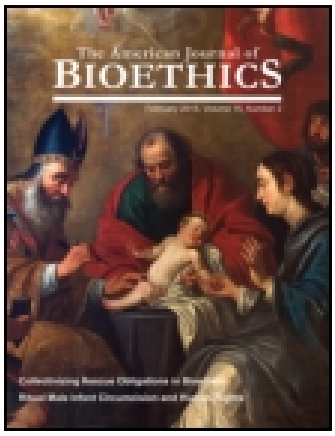

The American Journal of Bioethics
Publication details, including instructions for authors and subscription information:
http://www.tandfonline.com/loi/uajb20

The Tolerance of Ritual Male Infant Circumcision

Gregory L. Bock[a]
[a] Walters State Community College
Published online: 12 Feb 2015.

Frisch, M., Y. Aigrain, V. Barauskas, et al. 2013. Cultural bias in the AAP'S 2012 technical report and policy statement on male circumcision. *Pediatrics* 131(4): 796–800. Available at: http://dx.doi.org/10.1542/peds.2012-2896

Hodges, F. 1997. A short history of the institutionalization of involuntary sexual mutilation in the United States. in *Sexual mutilations: A human tragedy*, ed. G. C. Denniston and M. F. Milos, 17–40. New York, NY: Springer.

Jacobs, A. J., and K. S. Arora. 2015. Ritual male infant circumcision and human rights. *American Journal of Bioethics* 15(2): 30–39.

KNMG. 2010. *Non-therapeutic circumcision of male minors*. Utrecht, The Netherlands: KNMP.

Merkel, R., and H. Putzke. 2013. After Cologne: Male circumcision and the law. Parental right, religious liberty or criminal assault? *Journal of Medical Ethics* 39(7): 444–449. Available at: http://dx.doi.org/10.1136/medethics-2012-101284

Paust, J. 1990. Customary international law—Its nature, sources and status as law of the United States. *Michigan Journal of International Law* 12: 59–91.

Prince v. Massachusetts. 1944. 321 U.S. 158, 169.

Reynolds v. United States. 1878. 98 U.S. 145, at 166–167.

Svoboda, J. S. 2013. Promoting genital autonomy by exploring commonalities between male, female, intersex, and cosmetic female genital cutting. *Global Discourse* 3(2): 237–255. Available at: http://dx.doi.org/10.1080/23269995.2013.804757

Tarhan v. Turkey. 2012. European Court of Human Rights, Application number 9078/06, decided July 17, 2012.

United Nations Committee on the Rights of the Child. 2013. Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May–14 June 2013). CRC/C/ISR/CO/2-4. Available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ISR-CO-2-4.pdf, at paragraphs 41–42 (accessed November 12, 2014).

The Tolerance of Ritual Male Infant Circumcision

Gregory L. Bock, Walters State Community College

Jacobs and Arora (2015) argue convincingly for the permissibility of ritual male infant circumcision in general, but they allow for the state to prohibit the practice if it violates local norms. They say that such a ban would be permissible unless it amounts to unethical discrimination. In other words, if male infant circumcision is outlawed, then, as they say, "the same state should protect all children from all unnecessary procedures and practices that are equally uncomfortable and unsafe." While such an approach has its merits, a more just approach will involve accommodating male circumcision regardless of local norms and customs.

Jacobs and Arora's proposal to allow local governments to restrict the practice under certain conditions resembles Locke's principle of neutrality in *A Letter Concerning Toleration*, where Locke states:

> Whatsoever is lawful in the commonwealth, cannot be prohibited by the magistrate in the church. Whatsoever is permitted unto any of his subjects for their ordinary use, neither can nor ought to be forbidden by him to any sect of people for their religious uses. If any man may lawfully take bread or wine, either sitting or kneeling, in his house, the law ought not to abridge him of the same liberty in his religious worship; though in the church the use of bread and wine be very different, and be there applied to the mysteries of faith, and rites of divine worship. But those things that are prejudicial to the commonweal of a people in their ordinary use, and are therefore forbidden by laws, those things ought not to be permitted to churches in their sacred rites. Only the magistrate ought always to be very careful that he do not misuse his authority, to the oppression of any church, under pretense of public good. (Locke 1990, 48–49)

What Locke means is that religious liberties can be restricted by laws of general applicability. If the state prohibits a certain practice for everyone, it need not allow it in religion. On the other hand, if the state allows the practice in the public sphere, then it must allow it in the religious sphere as well.

Martha Nussbaum explains how the principle of Lockean neutrality has been influential in American jurisprudence. For example, in the U.S. Supreme Court case *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993), the city of Hialeah, FL, attempted to outlaw the ritual slaughter of animals in order to curb animal sacrifices conducted by followers of the Santeria religion. The court overturned the law on the basis of Lockean neutrality because animal killing was still allowed in the food industry (Nussbaum 2012, 72).

Address correspondence to Gregory L. Bock, Walters State Community College, 500 South Davy Crockett Pkwy, Morristown, TN 37813, USA. E-mail: greg.bock@ws.edu

While Jacobs and Arora do not use nonreligious circumcision as the basis of comparison, they do approach the issue in a Lockean manner by citing analogues that involve a comparable level of risk. They say that if the state bans ritual male infant circumcision because of health risks, then it must also ban nonreligious elective procedures involving the same level of risk, such as "human growth hormone to short boys, removal of extra fingers and toes, cosmetic orthodontia . . . and piercing of female infants' ears." In fact, the authors suggest that this might entail the outlawing of several contact sports for children, such as ice hockey and American football.

Jacobs and Arora's proposal may seem just, but religious accommodation is a better approach to handling issues like this. The principle of accommodation states that religious groups should receive occasional legal exemptions. Nussbaum favors this approach over the principle of neutrality because the latter is not sensitive enough to the ways in which the laws of general applicability often reflect the prejudices of the majority and may be, even if unintentionally, overly burdensome on religious minorities. She says, "All societies make choices regarding holidays, workdays, drug and alcohol restrictions, and a host of other matters touching on people's religious observances . . . [which may] be extremely harsh to minorities, rending their liberty unequal" (Nussbaum 2012, 87). For example, in the case of *Sherbert v Verner* (1963), Mrs. Sherbert, a Seventh-Day Adventist, was fired for refusing to work on Saturdays for religious reasons. The Supreme Court found that while the policy requiring Saturday work may have been applicable to all, and as such satisfied the principle of Lockean neutrality, such a rule unfairly burdened anyone whose religion observes its Sabbath on any day of the week other than Sunday.

In the same way, while a law prohibiting ritual male infant circumcision might reflect local norms, it is ultimately discriminatory because it disproportionately burdens religious minorities. It would have this effect especially on Jews because they view ritual circumcision as the sign of God's covenant with Abraham. It is the covenant command. In the words of the philosopher Baruch Spinoza, "I think the sign of circumcision has such great importance as almost to persuade me that this thing alone will preserve their nation for ever" (Spinoza 2007, 55).

This is not to give absolute license to the religious activity of minorities. Nussbaum explains that a compelling state interest can limit religious accommodation. She says, "The protection of a group of basic human entitlements that I call the 'Central Human Capabilities' would always supply government with a compelling state interest that could serve to limit actions taken in the name of religion: life, health, bodily integrity, and so forth" (Nussbaum 2012, 91). While some might think that this provides grounds for prohibiting ritual male infant circumcision, Nussbaum says, "I do not see solid evidence that it interferes with adult sexual functioning; indeed, it is now known to reduce susceptibility to HIV/AIDS" (Nussbaum 2012, 125). Jacobs and Arora's discussion of the health risks and the arguments concerning bodily integrity supports Nussbaum's point of view on this.

In summary, Jacobs and Arora's argument that ritual male infant circumcision does not violate human rights is convincing, but their Lockean approach to restricting this practice when it violates local norms raises concerns about the unjust treatment of religious minorities. In order to protect the religious liberties of such groups, issues like this should be decided using the principle of accommodation, which applied here would mean tolerating ritual male infant circumcision regardless of local values. ■

REFERENCES

Jacobs, A. L., and K. S. Arora. 2015. Ritual male infant circumcision and human rights. *American Journal of Bioethics* 15(2): 30–39.

Locke, J. 1990. *A letter concerning toleration*. Buffalo, NY: Prometheus Books.

Nussbaum, M. 2012. *The new religious intolerance: Overcoming the politics of fear in an anxious age*. Cambridge, MA: Belknap Press of Harvard University Press.

Spinoza, B. 2007. *Theological-political treatise*, ed. J. Israel. Cambridge, UK: Cambridge University Press.