

# **The Child's Interests and the Case for the Permissibility of Male Infant Circumcision**

Joseph Mazor

## **Abstract**

Circumcision of a male child was recently ruled illegal by a court in Germany on the grounds that it violates the child's rights to bodily integrity and self-determination. This paper begins by challenging the applicability of these rights to the circumcision debate. It argues that, rather than a sweeping appeal to rights, a moral analysis of the practice of circumcision will require a careful examination of the interests of the child. I consider three of these interests in some detail. The first is the interest in avoiding a moderate decrease in expected future sexual pleasure. I argue that even if such a decrease were to occur, it is not wholly unreasonable to think that this might actually be a good thing for child. Second, I consider the interest in self-determination. I argue that this interest is not as strong as it might appear because the adult's circumcision decision is subject to a variety of biases and a significant lack of information. Finally, I consider the child's interest in avoiding the future costs of adult circumcision. I argue that this interest becomes much stronger in the religious case because the child is quite likely to choose to become circumcised as an adult. The likelihood of the child choosing circumcision in the religious case also reduces the extent to which infant circumcision violates his interest in self-determination. I conclude that male infant circumcision falls within the prerogative of parental decision-making in the secular case and even more clearly so in the religious case. Finally, I distinguish male circumcision from female genital cutting in several important respects and argue that we can coherently hold that male circumcision is permissible without also endorsing all forms of female genital cutting.

## **I. Introduction**

The debate over male circumcision has recently achieved renewed prominence following a German court's ruling that the practice is illegal. In its ruling, the court appealed to the child's rights to bodily integrity and to self-determination.<sup>i</sup> Appeals to these rights are also common in the advice parents receive on circumcision in many countries, especially in Europe.<sup>ii</sup> I argue in this paper that these appeals are misguided.

Instead of sweeping appeals to rights, I claim that a proper analysis of the moral permissibility of circumcision requires a careful weighing of the *interests* of the child.<sup>1</sup> In addition to considerations regarding pain and the medical costs and benefits associated with circumcision, I consider two interests relevant to this analysis that have not received sufficient attention in the literature: the child's interest in avoiding a moderate decrease in future sexual pleasure and his interest in—as opposed to 'right to'—self-determination. I argue that these interests are not as compelling as they might initially appear. I conclude that, while the balance of interests might well tilt slightly *against* circumcision in cases in which the boy does not grow up in a household that sees this practice as an important cultural or religious tradition, the decision to circumcise nevertheless falls under the parents' accepted prerogative to make decisions based on what they believe is in their child's best interest.

Next, I turn to the case of the child of parents for whom circumcision is a central cultural or religion tradition. I argue that the fact that the boy who grows up in such a household would most likely choose to become circumcised as an adult tilts the balance of interests decisively in favor of neonatal circumcision. This is mainly because circumcision at this early age would eliminate the significant expected additional costs of adult circumcision that the young man would most likely come to face if infant circumcision were forbidden. Moreover, in these cases, the frustration of the child's interest in self-determination is significantly less pronounced, since the procedure is one that the child would likely choose for himself as an adult. Thus, society should permit circumcision for

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<sup>1</sup> Benatar and Benatar also argue that the permissibility of circumcision turns on an analysis of interests, although they focus on refuting the claim that circumcision is impermissible because it constitutes mutilation. See Benatar M, Benatar D. Between Prophylaxis and Child Abuse: The Ethics of Neonatal Male Circumcision. *Am J Bioeth* 2003;3:35-48.

children of religious parents, even without needing to appeal to the parents' religious freedom.

## **II. The Right to Bodily Integrity**

Circumcision in males involves the cutting of the foreskin. There are various forms of circumcision, and in this article I will be considering the form in which the entire foreskin is removed from the penis.<sup>2</sup>

A common argument invoked against male circumcision is that it violates the boy's "right to bodily integrity." A right to bodily integrity may well exist in certain cases. However, I argue in this section that appealing to this right in the context of circumcision entails a misunderstanding of the nature of this right.

While there are many conceptions of rights, one of the most well-known is Ronald Dworkin's conception of rights-as-trumps.<sup>iii</sup> On Dworkin's view, a right can "trump" or outweigh any mere interest or collection of interests in our moral calculus. Only the protection of another, more important right can justify violating someone's right.<sup>iv</sup> Since the German court does not consider any of the various interests of the child with respect to circumcision, I take it that the court holds something like this rights-as-trumps view. The question I wish to consider in this section is whether the child does indeed have a right to bodily integrity in this strong, interest-trumping sense.

Note first that an absolute prohibition against all violations of a child's bodily integrity is obviously untenable. Such a prohibition would rule out vaccinations and other

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<sup>2</sup> Other, less invasive, forms of circumcision are practiced and have been practiced by many communities. See, for example, the discussion of the difference between milah and periah in the Jewish Encyclopedia <http://www.jewishencyclopedia.com/articles/4391-circumcision> (accessed 24 March 2013)

violations of bodily integrity (e.g., various critical surgeries) that are necessary to protect the health of the child. Indeed, even opponents of circumcision recognize that violations of the child's bodily integrity are acceptable when there is medical necessity.<sup>v</sup>

One could argue that these medical cases are ones in which respect for the child's positive right to health justifies the violation of his negative right to bodily integrity. However, it also seems permissible to violate a child's bodily integrity even when interests that do not seem to rise to the level of rights are at stake. For example, some children are born with cleft lips that are sufficiently minor so that there is no purely medical reason for operating on the lips. Yet parents concerned about their children's appearance and about teasing at school sometimes ask for operations to be done to correct for such clefts.<sup>3</sup> These operations seem to me to be morally permissible. Yet, since it is difficult to argue that the benefits involved for the child in correcting minor clefts rise to the level of *rights*, it is difficult to understand why such operations are permissible if the child indeed has a right to bodily integrity.<sup>4</sup>

I want to suggest that such operations are permissible because the *right* to bodily integrity in the strong, interest-trumping form is not in play in either the cleft lip case or the circumcision case. Admittedly, a right to bodily integrity is part of many theories of justice, especially libertarian ones. And indeed, this right is sometimes given a very high (and even absolute) weight. However, the most common *justification* for the right to bodily

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<sup>3</sup> For an example of a post from such a parent, see the Circle of Moms website in the forum on unilateral incomplete cleft surgery, <http://www.circleofmoms.com/moms-of-kids-with-clefts/unilateral-incomplete-cleft-lip-surgery-600733#> (accessed 19 December 2012)

<sup>4</sup> One could try to differentiate the cases by suggesting that the cleft lip operation is correcting a "defect" while circumcision is not. Of course, a defender of a right to bodily integrity who tried to take this route would have to say much more about why deviation from some "normal" human form eliminates the right to bodily integrity. I will not consider this possibility further here.

integrity is the prohibition against the use of human beings *merely as a means for others' ends*.<sup>vi vii</sup> This is why, for example, individuals have a right against having their organs removed to benefit the sick, even when this would increase overall social welfare.

However, in both the circumcision case and the case of the cleft lip operation, the child's body is not being used as a means for others' ends. Instead, the claim of the parents is that they are circumcising the child/correcting his cleft lip *for his own benefit*.

Now, I do not deny that the child might nevertheless have an important *interest* in his bodily integrity. My point here is that the court's apparent appeal to the child's *right-as-trump* to bodily integrity is misguided in this case.

### **III. The Right to Self-Determination**

The second right the German court appeals to is the right to self-determination. I argue in this section that, although this right may arise in some circumstances, it too does not arise in the case of child circumcision.

In *On Liberty*, Mill argues forcefully in favor of a right to self-determination.<sup>viii</sup> On Mill's view, when adults make certain decisions about their own lives that do not harm anyone else, the government should not interfere in these decisions, even when other people's interests (and even the person's own well-being) could be fostered by such interference.<sup>ix</sup> This is arguably both because of a respect for individual autonomy and because Mill believes that respect for self-determination can best foster a person's interests.<sup>x</sup> On Mill's view, then, individuals do have a right to self-determination, at least in certain circumstances.

However, even among philosophers who are sympathetic to Mill's strong anti-paternalist stance, very few would argue that young children have anything like a Millian right to self-determination. For example, hardly anyone holds that you must never punish a child for not doing his math homework because you should let the child decide for himself when he reaches majority whether or not he wants to learn math. The child is not in a position to currently make an autonomous decision on this matter. Nor is he likely to be making a choice in not doing his math homework that is in his best long-term interest. Moreover, it seems implausible to insist on waiting for the child to reach majority in this case because the costs of learning basic math at, say, 18 are very much higher than the costs of learning the subject at 9. Since it is not possible to give the child (once he attains majority) the identical choice (or even a broadly similar choice) that the parents have regarding his earlier life circumstances, it would be implausible to appeal to the child's right to self-determination to condemn parents' punishing their child for refusing to do his math homework.

Similarly, in the case of circumcision, the choice the parents face is *markedly* different than the choice the child would face were he to wait until he reached majority to have the operation. The dangers of medical complications, the anticipatory dread, the disruption to life, and the unease relating to a change in what one is used to are all much greater when one is circumcised at 18 as opposed to infancy.<sup>xi</sup> Since the child is not currently autonomous, and since we cannot provide the child with (even roughly) the same choice facing the parents once he attains majority, it is a mistake to argue that the child has *a right* to self-determination that is being violated here.

Again, this is not to say that the child does not have *an interest* in determining for himself what is done to his body. I will return to considering this interest shortly. My point here is that the court's talk of *a right* to self-determination – a right that apparently makes it unnecessary to carefully consider the child's interests in this case - is implausible in this context.

#### **IV. The Interests of the Child in the Secular Case: Some Preliminaries**

I have argued so far that the considerations appealed to by the German Court (bodily integrity and self-determination) do not apply to the case of circumcision in their strongest (i.e., interest-trumping) form. Moreover, hardly anyone argues that the other right the court mentions — namely the “right” of the parents to raise their child in accordance with their own religious traditions — should be respected regardless of the consequences for the child himself. The upshot, then, is that a proper analysis of the permissibility of circumcision must carefully consider the interests involved. I will focus here only on the interests of the child himself.

I wish to begin by considering the case of the child who is raised in a household in which circumcision is not viewed as a religious or cultural obligation. I will refer to this scenario (somewhat inaccurately) as the “secular case.”<sup>5</sup> Furthermore, in the rest of this paper, I will consider the balance of interests for *neonatal* circumcision (which is the main form of circumcision practiced in countries like the United States.)<sup>6</sup>

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<sup>5</sup> This is inaccurate because there are many religions that do not view male circumcision as a religious obligation. I am including children who grow up in such religious households in the “secular case.”

<sup>6</sup> The case of neonatal circumcision is markedly different from circumcision in older children in at least two ways. First, as the child becomes older, the various costs of the procedure become higher (and not so different from the costs of adult circumcision). Second, the older the child becomes, the greater his autonomy. It seems

There has already been some work considering the interests of the newborn in the context of circumcision. Benatar and Benatar carefully reviewed the medical evidence and report the following conclusions:

The most significant cost of neonatal circumcision is the pain that accompanies it... [Moreover,] while circumcision can involve complications, these are mostly minor. Clinically significant negative sequelae are extremely rare. The available evidence suggests that circumcision is protective against the more severe forms of penile cancer and has a small but real effect in reducing the incidence of urinary tract infections. Circumcision is also associated with a lower risk of genital ulcer disease but a slightly increased risk of urethritis. At least in high-risk heterosexual groups, circumcision also seems to lower susceptibility to HIV infection. This would suggest that the potential benefits of neonatal circumcision slightly outweigh the costs, although this is not obviously so.<sup>xii</sup>

Admittedly, there are a variety of studies that suggest that Benatar and Benatar radically understate the medical costs of circumcision by understating the role of the foreskin in ensuring healthy male sexual functioning.<sup>xiii</sup> Critics point, for example, to higher incidence of sexual dysfunction that some studies have shown in circumcised males.<sup>xiv</sup> However, these claims are controversial,<sup>xv</sup> and I will largely take Benatar and Benatar's conclusions about the medical costs and benefits as given for the purposes of this paper.

Although Benatar and Benatar discuss the medical costs and benefits as well as the pain involved, the child has other important interests at stake that are not included in this summary. I have already mentioned two of these interests: the interest in bodily integrity and the interest in self-determination. Another interest mentioned briefly by Benatar and Benatar but not explored in any depth involves the possible reduction in sexual pleasure from circumcision. Finally, on the other side of the ledger, neonatal circumcision allows the child to avoid the additional costs associated with adult circumcision. For the purposes of

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clear to me that coerced circumcision at the point right before majority is impermissible. I also argue in this paper that neonatal circumcision is permissible. I leave the approximate age at which the balance of interests switches as an open question for future research.

this paper, I will take these as the main interests of the child,<sup>7</sup> which can be summarized in table form below:

<b>Circumcise Infant Boy (Costs)</b>	<b>Do Not Circumcise Infant Boy (Costs)</b>
Violation of interest in bodily integrity	Slight increase in risk of serious medical problems (severe penile cancer, HIV, genital ulcer disease)
Violation of interest in self-determination	Slight increase in risk of minor medical problems (urinary tract infection)
Reduction in sexual pleasure	Extra costs that the boy has to bear if he eventually chooses to be circumcised (anticipatory dread, added risk of complications, disruption of life).
Pain	
Risks of medical complications (from circumcision as well as increase in urethritis)	

## **V. Does Adult Men's Choice Provide a Good Guide to the Best Interest of the Child?**

What, then, is in the best interest of the child? One way to approach this question is by looking at the percentage of men who are not circumcised as children and who voluntarily choose to become circumcised as adults. Barring reasons why some particular child is likely to be different in terms of his attitude to circumcision compared to the general population, some might argue that this percentage gives us a good sense of what is

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<sup>7</sup> It would be impossible to discuss every conceivable interest in the context of a single paper. For example, I will not discuss the interests associated with body image relative to other males, since that interest itself might change if, say, circumcision were outlawed.

most likely in the child's best interest. Since this percentage is generally quite low (in Finland, the percentage reported by some studies was around 7%),<sup>xvi</sup> this appears to suggest that circumcision is not really in the child's best interest in the secular case. After all, adult men who have the option of having the procedure done overwhelmingly choose not to do so.

However, looking at such a percentage is not a good indication of the child's interest for several reasons. The first is the difference in costs. As I have already highlighted, the costs of circumcision as an adult are significantly higher than the costs of circumcision for infants.

The second reason is a lack of information on the part of the decision-makers. Many men are simply unaware of much of the evidence regarding the costs and benefits of circumcision.<sup>8</sup>

But there is also another, less obvious reason for not simply looking to the decision made by adult men. Namely, this decision is subject to a variety of biases. The first is so-called present bias.<sup>xvii</sup> Even the men who know about the health risks of being uncircumcised and find them compelling or who are unhappy with their foreskin might nevertheless decide not to go through with the operation due to this bias. The costs (in terms of pain, risks of temporary medical complications such as excessive bleeding, disruption of daily life, and economic expense) are in the near term while many of the benefits are far in the future and uncertain. Moreover, a bias in favor of the status quo might also play a role in many men's decision not to become circumcised.<sup>xviii</sup> These biases

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<sup>8</sup> Even articles on the subject do not necessarily describe the full medical benefits laid out by Benatar and Benatar. See for example, Cohen, E. Should teens make circumcision decisions? <http://www.cnn.co.uk/2011/HEALTH/04/14/teens.circumcision.ep/index.html> (accessed 15 March 2013)

further call into serious question the reliability of looking to the percentage of men who get circumcised as an indication the child's best interests.<sup>9</sup>

## VI. The Reduction in Sexual Pleasure

If we cannot look to the decision that adult males make, we are left with the task of carefully balancing the costs and benefits to the child ourselves. One cost that is often discussed, at least in the popular debate about circumcision, is the reduction in sexual pleasure.<sup>xix</sup> There is admittedly no clear medical consensus on the effects of circumcision on sexual pleasure,<sup>xx xxi</sup> and there does not seem to be a uniform effect on sexual pleasure in all men who choose to become circumcised as adults.<sup>xxii</sup> It is even more difficult to hypothesize about the counterfactual sexual pleasure that individuals would have experienced had they not been circumcised *as infants*. However, given the number of nerve endings in the foreskin and the experience of reduced pleasure for many men who have experienced sex both ways, it is not implausible to assume (as I will for the purposes of this paper) that, *on average*, male circumcision *moderately* reduces sexual pleasure for the circumcised individual, even when that circumcision is done when the person is a newborn. (I am using a “moderate reduction” to refer to something in the neighborhood of a 10% decrease).

To think through the moral implications of this (admittedly controversial) empirical assumption, I would like to suggest the following thought experiment: Imagine that there is an operation that has some negligible net health benefits for a child but that also moderately reduces the pleasure the child obtains from eating sweet foods. Further,

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<sup>9</sup> In addition, many men might simply lack the willpower to act on their desire to be circumcised.

imagine that this operation could only be done in childhood. How should we think about the permissibility of this operation?

I concede that, *ceteris paribus*, the reduction in the pleasure from eating sweets would be bad for the child (since physical pleasure is certainly one part of a reasonable conception of the good life). But the reduction in the pleasure from eating sweets might also change the behavior of the child. In particular, the child might eat fewer sweets, both in childhood and in adulthood.<sup>10</sup> And given the problems of obesity, diabetes, and the general negative health effects from eating sugary food, it seems fairly likely that a reduction in eating sweets would provide a significant benefit in terms of health, and thus there might well be a net benefit in terms of the child's flourishing from an operation that moderately reduces the child's enjoyment from eating sweets.

We do not, after all, come into this world with physical pleasure triggers that are optimally conducive for a flourishing human life. We do not even necessarily have the physical pleasure triggers that are most conducive for our survival and biological fitness (given current social conditions). To assume otherwise, it seems to me, is to fall victim to some kind of naturalistic fallacy.

Now admittedly, eliminating the ability to enjoy sweet food altogether (or drastically reducing it) would almost surely not be in the best interests of the child. It would deprive the child of simple but nevertheless valuable pleasures (e.g., the pleasure of eating an ice cream cone on a hot summer day). Since eating sweets in moderation is not harmful, it seems unreasonable to think that the parents would be benefitting the child by eliminating his ability to taste sweetness altogether. On the other hand, it does not seem to

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<sup>10</sup> Of course, the reduction in sweet consumption is not a foregone conclusion. The child might eat more sweets to somehow make up for the lower level of pleasure per sweet eaten.

me unreasonable to hold that *moderately reducing* the child's ability to enjoy sweets would be beneficial given that it might reasonably be thought to induce the child to consume fewer sweets.

Some might object that I have picked an example in which the intervention (moderately reducing the pleasure from sweets) is quite likely (intuitively at least) to lead to the healthier behavior. Some might argue that it is not nearly as clear that a reduction in sexual pleasure would lead to different behavior. In fact, many studies do not find significant differences in sexual behavior between circumcised and uncircumcised men.<sup>xxiii</sup> Moreover, even if the reduction of pleasure did lead to different behavior (i.e., less of a pursuit of sex), it is not at all clear that this would be good for the child's flourishing.

I am willing to concede both of these points. However, given the imperfections in the current studies on this issue,<sup>11</sup> it does not seem to me *unreasonable* to believe that a moderate reduction in sexual pleasure would lead to behavioral changes (e.g., less emphasis on sexual pursuits relative to other pursuits) and that some parents could reasonably see these behavioral changes as beneficial. (Maimonides in fact argued that circumcision does reduce sexual pleasure, but that this guards against "excessive lust" and allows the individual to achieve a kind of "golden mean" in terms of sexuality.)<sup>xxiv</sup> Since the reduction in sexual pleasure itself is, *ex hypothesi*, only moderate, it seems to me that *the overall effect* of this reduction on the child's flourishing is something about which there can be reasonable disagreement. At the very least, those who would argue that a moderate

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<sup>11</sup> Circumcision is associated with certain demographic factors (e.g., higher education for the mother) in the United States. Thus a simple study of the differences in behavior between circumcised and uncircumcised men is unlikely to provide conclusive answer about the effects of circumcision itself on sexual behavior.

expected reduction in sexual pleasure is (by itself) a *decisive* reason against allowing male circumcision seem to me to be mistaken.<sup>12</sup>

## VII. The Interest in Self-Determination

Now, one might concede that a moderate reduction in sexual pleasure might not be an obviously bad thing in terms of a person's overall flourishing. But one might argue that it should be the *person himself* who makes this decision (once he reaches majority). A decision as important, intimate, and irreversible as to whether or not to have the entire foreskin removed from one's penis (in a way that might reduce a key human pleasure) should not be left to others. Although I rejected earlier the idea that there is a *right* to self-determination in this context, we might reasonably think that there is nevertheless an important *interest* in self-determination that must be considered. I argue in this section that this interest, while important, is not as compelling as it first appears.

The first point to emphasize is that, in the context of circumcision, we are considering the child's interest in self-determination (i.e., his interest in making his own decisions once he attains majority) in the case in which the alternative is letting his parent(s) make decisions for him. I take it as given that the vast majority of parents have a very strong interest in the flourishing of their children, and so the typical worry that the paternalist decision-maker might not have the child's best interests at heart is not particularly salient in this case.

However, I concede that, even in the parent/child context, the interest in self-determination is still often quite strong. Two characteristics of the circumcision decision in

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<sup>12</sup> Of course, decisive empirical evidence that showed a *drastic* reduction in sexual pleasure from circumcision would change the calculus and require revisiting this point.

particular that significantly strengthen the child's interest in self-determination are (1) the importance and intimacy of the decision and (2) the non-reversibility of circumcision. It is fairly straightforward to see why these characteristics would make the child's interest in self-determination quite strong, and I will not develop these points in any detail here.

I wish to focus instead on the characteristics of the circumcision decision that make the child's interest in self-determination weaker than it might first appear. In fact, I already discussed three of these characteristics above when I considered whether the decision of most adult men not to become circumcised is a good guide to the best interest of the child. First, the costs of adult circumcision are higher than the costs of infant circumcision. Second, the young adult is likely to be fairly uninformed about the costs and benefits of circumcision. Third, the circumcision decision seems subject to a variety of important biases. The reasons why the decision of adult men are not a good guide for discerning the best of interest of the child are also reasons why the boy's interest in deciding for himself once he is an adult is not as strong as it might first appear.

Admittedly, the presence of difficulties for the child-as-adult in making the best decision for himself are not sufficient to undermine his interest in self-determination. It must *also* be the case that his parents are in a position to make a *better* decision.

However, this is largely the case. The parents are able to make the decision when the costs of circumcision are relatively low. The parents contemplating the circumcision of their son may actually be significantly more informed than the average childless young adult man about the pros and cons of circumcision.<sup>13</sup> Moreover, the parents making the

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<sup>13</sup> The decision of whether to circumcise one's son is one of the first decisions that parents make with regards to the life of their newborn son. Thus, it is not surprising that parents at least report high levels of

circumcision decision are not likely to be subject to present bias<sup>xxv</sup> and status quo bias<sup>14</sup> - at least not to the same extent as the child-as-adult would be. Thus, since the parents seem better positioned than the child-as-adult would to make the best decision in several respects, the child's interest in self-determination is weaker than it might first appear.

Now, one might object that the child-as-adult would have access to special, private information that the parents do not have. Namely, the child will come to know how his foreskin feels. He might therefore develop a strong desire to keep the foreskin on the basis of this private information.

However, while the uncircumcised child-as-adult, might have a great deal of information about how various activities feel with his foreskin, he would still lack critical counterfactual information. That is, he will not have good information about how those activities would feel in the absence of the foreskin. As discussed above, at least with respect to sexual pleasure, circumcision affects different men differently. Moreover, given the current state of medical/surgical technology, a person contemplating circumcision cannot "try out" being circumcised to see how it feels. Thus, though the child will come to have some important private information about his foreskin, this private information will not necessarily enable the child to make the best decision for himself in the absence of the important counterfactual information about how various activities will feel without a foreskin.

The final point to make here is this. The lack of information and the biases that characterize the decision of the child-as-adult not only reduce the chances that he will

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information regarding this decision. See Adler R, Ottaway S, Gould S. Circumcision: We Have Heard from the Experts; Now Let's Hear from the Parents. *Pediatrics* 2001;**107**:e20.

<sup>14</sup> In terms of the status quo bias, it seems relevant that the parents are often asked to make an active decision one way or the other. This seems likely to reduce the influence of inertia.

reach the best decision. They also reduce the extent to which we can confidently say that the man who decides one way or the other about circumcision is fully the author of his own life. If so, then allowing parents to circumcise their child does not undermine the child's future autonomy as much as it might first appear (since the ultimate decision the child would have made would have fallen significantly short of full autonomy in any case).

Now, I am certainly not claiming that these factors *eliminate* the importance of self-determination in the context of the circumcision decision. My point here is that the person's interest in making the circumcision decision himself rather than allowing his parents to decide for him is not as strong as it might first appear.

### **VIII. Taking Stock: The Secular Case**

Having explored two interests that have sometimes been overlooked in the circumcision debate, it may be useful to turn now to considering the balance of interests in the secular case. On the pro-circumcision side of the ledger, we have (as Benatar and Benatar argue, and as I take for granted for the purposes of this essay) slight medical benefits. We also have the benefit of enabling the child to avoid the additional costs of adult circumcision in the possible (though unlikely) future scenarios in which he chooses to have this procedure performed. On the negative side of the ledger are the pain of the procedure, the frustration of the child's interest in bodily integrity, (controversially) a moderate reduction in future sexual pleasure, and a violation of the child's interest in self-determination. Where does the balance of interests lie?

It might be worth considering first the case of the orphaned child whose guardian is the state. I am perfectly willing to concede that, in this case, the child should not be

circumcised. In my own considered judgment, if anything, the balance of costs and benefits tilts slightly against circumcision (especially given the child's interest in self-determination). Moreover, there are a variety of compelling arguments to be made in favor of taking the path of least interference (including slippery slope arguments about limiting the power of the state and doubts about the state acting in the best interest of the child if it is given discretion to decide what is to be done).

However, if we turn to the question of whether parents may decide to have their son circumcised, I am unwilling to concede that circumcision is clearly impermissible, and I am certainly unwilling to concede that it should be outlawed. There is reasonable disagreement about the medical benefits of the procedure. There is also reasonable disagreement about the extent of the reduction in sexual pleasure and reasonable disagreement about the effects of (non-drastring) reductions in sexual pleasure on human flourishing. There is reasonable disagreement about the moral importance of self-determination. There is also reasonable disagreement about how to weigh the medical and non-medical benefits and costs. We accept parents' prerogative to make decisions about their child's well being in all but the most extreme circumstances.<sup>15</sup> Given all of the sources of reasonable disagreement in the context of the circumcision decision, the position that this procedure is beyond the pale of what should be left to the parents' discretion seems to me to be implausible.<sup>16</sup>

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<sup>15</sup> For a discussion of this prerogative that includes the importance of the intimate parent-child relationship as well as the importance of the interests of the child, see Schoeman F. Rights of Children, Rights of Parents, and the Moral Basis of the Family. *Ethics* 1980;91:6-19.

<sup>16</sup> However, I think it is very important for both doctors and philosophers to continue debating this issue and to attempt to inform parents about the benefits and costs of the procedure.

## IX. The Religious Case

Let me turn, then, to the case of the child of parents for whom circumcision is an important religious obligation or cultural tradition. I will refer to this scenario (somewhat inaccurately) as the religious case.<sup>17</sup> I will focus on the child of Orthodox Jewish parents here, since I am most familiar with this case.

There are a variety of important issues that I cannot address here, but which are worth briefly highlighting. There is the interesting question of the respect due to the parents' religious claims that circumcision is in the best interests of the child since it is part of a covenant with God.<sup>18</sup> There is also the issue of the disruption to the parents' lives and to communities when a practice that is viewed by many as a fundamental part of their conception of the good life is outlawed (possibly inducing many to leave their communities). Finally, there is the interesting issue of the effects on the child's interests when his parents are induced to leave their community in response to a law that ostensibly aims to protect the child's interests. I will not address these issues here.

I want to focus instead on two other ways that the religious case is different from the secular case in terms of the interests of the child. The first and more important is this: In the religious case, the chances that the *child would himself choose to become circumcised once reaching majority are much, much higher than in the secular case*. The majority of boys

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<sup>17</sup> This is inaccurate both because there are religions that do not see circumcision as a religious duty and because there are cases that I am including under this label that see male circumcision as a cultural rather than religious obligation.

<sup>18</sup> This issue arises most dramatically in the cases where Orthodox Christian Scientist parents refuse care for their children. For a discussion of this issue, see Margolick D. In Child Deaths, a Test for Christian Science. *New York Times* 1990. <http://www.nytimes.com/1990/08/06/us/in-child-deaths-a-test-for-christian-science.html?pagewanted=all&src=pm> (accessed 24 March 2013)

raised in Jewish homes will themselves become Jewish.<sup>19</sup> And the ritual of circumcision is a critical commandment in the Jewish religion (it is one of the commandments whose failure is punished by “karet” or being spiritually cut off from the Jewish people).<sup>20</sup> Every year, many male converts to Orthodox Judaism undergo the ritual. It thus seems quite likely to me that if child circumcision were forbidden, a large proportion of children who grew up in Orthodox homes would choose to become circumcised as adult men.

Some might argue that, faced with a ban on infant circumcision, Orthodox Judaism might revert to a less extreme form of circumcision or might abandon circumcision altogether. It is admittedly difficult to definitively refute this counterfactual suggestion. However, given the onerous demands that Orthodox Judaism places on adherents in other areas, given its resistance to change, and given that Orthodox Judaism generally requires converts to undergo complete removal of their foreskin, I find the claim that circumcision as it is currently practiced would very significantly decline if it were illegal to perform the operation in infancy to be quite implausible.

The fact that Orthodox Jewish male babies would most likely choose to be circumcised as adults changes the interest calculus in two ways. First, the self-determination arguments against circumcision become significantly attenuated. Insofar as one’s interest in self-determination is grounded in being able to achieve the best outcome for oneself, and insofar as we do think that the Orthodox young men who eventually would choose to be circumcised are acting in their best interest, the fact that the child would have

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<sup>19</sup> It is unfortunately difficult to find accurate figures the rates at which children remain in particular branches of Judaism. However, only 24% of those who claimed to be raised in the Jewish faith as children are no longer active in their religious life. The Pew Forum on Religion & Public Life. U.S. Religious Landscape Survey Religious Affiliation: Diverse and Dynamic. Washington, DC: Pew Forum on Religion & Public Life 2008:30.

<sup>20</sup> For a discussion, see Chapter 1 of the section on the Laws of Circumcision of Moses Maimonides, *Mishneh Torah*. For a further discussion of the importance of the circumcision commandment, see the Babylonian Talmud, Nedarim 31a, Shabbat 133a, and Berachot 48b

likely chosen to become circumcised as an adult reduces the magnitude of the violation of his interest in self-determination in this case. Second, the fact that most children would choose to become circumcised in any case dramatically raises the expected value of the child's interest in avoiding all of the additional costs of an adult circumcision (viz., the anticipatory dread, the disruption to life, the additional risk of complications, etc.).

Admittedly, not every child of Orthodox Jewish parents who is not circumcised as a child would choose to become circumcised as an adult. A small minority will feel as though they have been "branded" or "mutilated" by a religion that they no longer endorse. Another minority who abandon traditional Judaism may experience regret about the possible reduction of sexual pleasure or about the appearance of their penis. The interests of these individuals clearly weigh against allowing circumcision in the religious case.<sup>21</sup>

However, I think the state has a compelling response to the complaints of these individuals. Namely, the state could respond that it was much more likely that the circumcision would have been of significant benefit, since, on average, the vast majority of Orthodox Jewish boys remain within Orthodox Judaism. Moreover, the state could emphasize that the interests of those who are complaining were not sacrificed for the sake

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<sup>21</sup> However, there is another group who would not become circumcised whose interests weigh strongly in favor of allowing circumcision. There are those men who remain religious and want to be circumcised, but are unable to bring themselves to have the operation. In the secular case, the lack of will power usually means living with some discomfort relating to the foreskin or some slightly increased risks of medical problems. However, in the religious case, there is a real risk of alienation from one's religion. The young man may find himself feeling hypocritical when participating in religious life while being in violation of a central commandment. He may also worry about forming intimate relationships with members of his religious community. If he is nevertheless unable to bring himself to undergo the procedure despite these worries, there is a very real possibility of his becoming alienated from his religious community. One need not accept the truth of his religion to recognize that the consequences of a failure of will-power are much more significant in the religious case. Avoiding this type of situation (fairly uncommon though it might be) provides another reason why the balance of interests shifts in favor of circumcision in the religious context.

of *others'* flourishing. Instead, in permitting the circumcision, the individual interests the state was considering were those of *possible future versions of the person himself*.<sup>22</sup>

Taking stock, it seems to me that in the case of Orthodox Jews at least, infant circumcision is, on balance, beneficial for the child. The key difference is that the child would most likely choose to become circumcised at adulthood if we prevented his circumcision as an infant. Circumcision thus enables the child to avoid the significant extra costs that he would most likely have to bear if he were forced to wait to have his circumcision as an adult. Moreover, doing something to a child that he would have most likely chosen to do to himself as an adult constitutes less of a frustration of his interest in self-determination. Thus, the balance of interests *of the child* – a balance which is admittedly quite murky and perhaps even tilted against circumcision in the secular case – seems to me to tilt significantly in favor of circumcision in the religious case.

## **X. Female Genital Cutting**

A natural objection to the arguments made in this paper is that it seems that they could lead to an endorsement of female genital cutting. Since most people see female genital cutting as clearly impermissible, if my argument leads to the endorsement of this practice, then this might show that my argument is somehow flawed. Although I cannot fully address this objection, I wish to briefly consider it in this final section.

Note first that there are important differences between female genital cutting and male circumcision. First, unlike male circumcision, female genital cutting has no

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<sup>22</sup> For a discussion of the difference between helping and harming different people and helping and harming the same person under different possible scenarios, see Otsuka M, Voorhoeve A. Why It Matters That Some Are Worse Off Than Others: An Argument against the Priority View. *Philos Pub Aff* 2009;37:171-99.

established health benefits and indeed has some important health costs.<sup>xxvi</sup> Second, many forms of female genital cutting are much more extreme than male circumcision. Some types, for example, involve removing the entire clitoris along with the inner labia.<sup>xxvii</sup> The drastic nature of these procedures raises the risks of medical complications. Moreover, although it is difficult to obtain precise data, the associated reduction in sexual pleasure from these more extreme procedures may very well exceed the reduction in sexual pleasure from male circumcision.

But there is also an important moral difference that does not have to do with the physical effects of the operation. Namely, in some (though not all) of the cultures in which female genital cutting is practiced, the practice reflects deeply-rooted attitudes about the lower status of women.<sup>xxviii</sup> Thus, even if male and female genital cutting were perfectly identical in terms of net health benefits and effects on sexual pleasure, the relationship in some cultures between female genital cutting and a failure to respect women as moral equals would give an additional reason to object to female circumcision.<sup>23</sup>

Although these differences are important in many cases of female genital cutting, I freely concede that it is possible that some of the arguments made here could be used to rethink the permissibility of the practice of female genital cutting *in certain contexts*.

Practices of female genital cutting vary greatly from culture to culture.<sup>xxix</sup> The arguments developed here suggest that, in cases in which the practice does not reflect a lower

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<sup>23</sup> An editor has usefully pointed out that the practice of male circumcision in Orthodox Judaism is arguably also deeply rooted in attitudes that view the male as superior to the female. However, it seems to me that the response to a traditional practice that privileges males is to add (as far as possible) an equivalent ritual for females. In fact, this is precisely what has been done in many Jewish communities with the traditional baby naming for female infants. For a description of these ceremonies, see [http://www.somethingjewish.co.uk/articles/80\\_the\\_brit\\_milah.htm](http://www.somethingjewish.co.uk/articles/80_the_brit_milah.htm). (accessed 24 March 2013). However, it is not as easy to rescue a ritual that *directly* denigrates women. Such a ritual may well become “morally tainted” in a way that cannot be addressed by adding an equivalent ritual for males. Unfortunately, discussing this interesting objection any further is beyond the scope of this paper.

inherent status for women, in cases in which its effects on health and sexual pleasure are not strongly negative (e.g., pricking as opposed to the more extreme forms of cutting), and in cases in which we have good reason to believe that the woman herself would most likely choose to have the procedure performed as an adult, there might indeed be a case for reconsidering the permissibility of female genital cutting. However, a full analysis of the child's interests in the case of female genital cutting is beyond the scope of this paper.

## **XI. Conclusion**

Shortly before the writing of this paper, the German Parliament passed a law effectively overruling the German court's ban on male child circumcision.<sup>xxx</sup> Lawmakers argued that a ban on circumcision would be an unacceptable violation of the parents' religious freedom.<sup>xxxi</sup> I do not deny that the parents' religious freedom may well be an important consideration. But the arguments in this paper suggest that it is unnecessary to appeal to this consideration to justify male circumcision.

We can instead appeal to the interests of the child. I have argued that there are no (interest-trumping) rights to bodily integrity and self-determination at stake here. Furthermore, both the interest in avoiding a moderate reduction in sexual pleasure and the interest in self-determination are not as compelling as they might first appear. Given the possible health benefits and the extent of scope for reasonable disagreement both about the medical evidence and about the weight of the different moral considerations, I have argued that the circumcision decision falls well within parents' accepted prerogative to decide what is in fact in the best interest of their children.

In the religious case specifically, the argument for the permissibility of male infant circumcision is even stronger. Since the child in this case is much more likely to choose to

have the procedure done as an adult, his circumcision as an infant does not violate his interest in future self-determination to the same extent. Moreover, it allows many of these children to avoid the significant additional costs of an adult circumcision. Thus, in the religious case at least, the interests of the boy (as separate from any interests or rights of the parents) clearly tilts in favor of the moral permissibility of male infant circumcision.

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<sup>i</sup> Landgericht Cologne Judgment, May 7, 2012, Docket No. 151 Ns 169/11, translated by Alexander Aumüller. Available at <http://www.intlawgrrls.com/2012/07/german-circumcision-ruling-now-in.html> (accessed 24 March 2013)

<sup>ii</sup> Hubblethwaite C. Circumcision the Ultimate Parenting Decision. *BBC* 2012  
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<sup>iv</sup> Wenar L. Rights. *The Stanford Encyclopedia of Philosophy* (Fall 2011 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2011/entries/rights/>.

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