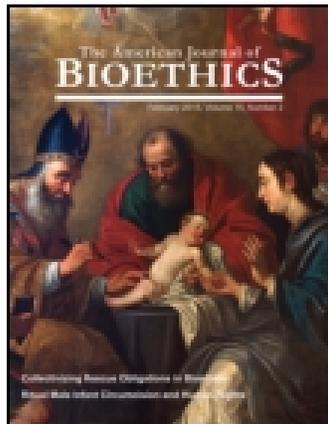


This article was downloaded by: [Copenhagen University Library]

On: 11 July 2015, At: 11:48

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: 5 Howick Place, London, SW1P 1WG



The American Journal of Bioethics

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/uajb20>

Ritual Male Infant Circumcision and Human Rights

Allan J. Jacobs^a & Kavita Shah Arora^b

^a Stony Brook University School of Medicine

^b Case Western Reserve University

Published online: 12 Feb 2015.



CrossMark

[Click for updates](#)

To cite this article: Allan J. Jacobs & Kavita Shah Arora (2015) Ritual Male Infant Circumcision and Human Rights, The American Journal of Bioethics, 15:2, 30-39, DOI: [10.1080/15265161.2014.990162](https://doi.org/10.1080/15265161.2014.990162)

To link to this article: <http://dx.doi.org/10.1080/15265161.2014.990162>

PLEASE SCROLL DOWN FOR ARTICLE

Taylor & Francis makes every effort to ensure the accuracy of all the information (the "Content") contained in the publications on our platform. However, Taylor & Francis, our agents, and our licensors make no representations or warranties whatsoever as to the accuracy, completeness, or suitability for any purpose of the Content. Any opinions and views expressed in this publication are the opinions and views of the authors, and are not the views of or endorsed by Taylor & Francis. The accuracy of the Content should not be relied upon and should be independently verified with primary sources of information. Taylor and Francis shall not be liable for any losses, actions, claims, proceedings, demands, costs, expenses, damages, and other liabilities whatsoever or howsoever caused arising directly or indirectly in connection with, in relation to or arising out of the use of the Content.

This article may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, redistribution, reselling, loan, sub-licensing, systematic supply, or distribution in any form to anyone is expressly forbidden. Terms & Conditions of access and use can be found at <http://www.tandfonline.com/page/terms-and-conditions>

Target Article

Ritual Male Infant Circumcision and Human Rights

Allan J. Jacobs, Stony Brook University School of Medicine
Kavita Shah Arora, Case Western Reserve University

Opponents of male circumcision have increasingly used human rights positions to articulate their viewpoint. We characterize the meaning of the term “human rights.” We discuss these human rights arguments with special attention to the claims of rights to an open future and to bodily integrity. We offer a three-part test under which a parental decision might be considered an unacceptable violation of a child’s right. The test considers the impact of the practice on society, the impact of the practice on the individual, and the likelihood of adverse impact. Infant circumcision is permissible under this test. We conclude that infant circumcision may be proscribed as violating local norms, even though it does not violate human rights.

Keywords: circumcision, human rights, Islam, Judaism

Male circumcision¹ is removal of part or all of the penile prepuce (foreskin). It may be performed for treatment, for prevention of disease, or for religious or aesthetic reasons. Some nations, cultures, and religions advocate nontherapeutic circumcision, others tolerate it, and still others oppose the practice. Critics of the practice have increasingly used human rights arguments (Darby 2013; Svoboda 2013a). These critics claim that circumcision of minors violates prerogatives of those circumcised, and that the resulting affront to their human dignity demands state protection against the procedure. The concept of human rights is sufficiently embedded in Western thought and in European law that a successful human rights argument might legitimize state limitation of circumcision.

There are at least five ways in which circumcision is said to encroach upon a child’s rights. First, it may impair sexual, urinary, or reproductive function. Second, it causes pain (Rosen 2010). Third, it may violate the autonomy of the circumcised child. Fourth, it may limit the child’s future options (Unger-Sargon 2013). Finally, it may transgress a right to bodily integrity (Darby 2013). The first two of these arguments are based on the principle of nonmaleficence. The latter three arguments are based on the principle of autonomy.

We defend the permissibility of ritual male infant circumcision both ethically and from a human rights perspective. We first refute the argument that circumcision should be banned on the basis of nonmaleficence and then address the autonomy-based arguments. Furthermore, we maintain that circumcision is compatible with a contemporary Western understanding of the concept of human rights.

We offer a three-part test to determine which parental decisions on behalf of their children may be considered to be unacceptable violations of the child’s rights. We conclude that circumcision is permissible under this test. Finally, we conclude that circumcision may be restricted if it violates local norms, even if it does not violate universal human rights. We believe that each nation is entitled to regulate circumcision in accord with its constitutional processes. We only assert that there is no human rights claim requiring legal restriction of ritual infant circumcision.

We presume that a trained provider performs the procedure in a hospital or outpatient setting hygienically and with adequate analgesia. We acknowledge that these conditions are variable in actual practice. We appreciate that the absence of these features may change the ethical calculus, but that is beyond the scope of our discussion.

We understand a human right to be a prerogative whose violation is offensive to the dignity of any person in any society. A human right may be distinguished from two other concepts. First, it is not the same as a desired good. Second, it is distinguishable from local preferences and local rights. We appreciate that a society may wish to adopt rights that other societies do not choose to adopt. That one country forbids corporal punishment or allows home schooling, and justifies these policies as furthering children’s rights, does not necessarily mean that another country with contrary policies is violating human rights. Also, we recognize that rights may entail complementary obligations or restrictions on others in support of those rights. Thus, a state can use the right of its citizens not to have to view an offensive activity as a reason to suppress

Address correspondence to Allan J. Jacobs, 590 7th Street, Brooklyn, NY, 11215-3707, USA. E-mail: allanjoeljacobsgmail.com

1. Unless specifically indicated otherwise, we henceforth use the term “circumcision” to mean ritual infant male circumcision.

an activity that most find offensive. This can create complementary and opposed claims of rights. For example, a putative right to public nudity is opposed by a putative right of bystanders not to be exposed to nude bodies. Finally, many legal rights have little to do with human rights. For example, a law that gives the buyer of a house the right to cancel the contract of sale within 72 hours might be useful to purchasers, but does not seem to be based on a universal human right.

Understanding the difference between human and local legal rights, and appreciating that rights may conflict, leads to the understanding that even if a nation were to decide that protection of its children's autonomy rights precluded some elective surgical procedures until legal maturity, this would not be sufficient to constitute groundwork for a universal right.

THE SAFETY OF CIRCUMCISION

Arguments regarding circumcision based on nonmaleficence or beneficence—that is, on the degree of pain, short-term risk, and long-term risk of circumcision—must begin with an accurate description of the risks and benefits. These have been summarized in a recent review with the acknowledgment that data quantity and quality are limited (American Academy of Pediatrics Task Force on Circumcision [AAP] 2012).² Infants are circumcised shortly after birth as outpatients or during initial inpatient stays. Injection of local anesthetic is safe and highly effective at reducing pain. Local anesthetic cream also is effective, but less so (Bellieni, Alagna, and Buonocore 2013; Brady-Fryer, Wiebe, and Lander 2009). As with any other surgical procedure, it is unlikely that pain can be entirely eliminated—even under general anesthesia (Brady-Fryer et al. 2009). The best empirical studies suggest that minor complications are unusual and that serious complications are rare (AAP 2012; El Bcheraoui et al. 2014). One retrospective review showed that only 10 of almost 20,000 boys required surgical revision, and only one revision was unsuccessful (Ben Chaim et al. 2005). The Royal Dutch Medical Association (KNMG) estimates that there is 1 death in 500,000 infant circumcisions (KNMG 2010), which is consistent with a recent American estimate (El Bcheraoui et al. 2014). While we acknowledge the deficits in the data, the balance of the available medical literature demonstrates that circumcision should be considered safe.

Circumcision beyond infancy is riskier. The operation is more complex, takes more time, carries a higher rate of complications, and costs more. The general anesthesia

routinely used in Western nations after infancy increases the medical risks and costs. Penile complications are more common in circumcisions performed after infancy (Weiss et al. 2010a). A population-based study in the United Kingdom found that 1% of boys younger than 15 years old required reoperation. Half of the reoperations were for bleeding and the remainder were for poor anatomical results (Cathcart et al. 2006). Adult circumcision is also associated with more complications than is infant circumcision. Adverse effects, mostly reversible, were noted in up to 4% of patients in randomized clinical trials, in contrast to the complication rate of 0.19–0.22% in infant circumcision (AAP 2012). A recent population-based study in the United States found a 20-fold risk of potentially serious complications in children 1 to 9 years old, and a 10-fold risk in adults compared to the risk in infants (El Bcheraoui et al. 2014). Adult circumcision also involves a longer healing time (AAP 2012). Finally, there is less protection against sexually transmitted diseases if circumcision is performed after coitarche, and the rate of transmission of sexually transmitted diseases increases if a man has intercourse while healing from his circumcision (AAP 2012).

Adult patients are able to complain of complications themselves, but infants who undergo circumcision must rely on parents and other caregivers to identify complications. Nonetheless, even opponents of circumcision appreciate that the preponderance of medical evidence shows an increased risk of complications when circumcision is performed after infancy (Svoboda and Van Howe 2013b). Also, while an adolescent or adult can provide input regarding the “style” of circumcision performed, there is a paucity of high-quality medical data to indicate that the “style” of circumcision is associated with statistically significant changes in the risk/benefit ratio. Thus, infancy is the safest time to perform circumcision and adult circumcision clearly is not equivalent to infant circumcision. Suggestions that adult circumcision is equivalent to infant circumcision in terms of medical risks are factually inaccurate (El Bcheraoui et al. 2014; KNMG 2010).

Male circumcision has evidence-based health benefits. Three randomized trials in countries with endemic HIV have demonstrated that circumcision decreases heterosexual HIV transmission by >50% (Gray et al. 2012; Siegfried et al. 2009). This has led to endorsement of circumcision by the World Health Organization (WHO) as an “efficacious intervention for HIV prevention” (WHO/UNAIDS 2007). Circumcision reduces the incidence of human papilloma virus infection, of herpes simplex virus type-2 transmission, and of cervical cancer in female contacts (AAP 2012). This is of great importance, especially in developing nations where cervical cancer comprises the greatest source of cancer mortality in women and the cost of preventive cytological screening and HPV vaccination are prohibitive (Dikshit et al. 2012). The absolute magnitude of the HIV protective effect is lower in Western nations with a lower prevalence of HIV than in Sub-Saharan Africa (KNMG 2010).

2. In accordance with current epidemiological standards, we assign reliability to the following types of studies in decreasing order: randomized clinical trials; population-based studies; other comparative trials such as case-control studies; large uncontrolled series; small series and single case reports; and finally, unsupported expert opinion. Scientific publications demand characterization of evidence. As in many areas of medical research, there are many more unreliable trials in print than trials with high reliability.

While many of the studies regarding the health benefits of circumcision were performed in developing countries and after adult male circumcision, American policy statements have also affirmed these health benefits (AAP 2012; Lyons 2013). This is largely due to the fact that decision modeling accounting for the HIV prevalence and transmission patterns in the United States demonstrated circumcision to be cost-effective for decreasing HIV transmission (Sansom et al. 2010).

Circumcision likely has little negative effect on sexual health and functioning. Randomized trials of circumcision performed on healthy adults found that circumcision did not reduce sexual satisfaction (Weiss et al. 2010b). The largest case-control study of men who had undergone infant circumcision found that circumcised men had greater sexual satisfaction and a lower rate of erectile dysfunction than a cohort of uncircumcised men (Laumann, Masi, and Zuckerman 1997). Two large randomized controlled trials involving adult male circumcision in Africa demonstrated less pain with intercourse and greater penile sensitivity after circumcision (Kigozi et al. 2008; Krieger, Mehta, and Bailey 2008). While there are studies suggesting impaired sexual function as a result of circumcision, it is important to note that many of these are small uncontrolled series, and thus the data are not of high quality (e.g., Frisch, Lindholm, and Grønbaek 2011; Kim and Pang 2007; Sorrells et al. 2007). It is unlikely that prospective trials addressing the impact of infant circumcision on adult sexual function as a result of circumcision will ever be performed. At present, the majority of the high-quality evidence finds limited negative impact on sexual experience or function.

Both men and women from religious or cultural groups that practice circumcision are likely to find the appearance of the circumcised penis more attractive, leading the women of these groups to prefer circumcised men as sexual partners (Appiah 2006). Finally, ritual circumcision initiates boys into a community that may provide emotional and spiritual advantages throughout life, and possibly beyond.

The American Academy of Pediatrics (AAP) considers the health benefits of infant circumcision to outweigh the risks (AAP 2012). Noting that there may be factors other than health-related issues involved in infant circumcision decisions, the AAP recommended that elective infant circumcision be a matter of parental choice (AAP 2012). Some have criticized both the empirical methodology of the AAP report and its alleged cultural bias (e.g., Frisch et al. 2013). However, the report presents a thorough analysis of all available good-quality evidence prepared by eminent, impartial authors in a nation with cultural tolerance of both the circumcised and uncircumcised penis.

Since the totality of current medical knowledge reasonably supports the conclusion that the health benefits may outweigh the medical risks, the nonmaleficence arguments against circumcision are insufficiently strong to justify abolishing circumcision. This leaves the arguments based on autonomy.

CIRCUMCISION AND AUTONOMY

Some critics of circumcision use autonomy-based arguments to assert that circumcision violates fundamental human rights (LeBourdais 1995; Mason 2001). Believing that only a consenting adult should undergo elective permanent alteration of the body, they see circumcision either as foreclosing a child's future options (Darby 2013) or as an unconsented assault on bodily integrity (Svoboda 2013a). If the reasonable possibility of health benefits to minors does not warrant infant circumcision then, a fortiori, neither do intangible religious benefits. This being the case, the choice of ritual circumcision must be made only for oneself, and only after attaining the age of legal consent.³ This is at 18 years of age in most Western jurisdictions, though others have proposed an earlier age for circumcision consent (Dyer 2013).

There are several criticisms of these arguments. These are listed here and expanded in our subsequent discussion. First, fundamental rights should be generally or universally appreciated (Sen 2005). A proposed right is, ipso facto, not universally appreciated if its status as a right is controversial. Second, rights should address issues of special importance. A procedure whose consequences usually are minimal does not meet this threshold condition (Sen 2005). Third, assuming, for the sake of argument, a rights violation, there still may be good reasons to decline to apply sanctions to de minimis rights violations. Fourth, whatever putative rights are invoked to criticize infant nontherapeutic circumcision may be counterbalanced by other putative rights that justify parents' decisions to circumcise their boys. Analysis of these points requires application of facts regarding risks and benefits. These risks and benefits include both factors that are health related and others that are not. Autonomy issues, therefore, are not independent of the beneficence issues.

Fifth, putative children's rights may conflict with other rights intended to protect the child. These might include children's right to practice their religion, or to obtain the health benefits of circumcision. Sixth, the international conventions invoked by critics to identify rights that would bar circumcision may not, in fact, do so.

Finally, use of rights rhetoric often is applied selectively to circumcision, ignoring the various other elective procedures performed on minors that are at least as invasive and permanent as circumcision (such as hemangioma or mole removal, polydactyly correction, sex-assignment operations, labioplasty for large labia majora causing pain, and orthodontia). When rights arguments are selectively applied in this manner, they are likely to reflect local cultural norms rather than universal principles.

Two recent articles that exhibit some of these errors are considered in the following. But in order to further discuss the putative rights to an open future and to bodily

3. A related argument is that religious affiliation is an adult choice, so that children are not part of a religious community.

integrity, it is first necessary to define what is meant by the term “human rights.”

THE SCOPE OF HUMAN RIGHTS

Human rights have been defined as political entitlements that all people ought to enjoy by virtue of their humanity. Mann and colleagues, for example, characterize them as

rights of individuals; these rights inhere in individuals because they are human; they apply to all people around the world; and they principally involve the relationship between the state and the individual. (Mann et al. 1994)

There are certain activities such as genocide, murder, rape, or slavery that are so universally loathed, and whose effect on their victims is so deleterious, that there is general agreement that they should not be tolerated. States that engage in these practices undoubtedly violate human rights to the extent that human rights is a viable concept. Even if conducted within a sovereign nation by its legitimate government, these activities are punishable as violations of treaty or of customary international law.

What areas of human or government activity should human rights doctrine protect or guarantee? And what are the appropriate consequences of violating human rights?

There is disagreement over whether human rights are restricted to protection against infringement on liberties (negative rights) (Neier 2012) or whether government has a further obligation to provide material conditions for a fulfilled life (positive rights) (Sen 2005). Some political theorists, such as Joshua Cohen, believe that the subject matter of human rights should be limited to those areas in which “different traditions can find resources for fresh elaboration that support a conception of justice and human rights that seems independently plausible as a common standard of achievement with global reach” (Cohen 2004). The Universal Declaration of Human Rights (UDHR 1948), International Covenant on Civil and Political Rights (ICCPR 1966), and Convention on the Rights of the Child (CRC 1990), however, enumerate extensive lists of putative positive and negative rights. Not only do most nations fall short of offering their citizens these rights, but many nations that ratified these documents appear to exert minimal effort to observe their terms.

It seems, then, that determining the scope of rights applicable to all is fraught with difficulty. We believe that such rights ought to be recognized only in important and unambiguous situations.

VIOLATIONS OF HUMAN RIGHTS

It is uncontroversial that rights protect people from their governments. What is less clear is the extent to which governments may restrain private third parties from infringing on individual rights, private citizens may seek legal redress from other private parties for infringing on their

rights, or individuals may compel government to take measures to protect them against infringements. Furthermore, interventions can range from criticism to economic sanctions or military action. Thus, characterizing a kind of activity as violating a human right raises questions regarding the appropriate remedy, the priority of enforcement, and the desirability or necessity of international action (Cohen 2004). Although Cohen (2004) would accept international action in extreme cases, Sen (Sen 2004) suggested that human rights are aspirational but do not necessarily have legal force.

In 2012, a German court held that ritual infant circumcision was a criminal violation of boys’ human rights (Landgericht Köln 2012).⁴ The court held that circumcision violated a child’s fundamental right to bodily integrity. The court further held that altering a child’s anatomy absent medical necessity required the consent of an individual with legal capacity, and that not even a proxy such as a parent could consent to elective circumcision. This holding has been reversed legislatively, although controversy continues (Merkel and Putzke 2013).⁵ The ethical views of the German court had been articulately expressed in a 2010 position paper of the Royal Dutch Medical Association (KNMG 2010). The KNMG did not, however, call for criminalization of circumcision.

Circumcision, however, is a religious requirement for Jews (Glass 1999) and Muslims (Rizvi et al. 1999). Absolute deference to religious and cultural practices injurious to health is ethically inappropriate. However, given the low risk and possible health benefits detailed in the preceding, the “powerful cultural value” that circumcision has for some people should be honored (Benatar and Benatar 2003). The magnitude of harm that circumcision causes falls below the threshold of importance necessary to invoke a right based on nonmaleficence. But we must consider the two putative autonomy-based rights that opponents of circumcision frequently invoke—the right to an open future and the right to bodily integrity. After discussing in the following how neither of these rises to the level of a human right, we apply the previously published

4. This case held that a physician who performed a ritual infant circumcision committed the crime of causing bodily harm to another person by using a dangerous instrument. The court held that neither parental consent nor “social adequacy” (religious or cultural sanction) justified circumcision. However, the physician was acquitted because he lacked *mens rea* (degree of intent required for conviction). This is because the status of the law had been unclear prior to this case, and the defendant had reasonably believed he was not committing a crime. In the future, the court’s decision would presumably have applied, as all physicians subject to this court’s jurisdiction now have constructive warning that ritual circumcision is illegal (Dyer 2013). The case was decided by a regional appellate court, and did not definitively settle German law on this matter even before its decision was overturned statutorily.

5. Some ethicists also have advocated criminalizing nontherapeutic infant circumcision (Boyle et al. 2000; Merkel and Putzke 2013).

Jacobs test to determine whether a parental choice on behalf of a child violates a right (Jacobs 2013).

CIRCUMCISION AND THE RIGHT TO AN OPEN FUTURE

Darby argues that there is a right to an "open future" and that this right requires that the decision to circumcise be deferred until adulthood (Darby 2013). Since the person can be circumcised as an adult but a foreskin cannot be restored after circumcision,⁶ infant circumcision, Darby argues, violates the right to an open future. Darby goes on to state, "No boy with normal (healthy) genitals has ever died because his parents neglected to circumcise him, though many have died or suffered crippling injuries as a direct consequence of circumcision."

However, as detailed in the preceding, the medical risks associated with circumcision are low, and deferral of circumcision to adulthood leads to increased circumcision morbidity and mortality. Therefore, circumcision should be viewed in light of the potential preventive medical benefits, especially as a tool in the armamentarium against the HIV epidemic. While the potential benefits of circumcision are not as great as those offered by many immunizations, the risks of circumcision are much less than those of smoking, to which Darby compares circumcision in terms of "long-term harm to the body and reduction of] future functionality" (Darby 2013; Morris, Bailis, and Wiswell, 2014). As Beauchamp and Childress (2012) discuss, the four bioethical principles are interrelated, and the discussion of autonomy must be informed by the discussion of beneficence. It goes without saying that an uncircumcised adult does not have a truly open future with the option to choose the lower risk, higher benefit option of infant circumcision. Thus, the open future argument cuts both ways. If a reasonable person could conclude that circumcision is beneficial, the decision to circumcise therefore falls within the prerogative of parental rights (Benatar and Benatar 2003; Mazor 2013).

Furthermore, a right to a truly open future is not possible. Whatever choices parents make, or allow their children to make, preclude other alternatives. Certainly, placing a child for years in a closed, focused environment such as a yeshiva or a tennis camp forecloses more options than does circumcision. Decisions regarding education, religion (or its absence), guidance of a child with regard to values, hobbies, inculcation of food tastes, and teaching (or not teaching) a child to hunt, play sports, or make home repairs, while theoretically reversible, are in fact likely to limit a child's future in ways that are significant to most people. The inability to have a foreskin is real, but trivial when compared with the options foreclosed by many inevitable life choices that parents must make for their children. Even if a child later rejects the ideas or attitudes he has been taught, the impact of education or indoctrination

6. In fact, surgical restoration of a foreskin is difficult, but usually possible.

is great. The adult who departs from his parents' way of life may be viewed as rejecting his upbringing rather than making an uninfluenced or free choice. As noted, there seems to be little or no effect of circumcision on sexuality. Circumcision seems to be no more limiting than other esthetic procedures that children often and uncontroversially undergo in economically developed nations.

We also do not believe that circumcision fails the substituted judgment test, as claimed by some critics (e.g., Darby 2013; Ungar-Sargon 2013). Although most uncircumcised adults do not choose circumcision, neither do most circumcised adults rue the fact that they had the procedure. Furthermore, a child who belongs to a religion would be likely to want to comply with an important religious requirement. The vast majority of Jews and Muslims probably do not rue their circumcision, and would have been unhappy had this procedure been delayed until the age of consent, when it would have been more inconvenient, painful, and dangerous. Thus, it is reasonable to presume the constructive consent of a Jewish or Muslim infant to circumcision. Even if an individual child does not practice the religion as an adult, the strong presumption, based on historical observation, is that most adult Jews and Muslims either practice their religion or identify with their respective religious communities (Mazor 2013). Thus, it is reasonable to conclude that parents from a religious community that practices circumcision are exercising substituted judgment on behalf of their children when having the procedure performed in infancy.

The decision to circumcise one's infant boy contrasts starkly with some other religious requirements that might be applied to children (e.g., religion-based denial of a life-saving blood transfusion). Here, the parental choice causes great harm—one that few reasonable persons would choose for their children (see discussion below of the Jacobs test). This is in contrast to circumcision, which carries low health risks, conveys medical benefits, satisfies religious requirements, and may confer social advantages, all of which weigh in favor of the children's best interest.

CIRCUMCISION AND BODILY INTEGRITY

Citing various international conventions such as the CRC, Article 24, § 3, which calls upon states to "abolish traditional practices prejudicial to the health of children," Svoboda (2013a) argues that circumcision, in the absence of pressing medical reasons, violates the human and categorical right to bodily integrity. Furthermore, UDHR proclaims a right to "security of person" (Article 3) and to freedom from "degrading treatment" (Article 5).

It requires convoluted extrapolation to derive a prohibition of circumcision of minors from these passages. No United Nations convention explicitly indicates that infant circumcision is impermissible. In cultures that practice circumcision the procedure contributes to the dignity of the male child; it is far from degrading. "Security of person" probably was not intended by the drafters to include physical alteration that most people in a culture see as a positive

feature. Indeed, it is doubtful that the framers and signatories of the UDHR and the CRC anticipated that the provisions of these conventions would apply to circumcision. These documents have been adopted by Israel and most Islamic nations. These nations certainly would not have endorsed conventions that forbid an important practice of their state religions.

From a philosophical standpoint, Dekker and colleagues find only a *prima facie* right to bodily integrity, meaning that this right must be balanced against others (Dekker, Hoffer, and Wils 2005). Such a *prima facie* right does not necessarily preclude infant circumcision. Rather, describing a right as *prima facie* right calls for weighing the magnitude of any infraction against the strength of conflicting claims of other rights. Consider two hypothetical religious rituals. One religion amputates the left hand of its children; a second religion merely pierces the earlobes of its female children. The amputation seems more amenable to government proscription, as it inflicts major loss of function upon the child. The piercing, though, is *de minimis*. It is not clear why reasonable people would deploy government resources to suppress this piercing in a minority community that regards it as important to its expression and cohesion. Infant circumcision resembles the piercing more than the amputation; negative effects are unusual. Even if it facially violates a *prima facie* human right, the adverse impact of its suppression on parental rights and on freedom of religion (also a human right) far outweighs any harm caused by circumcision.

Mazor (2013) discusses this right to bodily integrity, using Dworkin's conception of rights-as-trumps. First, there is no absolute right to bodily integrity. Even amputation and organ removal are considered ethical when medically necessary. Second, the right to bodily integrity is a right insofar as it is a prohibition of one's body being used for another person's means (e.g., rape). Thus, in the case of circumcision, Mazor argues, bodily integrity is not a right but rather simply an interest that must be balanced against other interests such as religious requirements, medical risks, and potential benefits. It is important to note that some critics of this argument rely on exaggerated claims of medical risks and of impact on life quality that the consensus of medical opinion finds overstated (Ungar-Sargon 2013). Were these claims correct, they might tilt the balance of interests against permitting circumcision.

SUPPORT FOR CIRCUMCISION IN INTERNATIONAL CONVENTIONS

International conventions also promulgate rights that can be used to justify circumcision. Provisions such as UDHR Articles 12 and 16(3) and the UNCRC support the right of parents to rear a child in their religion (Articles 5 and 17). The UDHR declares a right to "to manifest [one's] religion or belief in teaching, *practice*, worship and observance" (Article 18), and the CRC affirms the right of the child to

"profess and *practice* his or her own religion" (Article 30) (emphasis supplied in both quotations). Failure to allow circumcision also conflicts with the right to preventive health care guaranteed in CRC (Article 24(f)). When rights are in conflict, the physical, emotional, spiritual, cultural, and legal well-being that the rights are intended to promote must be balanced, in order to assure an equitable result. The best interests of the child are paramount (CRC Article 3). There is a rebuttable presumption (CRC Article 5) that parents are the parties best situated to determine their children's best interests.

Infants do not engage in religious rites, nor are they conscious of religious identification. However, the notion that religion is no more than an individual adult choice does not conform to the way in which religion is regarded in much of the world. In many nations, children are regarded as belonging to the religion of their parents when the parents share a religious identification. This presumption is embodied in CRC when it speaks of children practicing their religion. Children are likely to continue to practice the religion of their parents as adults. A member of a religion in which childhood circumcision is normative presumably would desire circumcision as a child. In permitting circumcisions, the state is considering the individual interests of the "possible future versions of the person himself" (Mazor 2013).

JACOBS TEST

Thus, neither an open future nor an absolute guarantee of bodily integrity rises to the level of a human right, though each is ethically important as a consequence of the principle of autonomy. Situations analogous to the circumcision question would be subject to consistent and satisfactory analysis if there were a useful heuristic available. To this effect, we propose adoption of a three-part test to determine whether a parental choice for a child, based on a minority religious or cultural practice, may be a rights violation. This test modifies the test Jacobs recently proposed for practices that might ethically trigger government interference with parental religious or cultural decisions for children (Jacobs 2013). The proposed modified test is as follows:

First, the practice in question must not significantly burden either society or its members outside the minority group. Second, the practice must not (a) create burdens that the large majority of reasonable persons in that society, but outside the minority group in question, would not accept for themselves or their children (such as, in the United States, child marriage or slavery); or (b) carry a substantial chance of death or of major disruption of a physiological function. Third, the burden on society or individuals must be actual and substantial, and not hypothetical or unlikely.

It is evident that infant circumcision has little effect on the general society or its members. It also is safe and is unlikely to impact adversely on quality of life, as

extensively discussed in the preceding. Thus, circumcision as a religious or cultural practice fulfills the Jacobs test as a parental prerogative and does not constitute a human rights violation.

LOCAL BELIEFS AND CIRCUMCISION

While circumcision does not violate human rights, it may be proscribed as a matter of local norms, beliefs, and culture. States legislate and act to promote the health, safety, welfare, and morals of the nation. American jurisprudence terms this power the state's "police power" (*Nebbia v. New York* 1934).⁷ This power is not based on rights, but rather limits individual rights to promote general welfare. Wielding this power, American states may, for example, compel quarantine (Mindes 1996), immunization (*Jacobson v. Massachusetts* 1905), and indefinite civil commitment of pedophiles (*Kansas v. Hendricks* 1997).

Classes of people deemed unable to make decisions for themselves, such as children and the mentally ill, are especially needful of protection. Such people generally have guardians to support their interests, but the state ultimately supervises the guardians. The legal doctrine that underlies this is called *parens patriae*. It places the state as the ultimate arbiter of and guardian of the child's best interest (*Prince v. Massachusetts* 1944). The state may constrain parents' actions or even terminate parental rights if the child's best interest requires this. Since these powers (and analogous government powers in other nations) are local, any moral principles that underlie actions taken under these powers are local, and if they are universal it is coincidental.

Thus, while circumcision does not violate a fundamental human right, it may still be proscribed locally on the basis of local principles, beliefs, and attitudes that regard circumcision as harmful to welfare or morals. Under this rationale, governments may ban practices that a majority of its population wishes banned, subject to constitutional restraints, whether or not the practices cause overt harm. Examples of such local legislation include laws punishing sale of dog meat for human consumption and banning corporal punishment, *lèse-majesté*, and public nudity. Leon Kass has argued that such "repugnance is the emotional expression of deep wisdom" (Kass 1997). It has been called the "yuck factor." Such reasoning was eloquently expressed by Judge Richard Posner, who held that "a state is permitted, within reason, to express disgust at what people do" (*Cavel International Inc. v. Madigan* 2007).⁸ Notably, this opinion upheld the law at issue not on the basis of a universal principal, but on the basis of the right of

sovereign entities to express their own values through legislation. Under some circumstances, a nation could ban circumcision on this basis.

However, it is important for governments to ensure that laws based on such local principles, beliefs, and attitudes are not unethically discriminatory. For example, if a state bans circumcision due to a concern for pain or danger, then the same state should protect all children from all unnecessary procedures and practices that are equally uncomfortable and unsafe.

In fact, some critics focus disproportionately on circumcision. Children are encouraged to participate in contact sports that carry greater risk of disability and death than circumcision. Ice hockey, for example, caused more than 18,000 injuries to American minors, including 630 traumatic brain injuries in children under 12 years old, over a recent 2-year period (Hostetler, Xiang, and Smith 2004). In addition to the United States and Canada, most northern European countries have hockey programs for children. Arguably, benefits of sport that do not apply to circumcision provide justification for their risks and dangers. These benefits, which include physical conditioning and development of teamwork skills, probably would accrue from sports less dangerous than ice hockey or American football—soccer or basketball, for example. In light of the 3-in-a-million risk of potentially serious injuries from infant circumcision (El Bcheraoui et al. 2014) and the unsubstantiated long-term risks, it seems disproportionate to focus on circumcision while ignoring opportunities to mitigate the risks of contact sports. This choice of focus may be related to cultural views regarding these two procedures.

Similarly, a number of Western states also permit physicians to alter minors' bodies for aesthetic reasons. If the state prevents religiously motivated procedures until adulthood because of a child's rights to bodily integrity and to protection from pain or peril, then this right should bar aesthetic surgery and perhaps elective medical procedures that can safely be deferred to the age of consent. Administration of human growth hormone to short boys, removal of extra fingers or toes, cosmetic orthodontia⁹ (especially involving dental extraction), and piercing of female infants' ears are among the many interventions that can wait until the age of consent if circumcision must be so deferred. When governments tolerate mainstream parents subjecting children to painful or dangerous practices, a rights standard is established that must be applied to comparable decisions by parents who belong to religious and cultural minorities. This is true whether the restriction invokes universal or local principles.

CONCLUSION

The concept of human rights is imprecise. It may refer to a few fundamental protections guaranteed by international

7. "Police power" is a legal term of art, and does not refer to the employment of government law enforcement agents.

8. This opinion upheld a state law that prohibited the slaughter of horses for export as meat to European countries in which consumption of horse meat is acceptable.

9. See Lau and Wong (2006) for a description of the complications of orthodontia.

law and a broad consensus of humanity. It may denote the body of guarantees and entitlements of all persons living in a liberal society. Or it may describe the set of human aspirations. Under none of these definitions is circumcision of minors unacceptable. This is not to say that parents have a categorical right to circumcise their children. Individual nations, for reasons related to their own concepts of rights, morality, or propriety, might proscribe the practice.¹⁰

Male infant circumcision has a low complication rate, and does not disadvantage recipients who undergo a successful procedure. Indeed, it is likely that the health benefits exceed the disadvantages. Therefore, arguments based on nonmaleficence fail. So do arguments based on violation of more abstract putative rights related to autonomy of the child—those of open future and corporal intactness. Many parental interventions close doors for their children, and all people reaching the age of 18 have markedly fewer open avenues than were theoretically available to them at birth. As for bodily integrity, circumcision is no greater an insult than many other widely accepted procedures. Even if it comprised a prima facie violation of a right to bodily integrity, other benefits (medical and otherwise) and other conflicting rights more than counterbalance the violation.

The intense campaign against circumcision in some quarters is not warranted by the magnitude of the effects of the procedure. Selective use of human rights arguments in an effort to abolish the practice seems misplaced. Male circumcision is compatible with a Western understanding of human rights.

DISCLAIMER

Opinions expressed in this article are the authors' own, and do not necessarily reflect the views or positions of any organization with which the authors are affiliated. ■

REFERENCES

- American Academy of Pediatrics Task Force on Circumcision. 2012. Male circumcision. *Pediatrics* 130: e756–e785. Available at: <http://dx.doi.org/10.1542/peds.2012-1990>
- Appiah, K. A. 2006. The primacy of practice In *Cosmopolitanism: Ethics in a world of strangers*, 69–86. New York, NY: Norton.
- Bellieni, C. V., M. G. Alagna, and G. Buonocore. 2013. Analgesia for infants' circumcision. *Italian Journal of Pediatrics* 39(1): 38–44. Available at: <http://dx.doi.org/10.1186/1824-7288-39-38>
- Ben Chaim, J., P. M. Livne, J. Binyamini, et al. 2005. Complications of circumcision in Israel: A one year multicenter survey. *Israel Medical Association Journal* 7(6): 368–370.
- Benatar, M., and D. Benatar. 2003. Between prophylaxis and child abuse: The ethics of neonatal male circumcision. *American journal of Bioethics* 3(2): 35–48. Available at: <http://dx.doi.org/10.1162/152651603766436216>
- Beauchamp, T., and J. Childress. 2012. *Principles of biomedical ethics*. 7th ed. London, UK: Oxford University Press.
- Boyle, G. J., J. S. Svoboda, C. P. Price, and J. N. Turner. 2000. Circumcision of healthy boys: Criminal assault? *Journal of Law and Medicine* 7(3): 301–310.
- Brady-Fryer, B., N. Wiebe, and J. A. Lander. 2009. Pain relief for neonatal circumcision. *Cochrane Database of Systematic Reviews* 4(1).
- Cathcart, P. M., J. Nuttall, J. M. van der Meulen, et al. 2006. Trends in paediatric circumcision and its complications in England between 1997 and 2003. *British Journal of Surgery* 93: 885–890. Available at: <http://dx.doi.org/10.1002/bjs.5369>
- Cavel International, Inc. v. Madigan. 2007. 500 F3d 551 (7th Cir., 2007).
- Cohen, J. 2004. Minimalism about human rights: The most we can hope for? *Journal of Political Philosophy* 12(2): 190–213. Available at: <http://dx.doi.org/10.1111/j.1467-9760.2004.00197.x>
- Convention on the Rights of the Child. 1990. Available at: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (accessed December 17, 2013).
- Darby, R. J. L. 2013. The child's right to an open future: Is the principle applicable to non-therapeutic circumcision? *Journal of Medical Ethics* 39: 463–468. Available at: <http://dx.doi.org/10.1136/medethics-2012-101182>
- Dekker, W., C. Hoffer, and J.-P. Wils. 2005. Bodily integrity and male and female circumcision. *Medicine, Health Care and Philosophy* 8: 179–191. Available at: <http://dx.doi.org/10.1007/s11019-004-3530-z>
- Dikshit, R., P. C. Gupta, C. Ramasundarahettige, et al. 2012. Cancer mortality in India: A nationally representative survey. *Lancet* 379: 1807–1816. Available at: [http://dx.doi.org/10.1016/S0140-6736\(12\)60358-4](http://dx.doi.org/10.1016/S0140-6736(12)60358-4)
- Dyer, K. 2013. Lessons from Germany: Should UK legislation circumnavigate or circumvent the issue of male circumcision? Judgment of the Landgericht Cologne May 7th 2012,1 and its aftermath. *Denning Law Journal* 25: 225–239.
- El Bcheraoui, C., X. Zhang, C. S. Cooper, et al. 2014. Rates of adverse events associated with male circumcision in US medical settings, 2001 to 2010. *JAMA Pediatrics* 168(7): 625–634.
- Frisch, M., M. Lindholm, and M. Grønbaek. 2011. Male circumcision and sexual function in men and women: A survey-based, cross-sectional study in Denmark. *International Journal of Epidemiology* 40(5): 1367–1381. Available at: <http://dx.doi.org/10.1093/ije/dyr104>
- 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>
- Glass, J. M. 1999. Religious circumcision: A Jewish view. *BJU International* 83(1): 17–21.
- Gray, R., G. Kigozi, X. Kong, et al. 2012. The effectiveness of male circumcision for HIV prevention and effects on risk behaviors in a

10. Of course, if they do so, they are outlawing a central practice of Judaism and Islam, making it difficult or impossible for practitioners of those religions to live there.

- posttrial follow-up study. *AIDS* 26(5): 609–615. Available at: <http://dx.doi.org/10.1097/QAD.0b013e3283504a3f>
- Hostetler, S. G., H. Xiang, and G. A. Smith. 2004. Characteristics of ice hockey-related injuries treated in US emergency departments, 2001–2002. *Pediatrics* 114(6): 661–666. Available at: <http://dx.doi.org/10.1542/peds.2004-1565>
- International Covenant on Civil and Political Rights. 1966. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (accessed January 7, 2014).
- Jacobs, A. J. 2013. The ethics of circumcision of male infants. *Israel Medical Association Journal* 15(1): 60–65.
- Jacobson v. Massachusetts. 1905. 197 U.S. 11.
- Kansas v. Hendricks. 1997. 521 U.S. 346.
- Kass, L. R. 1997. The wisdom of repugnance. *New Republic*, June 2, 17–26.
- Kigozi, G., S. Watya, C. B. Polis, et al. 2008. The effect of male circumcision on sexual satisfaction and function, results from a randomized trial of male circumcision for human immunodeficiency virus prevention, Rakai, Uganda. *BJU International* 101(1): 65–70. Available at: <http://dx.doi.org/10.1111/j.1464-410X.2007.07369.x>
- Kim, D., and M. G. Pang. 2007. The effect of male circumcision on sexuality. *BJU International* 99(3): 619–622. Available at: <http://dx.doi.org/10.1111/j.1464-410X.2006.06646.x>
- KNMG (Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst; Royal Dutch Medical Association). 2010. Non-therapeutic circumcision of male minors. Available at: <http://knmg.artsenet.nl/publicatie/77942/nontherapeutic-circumcision-of-male-minors-2010.htm>
- Krieger, J. N., S. D. Mehta, R. C. Bailey, et al. 2008. Adult male circumcision: Effects on sexual function and sexual satisfaction in Kisumu, Kenya. *Journal of Sexual Medicine* 5(11): 2610–2622. Available at: <http://dx.doi.org/10.1111/j.1743-6109.2008.00979.x>
- Landgericht Köln. 2012. Judgment 7 May 2012—Docket no. 151 Ns 169/11. Available at: <https://www.dur.ac.uk/resources/ilm/CircumcisionJudgmentLGCologne7May20121.pdf>
- Lau, P. Y. W., and R. W. K. Wong. 2006. Risks and complications in orthodontic treatment. *Hong Kong Dental Journal* 3(1): 15–22.
- Laumann, E. O., C. M. Masi, and E. W. Zuckerman. 1997. Circumcision in the United States: Prevalence, prophylactic effects and sexual practice. *Journal of the American Medical Association* 277(13): 1052–1057. Available at: <http://dx.doi.org/10.1001/jama.1997.03540370042034>
- LeBourdais, E. 1995. Circumcision no longer a "routine" surgical procedure. *Canadian Medical Association Journal* 152(11): 1873–1876.
- Lyons, B. 2013. Male infant circumcision as a 'HIV vaccine.' *Public Health Ethics* 6(1): 90–103. Available at: <http://dx.doi.org/10.1093/phe/phs039>
- Mann, J. M., L. Gostin, S. Gruskin, et al. 1994. Health and human rights. *Health and Human Rights* 1(1): 6–23. Available at: <http://dx.doi.org/10.2307/4065260>
- Mason, C. 2001. Exorcising excision: Medico-legal issues arising from male and female genital surgery in Australia. *Journal of Law and Medicine* 9(1): 58–67.
- Mazor, J. 2013. The child's interests and the case for the permissibility of male infant circumcision. *Journal of Medical Ethics* 39(7): 421–428. Available at: <http://dx.doi.org/10.1136/medethics-2013-101318>
- 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>
- Mindes, P. 1996. Tuberculosis quarantine: A review of legal issues in Ohio and other states. *Journal of Law and Health* 10: 403–428.
- Morris, B. J, S. A. Bailis, and T. E. Wiswell. 2014. Circumcision rates in the United States: Rising or falling? What effect might the new affirmative pediatric policy statement have? *Mayo Clinic Proceedings* 89(5): 677–688. Available at: <http://dx.doi.org/10.1016/j.mayocp.2014.01.001>
- Nebbia v. New York. 1934. 291 U.S. 502: 525–533.
- Neier, A. 2012. Putting natural law principles into practice. In *The international human rights movement: A history*, 26–56, Princeton, NJ: Princeton University Press.
- Prince v. Massachusetts. 1944. 321 U.S. 158: 166.
- Rawls, J. 1971. *A theory of justice*. Cambridge, MA: Belknap Press.
- Rizvi, S. A. H., S. A. A. Naqvi, M. Hussain, and A. S. Hasan. 1999. Religious circumcision: A Muslim view. *BJU International* 83 (suppl. 1): 13–16.
- Rosen, M. 2010. Anesthesia for ritual circumcision in neonates. *Pediatric Anesthesia* 20(12): 1124–1127. Available at: <http://dx.doi.org/10.1111/j.1460-9592.2010.03445.x>
- Sansom, S. L., V. S. Prabhu, A. B. Hutchinson, et al. 2010. Cost-effectiveness of newborn circumcision in reducing lifetime HIV risk among U.S. males. *PLoS ONE* 5(1): e8723. Available at: <http://dx.doi.org/10.1371/journal.pone.0008723>
- Sen, A. 2004. Elements of a theory of human rights. *Philosophy and Public Affairs* 32(4): 315–356. Available at: <http://dx.doi.org/10.1111/j.1088-4963.2004.00017.x>
- Sen, A. 2005. Human rights and capabilities. *Journal of Human Development* 6(2): 151–166. Available at: <http://dx.doi.org/10.1080/14649880500120491>
- Siegfried, N., M. Muller, J. J. Deeks, and J. Volmink. 2009. Male circumcision for prevention of heterosexual acquisition of HIV in men. *Cochrane Database of Systematic Reviews* 2009(2): article CD003362. doi:10.1002/14651858.CD003362.pub2.
- Sorrells, M. L., J. L. Snyder, M. D. Reiss, et al. 2007. Fine-touch pressure thresholds in the adult penis. *BJU International* 99(4): 864–869. Available at: <http://dx.doi.org/10.1111/j.1464-410X.2006.06685.x>
- Svoboda, J. S. 2013a. Circumcision of male infants as a human rights violation. *Journal of Medical Ethics* 39(7): 169–474.
- Svoboda, J. S., and R. S. Van Howe. 2013b. Out of step: Fatal flaws in the latest AAP policy report on neonatal circumcision. *Journal of Medical Ethics* 39(7): 434–441. Available at: <http://dx.doi.org/10.1136/medethics-2013-101346>
- Ungar-Sargon, E. 2013. On the impermissibility of infant male circumcision: A response to Mazor. *Journal of Medical Ethics*. Published online first, September 6. Available at: <http://dx.doi.org/10.1136/medethics-2013-101598>

Universal Declaration of Human Rights. 1948. Available at: <http://www.un.org/en/documents/udhr/> (accessed December 17, 2013).

World Health Organization/UNAIDS. 2007. New data on male circumcision and HIV prevention: Policy and programme implications: conclusions and recommendations. Available at: http://whqlibdoc.who.int/publications/2007/9789241595988_eng.pdf (accessed December 25, 2013).

Weiss, H. A., N. Larke, D. Halperin, and I. Schenker. 2010a. Complications of circumcision in male neonates, infants and children: A systematic review. *BMC Urology* 10: 2. doi:10.1186/1471-2490-10-2.

Weiss, H. A., K. E. Dickson, K. Agot, and C. A. Hankins. 2010b. Male circumcision for HIV prevention: Current research and programmatic issues. *AIDS* 24: S61–S69. Available at: <http://dx.doi.org/10.1097/01.aids.0000390708.66136.f4>