

1997

## Colloquium: Bridging Society, Culture, and Law: The Issue of Female Circumcision - Introduction

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### Recommended Citation

James T. Dixon, *Colloquium: Bridging Society, Culture, and Law: The Issue of Female Circumcision - Introduction*, 47 Case W. Rsrv. L. Rev. 263 (1997)

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COLLOQUIUM

BRIDGING SOCIETY, CULTURE,  
AND LAW: THE ISSUE OF  
FEMALE CIRCUMCISION

INTRODUCTION

*James T. Dixon*<sup>†</sup>

In the early summer of 1996, this law review was presented with the opportunity to contribute to the debate over the issue of female circumcision. Popular opinion of the issue has been influenced in part by a series of op-ed pieces and articles in the *New York Times* by A.M. Rosenthal and Celia W. Dugger.<sup>1</sup> Academic debate has taken place in a range of contexts, from articles and

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<sup>†</sup> Editor in Chief, Case Western Reserve Law Review. B.A. Denison University. J.D. Candidate, Case Western Reserve University School of Law. On behalf of the entire staff, I would like to thank all of the participants in this forum, particularly Professor Obiora for her initiative and cooperation. I would personally like to thank the associates who worked on each of these pieces, and Jon Hyman, Ann Skerry, and Sheila Saegh for their countless hours of editorial oversight. Carolyn Speaker and Rob Chaloupka also provided needed support in the Publications Office. I should also thank each member of the Executive Board for their support in this (ad)venture.

1. See, e.g., A.M. Rosenthal, *On My Mind: The Torture Continues*, N.Y. TIMES, July 27, 1993, at A13; Celia W. Dugger, *African Ritual Pain: Genital Cutting*, N.Y. TIMES, Oct. 5, 1996, at 1.

notes in law reviews to feature pieces in ethics-oriented periodicals.<sup>2</sup> The issue was also becoming a key policy concern with the emergence of gender issues on the global stage. From the continent of Africa to Beijing to the territories of Western nations, viewpoints on the matter were rapidly, and in some cases fiercely, emerging. The timeliness of the issue, then, was a key consideration in determining to sponsor this forum.

Our opportunity for involvement came in the form Professor Leslye Obiora's article *Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision*.<sup>3</sup> Professor Obiora, an Igbo woman conducting research and teaching in the United States, presented to us a theoretical and practical perspective that ran counter to much that we had read on this issue. Impressed by the depth and breadth of analysis and research marshalled in support of this perspective, we resolved to work toward the inclusion in this debate of contributors from various disciplines who could add enriching perspective to Obiora's provocative arguments. It has been both a privilege and a great learning experience working with these scholars, and we trust that you will appreciate their contributions.

Before introducing these commentaries and Professor Obiora's article, it may be best to begin with a brief description of some of the forms of the practice, the terminology used to describe the practice, and the thematic focus of this colloquium. A description of the forms and nomenclature is important because of their critical role in framing the debate in general, and Professor Obiora's arguments in particular. As noted by Obiora, there are many variations of the practice that is generically referred to here as "female circumcision."<sup>4</sup> Those practices with the most minor physical consequences are highly symbolic acts that merely involve the pricking of the clitoris.<sup>5</sup> The next variant is referred to by Muslims as

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2. See, e.g., Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1 (1995); Sandra D. Lane & Robert A. Rubinstein, *Judging the Other: Responding to Traditional Female Genital Surgeries*, HASTINGS CENTER REPORT, May-June 1996, at 31.

3. See L. Amede Obiora, *Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision*, 47 CASE W. RES. L. REV. 275 (1997).

4. See *id.* at 287-89.

5. See *id.* at 288.

*sunna* and involves the removal of the clitoral hood.<sup>6</sup> More involved forms of the practice are referred to as excision or clitoridectomy and involve the severing of the clitoris and some of the *labia majora* and *minora*.<sup>7</sup> The form with the most severe physical consequences is referred to as infibulation and involves the scraping and sewing together of the *labia majora*.<sup>8</sup>

Some of the controversy over female circumcision is centered on the terminology used to label these practices. The phrase "female genital mutilation" is perhaps the most widely used common reference.<sup>9</sup> Other participants in the debate have chosen to use the terms "female genital surgeries,"<sup>10</sup> "genital alteration,"<sup>11</sup> or "genital cutting."<sup>12</sup> Obiora refers to the practice generally as "female circumcision," but distinguishes among the variations as necessary.<sup>13</sup> Thus, in the interest of uniformity and coherence, the term "female circumcision" is used in this introduction and the title of this colloquium. This is not, of course, intended to preempt or conclude the debate over terminology.

The question of terminology is but one of many themes that run throughout this colloquium. The broadest theme, as suggested by the title of this colloquium, is how the issue of female circumcision highlights the relationship between society, culture, and law. Within a particular conception of a just society, how is a specific cultural practice that may not comport with the tenets of that society to be addressed? Does the institution of the law provide the appropriate framework for understanding and attending to the complexities of this tension? Should the initial inquiry, then, concern

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6. *See id.*

7. *See id.* at 288-89.

8. *See Obiora, supra* note 3, at 289.

9. *See, e.g.,* Layli Miller Bashir, *Female Genital Mutilation in the United States: An Examination of Criminal and Asylum Law*, 4 AM. U. J. GENDER & L. 415, 416 (1996). The Inter-African Committee on Traditional Practices officially adopted the terms "female genital mutilation" in 1991. The Committee did so while acknowledging that "terminology is a tool that may be used as appropriate to a given context and where genital mutilation does not make sense community workers would naturally use the appropriate colloquial terms." Letter from Seble Dawit, Director, Alliances: An African Women's Network, to Professor Leslye Amede Obiora 1 (Nov. 4, 1996) (on file with the *Case Western Reserve Law Review*) [hereinafter Dawit Letter].

10. *See, e.g.,* Lane & Rubinstein, *supra* note 2, at 31.

11. *See, e.g.,* Pauline E. Peters, *Another Bridge to Cross: Between "Outsider" and "Insider,"* 47 CASE W. RES. L. REV. 479, 480 (1997).

12. *See, e.g.,* Dugger, *supra* note 1, at 1.

13. *See Obiora, supra* note 3, at 290.

how a particular society defines itself and its ideals? In relation to the debate over female circumcision, this question gives rise to the issue of "universal" or "fundamental" human rights.

These "universals" lead to a calling into question of the specific cultural practice. Should a concrete assessment of the practice be a precondition for the initiation of legal reform? Does this assessment then lead to the preference of other solutions? Such an assessment necessarily involves the placement of the practice in context—assessing its origins and the reasons for its persistence, as well as defining its various forms. A key strength of the pieces that compose this colloquium is that they endeavor to avoid questionable assumptions—assumptions regarding the conception of a society, the context of the cultural practice that may conflict with this conception, and the role of law in resolving the tension.

One appeal of Professor Obiora's article lies in its sustained discussion of the complex issues that surround the practice of female circumcision—including issues raised by recently enacted legislation in the United States banning the practice.<sup>14</sup> As it is impossible to do justice to the sophistication of Obiora's arguments within the constraints of this introduction, a close reading of the article in its entirety is encouraged. The broad theme of this colloquium mirrors the structure of her article. The various sections of the article highlight differing conceptions of society, illustrate the context that gives meaning to the practice of female circumcision, and provide textured analysis of several approaches to the problems

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14. See Celia W. Dugger, *New Law Bans Genital Cutting in United States*, N.Y. TIMES, Oct. 12, 1996, at A1 (noting that the Centers for Disease Control has determined that female circumcision may affect up to 150,000 women in the United States).

In enacting the legislation, Congress listed six findings concerning female circumcision: (1) it is carried on by certain cultural and religious groups in the United States; (2) it results in physical and psychological harm to women; (3) it infringes on statutory and constitutional rights; (4) it is beyond the control of state or local governments; (5) it can be prohibited without infringing first amendment rights; and (6) Congress has the authority to enact the prohibition via the necessary and proper clause. See 142 CONG. REC. H11,644-01, H11,829 (daily ed. Sept. 28, 1996). The law is aimed at anyone who "knowingly circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora or clitoris of another person who has not attained the age of 18 years." *Id.*

The legislation also requires that the Immigration and Naturalization Service ("INS") provide information about the legal consequences of performing female genital mutilation, or allowing it to be performed on a minor, to aliens who receive visas. The INS is also directed to provide information regarding "the severe harm to physical and psychological health caused by female genital mutilation which is compiled and presented in a manner limited to the practice itself and respectful to the cultural values in which such practice takes place." *Id.*

posed by the practice. The article commences with a description of the priority given to violence against women at the 1995 United Nations World Conference on Women. Here, Obiora illuminates, *inter alia*, the tension between the universalization of individual human rights and cultural autonomy or self-determination.<sup>15</sup>

Obiora delineates a wealth of cultural contexts for the various forms of female circumcision. In the section entitled *Quest for Lost Origins*,<sup>16</sup> she searches for the reasons underlying the origin of the practices. Beginning with anthropological constructs of the origin and perpetuation of the practice, she underscores regional and national variations. Among the explanations offered for the practice, Obiora emphasizes those based on patriarchy. She then draws parallels between female circumcision and elective surgery in the West, and takes issue with the exclusionary terms of some Western anti-circumcision discourses.

In the sections of the article entitled *Quest for Change*<sup>17</sup> and *Orchestrating Change*<sup>18</sup> Obiora analyses strategies and proposes alternative modes of approaching the issue. Existing strategies range from the evolving recognition of female circumcision as grounds for granting refugee status to women who are at risk of circumcision in their homeland, to more traditional legal mechanisms aimed at penalizing the practitioners of female circumcision.<sup>19</sup> Obiora discusses some of the limitations of these strategies, drawing upon Anglo-American traditions; such as the right to bodily integrity, the sanctity of the family, the right to privacy, and the right of religious freedom. She then proceeds to assess the merit of certain extra-legal alternatives, including education, economic empowerment, and clinicalization. As she puts it, this is with a view to explore "the possibility of a bottom-up transitional transformation . . . and its potential for bridging the rift between polarized views."<sup>20</sup>

Reactions to Professor Obiora's article are provided by eminent scholars who pursue respective themes discussed in her article. These reactions are arranged according to how they relate to the three component parts of the broad theme of this colloquium: (1)

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15. See Obiora, *supra* note 3, at 275-87.

16. See *id.* at 292.

17. See *id.* at 332.

18. See *id.* at 361.

19. See *id.* at 333-34, 336-43.

20. See, Obiora, *supra* note 3, at 377.

the "universal" or "fundamental" human rights analysis; (2) the question of culture and cultural context; and, (3) the search for legal/alternative solutions. Several contributors address all three themes or provide overarching criticism of the female circumcision debate. These comments are grouped together and appear after those that relate to the individual components of the broad theme. Again, this introduction can provide only a brief summary of the position of each author, and a close reading of each is encouraged.

Several individuals we invited to participate were unable to do so because of time constraints or conflicting commitments, and we regret not being able to feature their contributions.<sup>21</sup> We had invited Seble Dawit, an African human rights activist who has earned the respect of many for her sincere commitment to the anti-circumcision campaign, to write a prologue and an epilogue for this colloquium. At the last minute, we received a letter sent by Dawit from Africa explaining that it was not possible for her to participate. This letter raised several important issues that are worth mentioning here. Dawit "disagree[s] wholeheartedly with [Obiora's] conclusions regarding medicalization," viewing it as "a serious setback to the efforts of African women to eradicate this practice."<sup>22</sup> Dawit also questioned why Obiora's failure to state her own position on the eradication of genital mutilation, and her silencing of the voices of African women involved in the anti-circumcision campaign.<sup>23</sup>

With reference to this silencing, Dawit argues that Obiora "ignore[s] the logical location and primary actors of the movement to eliminate genital mutilation."<sup>24</sup> Although the command of relevant literature exhibited in Obiora's article is impressive, her sources, of course, are not exhaustive. Though Obiora's sources do present salient works by many Africans, this colloquium certainly could have benefited if Dawit had discussed other African activists. Con-

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21. These include Jane Larson, V.Y. Mudimbe, Margaret Jane Radin, Lawrence Rosen, Chris Miller, Francois Lionnet, Martha Minow, Nahid Toubia, Elizabeth Mertz, Kimberle Williams Crenshaw, and Martha Nussbaum.

22. See Dawit Letter, *supra* note 9, at 1.

23. See *id.* at 2. One individual who was able to participate in this colloquium similarly takes issue with Obiora's medicalization proposal, her perceived silencing of African women, and her personal position on the issue. See Isabelle R. Gunning, *Uneasy Alliances and Solid Sisterhood: A Response to Professor Obiora's Bridges and Barricades*, 47 CASE W. RES. L. REV. 443 (1997); see also *infra* notes 44-47 and accompanying text.

24. See Dawit Letter, *supra* note 9, at 1.

cerning Obiora's failure to choose a side in the debate, it is clear at the outset, indeed, in the title of her article, that she chose to avoid the for/against nature of the debate. In this way, Dawit's participation may have served to illustrate the polarization of positions in the debate. We were eager to include Dawit's reasoned criticism of Obiora's arguments, and regret that her withdrawal has deprived our audience of an opportunity to savor another perspective.<sup>25</sup>

Professor Lawrence Friedman of Stanford Law School, who supervised Professor Obiora's doctoral dissertation and fostered her commitment to legal scholarship, directly addresses the question of defining "universal" or "fundamental" human rights. His comment, short-titled *The War of the Worlds*,<sup>26</sup> recognizes that the construction of this definition is not a theoretical dispute over the conflict between fundamental rights and cultural practices. Rather, the enterprise implicates a more practical consideration of where to draw the line between the two.<sup>27</sup> Friedman points out that culture can mean something as simple as a choice of clothing to a complex "marrow-deep belief[]" whose alteration may injure the group that adheres to it.<sup>28</sup> After an historical analysis of the derivation of and clash between cultural claims and fundamental rights, Friedman concludes by placing Obiora's article in the "zone of free fire" between the two.<sup>29</sup>

Professor Emeritus Edmund Gordon of Yale University works to support Obiora's position of respect for cultural context by bringing to bear insights from the "intersection between our growing knowledge of culture, pedagogy, and psychology."<sup>30</sup> He proceeds from the premise that there are "no . . . differences in cognitive and affective processes" among human groups, and notes that "[w]hen we speak of culture, we are speaking of both the cause and product of human affect and cognition."<sup>31</sup> Gordon establishes

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25. I also regret that the constraints of this forum prevent us from further engaging in the compelling debate that these arguments foreshadow. We hope to provide a forum for that debate, and others, in a site we are developing on the World Wide Web.

26. See Lawrence M. Friedman, *The War of the Worlds: A Few Comments on Law, Culture, and Rights*, 47 CASE W. RES. L. REV. 379 (1997).

27. See *id.* at 380.

28. *Id.* at 381.

29. *Id.* at 387.

30. Edmund W. Gordon, *Cultural Identity and Behavioral Change*, 47 CASE W. RES. L. REV. 389, 398 (1997).

31. *Id.* at 391 (citation omitted).



five fundamental dimensions of the cultural construct and defines how culture provides referents, stimuli, and consequences for behavior.<sup>32</sup> He concludes that behavioral change that occurs outside of an accommodation of and adaptation to cultural context "tends not to become a stable and internalized part of the learner's repertoire."<sup>33</sup>

Professor Kathryn Abrams, a prolific feminist critic currently teaching at Northwestern University School of Law, reveals that Obiora's analysis has related domestic application to "feminist debates of an intra-cultural nature."<sup>34</sup> Abrams applies elements of Obiora's method to an analysis of women whose lives are more culturally proximate in a discussion of Joan Nestle's essay *The Fem Question*.<sup>35</sup> Her approach is intended to provide assistance for feminists in confronting practices deemed self-subordinating, or rife with compromised agency or false consciousness.<sup>36</sup>

Dr. M.A. Ogbu, a noted public health expert, analyzes both cultural context and alternative solutions.<sup>37</sup> Ogbu begins by noting that the issue of female circumcision "is a complex and sensitive issue with many personal and social ramifications *in cultural contexts*."<sup>38</sup> She enriches the debate by adding comments that focus on Africa, urging participants to base their discourse on empirical evidence and a systematic analysis of cultural practices.<sup>39</sup> With reference to solutions, Ogbu shows that legislative reforms in African nations have been ineffective.<sup>40</sup> She also takes issue with Obiora's proposals for education and clinicalization, and observes that female circumcision may already be fading in frequency.<sup>41</sup>

Professor Ronald J. Krotoszynski, Jr., whose legal scholarship reveals a refreshing perspective on questions of constitutional law, notes that Obiora squarely "questions the ability of law, standing alone, to unseat long and deeply held cultural values."<sup>42</sup>

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32. See *id.* at 392-93.

33. *Id.* at 397.

34. Kathryn Abrams, *Respecting Women's Lives and Investigating Women's Consciousness: A Comment on Obiora*, 47 CASE W. RES. L. REV. 399, 400 (1997).

35. *Id.* at 400.

36. See *id.*

37. See M.A. Ogbu, *Comment on Obiora's Bridges and Barricades*, 47 CASE W. RES. L. REV. 411 (1997).

38. *Id.*

39. See *id.* at 412-13.

40. See *id.* at 416-17.

41. See *id.* at 418, 419-21.

42. Ronald J. Krotoszynski, Jr., *Building Bridges and Overcoming Barricades: Explor-*

Krotoszynski's own questioning occurs in the context of an analysis of law's ability to lead fundamental, transformational social change. Krotoszynski's initial point of comparison is to the American civil rights movement, where he asserts that it was individual and group demands for change that led the law. The lesson, he concludes, is that greater cultural sensitivity "is an absolute prerequisite to effective legislative reforms."<sup>43</sup>

Professor Isabelle R. Gunning, a legal scholar who has written extensively on the subject of female circumcision, highlights points on which she agrees with Professor Obiora, and others on which they disagree.<sup>44</sup> In particular, Gunning finds that Obiora monolithically defines the lives of Western women, while opposing such narrowness in relation to African women. Gunning prefers to view most women as involved in an "entangled reality . . . reconstituted by a multitude of contradictory structures and processes."<sup>45</sup> Gunning also argues that Obiora oversimplifies the lives of African women while muting the African voices of opposition to female circumcision.<sup>46</sup> Gunning takes particular notice of Obiora's proposal to clinicalize the practice of female circumcision. She notes that proposal's practical benefits while raising questions about some of its potential adverse affects: the possibility that modern Western-trained health care professionals may attain a stake in the perpetuation of the practices, the potential for male-centered control within these clinics, and the chance that this would lead to "regulation" and nothing more.<sup>47</sup>

Professor Micere Githae Mugo of Syracuse University, a renowned African literary and cultural critic, focuses on the negative role played by popular literature, in particular Alice Walker's *Possessing the Secret of Joy* and Alice Walker and Pratibha Parmar's *Warrior Marks*, while exploring the cultural imperialism inherent in the themes of these works.<sup>48</sup> Coining the phrase "external messiah syndrome," Mugo highlights the danger of silencing and stigmatiza-

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*ing the Limits of Law as an Agent of Transformational Change*, 47 CASE W. RES. L. REV. 421, 434 (1997).

43. *Id.* at 425.

44. See Gunning, *supra* note 23, at 443.

45. *Id.* at 447 (quoting Obiora, *supra* note 3, at 304).

46. See *id.* at 448-49.

47. See *id.* at 455-57.

48. See Micere Githae Mugo, *Elitist Anti-Circumcision Discourse as Mutilating and Anti-Feminist*, 47 CASE W. RES. L. REV. 459, 460-61 (1997).

tion created by even the best-intentioned of anti-circumcision campaigners.<sup>49</sup> After making clear her position on the practice of female circumcision, Mugo argues that the focus works are rife with problems: they are decontextualizing, typifying, objectifying, disempowering, and dominating.<sup>50</sup> A true and lasting solution, Mugo concludes, must endow women with power and agency "so that they can do away with oppressive traditions, conditions, and relationships."<sup>51</sup>

Dr. Pauline Peters of the Harvard Institute of International Development, whose study on African women and development supports a portion of Obiora's argument, contributes an analysis that is positioned both inside and outside of the existing debate.<sup>52</sup> She argues for a more complete consideration of "insider" perspectives on the practice; perspectives that may themselves vary within a particular culture.<sup>53</sup> For the "outsiders" she urges the avoidance of essentialism and a more close-fitting relationship between description and reality in the naming of particular forms of female circumcision.<sup>54</sup> She then wonders why this topic has attracted such attention, and what effects this attention may have on the debate.<sup>55</sup> Highlighting several effects and the added distortions of polemicism, Peters concludes that an "insider" focus is necessary to inform the debate.<sup>56</sup>

Professor Preston Williams of the Harvard Divinity School, in addressing each component of this colloquium's broad theme, first speaks of "orient[ing] us to a standard that will be most supportive of the dignity and worth of individuals."<sup>57</sup> Examining the cultural context in which female circumcision occurs, Williams states that "[w]hat we should investigate is whether or not the ritual . . . is free from coercion, is not physically harmful, and in fact accurately represents what it alleges to contribute to a woman's sense of worth and dignity."<sup>58</sup> Williams draws several conclusions about

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49. *Id.* at 460.

50. *See id.* at 477-78.

51. *Id.* at 478.

52. *See Peters, supra* note 11, at 479.

53. *See id.* at 482-85.

54. *See id.* at 481.

55. *See id.* at 484.

56. *See id.* at 487.

57. Preston Williams, *A Personal Perspective on the Elimination of Female Circumcision*, 47 CASE W. RES. L. REV. 489, 489 (1997).

58. *Id.* at 492.

the practice and alternatives that may lead to its elimination, favoring the use of education and law (as both a form of education and a restraint on behavior).<sup>59</sup>

Professor Emerita Sylvia Wynter of Stanford University notes that Obiora, as a feminist and a native, is forced to defend the practice's rationality to its practitioners against the criticism of other feminists.<sup>60</sup> Wynter then argues that both feminist and Western discourse contain a specific culturally defined episteme, and that Obiora's criticism of the terms of this debate calls both into question. Thus, Obiora is in a paradox, both relying on Western and feminist principles in order to resolve the issue while "devastatingly deconstruct[ing]" these principles in order to do so.<sup>61</sup> Wynter moves beyond this positional critique to provide a vast framework of analysis involving, in part, what it means to be a "good" man or a "good" woman.<sup>62</sup> This is defined by the contrast between being and non-being—between life and death, white and non-white, rich and poor, developed and underdeveloped, and uncircumcised and circumcised. Wynter concludes that Obiora's analysis may be a first step toward the realization of a "Second Emergence," and that this realization is appropriately based on a cultural practice spanning millennia.<sup>63</sup>

For legal scholars and policy makers, the importance of these theoretical arguments is secured by the efforts of governments to use the law to alter or eradicate the practice of female circumcision. A crucial aspect of female circumcision, or any other cultural practice, is the conditioned nature of the human behavior that leads to its origin and perpetuation. As highlighted by Wynter in discussing these origins, "[M]an has the capacity to turn theory into . . . codings in the nervous system known as conditioning."<sup>64</sup> Krotoszynski echoes this when he argues that "[b]efore we dismiss the cultural importance of a practice that we find repugnant, we should first consider the culturally conditioned nature of that re-

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59. See *id.* at 496.

60. See Sylvia Wynter, "Genital Mutilation" or "Symbolic Birth"? *Female Circumcision, Lost Origins, and the Aculturism of Feminist/Western Thought*, 47 CASE W. RES. L. REV. 499, 500-501 (1997)

61. *Id.* at 503.

62. *Id.* at 510.

63. See *id.* at 549.

64. See *id.* at 510 (quoting Antonio T. de Nicolas, *Notes on the Biology of Religion*, J. SOC. & BIOLOGICAL STRUCTURES, Apr. 1981, at 219, 225)

sponse."<sup>65</sup> Thus, theory affects both the origin of cultural practice and the response of those challenging the practice.

The contributions to the debate over female circumcision gathered in this colloquium evince an effort to fully define the foundation of theory that informs this debate: to ensure the finely developed conception of a just society, to ensconce the particular cultural practice in the context of social conditioning in which it exists, and to accurately and equitably choose between alternative solutions when the cultural practice does not comport with the conception of a just society. Thus, theory will most ably be transformed into conditioning by a choice among various methods, and that conditioning will most readily transform behavior. In this way the issue of female circumcision may serve as an example of how a sturdy bridge between society, law, and culture may be built.

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65. Krotoszynski, *supra* note 42, at 423-24.