin suggested that airport profiling and attacks on Middle Eastern communities could serve a beneficial purpose for Americans. Although I do not shy away from contention, I felt taken aback by this statement. Choosing my words carefully, I asked him why Middle Eastern people in particular deserved to be singled out. Very plainly, he answered: “There's just a culture of evil over there”.

This sound bite, recycled from American political discourse (Bush 2002, Reagan 1983), challenged the basic tenet with which modern anthropologists approach their discipline: We are trained to believe that culture is neither good nor evil. It is more palatable to think of political and socioeconomic systems that subjugate or disenfranchise their citizens as morally suspect. To argue that one has “good” culture while others have “evil” actively places culture in a vacuum and reflects a deeply ingrained ethnocentrism. But why does so much of the media rhetoric seek to classify it as such? My cousin's offhand comment spoke to a far more serious reality. America and Europe have a history of condemning enemy nations as evil or barbarous. Recently, this rhetoric has manifested in Western condemnations of enemies as human rights abusers. Due in part to this display of cultural politics, many communities in North America and

Europe believe that their Western culture embraces freedom and human rights while Arab and Muslim cultures disregard these values. But what gives the West such moral superiority? Can cultural practices be misunderstood as human rights issues? Conversely, when do Authoritarian states incorrectly cite cultural difference as a shield to protect themselves from human rights advocates?

### **Cultural Politics, Universalism, and Cultural Relativism**

Entrenched in clear philosophical camps, both Islamists and Western leaders engage in cultural politics. I use that phrase here to refer to a politicized discourse in which culture is stereotyped, exoticized, and appropriated on the global stage. Cultural politics reduces Western and Eastern bodies of thought to a few, simple talking points that stand in opposition to 'the enemy'. Certain practices are lauded while others are ignored, based on their geopolitical use. The veil, for example, became enormously important when the French and Turkish governments tried to ban it in public spaces. Thus a symbol of modesty transformed into a symbol of assertion and liberation. At the same time, the veil became a symbol of disenfranchisement and patriarchy to some within Western feminism, for whom it represented everything that modern, enlightenment-influenced women must cast aside. Leaders from George Bush (CNN News 2001) to Mahmoud Ahmadinejad (CNN News 2008) use culture as both weapon and shield, attacking the other's corrupt values while ignoring criticism as cultural miscommunication.

Human rights discourse is hotly contested in law, international relations, and anthropology circles. During the post-colonial nationalist resurgence in the Middle East and North Africa, communities in the region rejected human rights because of their Western origins

(Chase 2006, Dalacoura 1998, Kepel 2002, Mayer 1998). This framework continues to undermine the efforts of human rights workers and both Western and Arab activists have a responsibility for separating human rights discourse and postcolonial interference. While traditional human rights schemes may seek to impose values on other societies, the capabilities approach forwarded by Amartya Sen and Martha Nussbaum provides a solid philosophical base for cross cultural dialog. Although many models examine human rights violations through statistics, the capabilities approach considers them within local, enculturated standards. In this thesis, I argue that this human rights framework is unique in its potential to guide the respectful navigation of cultural politics and international dialogue around global inequity and injustice.

Any cross cultural analysis of human rights necessitates a firm understanding of universalism and cultural relativism. While human rights have existed conceptually for centuries, the first attempt toward global codification was drafted in 1948. Still the most powerful document of its kind, the Universal Declaration of Human Rights (UDHR) continues to serve as the basis for international human rights laws, conventions, and agreements. The UDHR should be commended as a positive step forward in international relations history, but it cannot and should not remain the final say on universal human rights. Drafted primarily by men from former colonial powers and entrenched in Western Enlightenment philosophy, the UDHR espouses individual civil and political rights familiar to European and North American constitutions. While I do not seek to belittle the importance of first-generation rights, which serve as important checks to the potential power of any governing body, critics (Galtung 1995, Monshipouri 1998) note that UDHR is conspicuously less clear on social, economic, and cultural rights. Where are the rights to peace, development, environmental heritage, or cultural tradition? Article twenty-seven acknowledges the right to participation of the individual, but the UDHR

does not address communal rights to customs such as circumcision or veiling. Furthermore, the philosophy supporting universal rights derived from reason and 'natural law' is necessarily ethnocentric as it depends on European enlightenment theory and the belief in universal truths (Dembour 2001, Maduagwu 1987, Renteln 1990).

In practice, universalism entails presumptions of power hierarchy. Whose rights are deemed universal and whose power structures are entitled to determine this? As the Soviet Bloc noted with its initial abstention during UDHR ratification, the rights under the Universal Declaration take shape within a capitalist context in which the autonomous, property holding individual is the default human being. Because they depend on laws judges, and reparations, they can only exist in societies with infrastructures designed around large-scale judiciaries, executives, and market-based economies. Universal rights are designed to remedy problems that only exist in large scale society: prisons, torture, and government imposition. The UDHR recognizes the rights to food, health care, property, and higher education, but one must still go forth to earn them. Drawing on the idea that policy reflects distributions of power, some critics go so far as to claim that human rights and capitalism are inexorably intertwined, that “because of the social divisions that make rights both possible and necessary, the net effect of the arrival and enforcement of rights discourse is more likely to be endless strife than perpetual peace” (Woodiwiss 2005: 137). Woodiwiss continues, arguing that human rights are based in systematic inequalities of hierarchical society (social, economic, political, cultural) and thus require citizens to sacrifice their desire to change the system while they treat symptoms but offer no cures to these inequalities. An examination of the rights in the UDHR reveals the assumption that the state will abuse its power to politically disenfranchise its citizens. While it offers a series of protections against such abuses, the Universal Declaration offers no solutions to the political,

societal, economic, and cultural forces that reinforce such a power structure. Universalism is meaningful because of the prevalence of authoritarian abuses to civil and political rights and its pragmatism allows for clear action regarding human rights abuses. When approached appropriately, universalism can be a valuable tool but its philosophical rigidity makes it ill-adapted to pluralistic global society in its most extreme form. Inevitably, such extreme universalism leads to an equally strong and equally misguided extreme cultural relativism.

As synthesized from the ethical relativist philosophies of: Friedrich Engels, who argued that ethics were a product of economic situations; Max Weber, who argued that any evaluative statements are reflections of world views; and Melville Herskovits, who questioned the reflection of European and American norms in the Universal declaration (Maduagwu 1987), extreme cultural relativism argues that no observer can pass judgment on a society. This notion, advanced by Boasian anthropologists to promote tolerance, challenges not only human rights law but all international laws. If we deny the existence of any universal rights, international law can only perpetuate the moral imperialism of the law writers. Relativism is absolutely necessary for any rights discourse because only a relativist perspective has the potential to challenge a presumed universality of standards that are actually culturally based (Renteln 1990). This deeper understanding is an invaluable tool for cross-cultural dialog. This is not to say that human rights standards apply to only one society but rather that relativism gives advocates and anthropologists an accurate perspective on ideas of universality, truth, and justice. Such humility and openness to new ideas are crucial for international dialog. In criticizing universal standards, relativists point to the inapplicability of Western standards and caution against the presumption of rights workers who impose those standards on the people they wish to help.

Paradoxically the relativist counter-argument to universalism, designed to protect cultural

heritage from outside interference, performs a great disservice by homogenizing regional cultures, excessively separating other communities, and downplaying the importance of human rights in cultural politics. Pragmatically, extreme relativism cannot survive in an increasingly globalized world. People are interacting transnationally at incredible rates, bringing historically isolated cultures into direct contact. This global scope introduces a host of new social, economic, and political factors into cross-cultural examinations. Relativists who claim that no Western standards apply to a particular community assume that members of that community unanimously agree to reject them. Critics (Dembour 2001, Maduagwu 1987, Mayer 1998) argue that values differ among colleagues and even family members, so I agree with their sentiment that no single cultural entity exerts homogeneity. Anthropology is, in part, the science of understanding cultural patterns, and so we must be especially careful that our observations do not become simple 'othering'. Cultural trends might seem to define a society but they could never hope to express the complicated views of a person.

By focusing on differences between cultures to the exclusion of their similarities, relativist discourse is counterproductive and divisive. Edward Said criticized this constructed othering because it establishes that "on the one hand there are Westerners, and on the other there are Arab-Orientals; the former are (in no particular order) rational, peaceful, liberal, logical, capable of holding real values, without natural suspicion; the latter are none of these things" (Said 1994). In perpetuating historical differences, extreme relativism unintentionally exoticizes the people it aims to protect.

I argue that discarding universal human rights in favor of relativism is unacceptable; genocide, torture, racism, sexism, and inequality exist and anthropologists should not remain indifferent to them. However, universalism remains unabashedly Western. The historical and

ongoing subjugation of poor or geopolitically excluded communities in the global South and East by corporate, geopolitical leaders in the West without regard to cultural heritage undermine human rights legitimacy. But if neither universalism nor relativism can appropriately address the human rights issues in the modern world, what can? As many authors (Cowan et al. 2001, Santos 2002, Caney 2001, Renteln 1990, Dembour 2001) note, the relativism-universalism debate tends to frame human rights as falling into one category at the expense of the other. Fortunately, such dichotomies exist only in social theory. A practical approach to human rights combines elements of both, producing what Boaventura de Sousa Santos (2002) called diatopical hermeneutics. Alternately called cross-cultural dialog (Renteln 1990), this approach is advocated by Western and Middle Eastern scholars including Abdullah an-Na'im (2008) and Emile Saliyeh (2003). Once the global community accepts the necessity of human rights discourse despite its Western origins, previously marginalized voices can add their own input and form pluralistic and respectful international standards. By tempering universal rights discourse with the cross-cultural understanding, human rights dialog can be both effective and applicable.

### **Islamism and Contested History**

In speaking generally about human rights issues in the Middle East, North Africa, and an Islamic context, I should clarify my intent. As an outsider, I do not wish to pass judgment on another society but rather to offer my observations and analysis. Additionally, Islamic homogeneity is as much a false construction as Western homogeneity; I can only speak to general trends while appreciating the great diversity of thought and practice within the Middle



East and North Africa. For every Western critic of Middle Eastern veiling, a Middle Eastern critic can respond with similar comments regarding Western materialism or demeaning pornography. Respectful criticism on either side does not negate the other's validity. Indeed the greatest value of cross-cultural dialog is the potential to learn and grow through this kind of discussion. The conflict emerges when political figures use culture to attack their enemies. I do not intend to deny the effect of religious fervor in the region as a motivator for violence or human rights violations. Rather, I would argue that the political, social, and economic climate provided its support to a narrow and extremist version of religion that offers salvation through obedience to the state and violence against the historical oppressors. By restricting and discouraging change, such religious philosophy limits the capabilities of individuals and communities to fulfill their potential.

Our current conception of civilizational conflict between Islamic cultural tradition and Western values of life, equality, and personal freedom exists because of inflammatory remarks from prominent, popular voices on both sides. The New York Times noted the growing distrust among European officials, including Pope Benedict XVI, placing Islam at odds with the treasured Western right to free speech (Bilefsky and Fisher 2006). Former president Bush commented about crusades (Myers 2008) and axes of evil, and one need only watch the FOX news network to see pundits and statesmen criticize region, religion, and culture. On the other side, Iranian leaders have leveled a number of charges on America, most notably Khomeini's infamous Great Satan remark. Ranking Taliban and al-Qaeda members continue to incite acts of violence and leaders like Osama Bin Laden and Ayman Al-Zawahiri call for militant attacks (Aljazeera 2008). Meanwhile various radical groups have implemented terrorist acts in New York City, London, Madrid, Bali, and throughout the Arab world. Regardless of the origin of

this tension, East and West both perpetuate inflammatory statements and action. There is fault on both sides. This is the climate in which Americans, Europeans, North Africans, and Middle-Eastern people view one another. In such an environment culture assumes an easy target: the other becomes symbolically vilified through their traditions. But such hierarchical ranking and cultural assertion only distracts from the real factors driving this perceived 'culture clash'. To properly implement cross-cultural dialog between human rights workers and the people they wish to help, we must first understand the political, social, and economic forces that have formed the current distrust and perceived disregard for human rights.

Undeniably, the most dramatic force shaping the “myth of confrontation” (Halliday 1996) is Western colonialism. Since the crusades, the Western world has been both fascinated and frustrated with the Middle East, leading to the phenomenon Edward Said coined orientalism. Conceptualizing the Middle East as a strange world complete with a culture resistant to Christian missionaries allowed European colonial powers to dominate while reducing the population to a bizarre 'other' composed of regional and recycled anti-Semitic stereotypes (Said 1994). Owing to its geographical proximity, the Ottoman Empire provided an unwelcome and omnipresent reminder of this other world during Europe's colonial period. Despite European attacks, the empire maintained its sovereignty until the early twentieth century.

Memory of this resilience and of Christian defeat during the crusades added the geopolitical fuel to orientalism. By the time of the Ottoman Empire's collapse following the First World War, European powers had established themselves throughout the Middle East and North Africa (Halliday 1996). When colonial powers appeared, they attempted to impose their own social, economic, and political systems. As they artificially created new national boundaries, nation-states appeared haphazardly in the midst of clan boundaries and defunct

Ottoman provinces, complete with newly developed capitalist market economies that exploited the trade networks (Tibi 1998). Frustration with foreign domination festered as European powers, namely France and Britain, consolidated their power. They appropriated trade and transportation lines for their geopolitical strategy and kept the people in check through a series of corrupt regional leaders. Then, with the conclusion of the Second World War, the European colonial period in the Middle East swiftly declined. Leaving behind only the newly created Israel and a legacy of authoritarian rule and socioeconomic subjugation, Europe relinquished official control of the region.

As a result of ethnocentric colonial empires, the West had come to represent exploitation, aggression, and imposition and colonialism provided the necessary catalyst for modern political Islam, or Islamism. Part national, religious, and philosophical assertion, Islamism evolved from a rejection of foreign authoritarian rule and exploitation, finally gaining power in the postcolonial age (Chase 2006, Dalacoura 1998, Kepel 2002, Mayer 1998). Often, outside observers confuse Islam with Islamism. Islam is a religion, a set of moral principles, codified values, and written traditions. Speaking generally, Muslims draw upon a number of sources for religious guidance, namely the Qu'ran, the holy revelations of Allah to Mohammed, the Hadith, the oral traditions of the prophet, and Shari'a, the collected body of Islamic jurisprudence. Of these, only the Qu'ran is divine while the Hadith and Shari'a derive from human interpretation (An-Na'im 1996, An-Na'im 2008). Islamism gains its legitimacy from a selectively conservative Qu'ranic reading and an authoritarian and patriarchal interpretation of the Hadith and Shari'a. During the power struggles following the prophet Mohammed's death, various religious and political leaders selectively chose certain texts to fit their strategic needs while opposition was deemed heretical and anti-Islamic (Moussalli 2001, al-'Ashmawy, 1998). To legitimize their

power, political rulers emphasized verses justifying, among other ideas, disenfranchisement and female subordinancy while suppressing others. By enforcing their own narrow views at the exclusion of liberal or moderate scholars, these early men were able to channel Islamic thought and political process toward absolutist rule. This historical precedent still haunts Islamist policy by discrediting the legitimacy of reformers as Western agents.

Such interpretations, combined with military conflict during the crusades "would finally give the upper hand to authoritarianism and traditionalism and reduce the margins of free public space and weaken the original powers of society" (Moussalli 2001:49). Reacting to political stress, an elite group presented their conservative interpretation as truth. Centuries later, Islamists drew on this construction as historical fact and recycled it as the basis for their own authoritarian rule. By presenting extremism as the patriotic alternative to Western colonial rule, Islamists gained popular support. They worked within the existing confines of the nation-states and capitalism, funding support for their view of religious polity. They gained additional popular support from the rampant corruption, repression, and overall economic failure of secular states like Morocco, Iran, and Egypt (Kepel 2002, Monshipouri 1998, Waltz and Benstead 2006, Dwyer, 1991).

Radical groups and thinkers throughout the Middle East and North Africa rose to power, including the Muslim Brotherhood, Wahhabism, Sayyid Qutb, Ruhollah Khomeini, and Sayyid Abdul Ala Maududi. Qutb, Khomeini, and Maududi are especially important because their scholarly critiques of Western materialism, morality, and preoccupation with money, their commentary on key scripture and Islamic history, and their political efforts to organize a religious and ostensibly moral state laid the philosophical foundation for modern Islamism. Their philosophy was radical and political, as it needed to be to compete with similarly radical

and vocal calls for Zionism and Pan-Arabism among nationalists of every variety during the turbulent 1960s. Because Qutb was so much more concerned with broad philosophical ideas than tangible battles or physical wars, he probably would have had reservations about the means and targets used by Al-Qaeda. Nonetheless, the terrorist group identifies Qutb as a key theoretician in their work (Berman 2003). Their influence legitimized an extremist religious interpretation that marginalized other perspectives and formed an important alliance between clerics, politicians, and militants. I deny the validity of the positive connotations of the term fundamentalism because it implies that this restrictive interpretation accurately reflects the fundamental precepts of Islam. Instead, I agree with Sa'id al-Ashamawy (1998) and favor the term extremist, which more accurately describes Islamist philosophy.

This alliance came to dominate the postcolonial region when radical Islamism, funded by Saudi oil and legitimized by Khomeini's revolution, spread throughout the Middle East and North Africa to call for religious states (Kepel 2002, Dorraj 1999). This previously marginal and radical movement now had the impetus to shape postcolonial resentment to their political gain. As part of their political and social domination, the British and French discouraged any dissent including that based in freedom of religion or ideas and that appealed to human rights sentiment (Saliyeh 2003). In denying these freedoms, the colonial powers created the ideal environment for extremists and inspired an underground backlash that fused religious and nationalist fervor. When the region finally gained independence, the movement fragmented as nationalists succumbed to corruption and religious leaders radicalized. Islamism asserted itself as a new religious national identity that would remain true to regional development and 'traditional' Arab-Islamic values. Frustrated by the lack of socioeconomic development and their corrupt and repressive regimes, "social and political discontent was most commonly

expressed in the cultural sphere, through a rejection of the nationalist ideologies of the ruling cliques in favor of Islamist ideology" (Kepel 2002:66). Kepel uses culture here to refer to the resurgence of identity as an Arab Muslim rather than a citizen of an artificial state, not in reference to specific cultural heritage. Transcending the boundaries of national assertion associated with Islamism, culture deals with clothing, sexuality, and world views, not political goals.

In fact, cultural practices have relatively little to do with Islamism. The movement's success is largely a product of Western subjugation: the presumed cultural confrontation can be much better described as a geopolitical backlash. Kepel notes that the strict interpretation nearly caused the Islamist movement to collapse by the turn of the century as rival factions fragmented and fought against each other in the name of the 'true' way. Unfortunately, the aftermath of the September eleventh attacks, a "desperate symbol of the isolation, fragmentation, and decline of the Islamist movement" (Kepel 2002:375), gave extremists the political fuel necessary to revitalize the movement. The era of globalization has introduced foreign economic, social, political, and cultural elements. By using culture to define themselves in contrast to the global community, Islamists hope to deny the advancement of globalization. However, this dichotomy is false: globalization itself brings as much Eastern culture to the West as vice versa. When Western nations and corporations attempt to control the local economies globalization is interpreted, often correctly, as neoimperialism, to the point where some Muslims "feel they are under siege by the West" (Monshipouri 1998:52). This economic subjugation recalls the former colonial domination and lends support to extremists who offer an internal, Muslim alternative.

Current Islamist thought, rhetoric, and action bears only a passing resemblance to cultural practices like gender, dress, or world interpretation. Instead, it deals with the effort to

consolidate political power and resist former colonial authority. Inter-regional differences have been cast aside in favor of a united front against the oppressors in Europe and America. Anything Western was subject to suspicion strictly because of its origin thanks to a fear of neocolonialism. This includes the Universal Declaration, drafted before the colonial collapse. This environment inadvertently nurtured reactionary feelings of nationalism and religious pride. As part of an intellectual resurgence in the absence of a physical revolution, Muslims came to "reject Western ideas only because the West tried to force the Muslim world to accept them. Western force, exploitation, the crusades, and the weakness of Muslims, all caused Muslims to panic and fear accepting Western ideas" (Amin in Khatab and Bouma 2007:63). This is the framework within which human rights advocates now work.

### **Navigating Insularity, Arrogance, and Incompatibility**

Numerous critics perceive an incompatibility between Islam and human rights. Some argue that Islam, Islamic law, and Arab culture are incompatible with human rights (Ali 2007, Pipes 2003). Others argue that human rights have existed within the Shari'a for centuries (Dwyer 1991, Saliyeh, 2003). Still others contend that human rights and Islam address entirely spheres of influence (Chase 2006, Donnelly 2003). One critique in cultural politics falls in line with Samuel Huntington and his 'clash of civilizations' theory (1996), which posits that Western democracy and Islam are mutually exclusive. In rejecting the absolutism of the incompatibility theory, I also note that the human rights protections of Shari'a and Islamic tradition have been unsuccessful in nations claiming to govern under religious law. But to argue that this reflects culture or even popular tradition ignores centuries of patriarchy and political domination.

Ayaan Hirsi Ali is one particularly vocal critic. Rather than placing current social order in its historical context, Ali's 2007 memoir *Infidel* frames it exclusively within Arab and Islamic culture. Throughout her compelling and powerful story, Ali documents and criticizes the fanaticism in North African communities of her upbringing and her feeling of subordination. But in each instance, from female genital cutting, veiling, Saudi sexual segregation, book burning, or even physical violence, Ali blames culture as a driving force. She does not address the economic necessity of genital cutting in North Africa or the political motivation for disenfranchising the female population. As I shall discuss later, class elites often use such cultural practices to further economic and political goals. Even as she observes the state system failing in Somalia, Ali credits Islam and culture with the appeal of religious fanaticism. This observation assumes that opportunistic clerics and extremists did not seek to fill the political vacuum left by the colonial powers.

Although I appreciate Ali's struggle and admire her book, her analysis can be simplistic because it ignores the complex political, economic, and social push toward "traditional culture" as interpreted and defined by those in control of the postcolonial Middle East and North Africa. When culture appears to subjugate, this represents a greater effort to subjugate the population by those wielding political, social, religious, and economic power. Culture, defined by its fluidity, cannot force itself upon an unwilling community—only political structures have this influence. This conflation of culture and state dynamics becomes clear as Ali describes her asylum in Holland. In contrasting her Somali and Dutch lifestyles, she almost exoticizes her European standard of living in comparison to the Arab world, ultimately concluding, "one of these worlds is simply better than the other. Not because of its flashy gadgets, but fundamentally, because of its values" (Ali 2007:348). I believe that Ali is confusing Holland's political and economic



stability with its cultural heritage. When allowed to liberalize, as Western states have, European Christian and Arab Muslim values are extremely similar. Dutch culture is as equally valid and invalid as Somali or Saudi culture and any arguments to the contrary conflate political stability with cultural merit and resound with ethnocentrism. Ali owes her success in Europe not to culture but to state stability and support. To argue cultural or religious superiority supports ethnocentrism and thus compromises the hope for respectful cross-cultural dialog.

Political leaders can cite a tradition of incompatibility between universal human rights and Islam because they have strategically controlled the law's interpretation and implementation (Moussalli 2001). In modern times, Ann Mayer notes that "undemocratic regimes perceived the growing influence of human rights ideas as a threat, which gave them the incentive to concoct new sets of Islamic rules on human rights, in which Islamic criteria could be deployed to override and circumscribe human rights and to maintain old hierarchies and forestall an advancement of freedoms" (Mayer 2006:68-9). By citing the Western origins of human rights, such regimes can justify their actions as resistance against the West. As tangible representatives of a historical oppressor, human rights advocates can appear ethnocentric and recall the efforts of missionaries sent to save the savages. This idea has significant merit if one notes, with Noam Chomsky (2003), that American foreign policy uses human rights discourse when it is politically and economically beneficial. Human rights were at the forefront of the justifications for war with Iraq, and are completely ignored when the American government wishes to promote economic and geopolitical stability, as is the case with Saudi Arabia. Such double standards weaken human rights legitimacy while providing a wary population with greater evidence of a neo-colonial agenda (Chomsky 1998, Chomsky 2003, Gerges 1999, Halliday 1996). These tactics also discredit the effort of human rights workers by presenting human rights discourse as

a tool for military action, political interference, and general ethnocentrism.

Yet, following an extreme relativist logic, one could easily conclude that human rights are only acceptable for Western nations while the Middle East and North Africa should continue without them, a conclusion both orientalist (Mayer 1998) and inherently insular (al-'Ashmawy 1998). Beginning with politically motivated restrictions and greatly compounded by colonial interference, the Arab and Islamic world have engaged in cultural, social, economic, and political exchanges with the West that have fundamentally shaped their development. Despite their Western origins, the region accepts the concepts of the nation-state and market economy. More importantly, the Middle East and North Africa are home to a number of internal human rights organizations devoted to the development of a regional human rights schemes (Dwyer 1991, The Harvard Law School Human Rights Program and the Center for the Study of Developing Countries at Cairo University 2000, Skaine 2005). Any claim of incompatibility due to regional or Islamic exceptionalism recalls a false nostalgia and posits that culture and society have remained unchanged and uninfluenced: this is simply not true. Even in its early development, the ideal authoritarian state governed by strict religious rule has never existed (Moussalli, 2001 Mayer 1998).

With this in mind, I agree with writers like Abdullah an-Na'im (2003), Bassam Tibi (1998) and Jack Donnely (2003) and argue that the Western origin of human rights discourse does not limit their applicability. By the same token, Shari'a may offer a useful set of laws for Western society. This dialectic is crucial to cross-cultural dialog. While noting the potential societal benefits of both Shari'a law and the Universal Declaration, I must reject the notion that either is an effective means of ensuring human rights in the Middle East and North Africa in their current forms. This false dichotomy is analogous to that between universalism and

relativism: reality lies in the middle. It is not the concept of human rights that moderate populations in the Middle East and North Africa take issue with but rather the way in which it is presented (Halliday 1996). Modernization and general participation in the world community should not require Muslims to import Western or Christian values or deny their own cultural heritage (Haq 2001). To ensure this, both Western and Arab workers are responsible for separating human rights discourse from colonial influence. In order to create a human rights framework with the political legitimacy of Shari'a and the rhetorical strength of the Universal Declaration, Western human rights advocates must work with their Muslim counterparts and establish cross-cultural dialog. Using this tool, they can work to reconcile the Universal Declaration and Islamic and regional jurisprudence, implementing a viable human rights scheme removed from Western domination. This approach has already led to considerable success in Africa, where authors adapted Western human rights documents to their specific cultural needs in Botswana, Malawi, and Mozambique (Lindholt 1997).

Other relativist critiques highlight the cultural differences between the Western concept of rights and a non-Western idea of duties. Superficially, the difference between rights and duties may appear to be inconsequential, and both seek to respectfully promote equity. In seeking to remain respectfully relativistic, human rights advocates should not succumb to orientalism and assume that Western and Middle Eastern human rights schemes are mutually exclusive. We must remember that neither camp is a homogenized bloc incapable of understanding the other's concept of preserving dignity. Nonetheless, subtle inconsistencies become enormously important when using cross cultural dialog to advance a culturally respectful human rights plan. Like other holy texts, including the Ten Commandments and the gospel, the Qu'ran deals mostly with duties of people to God, not guaranteed rights. The rights espoused by

the Universal Declaration seek to protect human dignity through a series of protections from an authority.

Duties, like the obligation to give charity and provide for one's family, imply human dignity but they do not explicitly necessitate it. Duties also offer no protection from authority but instead assume that authority will act benevolently. In this context, the "question whether the notion of duty contains within it the notion of right is complex. A right does imply a duty but it is critical to the idea of human rights that the right exists independently of and prior to its correlative duty. The centrality of duty in Islam is not a mere difference in emphasis but a judgment that rights are less important between duties" (Dalacoura 1998:57). Because this description is somewhat simplistic and denies the viability of rights generally, other scholars (Donnelly 2003, Mayer 1998) have criticized such discrepancies. However, I feel that critics on both sides are complicating the issue. The current use of duties to protect human dignity is not effective because its enforcement falls to a few political activists who rely on radicalized Islam to maintain power. A survey of the prisons throughout the region will show that duties are not sufficient to protect the rights of the incarcerated. This discrepancy inspires Western action. Because this action may be unsolicited or present a challenge the political authority, it may appear to be a form of Western subjugation and further encourage Islamism (Bhutto 2008). Rights and duties intersect in their respect for human dignity and intent to protect it. Utilizing cross cultural dialog, this common ground can serve as a base for Western and non-Western human rights workers to implement the culturally established system of duties to guarantee human rights in practical context.

Those who use duties as a justification to deny human rights often do so to obviate any political challenge to their authority (Mayer 1998). Similarly, many leaders in the developing

world claim that economic development must precede adequate human rights, an argument often voiced by those who encourage industrial investment at the expense of their environmental resources. There is a certain logic to this argument as much of the West industrialized at the expense of human and environmental rights. But global dynamics have changed drastically since Western industrialization. Transnational entities including corporations and politically influential organizations controlled mostly by Northern nations have shaped the global economy such that Southern nations feel pressured to choose between economic success and human rights (Hernandez-Truyol 2002). Sudden economic liberalization most often leads to a sudden increase in capital for certain classes while perpetuating the exploitation of the rest, especially women (Monshipouri 1998, Gruenbaum 2001). Civil and political rights need not and should not be suspended to provide for economic rights. As with the false 'Full Belly Thesis' offered by African leaders and described by Rhonda Howard (1983), such action is often a ploy to maintain power and deny political opposition. Ignoring popular demand for civil and political participation can also be an effective way to draw on colonial resentment, as the West may appear to deny economic development in human rights discourse advocating universal values.

The rights that such leaders claim are so ill-suited to their culture and heritage, such as free press or gender equality, rarely limit the powerful or wealthy. Whether on the national or personal level, those who claim cultural difference as a justification for violent crimes like rape or for beating one's children invoke an orientalist notion of culture and the other. This claim presumes that the offender's culture is unchanging, untouched by modernity, globalization, or liberal trends. Perversely, it defines culture in the same barbaric and backward stereotypes imposed upon it by colonialist thought. Responding to Susan Okin's 1999 essay *Is Multiculturalism Bad for Women*, Katha Pollit (1999) references prominent court cases in which

immigrants from numerous backgrounds successfully eluded domestic abuse charges by claiming to be “naive products of a rigid, static society” (Pollit 1999:28). She continues, arguing that immigrants from countries perceived as modern, such as Italy or Russia, would be unable to defend themselves in this manner. However, in accepting national borders, legal codes, capitalism, or immigration bureaucracy, among any number of new and culturally unfamiliar systems, those who hide behind cultural exceptionalism for violent crimes betray their adaptability to the globalization. Thus, it seems clear that this claim is less a maintenance of heritage than an excuse to keep power, whether this manifests in familial patriarchy or political leadership. Transnational business and economic rights are respected: one wonders if the political leaders that support gender inequality on Islamic grounds also refuse to pay interest on national loans. Indeed, the Qu’ranic restrictions on collecting interest, which could extend to everything from national debts to credit card payments, are far less ambiguous than those used to justify patriarchy. Such claims have, at best, a tenuous base in historical or religious reality, as will be discussed further below.

### **Martha Nussbaum And The Capabilities Approach**

In attempting to reconcile preferential rights, cultural difference, and postcolonial resentment, it becomes clear that anthropologists must have a widely applicable and respectful philosophical basis from which to initiate cross-cultural dialog. A variety of human rights schemes may attempt to define a series of rights, as with the UDHR, advise Western solutions, as with American democratization policies, or advise noninterference altogether, as with extreme cultural relativists. I have already criticized extreme relativism for its unwillingness to address

human rights abuses and extreme universalism for its inherent ethnocentrism. However, a number of moderate schemes can fail when applied to the diversity of human rights abuses. As Sen and Nussbaum note (Nussbaum 2006), large-scale examinations will often prove to be faulty as well. Economists and global institutions determine human rights abuses by examining visible statistics, like GNP or income distribution (Sen 1973). GNP and welfare economic methods can be useful when comparing state resources, but this data does not inform advocates about the actual lives of the people in these countries. Nor does it account for interpersonal distributions, the economic gaps between individuals within states.

Approaches that focus on rights tend to be absolute, impersonal, and Western. Furthermore, rights language tends to highlight negative rights, the ‘freedoms from’. This is especially evident in the American constitution, which emerged from Enlightenment-style fear of government control. Rights schemes are inadequate for both the individual’s right to happiness and the family’s right to love and protection. They articulate procedures that may lead to a specific outcome, rather than beginning with a desirable outcome and leaving the procedures open-ended. Approaches that focus on utilities do not consider that people have variable needs and variable access. Focusing on human entitlements tends to focus on what people need, not what they could have. By the same token, rights schemes that focus on human functioning focus on what people do and are, not what they could potentially do and be. At the same time, failing to articulate rights entirely will not fight global inequality. Although rights language has been unhelpful, defining a series of basic human necessities is not inherently unproductive. Such a baseline is useful because it gives human rights advocates a measure by which to assess potential human rights violations.

As a discipline, anthropology has had a troubled history with human rights discourse.

Unwilling to endorse early rights systems because of their Western bias, anthropologists have remained split on this issue, with prominent scholars arguing for cultural relativism, universalism, and many viewpoints that lie somewhere in the middle of these two extremes. Without a sense of clarity, anthropology will be unable to contribute to the human rights movement. Yet anthropology's attention to cultural diversity and unique knowledge of cross-cultural relations should help to inform any global movement, ensuring that native voices are well-represented and cultural heritage is preserved. Anthropology will not achieve this introspectively; human rights is an especially contentious issue and no single philosophy has risen to prominence. Other social sciences have offered various models, but they lack the cultural sensitivity that characterizes anthropological theory.

What anthropologists need, then, is a system that can articulate human needs without imposing Western rights while remaining versatile enough to preserve cultural meaning and apply to individuals across the world. I favor the capabilities approach articulated by economist Amartya Sen (1973) and furthered by philosopher Martha Nussbaum (2002, 2006). As the name suggests, this human rights scheme is designed around the ability to fulfill individual and community potential. Rather than focus on the individual's relationship to the state, capabilities begin with the assumption that human rights are based on dignity, ability, and possibility. As a result, they are more concerned with personal qualities of life. This approach is unique in that it focuses exclusively on human capabilities, what people, or groups of people, are actually capable of being or doing. Capabilities are distinct from rights, entitlements, and utilities because they encompass human possibility. They stand juxtaposed to rights laws in that their purpose is fixed but their actual implementation depends on the situation in question. Actors who follow this model articulate their final outcome but allow the procedures that create this outcome to remain



vague. Their advantage lies in that capabilities address positive freedoms, can infiltrate the private and public spheres, and are not linked to Enlightenment philosophy (Nussbaum 2006). Thus, while traditional sociopolitical contracts have focused on procedures that maintain a balance of power, capabilities encourage a result, equality and dignity, that focuses primarily on human well-being. When examining human rights, I contend that advocates can be more effective when they concentrate on helping people achieve their human potential, in terms of physical, mental, emotional, and social fulfillment. This tool is especially useful for anthropologists navigating human rights discourse or cultural politics because the capabilities approach requires advocates to be cultural specialists.

Nussbaum explicitly lists ten base capabilities, which she believes to be necessary for human functioning. These capabilities form a baseline, against which human rights advocates can measure well-being. Her list of central human capabilities encompasses: the ability to live one's life; the capability to promote personal bodily health; the capability for bodily integrity including reproductive freedom; full expression of sensory perception including imagination and thought; emotional expression; the ability to employ practical reason with regard to one's life; the ability to affiliate with social groups and individuals without fear of reprisal; being able to live harmoniously with the natural world; enjoying rest, play, and recreation; the ability to exercise some control over one's life, through some combination of political participation, cultural or religious expression, unhindered access to the economic system, and meaningful social relationships (Nussbaum 2006). People who express these basic capabilities can be seen as above this human baseline while people below this baseline may suffer human rights abuses. Nussbaum's central capabilities differ from other rights lists in that they are intentionally vague and open to interpretation. Rather than define what it means to live a good life, the capabilities

list asks only that people are able to live one. This necessitates an anthropological understanding of what that life would entail in multiple settings. In this way, each capability can be interpreted in distinct cultural contexts without losing its essential meaning. In this way, the capabilities approach is equipped to navigate universalism and cultural relativism. However, because the essential meaning remains the same cross-culturally, advocates can know, and thus defend, human capabilities.

In Nussbaum's worldview, as articulated in *The Frontiers of Justice* (2006), these essential capabilities are guarded by state and nonstate actors. Drawing on a liberal political science philosophy, she argues that global institutions are capable of watching states and identifying areas that need human rights support. However, she stresses that states are ultimately responsible for helping improve the global structure. In this way, the responsibility for global well-being is shared among actors that have the power to effect change. States can do this through policy, institutionalizing positive rights, or they can contribute material aid to areas with a demonstrated need. Nussbaum believes that transnational institutions are capable of assessing this need, in accordance with the capabilities approach. In such a process, both people affected by a perceived human rights violation and outside observers must work together to ensure that any outside response is both wanted and effective. By working together, outside actors can overcome any sense of moral imperialism while the disaffected can realize their double consciousness. It is important to note that Nussbaum stresses that her model does not provide a grounds for interference. The capabilities are not designed to spur international agents into action. Rather, they provide a framework within which international groups, states, and those affected by human rights violations can begin cross-cultural dialog.

Although Nussbaum writes mostly about women and women's rights, I believe that the

capabilities approach can be extended to men, women, and transgendered persons. By examining the political, social, and economic realities that constrain a realization of specific goals, it provides a realistic vantage point from which to view potential human rights abuses. Other indicators like GNP, economic development, political expression, or even asylum requests can be misleading because they presuppose Western values. Judging by income standards, one could conclude that successful hunter-gatherer societies exist in tragic poverty while a city that undergoes sudden economic liberalization, deepens class divides, and compromises environmental standards seeks to fight social inequality (Sen 1999). Such an approach implies that human rights issues can have a quick, easy, or merely economic resolution. But real change must be gradual, as with any shift in thinking. The capabilities approach examines human rights within their cultural context, investigating "not only about the person's satisfaction with what she does, but about what she does, and what she is in a position to do" (Nussbaum 2002:129). Building off of Nussbaum and Sen's work, other authors (Gruenbaum 2001, Talbott 2005) have argued for an autonomy-based human rights scheme. The most useful aspect of the capabilities approach is its emphasis on individual context. Rather than impose values on other societies, it examines potential human rights abuses from within local, enculturated standards. While other, more general models use statistics based on human beings as the basis for their observation, it directly investigates the grievances of those people. For this reason, the capabilities approach is uniquely situated to provide a philosophical base for cross cultural dialog.

Proponents of cultural relativism criticize Nussbaum's system because it claims to be universally applicable. By forwarding a system of rights at all, it supposes that one existence can be superior to another. In addition, focusing on individual autonomy, it ignores communal and familial rights. These are legitimate anthropological criticisms, but I feel that they miss some of

Nussbaum's essential meaning. Yes, capabilities are unabashedly universalist, but their basis is not in the Western political tradition. In fact, the rights to free affiliation and a harmonious existence with one's environment are decidedly contrary to European and North American tradition, as evidenced by institutional racism and the environmental devastation that has sustained these societies. Furthermore, Nussbaum's list is intentionally non-specific and open to revision. Capabilities are designed to be interpreted within distinct cultural contexts and applied to the variable need that they express. On a culturally specific level, human existence cannot be compared, and anthropological work has shown that people are products of the culture that surrounds them. However, the capabilities approach argues that only an ideal life, in which capabilities are fulfilled, is superior to other existences. The capabilities approach is neither willing nor equipped to criticize cultural structures, only the way that people are able to act within them. Nussbaum demands only that all cultures express respect for human life and dignity, the human rights outcome. She does not seek to impose her own values on how this respect can be expressed, the human rights procedure. This is the very essence of a relativist-tempered universalism.

I feel that one aspect of Nussbaum's argument does require special attention. In an effort to preserve individual autonomy, the capabilities approach also possesses a strong individualist tilt. Her discussion glosses over the rights of families and other communal networks. In fact, citing institutional patriarchy, Nussbaum notes that families often stifle women's capabilities. However, I feel that Nussbaum is wrong to exclude communal rights from her list. Group rights including self determination, the right to familial safety and privacy, and religious expression, can work within her rights framework as outlined above. As numerous authors (Mahoney, 2007, Moussalli 2001, Sahliyah 2003) note, families and large societal networks have traditionally

been excluded by human rights discourse. As with Nussbaum, groups are portrayed as aggressors. However, families and groups require similar protections in order to fulfill their own capabilities. An extreme and individualist interpretation of Nussbaum's argument could lead to misinformed conclusions about social structures.

Although they form an important part of the international human rights movement, non-state groups have no explicit rights to statehood under the capabilities approach. Ethno-national groups such as the Tibetans and the Palestinians have tried to invoke the communal right of self-determination. When examined as part of the capabilities approach, anthropologists should conclude that such groups have intrinsic rights to dignity, not to live as second-class citizens, that are covered by Nussbaum's list. Political expression of this kind is more a matter of recognition by the global community, economic and resource rights on the national level, and numerous international laws and treaties. It transcends both the ethical needs of individuals and the fulfillment of human capabilities.

This is not to say that self-determination issues are unrelated to human rights issues. By denying a group nationality, the state can commit any number of atrocities, from denying full economic or political rights to outlawing language. The capabilities approach is well equipped to address these particular violations, potential consequences of state-sponsored disenfranchisement. However, owing to its wide-ranging international political and economic ramifications, self-determination itself lies beyond the scope of the capabilities approach. However, it is equipped to deal with other types of groups that would benefit from an individual, case-by-case examination of potential disenfranchisement. While it is beyond Nussbaum's philosophy to advocate for political secession, she can speak to state policies as they affect a current group, be it religious, familial, or ethnic. Fulfillment of capabilities may well lead to

self-governance, but this is a procedure and as such it is not specifically argued for by the capabilities framework. The capabilities approach is based in a social contract between leaders and communities, namely states and individuals residing within them. The ultimate goal is not to appease every political, economic, or even social aspiration, but rather to create an environment of equal potential for fulfillment. By applying these rules to such groups, the capabilities approach becomes both more versatile and encompassing. By remaining rigidly individualistic, the capabilities approach can actually do more harm than good.

In many settings, the family is a beneficial structure from an individual and group perspective. Although it sets certain restrictions on individual liberties, can anthropologists consider these human rights abuses? Many families protect, nurture, and care for group members. American parents who give their children curfews do not do so to stifle personal freedoms. Rather, they hope to ensure their children's safety. Abusive parents who lock their children in their rooms have crossed a vague boundary and committed a human rights infringement. While this situation should not cause human rights advocates to conclude that the family is an intrinsically bad institution, it calls attention to the ways that groups must be treated with nuance in rights discourse. Fortunately, the capabilities approach is distinctly contextual. I contend that both families and individuals are intrinsically worthy of dignity and respect. As such, they should both share Nussbaum's capabilities. The most reliable way of ensuring that such groups do not oppress their members would be to examine context and the anthropological meaning of questionable actions.

Nussbaum herself addresses another potential critique of her philosophy in *A Plea for Difficulty*, an essay that responds to Susan Okin's *Is Multiculturalism Bad for Women* (1999). For the religious, the capabilities could be seen as another secular attack that seeks to undermine

traditions including dress or the gender of the clergy. More secular critics ask the opposite questions: at what point is religion harmful to the individual? Does religion hamper personal capabilities? Do religious rights, customs, and ethical standards conflict with capabilities for equity and personal freedom? Such questions would undoubtedly seem offensive to people who see their faith as integral to their lives. However, this issue is not as philosophically complicated as it may appear. The secular critique is ultimately misguided, because it assumes that “religion has nothing positive to contribute to the struggle for justice, and perhaps to life more generally” (Nussbaum 1999:107). In validating such a denial of religious thought, the argument not only limits the human and group capabilities for spiritual expression, it damages the attempts of religious activists who draw on their faith to combat inequity. Nussbaum cites Ela Bhatt and Gandhi, both of whom drew on Hindu philosophy to combat the abuses of the colonial British, but the list extends to Dr. Martin Luther King Jr., Frederick Douglas, and Mother Theresa, among countless others. The capabilities approach demands that people be able to live in a pluralist environment where both religious and secular viewpoints are respected.

To this end, she notes that while a philosophical liberal like herself might lament the exclusion of women from the Catholic clergy, the kind of political liberalism that she espouses in the capabilities approach would not allow such an imposition into church dogma (Nussbaum 1999). This exclusion does not prevent women from practicing religion and so does not infringe upon a base capability, however unfair or even unjust it may seem to the liberal observer. Claiming so runs the risk of imposing a normative value without any respect to the cultural legacy of Catholicism and opens the door for any normative value judgments against other societies. The value of the capabilities approach lies in its ability to draw a boundary between human rights abuses and seemingly improper practices. The example of female clergy in the

Catholic tradition illustrates the necessity for an assessment of severity and a cultural appreciation for the practice in question.

That said, the secular argument correctly critiques certain patriarchal and disenfranchising structures employed by religious groups. However, rather than solely blame religion, I believe this argument speaks to one of the central themes of this paper. The religious practices that interfere with human capabilities result from dubiously authentic historical practices. They arise, continue, and are revived as powerful people gain control over others. The result is less a religious and moral institution, but rather one that reflects the political and socioeconomic will of these elites. Reform does not call for a restructuring of religion itself, but rather the re-examination of these historical practices. As Muslim feminists, Gandhians, and religious liberals of all kinds argue, reform aims to draw religious groups closer to the true moral and ideological tenets of spirituality and religion itself.

Cultural politics aside, the issue of religious freedom is an especially difficult issue to deal with as a human rights advocate, anthropologist, or proponent of the capabilities approach. Free religious expression is not just one of the fundamental capabilities – it has a long history in liberal philosophy. But, taken to an extreme, work toward religious freedom can lead to the claim of religious exceptionalism. However, human rights philosophy and the capabilities approach insist that no person can be stripped of their humanity on religious grounds. Once again there is a need for some kind of scale to measure the difference. To counter religious exceptionalists, Nussbaum argues that the basic protection of human life and happiness supersede the need to continue historical or traditional practices. For her, God is just and does not order humans to debase others; rather that mandate comes from other humans and carries neither divine nor supernatural authority. Nussbaum continues this argument, claiming:



To those who object that violating others is part of the free exercise of their religion, we should reply as we do when a murderer claims that God told him to do it (and he may sincerely believe this to be true): Never mind, we say, there are some things we do not allow people to do to other people. Or as the Bangladeshi wife said in my epigraph, if Allah really said that, then he is dead wrong. (What we really mean by saying such things is that a just God cannot possibly have said such things.) (Nussbaum 1999:102)

The case of religiously justified abuse shows a potential for a clash of capabilities, in which one right is used to legitimize the violation of another. However, the full set of capabilities must be met if one is to fulfill their human potential.

That which the capabilities approach to human rights seeks to protect is the human. This is not a scheme for the equal protection of ideas or ideologies, because these can be used to justify actions that limit functioning or capabilities. This framework maintains that the protection of human capabilities supersedes the protection of larger ideas. That is, tradition is no excuse for torture. Those extreme views that cause members of a society to harm and unequally treat their fellow community members cannot be tolerated or respected when their rhetoric becomes a tangible threat. No matter how sincere, human rights supporters and anthropologists should and must oppose any actions that threaten the equality of the community.

The capabilities approach entails several key assumptions that inform its conclusions on human rights issues. First, it assumes that all human life is valuable and that all people have intrinsic worth by merit of their humanity alone. In the just world that human rights advocates work to create, there is no natural state in which one human is inferior or superior to another. All people are fundamentally equal and possess an equal degree of worth. This is the key value of respect, in which actors value each other's culture and history and approach cross cultural dialog from a position of equality. This value is indisputable and no cultural relativism can challenge

this basic tenet. Thus, the relativist critique that guards against imposition cannot threaten one's humanity. Women, men, and transgendered people of all religions, ethnic backgrounds, and cultures possess inalienable human dignity, and deserve to have that dignity respected. This belief comes from Nussbaum's familiarity the works of John Rawls and John Stuart Mill, who considered dignity, equality, and respect to be key foundations for human rights, and from her conviction in Humanism (Nussbaum, 1999). I would hope that anthropologists could comfortably endorse this assumption.

As a ramification of this assumption, the capabilities approach also assumes that pluralist society is beneficial. By pluralist, I refer to a society in which all people can coexist peacefully, in which no single demographic asserts an advantage over another by virtue of sex, heritage, sexual orientation, religion, or cultural background. Pluralism only ensures that the full diversity of a population can affect its own well-being. The capabilities approach does not offer any specific means of achieving this environment and, rather than being western-centric, criticizes American and European states for their hierarchical societies. Because it violates the capability for a full and dignified life, violence must be viewed as detrimental to human existence. Thus, the capabilities approach would have anthropologists universally condemn acts of injustice against any people, despite a cultural precedent. In order for an individual to recognize injustice, they must be aware of their own situation and of an alternative. The individual must then be able to make a competent value judgment to determine if his or her capabilities are being limited by the situation in question. In short, the capabilities approach is dependent upon sufficient access to resources, be it some form of education or other way of evaluating one's potential human rights abuse in context. In this way, the individual can ensure that their choice is neither spontaneous nor already decided by an outside force (Nussbaum 1995). That is, the capabilities

approach relies on one's ability to form a double-consciousness.

Finally, it assumes that individual rights are centrally important, as explained above. As such, groups are institutions through which individual rights can be respected or denied. Thus group rights fit with the capabilities approach only when they do not seek to compromise one's personal autonomy. Nussbaum does not support a tyranny of the majority; on the other hand, history shows that family ties can be enormously helpful in protecting individuals from social and physical dangers. A person's stated desire, as identified by NGOs and ethnographers alike, is an insufficient guide for rights workers when compared to their actual functioning and abilities. Therefore, any individual rights, as expressed through capabilities, cannot impinge on the rights of others, limit their capabilities, or hamper one's perspective when forming a double-consciousness.

I argue the idea that cultural politics, the way in which culture is represented and appropriated by both authoritarian regimes and human rights advocates, and postcolonial political and socioeconomic factors, is responsible for a perceived incompatibility between Islam and human rights. Furthermore the capabilities approach is uniquely situated to deal with ambiguous rights or rights pertaining to cultural artifacts. Three case studies are particularly valuable for addressing these gray area rights: female genital cutting, the veil, and ideas of democracy. Each of these cultural constructions are often perceived as human rights issues by Western observers looking to the Middle East and North Africa. While traditional human rights or feminist approaches tend to frame these as simple problems, easily remedied by informed activists, the capabilities approach enables human rights advocates to fully realize their complexity and cultural significance. With this relativistic outlook, we can appropriately engage in cross cultural dialog and work toward a positive outcome. This will recognize the political,

economic, and social fabric surrounding the veil, female genital cutting, and democracy while providing the tools to better understand them.

In the Universal Declaration of Human Rights, veiling and female genital cutting can be interpreted as human rights violations under the articles guaranteeing the right to personal liberty and security (article 3), forbidding degrading treatment (article 5), forbidding interference with privacy and family (article 12), freedom of opinion and expression (article 19), and guaranteeing security of family and motherhood (article 25). From this, one could conclude that these cultural articles are incompatible with human rights law. However, I contend that the Universal Declaration is merely ill-equipped to address these perceived incompatibilities. In examining these issues, I will investigate the historical, cultural, social, economic, and political significance of each while reinforcing that culture itself is fully equipped to fulfill autonomous capabilities.

### **Female Genital Cutting**

Female genital cutting is one of the most hotly contested human rights issues in North Africa, in part because it is defended as a cultural right. Western feminist groups, women's rights activists, African governments, and the World Health Organization have all criticized this practice while individual communities, including the women, insist on the procedure. Its relationship with Islam is complicated and ambiguous, and its original significance in cultural constructions of gender and adulthood has become appropriated by postcolonial discourse. In short it can be seen as both an abuse and a right, depending on one's orientation within cultural politics.

The term itself is subject to scrutiny. Depending on one's perspective, it is called

circumcision, cutting, or mutilation. Designating the practice circumcision draws a false comparison to male circumcision, a procedure far less dangerous or invasive. Although I personally believe that mutilation is often accurate, the word's severity and connotations insult the tradition, its cultural meaning, and the people who perform the procedure without distinguishing between mild and severe forms. Mutilation, although strong enough to capture the imagination of Western human rights advocates, is an impractical term for cross cultural dialog. I use 'cutting' because it accurately describes the process without passing judgment.

Female genital cutting (FGC) is not a single, defined procedure. As a blanket term, the World Health Organization (WHO), United Nations Children's Fund (UNICEF), and the United Nations Population Fund (UNFPA) issued an April 1997 joint statement defining FGC as "all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural or other non-therapeutic reasons" (WHO 1998:6). As a procedure, FGC has a considerable range with respect to severity and tradition. Several sources (Skaine 2005, Billet 2007, WHO 1998, Gruenbaum 2001, El Guindi 2006) agree on four variable methods of FGC. The first method, clitoridectomy, is the most common and least severe. Most often, the clitoral prepuce is cut and the clitoris may be pricked, cut, or removed. Classified as Sunna, or tradition, this is the method that Mohammed encountered, which subsequent Muslims defend on Islamic grounds. The second method, excision, is more variable. Excision involves the removal of all or part of the clitoris as well as the all or part of the labia minora. Subsequent scarring may cover the vaginal opening. According to the WHO (1998), methods one and two account for 80-85% of FGC procedures. Type three is the most severe and invasive, known alternately as pharonic circumcision, Sudanese circumcision, or infibulation. During this procedure, most or all of the external genital tissue is removed. The remaining tissue

is then sewn back in place while the legs are bound to ensure that the wound heals properly. The resulting scar covers most of the vagina, creating a physical barrier for intercourse. The people performing the procedure leave an opening that allows menstrual blood and urine to flow. The fourth category covers all other procedures not previously discussed by the other three, including stretching, piercing, pricking, cauterizing, other cutting, or introducing corrosive materials to the genitals. This involved and potentially dangerous process remains in place because of its historical precedent, cultural importance, and socioeconomic function.

FGC has a long history, one that predates both Islam and the nation-state. The earliest documented accounts show that FGC was practiced in North Africa well before Christ's birth. The process is old enough to have lost its original tribal affiliation, and historians speculate that it could have originated anywhere from the heart of Africa to Phoenicia. Certainly, FGC spread to Egypt by 484 B.C., as archaeologists have uncovered mummies displaying the procedure (Billet 2007). Greek explorers noted the process throughout the Red Sea area and a Greek papyrus dating from 163 B.C. describes FGC as a necessary marriage rite (Billet 2007, Skaine 2005). Many communities believe that the process began with Islam or that Muslims are responsible for its prevalence (Billet 2007, El Guindi 2006). Ayaan Ali (2007) suggests that Islam's emphasis on purity perpetuates FGC, but historically speaking, this is equally due to a geographic coincidence. I should note that in some rural areas, Jewish and Christian communities are also enculturated to perform FGC, although no major texts mention it (Billet 2007, Saadawi 1997). Geographic affinity proves to be a more accurate predictor of the process than religion. The Koran does not explicitly mention FGC (Billet 2007, Saadawi 1997, Abu-Sahlieh 2006), so the Islamic connection stems from Mohammed's sayings in the Hadith. When he encountered FGC, the prophet neither advised nor condemned it, leaving it as an option for

communities; in the event that it was practiced, Mohammed advised that the women take care not to go "too far". Some Muslims argue that because they trace their descent through Ishmael, son of Abraham and Hagar, and Hagar underwent FGC, the practice is a part of their heritage (Abu-Sahlieh 2006). Although this may appear to provide an Islamic sanction, El Guindi notes (2006) that most Muslims see this explanation as somewhat weak. Rather, because the Sunna version of the procedure did not conflict with Islam, it kept its traditional place in the new world order. It is also important to note that not all Muslim states practice FGC, including Pakistan, Algeria, Tunisia, Saudi Arabia, Iran, and Iraq (Nussbaum 1999). Owing to the religious character of states like Iran and Saudi Arabia, one can see that religion plays a secondary role to tradition.

Although some doctors and scholars in the East and West debated the issue, FGC remained primarily in the personal realm, as with male circumcisions. The process is not a solely Islamic practice. In more recent times, European and American doctors performed clitoridectomies as late as the 1950s for "improving female mental health, discouraging lesbianism, and reducing the incidence of masturbation" (Maguigan 2002:242). In the light of postcolonialism, some communities have taken offense to Western human rights workers who do not appreciate FGC's cultural significance, viewing human rights discourse as a new means of denial and oppression (Gruenbaum 2001). Regardless of their geographic origin, the actual procedures of FGC remain relatively unchanged since their beginning. By contrast, the original cultural significance of FGC has become largely appropriated by cultural politics.

FGC primarily functions as a rite of passage that prepares girls for puberty and marriage. Although the world has changed since FGC began, it continues to serve this purpose. When examined through a cultural lens, the ideal procedure, unaffected by political, social, or

economic forces, takes place as part of a ritualized coming of age ceremony. As described by John Mbiti (1990) and Ellen Gruenbaum (2001), the local community gathers to welcome the girls into adult society. This ceremony is complete with a party, food, drink, ululation, dancing, and even presents. Mbiti and Gruenbaum cite the belief that children are born with gender ambiguity. This liminality is physically expressed in boys through their foreskin and in girls through their external genitalia. In speaking about the Akamba, an ethnic group from Kenya, Mbiti writes:

The cutting of the skin from the sexual organs symbolizes and dramatizes separation from childhood: it is parallel to the cutting of the umbilical cord when the child is born. The sexual organ attaches the child to the state of ignorance, the state of inactivity and the state of potential impotence (asexuality). But once that link is severed, the young person is freed from that state of ignorance and inactivity. He is born into another state, which is the stage of knowledge, of activity, of reproduction. So long as a person is not initiated, he cannot get married and he is not supposed to reproduce or bear children (Mbiti 1990:120).

Genital cutting, in boys and girls, is designed to foster group identity and responsibility. For girls, it symbolizes a mature readiness to bear children, contributing to the community's survival. Gruenbaum (2001) notes that communities may ostracize people who do not undergo genital cutting. Ethnic identity, family loyalty, and sexuality all come into question when a person refuses to initiate.

Certain Middle East and North African communities place a significant cultural value on virginity before marriage (Ali 2007, Gruenbaum 2001). This increases the dowry and symbolizes the community's moral conviction. The infibulation procedures serve a social purpose as physical chastity belts, projecting the girl's virginity and community's honor. As Gruenbaum shows, because the scar tissue would not actually prevent sexual activity,



infibulation does not ensure virginity itself, but rather the *idea* of virginity. For the woman in question, FGC is a lasting, physical reminder of this communal commitment to morality, purity, ethnicity, and responsibility.

Fadwa El Guindi's work (2006) with the Copts in Egypt suggests a physical motivation as well. El Guindi notes that women see uncut genitalia as ugly and primitive. By contrast, women who do undergo FGC are seen as beautiful, demasculinized, and religiously pious (Shweder 2002). Surprisingly, although many religious and Western observers, including the WHO (1997) and the men featured in El Guindi's research and Ellen Gruenbaum's 2001 ethnography of Sudanese women, view FGC as a process designed to inhibit sexual activity, women do not appear to suffer a devastating lack of sensitivity or sexual ability. In fact, both the Copts and the Sudanese women encountered by Gruenbaum believed that FGC actually heightened sexual experience, especially for their men. This rationale also reflects ethnic pride and identity, perpetuating a belief that, as a woman told El Guindi, "circumcision makes a woman nice and tight. The man finds great pleasure in tight women, unlike Cairo women whose vaginas are wide enough for four men to enter together" (El Guindi 2006:32). In this way, genital cutting is perceived as sexually empowering.

With all of this cultural significance, why have the WHO (1998), American and international law (Maguigan 2002), and numerous internal and external women's rights groups (Gruenbaum 2001, Skaine 2005) have labeled FGC as a human rights abuse? The WHO notes the following medical complications: bleeding, shock, infection, urine retention, pain, failure to heal, abscess formation, dermoid cysts, keloids (scar tissue), UTI, scar neuroma, painful sex, increased risk of transmission due to instruments and increased bleeding, pseudo-infibulation (healing with vulval adhesions), reproductive tract infections, dysmenorrhoea (painful

menstruation), chronic urinary tract obstruction, urinary incontinence, stenosis of the artificial opening of the vagina, complications of labor and delivery, injury to neighboring organs, painful sexual intercourse and associations therein, and susceptibility to disease and infection (WHO 1998). FGC is most often performed by midwives or community members rather than trained medical officials (Gruenbaum 2001, Skaine 2005), increasing risk of infection, uncontrolled bleeding, and potential tissue damage. Transferring HIV/AIDS is a notable risk as the people performing the procedure often use the same tools on multiple women with only minimal cleaning. Gruenbaum (2001) observed a woman cleaning her tools by placing them in a dish of warm water. This disregard for hygiene is unacceptable in a region where HIV/AIDS is so prevalent.

While women still experience sexual pleasure and stimulation, FGC can greatly reduce this sensitivity. As Ali (2007) notes, sex can be extremely painful as a result of more severe procedures, resulting in an emotional association with pain, fear, and sexuality. Although Richard Shweder (2002) correctly argues that mental and emotional health after FGC have yielded inconclusive results (Shweder 2002, WHO 1998), I disagree with his assertion that "the risk of death associated with these operations compares quite favorably with the risks associated with many activities that are routine in our own lives, such as driving a car" (Shweder 2002:232), an analogy is flawed on several levels. Most importantly, the act of driving a car is not intended to cause physical harm. It also compares FGC to a mundane western practice—FGC is anything but routine. The process entails both significant cultural meaning and physical risk. In comparing FGC to driving a car, Shweder ignores intent. The dangers of automobiles result from accidents and mistakes; the dangers of FGC are inherent in the practice.

With respect to religion, FGC is barely mentioned in any Islamic texts. The sunna label

gives tacit support to the practice but that merely serves to validate an existing tradition rather than give any new direction. Inevitably, this ambiguity gives support to pro-circumcision and anti-circumcision advocates. Ali (2007) agrees, noting that while the Qu'ran offers no persuasive commentary in favor of FGC, Islam's traditional view of chastity and purity reinforce the practice as a means of ensuring this morality. In a survey of contemporary Muslim writing, Abu-Sahlieh (2006) notes that Islam offers no divine instruction regarding FGC. At best, the prophet observed the practice and religious scholars offered commentary on his observations in later years. The idea is further complicated by Fadwa El Guindi's work (2006) with Egyptian Copts, a Christian group that practices FGC and lampoons the Muslim women of Cairo. If we are to take a liberal approach to Islamic tradition, then we can conclude, with al-'Ashmawy (1998), that humans are fallible and their words are open to interpretation and change. Thus, Islam does not mandate or justify FGC.

And yet, women across the region insist that they and their daughters undergo FGC (El Guindi 2006, Gruenbaum 2001, Maguigan 2002). The cultural reasons explored previously explain its symbolic significance but not its perpetuation. Many cultures perform marriage and coming-of-age rites, but few are as potentially dangerous as FGC. For that explanation, we must examine the socioeconomic forces within the communities that practice genital cutting. In many rural areas, women cannot marry without first undergoing this rite of passage. FGC increases their marketability by reinforcing their presumed virginity and purity. Because this standard is not applied to men and, in effect, forces women to undergo genital cutting, I would qualify this practice as an extension of institutional patriarchy.

Perpetuated by social structure rather than individual demands, it imposes a potentially dangerous surgery on women so that they will be more acceptable for a prospective suitor. While

this kind of marital selection is a social decision, it has important legal consequences. Samuel Martinez's 2005 essay *Searching for a Middle Path: Rights, Capabilities, and Political Culture in the Study of Female Genital Cutting* addresses the complications of legal standing for women living in this region. An unmarried woman will have poor social, legal, and economic standing. Because of these detriments women in North Africa are often the staunchest supporters of FGC. Sudanese women, for example, value the practice because they see “marriage [as] the entry gate to family formation. FGC is the ticket to pass through this gate and from thence to gain access to respect, a more reliable livelihood, and a stronger assurance of care and subsistence in old age than could be obtained by foregoing a socially-legitimate conjugal union” (Martinez 2005:37). Women call for this procedure as it may be the only way they can fulfill their full economic potential. Besides maintaining their family's honor, married women are able to run their household and conduct business. Though these are domestic goals they are unattainable by unmarried (uncut) women.

Gruenbaum and Martinez draw a parallel to the Chinese process of foot-binding. Honorable women bound their feet: “similarly to FGC it was necessary for a proper marriage, for the virtue of the woman, and for the honor of her family” (Martinez 2005:36). Yet human rights activism successfully addressed foot-binding without compromising the Asian values of familial honor through a three-part education campaign. First, activists informed the Chinese of an alternative; that is knowledge of other cultures that did not bind feet. Then they distributed information about the detrimental health effects of foot binding in Chinese cultural terms. Finally activists encouraged the formation of groups that agreed not to bind their daughter's feet and forbade their sons from marrying women with bound feet.

This process eventually leads to the audience theory of culture change. If an audience is

standing, then sitting is both forgotten and inapplicable to the situation. However once a “critical mass of people in the audience can be organized to sit, they realize that they can attain both the ease of sitting and a clear enough view of the stage” (Martinez 2005:35). If enough families agree to stop practicing FGC, then they could marry among each other. Once this “critical mass” has been reached, FGC may literally fall out of fashion. This may seem simplistic, but as Martinez explains, it succeeded in China. Of course, China is a product of Asian values while African and Islamic nations are a product of their own values; the foot-binding example is analogous rather than defining. However, there are encouraging signs. Human rights groups have successfully implemented health awareness campaigns and designed non-harmful initiation rites throughout the Middle East and North Africa (Skaine 2005, Gruenbaum 2001, Billet 2007).

### **Female Genital Cutting and The Capabilities Approach**

Yet something is missing from this explanation, because it begins with the assumption that genital cutting is wrong, it’s existence is harmful, and the women who agree to it lack a double consciousness that would illuminate their subjugation. While this may be the ultimate conclusion, activists cannot use these assumptions as a starting point. By allowing FGC to be judged in this Western, normative light, human rights would open the door for any cultural tradition to be scrutinized by the standards of a single moral system. Rather, Nussbaum provides the solution with her capabilities approach.

So what can the women in question do and be? From the capabilities perspective, the genital cutting process allows women to be functioning members of society. They can be mothers and wives, they can feel sexually empowered, they can hold positions in society, and

they can be culturally initiated. For these women, FGC is a necessary part of their social life, one that allows them to participate in their economic and political structures. These capabilities, named by the communities themselves and relayed through the cross-cultural dialog of anthropologists and other fieldworkers, are crucial because they reflect the cultural importance ascribed to FGC. Human rights workers cannot present a lasting alternative solution that ignores these.

One value of the capabilities approach is in its ability to be reinterpreted in different cultural contexts. Every person has base capabilities, but they are differently defined for different groups. By addressing social and economic capabilities, FGC can be seen as necessary for some women. However, another value of this framework lies in its scope. Nussbaum is uncompromising about this, and her system dictates that no capability can deny another. Because of the health risks, emotional damage, and patriarchy that is reinforced by the system, FGC denies central capabilities related to well-being. The social gains are negated by a physical danger that is unacceptable in modern medical times. Additionally, the Functionalist argument that genital cutting fills a social need is dangerously fatalistic. The diversity of the anthropological record shows that FGC is far from necessary or justified in a society that respects the choices of its members. The risk of infection, especially of HIV/AIDS is reason enough to campaign against the surgery. The harm that comes from an unwanted surgery or a botched ceremony cannot be undone, and so violates a woman's capability for physical, mental, and emotional health. Parents who perform the procedure on their daughters cause this same irreparable damage; they will never be able to change the decision and will have to live with its consequences. Of course, the less severe the surgery, the less serious the physical damage and the farther removed from a human rights abuse.

For this reason, the comparison to male circumcision is fallacious and dangerously misleading. Only the most mild version of the practice is analogous to the removal of foreskin; an uninvasive, less bloody, and overall less risky process that does not limit or seek to limit sexual ability. If male circumcision violates a capability, it is certainly less severe than most forms of female circumcision. However, male circumcision is not performed in order to make men more marriageable. Its connection to historical and religious tradition has been less distorted over time than its female counterpart and men do not circumcise to appear more attractive to women. As this is an explicit concern for many FGC procedures, it violates a woman's capability for sexual fulfillment and control over her life. Furthermore, it becomes farther removed from any historical roots in eliminating gender ambivalence and becomes another method of patriarchal control. A family's desire to control their daughter's sexuality is not inherently wrong, patriarchal, or subordinating. Promoting birth control, abstinence, condom use, or other non-invasive and consensual methods of limiting sexuality may well protect a child's future. These means also educate young women about the consequences of sexual activity and encourage healthy ideas about sex. Along a spectrum of techniques to protect one's children from the social, economic, and physical dangers of their sexuality, education, communication, abstinence, or even birth control, in more liberal contexts, would lie amongst the least potentially dangerous and limiting. This surgery, by contrast, is nonconsensual, permanent, and physically severe: it denies both the intent of the capabilities approach and physical wellness itself.

The claim that FGC is a necessary part of beauty or enhances male sexual pleasure is not foreign to Western feminists. Dieting, eating disorders, or questionably safe cosmetic procedures like Botox injections and pharmaceutical drugs occupy a similar place in feminist

discourse. FGC may inspire more outrage because of the physical actions taken, but this motivation is ideological similar to the Western search for beauty. As such, it can be addressed in human rights discourse in a similar way. Action, so justified, is not taken to improve the lives of the women but rather to make them more appealing to men and is thus a form of masculine oppression. Because there is a desire to make a woman more sexually appealing, cosmetic FGC perversely reinforces the idea that un-cut genitals are unattractive and that women should seek drastic measures to sexually please their male partners. Because men are not held to such standards of beauty this asymmetric practice places women in a position of inferiority, which is unacceptable in the capabilities framework.

The emotional and mental damage is far more difficult to quantify, and any lasting or unwanted damage should be considered harmful. The social gain is a pyrrhic victory because it forces women to submit to a procedure before they can participate in their social life. Because the Koran is so ambivalent on the subject, FGC does not fulfill any real spiritual capability and claims to the contrary refer to a misogynist interpretation of religious texts. Although many governments officially oppose the practice, male dominated communities keep it in place below the state level. The testimonies of female refugees (Ali 2007, Kratz 2002), the potential physical harm to women, and the political consequences of rejecting genital cutting lead me to agree with a more universalist stance.

Nussbaum explicitly addresses FGC in *Sex and Social Justice* (1999) in a chapter problematically titled 'Judging Other Cultures'. Nussbaum begins her discussion by arguing, as I have, that circumcision draws a fallacious comparison to male circumcision. However I feel that she goes too far by claiming that the "male equivalent of the clitoridectomy would be the amputation of most of the penis [and] the male equivalent of infibulation would be removal of



the entire penis, its roots of soft tissue, and part of the scrotal skin” (Nussbaum 1999:119), because the two procedures create different results in a capabilities framework. While Nussbaum claims that FGC removes a woman’s capability for sexual functioning, ethnographies like Ellen Gruenbaum’s disagree (2001). Nussbaum’s counter-argument would maintain that the women in question did not have a reference point for healthy sexual activity. However, Gruenbaum has empirically tested this point in Sudan. Voicing her concern that the women were unable to form a double consciousness that would allow them to see their own subjugation, the community thoroughly reassured her that they engaged in a fulfilling sex life. At least for these women, FGC did not inhibit their capability for sexual fulfillment. Nor does the process remove one’s ability to reproduce, as the removal of the penis would. Through her comparison, she actually does a disservice to those trying to apply the capabilities approach to human rights issues. Her critique is not only misleading, it casts doubt on real testimonies of physical danger and abuse. Ethnography is invaluable for dealing with an issue like FGC because it shows both the diversity of cases and the real dangers involved, including infection, painful intercourse, and emotional trauma. Nussbaum’s argument becomes stronger as she draws on real experience, citing botched procedures and pleas for asylum.

The emphasis on physical damage also suggests that, if that danger could be minimized, the practice would be acceptable for human rights advocates. For example, this argument follows that if FGC were practiced in clean, well attended hospitals using anesthetic and parental consent forms (as most of the women who undergo FGC are legal minors), then it would offer no great threat to human rights. As mentioned above, this was actually the case in 1950’s Europe and the United States. The health concerns are serious and should give cause for alarm, but they do not address the more insidious means by which women’s rights are violated on the social-

structure level. We must look past physical concerns to their functioning, what women are actually capable of doing and being in communities that require the procedure. In this case, the most important part of Nussbaum's critique lies in her feminist approach. FGC plays a part in perpetuating the dominance of men over women. FGC limits capabilities by creating a sex hierarchy in which men are superior to their female counterparts for no greater reason than their sex. Because the women in question do not necessarily consent to the procedure, this major life choice lies largely with the men in their community. The denial of personal agency and the lack of respect that creates it show that capabilities are being violated.

After weighing the evidence, human rights advocates can conclude that FGC has the potential to fulfill and deny capabilities. But Nussbaum is absolutely clear that people must have control over their lives in order to access their potential. In every situation, the people affected must have some kind of choice. Because the only path to social life lies in this procedure, which is potentially dangerous and unabashedly patriarchal, these women have no alternative. For this situation to fully satisfy the capabilities approach, there must be a way for women to respect their history and participate in their communities while still keeping their bodies, minds, and dignity intact. Once an acceptable alternative has been found, and women have a free choice for themselves and for their daughters, FGC may become obsolete.

The physical danger and social ramifications of FGC disproportionately affect women, and it would seem that the custom has its roots in male dominated culture. The relativist would argue that these communities are best left discontinuing or continuing FGC as they see fit. And certainly, any activist that would fight against genital cutting would also risk attacking the cultural emphasis on family honor and purity that surrounds it. But human rights activism does not have to involve an attack on culture. By encouraging cross cultural dialog, human rights

organizations in North Africa and the West can work together, introducing a new perspective while preserving its cultural function. The key for activists is a gradual and inclusive educational process. A capabilities-based approach to the audience theory is especially effective because it correctly blames sexism on a political climate that allows discriminatory practices to hide behind cultural values of morality and community. Equally important, the educational approach utilizes human rights ideology while still showing respect for culture. Activists must recognize both the importance of familial honor and of the ceremonial rite of passage. Human rights workers should always endeavor to maintain the cultural framework of the people they want to help, or else this human rights abuse will continue. Without the full understanding and support of these people, activists seeking to end sexist cultural and political practices are nothing more than imperialists or missionaries.

### **The Veil**

In cultural politics, the veil is as much a symbol of Islam as the crescent moon and star. Women's rights organizations throughout the world have criticized the veil as exclusive and disempowering. Several nations including Turkey, France, Singapore, Belgium, Egypt, and Germany have passed laws that ban the traditional headscarf, as well as other more encompassing veils, in public settings (BBC News 2004, 2006). Italy and the Netherlands are considering such laws, and British cabinet minister Jack Straw noted his discomfort in speaking with veiled women (BBC News 2006, Bilefsky and Fisher 2006). Prominent Muslim scholars are split as well. Muslim women continue to legislate for their right to veil in the West while scholars like Fadwa el Guindi (1998) argue for a more tolerant stance on the veil. On the other

side, popular social critics like Ayaan Hirsi Ali (2007) and Nawal El Saadawi (1997) see veiling as a form of repressive and disenfranchising religious domination. Like FGC, the veil has a complex history that has led to its perception today.

Although I will be speaking generally about 'the veil', the actual article is, of course, more nuanced. Its homogeneity in law and in the international media is the result of both cultural politics and general ignorance as to the garment's complexity. There are several different types of head or body coverings, each reflecting a distinct regional, cultural, and religious tradition. The hijab is one of the most familiar to Western observers because it is a more liberal veil and is common in Western settings. Literally a headscarf, it drapes over the head and neck but leaves the face clear. The niqab is a more conservative garment that covers the entire body and leaves a slit for the eyes, masking shape and movement. Common in strict Muslim communities, it is known as a burqa when worn with a sewn mesh that covers the eye slit. This veil is common in Saudi Arabia, Yemen, and Afghanistan (Ali 2007, El Guindi 1998). The al-amira is similar to the hijab and includes a special fitted cap that covers the hair. The shayla is also similar to the hijab and popular in the Gulf region. A long scarf, it covers the hair, neck, and shoulders. The khimar and chador both leave the face clear but are more like capes than headscarves. Common in Southeast Asia and Iran, these cover the head and neck but extend past the shoulders (BBC 2005).

Like FGC, the veil is a holdover from the jahiliyya, the time before Islam. Veils were common throughout the pre-Islamic Middle East and North Africa for both men and women. Hardly a symbol of repression, the veil empowered some women by acting as a symbol of their high status. El Guindi (1998) shows that in ancient Sumeria, the veil was a symbol of feminine power and domestic control while in Assyria veiling functioned as a symbol of class position,

where only upper class women were permitted to veil. She continues, framing the exclusivity of the veil as a Western construction. Whereas the Middle East and North African communities veiled to assert their societal role, Christian and Greek communities veiled as a symbol of gender hierarchy and deference to male power. In the early Christian context, nuns wore veils to seclude themselves in abbeys and devote their lives to religion. In doing so, they effectively removed themselves from the male dominated power structures. However, in Arab societies where men and women veiled, the article did not develop as a means for gender segregation. Rather than impose patriarchal rule on women, early veiling reflected the existing class structure. Mohammed himself veiled to show respect to other men and, by the dawn of Islam, men of various ethnic groups throughout the Middle East and North Africa veiled to show their class status, gain supernatural protection, and as part of ceremonial dress (El Guindi 1998). Veiling reflected rather than caused or defined existing class hierarchy. Socially speaking, the veil is not an issue itself so much as the inequality that it represents.

Islam adopted the veil as a traditional practice and offered little new direction. In mentioning the veil, the Qu'ran refers to the prophet's wives (Sura 33:53), covering one's breasts and genitals, (not the face) (Sura 24:31) and distinguishing between 'decent' women and prostitutes or slaves (Sura 33:59). Because of this, most contemporary religious enforcement stems from tradition, the Hadith, and the Qu'ran (al-'Ashmawy 1998). Contemporary writers (al-'Ashmawy 1998, Khan 1996, Jawad 1998) agree that the jahiliyya era society subjugated and sexualized women throughout the Middle East and North Africa. However, this subjugation occurred without the use of the veil. The veil symbolized a new and progressive gender dynamic, designed to protect women's dignity.

Mohammed's reforms were thus motivated to protect women's rights, including property,

safety, and modesty. While some critics (Ali 2007) argue that veiling reflects a religious obsession with purity, others (El Guindi 1998) note that purity and impurity are fluid states within an Islamic context. Islam, unlike Christianity or Judaism, defines equality in its Genesis story. Early Islamic thought and law protected the right of property and money, the right to marry willingly and divorce at will, the right to education, the right to her family name, the right to sexual pleasure, the right to inheritance, the right of election, nomination, and participation in the political realm, and the right to respect (Jawad 1998). Modern Islamist laws that prevent education, divorce, or political interaction are only sexist interpretations that keep the elite in power, as will be discussed further. The veil served as another method of protection and Islamic distinction from the other communities in the Middle East. Just as a yarmulke or crucifix, Western observers should view Islamic veiling as a religious article when outside of its regional context. Extending the metaphor, to fully respect a capabilities approach to human rights, a liberal and contextual interpretation of the Qu'ran shows that women should have the option to veil or not veil as they see fit (al-'Ashmawy 1998). If a woman believes that veiling or not veiling will help her fulfill a religious or personal potential, then the capabilities approach mandates that human rights activists and local laws allow her do to so. Both denying and requiring it negate a woman's autonomy.

For a time, Muslim women enjoyed far more freedom than their counterparts in the West as a result of Mohammed's reforms. Unfortunately, infighting and power struggles within the religious and political circles ended any legal reform. As authoritarian leaders attempted to consolidate power, reform became tantamount to treason and conservative interpretations prevailed over more fluid social rules (Khan 1996, Moussalli 2001). Out of a contemporary necessity, the Hadith, Qu'ran, and focus on female rather than male veiling, but that intended

protection transformed into disenfranchisement as Caliphs, Imams, and hereditary rulers attempted to gain political power. Thus, the veil, a newly religious symbol of propriety, modesty, and Muslim civilization, did not continue to protect women's rights. Instead, with sole religious and political authority vested in a few, male, leaders, legal interpretation stagnated and conservatives presented their own sexist view as truth (Monshipouri 1999). Rather than allow women to continue observing equality, the veil was newly interpreted as a system of control (Jawad 1998). In the 1960's, Islamism, following writings of Qutb, Maududi, and Khomeini, would draw upon these fabricated ideas to disenfranchise women (El Guindi 1998), presenting this narrow construction as a truth that gave men dominance over women.

In the colonial era, European powers alternately banned traditional practices and dress or allowed them to continue, depending on the effect on regional stability (Said 1994, al-'Ashmawy 1998, El Guindi 1998). When the veil allowed free expression of Muslim faith, colonial powers prohibited it in the name of modernization; when it kept women out of the political spectrum, they allowed it. The postcolonial era witnessed a resurgence of Muslim pride, conflated with nationalist identity. In many modern Muslim countries, to veil is to express cultural pride. This is especially true in Algeria, where Muslim women used the veil to defy French colonialist influence. Denied full expression of their religious and cultural heritage, Algerian women chose to veil to symbolize their independence. Young women began wearing the veil in Egypt in the 1970's, and the movement has since spread to many other countries and Muslim communities. Palestinians, denied their right to self-determination, veil to show national solidarity and instill a symbolic unity despite their lack of a national identity. Many women veil as a gesture of respect to Islam itself that “rejects Western materialism, consumerism, commercialism, and values” (El Guindi 1998:145). Dress embodies a socio-moral code, a self assertion of a woman capable,

intelligent, and distinctly Muslim. Veiling also gives women a way to participate in the work and market environments without having to sacrifice values of modesty and purity.

El Guindi argues that the veil becomes an instrument of repression when it begins to symbolize seclusion, silence, and anonymity, a point shared by the capabilities critique. As a result of the postcolonial power vacuums in the Middle East and North Africa, some communities have forced the veil upon their women. By following extremist leaders who offered a return to tradition and prosperity after years of colonial imposition and poverty, Muslim communities effectively ignored the vast potential for women's rights as established in the Hadith and Qu'ran. The Taliban in Afghanistan implemented such a strict Islamic rule to validate their authoritarian rule (Kepel 2002, Mayer 1998, Monshipouri 1998, Dorraj 1999). By the same token, Saudi 'religious' laws prevent women from making a serious impact in the political sphere, as evidenced when Saudi Arabia's highest religious authority condemned women who advocated, unveiled, economic reforms. Ignoring their policy suggestion, he warned of "grave consequences" due to their "outrageous behavior" (BBC 2004). Keeping women under the veil ensured that the regime would face no political or economic opposition from the female population. Just as they opposed the Western influence that restricted the veil, Muslim feminists oppose the mandatory measures. In such instances, it is a tool of class and gender segregation wielded by politically powerful men. Ironically, this tradition is less Islamic than Western.

The Hellenic gender ideology that would come to define Western thought maintained that women should be segregated from men, practicing silence and submission. Christianity took this idea and expanded it to the Catholic convent. Nuns veiled to symbolize their chastity and separation from greater society. When Western nations colonized the Middle East and North



Africa, they extended this view to a culture that seemed exotic and sexual. Through this lens, they came to see the veil as an extension of the harem (El Guindi 1998). Colonizers glorified this false perception with pictures of exposed, veiled women and “ethnographic” accounts that promised visitors sexuality and immorality. However, this cultural explanation is an imposition.

The veil is a complex symbol in the Middle East and North Africa. On one level, it symbolizes Muslim, Arab, or African identity as a tangible expression of regional identity. This level is especially important when examined as a response to historical and ongoing bans. The current body covering limitations in Europe provide legitimacy to those regimes that force women to veil. Aided by the false East-West dichotomy, authoritarian rulers draw a contrast between their own states and the repressive Western nations that legally target Muslim tradition.

On another level, the veil symbolizes a compliance with religious tradition. Veiling is mentioned and advised, under certain situations and for certain people, in the Hadith, and Qu'ran (Khan 1996). Western observers, drawing upon a secular tradition and their own ethnocentrism, have a tendency to confuse religious devotion with oppression. Linguistically, the Arabic language connects women, religion, family, and community through a common root (El Guindi 1998) and women who chose to do so have every right to maintain that bond in their daily life. Western observers should remember that empowerment can come from family and religion, not just success within the capitalist system. Modesty, privacy, respect, and commitment to family are not intrinsically disenfranchising tenets of Islam. Unfortunately, they are easily manipulated in a patriarchal system, but we should be careful not to confuse male domination with inflexible, divine instruction. In instances where a woman has the option and remains capable of fulfilling her desired potential, we cannot argue that a human rights violation is taking place. Women receive the honor of wearing a special veil upon completion of the hajj, often the final pillar of

Islam undertaken (El Guindi 1998). Like the Jewish tallit or a military officer's decorations, this veil connotes their new and higher status of hajja within the community; naming the hajja's veil a human rights violation represents a gross misunderstanding.

Unlike the puritan philosophy that characterized the colonizing Christian West, Islam recognized sexuality and attempted to incorporate it into the Muslim way of life (El Guindi 1998, 2006, Jawad 1998). As a result, the colonizers saw the Middle East and North Africa as a hotbed of passion and sexuality. They incorporated harems, prostitutes, and sexual openness into the greater oriental framework (Said 1994) that placed the enlightened West in a superior position. El Guindi (1998) argues that part of the reason that the veil remains so unpalatable for Western feminists and human rights advocates is this lasting perception of imposed sexuality and the lasting Christian conceptualization of sex as dirty and shameful. If the veil were merely a tool for sexual subordination, then outside observers could be justifiably concerned. However, the veil is more culturally established as an indicator of status and social rank.

Dress, like the male and female genital cutting discussed previously, indicates membership within a collective identity. This can be communal, ethnic, religious, regional, or any combination depending on an individual's intent. Clothing reflects status in the Middle East and North Africa as it does across cultures. Ceremonial dress will obviously carry cultural weight, but ordinary clothes indicate an equal variety of significant values. This is certainly present in Western society: business professionals wear suits to convey their professionalism and competence; fashion magazines have made their fortunes on symbolic interpretations of clothing accessories; popular stores like Hot Topic mass produce 'counter-culture' for teenage consumption; many restaurants maintain dress codes that, along with their expense, exclude lower socioeconomic classes. Visual expressions of class superiority are evident in many

societies, including American and North African communities, but the veil can have a secondary, disempowering purpose.

Fadwa El Guindi's 1998 book *Veil: Modesty, Privacy, and Resistance* shows that, as with any of those Western examples, Middle East and North African veiling has traditionally indicated one's class status. Clothing facilitates the complex social interactions between men and women, and members of different political, social, or economic classes. High ranking women veil not to protect their dignity from wandering eyes, but to command respect and symbolize inaccessibility. In this context, a veiled woman uses clothing to symbolize her superiority to others, including men. Women may choose not to veil to people whom they do not need to show respect. Additionally, in many communities, adult women veil while girls do not. Thus the veil connotes maturity and responsibility. It immediately identifies a woman as a contributing member of the community, indicating one's passage into adulthood. This status recognition is not confined to women. In some communities, like the Tuareg of Saharan Africa, the men veil instead of women and in others, like the Berbers in North Africa or students and teachers at Muslim universities, both sexes veil. While showing status in stratified society, the veil also symbolizes a connection to the past. Veiling shows respect for one's history and family, providing a tangible link to culture and tradition in a quickly globalizing world. Reducing the veil to a symbol of sexuality alone ignores complex power structure that facilitates and perpetuates the orientalist notion that the Middle East and North Africa are dominated by sexuality and lack reason or complexity. Veiling predated Islam, Christianity, or Judaism and its main cultural function, visually reflecting the existing power hierarchy, has remained intact through iterations in each religion. Neither the religious nor cultural meanings surrounding the veil are designed to disempower women or limit their capability to function outside the home or

family contexts.

Recognizing their own historical oppression in other contexts, Western women's rights groups have turned to the Middle East and North Africa, each spreading their own brand of feminism. When this takes the form of cross-cultural dialog, sharing ideas in equal discussion, both Western feminists and the women they seek to help benefit. But rights lists, government mandates, or economic growth scenarios miss the nuances that arise during cooperative discussions. Economic rights schemes that focus on national income or personal utility will be totally ineffective when dealing with the veil. The human rights issues that arise from veiling are issues of access, not of resource scarcity. A common feminist argument holds that politically powerful men use veiling as tool to prevent women from leaving the home, conducting business, or attaining an equal political status. In some parts of the world, veiling does serve this purpose and ignores much of the article's cultural significance. In other situations, traditional women's rights discourse assumes superiority and advocates change from above rather than from within regional context. Male-dominated families may force wives and daughters to veil in an attempt to hinder their social advancement. Other women may veil to pay homage to a religious and cultural institution almost fourteen-hundred years old. To accuse these women of having a false consciousness is not only ethnocentric but also ignorant. Cultural relativism is an important concept to keep in mind for anthropological activists; veiling cannot be universally judged.

Imposing orientalist sexuality and Western seclusion on the veil, feminist and human rights discourse has come to see it as an abuse (El Guindi 1998). This false perception is exacerbated by authoritarian regimes that follow a sexist interpretation of Islam and have publicly defined culture within sexist parameters. Those regimes that legally force women to veil remove their capability to fulfill their potential, thus committing a human rights abuse.

Consequences for unveiled women in such regimes can be severe, including beatings, religious stigmatization, or even death (Meek 2001). These draconian measures, imposed to keep women safely removed from political action, cause Western observers to perceive veiling itself as incompatible with human rights.

Veiling bans have created an opposite reaction throughout the Middle East and North Africa. Religious scholars, authoritarians, and liberal women have all condemned the bans in Europe and Turkey as persecution or neo-imperialism (Kepel 2002, Sadaawi 1997, An-Na'im 2008). This criticism is entirely justified because a blanket ban denies the capability for religious expression and cultural fulfillment and thus denies human rights. Furthermore, this legal action ignores any autonomous religious desire for modesty, privacy, and family commitment or cultural connection to family and regional tradition. Unfairly criticized by human rights groups as solely exclusionary and imposed on unwilling women as a symbol of national or religious resistance, the veil has been appropriated as political leverage. Because it is so visual and easily recognizable as Middle Eastern and North African, the veil has entered the realm of cultural politics for both tyrants and human rights advocates.

Although women like Ayaan Hirsi Ali (2007) and Nawal el Saadawi (1997) have joined Western feminists in condemning veiling as exclusionary, many women in the Middle East and North Africa insist on veiling despite acknowledging ongoing and future possible violations (El Guindi 1998, Bhutto 2008). I have discussed the nationalist and identity motivations for claiming the veil, but women also cite socioeconomic forces. Within states governed under Islamist rule, women must veil in order to advance within their work and social structures (El Guindi 1998). Saudi Arabia, for example, requires women to veil when employed (Whitaker 2006). If a woman wants to work or advance in her workplace, she must agree to this

requirement. Here, it is a tool of empowerment that allows a woman to exercise her economic capabilities. While feminism argues that this rule reinforces institutional patriarchy, women see it, at worst, as a necessary evil to work within the system. This differs from requirements of FGC in that FGC is more permanent, less empowering, and most importantly, veiling at work is a daily choice made by the woman. From another perspective, if a woman wishes to work but also exercise a religious pride in privacy or display her connection to a deep cultural heritage, the veil allows her to do so without compromising these desires. In veiling communities, refusal to veil can negate the social status conferred by that garment and invite criticism, directed at both the woman herself and her family. Thus, women choose to veil and retain good social standing within such communities (El Guindi 1998). In doing so, they uphold ethnic or regional moral and visual identity. This may seem to be an imposition, but any critics should keep in mind that all societies have certain clothing restrictions. Americans cannot wear tie-dye, cloaks, or simply walk around naked, for example, without inviting general critique or police action.

### **Veiling as a Human Capability**

Nussbaum's capabilities approach can navigate the cultural politics that surround the veil, mediating feminist, religious, traditional, social, political, and economic arguments. Once again, the focus must shift from the individual's relationship with her government to the individual ability to fulfill central capabilities. Anthropologists should endeavor to protect the capability to veil along with its counterpart, the capability to unveil. In practice, veiling is integrally related to the baseline capabilities of bodily integrity, free affiliation, and control over one's environment. In some situations, the act of unveiling can be grounds for social stigma or even physical assault

(Monshipouri 1998, Bhat and Hussain 2007). In this case, choice is removed and veil becomes a segregating symbol that reinforces patriarchal violence. Women are not allowed to live to their full potential and, due to threats of violence, must defer to the male authority that subjugates their action through the veil. Such action reflects the greater threat of violence against women who would challenge male authority. The most that they can do or be, in capabilities terms, is the disenfranchised women that men desire them to be.

On the other end of the spectrum, France and Turkey remove the capability for free social and religious affiliation by banning the article. Women who veil in these countries now do so to show their defiant pride for their cultural and religious heritage. Veiling prevents women from securing employment and reinforces the orientalist notion of the Arab other, as depicted in current cultural politics. Even by the standards of Western-oriented contractual rights with one's government, this action violates the freedom of religious expression. From a capabilities perspective, veiling bans challenge the inherent dignity of Muslim women and the respect owed to them as human beings. Worse, because such bans apply indiscriminately, they ignore the culturally specific environment in which women choose to veil. The capabilities approach is especially critical of simple or all-encompassing human rights schemes: this is a plea for difficulty. Criminalizing the veil institutionalizes the idea that the veil is harmful. As with situations where veiling is mandatory, it creates an environment in which Muslim women are afraid to consciously and thoughtfully express their religious and cultural worldviews through the veil. Women forbidden from veiling are not allowed to be religiously and culturally observant, and are thus denied the full range of their capabilities.

Most importantly, veiling bans and directives both take choice away from women and place it into the hands of political authorities. Women are forbidden from coming to culturally

informed decisions about their own dress decisions. Any attempts to assert free choice in this matter lead women to be publically humiliated, discriminated against, and even endangered. In such an environment, how can women fully realize their potential? When the veil is outlawed, some women may find themselves unable to be Muslims. When the veil is enforced, women may be unable to assert themselves publically, whether by conducting business, holding public office, or even fulfilling a social life outside of the home. By examining this issue through a capabilities lens, anthropologists can consider the enormous cultural weight that constructs the veil. This should not be done in opposition to family wishes; after all the family has the same communal rights to dignity and respect as individuals. Anthropologists are well equipped to work with veiling proponents or opponents to find a culturally satisfying solution that will enable women to lead full lives without seriously compromising the family's religious and social values. More so than typical human rights issues like prison conditions or sex trafficking, veiling falls into a gray category that can entail abuse but also fully aware religious expression. Universal rights contracts miss the distinction while a culturally relative 'hands-off' position would ignore the dangerous ramifications of forced veiling. Economic development measures like income or GNP are entirely ill-equipped to deal with veiling as a human rights issue. To gauge the function and meaning behind specific situations, anthropologists must evaluate the freedom of capabilities and treat each potential abuse on a case-by-case basis.

In reconciling perceived or actual human rights abuses stemming from the veil, human rights advocates must first better understand the article itself. This requires real dialog between human rights advocates, feminists, and women living in the Middle East and North Africa. In examining a possible abuse, the case should be reviewed by etic and emic observers to ensure legitimacy and pluralist input. Blanket bans that ignore cultural and religious rights are not only



ineffective but also counterproductive. Similarly any, education programs designed to empower women by removing their veils merely insult their heritage by falsely imposing orientalism-inspired notions of sexuality and seclusion. Such programs claim an ethnocentric superiority by assuming that Western concepts of modesty, privacy, and family are superior and therefore, women claim the veil out of ignorance. This view is extended to the anti-veiling laws in countries as diverse as France and Turkey. The capabilities approach can enable human rights advocates to differentiate between an expression of culture and religion and an external imposition. Such impositions can take the form of restricting or requiring the veil entirely: neither allows for autonomy and both limit the possibility of a pluralist society. The veil itself is not abuse, but its appropriation in cultural politics, by Islamist conservatives or over-zealous rights groups, often is.

### **Democracy**

Veiling and FGC are both relatively tangible cultural constructions. However, the idea of democracy exists only conceptually. The right to popular and equal political participation is guaranteed by article twenty-one of the Universal Declaration, but prominent scholars like Sayyid Abdul Ala Maududi, Sayyid Qutb, and Ruhollah Khomeini have produced works arguing that such a system is incompatible with Islam (Khatab and Bouma 2007, Moussalli 2001). Conservative Westerners like journalist Daniel Pipes, Samuel Huntington, have forwarded the idea that the Islam and the West are bound for conflict, and the popular media seem to agree (Monshipouri 1997, Halliday 1996, Gerges 1999, Dorraj 1999). In asserting their political power on the world stage, authoritarian rulers in Iran, Afghanistan, Iraq, Saudi Arabia, and many other

states in the Middle East and North Africa have refused to hold elections and grant equal civil rights, citing an incompatibility between pluralist democracy and Islam (Kepel 2002, Dorraj 1999). Yet a growing number of scholars, including Abdullah An-Na'im, Benazir Bhutto, Fred Halliday, and Ahmad S. Moussalli argue that democracy and Islam are not only compatible but also fundamentally interrelated. In undertaking a liberal approach to both Islam and democracy, we can fully expose the fallacious conflict between 'Eastern' and 'Western' values in cultural politics through cross-cultural dialog.

Due to my own saturation with confrontational rhetoric in the media and popular politics, I was surprised to learn that Shari'a can be a force for democracy. These ideas exist within the concepts of *shura* and *ijma*. The *shura* refers to a consultation involved in legislation and legal interpretation. This is the very essence of democracy. Developed in an age of monarchs and dictators, it was the most inclusive governing system of its time (Moussalli 2001). The early Muslim scholars even improved on the original Greek design, including women in the legal drafting bodies (Jawad 1998). Here again, one observes that liberal Muslim demands for gender equality are at least as culturally and religiously valid as the current disenfranchisement, and more historically accurate. The *shura* also contains provisions designed to depose an illegitimate leader. A leader who denies consultation is thus a tyrant and tyrants have no authority according to the *shura* (Moussalli 2001). By this rule, there can be no truly Islamic government without popular input and authoritarian regimes are illegitimate. Determined by the people whom it affects, this legal philosophy has the potential to form the core of modern democratic Islam. More importantly it proves that the construction of democracy, of legislation and government as powers vested in the community rather than an individual, has an Islamic and Arab base. Far from a cultural imposition, Muslims valued democracy at a time when the nation-states of

Europe were still warring tribes, fighting over the remnants of the Roman empire.

The *ijma* refers to a consensus required before legal and executive direction can take place. While the *shura* provides the discussion necessary for democracy, the *ijma* necessitates that they should agree before acting (Moussalli 2001). What is this if not a code for majority rule and a channel for compromise? Conceptually, in a society where the *shura* is comprised of men and women of various creeds, colors, and religions, the *ijma* provides an Islamic direction for pluralist democracy. Democracy is neither a foreign concept nor the newest iteration of colonial domination. The notion that democracy and Islam are philosophically incompatible is thus untrue. By its very definition, democracy *is* communal consensus and is *ijma*. This is not to say that American or European democratic systems are well suited for the Middle East and North Africa. Bicameral legislatures, parliaments, ministers, and presidents are all products of their own historical development and any such system in the region would have to develop within its own context. But the *shura* and *ijma* outline a legitimate, Islamic base from which an appropriate democratic government can emerge. The idea itself is firmly established in Islamic jurisprudence. In this light, it is difficult to see why Western, Middle Eastern, and North African leaders maintain that Islam and democracy are incompatible in cultural politics. To fully understand this issue, we must return to 632 C.E., Mohammed's death.

To understate, Mohammed's impact on the Arab world during his lifetime was profound. Religion aside, Mohammed united warring tribes and established the first Arab polity, one based not on ethnicity or family affiliation but on mutual respect and a shared belief system that included not only religion but morality, philosophy, and pluralistic peace (Moussalli 2001). This state included not only the concepts of the democracy embodied in the *shura* and *ijma*, but also social contract, constitutionalism, freedom of religion, and individual rights. But before this

system, with the potential for pluralism, democracy, liberalism, and moral guidance could fully develop, Mohammed fell ill and died.

His authority “was unique and cannot be replicated, because Muslims do not accept the possibility of prophets after the Prophet Mohammed” (An-Na'im 2008:53). The state's future suddenly fell to the far less capable hands of humans lacking divine inspiration. Mohammed's death created a power vacuum and each successive ruler who attempted to claim the right to lead faced rebel factions. The line of descent is so contentious that the Shia and Sunni Muslims remain split, primarily over disagreements regarding Mohammed's succession. The early caliphs and political leaders disagreed over the Qu'ran and Hadith, attracting supporters as well as enemies. As each faction developed the *Shari'a*, the successive leaders or rebel factions defined their rule as absolutely correct and their enemies as absolutely wrong. This environment led to the wars of apostasy that followed the Prophet's death (An-Na'im 2008). Apostasy, the renouncement of faith, was leveled at political opponents to discredit their power and religiously justify their murder. Interestingly, this same technique would be used seven hundred years later in Medieval Europe by Catholic states who accused the Central European Hussites of heresy, and then repeatedly to justify violent conflicts well into the nineteenth century. By labeling his enemies as apostates, Abu Bakr, the first caliph, legitimized his own political rule.

However, this alone does not explain the conservative interpretations championed by the most vocal and repressive rulers in the Middle East and North Africa, nor does it justify the absence of democratic process in the region. None of the leaders immediately following Mohammed wielded sufficient political power or authority to confidently rule without challenges, nor did they hold power long enough to feel comfortable exercising their rule liberally. They followed Bakr's example in an attempt to consolidate authority, but in doing so,

sacrificed any institutional liberalization. Pluralism and tolerance were cast aside in favor of greater control. Successive caliphs and tribal leaders would suppress any legal or religious interpretations that challenged their rule, eventually eliminating six of the seven Qu'ranic readings that the Prophet himself authorized (Moussalli 2001). By appointing politically supportive jurists and religious supporters, political elites maintained control over religious and political interpretation, revoking the rights of *ijma* and *shura* from the community.

This time witnessed the passage of many disenfranchising laws and legal precedents against women and other religious minorities (Bhutto 2008). By decreasing their political and economic freedom, those in power limited their potential opponents to members of the community with similar philosophical ideas and socioeconomic standing. Drawing on their legal and religious authority, those in power were able to systematically reduce potential political threats to those who wielded socioeconomic power. That is, they were able to consolidate the tools for political and social change in the hands of those who had no desire to see the status quo altered. Corrupt leaders paid off well-connected political dissidents while ignoring those that posed no potential threat, using hereditary treasuries as their personal banks (Khatab and Bouma 2007). Some factions disagreed with this alteration and multiple factions broke into civil war, accusing each other of *kufir*, or absolute unbelief. Interestingly, this is the climate in which the laws condemning apostates to death emerged. In this context, an apostate is less a religious heretic than a political dissident (Moussalli 2001, An-Na'im 2008). As Muslim influence expanded into Europe, Asia, and Africa, rulers made liberal cultural concessions and conservative political judgments. In affirming their rule, politicians and religious authorities worked together to maintain their own legitimacy while condemning political enemies as apostates. They based their state primarily on the claim that their rule alone represented God's

will. This claim of infallibility gave the elite “a free hand, full power and absolute authority over the people, the national income, and destiny of the nation. In domestic affairs, the people were almost always (with few exceptions) treated as members of a herd rather than as citizens; as subjects rather than brothers in Islam” (al-'Ashmawy 1999:76). This is a clear appropriation of a religion that instructs that all are equal before God.

By the colonial era, religion and politics had both become so interrelated that the two authorities were inseparable. In the race to maintain power, religious rule had become political rule. Unfortunately, Mohammed alone had the popular authority to combine religion and politics. In addition to denying *shura* and *ijma*, authoritarian leaders also denied the right of *ijihad*, interpretation of the Qu'ran. Muslim leaders from Andalusia to the Mughal and Ottoman empires denied the right of printing for three hundred years after its invention, a tactic used by the Christian world to limit independent thought (Bhutto 2008). By suppressing knowledge and interpretation, religious and political leaders worked together to ensure that only their narrow views on human rights, religion, and politics advanced. Over time, their opinions came to be accepted as the truth, and authoritarian leaders today look to these false constructions to legitimize their own rule. In her memoir, Ayaan Ali describes (2007) her religious instruction as memorization rather than education. When she questions her teacher's interpretation, she is met with dismissal, hostility, and even violence. This perpetuation of ignorance and dogma stifles creative thought and denies political change.

Western colonialism appeared at the height of this fragmentation and repression. In the name of stability, European colonizers allowed cultural and political practices, like authoritarian rule and segregative veiling, to continue (Said 1994). In fact, the West continues to support repressive regimes in exchange for oil or regional stability, as a number of authors argue (Gerges

1999, Saadawi 1997, Chomsky 2003). Ignorance, poor education, systematic disenfranchisement all fit that bill. However, democracy and Islamic education were systematically discontinued because they threatened to upset the balance of power in favor of the colonized. In such progressive instances, the West disrupted any stability and deposed the former political authorities. In their place, the colonizers artificially created nation-states, a system that revived ancient ethnic struggles placated by Mohammed's early pluralist society (Sahliyah 2003). By the twentieth century, postcolonial resentment led prominent Muslim scholars to reject democracy along with several other Western philosophies that had plagued them for centuries. While a minority of these scholars argued that Muslims should reject imposed national borders and capitalism, the most influential voices chose to embrace those ideas because they provided economic security and political power. Although a number of reformers traveled in Europe and America, advocating a moderate approach that would preserve liberal democracy and trim away geopolitical dominance, their writing did not emerge as a dominant discourse (Khatab and Bouma 2007).

By the time of Sayyid Qutb's execution in 1966 the Islamism movement had come to firmly reject Western democracy as an extension of the immorality and decadence that had spiritually destroyed EuroAmerican civilization. Ironically, this systematic rejection effectively reversed Mohammed's own directives in favor of a corrupt and rewritten history. Despite accepting market economies and industrialized society, Islamists justified their rejection by claiming that democratic rule was a foreign, imperialist concept (An-Na'im 2008). That authoritarian rulers did not choose to reject Western currency, language, or international borders suggests that anti-democratic regimes result from more than 'culture clash'. Khomeini, Qutb, and Maududi came to believe that only an Islamic state firmly grounded in a particular version of

both *Shari'a* and Islamic tradition would suffice for the Muslim world (Moussalli 2001). But these men did not question the interpretations that they presented as the truth. Their rejection of popular rule was influenced so completely by corrupt Western rule that they turned to the only remaining source of legitimacy in their world: religion. Yet, as Moussalli (2001), al-'Ashmawy (1999) and An-Na'im (2008) argue, a theocracy is, by definition, un-Islamic. A theocracy demands that divine instruction be received and transmitted through a human executive or executives. By definition, theocracies require prophets, and Islam declares that Mohammad was the final prophet. Any contemporary ruler claiming divine inspiration acts against this belief, both disobeying the Qu'ran and breaking *Shari'a*. When examining the ways that Islam has developed historically and regionally, it is important to recognize that for capabilities work, which focuses on real lives and actions, the most relevant religion is that which affects the lives of the people in question. History simply shows how many different forces have shaped that religion.

However, if we wish to use Islam as a guiding philosophy for government then, as An-Na'im (1996, 2008) and Bhutto (2008) suggest, we should turn to Mohammed's words and direction, not those of his warring successors. That is, we should turn to pluralist democracy, defined by the Prophet over a thousand years before acknowledged by the American constitution. Rather than claim a dichotomy between *Shari'a* and democratically designed law, as this Islamist discourse suggests, democratic reformers should keep *Shari'a's* interpreted history in mind. The laws grew out of a conservative tradition and their human origins give modern liberals the authority to advocate change.

*Shari'a* law was developed after political and religious authorities had restricted interpretation and during the continual power struggles (Bhutto 2008, An-Na'im 1996). Its scope



is thus defined by the jurists who claimed power. Although *Shari'a* was originally intended to govern prevent individuals and rulers from gaining too much power, internal influence and colonial rule caused it to take on a more conservative tone. Under pressure from political enemies, *Shari'a* granted the authorities increasing control while its family and personal laws grew more restrictive (Bhutto 2008, 1996). Ali Benhaj, Khomeini, Qutb, and Maududi's work in the postcolonial era accepts these restrictive interpretations as the truth and presents democracy as *kufir* (Tibi 1998). Modern authoritarian states, in turn, draw upon these philosophers and use their work to justify human rights abuses and democratic disenfranchisement (Kepel 2002, Dorraj 1998). In the newest iteration of interpretive control, they present *Shari'a* as immutable and severe.

But *Shari'a* has a history of adapting to popular need or desires, whether social, technological, or economic (Chase 2006). The vast complexity of *Shari'a*, as with Jewish religious law and the texts of all three Abrahamic religions, lends itself to ambiguity. Because it lacks legal consistency, it must be regularly reevaluated to maintain clarity and relevance (Mayer 1998, Tibi 1998). Even under the most conservative approach, *Shari'a*, unlike the Qu'ran, can be liberally interpreted and contextualized because it is man-made and relates to man's relationship with others, not with his relationship with God. *Shari'a* law is thus amendable and can adapt to serve a purpose in the modern context (An-Na'im 1996, 2008). As Zehra F. Kabasakal Arat (2003) reminds us, the idea of a stable and defined *Shari'a* is a misconception itself. Subject to a regime's interpretations of the Hadith, Sunna, and Qu'ran and even the jurisprudence of the *Shari'a* itself, Islamic law is far from homogeneous. Indeed, it has a strong tradition of individual interpretation (Dallacoura 1998), aided by a religious imperative to seek out knowledge, fight tyranny, and help those in need. Thus, the perceived

incompatibility between Islam and democracy is neither cultural, religious, nor even legitimately legal. Drawing on a long history of political and religious interpretation designed to keep struggling elites in power, exaggerated by colonial influence, interpreted as truth by influential scholars, and appropriated by modern authoritarians, communities in the Middle East and North Africa may willingly turn to tyrannical rule. To combat this eventuality, human rights advocates must speak to Islam's cultural heritage.

Consultation, consensus, and interpretation, as defined in Islamic jurisprudence, ensure that the religious community is capable of participating in its political sphere. To deny this inclusion is to deny Mohammed's instruction and practice. With all of this religious and cultural potential, liberal democracies could have replaced the colonial governments. This did not occur for two main reasons. First, Western influence and aid kept authoritarian regimes in place as with the monarchs of Saudi Arabia or the Shah in Iran (Kepel 2002). Second, opportunistic political leaders used the influence of newly emerging radical Islam to legitimize their rule and construct a dichotomy with the West. Internalizing the old orientalist rhetoric, monarchs, dictators, and religious authorities have perpetuated the idea that Western government works in a way incompatible with the Middle East and North Africa. In global discourse, politicians present the region as exceptional (Halliday 1996). Human rights advocates play into this false notion when they claim that rights discourse should supersede Islam. Presenting such claims as attacks, the religious and political elite uses them to further solidify their rule as sentries against the imperial West (Sahliyeh 2003). The cultural politics surrounding democracy have been counterproductive on the other end as well.

Especially in American international politics, democracy is presented as a panacea to social, economic, and political troubles. Empowered by its own internal success, US policy in

the Middle East and North Africa has pushed for immediate political restructure in key geopolitical areas. Echoing the domino theory of the Cold War, the West has attempted to empower friendly regimes and support democratic movements to serve as buffers against political enemies (Gerges 1999, Dorraj 1999). Double standards on human rights (Chomsky 1998), use of geopolitical buffers, and tacit support of unpopular regimes have further distorted the popular conception of democracy in the region. Noting the West's clear willingness to attack, as shown by the campaigns in Iraq and Afghanistan not to mention the war on terror, Islamists can rally popular support by presenting Western action as a full scale war on the Muslim way of life. Of course, philosophical anger can only last so long in the face of poverty and disenfranchisement. Perhaps for this reason, most influential anti-West action has often come from wealthy, educated men. Osama Bin Laden and the Saudis who orchestrated the September eleventh flights had assets in the billions. Frustrated by their religion's and nation's position within the postcolonial world, they had tried, and failed, to assert themselves on a global stage through Islamism. But their movement, which had lost much of its support by the new millennium, was revitalized by the 2001 terrorist attacks and the Western reaction. The subsequent violence and ethnocentrist discourse directed socioeconomic anger away from corrupt leaders and back against the West (Kepel 2002). Democracy is guilty by association.

To advocate for democracy under the capabilities approach, I should be clear on what democracy means. It does not refer to any specific political structure, real or imagined. Rather, democracy as a capability refers to one's ability to control their environment and employ practical reason in the management of their life. This does not need to be accomplished through voting booths as in the West or even black and white stones as in ancient Greece. There is no single way to ensure that individuals maintain a stake in their political lives, nor should there be

when we remember that the capabilities approach advocates culturally specific outcomes to human rights problems. The idea of democratic government has been utterly appropriated through cultural politics, to the point where its fiercest critics and proponents are more concerned with its appearance than its function. However, as human rights activists working in a capabilities framework, anthropologists can focus on function, seeking to preserve and bolster culturally meaningful methods of political participation. For the purposes of this discussion, citizens are defined as community members because the idea of democracy is one that transcends the Western idea of the state. By expanding the definition of citizens in this way, we see that political participation is needed for an equitable relationship among members of villages, among large families, and in other groups not typically associated with formal governments. For the sake of simplicity I will use the word state but in the Middle East and North Africa, where official states sometimes exercise power in name only, I use state to refer to governing bodies in whatever form is contextually relevant.

In accordance with Nussbaum's theory, democracy is a tool that communities can use to ensure their engagement with the state, the fulfillment of their social contract, their protection under societal rules, freedom of belief, their equality with other citizens, and the constant protection of their personal autonomy. When the state denies citizens the opportunity to voice their concerns and change political rules, it ignores their personal choices and decisions. Allowing all citizens to influence policies, either directly or through elected officials, ensures that a diversity of viewpoints will be represented in policy decisions. Because a simple majority rule can lead to institutionalized inequality, democracies that embody human rights philosophy will also seek out certain protections for citizens holding minority views.

Although the capabilities approach is primarily concerned with maintaining personal

choice, it also seeks to ensure that citizens are treated fairly. In a state ruled by an elite, society becomes classed, with first-class citizens enjoying state support and all others clambering for it. By giving all people an equal voice in policy decisions and implementing their wishes, democracy presents a way to prevent the domination of a single view, even when it may be the majority view. Where women participate in their government, they are more in control of their life decisions. Where religious minorities can voice their concerns and change laws, the state cannot treat them with unequal respect.

As a political philosopher, Nussbaum devotes a great deal of time to the complicated interactions between religion, equality, dignity, access, and the state. Her 2008 *Liberty of Conscience* explores the development of religious pluralism in the United States. Drawing heavily on the works of Roger Williams, religious philosopher and founder of Rhode Island, she traces the development of a social contract between the government and society that forbids religious persecution and refuses to show preferential treatment to a dominant religion. In some cases, this dedication to religious equality of minority viewpoints necessitates certain accommodations, such as allowing observant Jewish people to refuse to testify on Saturdays or excluding priests from testifying against their congregants. States that draw on a particular religion to inform their civil laws entangle themselves in a power structure that is inherently unjustly biased toward that religion. As this idea evolved in American discourse, it became institutionalized in the written constitution, a crucial step for reifying freedoms guaranteed by political rhetoric. Through clauses demanding free exercise and equitable treatment, the government is restricted from exacting preferential treatment toward members of a dominant group. The remainder of her argument discusses the various ways in which minorities can be accommodated so that their capabilities are protected but do not infringe on the liberties of other

citizens. In the American legal tradition, the courts have maintained that religious accommodations must stem from either a “significant burden” on the people or question. In cases where accommodation can be overturned, this must result from a “compelling state interest”. Tracing issues of new religions, religious education, and religious concerns with state functions, Nussbaum charts the history of accommodations through the American court system. Although its success in this system remains mixed, her argument makes it clear that accommodations are a necessary element in liberal democracies.

### **Democracy as a Capability**

In order for democracies to respect the diversity of human dignity and need embodied in the capabilities approach, certain arrangements must be made to protect minorities. The majority creates law in democracies, so special accommodations need to be made for those people whose religious or personal convictions prevent them from serving the state in some way. Quakers who conscientiously object to military service, a crucial state function, should not be forced to serve because it violates their right to free religious expression. In the United States, this particular issue was resolved satisfactorily according to the capabilities framework by Quakers who agreed to work in hospitals or in positions where they were not forced to harm other people.

In cases where opponents argue that accommodations seem outlandish or seem to threaten the state, anthropologists can use the capabilities approach as a means to filter these arguments. Requests for a religious exemption from work should be respected as they are crucial to religious functioning. Similarly, a democracy that contains religiously observant Muslim women should allow those women to veil if they so choose (as discussed earlier at length).

Democratic, pluralist states must also respect the views of atheists, polytheists, animists, and all others who want to avoid compulsory religious services or religious education at state schools that do not conform with their view of the divine. Even the most conservative perspective, which views exposure to other religions or philosophies as a contamination and is thus ideologically opposed to cross-cultural dialog, cannot claim that such states impose a substantial burden on their citizens because no one is being coerced into believing or practicing religious ideas. Nussbaum cites the case of The Holiness Church of God in Jesus' Name, which directs its members to handle poisonous snakes and drink strychnine, as one example of a sufficiently dangerous practice that limits capabilities.

Capabilities require that religious diversity be respected as part of a democratic system. Because theocracies establish a single religion as the truth, they necessarily give preferential treatment to a single faith. The minority religions within such a state face an institutional disadvantage if not outright persecution. By elevating one group over another, the state creates classed groups of citizens; those holding minority views suffer the loss of their equality as human beings. This is not to say that religion cannot or even should not inform civil laws. The ethical codes found in the world's religions have evolved to serve their communities and should not be lightly cast aside. To do so would disrespect the religiously guided individuals in society. Rather, anthropologists should "respect the space required by any activity that has the general shape of searching for the ultimate meaning of life, except when that search violates the rights of others or comes up against some compelling state interest" (Nussbaum 2008:169). Democracy respects that the state interest, in turn, does not limit human capability. In fact, considering religiously based morality in secular government is a good form of cross-cultural dialog, which can result in equality and cultural specificity.

Accommodation is an integral part of democracy and is the logical conclusion of the ideas of equality and tolerance. It is the practical means by which the tyranny of the majority can be avoided without compromising core values and cultural distinctiveness. Accommodation is designed to protect not only those people who exist in contemporary society, such as religious minorities, but also those people who may come to the society in the future. This system ensures the longevity of a just state, open to the natural flow of immigrants and its own self-improvement through the new perspectives that their cultural background brings.

The idea of democracy as a fundamental capability relies on the philosophical push for equality for all citizens. In the political realm, this equality depends on equal access to the structures that determine one's life and input into the rules that govern it. In certain cases, when rules asymmetrically benefit society, the majority must accommodate citizens with special needs to ensure that all are treated equally.

To give democracy a sense of legitimacy and purpose in this context, human rights advocates can once again use cross cultural dialog and the capabilities approach to break down the false incompatibility between democracy and Islam found in cultural politics. By engaging political leaders and liberal democratic groups, human rights groups in the Middle East and North Africa as well as the West can work to present Islam within its proper context. Islam, like Christianity and Judaism, can be interpreted to show an incompatibility with democratic or pluralist rule. However, Judaism and Christianity have survived a number of liberal reinterpretations, emphasizing peace and deemphasizing monarchical rule, that allow them both to function in a pluralist global setting. I disagree that this difference stems from the comparative ages of the religions (Sahliyah 2003), as it suggests that Islam, chronologically the youngest of the three Abrahamic religions, is less mature or developed than the others. This is not only



ethnocentric and patronizing but it offers a simplistic and ignorant view of global politics. Islamism, as I have argued previously, stems from centuries of power struggles, interpretation, and colonial resentment. But in order to survive in the continuously globalizing world, Muslims throughout the Middle East and North Africa must reject the cultural politics spouted by their authoritarian leaders as soundly as they must reject the economic liberalization that has turned their nations into rentier states (Monshipouri 1998). The first steps in cross cultural dialog can reaffirm the Islamic basis for pluralistic democracy as commanded by the *shura*, *ijma*, and *ijihad*.

Within the framework of a nation-state, democracy, theoretically, allows every community equal access to political representation. In doing so, it allows individuals and communities to both fulfill their political capabilities. By having a voice in the government's direction, formerly disempowered groups will gain a peaceful means of addressing grievances. Authoritarian states in the Middle East and North Africa that deny their populations such representation do so not on religious or cultural grounds, but because they wish to prevent certain parts of their polity safely away from any access to power. That is, such states deny their citizens' political capabilities in order to eliminate potential threats to their position.

The fiery rhetoric of the religious and political elite does not necessarily reflect general sentiment in the Middle East and North Africa. The communities of this region are no more monolithic than communities in the West. Cross cultural dialog pioneered by scholars like Abdullah An-Na'im (1996, 2008), Benazir Bhutto (2008) and Sa'id al-'Ashmawy (1999) has shown both that democracy is an internal, not imposed, concept and that liberal and interpretive approaches to law have a long historical tradition. Human rights advocates can work for democracy from within the cultural context, giving the democratization movement greater

legitimacy. However, Ahmad Moussalli warns against blindly accepting the imposed, postcolonial version of democracy imposed by the West to promote stability arguing that it will cause Muslims to “suffer doubly: first by the negative aspects of their history, intellectual backwardness and traditionalism, and second, by the emergence of new and “modern” tyrannical states and comprehensive conflicts as well as the states' control of individual and social life” (Moussalli 2001:78). The ethnocentric trap occurs when human rights advocates, internal or external, try to import a supposedly superior system without adapting it to a state's specific social and cultural specifications. The push for popular rule in the Middle East and North Africa can and should draw on outside ideas, including Western democracy, but its success hinges on its cultural legitimacy. By disproving the notion of incompatibility forwarded in cultural politics, human rights advocates can both depose their authoritarian leaders and provide legitimacy for Islamic democracy.

### **Conclusion**

In researching this paper, I have found a few common threads in popular human rights discourse. First there is the idea of superiority, that Western Enlightenment philosophy is a universally applicable idea. By extension, any actions or discourse that appear to conflict with Western Enlightenment must be wrong or are at least misguided. More subtly, this approach tends to frame non-Western ideas as pre-Western, as ideas that could be 'enlightened' with a bit more development.

Such people malign female genital cutting as barbaric, uncivilized, or disgusting. Their

simplistic approach offers no respect for the long history, cultural significance, and socioeconomic role that this procedure plays in the community. “Education” efforts that make no effort to involve local opinion and interest imply a similar superiority. This disregard for the validity of the process is completely contrary to the ultimate goal of the capabilities approach. This same unproductive attitude is evident in Western feminists who see religious veiling as an attempt to hide women away. This accusation contains the implicit assumptions that veiling is a sinister patriarchal structure, that women who veil are ignorant to its true purpose, and that the Western view of modesty, dress, and identity are a model that can and should be copied by all others. The patronizing charge that all women who veil are somehow victims of the men in their lives damages the efforts of progressive Muslim women everywhere. This argument is most pervasive in the context of democracy. Fed by popular interest in regional politics in the last ten years and by authors like Samuel Huntington, media pundits and analysts alike push for a democratic system similar to that found in Europe or the USA. Others, citing Islam’s age at 1431, compare modern-day political affairs in the region to medieval Christian Europe. The idea that Islamic society will one day civilize and evolve into something similar to modern Western society is not merely bigoted. It assumes that the European model of political participation is well-designed and effective in satisfying capabilities and denies alternative systems such as those formulating within the regional or generally Islamic contexts. In a way, this recalls early evolutionary anthropologists who believed that ‘savage’ people would someday civilize. In effect, it closes the door on reform and a process of constant improvement by activists from within this cultural setting. It implies that the West can learn nothing from cross-cultural dialog. More damning, this argument effectively excuses those leaders who deny political capabilities to their citizens by calling them products of their primitive time.

Second, I have observed the idea of insularity, that no society should interfere with another. Unfortunately, this extreme relativism allows rich, powerful geopolitical players to rest on their privilege and justify their inaction. Insularity also conflates the complex interaction of political, social, cultural, religious, and economic factors that drive a community's cultural politics. Assuming that any cross cultural observation is impossible because of cultural differences presupposes that culture has been unaffected by centuries of conflict and contact and thus falls short of a reasonable analysis.

This trend is evident in the long histories invoked to justify authoritarianism, segregative veiling, and genital cutting. Those who perpetuate such human rights abuses cite their own exceptionalism, contending that outsiders cannot understand their customs or that lives are some detached from modernity. In the postcolonial age, where globalized trade has reached every corner of the earth and humans have even begun changing planet's climate, no group can honestly claim that their culture exists in a vacuum. Only those traits that conveniently serve the existent power structure are justified in this way. Certainly, none of these leaders intends to forsake their material wealth, international recognition, or weapons in the name of preserving traditional values. The only traditional values they maintain are those of patriarchy, control, and greed. Insularity appears in FGC when relativists advocate for a 'hands-off' approach, turning a blind eye to the unnecessary pain it causes. It implies that all cultural practices are equally significant and beneficial to society at large and should be maintained in their current form at all costs. In fact no cultural practice, FGC included, has maintained its complete connection to the past. As part of the constantly evolving larger cultural context in which it resides, its symbolic meaning has changed. Using the capabilities approach as a guide, a concerned observer will see that communities who use the veil to keep their women from participating fully in their own lives

are committing a human rights abuse. When those communities claim exceptionalism to prevent outside interference, they betray their dependence on patriarchal control. When critics claim that their disenfranchisement is simply difference, they malign the efforts of progressive activists, regional feminists, and those who veil to show their faith and social identity. Insularity is so encompassing that it eliminates the ability to recognize degrees of severity and to act accordingly, on a case by case basis. In this way, insularity limits capabilities. Insular thinkers ignore the historical inaccuracy and corruption of authoritarian leaders, placing them in a non-existent cultural setting that excuses their actions. If this ideology is not out-right patronizing, it is certainly ignorant. In such situations, it falls to ethical and concerned observers to act, advocate, and help the disenfranchised. The ways to identify abuses of power and methods for interfering have already been discussed at length. The extreme cultural relativist, aware of the issues but unwilling to intervene, is as accountable for suffering and indignity as those who cause it directly: inaction *is* action. In a way, insularity perpetuates segregation, genital cutting, and authoritarian states by considering their actions to be completely exempt from any outside scrutiny and discouraging the efforts of those who disagree. It is too late to be insular – cultural contact has, is, and will continue. To be insular in the face of human rights abuses is to limit capability.

I call the third trend reactionism, the tendency to disregard action and discourse because of its origin. Islamism survives on reactionism, responding to the economic and geopolitical domination of the West. In turn, the recent push for democracy and Western Enlightenment philosophy in the Middle East and North Africa is due mainly to the impact of terrorism and a vague fear that the region's culture and religion are determined to destroy the West. In the realm of cultural politics, reactionism homogenizes one's own people along with their political

enemies, transforming both into monolithic blocs. It constructs dichotomies and in doing so stereotypes and encourages misunderstanding.

The political aspects of FGC and veiling both stem from a reactionary response to the conquest and colonization of the Middle East and North Africa. In response to missionaries and official policies that banned or restricted cultural practices, and capabilities, both of these became synonymous with community pride. Such an identity relies not on a connection to history, culture, and religion, but rather on the rejection of that which is different. Remembering the lies of colonial governors, communities view FGC advocates with, at best, cautious suspicion. Believing that the West brings moral degradation and living in a region prone to warfare and interference by foreign powers, communities shy away from Western lifestyles. Associating unveiled women with corruption and decadence, communities enforce the veil and FGC. As the same foreigners that they want to avoid try to interfere further, they turn to a more conservative approach that stands farther from Western norms. Misinterpreting this response in the West, feminists and liberals lament the sorry state of women's health and well-being in the Middle East and North Africa. But their information is incomplete, provided by a news agency with little interest in history or culture, and viewed in light of a political situation that considers foreigners from the region potential terrorists. The natural assumption for those with strong ideals but short attention spans is to lump the complex and distinct communities from Iran to Morocco in one large, hostile group. For a population frightened of terrorists, homogeneity is much easier to dislike and rally against. In this group consciousness, the other crystallizes and takes the shape of all that is different, wrong, and barbaric. This extends to the renewed faith in secular democracy, a symbol of enlightened Western society. While certain Western politicians and media pundits view it as a cure for political upheaval or even the final stage of political

evolution for an advanced civilization, their opponents in the Middle East and North Africa see imperialism, disrespect, and the decline of their global independence. Many of those opponents also view democracy as the end of the regional power, so they opt to prevent it. Using their own media and conservative interpretations of history or religion, they encourage citizens to reject democracy and forfeit their own political participation. Cultural politics encourages the polities of both groups to focus on keeping the ideological enemy at bay, thus distracting them from human rights abuses, capability limitations, and their own disenfranchisement.

These observations have led me to favor a fourth, newly emerged paradigm. Alternately referred to as cross cultural dialog or diatopical hermeneutics, this approach necessitates a holistic stance on human rights. A philosophical form of pluralism, this is an open communication that acknowledges that no system is perfect and that one's society, values, government, and human rights position can be improved by re-examination and conversation with those who have differing opinions. Extreme universal and relativist arguments can be useful because they force human rights advocates to constantly guard against superiority or insularity. However, in a world constantly shrinking under the pressure of transnational corporations, immigration, war, and economic liberalization, human rights must adopt a more pragmatic stand. The best way to accomplish this dialog is through a careful and culturally informed examination of personal capabilities. This versatile approach allows anthropologists to understand human rights in terms of that which people are able to do and be. By looking at capabilities, human rights advocates can largely ignore the unproductive rhetoric that characterizes cultural politics and work from within a culturally specific and informed base.

Among political imprisonment, torture, human trafficking, and thousands of more severe and arguably more important human rights abuses, why focus on female genital cutting, veiling,

and democracy? First these three ideas are more culturally tied to the communities that practice them than many others. They have distinct histories and are born out of a context older than Mohammed, heavily influenced by Islam, twisted by colonialism, reinterpreted as new leaders filled the postcolonial vacuum, and now navigate cultural politics in a post 9/11 world. For this reason, these ideas are more susceptible to international critique than more obvious human rights infractions. There are far fewer doubts about the legitimacy of massacres than of the burqa. And, of course, as an anthropologist, I am more interested in cultural and communal rights than in those covered by international laws and treaties.

In this paper, I make a concerted effort to explore the cultural history that surrounds human rights, especially the specific cases of female genital cutting, veiling, and democracy. I believe that many of the incompatibility theories relate to a flawed understanding of history and its reinterpretation by political elites, colonial powers, and opportunistic religious leaders. I have discussed the regional histories at length, but it is important to note that “Western” and “non-Western” are such broad categories that they are only useful because they are the terms used in cultural politics. Nussbaum attributes such errors to a short memory:

We forget that modern mathematics, which played a key role in the European Enlightenment, had its origins in Arab culture; we forget that Christianity had its origins in a part of the world that nowadays is regarded as “non-Western”. We forget that the roots of ideas of human equality, democracy, and human rights existed in many different cultures and that their full development in “our own” is a very recent matter. We forget that ideas of religious toleration and equal respect were well known in India by the time of Ashoka’s empire, in the third century B.C.E., a very long time before they were known in Europe (Nussbaum, 2007:7).

When discussing human rights, advocates must avoid the familiar trap of cultural politics and recognize that their culture is dynamic and has been influenced by a vast history of



interaction, dialog, and interpretation. In the increasingly pluralist world, anthropological methods are crucial to developing ideas of legitimacy and legitimizing seemingly foreign ideas.

I specifically focused on three ideas that have no easy answers, occupy a nebulous position in international law, and have been distorted in cultural politics. Anthropologists and social theorists have written the majority of the literature on these subjects and the most important texts in the field are contentious and authors seldom agree with one another. In short, it is the perfect environment for the capabilities approach. This system alone is equipped to fully understand every viewpoint, investigate history and verify authenticity, promote legitimacy by finding solutions that do not compromise underlying values, and above all ensure that human capabilities are being protected. Female genital cutting, veiling, and democracy are shining examples of both the inadequacy of current rights systems and the value of capabilities.

In any such situation where normative values break down and the way forward is unclear, capabilities can illuminate the way forward better than rights, duties, or laws. More optimistically, we can understand triumphs (or perceived triumphs) in human rights through the capabilities approach as well. Just as with potential abuses, potential successes in human rights discourse can be problematized by cultural politics.

The capabilities approach can be easily applied to other current issues studied by anthropologists, including elections in Iraq, the Millennium Development Goals, the growing concern over food access in American inner cities, and gay marriage reform in the United States. Elections are a tool by which democracy can occur, but it is not the only form of political participation. More important is the functioning that this tool allows. Because of the sectarian nature of Iraqi religious politics, *Shari'a* may be less helpful than this western form of political input. The famous photographs of stained thumbs from women and men throughout the country

are a testament to the fulfillment of that central capability. However, the ongoing political destabilization that followed Iraq's historic election has limited the functional abilities of those voters, and so elections can no longer be said to satisfy the right to shape one's own life.

The Millennium Development Goals center on a rights-based approach and are thus more rigid and culturally based than the capabilities approach. Rather than seeking to improve what people are actually able to do and be, they aim to improve the system on a state level. Their rhetoric has the potential to benefit the areas that the UN considers to be underdeveloped, but the tools that they use, namely neoliberal economic development, are functionally ineffective in the lives of the people the goals hope to improve. This is especially clear in Latin America, where neoliberal policies designed to stabilize currency and improve global confidence in those economies has, at best, done nothing to improve the lives of millions in poverty and, at worst, has led to the erosion of the social safety nets that mitigated this poverty in the past. By failing to improve lives within their own cultural and historical context, this program perpetuates a distrust of Western/Northern policy and satisfies little more than the greed of a corporate class who benefits from the new market.

The issue of food deserts, areas in which good food is either too expensive or too difficult for inner-city residents to seek out, relates to access, health, and equity (Winne 2008). As grocery stores followed 'white flight' out of cities, they left small shops with few competitors but because of their location, no room to expand to the retail size of their suburban counterparts. As a result of low competition, higher food prices, and the inefficiency of shipping fresh food into the city, prices increased but quality diminished. Inner city supermarkets have become inadequate for meeting the needs of low-income families. Small and poorly stocked, they offer few fresh vegetables and even fewer nutritional options. Cheap or fast food options abound, in

part because of the low cost and convenience. Because large supermarkets can make more money in the suburbs than cities, most city groceries remain relatively small but the food production system favors economies of scale. As city groceries closed or raised prices, the resulting gap created so-called food deserts. The physical difficulty of shopping where the food is fresh and inexpensive perpetuates food insecurity. From a capabilities perspective, people in this situation lack the access to the same health and quality of life that their suburban counterparts enjoy with respect to a fundamental need. Business interests and poor city planning have denied them this opportunity and their physical health is suffering as a result. As a result of this, their ability to take control of their lives and reach a full potential is seriously impacted.

Gay marriage is extremely relevant to capabilities and the discussion of accommodation because of the vocal religious objections by conservative Americans. However, allowing homosexuals to marry does not force objectors to marry other members of the same sex. Denying homosexuals that right does, in fact, force them to adopt a heterosexual perspective. The issue is one of equal treatment for all citizens. A gay marriage ban denies the same rights afforded by the state to heterosexual couples to homosexual couples, giving preferential treatment to a majority group. Not only would such legislation limit homosexuals' capability to pursue love and commitment in their cultural context, it establishes the idea that one sexual preference is correct and the other is wrong. In that world, homosexuals are second-class citizens. If American critics remember laws against interracial marriage or early colonial laws that forbade Jewish weddings (Nussbaum 2008), they will understand the ongoing struggle for marital freedom.

In the age of globalization, anthropology is more relevant than it has ever been. The capabilities approach is a universal framework for human rights, but it is utterly dependent on

anthropological data. Because we rely so heavily on ethnography, anthropologists are uniquely qualified to synthesize raw cultural data with broader social, political, and economic theories. This leads to a fuller understanding of a holistic worldview and provides the understanding necessary for a culturally specific adaption of Nussbaum's capabilities. Previous human rights schemes have relied either on laws based entirely in Western practice with little regard for local tradition and blatant disregard for religious differences, or have degraded into ineffective and ultimately self-defeating extreme cultural relativism. The capabilities approach demands anthropological data and requires the skills necessary to equitably mediate culturally based interpretations of human fundamentals. Perhaps more importantly, this anthropologically based method allows groups to speak for themselves, prove the legitimacy of their customs, show their commitment to a greater quality of life, and improve the global community by sharing their unique perspective. At a time when great numbers of people are rallying against human rights abuses, anthropologists have been given an opportunity to use their skillset to facilitate equity and dialogue throughout the world.

Although the Universal Declaration of Human Rights can be extremely useful in dealing with matters of torture or wrongful imprisonment, it is inadequate for more culturally based rights and ideas. The capabilities approach provides a philosophical base from which to address perceived abuses, but in the absence of cross cultural dialog Western human rights advocates run the risk of misunderstanding culture as abuse. The complex historical background of the Middle East and North Africa has led to a conflation between religion, culture, and politics in the rhetorical battles between political elites in the East and West. To accept polarized political discourse as the truth would ignore this convoluted past. The power of the capabilities approach lies in its willingness to consider the different possible angles that have led to a cultural practice.

Rather than seeking to provide immediate change, dialog forces different parties to gradually work out their problems and urges that they fully understand a situation before attempting to change it. Because the process is dialog and not instruction, it will force both the West and the Middle East and North Africa to consider their shortcomings. In time, both can learn from each other and realize that while economics and politics may divide, culture can unite.

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