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Special Issue: Gender Equality in Abrahamic Circumcision: Why or Why Not?

REPLY

Against legalising female 'circumcision' of minors: a reply to 'The prosecution of Dawoodi Bohra women' by Richard Shweder

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Defenders of male circumcision increasingly argue that female 'circumcision' (cutting of the clitoral hood or labia) should be legally allowed in Western liberal democracies even when non-consensual. In his target article, Richard Shweder (2022) gives perhaps the most persuasive articulation of this argument to have so far appeared in the literature. In my own work, I argue that no person should be subjected to medically unnecessary genital cutting of any kind without their own informed consent, regardless of the sex characteristics with which they were born or the religious or cultural background of their parents. Professor Shweder and I agree that Western law and policy on child genital cutting is currently beset with cultural, religious and sex-based double standards. We disagree about what should be done about this. In this commentary, I argue that 'legalising' childhood FGC so as to bring it into line with current treatment of childhood MGC is not an acceptable solution to these problems. Instead, all medically unnecessary genital cutting of non-consenting persons should be opposed on moral and legal grounds and discouraged by all appropriate means.

Key words circumcision • Dawoodi Bohra • female genital cutting • bodily integrity

Key messages

- Under current legal norms, children with female-typical sex traits, male-typical sex traits, and intersex traits are treated fundamentally differently when it comes to protection from medically unnecessary, non-consensual genital cutting
- Defenders of non-consensual male circumcision increasingly argue that non-consensual female 'circumcision' should be legalized in Western liberal democracies
- Advocates of children's rights counter that all non-consenting persons, irrespective of their sex-characteristics, should be protected from medically unnecessary, non-consensual genital cutting
- An emerging view is that non-consensual child genital cutting of any type is already contrary

to criminal law, constituting physical assault and battery; parents cannot legally "consent" to the physical assault of their children
- Nevertheless, questions remain about the prudence of applying criminal sanctions (at least in the immediate future) to parents or providers who authorize or perform child genital cutting

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Introduction

I am honoured to have been asked to comment on the – characteristically – provocative and forcefully argued piece by Rick Shweder (2022), 'The prosecution of Dawoodi Bohra women: some reasonable doubts'. The Dawoodi Bohra are a religious community within the Musta'li Isma'ili Shi'a branch of Islam who, as Shweder notes, practise a gender-inclusive form of 'circumcision' affecting both boys and girls (Bootwala, 2019a; 2019b; 2019c). By most accounts, the form of ritual genital cutting to which the girls in this community are subjected (typically nicking, pricking or partial removal of the clitoral prepuce or hood) is less substantial than the form to which the boys are subjected (partial or total removal of the penile prepuce/foreskin) (for details, see Box 1).

Box 1: A Brief Overview of the Human Prepuce

The genital prepuce is a shared anatomical feature of both male and female members of all human and non-human primate species (Cold and Taylor, 1999). In humans, the penile and clitoral prepuces are undifferentiated in early foetal development, emerging from an ambisexual genital tubercle that is capable either of penile or clitoral development regardless of genotype (Baskin et al, 2018). Even at birth – and thereafter – the clitoral and penile prepuces may remain effectively indistinguishable in people with certain intersex traits or differences of sex development (Pippi Salle et al, 2007; Fahmy, 2015; Hodson et al, 2019). The prepuce is an integrated feature of the external genitalia, having evolved to function in concert with other genital structures; for example, it forms the anatomical covering of the glans penis or clitoris, thereby internalising each and 'decreasing external irritation and contamination' (Cold and Taylor, 1999: 34). In the case of the penile prepuce, an additional function – alongside its biomechanical role in sexual intercourse (Purpura et al, 2018) – is to protect the urinary opening from abrasion, as this runs through the penile but not the clitoral glans (Fahmy, 2020). The penile prepuce has a mean reported surface area of between 30 and 50 square centimetres in adults (Werker et al, 1998; Kigozi et al, 2009) and is the most sensitive part of the penis, both to light touch stimulation and sensations of warmth (Sorrells et al, 2007; Bossio et al, 2016). The clitoral prepuce, while smaller in absolute terms, is continuous with the sexually sensitive labia minora; it is also an important sensory platform in its own right, and one through which the clitoral glans can be stimulated without direct contact (which can be unpleasant or even painful)

(O'Connell et al, 2008). In both sexes, the human prepuce is 'a specialized, junctional mucocutaneous tissue which marks the boundary between mucosa and skin [similar to] the eyelids, labia minora, anus and lips.… The unique innervation of the prepuce establishes its function as an erogenous tissue' (Cold and Taylor, 1999: 34).
Source: Adapted and expanded from Myers and Earp (2020).

This situation – namely, gender inclusivity in genital cutting with typically more substantial cutting for boys – is not unique to the Dawoodi Bohra. Rather, it applies to many Muslim communities, particularly among those established throughout parts of South and South-East Asia (Dawson et al, 2020). Indeed, from a global perspective, virtually all communities that practise ritual female genital cutting of minors, whether Muslim or otherwise, also practise ritual male genital cutting of minors, often in a parallel ceremony serving similar socio-religious functions (Abdulcadir et al, 2012). This is true not only in Asia, as mentioned, but also in parts of Africa and the Middle East. Depending on the community, the form(s) of cutting it has adopted and the extent to which the practice has been medicalised, either the male or female version of the ritual may be more substantial or risky, with variable implications for health and sexuality (Shahvisi and Earp, 2019).

In this respect, therefore, the Dawoodi Bohra should not be seen as an unusual or isolated case. Nevertheless, following migration to – and largely successful integration within – such countries as the US, UK and Australia, the Dawoodi Bohra have been thrust into the spotlight in recent years, primarily due to high-profile 'female genital mutilation' (FGM)[1] court cases and often-sensationalist media coverage thereof (Rogers, 2016; O'Neill et al, 2020; Earp, 2020b). Although research suggests that most, chiefly African, communities that practise female and male genital cutting together have been willing to suspend the female 'half' of their initiation rites following migration to Western countries (Johnsdotter and Essén, 2016; Creighton et al, 2019; Johnsdotter, 2019; Karlsen et al, 2019), in the case of the Dawoodi Bohra, there has evidently been a desire among some devout members to continue genital cutting on a gender-inclusive basis. For allegedly acting on this desire, they have been subjected to arrest, incarceration, family separations, stigmatising treatment and criminal prosecution (Shweder, 2022).

Tensions in western law and medical ethics

As Shweder argues, this situation highlights an uncomfortable tension in Western law and policy, as well as in contemporary codes of medical ethics. In particular, it throws into sharp relief the different degrees of protection that equally non-consenting minors have been granted from medically unnecessary[2] genital cutting, depending on the sex characteristics with which they were born. There is now, for example, a large literature objecting to the ongoing failure to protect children with intersex traits from such cutting, despite little reliable evidence that the surgeries to which they are subjected (that is, for 'cosmetic' purposes) are conducive to their long-term best interests (for a bibliography, see Carpenter, 2020). Moreover, as illustrated by the case of the Dawoodi Bohra, even non-consenting children within the same families who have female-typical, as opposed to male-typical, sex traits are treated differently when it comes to protection from such genital cutting, even when anatomically

homologous tissues are at stake (see Box 1). This striking comparison – between female and male so-called 'circumcision' within this Muslim community – forms a backbone of Shweder's analysis (for further comparison, see Table 1).

Given the considerations raised by Shweder (2022) and expanded upon in Table 1, I agree that unjust double standards are currently being applied to the Dawoodi Bohra and to other Muslim and non-Muslim communities that practise both male and female 'circumcision' (see also Davis, 2001; 2003). I also agree with Shweder (among other subject-area experts) that the World Health Organization (WHO) is an unreliable and unscholarly source of information on childhood genital cutting practices, whether female or male (see, for example, Shell-Duncan and Tierney, 2008; Johnsdotter, 2020). Moreover, I agree that the differential protections afforded to children against such practices depending on their sex characteristics or the religion of their parents is unjustified and unsustainable (Earp, 2015a). Shweder's analysis is thus a much-needed and long-overdue intervention into the debate, and I hope it has the intended effect of encouraging people – including journalists, legislators and policymakers at the WHO – to rethink their biased and incoherent approach to this issue. To keep the conversation going, I will now focus for the rest of the article on where Shweder and I disagree.

Goose, gander or gosling: when (and why) is it wrong to cut a person's genitals?

In previous publications, my co-authors and I have argued at length that all non-consenting persons, including non-consenting children,[3] deserve protection from medically unnecessary genital cutting, regardless of their sex characteristics (see, for example, Earp 2015b; 2016a; 2020a; Earp and Steinfeld, 2017; 2018; Steinfeld and Earp, 2017; Earp et al, 2021; see also, for example, Tangwa, 1999; 2004; Svoboda, 2013; Shahvisi, 2016; Munzer, 2018; Möller, 2020; Townsend, 2020). Shweder takes a contrary view. As he sees it, male *and* female 'circumcision' (see Table 1) should be permitted in Western countries, even when performed without the consent of the affected person in the absence of any urgent medical need. As he puts it: 'if the practice is legal for the gander why should it be banned for the goose?' (Shweder, 2021: 9).

In making this argument, Shweder allies himself with a small but highly influential group of scholars, including Jacobs and Arora (see, for example, Arora and Jacobs, 2016; Jacobs and Arora, 2017), Duivenbode and Padela (2019a; 2019b), Dershowitz (see Sales, 2017) and Diekema (see AAP, 2010). These authors have, with growing force in recent years, adopted an argumentative strategy that takes for granted the moral and legal permissibility of medically unnecessary, non-consensual MC and builds on this assumption to urge tolerance, within Western liberal democracies, of certain forms of medically unnecessary, non-consensual female genital cutting. The argument, which is obviously strengthened by its appeal to the principle of non-discrimination, both on grounds of sex and (parental) religion, proceeds as follows:

- Premise 1: assume that medically unnecessary circumcision of non-consenting male children ('child MC') is morally permissible; at any rate, assume that it should be legally allowed in Western liberal democracies. Assume that these propositions hold *regardless* of any contestable empirical claims about 'health benefits' that may or may not follow from child MC (see Table 1).

Table 1: Comparison of female and male 'circumcision' in Western law and health policy

Procedure/status	'Female circumcision' (FC): nicking, pricking or partial removal of the clitoral prepuce/hood	'Male circumcision' (MC): partial or total removal of the penile prepuce/foreskin
Physical assault and battery	If non-consensual, medically unnecessary FC is legally considered to be physical assault and battery (which parents are not entitled to authorise for their children) (see, for example, United States of America vs Jumana Nagarwala et al[a]).	Although more physically invasive, MC is not treated as physical assault or battery – even when it happens within the same families as FC under otherwise identical conditions – despite meeting similar legal definitional criteria (Brigman, 1984; Price, 1997; Boyle et al, 2000; Davis, 2001; Mason, 2001; Somerville, 2004; Askola, 2011; Adler, 2012; Geisheker, 2013; Merkel and Putzke, 2013; Svoboda et al, 2016; 2019; Earp et al, 2017; Earp, 2020b).
Genital mutilation	In many jurisdictions, FC has additionally been defined as an instance of the crime of genital 'mutilation', even if performed by clinically trained personnel with pain control in a sterile environment, and even if there are no long-term physical complications, functional difficulties or visibly altered anatomy (Rogers, 2016; Earp, 2020c; O'Neill et al, 2020).	MC is nowhere defined as 'mutilation', even when performed by clinically untrained personnel with no pain control in non-sterile environments, and even though it necessarily involves the removal of healthy tissue, alters the biomechanics of the penis (Taylor et al, 1996), results in an easily noticeable change to the appearance of the organ and often leaves a prominent scar (Fahmy, 2019).
Medical ethics	Even if it were legal to do so, from a medical ethics perspective, it is widely understood that doctors cannot within the scope of their professional duties permissibly engage in medically unnecessary cutting of the clitoral prepuce of a non-consenting person (FC), even at the request of her parents (that is, parental 'proxy' consent for such cutting is considered invalid), regardless of the level of risk entailed by the procedure (Askew et al, 2016).	Within the same healthcare contexts, doctors routinely comply with requests to excise the healthy penile prepuce of non-consenting children (MC), typically citing parental 'proxy' consent as a sufficient justification, notwithstanding that the procedure is medically unnecessary and, like any surgery, carries non-trivial risks (Darby, 2015; Edler et al, 2016; Hung et al, 2019).
Religion	Great efforts are made to 'disassociate' FC from religion, often by emphasising that FC is not mentioned in the Quran, the primary scripture of Islam (Duivenbode and Padela, 2019b). The fact that FC is recommended in secondary Islamic sources considered authoritative by some Muslim scholars and communities is ignored or downplayed (Asmani and Abdi, 2008). Even if FC is acknowledged to be religiously meaningful for some groups (as opposed to 'merely cultural'), this is not considered sufficient reason to allow the practice (for example, some laws explicitly state that religion is not an excuse for FC) (for example, the STOP FGM Act 2021[b]).	Even in ostensibly medical contexts, efforts are often made to associate MC with religion, typically by emphasising that MC is mentioned in the Torah, the primary scripture of Judaism. The fact that MC is not mentioned in the Quran, the primary scripture of Islam, is almost never cited as evidence that it is 'not a religious practice' for Muslims; rather, the fact that it is recommended in secondary Islamic sources may be highlighted. However, even when MC is practised for reasons that have nothing to do with religion – that is, 'merely cultural' reasons, as in the vast majority of MCs in the US – it is still widely considered to be ethically acceptable.

(Continued)

Table 1: Continued

Procedure/status	'Female circumcision' (FC): nicking, pricking or partial removal of the clitoral prepuce/hood	'Male circumcision' (MC): partial or total removal of the penile prepuce/foreskin
Health benefits?	Whether FC might have 'health benefits' is not even entertained. However, if it did have health benefits – such as a reduced risk of acquiring a urinary tract infection, vulvar cancer or some sexually transmitted infections (such as HIV) following sexual debut – this would not be accepted as a reason to go ahead with the procedure on a non-consenting child, unless the purported benefits: (1) were statistically likely and essential to the child's well-being (taking into account alternative means of prevention and/or treatment of disease); (2) primarily applied before the child was capable of consenting; (3) could not be achieved in a less harmful way (for example, non-surgically); and (4) had a strong evidence base with respect to the procedure *as performed in childhood* in the relevant epidemiological environments.	Whether MC might have 'health benefits' is regularly entertained and, indeed, the question is actively pursued. Purported benefits include a reduced risk of acquiring a urinary tract infection,[c] penile cancer[d] or some sexually transmitted infections (such as HIV)[e] following sexual debut. These purported benefits are widely accepted as a reason to go ahead with the procedure on a non-consenting child, even though the purported benefits: (1) are not statistically likely and/or are peripheral to the child's well-being (taking into account alternative means of prevention and/or treatment of disease); (2) primarily apply after the child would be capable of consenting; (3) can be achieved in less harmful ways (for example, non-surgically); and (4) have a weak or inconsistent evidence base with respect to the procedure *as performed in childhood* in the relevant epidemiological environments.[f]

Notes: [a] United States of America vs Jumana Nagarwala et al, 17-CR-20274 (US District Court, Eastern District of Michigan, Southern Division), 20 November 2018 (see: www.scribd.com/document/393706333/Judge-dismisses-several-charges-in-FGM-case#download). [b] STOP FGM Act, H.R. 6100 (116th), 5 January 2021 (see: www.govtrack.us/congress/bills/116/hr6100/text). [c] According to the American Academy of Pediatrics (AAP, 2012), approximately 100 MCs would be required to prevent one urinary tract infection (UTI). As this same hypothetical UTI could almost always be treated with antibiotics with no surgical risk or tissue loss – as is done for UTIs in girls, who get them at a much higher rate than boys – it is not medically or ethically reasonable to rely on surgery in boys as a pre-emptive measure. [d] According to the AAP (2012), between 909 and 322,000 non-consensual (newborn) MCs would be required to prevent one case of penile cancer. Penile cancer is among the rarest cancers in Western countries with advanced healthcare systems, primarily occurs in men of advanced age who have multiple risk factors (for example, smoking), can typically be diagnosed at early onset and may often be treated with a targeted excision that does not require a full circumcision (Frisch, 2017). [e] Data suggesting a role for MC in reducing female-to-male HIV transmission comes from three trials of adult, voluntary circumcision in parts of sub-Saharan Africa with epidemics of heterosexually transmitted HIV (Auvert et al, 2005; Bailey et al, 2007; Gray et al, 2007). A fourth trial, stopped early for 'futility', showed an increased risk of male-to-female HIV transmission following circumcision (Wawer et al, 2009). Meanwhile, large-scale studies of non-voluntary circumcision of infants and children in Global North settings (for example, Canada and Denmark) suggest no protective effect against HIV or other sexually transmitted infections (Nayan et al, 2021; Frisch and Simonsen, 2021). [f] See, again, table footnote [e].

- Premise 2: certain forms of medically unnecessary genital cutting or 'circumcision' of non-consenting female children, including some of Types 4 and 1a on the WHO classification ('child FC'), are less physically substantial[4] than child MC. Moreover, if carried out under similar conditions (for example, by a sufficiently skilled operator using sterile instruments), such FC can be assumed to be no more harmful (for example, to health or sexual functioning) than child MC.
- Premise 3: if a form of non-consensual child FC is culturally meaningful to some group and is 'no more harmful' than non-consensual child MC, it should (also) be legally allowed in Western liberal democracies.
- Conclusion: non-consensual child FC (assuming it is performed by a sufficiently skilled operator using sterile instruments) should be legally allowed in Western liberal democracies.

Arguments in this vein tend to assume that non-consensual child MC is 'not harmful enough' to justify state interference (Cohen-Almagor, 2020; Jacobs, 2021; see also note 4); this assumption is then leveraged to argue in defence of certain forms of non-consensual child FC – such as that allegedly practised by the Dawoodi Bohra – which are plausibly no more harmful than the MC 'baseline'. There are various ways of responding to this, one of which is to push back on the assumption that non-consensual child MC is as harmless as its defenders commonly suppose (Boyle et al, 2002; Boyle, 2015; Darby, 2015; Shahvisi, 2016; Hammond and Carmack, 2017). As it happens, I agree that there are significant harms to non-consensual child MC that are often ignored or strategically downplayed by its defenders (see Box 2).

Nevertheless, I want to argue here that the ethical status, and perhaps also the legal status, of medically unnecessary, non-consensual child genital cutting – at least, but not necessarily only, in Western liberal democracies (see later) – ultimately does not depend on (inevitably contentious) questions of harm,[5] much less on the set of sex characteristics with which the child happens to have been born (Reis-Dennis and Reis, 2021). Rather, I argue, the focal consideration should be on whether the person whose healthy genitalia are to be cut or altered has given their own adequately informed consent. In other words, ganders and geese may do as they please when it comes to interventions into their intimate anatomy; goslings, by contrast, should be protected from medically unnecessary genital cutting until they are capable of making their own decision.

Box 2: Assessing the harms of non-consensual child MC: a selection of key arguments

There are several ways to argue that non-consensual child MC is more harmful than defenders of the practice typically allow. Briefly, these include the following.

The argument from value of the excised tissue

There is evidence that many, possibly most, individuals with intact penile foreskins place a positive value (often quite high) on the foreskin itself (see, e.g., Ball, 2006). This is unsurprising: studies suggest that the foreskin is the most sensitive part of the penis to light-touch sensation as well as mild sensations of warmth (Bossio et al, 2016; Sorrells et al, 2007), both of which can contribute to intimacy and sexual enjoyment. Moreover, the foreskin – like the female genital labia – consists of elastic, nerve-laden

tissue with self-moisturising glands. This tissue can be orally or manually manipulated independently of, or conjunction with, other genital structures (for example, the head of the penis), thus allowing for particular subjective sensations, often experienced as acutely pleasurable, which are not possible if the foreskin has been removed (the same point applies by analogy to the labia, clitoral hood and so on) (Earp, 2016b). To make the point more generally: if someone places a positive value on the part(s) of their body removed by genital cutting, then the removal per se is a harm to them, irrespective of whatever other harms (for example, surgical complications) may or may not occur (Svoboda, 2017). If someone places a high value on the body part(s) in question, the harm to them of its being removed may be considerable.

The argument from value of choice

The same point applies to the value that many people place on being able to decide about the 'look' and/or biomechanical or (other) anatomical properties of their own genitalia (their so-called 'private parts'). There is evidence that many individuals who were subjected to medically unnecessary genital cutting in early childhood – whether or not the cutting led to physical 'complications' – greatly resent that this particular choice was taken away from them (regarding MC, see, e.g., Bossio and Pukall, 2018; Hammond, 1999; Hammond and Carmack, 2017; Watson and Golden, 2017). If someone places a high value on being able to decide about the 'look' (etc.) of their own genitalia, the harm to them of this choice being taken away may be considerable.

The argument from physical risk

Some surgical complications agreed by all to be significant harms (for example, among others: nerve damage leading to numbness or unpleasant sensations; the removal of too much foreskin tissue to accommodate a full erection later in life without discomfort or pain; the accidental excision of part or all of the head of the penis; the subsequent pathological narrowing of the urethral opening, causing difficulties with urination; and the development of penile adhesions or skin bridges) may be more common than has often been assumed (for example, due to problems with under-reporting) (for a discussion, see Frisch and Earp, 2018). However, even if one or more of these complications is simply assumed to be rare, each can have devastating lifelong consequences for those who, nevertheless, experience them (Shteyngart, 2021). Importantly, the seriousness of a risk is a matter of not just its absolute likelihood (under certain conditions), but also its magnitude (degree of badness or disvalue). Since the magnitude of these complications can be quite significant, the risk of harm associated with MC may be considerable even if the statistical likelihood of specific complications is considered low.

The argument from psychological risk

There is evidence that many thousands of neonatally circumcised men in the English-speaking world are engaged in an arduous process of so-called 'foreskin restoration' (that is, the attempt to create a pseudo-prepuce by attaching weights, tapes or other instruments to the remaining shaft skin, if any, so as to slowly stretch it out over the course of many months or, more typically, years, with the goal of achieving at least partial coverage of the penile glans) (Earp, 2016a; Mohl et al, 1981; Özer and Timmermans, 2020; Schultheiss et al, 1998; Timmermans et al, 2021). Many such men report a strong feeling of resentment that their penile foreskin was removed

without their consent – often irrespective of medical complications – stating that they place a high value both on the foreskin itself (for example, for its properties and affordances, such as the ability to have one's glans covered when not in a state of sexual arousal) and on the ability to make one's own choice about such intimate matters. While such foreskin 'restoration' cannot actually restore the foreskin (its specialised nerve endings, for example, do not regenerate), it is significant that so many men are pursuing a painful and difficult process to (try to) create at least a semblance of a pre-genitally modified state. It can safely be assumed that such men experience considerable psychological anguish about having been non-consensually circumcised.

Summary

Taken together, these arguments put pressure on the assumption that non-consensual child MC can be used as a 'baseline' standard of relative harmlessness against which non-consensual child FC can be compared. Of course, many of these same arguments, or close analogues of them, can also be used to put direct pressure on the assumption that supposedly 'minor' forms of non-consensual female genital cutting are insufficiently harmful to justify state interference.

An argument for personal choice in genital cutting

Over a series of articles, my co-authors and I have argued that no one should be subjected to genital cutting, of any form, without their own informed consent. The only exception is if: (1) the person is incapable of consenting (for example, due to intoxication, being unconscious or being insufficiently autonomous, as in the case of most young children); and (2) the cutting is urgently medically necessary and so cannot ethically be delayed until the person (re)gains the capacity to consent. In other words, we have argued that 'cutting any person's genitals without their informed consent … is morally impermissible unless the person is nonautonomous (incapable of consent) and the cutting is medically necessary' (BCBI, 2019: 17).

One thing to note about this argument is what it does not state. It does not state that those who engage in, or authorise, medically unnecessary genital cutting of a non-consenting child should (necessarily) be subject to criminal prosecution. It is a moral, not a legal, argument (potential legal implications will be discussed later on). Nevertheless, from a moral perspective, it might still be objected that the argument puts too much weight on 'medical necessity' as a threshold criterion for ethically cutting the genitals of a non-consenting child. Why not make an exception for cutting that is perceived (by some) to be 'religiously necessary' or 'culturally necessary', for example? In other words, what is so special about *medical* necessity that it should serve as the sole exception to an otherwise generally stated moral rule?

In a recent exchange with Rabbi Josh Yuter (who posed a question very like this), I replied by drawing a distinction between the values, norms and beliefs that underlie perceptions of medical necessity in Western liberal democracies and those that underlie perceptions of, for example, religious or cultural necessity (Earp and Yuter, 2019). First, I gave a definition of medical necessity (see note 2):

> an intervention to alter a bodily state is medically necessary when (1) the bodily state poses a serious, time-sensitive threat to the person's well-being,

> typically due to a functional impairment in an associated somatic process, and (2) the intervention, as performed without delay, is the least harmful feasible means of changing the bodily state to one that alleviates the threat. (BCBI, 2019: 18)

Then, I suggested that the values, norms and beliefs that underlie this criterion (for example, a desire not to die prematurely) are almost universally shared across individuals and groups, cultural and religious frameworks, meta-ethical theories, and social epistemologies. Accordingly, although a pre-autonomous person's body envelope might be radically breached by an intervention – for example, by an open-heart surgery – if the breach were medically necessary in the sense outlined earlier, practically no one would object on moral or medical-ethical grounds, and subsequent resentment about the breach (as such) would be hard to justify. Likewise:

> for any person whose informed bodily preferences are not known (because they are a baby, or perhaps a passed-out stranger who appears to need medical attention), it is close to 100% safe to assume [that is, with a high degree of warranted certainty] that they *would* consent to having their genitals touched (or cut) if (1) this was necessary to save their life or preserve their future bodily autonomy, and (2) it could not be delayed until they were actually capable of consenting without undermining that very aim. (Earp and Yuter, 2019: letter 5, emphasis in original)

Moreover, it is safe to assume that the person would consent to genital contact/cutting under these conditions across a highly diverse set of beliefs or values they might eventually come to adopt (that is, by the time they became capable of making autonomous decisions).

By contrast, the same cannot safely be assumed for such values as 'fulfilling a supernatural will' or 'ensuring group cohesion' (Earp and Yuter, 2019: letter 4). Stated more generally, the norms, beliefs and values that underlie medically unnecessary genital cutting – for example, 'the belief that a child's body must conform to a strict gender binary; that surgery is an appropriate means of pursuing hygiene [given effective alternatives]; that one's genitals must be symbolically purified before one can be fully accepted; and so on' – are often understandably 'controversial in the wider society and hence prone to reevaluation upon later reflection or exposure to other points of view' (BCBI, 2019: 21). Therefore, if one assumes a multicultural context with sufficient access to differing perspectives:

> there will typically be greater opportunity for someone who was pre-autonomously exposed to a medically *unnecessary* genital operation to (re) construe the operation as having been harmful or inappropriate, than for someone who was exposed to a medically *necessary* genital operation, all else being equal. (Earp, 2021: 4, emphasis in original)

An example

Let us now see how this applies to genital cutting within the Dawoodi Bohra community. As Shweder (2022: 12) notes, along with many other Muslims, Dawoodi

Bohra religious leaders interpret the Abrahamic covenant (that is, penile circumcision) 'to be an act of purification of the human body in which excess parts of the body (uncut fingernails, uncut hair, the foreskin) are trimmed back to restore it to what they view as its original God-made natural form'. When contemplating the ethics and legality of a proposed non-consensual genital surgery, we might ask whether this religious conception of bodily integrity (that is, restoration to a God-made natural form) should be given just as much weight in a secular, liberal democracy as the conception implied by appeals to medical necessity (that is, a conception according to which certain unconsented intrusions into 'intimate' body parts are permissible only insofar as the intrusion is required to preserve or restore a somatic function whose impairment poses a serious, direct and time-sensitive threat to the person's well-being).[6]

First, let us consider the idea that there might be 'excess' parts of the body. One can begin by noting that one of these things (the foreskin) is not like the others (fingernails and uncut hair), in that it does not spontaneously regenerate after being 'trimmed'. The same point applies to the clitoral prepuce. Given that there is sharp disagreement, even within cultures with a dominant practice of child genital cutting, as to the significance or value of the foreskin or prepuce, this fact about irreversibility seems morally significant. Nevertheless, according to this religious version of the concept (see also Dekkers et al, 2005), a person's 'bodily integrity' can only be ensured or achieved by doing something that, on a secular-liberal understanding of the concept, literally dis-integrates the body: that is, cutting into and permanently removing a developmentally normal, healthy and functional part of one's genital anatomy.

In the context of Western law and policymaking, a potential problem with this religious interpretation is that in order for the concept even to make sense, much less be morally compelling (for example, in evaluations of non-consensual genital cutting), one has to subscribe to a particular and highly contentious metaphysical world view. For example, one must believe in the specific God of Judaism or Islam (other religions, such as Christianity or Sikhism, have a different take on bodily integrity) (Fadel, 2003; Chahal, 2004; Glick, 2005). Such a peculiar interpretation is arguably not well suited to serve as a conceptual basis for a generally applicable legal right to bodily integrity in a secular liberal democracy.[7] In such a democracy, the conceptual basis for legal rights must be defensible to public reason; whereas, appeals to an allegedly divine understanding of a functional body part as being extraneous cannot satisfy this principle. Moreover, in the face of reasonable disagreement about whether a non-consensual intervention violates bodily integrity, state neutrality favours a policy of non-intervention, leaving the decision to the affected individual (Chambers, 2018). Finally, if one does not happen to subscribe to the requisite metaphysical world view (for example, if one does not share one's parents' religious beliefs, as is increasingly common in many Western countries) (Pew Research Center, 2013; 2015; 2018), one may reasonably come to conclude that one's bodily integrity, and more specifically, one's sexual-anatomical or genital integrity – understood literally – has been very seriously violated indeed.

A question of scope

It is possible that the foregoing analysis does not apply with equal force in all cultural or political contexts. For example, it may not apply with equal force in countries with deeply entrenched traditions of communal decision-making, 'group' consent or other relevantly different background conditions. I will not take a stand on that issue here.[8]

I am confident, however, that the argument applies to Western liberal democracies such as the UK and the US. I confine my remarks in what follows to this context.

In these countries, there are long-standing and deep-rooted moral and legal traditions emphasising the importance and ontological primacy of individual rights, including the right to bodily integrity as that concept is commonly and secularly understood (see earlier). Within these same traditions, the right to practise one's religion is considered to be, not an absolute or unfettered right, but rather one that is limited in various ways. For example, a desire, however strong or sincere, to manifest one's own religious beliefs does not entitle one to violate, among other things, the bodily integrity rights of others – including those of one's own children. (These children may not, after all, grow up to share their parents' religious convictions, and they may reasonably resent having had those convictions permanently engraved, so to speak, into their flesh [Sarajlic, 2014; 2020; Möller, 2017]).

In these same Western countries, children are taught, almost universally and from a young age, that of all the various aspects of their embodied selves, their sexual anatomy, in particular, should be considered 'private' and they alone should have the final say over who engages with, for example, their vulva or penis (as well as how and under what conditions), when they are sufficiently mature to understand what is at stake (Archard, 2007; Munzer, 2018). The only widely recognised exception to this rule, especially when it comes to adults interacting with children's genitals, 'pertains to necessary parental (or equivalent) care: for example, changing diapers or help with washing' (BCBI, 2019: 21). However, this exception applies 'only insofar as the child requires such help; a parent or caregiver who continued to wash a child's genitals when the child was capable of such washing on their own would likely be acting inappropriately' (BCBI, 2019: 21).

The same principle applies – as children of all cultural and religious subgroups are continually reminded – not only to their family members, but also to faith leaders, coaches or teachers, and even to medical staff. Thus, 'a doctor or other health care professional who handled – much less cut into or removed tissue from – a child's genitals beyond what was strictly necessary for diagnosis or treatment' would widely be understood to be 'crossing an ethical line' (BCBI, 2019: 21).

Within such a cultural, moral and legal milieu, one can readily see why a growing number of individuals report feeling extremely aggrieved that when they were at their most vulnerable, a more powerful adult figure not only touched or handled, but actually cut into and removed, sexually sensitive tissue from what they had been told all their lives was the most 'intimate' part of their body. In many cases, the feeling of having been harmed or wronged by genital cutting is not reducible to questions of physical damage or the incidence of 'medical' complications. Rather, a feeling of having been (sexually) violated and/or having had a 'personal' choice taken away from one is commonly reported among those who object to such practices (see Box 2).

Changing perspectives and moral reasons

Even more difficult to come to terms with, for some, is the fact that it was not a stranger who committed this perceived violation or allowed it to happen. Rather, it was their own parents – often with the encouragement of religious leaders or other respected community members – who authorised this unconsented intrusion into their body. Here is how one woman, a member of the Dawoodi Bohra,[9] described

her experience of coming into a new kind of awareness or understanding about what happened to her when she was a little girl:

> As the years rolled by, I attained puberty, and after experiencing my first menstruation, I became aware of my sexuality. At this point of time, my second eldest sister, in order to give me an understanding of sexual knowledge, gave me a book to read [on human sexuality]. After reading that book, the full impact and realization of that awful, painful and life-changing procedure which I was made to undergo at the innocent age of seven years, dawned on me.… I feel robbed and cheated of my sexuality, and feelings of inadequacy and incompleteness remain with me till today, even at the age of 61.… After making a private self-examination, I found that the prepuce or the entire foreskin of my clitoris had been cut off. (Taher, 2017: 55)

This quote comes from a survey conducted by Sahiyo (Taher, 2017: 55), an organisation led by women raised within the Bohra community who have come to oppose such *khafz* ('female circumcision'). However, as Shweder notes in his critique of the survey, it did not rely on random sampling methods. Therefore, he cautions, we should not suppose that such attitudes are representative of Bohra women in general. Indeed, as he stresses, a different survey with a larger sample size and more representative participation suggests that, 'Overwhelmingly the women in the global Dawoodi Bohra religious community support the continuation of khafz' (Shweder, 2022: 15).

As a descriptive matter, that may well be so. However, the moral conclusion we should draw from this is not clear. First, we should distinguish between the attitudes of those in the 'global Dawoodi Bohra religious community' who reside in contexts other than Western liberal democracies (i.e., the majority), who plausibly have not been exposed to alternative points of view about their practice to the same extent as have those within the community who have migrated to, or were born in, countries such as the US or UK. Indeed, there is a body of evidence suggesting that women who grew up in genital cutting cultures but subsequently migrated to Western countries often change their minds about the practice: from seeing it as 'normal, natural, and beautiful' to something that is inconsistent with their newfound notions of bodily and sexual integrity (Johnsdotter and Essén, 2016; Hanberger et al, 2021; O'Neill and Pallitto, 2021). Since the topic of Shweder's piece is, primarily, Western law and policy regarding child genital cutting practices, it is a category error to cite the views of the 'global' Dawoodi Bohra community – most of whose members have been socialized and continue to reside in locations outside of that cultural and legal context – in support of *Western* tolerance of female 'circumcision' of minors.

But even if endorsement of non-consensual female 'circumcision' was the majority position of Bohra women within Western migrant communities, this would not, whether on moral or legal grounds, straightforwardly support a position of tolerance toward the procedure in that context. It also would not show that the dissenting views of the women highlighted in the survey by Sahiyo (the organization opposed to female 'circumcision') were somehow unworthy of serious moral consideration. By way of analogy, suppose I wanted to argue that it is wrong to eat meat because doing so is disrespectful to non-human animals. To help the reader empathise with this position,

suppose I shared stories of vegetarians within my society who, as it happens, used to see meat eating as perfectly normal, natural and ethically benign but who – upon gaining a different perspective, possibly due to a striking personal experience of some kind – eventually came to see the very same practice as morally wrong.

It would, presumably, be an odd critique of my position to point to a representative survey of individuals from within my society – much less a wider global community within which meat eating, we will assume, is a normative cultural practice that generally goes unquestioned for all the usual reasons – and stress that the overwhelming majority of survey respondents 'support the continuation of eating meat'. What matters for moral analysis, typically, is not how common a given attitude is, but, rather, whether the attitude is sufficiently well justified to do the argumentative work it is being called upon to do (Earp et al, forthcoming).

The question, then, is whether we can justify – and assign significant normative weight to – the view that there is something morally troubling about a practice that involves the following features, no matter how widely approved the practice may be in certain groups:

- a child at a time of heightened vulnerability is physically restrained by one or more adults;
- the child (who may or may not yet be old enough to have learned about the 'special' or 'private' status of their sexual anatomy) has their genitals exposed – whether or not this is something they want, are comfortable with or are capable of understanding;
- a sharp object is pressed onto their genitals, usually causing pain but certainly introducing a certain amount of risk (for example, of infection, nerve damage, removing too much tissue and so on [see Box 2]) that a person might rationally want to avoid having concentrated on this particular part of their body (unless for reasons they themselves endorse);
- healthy, erotogenic tissue (that is, tissue with properties that it is reasonable to value and that those who possess the tissue typically do value, often highly) is cut or removed, creating a wound and causing the child to bleed, without this being medically necessary; and
- whether this risk, pain, bleeding and damage to, or loss of, prima facie valuable tissue is regarded as 'worth it', all things considered, depends on factors (for example, contested religious beliefs or cultural values) that are far from universal and hence prone to reconsideration or rejection upon exposure to other points of view.

My own view is that such an attitude is reasonable, even if it may not be the majority attitude of affected individuals within cultures or subcultures where ritual genital cutting is socially prescribed. By emphasising a numerically dominant view within the Dawoodi Bohra community, Shweder downplays the legitimate concerns of the 'minority within the minority' – here, those women who have had an understandable shift in perspective away from the dominant view within their group and who believe that 'circumcision' should be a voluntary choice rather than something that is imposed on children.

Whose perspective should be given more weight? Consider a comparison between two groups: those who were not genitally cut as children but wish they had been

(currently a largely hypothetical population) and those who were genitally cut as children but wish they had not been (an actual population including the woman quoted earlier). Members of the first group, if they do end up sharing the metaphysical beliefs and/or cultural values of their parents, have the option of 'circumcision' available to them: they can *choose* to have part or all of their prepuce removed as a sign of their devotion to God or ongoing commitment to the community. It is true that they cannot travel back in time and undergo the procedure as a pre-autonomous child, but they can still be 'cut' in accordance with their stable adult preferences and considered personal and/or communal values.

The second group, by contrast, has no comparable remedy for the resentment they feel about what happened: they cannot 'undo' the genital cutting they have already endured, nor erase the fact that it was done without their consent (Earp and Darby, 2017). From this perspective, it seems that more moral weight should be assigned to the concerns of the second group.

Legal implications

As it happens, the law in Western countries generally reflects this moral perspective, at least when it comes to girls. In other words, Western law currently prohibits medically unnecessary genital cutting on non-consenting female minors while allowing adult women to pursue such cutting – as in female genital so-called 'cosmetic' surgery – if that is what they choose (but see Dustin, 2010; Shahvisi and Earp, 2019). However, Shweder proposes that this law be changed to allow groups such as the Dawoodi Bohra to engage in medically unnecessary genital cutting of non-consenting girls. What is legal for the gander, he thinks, should be legal for the goose.

This proposal is not new, nor unique to Shweder, but has been gaining steam in recent years. In response to a similar proposal by Jacobs and Arora in 2016, I argued against such a change on several grounds. To make sense of these objections, it is important to understand that medically unnecessary female genital cutting of non-consenting minors is currently illegal in most Western countries for at least two reasons: first, in many countries, it is specifically prohibited by so-called anti-FGM legislation; however, second, and more basically, it is considered to be form of physical assault and battery (see Table 1).

This view was recently confirmed by Bernard Friedman, the federal judge who oversaw the first-ever court case in the US to test the national-level 'FGM' law passed by Congress in 1996. This case primarily concerned a member of the Dawoodi Bohra, Dr Jumana Nagarwala, who was charged with carrying out multiple instances of 'FGM'. In striking down the national law as unconstitutional (Dyer, 2018), Friedman argued that the statute concerned activity that was already illegal at the state level. 'As despicable as this practice may be', he wrote – referring to female 'circumcision' as allegedly practised by the Bohra (that is, nicking, pricking or partial removal of the clitoral prepuce) – 'it is essentially a criminal assault'.[10] Friedman argued that Congress is not permitted, on federalist grounds, to regulate 'local criminal activity' under the US Constitution unless it, for example, substantially affects interstate commerce. In passing the 1996 law, therefore, it overstepped its authority: 'FGM is not part of a larger market and it has no demonstrated effect on interstate commerce. The commerce clause does not permit Congress to regulate a crime of this nature.'[11]

Since female 'circumcision' on this view – if non-consensual and medically unnecessary – is essentially a form of criminal assault, irrespective of whether the practice is (also) prohibited by specific anti-FGM legislation, an attempt to fully 'legalise' the practice would have significant implications. As I argued previously (quoting and paraphrasing here from Earp, 2016a: 161), such an attempt would likely result in:

- disturbances and inconsistencies throughout Western legal systems, possibly requiring new definitions of bodily assault and opening the door for inadvertent legal protection of a wide range of potentially harmful practices (typically carried out on children, who cannot adequately defend themselves);
- removal of an important tool that reformers from within the affected communities rely on to solve the 'collective action' problem introduced by child FC (namely, the problem of unilaterally stopping the practice for one's daughter if others do not also do so, potentially increasing the risk of social ostracisation);
- regulatory challenges in tracking and monitoring child FC cutting sessions to ensure that they were not being used as opportunities for more invasive procedures;
- the exposure of young girls to an unknown amount of surgical risk in the absence of medical need, thereby placing doctors in an untenable position with respect to their professional duties; and
- widespread outrage among women who consider themselves victims and/or survivors of FC, as well as their allies, and other forms of political backlash.

These points suggest that there are strong reasons not to pursue 'legalisation' of child FC when medically unnecessary and non-consensual (assume these qualifications in what follows) at least in Western liberal democracies. What, then, are the implications for child MC (similarly qualified)?

One person's *modus ponens* is another's *modus tollens*. In a striking development, a number of legal scholars have begun to argue (building on scholarship going back to the 1980s) that child MC, like child FC, is also essentially a criminal assault (see also Brigman, 1984; Price, 1997; Boyle et al, 2000; Somerville, 2004; Adler, 2012; Merkel and Putzke, 2013; Svoboda et al, 2016; 2019; Adler et al, 2020). According to this view, it is not that such MC might need to be 'banned' so as to make it illegal (as is increasingly being entertained in some countries, including Iceland in recent years [for an analysis, see Notini and Earp, 2018]); rather, it is *already* unlawful, even if it is not currently treated that way (because its status as an assault is not yet widely appreciated). Referring to the situation in Germany, for example, Merkel and Putzke (2013: 447) argue:

> Circumcision therefore is, and, in a material sense, remains, unlawful even if performed as a religious rite. A different question is whether parents who arrange for a circumcision to be performed on their child (along with the person who actually performs it) should be liable to criminal prosecution. If, from a subjective point of view, there is no acceptable alternative to circumcision, as might be the case for devout Jews, a legal ground for a personal exemption from punishment by exculpation might be considered. It certainly does appear excessive to stigmatize such well-meaning and

> piously minded parents as criminals.To abstain from raising criminal charges would not, however, alter the fact that the circumcision procedure itself remains unlawful.

How, or whether, to extend this analysis to child FC is worthy of further consideration. One possibility is that *neither* child FC nor child MC should be fully legalised (for the aforementioned reasons), but *both* could be, as it were, 'decriminalised' – akin to drug use on the so-called Portugal model (Rieder, 2021). On this model, the use or possession of certain drugs remains illegal, but criminal penalties are not applied if the amount of drug in possession is sufficiently small (e.g., less than a 10-day supply); the focus of policy shifts from carceral solutions to harm-reduction measures and public health promotion; and the authority to impose non-criminal consequences, where applicable, shifts from police, prosecutors, and other officials within the criminal justice system to civil servants charged with dissuasion over punishment. Given that criminal law, as applied to drug use or possession, as with many other perceived social problems, often has been applied in a racially discriminatory manner, such "decriminalization" (if not outright legalization) has strong support among scholars of race and racism and drug policy researchers alike (Earp et al, 2021).

Applying such an approach to genital cutting might involve the following: affirming the unlawful status of both male and female child 'circumcision' (increasingly advocated by legal scholars who consider both practices to constitute physical assault and battery when medically unnecessary), but withholding criminal penalties (e.g., jail time) so long as the type of cutting remained below some threshold of severity (such that, for example, non-consensual acts of infibulation would remain subject to criminal sanction). A similar shift from carceral solutions (which disproportionately affect people of color) to harm-reduction, public health promotion, and non-coercive strategies of dissuasion could likewise be pursued.

An advantage of this approach is that it would eliminate the double standard in legal reactions to child genital cutting, which currently differ as a function of the child's gender and/or sex characteristics and/or the religious affiliation of the child's parents. Such double standards, presumably, are themselves unlawful, as they seem to violate the equal protection clause of the US Constitution (and similar legal standards in other countries) (Bond, 1999; Davis, 2001).

A further advantage of setting aside criminal sanctions – at least as a temporary measure for the reasonably near future – is that the criminalisation of child FC has often failed in its aims (for example, driving the practice underground while also inadvertently harming affected communities) (Berer, 2015; 2019; Johnsdotter, 2019), while other, less-coercive social change efforts (for example, education, consciousness raising and the introduction of alternative rites) could be prioritised. These latter kinds of efforts are less likely to lead to (further) stigmatisation of already-marginalised minority groups, much less on an unequal basis with more established or less marginalised minority groups (for example, criminalisation of Muslims but not Jews for substantively similar practices). Moreover, evidence suggests that, at least in certain contexts, such 'softer' efforts may, in fact, be more successful (that is, in actually driving down rates of child genital cutting based on changing hearts and minds, rather than driving the cutting underground based on the threat of punishment) (see, generally, La Barbera, 2017).

Meanwhile, reformers from within practising communities could still appeal to the fact that child genital cutting (whether female or male[12]) is strictly speaking illegal, and use this as leverage to persuade fellow community members if not to give up the practice entirely, then at least to leave the decision to children when they are older. By the same token, as more people became aware of the unlawful (if not necessarily criminal[13]) status of such child genital cutting, it would likely be easier for parents who want to forgo the practice – and who would do so if not for ongoing pressure from other community members to conform to tradition (see, for example, Meoded Danon, 2021) – to take a stronger stand for their values.

Conclusion

I am not here claiming that this is the approach that should be taken, though I do think a move in this direction would represent an improvement over the status quo. There are no perfect solutions, and not everyone will be pleased. Many advocates for children's rights – to bodily integrity, to sexual and religious self-determination, and so forth – would clearly like to see *both* male and female child genital cutting criminalised, typically believing (albeit contestably) that this is the surest way to protect children going forward. Advocates for parental rights and religious freedoms, by contrast, are likely to baulk at the idea that any legal restrictions should be invoked in this context (e.g., Jacobs, 2022b). What is clear, and where Professor Shweder and I agree, is that the current situation whereby males and females, as well as, in practice, Muslims and Jews (and native-born white people and black African immigrants, and so on), are treated fundamentally differently under Western law is unjust and unsustainable.[14]

Notes

[1] Non-Western-associated forms of medically unnecessary female genital cutting have been defined as FGM by the World Health Organization (WHO); this language is reflected in most country-level legislation aimed at criminalising such cutting as well. For a recent summary of scholarly critiques of the WHO's terminology, see Earp and Johnsdotter (2021), as well as Ahmadu (2016), Duivenbode (2018), Njambi (2004) and Oba (2008).

[2] According to a recent international statement:
an intervention to alter a bodily state is medically necessary when (1) the bodily state poses a serious, time-sensitive threat to the person's well-being, typically due to a functional impairment in an associated somatic process, and (2) the intervention, as performed without delay, is the least harmful feasible means of changing the bodily state to one that alleviates the threat. (BCBI, 2019: 18)
Reasons for considering medical necessity, as opposed to, for example, perceived cultural or religious necessity, as the threshold criterion for permissibly cutting the genitals of an individual who cannot (yet) consent will be discussed later on.

[3] The phrase 'non-consenting children' may seem redundant, insofar as 'childhood' is often equated with a lack of capacity to provide ethically valid consent to certain kinds of interventions. However, I am using 'children' and 'minors' in this article interchangeably to refer to those members of a society who are not yet legally considered to be adults, with all the rights and privileges associated with that status. I am nevertheless assuming that some people who are legally minors (or children) may, in some cases, give valid (for example, adequately informed) consent to certain interventions into their bodies,

depending on what is entailed by the intervention, the child's capacity to understand what is at stake in it, the extent to which the child's agreement to undergo the procedure is sufficiently voluntary and so on (for a discussion, see Earp, 2019; Murphy, 2019). I leave open what the precise conditions are for such 'childhood consent'. Here, I am concerned only with those cases in which either the child is not (yet) capable of giving ethically valid consent to a given act of genital cutting – because, for example, they are too young or (sexually) inexperienced to understand what is at stake, or because they are subject to too much societal pressure (that is, with no real option to refuse without incurring extraordinary social costs) – or the child is capable of consenting but withholds their consent. For the purposes of this article, I will assume that prepubertal children, infants and newborns are incapable of consenting to genital cutting.

[4] In his article, Shweder (2022) often discusses how 'extensive' or 'substantial' FC is compared to MC – rather than how 'harmful' it is – presumably because he recognises that harm judgements are inescapably value-laden and often also culturally variable (Earp and Darby, 2017). However, at least one of Shweder's implied arguments is that the form of FC allegedly practised by the Dawoodi Bohra is not harmful enough (cf 'not substantial enough') to justify state interference. Since Shweder frequently uses non-consensual child MC as a reference point for what is morally permissible – and should be legally allowed – he seems to endorse the following conditional: if a form of non-consensual child female genital cutting is culturally meaningful to some group and is 'no more harmful' than non-consensual child MC, it should (also) be allowed. A similar assumption is present in the work of other recent defenders of non-consensual child FC (for example, Arora and Jacobs, 2016). I therefore make this assumption explicit as Premise 3.

[5] For example, should we be concerned with the 'average' level of harm, or should we also take into consideration the extremes of harm that can apply to certain cases (for example, 'botched' operations)? And how is the 'level' of harm to be measured in either case? Supposing that we could agree on a method of measuring harm, what is an 'acceptable' level of harm to inflict on a child through genital cutting?

[6] For an in-depth discussion, see 'The child's right to bodily integrity' (Earp, 2019).

[7] In separate work, Shweder (2009) has drawn a distinction between what he calls 'imperial liberals' and 'liberal pluralists', suggesting that medically unnecessary, non-consensual child genital cutting is incompatible with the foundational moral commitments of the former sort of liberal but not the latter. This distinction, while interesting, is not one I have the space to pursue here. In this article, I am simply trying to provide reasons for opposition to such genital cutting that I anticipate will appeal to liberals of various stripes. In other words, I am suggesting that those who support, endorse and/or benefit from the tenets of secular, Western democratic liberalism – notwithstanding its various purported flaws – and yet fail to consistently oppose medically unnecessary, non-consensual child genital cutting are being inconsistent. Therefore, on pain of hypocrisy, they should revise their position on at least one of these two issues. My position is that there are much stronger reasons to give up child genital cutting than there are to weaken key liberal precepts regarding, for example, individual rights and bodily integrity.

[8] As a reviewer notes:

culture itself is neither static nor homogeneous … universal human rights are historical and constantly negotiated, implemented and monitored by national, international and transnational institutions and policy-makers. This may, for example, mean that if

policymakers address [current inconsistencies in the treatment of male versus female child genital cutting] in global institutions, this could impact human rights practice. For further discussion, see, for example, the section with the subheading 'The right to culture and culture of rights' in Hernlund and Shell-Duncan (2007).

[9] Demographic details for this individual are not available. However, in the survey from which this quote was taken, the greatest proportion of participants resided in India (131 participants, or 34 per cent), followed by the US (119 participants, or 31 per cent), United Arab Emirates (9 per cent), UK (8 per cent), Pakistan (6 per cent), Canada (5 per cent) and Australia (3 per cent) (Taher, 2017).

[10] United States of America vs Jumana Nagarwala et al, 17-CR-20274 (US District Court, Eastern District of Michigan, Southern Division), 20 November 2018, p 8 (available at: www.scribd.com/document/393706333/Judge-dismisses-several-charges-in-FGM-case#download).

[11] United States of America vs Jumana Nagarwala et al, 17-CR-20274 (US District Court, Eastern District of Michigan, Southern Division), 20 November 2018, p 8 (available at: www.scribd.com/document/393706333/Judge-dismisses-several-charges-in-FGM-case#download).

[12] Indeed, regardless of the child's sex characteristics, that is, including children with intersex traits.

[13] In the sense of liable to having criminal sanctions applied. Of course, non-criminal sanctions (for example, fines or, in the case of medical personnel, loss of licence) might still be applicable.

[14] In this respect, we are both in agreement with a great many of our peers and colleagues (see, for example, Obiora, 1996; Gruenbaum, 2001; Shweder, 2002; 2013; 2016; Davis, 2003; Ehrenreich and Barr, 2005; Oba, 2008; Dustin, 2010; Askola, 2011; Abdulcadir et al, 2012; van den Brink and Tigchelaar, 2012; Latham, 2016; Ahmadu, 2017; Shahvisi, 2017; Coene, 2018; Johnsdotter, 2018; Bader, 2019; Abdulcadir et al, 2020; Bader and Mottier, 2020).

Conflict of interest

The author declares that there is no conflict of interest.

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