

The child's right to bodily integrity

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Précis

In this chapter, an infringement of bodily integrity (BI) is defined as any penetration into a bodily orifice, breaking of the skin, or alteration of a person's physical form. A violation of a person's right to BI is any infringement of their BI that wrongs them. An autonomous person is wronged by an infringement of their BI if they did not consent to it. If a person is incapable of consenting because they are temporarily non-autonomous – as in the case of an intoxicated adult or a pre-autonomous child – the infringement should be delayed until the individual becomes autonomous and can make their own decision. It is only when the infringement cannot be delayed without putting the person into a situation they would be *even less likely* to consent to (if they were autonomous) that the infringement does not wrong them. Given the seriousness of violating anyone's right to BI, and especially that of the most vulnerable persons, the appropriate likelihood-of-consent for proceeding with a BI infringement on a child is argued to be at or near the 'medically necessary' threshold.

Introduction

Suppose you are a healthy adult, minding your own business, and a stranger comes along and cuts you with a knife. Not badly – just a little slice out of your arm, let's say – but enough to draw blood. If you did not consent to this, it seems obvious that this stranger has seriously wronged you. In fact, you might say you have a *right* against other people intentionally cutting you (or otherwise crossing your physical boundaries) without your consent, no matter how mildly. This is sometimes expressed as a right to 'bodily integrity.'ⁱ

Let's say that *bodily integrity* (BI) refers to the physical state of being all in one piece, unbroken, undivided, intact. So, skin puncturing of any kind would negate this. What about borderline cases, like if I jam my finger in your ear? I'd have entered your bodily sphere, in some sense, and if you don't want my finger there, I am most likely wronging you in some way. But it isn't clear whether I am actually infringing on your 'bodily integrity' as we have defined it. So let's just stipulate that any intentional (or negligently

accidental) penetration into a bodily orifice, breaking of the skin, or alteration of your physical form, counts a BI infringement.

Now we have to draw a distinction: ‘merely’ infringing on someone’s BI is not necessarily the same thing as *violating their right* to BI. This is because not all infringements of a person’s BI wrong them, and if you have not wronged someone (we’ll suppose) you also have not violated their rights. So let’s go ahead and define a violation of a person’s *right* to BI as an infringement of their BI that *wrongs* them.

Why should we think that not all infringements of a person’s BI wrong them? Well, suppose you have a sudden heart problem. You need emergency surgery or you will probably die. You are rushed to the hospital and, in this case, you give your consent to have your chest cut open so the surgeon can fix the problem: let’s assume that ‘consent’ means *valid, informed* consent here and for the rest of this chapter. As it happens, the surgeon in this scenario will have to cut you in a much more serious and invasive way than the stranger who sliced your arm. But since you gave your consent, she clearly does not wrong you by opening up your chest cavity. In other words, although she certainly *infringes* on your BI when she cuts you open, and while she also causes significant local harm in damaging certain bodily tissues, she does not *violate your right* to BI as we have defined it.

Now, the two cases of cutting obviously differ in various ways apart from whether you gave your consent. In the heart problem case, for example, you *need* to be cut to have a decent chance of survival, and that is plausibly at least part of what makes the cutting permissible: that is, the local harm to specific bodily tissues is instrumental to, even necessary for, and above all, clearly outweighed by, the expected benefit of the surgery to your body as a whole. In fact, even if you *couldn’t* consent – because you passed out on the way to the hospital, let’s say – it would still be permissible under ordinary circumstances for the surgeon to operate to save your life. We’ll explore why that is in the following sections. But in most cases, if you *are* capable of consenting to a potential infringement of your BI and you *don’t* consent – and especially if you actively *withhold* your consent – then it is seriously wrong to cut you (or otherwise intrude into your bodily sphere).

Underlying insight and two conditions

What is the basic idea behind this principle? It’s rather simple. Our bodies are very precious to us (even if we don’t always take good care of them). In an important sense, they are part of who we are.ⁱⁱ They house our minds and our personalities and are the means by which we navigate the world and interact with others. They are deeply connected to how we understand ourselves, including our sexuality and gender identity.ⁱⁱⁱ And for better or worse, they are with us to the end. You can lose virtually everything else – friends, family, house, job; even the clothes off your back – and still soldier on. But if your body gives out, that’s it. Unless you believe in souls and the like, without our bodies, we would not exist.

Moreover, the particular *state* of our bodies often matters to us a great deal. We care whether we are healthy or sick, fat or thin, hairy or hairless, light-skinned or dark-skinned. We care whether we have scars, and where they are, and how they got there. In fact, meaningful concern about the state of our bodies can come down to the tiniest detail, sometimes in ways that are not obvious to others: the specific location of a favorite freckle that is deeply cherished by someone we love (for instance). Or the fullness of our beard as a

sign of devotion to our religion. Or a small tattoo we got in remembrance of our sister who died in the war. In other words, profound layers of meaning can become associated, quite intimately, with various aspects of our bodies, most often in ways that we alone are best positioned to appreciate.

Given their role in anchoring such personal meanings in our lives, as well as enabling our agency, shaping our identity, and facilitating – or frustrating – our general well-being, it makes sense that *we* should get to decide what happens to our own bodies. How they are treated, whether or in what ways they are altered, what goes into them, who even gets to see or touch them. And this means that except in very odd circumstances (for example, we are attacking someone and they are defending themselves within reason), no one has a right to infringe on our bodily integrity, not even to remove a freckle. Unless, that is, one of two conditions holds:

- 1 we *consent* to the infringement (often because we judge it to be in our overall best interests); or
- 2 we *can't* consent, because we are temporarily unconscious or otherwise impaired in some way, but we *would* consent if we were able – like in a medical emergency.

We will come back to these two conditions throughout this chapter, and attempt to clarify why they matter and how to apply them. For example, what is so important about your consent in the first condition, and how exactly does it relate to your best interests? And for the second condition: How do you *know* what BI infringements a person ‘would’ consent to, if they are not in a position to tell you, and how certain do you have to be of your judgment?

For now, it is enough to say that this general framework is pretty uncontroversial, at least when it comes to autonomous individuals (roughly speaking, adults). Here, ‘autonomous’ means: having the mental capacity to make adequately informed and reasoned decisions about important self-affecting matters, taking into consideration the potential long-term consequences.^{iv}

Bodily integrity for children

What about non-autonomous individuals, though? Or more specifically, *pre*-autonomous individuals, like children? Here things get more complicated. This is because both of the conditions we listed in the previous section (for when an infringement of someone’s BI does not wrong them) are rooted in the notion of consent. But children, depending on their level of maturity, are not yet *able* to consent to a wide range of important actions that affect them, including potential BI infringements.^v So how do they fit into this framework? Specifically, how can we tell if a child is *wronged* by a BI infringement, and therefore that their *right* to BI has been violated?

Typically, when it comes to things that go beyond their ability to understand what is at stake and make their own informed decisions, children depend on their adult caretakers – most often their parents – to decide for them. The thinking is that parents usually love their children and sincerely want what’s best for them; and they also *know* more about their children and their particular needs than just about anybody else. So it makes sense that they should be the ones to decide. Of course, there are exceptions to this. Some parents are indifferent to their children or actively abuse them. Other parents have good intentions but still make bad decisions that undermine their children’s welfare. Either way, resulting traumas can last a lifetime. So it’s

very important to get clear about what the moral limits should be for what parents can do – or have done – to their children’s bodies.

Setting exceptions aside, though, most parents *do* love their children, and really do want to see them flourish. And not just in childhood, but for the rest of their lives. So the aim should be to help them grow up, physically and mentally secure, so they can develop the tools necessary to think for themselves and eventually act on their own behalf. Accordingly, there are – or should be – increasing *degrees* of autonomy as children approach adult status, ranging from a helpless baby (almost no autonomy) to an older teenager (almost full autonomy, as defined by what is characteristic for adults).

This has implications for how we should think about children’s BI. Based on what we said in the previous section (about the importance of getting to decide for ourselves what happens to our own bodies), it means that there should be shifting priorities for how we treat children’s bodies, depending on where on the spectrum of autonomy they are. Specifically, the more helpless a child is, the more it needs protection from BI infringements that are not clearly in its best interests, whereas the more autonomous a child is, the more it needs authority over what happens to its own body – both in a positive sense (what to do with its body), and a negative sense (what to keep from happening to its body). In both cases, the goal is to avoid BI infringements during childhood that would limit the child’s ability, in the future, to make important decisions about their own BI as informed by their ever-maturing preferences and values.^{vi}

Autonomy and consent

This is where consent comes in, and why it is so important. Just think of your own case. Consent is what lets *you* decide about something that will primarily affect your own embodied self, typically based on what you take to be in your best interests. But you might also decide to do something that is plausibly not in your best interests, such as donating one of your kidneys to a sibling. Either way, though, the choice should be yours. We would not want to live in a world where others had a right to interfere with our bodies based on what *they* thought was in our best interests, without first asking our permission. This is why consent, rather than best interests, is built into the two conditions from before for when someone can infringe on your BI without wronging you, and so avoid violating your right to BI: (1) you *consent* to the infringement, or (2) you *can’t* consent, because you are temporarily non-autonomous (TNA), but you *would* consent if you were able.

We have already seen that children, especially very young children (like toddlers and babies) are not *capable* of consenting to all sorts of things, including potential BI infringements. So for them, the first condition doesn’t seem to do much good. What about the second condition? This one seems more promising. In particular, it invites us to think of children, depending on where they are on the autonomy spectrum, as being more or less TNA. According to this picture, older children and teenagers are TNA for a shorter stretch of time, whereas younger children and babies are TNA for a longer stretch of time. But in both cases, the relative lack of autonomy is temporary, barring some tragedy or abnormality.

Now, there is an important caveat here. And that is that no child is non-autonomous with respect to decisions that match – or fall within – their level of autonomy. Remember that we defined autonomy as simply ‘having the mental capacity to make adequately informed and reasoned decisions about important self-affecting matters, taking into consideration the potential long-term consequences.’ In other words,

having the capacity to *consent*. Depending on what the proposed BI infringement is, then, children *will* sometimes be able to consent – or withhold their consent – to a proposed alteration of their bodies in a way that is appropriate for their developmental stage. Presumably most 15-year-olds, for instance, will be entirely capable of making an informed decision about whether or not they want to get their ears pierced or have cosmetic orthodontia wired onto their teeth; and if they do *not* want either of those things done, to simply force it on them against their will *would* wrong them, and therefore violate their right to BI.

What, then, about proposed infringements that go *beyond* a child's capacity to give their own consent? Here we can turn to the second half of condition (2), which refers to what a person 'would' consent to if they were able. But how do you *know* what someone would consent to, if they are not in a position to tell you? Someone who is unconscious, for example, like when you passed out on the way to the hospital in our thought experiment? Or more to the point for this chapter, someone who is pre-autonomous, like a child?

You can make an educated guess, of course; but you can't really *know* unless the person tells you. So in most situations, the surest way to avoid violating someone's right to BI is simply to wait. Wait, that is, until they are no longer unconscious, or pre-autonomous, or otherwise TNA, so they can assess the situation and any relevant trade-offs in light of their own considered values, and then consent to the infringement, or withhold their consent, on their own terms and on their own behalf.

This point should not be taken lightly. Sometimes, you think you know what a person would want for their body, but you turn out to be very wrong. For example, you might think that someone would want to be touched sexually, though they are temporarily impaired (perhaps from too much drinking). And you might even be *right* that, if they could consent, that is what they would want. But what if you are wrong? Because the potential harms, emotional and otherwise, that are often associated with unwanted sexual contact are so profound, if there is *any doubt at all* about the other person's consent – much less their capacity to consent – it is very wrong to touch them. Now just extend this lesson to the whole range of possible infringements on a person's BI that have the potential to cause harm or resentment.^{vii}

As we saw with the cherished freckle in an earlier section, even seemingly 'trivial' aspects of a person's body may have great value or meaning for them, in ways that only they can understand. In such cases, it could seriously harm the person if those aspects were changed without their permission. So, if you are thinking about infringing someone's BI who is not currently capable of consenting to the infringement, and you can wait for them to become autonomous without putting them in a situation they would be even less likely to consent to, you should.

Judging for others

How can you know if failing to infringe on someone's BI while they are TNA would put them in a situation they would be even less likely to consent to, if they were autonomous, than the proposed BI infringement itself?

There are easier and harder cases. On the easiest end of the spectrum are things like feeding and washing a child who cannot yet manage those tasks on their own, as well as giving them required vaccinations, all of which preserve their future bodily autonomy with minimal interference. There are also 'medically necessary' interventions for any TNA person, like the open heart surgery we imagined at the

beginning. For a quick definition, these are interventions that are needed to alter a bodily state, where the bodily state in and of itself poses a serious and immediate threat to the person's well-being, and the intervention is the least harmful way of changing the bodily state to one that substantially alleviates the threat. These cases are easy because nearly everyone would consent to having their BI infringed if it was necessary to save their life, preserve their future bodily autonomy, or otherwise reliably promote their well-being to a similarly high degree.

When a BI infringement is almost universally regarded as something that promotes well-being in this way, and when judgements to that effect are likely to remain stable over the course of a person's lifetime despite plausible changes in circumstance or perspective, the chance it will wrong the person, and therefore violate their right to BI, is very small. The less universally a BI infringement is regarded as something that promotes well-being, or when judgements to that effect are not as robust against changes in circumstance or perspective, the greater the chance it will violate the person's right.^{viii}

There are various ways a BI infringement could come to be widely – and robustly – regarded as an overall well-being promoter. But a major way is to have its expected benefits rooted in norms or values that are relatively fixed across cultures and times: values like preserving core bodily functions or avoiding premature death, for example, when there is no other feasible way to achieve those ends in a less harmful way. Where things get more difficult is in cases where the very status of a BI infringement as an overall well-being promoter (versus diminisher) depends on relatively unstable, contested, or parochial norms or values, or when its intended benefits *could* be feasibly achieved in a less harmful way: for example, a way that didn't involve a BI infringement.

The main examples in this category are what are sometimes called 'cultural' surgeries, or other socially driven body modifications that are not strictly medically necessary. Things like breast implantation,^{ix} traditional body scarification or tattooing,^x partial finger amputation,^{xi} ritual tooth extraction,^{xii} non-therapeutic male circumcision,^{xiii} and female genital cutting of various kinds.^{xiv} In these cases, there is no life-threatening illness to treat or physical function to restore. Almost no one would claim that the current bodily state of the person – often a child who cannot consent – poses a serious or immediate threat to their well-being. So why are these BI infringements carried out?

Usually, there is a background cultural norm in the person's group that stigmatizes the healthy body part in question, or that attaches perceived or intended social, aesthetic, symbolic, prophylactic, or spiritual benefits to its being altered or removed. Among the Dinka and Nuer people who live along the banks of the Nile River, for example, if a child does not have its front teeth pulled out, it may be teased or seen as unattractive.^{xv} Among the Dani people of central New Guinea, if a girl does not have one of her fingers partially amputated after a relative dies, this may be seen as disrespectful.^{xvi} Among practicing Jews and Muslims, if a boy does not have the foreskin of his penis cut off, he may be seen as physically or symbolically impure or as excluded from a certain relation to the divine.^{xvii}

A problem with these cases is that many people, both within and outside of the relevant communities, either do not agree that the intended benefits are actually benefits (for example, if they do not share the cultural or religious beliefs of the majority), or they disagree that the benefits outweigh the disadvantages, or they see the benefits as being based in norms that are themselves morally objectionable.^{xviii} In cases like this, where there is disagreement among reasonable people about the very status of the BI infringement as

an overall well-being promoter versus diminisher, it is harder to predict what any given child would consent to if it were autonomous. And guessing incorrectly could lead to serious resentment.

To illustrate: having a prominent scar or tattoo on your body, or missing your front teeth, the top half of your finger, or sensitive tissue from your penis, *might* be something you grow up to appreciate – if you strongly identify with the religion or culture of your parents, for example, or if you end up endorsing the relevant background norms and values. But if you grow up to dissociate from your parents' culture or religion, or to reject those norms or values, you might feel harmed or even mutilated by the very same bodily changes.^{xix}

What this suggests is that parents should think twice about subjecting their children to any BI infringement whose status as a well-being promoter is vulnerable to such shifts in perspective. This is especially the case when (1) opinion among informed and reasonable people is polarized: between those who see the infringement as an overall benefit and those who see it as an overall harm,^{xx} and (2) the infringement is irreversible. Anyone who wishes they had been subjected to a polarizing, irreversible BI infringement when they were TNA may have the option to undergo the infringement now that they are autonomous. By contrast, someone who resents that they were subjected to such an infringement when they were TNA has no comparable recourse: they cannot 'undo' what has already happened.

Conclusion

We live in an interconnected world. People from different cultures now constantly interact, and move from place to place, and get exposed to new ideas, and as a consequence often revise their beliefs and attitudes.^{xxi} This means that the risk of wronging a child by permanently altering its body on behalf of norms or values that are neither universal nor stable is much greater than it may have been in the past – when people lived in more isolated settings and their future preferences could be more easily controlled and predicted.

In other words, unlike the values associated with avoiding premature death or preserving core bodily functions (which are constant over time and shared by almost everybody), the values associated with particular cultural or religious practices are much less robust against possible changes in perspective over a lifetime. Indeed, it is increasingly common for people to adopt new cultural identities upon reaching adulthood, or to lose the religious beliefs they may have had as children.^{xxii} For BI infringements that are based in such identities or beliefs, then, there is often a subset of affected children who grow up to feel, not just apathetic or mildly irritated about what was done to their bodies without their consent, but significantly harmed by what was done.^{xxiii}

This suggests that, for any BI infringement carried out on a pre-autonomous child, especially if it is irreversible, the degree of certainty one should have about what the child would consent to if it were autonomous should be very high before proceeding – at or near the 'medically necessary' threshold. If the BI infringement can be delayed until the child is sufficiently autonomous to make their own decision (without placing the child into a situation they would be even less likely to consent to), it should be delayed.^{xxiv}

Notes and references

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- ⁱ In this chapter, we'll be talking about a *moral* right to bodily integrity, as opposed to a *legal* right, although these rights often overlap. A *moral* right is something that places ethical limits (or requirements) on others for how they can (or should) treat you, whatever the law may say. So, even if there were some country where cutting an adult without their consent didn't happen to be illegal, it would still be *wrong* to do this because, among other reasons, it would violate that person's *moral* right to not be assaulted. For more on the right to bodily integrity as discussed in this chapter, see the following references ([Earp, 2017a](#); [Fox and Thomson, 2017](#); [Hill, 2015](#); [Koll, 2010](#); [Ludbrook, 1993](#); [Mazor, 2017, 2018](#)).
- ⁱⁱ See [Bermúdez \(2018\)](#); [Jensen and Moran \(2014\)](#).
- ⁱⁱⁱ See [Earp and Steinfeld \(2018\)](#). See also [Munzer \(2018\)](#).
- ^{iv} For discussion, see [Owen et al. \(2009\)](#).
- ^v For discussion, see [Carmack et al. \(2016\)](#).
- ^{vi} See [Darby \(2013\)](#); [Maslen et al. \(2014\)](#); [Möller \(2017\)](#).
- ^{vii} For a very good discussion of why non-consensual sexual contact is wrong, see [Archard \(2007\)](#). For further discussion see [Earp \(2015c\)](#). These discussions clarify that sex without consent is wrong not *simply* because of the harms, such as psychological trauma, that it may cause, as in some cases it does not appear to cause such harms. Nor is it wrong simply because it *tends* to cause such harms. Rather, it is wrong, first and foremost, because it infringes on a person's 'sexual integrity' – to use [Archard's \(2007\)](#) term – without their consent. In this, it denies that the person is worthy of respect with regard to something that is central to their personhood, namely, their ability to decide who may engage with their embodied sexuality under what conditions. In other words, regardless of the harms that may or may not follow from non-consensual sex, the sex is wrong *because* it is non-consensual. Similarly, non-consensual infringements of a person's BI are wrong, whether or not the person is harmed or goes on to feel harmed by the infringement.
- ^{viii} See [Earp and Shaw \(2017\)](#).
- ^{ix} See [Chambers \(2004\)](#).
- ^x See [Ojo \(2008\)](#).
- ^{xi} See [Bosmia et al. \(2014\)](#).
- ^{xii} See [Willis et al. \(2005\)](#). For an argument that prophylactic extraction of third molars (wisdom teeth) in so-called developed nations is essentially a medicalized ritual with little evidence of benefits outweighing risks, see [Friedman \(2007\)](#).
- ^{xiii} See [Earp and Darby \(2017\)](#).
- ^{xiv} See [Shahvisi and Earp \(2019\)](#).
- ^{xv} See [Finchi et al. \(2015\)](#).
- ^{xvi} See [Kirkup \(2007\)](#).
- ^{xvii} See [Glick \(2005\)](#).
- ^{xviii} See [Chambers \(2018\)](#); [Earp \(2014\)](#); [Earp and Darby \(in press\)](#); [Iuth and Lynoe \(2014\)](#); [McMath \(2015\)](#); [Sarajlic \(2014\)](#); [Ungar-Sargon \(2015\)](#).
- ^{xix} See [Earp \(2017b\)](#).
- ^{xx} See [Earp \(2015a, 2016\)](#).
- ^{xxi} See [Johnsdotter and Essén \(2016\)](#).
- ^{xxii} See [Haretz Staff \(2014\)](#); [Pew Research \(2015\)](#).
- ^{xxiii} See [Earp and Steinfeld \(2017\)](#); [Hammond and Carmack \(2017\)](#); [Johnsdotter \(2018\)](#); [Lightfoot-Klein et al. \(2000\)](#); [Sahiyo \(2018\)](#); [Taher \(2017\)](#); [Willis et al. \(2005\)](#).
- ^{xxiv} For extended discussions, see [Earp \(2015b, 2016\)](#).