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# Can Culture Justify Infant Circumcision?

Eldar Sarajlic

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**Abstract** The paper addresses arguments in the recent philosophical and bioethical literature claiming that social and cultural benefits can justify non-therapeutic male infant circumcision. It rejects these claims by referring to the open future argument, according to which infant circumcision is morally unjustifiable because it violates the child's right to an open future. The paper also addresses an important objection to the open future argument and examines the strength of the objection to refute the application of the argument to the circumcision case.

**Keywords** Infant circumcision · Ethics · Culture · Religion · Rights · Interests · Future

## Introduction

Recent controversy over neonatal male circumcision within Jewish and Muslim families in Germany has once again brought considerations about the moral justifiability of this practice at the forefront of worldwide ethical and philosophical discussions. The previous wave of academic interest in this topic occurred in early 2000s, when the *Journal of Medical Ethics* published a series of articles on the topic and the *American Journal of Bioethics* featured the famous defense of the practice by Michal and David Benatar (Benatar and Benatar 2003, pp. 35–48).

Circumcision debates resurfaced in 2012 after the District Court in Cologne, in Germany, outlawed the practice of non-therapeutic male circumcision on the grounds of considering such a practice a form of bodily harm. After a strong protest against the decision by Jewish and Muslim representatives in Germany, the country's parliament adopted a new law that overruled the decision of the court in

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Cologne and provided for parental discretion in deciding about the practice (Merkel and Putzke 2013, pp. 444–449). As a scholarly response to this controversy, the *Journal of Medical Ethics* published a special issue devoted to ethics of circumcision in 2013, featuring a number of important philosophical contributions on the topic that reflected this issue anew.

In this paper, I wish to examine some of the arguments offered in support of the thesis about moral justifiability of circumcision that have occurred in contributions during both waves of interest in this topic. Namely, I will focus on one strand of arguments: those claiming that social and cultural benefits can justify parental authorization and institutional performance of the procedure. Contrary to them, I will suggest that cultural reasons cannot justify non-therapeutic circumcision. I will follow and try to improve the arguments made by some authors to claim that infant circumcision violates the children's right to an open future.

Before commencing the discussion, however, I wish to make several methodological remarks. First, I focus only on non-therapeutic circumcision of male infants. Though making comparison with female circumcision is often made in the literature, I will refrain from making any comparisons and will look exclusively at the male case. Second, by circumcision I imply a complete removal of the foreskin from the penis, rather than a merely ritual nick or other less invasive forms of ritual genital intervention.<sup>1</sup> Third, I will focus on arguments about non-therapeutic circumcision undertaken for reasons of culture, both in its secular and non-secular form, such as the circumcision for aesthetic reasons or ritual circumcision performed as part of Jewish and Muslim rites of tradition. However, I will not make distinctions between Jewish and Muslim circumcision patterns, though there are some worth mentioning. Most notably, the age of the child undergoing circumcision differs. While Jews circumcise their male children on the eighth day of birth, Muslims do not have a strict age limit, though some of them initiate the procedure within the first 7 years of the child, while others follow the Jewish case and perform the procedure within the first week of the infant's life (Gollaher 2001; Glick 2005). The age of the child undergoing circumcision may have normative importance. An older child can plausibly express some form of consent or agreement to undergo the procedure. But, it is highly questionable whether this kind of possible consent has enough normative weight to tip the balance of the argument. Thus, I will refrain from taking this difference into account and argue against the background of the general notion of *infant* circumcision.

Fourth, I also develop the arguments against the background lack of scientific consensus about medical harms of benefits of the circumcision procedure (British Medical Association 2004, pp. 259–263; American Academy of Pediatrics 2012, p. 585; also 2013, pp. 442–443). I assume that there are no unequivocal proofs for considering circumcision as either beneficial or harmful in the medical sense. And fifth, by culture I imply a set of beliefs and convictions about the organization of the social world that feed the parental and expert assumptions that circumcision will provide certain social benefits to the child.

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<sup>1</sup> Therefore, I imply what Judaism defines as *milah*, not *periah*. See Mazor (2013, pp. 421–428).

## The Cultural Benefits of Circumcision

How does the argument about potential cultural benefits of circumcision go? In this section, I will focus on two different ways to conceptualize this argument, espoused by three authors from the discipline: Joseph Mazor and Michael and David Benatar. Though they differ in analysis and normative proposition, the arguments of all three authors aim to provide reasons for the justification of infant circumcision on social and cultural (as non-medical) grounds.

### Rights and Interests: Joseph Mazor's Argument

Joseph Mazor claims that we have sufficient reasons to think that bodily integrity should not be conceptualized in terms of rights-as-trumps. This conceptualization, which he tracks to Ronald Dworkin, implies that rights trump or outweigh 'any mere interest or collection of interests in our moral calculus' (Mazor 2013, p. 422). Mazor believes that circumcision is conceptually similar to cases of vaccination or cleft lips, when parents seem justified in authorizing an invasive intervention into their children's bodies because they do that for their (children's) benefits. Similarly, Mazor thinks that children cannot have any meaningful right to self-determination, because they are not sufficiently autonomous to exercise that right.

What he suggests is to replace the notion of rights to bodily integrity and self-determination with the notion of interests, secularly and religiously defined (Mazor 2013, p. 423). The benefit of doing so would be, according to him, the possibility of weighing the interests of bodily integrity and self-determination against other possible interests instead of simply trumping them.

There are several additional interests that he argues are morally relevant in discussing the permissibility of circumcision. First, there is the interest in avoiding pain and discomfort the person would feel if he decides to undergo circumcision later in life (assuming he would like to do it for religious or cultural reasons) (for a similar claim, see Benatar and Benatar 2003, p. 57). For him, this interest is stronger than the interest in self-determination because he believes that parents of a male infant are much better positioned to know what is best for him and are not likely to experience the present bias. Also, in the religious case, the assumed probability that the religious adult will decide to get circumcised increases the weight of the argument about reducing the later costs of circumcision by performing it on the person as a child (Mazor 2013, p. 426).

Second, there is the interest in moderately decreasing sexual pleasure so other pursuits could be more substantially emphasized (Mazor 2013, p. 424). This interest, though he concedes is problematic, implies that it may be reasonable to claim that moderate decrease in sexual pleasure can be beneficial for the child's flourishing as an adult. Third, there is the religious interest in fulfilling the covenant with God, which characterizes the Jewish faith in particular. Fourth is the interest in remaining within the religious and cultural community, characteristic of both Jewish and Muslim conceptions of circumcision (Mazor 2013, p. 426).

For Mazor, the moral justifiability of circumcision hinges on the possibility to weigh different interests of the child. He disagrees with the views claiming that only

medical or autonomy factors (bodily integration and self-determination) should be taken into consideration. This occurs if we take these interests as rights that trump other moral variables, including wider social interests of the infant. Instead, we have to consider other possible interests and weigh them into the moral calculus of circumcision.

### Social and Cultural Benefits: Michael and David Benatar's Argument

Somewhat similar to Mazor, Michael and David Benatar weigh different reasons behind the practice to argue that circumcision is morally justifiable. They suggest that non-medical factors should supplement the medical ones.

Namely, Benatar and Benatar claim that given the equivocal nature of the scientific data about potential medical benefits or harms of circumcision, it is impossible (at this point) to say that circumcision represents a medically harmful invasion into infant bodies. Instead, they see circumcision as a discretionary matter of the child's parents, who are justified in deriving the reasons for circumcising their sons from the domains external to medicine: primarily, from culture.

Suggesting that it is plausible to assume that there might be benefits to circumcision other than medical ones, they argue that the crucial question is whether the relevant presumption should be that:

1. Surgery is impermissible unless it offers a clear and significant net *medical* benefit; or
2. Surgery is impermissible unless it offers a clear and significant net (medical or nonmedical) benefit (Benatar and Benatar 2003, p. 45).

For them, those who would go for the first option would have to explain why is it that medical benefits are the only relevant ones. Medical benefits are not necessarily or always more important than non-medical ones and there is a number of cases when a medical intervention yields more non-medical than medical benefits. Therefore, decisions about circumcision should not be made without considering other possible benefits for the child. If there are clear and significant social or cultural benefits, then the surgery is morally justifiable.

Though Benatar and Benatar do not discuss what are the potential social or cultural benefits of circumcision, it is plausible to assume that they imply benefits of communal integration, fulfillment of religious duties or plain conformity with the tradition. Socio-cultural benefits may also include beliefs about hygiene (presumptions that a circumcised penis is easier to clean or that it corresponds to some cultural standards of hygiene) as well as notions of similarity to fathers and other male members of the family (see Cannold 2006, pp. 52–54).

### The 'Cultural Benefits' Argument

Both Mazor's and Benatars' discussion sufficiently indicates the shape of the argument about cultural benefits of circumcision, although they do not enumerate or elaborate the cultural reasons for circumcision per se. Here, I will try to exercise

what I will call the 'cultural benefits argument' to make its reasoning more explicit and easier to analyze.

First of all, the 'cultural benefits argument' assumes that though there are morally relevant medical factors, they are not decisive because sufficient scientific proof about medical harms or benefits of the procedure is lacking. This presumption feeds the claim that other non-medical considerations can be taken into account. For Mazor, these considerations include not only bodily integrity and self-determination (which are non-medical considerations the critics of circumcision usually invoke), but also interests of communal integration, avoidance of later discomfort or religious salvation. Benatar and Benatar do not specify the kinds of non-medical considerations, but their thesis builds on the assumption that some of them are decisively relevant for rendering the practice morally justifiable.

Second, the cultural benefits argument claims that circumcision is morally permissible because parents that authorize it do so for the alleged cultural benefit of the child. The argument claims that the child has a range of cultural interests that are catered to better by performing the procedure at his early age instead of waiting for the child to decide once he is an adult. Mazor believes, for example, that the (inevitable medical and cultural) costs of the procedure are much lower if it is performed while the child is very young. By having undergone the procedure at the young age, he may be spared of later discomfort and social awkwardness that might accompany the procedure. Benatar and Benatar think that the social and cultural net benefit outweighs these costs.

Third, the cultural benefits argument assumes two forms: secular and religious. The secular form pertains to claims about cultural standards independent of religious perceptions of the world. These standards include beliefs about pain, the value of sexual pleasure, physical similarity with male parent(s), bodily aesthetics and genital hygiene. The religious form pertains to claims about religious salvation or communal belonging. It suggests that circumcision benefits the child by satisfying his metaphysical interests (covenant with God), by satisfying his communal interests (integrating him into the community) or by conforming to the cultural tradition of that particular religious/ethnic group.

In the next section, I will critically review the cultural benefits argument, both in its secular and religious form. Also, I will question the assumptions it depends on.

## **Critique of the Cultural Benefits Argument**

There are several problems that the cultural benefits argument faces. I will address them by analyzing separate arguments made by Mazor and the Benatars. Only after I address individual claims, I will examine the plausibility of the culture argument as a whole and discuss an alternative.

### **The Secular Form**

Irrespective of one's moral assessment of the case, one may be easily led to agree with Mazor's attempt to formulate some notions related to circumcision in terms of

interests rather than rights. Namely, it is plausible to assume that this might be the case with the notion of bodily integrity. A child has an interest in bodily integrity that can be outweighed by his or her other interests; the interest in long-term health or the interests in disease prevention are cases in point. Vaccination and the operation of cleft lips fall within this domain. Parents are justified in authorizing their child's vaccination and cleft lip repair surgery—which intervenes in child's body and thus violates its bodily integrity—because these interventions serve long-term interests of the child in a disease-free and impairment-free life. Moreover, this intuition fits some earlier theories suggesting that due to their vulnerability and incapacity, children cannot be viewed as proper rights bearers (see Archard 2002, p. 5). These kinds of arguments claim that the language of rights should be reserved for beings capable of agency (Griffin 2002, pp. 19–31). This would include older children, but not infants.

However, it is not completely clear that we should replace all talk of children's rights with the talk of interests. As Harry Brighouse has shown, we can posit two types of rights applicable in the case of children. First, there are agency rights that are attached to personhood and protect the freedom to choose. Second, there are interest-based rights that protect children's welfare (Brighouse 2002, p. 38). Because they lack the capacity for competent choice, children's rights are interest-rather than choice-based. This means that some rights can serve as trumps that prevent violation of children's welfare in the name of some future benefit. It also means that Mazor's strategy of distinguishing between rights and interests hinges on a prior assumption that rights are only choice-based, which, as some authors claimed, may be mistaken (Brennan 2002, p. 59). Still, this doesn't disarm Mazor's argument completely, since he might claim in response that a child has an interest-based right to avoid future discomfort or to belong to a community and achieve metaphysical salvation. However, showing that these rights outweigh the interest-based right to the child's bodily integrity would need additional justification to show why future interests of salvation outweigh present interests of integrity of one's body, or some other interest-based rights. Also, why is present pain less normatively important than future pain? The argument that we should avoid future pain by inflicting it in the present is odd, to say the least. Therefore, I doubt that justification along these lines is plausible (and will address why in the next section).

In addition, one can also question the view that an infant cannot have choice-based rights because he is incompetent of making sovereign choices. As shown by Joel Feinberg and a number of other authors, there may be choice-based rights that are 'rights-in-trust', which reflect a child's future interest in exercising its right to make his own choices (Feinberg 1992, pp. 76–98). This understanding would merge the interest and choice conception of rights: a child has a present interest-based right to the future exercise of the choice-based right.

Mazor's view also mistakenly assumes that parents are much better positioned than the child will be as an adult to know what is best for him. He believes that the uncircumcised adult will experience the present bias (a preference toward the existing state of affairs) and will thus refuse to undergo the procedure that may be (culturally) beneficial for him. Therefore, it is better for him to be circumcised as a child because the decision of his parents to have him circumcised will be less under

the influence of the present bias. But, assuming that parents experience less present bias, especially when the practice of circumcision is culturally shared and the family is immersed in this culture, is unwarranted. Parents who wish to circumcise their son for cultural reasons (Jewish or Muslim) may be no less under present bias than a grown adult who considers undergoing the procedure. Peer and cultural pressure can contribute to the present bias much more than the simple reluctance to experience moderate pain. If 'present bias' is to have any normative weight, it should also apply to parents, not only to the child as a future adult.

Furthermore, Mazor's assumptions about potential benefits of the moderately decreased sexual pleasure caused by circumcision, strike as unusual, to say the least. The notion that less sexual drive can be beneficial to an individual by allowing him to devote more time and energy to other pursuits<sup>2</sup> is a form illiberal perfectionism that lack sufficient justification. First of all, what kinds of other pursuits this assumption might have in mind? Second, even if the alternative pursuit is defined in reasonable terms (say, pursuing moral philosophy) it seems hardly justified to say that circumcision is permissible because it might provide the person with more energy to do other things because one can never know if the child will find any of the alternative pursuits valuable in the future. We cannot know whether the circumcised child as an adult will appreciate sexual pleasure more than moral philosophy. It is an unwarranted counterfactual supposition.

Notions of physical similarity with parents, bodily aesthetics and genital hygiene are often invoked as secular forms of cultural benefit of infant circumcision. All three of them are problematic for the same reason: they assume parents' rather than child's standards of physical semblance, beauty and responsibility for cleanliness and thus position the child as a mere means for their parents' ends. Children should not bear the burden of their parents' views about what constitutes a sufficient physical resemblance between family members and physical aesthetic, nor should they bear the burden of the parents' responsibility for their hygiene (for a similar argument see Cannold 2006, pp. 51–52). The cultural belief about hygiene is especially problematic, given its striking discrepancy with moral intuitions about the status of other parts of the human body that are even more demanding in terms of cleanliness. The belief that a child's body parts can be surgically removed because they demand additional hygienic attention is unwarranted and unjustified.

### The Religious Form

It is not directly clear what are the claims of the religious form of the cultural benefits argument. Neither Benatar and Benatar nor Joseph Mazor discuss at length the cultural benefits of circumcision associated with religion, though they assume there are morally relevant religious benefits. However, I will try to infer from their writing what these benefits might consist of.<sup>3</sup>

<sup>2</sup> An idea first espoused by Maimonides in twelfth century. See Gollaher (2001, pp. 19–30) and Glick (2005, pp. 64–66).

<sup>3</sup> Here, I assume a broad (sociological) understanding of religion, with no intention to discuss doctrinal issues. This understanding enables me to group metaphysical (first) with communal (second and third) claims. The distinction between 'secular' and 'religious' form of the cultural benefits argument should not



I believe there could be three separate claims. First, the argument might claim that circumcision serves the child's metaphysical interests in salvation or fulfilling the covenant with God. This would particularly be the case within Jewish religious interpretation. For Jews, circumcision represents the *brit milah*, an act of covenant between man and God (Glick 2005, p. 14). It could be said that male children are circumcised to bring the covenant into existence and form a bond between the metaphysical and the physical.

Second, the argument might claim that circumcision represents an initiation of the infant into the community of faithful. This would be the case for both Jews and Muslims. Muslims in particular believe that circumcision is obligatory because the Prophet Muhammad advised so—it is *sunnah*, the perpetuation of Prophet's tradition (Gollaher 2001, pp. 31–53). Through circumcision, so the argument could go, male children become fully fledged members of the community and receive all benefits that accompany that membership.

Third, the argument might also claim that circumcision is justified because it represents a way of distinguishing members of one religious (or ethnic) community from the other. Therefore, circumcision would not only be a sign of a covenant with God or the perpetuation of tradition but also a way to (re)produce cultural difference among religious and ethnic groups and keep a particular cultural and religious tradition alive. This could be a plausible argument from within both Jewish and Muslim perspectives.

Are any of the possible religious forms of the argument sufficient to justify infant circumcision? The first claim builds on several problematic presumptions. First, it presumes the existence of a divine entity that commands the performance of circumcision. While the question about the existence of such an entity is a matter of personal persuasion, the mere presumption can hardly warrant authorizing invasive intervention into the body of another human being, even if in cases of parents and their children. Without a definite proof that such an intervention would bring metaphysical benefits (provided these are defined more precisely) to the child, circumcision cannot be justified.

However, one may claim that authorizing or initiating circumcision represents an expression of the deepest concern and love for the child by parents who sincerely believe that without circumcision, their child will suffer eternal damnation. This claim is plausible and it may be true for many families. But, in any similar case, in which an objectively unwarranted parental belief about some benefit authorizes an invasive intervention into the child's body, our basic intuitions militate in the opposite direction. Take the hypothetical case of parents who would wish to surgically engineer an irreversible removal of hair from their newborn child, so to secure its eternal salvation in the eyes of God. One may have no doubts that such parents or systems of belief might exist, but it is difficult to accept that such beliefs can justify the procedure. The reason feeding this intuition is the notion that infant

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Footnote 3 continued

be taken as too strict. It can be also framed as the difference between culture in the 'broad' sense and culture in the 'narrow' sense of the word. However, I opt for 'secular' versus 'religious' for the sake of simplicity.

bodies should not be instrumental to satisfaction of unwarranted (metaphysical and other) beliefs of their parents. The intuition would hold even if the putative salvation-conferring procedure were not scientifically proven to be decisively beneficial or harmful, such as circumcision.

Second, the claim about metaphysical salvation presumes that the child will necessarily share their parents' metaphysical beliefs once it is grown up (Svoboda et al. 2000, p. 74). It is plausible to assume that most children end up having the same religious beliefs as their parents, but this is not necessarily so. Individuals often change their beliefs, shed the religious assumptions inherited from parents or adopt new ones. Undergoing an irreversible bodily modification when non-autonomous to provide consent can significantly affect the subsequent development of the individual. It can diminish their sense of selfhood by limiting the degree of self-determination and control over one's life.

The claim about communal initiation suggests that by circumcising their sons, parents help them become full members of the community and reap the benefits of such membership. While this argument may certainly reflect parental concern for their child's social well-being and integration, it is hardly justifiable because it also builds on an unwarranted assumption and implies a mistaken conception of the relation between individuals and communities. Namely, presuming that the child will want to be a member of the given community once it reaches adulthood is unwarranted. True, most men circumcised for cultural reasons stay within the communal bounds of their birth, but many don't. A plausible valuation of communal membership must be accompanied by the exit option that allows members to opt out freely at any time without grave consequences. When the membership is involuntarily imposed and marked by an irreversible bodily modification, the exit avenues are significantly narrowed. The fact that few men choose to opt out later in life may actually reflect the fact that they have been physically marked as members, rather than the assumption that they do not wish to opt out because they value their community.

However, one may also suggest that opting out from Muslim and Jewish communities has nothing necessarily to do with circumcision: men can freely exit these communities and circumcision does not prevent them in doing so. Furthermore, one may claim that circumcision is a fairly inconspicuous modification of the body, so no necessary stigma is attached to communal disintegration of the individual. True, circumcised men may be free to exit one community and integrate into another without visible marks, but this argument is sustained only against an externalist assumption about identity. One's identity is not necessarily affirmed or altered through a visible (external) change. Inner self-understanding and perception play an important role as well. A bodily modification such as circumcision can significantly diminish the ability of a person to perceive himself as a member of the non-circumcising community.<sup>4</sup>

The claim about communal integration also sustains an implausible conception of the relation between the individual and the community. Namely, the argument about

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<sup>4</sup> Though, as many authors report, there are surgical procedures that can restore the prepuce, they merely recover the aesthetic but not bodily functions of the foreskin. See Gollaher (2001) and Glick (2005).

benefits implies that circumcision is a small sacrifice (both in literal and symbolic sense) of the infant individual for the large cultural (and sometimes even material) benefit that comes with communal membership. It is assumed that the practice is a form of a trade between individuals and their communities, where community reciprocates the individual sacrifice with access to communal wealth. In other words, circumcision is a form of investment that will yield cultural capital to the infant once he reaches adulthood. As far as the exchange of symbolic and real sacrifices for the benefit of cultural capital goes, this assumption is right. Individuals do trade their personal energy, time, aesthetic preferences, and even bodily parts for some forms of social and cultural capital. But, the plausibility of the assumption builds on the understanding that the trade between individuals and the communities reciprocating with cultural capital takes place voluntarily. The argument about trade, thus, makes sense only against the background of a free exchange of goods and benefits: if not free, the exchange of goods is not a trade but—extortion. Therefore, performing circumcision on a non-autonomous infant as a form of his sacrifice for the future gain in cultural capital is contrary to the meaning and the spirit of trade relations between individuals and groups.

Finally, the claim about cultural benefits of circumcision also suggests that the value of the procedure stems from its difference-making properties. Namely, the argument assumes that circumcision helps particular groups to build and sustain the boundary against other groups. Again, as in some of the previous claims, this argument is insufficient to justify the procedure because it treats individuals as means to the end of boundary making. In case of fully autonomous individuals, the use of bodily modification for sustaining boundaries is morally permissible because it can be based on voluntary acceptance of individuals involved. However, in cases of infants, who are incapable of giving their permission to the procedure, bodily modification is morally unjustified. This claim can be further confirmed through a comparison with other (hypothetical) cases of infant body modification for communal boundary making purposes. Even in cases in which the modification would not necessarily be medically harmful, it is difficult to accept that infant bodies can bear the burden of sustaining the communal boundary. Take the example of a parental couple that would wish to tattoo their newborn baby with the symbol of their community. Our basic moral intuitions suggest that parents are not morally permitted to authorize any irreversible modification of their children's bodies for the purpose of creating or sustaining a communal boundary. Children cannot be treated merely as means for communal ends (Archard 2002, pp. 142–160).

### Why the Cultural Benefits Argument Doesn't Work

It is clear from the enumerated examples and claims that the argument about the cultural benefit as a plausible justification for non-therapeutic infant circumcision is burdened with a number of problems. Even if circumcision is not necessarily medically harmful, as Benatar and Benatar seem to demonstrate successfully, it still doesn't mean that other, non-medical reasons, such as social and cultural benefits, are sufficient to justify parental authorization and institutional performance of such procedure. Moreover, the examination in this section shows that contrary to

Benatars' and Mazor's claims, cultural benefits cannot serve to justify authorization of circumcision.

The problem with hitherto references to potential cultural benefits as grounds for justifying circumcision is that they haven't been assessed in sufficient detail to argue that they are morally decisive factors in determining the justifiability of the procedure. Benatar and Benatar simply assume that, provided culture is critically assessed, it can serve as a justifying argument for parents to authorize and hospitals to administer circumcision. But, such a claim needs to be examined further. What kinds of culture-based arguments? Does any argument based on tentative cultural benefits work? The aim of this section in the paper has been to analyze some of the potential ways to argue for cultural benefit as the justification for circumcision. It attempted to show that none of the plausible ways to frame the argument works. They all fail to provide sufficient grounds for justifying the procedure, even under the assumption that the procedure is (relatively) harmless.

So far I have been rejecting arguments claiming (or implying) that cultural benefits can justify circumcision. In the remainder of the paper I will focus on examining the normative background of the reasons for rejecting the cultural justification of circumcision more closely. In particular, I will discuss the argument that non-therapeutic circumcision violates the child's right to open future. In the following, I will endorse this view but also try making it stronger by extending the elaboration further.

### **The Open Future Argument**

I find that the most powerful rebuttal of the claim that circumcision is morally permissible because it causes no harm to the child and confers a number of socio-cultural benefits upon him is the open future argument. This argument suggests that infant circumcision, even if it doesn't harm, violates the child's right to an open future by closing off some options for him in adulthood.

In its general form, the argument has been first introduced by the legal philosopher Joel Feinberg. Namely, he suggested that, unlike adults, children possess something called 'the rights in trust'—rights that children cannot exercise right now but will be able to do so once they reach adulthood. While adults have a right to autonomous self-determination, children only have 'anticipatory autonomy rights', rights-in-waiting as it were, which will be exercised at a later stage of their life, but whose exercise is normatively relevant at any earlier point in their lives (Feinberg 1992, p. 77).

These rights imply that a range of relevant life-affecting options must be available to children in the future. Committing acts that narrow the range of these options now violates their right to have a certain range of life options in the future. An example of such a right is the option to travel abroad. Even if the child were unable to do so while an infant, permanently closing this opportunity for him it would violate his right to choose that option once he is an adult. This normative theory helped Feinberg and others explain why the Jehovah's Witnesses parents' refusal of the life-saving blood transfusion for their child would be morally

impermissible. Bioethicist Dena S. Davis applied similar reasoning to assess *Wisconsin vs. Yoder* to suggest that these and similar cases reflect the need to establish the child's right to an open future as an important normative principle (Davis 1997a, pp. 93–105; also Davis 1997b, pp. 7–15).

It was only recently that the principle has been applied to circumcision. In his 2013 article for the *Journal of Medical Ethics* special issue on circumcision Robert J. L. Darby used the open future principle to show that infant circumcision is morally unjustifiable. According to Darby, the open future argument developed by Feinberg and Davis is 'applicable to parents who deliberately remove a boy's foreskin because they want his penis to be like his father's, to fit the norms of a religious or ethnic group, because they think it is cleaner or for any reason other than medical necessity' because it indicates that doing so violates the child's right to an open future (Darby 2013, p. 467).

According to this view, the procedure deprives the child from the opportunity to make his own decision about the social and cultural value and benefits of circumcision. It closes off some options for him and thus violates his right to a range of options to choose from: most importantly, it violates his right to choose if he wants to have a foreskin or not. Thanks to Darby's analysis we can see that the analogy Mazor made between cleft lips or vaccination and circumcision does not hold: unlike vaccination or restorative lip surgery, circumcision narrows rather than expands the range of choices that will be at child's disposal in the future. An adult can choose to surgically shape his lips in any way he desires, but cannot choose to restore his foreskin with all the functions it would have had it not been removed in his youth.

### An Objection to the Open Future Argument

However persuasive, Darby's open future argument is not free from objections. I will address one of the most serious objections and try to show that it still doesn't endanger the validity of the argument nor its application to the circumcision case.

Namely, one of the driving mechanisms in the open future argument is the assumption that circumcision permanently deprives the child of some options in his future life. Most notably, it deprives him of the opportunity to choose if he would like to have the foreskin on his penis. The physical nature of the procedure is what, according to some advocates of the open future argument, makes circumcision especially wrongful. For example, Darby argues that

[w]hile it may be possible to change one's mind about religion or other values, it will not be possible to erase permanent physical marks or to restore lost capabilities or body parts (Darby 2013, p. 465).

This argument hinges on the difference between physical and non-physical ways to constrain the range of child's options in the future. It implies that a child's future is somehow more narrowed by the physical than the non-physical parental intervention. The early literature about the open future argument has been mostly concerned with education and religious upbringing as non-physical modes of narrowing or expanding child's future options. But, Davis and Darby have shown that when

parental actions involve alteration of some physical properties of the child, the principle of open future has an even greater relevance because physical removal of a body part has more limiting power. Davis discussed the case of deaf couples trying to genetically engineer their baby so she is also born deaf (Davis 1997b). These attempts were made under the pretext of deafness as a culture rather than impairment, and the parents felt entitled to transmit their culture to their kids. Because transmitting culture in this case involved bestowing a limited range of future options in the strong physical sense, Davis argued it was morally unjustifiable. Darby took the Deafness case as an analogy to suggest similar normative assessment of circumcision: physical removal of a body part for non-therapeutic reasons is impermissible.

However, the argument that a child's future options are significantly more narrowed by removal of a body part than by inculcation of religious doctrine is not self-evident. Theoretically, it may be easier to shed a belief than to grow an inch of skin, but this is not necessarily the case in practice. Children brought up within particular cultural and religious beliefs may not be more able to radically alter these beliefs than to grow a new part of the body. Assuming that non-physical change is more likely to happen contradicts the existing historical experience: in most cases, children grow up having the same belief systems their parents (or the society in which they have been socialized into) had. So, there may be no normatively significant difference between physical and non-physical cases, because non-physical parental determination of the child's future prospects is no less powerful than the physical one.

This poses a threat to Darby's open future argument. It suggests that if the argument is to be valid, it needs to apply to both physical and non-physical cases. But, the non-physical examples indicate that there may be nothing wrong with transmitting parental beliefs and values to their children. Parents, as Feinberg argued, have a legally recognized right to the custody of their child, which includes the right to transmit their culture to them, and the institutions should infringe upon this right 'with the greatest reluctance and only for the most compelling reasons' (Feinberg 1992, p. 88). If circumcision does not necessarily constitute a medical harm, should it be then impermissible? To parents from religious or cultural groups in which circumcision has a special (metaphysical or communal) meaning, the procedure represents a form of cultural reproduction, comparable to transmission of cultural narratives, values and norms. Then, what is the compelling reason behind arguments for restriction of circumcision?

### Response to the Objection

The assumption that circumcision is morally impermissible while inculcation of parental beliefs is permissible needs additional justification. Merely assuming that the physical nature of the restricting act of circumcision makes it more wrongful is insufficient to ground the validity of the argument. However, I believe this objection is not fatal to the open future argument and it still has currency to address the circumcision case.

Namely, the objection that circumcision is not morally unjustified because there is no significant difference between circumcision as a physical act and religious upbringing as a non-physical act of shaping the future outcomes of the child rests on an assumption that also needs additional warrant. To make such a claim one needs to presume that any kind of parental intervention in the child's future, in terms of transmitting cultural (or religious) beliefs and value systems to the child, is *prima facie* justifiable. The presumption holds that parents are allowed to confer any kind of belief to their child without special moral responsibility.

But, parental authority to inculcate beliefs into their children is not without certain boundaries. As J. Morgan argued, the child's right to an open future 'does not preclude parental influence on the child, but it does suggest limits to such influence' (Morgan 2005, p. 369). These limits establish the rule that the child's education must not shut down the variety of social influences on him, but leave them open. The parents are allowed to transfer their beliefs to the child but there are not allowed to prevent the exposure of the child to alternative beliefs and values. For Feinberg, state institutions have a crucial role in securing that these varied influences remain open to the children irrespective of the nature of their parental upbringing. They should

insist that all public influences be kept open, that all children through accredited schools become acquainted with a great variety of facts and diversified accounts and evaluations of the myriad human arrangements in the world and in history (Feinberg 1992, p. 88).

If a child is brought up in a closeted and exclusivist culture that prevents him to experience alternative beliefs, values and explanations, his right to an open future has been violated. Morgan provides an indication of how the open future argument works in such cases:

For example, a homophobic parent could bring her children to a church that expressed its strong disapproval of homosexuality, but would have no right to prevent her child from participating in educational programs designed to combat discrimination against gays and lesbians (Morgan 2005, p. 373).

Therefore, the assumption that parental education and upbringing through inculcation of their values is justified is not warranted without additional specification. Such upbringing is justified only when it is supplemented by institutional efforts to secure the exposure of the children to a variety of social influences (also see Noggle 2002, pp. 97–118). Without it, parental belief inculcation lacks sufficient justification and represents a violation of the child's right to an open future.

Plugging this understanding back into the circumcision context allows us to see that the initial objection to the open future argument about circumcision's lack of moral justification does not work. This is because the difference between physical and non-physical nature of parental interventions into their child's future is after all a warranted assumption behind the argument. Individuals are able to shed their parental beliefs if their education has taken place against the background of an institutionally guaranteed exposure to variety of social influences and belief



systems. There is no such guarantee in cases of physical removal of body parts. The act cannot be balanced against alternative scenarios because such a bodily modification does not allow for a functional restoration of the prepuce: the cut of circumcision is permanent and irreversible.

The open future argument is, thus, still a valid normative framework for assessing the morality of circumcision. Its claim that circumcision, due to its physically invasive nature that implies removal of the part of a child's body, is not justified because it violates the child's right to an open future is plausible and persuasive. It still represents the best possible refutation of the claim that cultural and social benefits can justify parental authorization and institutional performance of the procedure.

## Conclusion

In this paper, I have tried to show that claims of cultural benefit cannot be used to justify non-therapeutic infant male circumcision. I have tackled some of the most influential cultural benefit arguments in the recent philosophical and bioethical literature and attempted to show that they fail to provide a proper justification to their claims. Social and cultural benefits cannot justify infant circumcision because performing such a procedure on a non-autonomous infant violates his "rights-in-trust" and closes a number of viable options for him in the future. We cannot know if the child will appreciate the communal bonds or that particular metaphysical salvation once he is an adult in the future. If he does, he will have the freedom to undergo the procedure and reap the cultural benefits circumcision may confer upon him. If he doesn't, there is no plausible way for him to have his foreskin, with all its natural functions back.

However, this conclusion has two important implications that I wish to mention in the end. First, it implies that the moral status of circumcision cannot be altered by potential ways to reduce the harm of circumcision through provision of more appropriate local anesthetic or through increasing the legal age limit for the child for several months, as has been suggested in the literature (Ben-Yami 2013, pp. 459–562). No matter how much medical practitioners are able to decrease the pain experienced by the child, it still doesn't change the moral status of the procedure, because the normative ground of its moral status lies not in the pain experienced but in future of the child.

Second, it doesn't necessarily imply that circumcision should be banned outright, as both German court and some authors have suggested, at least not without considering the nature of social and political context (Davis 2013, pp. 456–458; also Merkel and Putzke 2013, pp. 444–449). Since I believe there may be potential solutions that will involve amendments to the practice by altering the irreversible physical consequences of the procedure, analogous to some earlier suggestions in the case of female circumcision controversy in United States, liberal institutions should explore alternatives to regulate the procedure in a more culturally sensitive, yet rights-based way (Coleman 1998, pp. 717–783). Discussing these alternatives falls beyond the scope of this paper, so I cannot pursue it here. However, I wish to



note two potential reasons for worry about outright ban on infant male circumcision. First, criminalization of circumcision may actually aggravate rather than prevent violation of children's rights. Since circumcision is vital to certain forms of cultural reproduction, it could move from hospitals to underground practitioners and street doctors and expose the subjected children to even more harm. If there is anything to be learned from the cases of female genital mutilation it is that performance of these procedures in non-medical conditions poses significant risk of infection and further health complications. A ban on male infant circumcision might actually produce more public health problems than we have at this point.

Second, suggesting that cultural benefits cannot provide sufficient justification for the procedure does not mean that cultural and social facts have no normative relevance in devising policy solutions to controversies that arise from these cases. They are relevant and need to be addressed in their own right. For example, the nature of the social, cultural and political context of circumcising communities, such as Jews and Muslims in Germany, is also relevant from the perspective of the open future argument. One could plausibly argue that the range of options for cultural reproduction of minority communities is significantly limited in majoritarian social contexts, where dominant forms of socialization threaten the existence of marginal ways of life. In an environment in which a cultural or religious community has fewer options for cultural reproduction the emphasis on circumcision as a form of cultural existence and distinction will be strong. Any plausible change of public policy regarding circumcision needs to consider these issues as well.

However, this is not to say that reasons for moral impermissibility of infant circumcision have little weight in light of pragmatic political considerations. It is only to suggest that policy solutions need to supplement morally decisive reasons for non-justifiability of circumcision with considerations that reflect on the nature of social and political context. If needed, solutions alternative to an outright ban are available, as some cases (such as the Seattle Compromise, see Coleman 1998) suggest. It is up to the political theorists and bioethicists to make sense of them and up to the policy makers to render them applicable to their particular situations. But, such is a topic that requires more space than this paper allows, so I will stop here and leave that discussion for another occasion.

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