Circumcision of male infants as a human rights violation

J Steven Svoboda

Correspondence to
J Steven Svoboda, Executive Director, Attorneys for the Rights of the Child, 2961 Ashby Avenue, Berkeley, California 94707, USA; arc@post.harvard.edu

Received 9 November 2012
Revised 17 January 2013
Accepted 30 January 2013
Published Online First 20 May 2013

ABSTRACT

Every infant has a right to bodily integrity. Removing healthy tissue from an infant is only permissible if there is an immediate medical indication. In the case of infant male circumcision there is no evidence of an immediate need to perform the procedure. As a German court recently held, any benefit to circumcision can be obtained by delaying the procedure until the male is old enough to give his own fully informed consent. With the option of delaying circumcision providing all of the purported benefits, circumcising an infant is an unnecessary violation of his bodily integrity as well as an ethically invalid form of medical violence. Parental proxy 'consent' for newborn circumcision is invalid. Male circumcision also violates four core human rights documents—the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and the Convention Against Torture. Social norm theory predicts that once the circumcision rate falls below a critical value, the social norms that currently distort our perception of the practice will dissolve and rates will quickly fall.

INTRODUCTION

Every human being has a right to bodily integrity. Removing healthy tissue from an infant is only permissible if there is an immediate medical indication. In the case of infant male circumcision there is no evidence of an immediate need to perform the procedure. As a German court recently held, any benefit to circumcision can be obtained by delaying the procedure until the male is old enough to give his own fully informed consent.[1] With the option of delaying circumcision providing the lion's share of purported benefits, circumcising an infant is an unnecessary violation of his bodily integrity as well as an ethically invalid form of medical violence. Parental proxy 'consent' for newborn circumcision is invalid. Male circumcision also violates four core human rights documents: the Universal Declaration of Human Rights (UDHR),[2] the International Covenant on Civil and Political Rights (ICCPR),[3] the Convention on the Rights of the Child (CRC),[4] and the Convention Against Torture (CAT).[5] In this essay, I defend these ethical and legal claims and focus on their relevance to the practice of circumcision as it is carried out specifically in the USA—the only developed nation still committed to the routine removal of infant foreskins. Social norm theory predicts that once the circumcision rate falls below a critical value, the social norms that currently distort Americans' perception of the practice will dissolve and rates will quickly fall.[6]

To cite: Svoboda JS. *J Med Ethics* 2013;**39**:469–474.

A BRIEF HISTORY OF MEDICAL MALE CIRCUMCISION

In 1969, Bolande published an article in the *New England Journal of Medicine* denouncing two forms of ritualistic surgery—tonsillectomy and circumcision—arguing that neither procedure satisfied 'the criteria of scientific rationalism'.[7] Today tonsillectomies are rarely performed, yet circumcision of infant males continues to be the most commonly performed surgical procedure in the USA[i].

The vast majority of US circumcisions are performed for non-medical reasons.[8–13] Male circumcision was first introduced as a medical procedure in the 19th century to stop masturbation. The pervading medical paradigm at that time alleged that by preventing masturbation, circumcision would cure and/or prevent a long list of maladies including epilepsy, imbecility, hip dislocation and halitosis.[14] Over the past century, numerous other justifications have been invented and in turn discredited, with new justifications being devised once the previous ones were debunked. American doctors have associated the absence of a foreskin with (partial) prevention of urinary tract infections, penile cancer, cervical cancer in female partners of circumcised men, sexually transmitted diseases and, most recently, of infection with HIV.[14]

Today medical organisations around the world, including the American Medical Association (AMA) and the American Academy of Paediatrics (AAP), agree that neonatal circumcision cannot be recommended on a routine basis.[15–21] The Finnish Union of Medical Doctors (Suomen Lääkäriliitto) is opposed to non-medical circumcision on the grounds that it involves risks, inflicts pain and injury, and violates the child's right to decide about his body,[22] and the Royal Dutch Medical Association has gone so far as to discourage its membership from participating in the procedure.[23] The Finnish Medical Association has stated that 'child circumcisions are in conflict with medical ethics'[24] while the Swedish Paediatric Society has called infant male circumcision an 'assault on boys'.[25]

Over the past 150 years, circumcision in the USA has transformed from a cultural practice to a

[i]As noted above, circumcision as practiced in the USA in particular will be the focus of this essay. Also note that I generally decline to explicitly distinguish between circumcisions performed for religious, cultural, and/or 'health' reasons: from the perspective of the infant, such distictions are irrelevant. Indeed, as I will argue, human rights protect the bodily integrity of all infants against *any* unnecessary and non-medically indicated intrusion.

medical oddity back to a cultural practice. During the same time span, the concepts and application of patient autonomy, bioethics, informed consent and universal human rights have come to fruition. At the time circumcision was adopted as a cure for masturbation there were no discussions of its impact on patient autonomy and the right to bodily integrity, and neither informed consent nor modern notions about human rights existed. It is time to scrutinise this Victorian relic in a modern context.

Non-therapeutic circumcision, as currently performed on newborns, entails compelling an infant to undergo a painful procedure that is performed without the patient's consent, is not medically necessary and is carried out either without anaesthetic or with inadequate anaesthetic. As an appellate court in Cologne, Germany ruled on appeal in June 2012 in a landmark criminal case, non-therapeutic circumcision of boys is a form of bodily injury and doctors performing the surgery can be punished for having committed a criminal offense under the Non-Medical Practitioners Act.[1] The Cologne court further held that the procedure can be safely delayed until an age at which the individual can choose for himself whether or not to have it performed.[1ii] Circumcision is the *only* practice in American medicine inflicted on otherwise healthy children that is routinely carried out without valid consent and without medical necessity or a medical indication.

In August 2012, the AAP issued a policy statement on circumcision for infant males that supported the procedure without recommending it outright.[15] The AAP policy statement candidly and repeatedly admits that data regarding complications of the procedure are unknown, yet inexplicably concludes that, 'Evaluation of current evidence indicates that the health benefits of newborn male circumcision outweigh the risks'. The AAP policy statement was issued with no regard to the Cologne court's ruling that circumcision of boys is a bodily injury.[1]

Examining in detail considerations of medical ethics, consent and human rights, I will expand upon the Cologne court's reasoning by showing, first, that severing healthy tissue from an infant is unethical and a human rights violation and, second, that there is no net benefit to circumcising the infant that cannot be achieved with a circumcision performed at an age at which the patient can give his fully informed consent. For these two reasons, non-therapeutic infant circumcision is indefensible.

MEDICAL VIOLENCE AND AUTONOMY

Violence may be defined as physical force used to injure or damage, in the absence of an appropriate justification or consent. Circumcision is the removal of the male prepuce, which excises between a third and a half of the skin system of the penis and nearly all of its fine touch neuroreceptors.[27 28] Consequently, infant circumcision is a violent act. To be justifiable medical violence, an intervention must have the recipient's fully informed consent; an exception to obtaining informed consent is possible when there is a life-threatening emergency for which treatment cannot be delayed. When the patient is fully informed of the relevant options, and makes a considered decision to undergo the procedure, the violence is no longer classified as a crime.[29]

Informed consent is crucial in protecting patients from aggressive, unnecessary or unwanted medical intervention and protecting doctors from criminal charges or legal actions being brought against them. The informed consent process grew out of respect for personal autonomy: the ability of an individual to have control over his own person. The modern concept of autonomy is usually traced to the German philosopher Immanuel Kant. He believed that all humans have an intrinsic value that cannot be bought or sold. As such, a person should always be treated as an end unto himself and never as a means to an end. To treat a person as a tool to accomplish a goal in which the person has no interest does not respect that person's intrinsic worth as a human. Kant also argued that in order to be a moral agent, a person needs to have the ability and freedom to make his or her own decisions. The concept of autonomy also underlies core ethical and legal concepts of freedom, the right to security of person and the right to bodily integrity. To make decisions on behalf of someone else interferes with his or her personal autonomy.[30–34]

The right to bodily integrity has enjoyed a hallowed history in domestic jurisprudence, stretching back to a landmark 1891 Supreme Court decision. In *Union Pacific Railway Co. v. Botsford,* the Court held, 'No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law'.[35] As Christyne L Neff writes:

> American constitutional and common law principles incorporate these concepts of physical liberty and bodily integrity in a wide array of legal principles, each of which affirms the central importance of a citizen's bodily integrity.... Courts have consistently respected the principle of bodily integrity and zealously promoted it as sacred, inviolable, inalienable, and fundamental. In addition to its common law roots, the right to be free from an invasion of bodily integrity by the state has found support in the First, Fourth, Fifth, and Fourteenth Amendments of the Constitution. (Internal citations omitted.)[36]

PROXY CONSENT FOR INFANT CIRCUMCISION

Infants do not have the capacity to give fully informed consent. It has been previously extensively argued, based on the lack of compelling medical justification, that parental proxy 'consent' for newborn circumcision is invalid.[37] Without a medical justification or a disease to treat, courts have uniformly invalidated parental efforts to compel their incompetent minor children to undergo surgeries such as kidney donation. Depending upon the applicable legal standard, courts endorse only those procedures that either are in the infant's best interests ('best interests' standard) or which are found to be procedures that the infant would choose for himself if and when he became legally competent ('substituted judgment' standard).[37 38] Yet since most men who possess a foreskin in adulthood would be loathe to give it up, the substituted judgment standard arguably is not met in the case of neonatal circumcision. Medical interventions on patients who are incompetent should be permissible only in cases of clinically verifiable disease, deformity or injury, and only where a net benefit to the patient is reasonably expected. A medical intervention that did not treat a veritable disease, deformity or injury would not be for the patient's own benefit.[31] The argument that the procedure

[ii]In December 2012, German legislators passed into law a bill explicitly legalising circumcision.[26]

might be for the patient's *future* benefit[iii], as, in this case, removing the body part in question would reduce the likelihood of its ever becoming infected, ignores the existence of less invasive and more effective treatments that the patient might reasonably wish to avail himself of in lieu of pre-emptive genital surgery performed without his permission.[39]

The AAP Committee on Bioethics has established useful guidelines for allowing the consent of the patient himself or herself to be replaced with 'parental permission'. Parental permission is a form of proxy consent that serves to authorise medical care to infants and other incompetent persons who are unable to give their own permission. The AAP Committee on Bioethics guidelines state:

> [P]roxy consent poses serious problems for pediatric health care providers. Such providers have legal and ... ethical duties to their child patients to render competent medical care based on what the patient needs, not what someone else expresses ... [T]he pediatrician's responsibilities to his or her patient exist independent of parental desires or proxy consent.[40]

The Committee on Bioethics further emphasised that the power to consent to a procedure rests solely with the patient, that is, the child:

> Only *patients* who have appropriate decisional capacity and legal empowerment can give their *informed consent* to medical care. In all other situations, parents or other surrogates provide *informed permission* for diagnosis and treatment of children with the *assent* of the child whenever appropriate. (Emphasis in original.)[40]

The Committee goes on to state—in line with the recent Cologne court decision—that interventions that can safely wait until the child can provide his own consent should be delayed until that consent can be obtained. A healthy infant does not *need* to be circumcised and thus circumcision can safely wait. If a problem does occur, such as the development of a urinary tract infection while the patient is still a minor (a rare affliction for boys compared to girls, and the only ailment for which there is any evidence of a protective effect of circumcision prior to sexual maturity), then conservative treatments such as the use of antibiotics could be considered: circumcision *still* would not be needed except in the most extreme cases. Otherwise, only the consent of the individual himself can permit such an operation, and no infant is capable of providing such a consent.

OVERVIEW OF HUMAN RIGHTS LAW

One of the reasons for the development of human rights principles is to provide an international mechanism to cut through the morass of cultural relativism using widely accepted ethical norms.[41] By enumerating human rights principles in a concrete and absolute fashion, objective analysis can take place. Thus, when evaluating a given practice under such a framework, it is only necessary to determine whether the practice meets the formal criteria for being a human rights violation. If it does, then it is prohibited under human rights law. In this and the following section, it is argued that circumcision of infants for non-medical reasons is, formally, a human rights violation in just this sense. That non-medical circumcision is rarely prosecuted on such terms is an anomaly meriting serious consideration: after all, even the most mild forms of female genital cutting, including those that are orders of magnitude less invasive than the male analogy commonly practiced in the USA, are widely condemned as conflicting with human rights, and are explicitly prohibited under US federal law.

According to the USA Constitution's Supremacy Clause (Article VI, paragraph 2), and numerous decisions by the US Supreme Court (USSC) stretching back over nearly two full centuries, international treaties are, along with the Constitution itself and federal statutes, the supreme law of the land.[42] In 1900, the USSC spoke strongly in *The Paquete Habana* case,[43] clarifying—as noted by Richard Bilder—that international law, including customary law, is part of 'the law of the land' and does not require a treaty or legislation to be binding domestically.[44 45]

Commentators who have suggested that treaties do not confer enforceable rights on individuals in the absence of executive or legislative implementation are mistaken. In 1984, Louis Henkin emphasised, 'International law is not merely law binding on the USA internationally but is also incorporated into USA law. It is 'self-executing' and is applied by courts in the USA without any need for it to be enacted or implemented by Congress'.[46] Then, 4 years later, Jordan Paust pointed out forcefully that 'it is difficult to imagine that something shall be supreme federal 'law of the land' but not operate directly as 'law' except by believing in the most transparent of judicial delusions'.[47] Such an approach 'smacks of a violation of the separation of powers'.[48] Paust explains:

> The distinction found in certain cases between "self-executing" and "non-self-executing" treaties is a judicially invented notion that is patently inconsistent with express language in the Constitution affirming that "*all* Treaties... shall be the supreme Law of the Land." (Emphasis in original, 46:760.)

The ICCPR, for example, in Articles 2, 9, 14 and 50, clearly sets forth individual rights secured by the treaty.[3] Article 2, paragraph 2 requires each party to 'take the necessary steps, in accordance with its constitutional processes... to adopt such laws or other measures *as may be necessary* to give effect to the rights' protected by the ICCPR.[3 49] Article 2, paragraph 3, subparagraph (a) requires each signatory state to undertake to 'ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy...'. [3 50] Similar clauses appear in UDHR Articles 2 and 8, CRC Articles 2 and 12 and CAT Articles 4 and 5, though the latter treaty does not provide legal rights to the victim, only providing for bringing criminal proceedings against the torturer.

Even in the absence of such clauses within the treaties, however, treaties are self-executing and provide rights to individuals. While 'legislative approval is a condition for the valid conclusion of the treaty, (n)ormally it does not determine the domestic applicability of the treaty provisions'.[51] Deener noted back in 1964 that 'under international law, the international obligation is not affected (by action or inaction of a national legislature regarding a treaty) and remains binding'.[52] Reisenfeld and Abbott point out that a declaration that a treaty is

[iii]There are numerous disanalogies between infant circumcision and vaccination, which is sometimes brought up in comparison on the point of 'future benefit'. While it is true that vaccination of a minor does not treat any existing malady, it also does not remove any functional tissue from the child, much less from his genitals. No one would resent, as an adult, having been vaccinated as a child, while this is demonstrably not the case for circumcision. Finally, if removing healthy tissue to prevent its becoming diseased at some potential time in the distant future should be considered morally permissible (on this far-fetched analogy to vaccination), then it should be considered equally permissible to remove the breast buds of infant girls to prevent their falling prey to breast cancer. This is not done, however, because breasts are considered valuable parts of the body, worth retaining until they absolutely must be sacrificed. A similar logic should be taken to apply to foreskins.

non-self-executing has no effect on the legal obligations thereby created:

> A declaration is not part of a treaty in the sense of modifying the legal obligations created by it.... A declaration is merely an expression of an interpretation or of a policy or position. United States courts are bound by the Constitution to apply treaties as the law of the land. They are not bound to apply expressions of opinion adopted by the Senate (and concurred in by the president).[53]

The CRC has proven highly successful and influential in leading to international acknowledgement of the need to safeguard the human rights of children.[54 55] Robert F Drinan writes:

> The emergence, therefore, of the U.N. Convention on the Rights of the Child is a breakthrough of enormous consequence.... Those moral demands have now been recognized as legally binding on the governments of [as of 2001] 191 nations. These countries have made solemn promises and entered into binding contracts to love children by guaranteeing them their rights. The world has obtained an unprecedented level of caring and compassion.[56]

The applicability to the US of the CRC is based on customary law given that while the US has ratified the UDHR, the ICCPR and the CAT, it has signed but—along with only Somalia and South Sudan—has not ratified the CRC. Human rights agreements such as the CRC and other international principles such as those set forth in the UDHR may be widely enough observed by the community of nations to acquire the status of customary law. Arguably no human rights agreement more clearly qualifies for customary law status, since as Carpenter observes, the CRC is in fact "the most widely ratified human rights instrument in history.[57] Customary law refers to rules of law derived from states' consistent conduct based on the belief that the law requires such behaviour.[58 59] Customary law is applicable to all states regardless of whether they have themselves actually ratified the document or principle in question. Consequently, customary international law *is* supreme federal law that is incorporated into US law and is enforceable in federal district court.[60] Beth Stephens explains:

> The conclusion that customary international law constitutes federal law is supported by early constitutional history and has been firmly upheld by modern Supreme Court rulings.... [I]f international law is part of federal law, it is the law of [the] land, binding on the states pursuant to the supremacy clause... (Citations omitted.)[61]

With near universal adoption, the Convention of the Rights of the Child arguably qualifies as customary law, and therefore is fully binding on the USA.[62]

INFANT MALE CIRCUMCISION AND HUMAN RIGHTS LAW

Infant male circumcision needlessly exposes the child's body to physical assault, short-term and long-term harm, and loss of functional tissue without medical justification or valid parental permission. Accordingly, rights under the UDHR, the ICCPR and the CRC to privacy, to life, to liberty, to security of person and to physical integrity are violated by circumcision.

The UDHR safeguards privacy rights (Article 12) and guarantees that 'everyone has the right to life, liberty and security of the person,' (Article 3).[2] ICCPR Articles 9 and 17[3] and CRC Article 16[4] contain parallel provisions making similar guarantees. As Robert Ludbrook notes, 'The UN Committee on the Rights of the Child, which receives and comments on the Reports filed by parties to the Convention, recognises ... the Convention as granting children a right to physical integrity'.[63] Such a right is violated by infant male circumcision. Arbitrary or unlawful interference with privacy occurs in neonatal circumcision when a child's genitals are altered without valid medical justification and without consent of the individual.

The right to life guaranteed by these three core human rights documents in UDHR Article 3,[2] ICCPR Article 6,[3] and CRC Article 6[4] is also needlessly placed at risk by circumcision. Bollinger estimates that at least 100 infant males die as a consequence of circumcision each year in the USA.[64] UDHR Article 29[2] is widely interpreted to prohibit interference with physical integrity. Circumcision constitutes a violation of privacy and of physical integrity.

Under CRC Article 19.1, states must take all measures to insure that no violence, injury or abuse, etc., occurs while the child is under the care of a parent or legal guardian.[4] The USA fails to take 'all' measures to insure that no violence, injury or abuse occurs in violation of CRC Article 19.1,[4] and effectively promotes (by financially supporting those who perform the procedure) and condones the violence, injury or abuse caused by neonatal circumcision. Article 37(b) of the (CRC) provides, 'No child shall be deprived of his or her liberty unlawfully or arbitrarily'.[4] Neonatal circumcision requires the temporary deprivation of a child's liberty by physically restraining him in order to carry out the procedure.

Article 24 of the CRC specifically addresses health issues. Section 1 obligates state parties to recognise the child's right to enjoy the highest attainable standard of health. Section 2 requires states to pursue full implementation of the child's right to enjoy the highest attainable health standard and to take appropriate measures to, among other things, diminish infant and child mortality. Section 3 requires states to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.[4] Article 24.1 of the ICCPR[3] and CRC Article 19[4] set forth similar protections providing that every child shall have the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state.

The USA tolerates male circumcision while simultaneously outlawing forms of female genital cutting that remove no tissue and thus are less invasive and cause less damage than male circumcision, which removes up to half of the penis' surface tissue. UDHR Article 2,[2] ICCPR Article 24.1,[3] and CRC Article 2[4] ensure the child's right to all appropriate protection without regard to sex. Infant male circumcision, as is evident from the very terminology, discriminates on the basis of sex, also thereby violating constitutional guarantees of equal protection.

CRC article 37(a) forbids states from permitting any child to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.[4] UDHR Article 5[2] and ICCPR Article 7[3] contain parallel provisions applicable to all human beings. CAT Article 2 requires state parties to take effective measures to prevent torture in any territory under their jurisdiction. The deliberate, intentional nature of a painful procedure by a state-sanctioned individual meets the definition of torture provided by CAT Article 1:

> Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted

> by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[5]

Infant male circumcision arguably fits the definition in that it can cause severe pain and it is intentionally inflicted. The points of debate are whether it is based on discrimination of any kind and whether it is inflicted by someone acting in an official capacity. It is discriminatory based on sex. Such acts on females are explicitly illegal. Doctors are licensed by the state, but are usually not acting in an official capacity. It is not clear whether doctors employed by the government, such as those in the armed forces, would be exempt. There are also circumcisions performed by unlicensed individuals. Finally, in most states infant male circumcision fits the statutory definition for child abuse. Consequently, it could be argued that infant male circumcisions performed by government employees in states where circumcision is not listed as a specific exception to their child abuse statutes would fit the international definition of torture.

THE COMPETENT MALE DECIDES

As the Cologne court concluded, the competent male should be able to weigh the pros and cons of having his foreskin cut off. By the age of competency, he will know what the foreskin does, what pleasure it gives and what difficulties it can generate. A male guardian, especially one who has been circumcised since birth, cannot make this individual assessment. The competent male can assess the effectiveness of the various methods of disease prevention. For example, he can assess the effectiveness of practicing abstinence or using condoms in preventing sexually transmitted infections and HIV infection and his willingness to rely on those strategies.

Those who promote infant circumcision do not want to give the competent male the opportunity to make this choice for fear he may not make the choice they like.[65] They recognise that given a choice, fully informed males are willing to be vaccinated to prevent a variety of infectious diseases, but they are unwilling to undergo circumcision to avoid HIV infection (see footnote iii). Wearing condoms and limiting the number of sexual partners is a reasonable choice for competent males to make rather than parting with their foreskins, especially since this approach is more effective in reducing infection risk than circumcision.[66]

If the benefits of circumcision were compelling, competent well-informed men would choose it for themselves, but very few normal men do. Only 1 in 3000 genitally intact American men will request circumcision as an adult for non-medical reasons. The rates are even lower in Europe.[67] Consequently, one tactic to perpetuate circumcision is to scare nervous new parents into having their infants, who are vulnerable and too young to resist, circumcised. The solicitation of the procedure by doctors and hospitals is ubiquitous across the USA. In every hospital in which Dr Robert S Van Howe has had privileges, it has been hospital policy for the hospital personnel to ask pregnant women at the time of their confinement if they desire circumcision for their infant sons.[68] Likewise, the standard prenatal forms used by obstetricians and family doctors have a section to indicate the parental wishes regarding circumcision. It is customary to ask regarding these wishes. Anecdotally, parents (including the author) report refusing the offer to circumcise their infant sons numerous times in order to successfully protect their son's prepuce during the perinatal hospitalisation. The solicitation of the procedure by doctors and hospitals prior to the infant's birth may violate the American Medical Association's Code of Medical Ethics in that the financial benefit to the doctor (which is measurable) is greater than the benefit to the patient (which is speculative).[69]

WHY DOES INFANT CIRCUMCISION PERSIST?

Sarah Waldeck performed an evaluation of newborn circumcision through the lens of social norm theory. The power of circumcision in the USA as a social norm is to influence doctors and others to judge evidence confirming the positive attributes of circumcision as relevant and reliable, but to discount nonconforming evidence as irrelevant and unreliable.[6]

Attempts have been made to explain circumcision's remarkable, anomalous persistence in the USA, but most of them have been unsatisfactory.[70–72] While several potential factors have been identified, their relative importance is difficult to assess. For parents, one consideration may be a lack of education and understanding of the risks involved in the procedure and its lack of benefits for the child. Another consideration is the willingness of the medical profession to perform the procedure, which inevitably conveys the impression that neonatal circumcision is approved of by doctors. A further consideration may be self-perpetuation; if a procedure has persisted for so long and is performed so widely in hospitals across the country, many parents will assume that it must be useful. Countless Americans may never consider the issue and many assume (erroneously) that neonatal circumcision is widely practiced in Europe.[6] The practice's curious persistence may also be partly attributable to the fluidity with which—depending on the details of the discussion at hand—various rationales can be interposed, based upon the very different considerations of religion, culture and medicine.

With a rapidly falling infant circumcision rate,[73 74] we may gradually be coming to grips with the fact that no circumcision is 'normal' and that the resultant harm to infants is substantial and unnecessary. Waldeck believes that once the circumcision rate falls below a critical value, the social norms that distort our perception of newborn circumcision would no longer be in play and the practice would fall off precipitously.[6] With the recent Cologne court case as well as medical associations around the world unanimously finding no value to indiscriminate neonatal circumcision, the dissipation and later elimination of newborn circumcision in the USA is possible and indeed perhaps inevitable. In New Zealand, the circumcision rate fell from over 90% to nearly 0% within a couple of decades.[75 76] It now becomes a question of how much longer we continue to squander resources and subject our male newborns to this needless and harmful trauma.

Acknowledgements Robert S Van Howe, MD, read early drafts of this paper. His contributions are gratefully acknowledged.

Competing interests None.

Provenance and peer review Not commissioned; externally peer reviewed.

REFERENCES

1 Landgericht Köln; 7 May 2012;Urteil Ns 169/11.
2 Universal Declaration of Human Rights. G.A. Resolution 217A (III). United Nations Document No. A/810 (1948). Adopted 10 Dece 1948.
3 International Covenant on Civil and Political Rights. United Nations General Assembly Resolution 2200 A (XXI). Adopted 16 Dec 1966.
4 Convention on the Rights of the Child. United Nations General Assembly Resolution 44/25. Adopted 20 Nov 1989.
5 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. United Nations General Assembly Resolution 39/46. Adopted 10 Dec 1984.
6 Waldeck SE. Using male circumcision to understand social norms as multipliers. *Univ Cincinnati Law Rev* 2003;72:455–526.

7 Bolande RP. Ritualistic surgery—circumcision and tonsillectomy. *N Engl J Med* 1969;280:591–6.
8 Brown MS, Brown CA. Circumcision decision: prominence of social concerns. *Pediatrics* 1987;80:215–19.
9 Walton RE, Ostbye T, Campbell MK. Neonatal male circumcision after delisting in Ontario: survey of new parents. *Can Fam Physician* 1997;43:1241–7.
10 Adler R, Ottaway S, Gould S. Circumcision: we have heard from the experts; now let's hear from the parents. *Pediatrics* 2001;107:e20.
11 Afsari M, Beasley SW, Maoate K, *et al*. Attitudes of Pacific parents to circumcision of boys. *Pac Health Dialog* 2002;9:29–33.
12 Oh SJ, Kim KD, Kim KM, *et al*. Knowledge and attitudes of Korean parents towards their son's circumcision: a nationwide questionnaire study. *BJU Int* 2002;89:426–32.
13 Tiemstra JD. Factors affecting the circumcision decision. *J Am Board Fam Pract* 1999;12:16–20.
14 Hodges F. A short history of the institutionalization of involuntary sexual mutilation in the United States. In: Denniston GC, Milos MF, eds. *Sexual mutilations: a human Tragedy*. New York: Plenum Press, 1997: 17–40.
15 American Academy of Pediatrics. Circumcision policy statement: Task Force on Circumcision. *Pediatrics* 2012;130:585–6.
16 Fetus and Newborn Committee, Canadian Paediatric Society. Neonatal circumcision revisited. *CMAJ* 1996;154:769–80.
17 British Medical Association. The law and ethics of male circumcision: guidance for doctors. *J Med Ethics* 2004;30:259–63.
18 American Medical Association Council on Scientific Affairs. *Report 10: Neonatal Circumcision*. Chicago: American Medical Association, 1999.
19 College of Physicians and Surgeons of British Columbia. *Policy manual: infant male circumcision*. Vancouver: College of Physicians and Surgeons of British Columbia, 2004.
20 Kendel DA. *Caution against routine circumcision of newborn male infants: memo to physicians and surgeons of Saskatchewan*. Saskatoon: College of Physicians and Surgeons of Saskatchewan, 2002.
21 Royal Australasian College of Physicians. *Circumcision of infant males*. Sydney: Royal Australasian College of Physicians, 2010.
22 Suomen Lääkäriliitto. Poikien ympärileikkaus. http://www.laakariliitto.fi/uutiset/kannanotot/ymparileikkaus.html (accessed 7 Nov 2012).
23 Royal Dutch Medical Association. *Non-therapeutic circumcision of male minors*. Amsterdam: KNMG, 2010.
24 Vähäsarja I. News analysis: Finland lacks policy on religiously-mandated male circumcision. Helsingin Sanomat. 28 May 2012. http://www.hs.fi/english/article/NEWS+ANALYSIS+Finland+lacks+policy+on+religiously-mandated+male+circumcision/1329104229469 (accessed 7 Nov 2012).
25 Guiborg C. Swedish docs in circumcision protest. The Local, 19 February 2012. http://m.thelocal.se/39200/20120219/ (accessed 7 Nov 2012).
26 Jordans F. Germany approves bill to protect male circumcision. http://start.localnet.com/article.php?category=topstories&article=a028ec0da5f4458fa200891071b65d0d (accessed 19 Dece 2012).
27 Cold CJ, Taylor JR. The prepuce. *BJU Int* 1999;83(Suppl 1):34–44.
28 Taylor JR, Lockwood AP, Taylor AJ. The prepuce: specialized mucosa of the penis and its loss to circumcision. *BJU* 1996;77:291–5.
29 Etchells E, Sharpe G, Walsh P, *et al*. Bioethics for clinicians: 1. Consent. *CMAJ* 1996;155:177–80.
30 Kant I. *Critique of practical reason*. Tr. Beck LW. Indianapolis: Bobbs-Merrill Educational Publishing, 1956.
31 O'Neill O. *Autonomy and trust in bioethics*. Cambridge, UK: Cambridge University Press, 2002.
32 Rawls J. *A theory of justice*. Cambridge, Massachusetts: Harvard University Press, 1971.
33 Rawls J. *Political liberalism*. New York: Columbia University Press, 1993.
34 Beauchamp TL, Childress JF. *Principles of bioethics*. New York: Oxford University Press, 1989.
35 Union Pacific Railway Co. v. Botsford, 141 U.S. 250, 251 (1891).
36 Neff C. Woman, womb, and bodily integrity. *Yale J Law Fem* 1991;3:327–53, 328–39, 337.
37 Svoboda JS, Van Howe RS, Dwyer JG. Informed consent for neonatal circumcision: an ethical and legal conundrum. *J Contemp Health Law Policy* 2000;17:61–133.
38 Dwyer JG. *The relationship rights of children*. Cambridge, UK: Cambridge University Press, 2006.
39 Hodges FM, Svoboda JS, Van Howe RS. Prophylactic interventions on children: balancing human rights with public health. *J Med Ethics* 2002;28:10–16.
40 American Academy of Pediatrics Committee on Bioethics. Informed consent, parental permission, and assent in pediatric practice. *Pediatrics* 1995;95:314–17.
41 James SA. Reconciling international human rights and cultural relativism: the case of female circumcision. *Bioethics* 1994;8:1–26.
42 The Nereide, 13 U.S. 388, 423 (1815).
43 The Paquete Habana, 175 U.S. 677, 700 (1900).
44 Bilder R. Integrating international human rights law into domestic law—U.S. experience. *Houston J Int Law* 1981;4:1–12, 2.
45 Paust J. Customary international law: its nature, sources, and status as law of the United States'. *Mich J Int Law* 1990;12:59–91, 86–7.
46 Henkin L. International law as law in the United States. *Mich Law Rev* 1984;82:1555–69, 1561.
47 Paust J. Self-executing treaties. *Am J Int Law* 1988;82:760–83, 766.
48 Damrosch LF. The role of the United States concerning "self-executing" and "non-self-executing" treaties. *Chic Kent Law Rev* 1991;67:515–32, 527.
49 Sloss D. The domestication of international human rights: non-self-executing declarations and human rights treaties. *Yale J Int Law* 1999;24:129–221, 156.
50 Paust J. Avoiding fraudulent executive policy: analysis of non-self-execution of the Covenant on Civil and Political Rights. *De Paul L Rev* 1992–93;42:1257–86, 1259.
51 Riesenfeld SA. The doctrine of self-executing treaties and *U.S. v. Postal*: win at any price? *Am J Int Law* 1980;74:892–904, 900.
52 Deener DR. Treaties, constitutions, and judicial review. *VA J Int Law* 1964;4:7–34, 15–16.
53 Riesenfeld SA, Abbott FM. Foreword: symposium on parliamentary participation in the making and operation of treaties. *Chic Kent Law Rev* 1991;67:293–312, 296–97.
54 Mower AG Jr. *The convention on the rights of the child: International Law Support for Children*. Westport, CT: Greenwood Press, 1997.
55 Shackel R. The UN Convention on the Rights of the Child. *Aus Int Law J* 2003;2003:21–60.
56 Drinan RF. *The mobilization of shame*. New Haven, Connecticut: Yale University Press, 2001:96.
57 Carpenter RC. *Forgetting children born of war: setting the human rights agenda in Bosnia and beyond*. New York: Columbia University Press, 2010:18.
58 Statute of the International Court of Justice, June 26, 1945, article 38, 59 Stat. 1055, T.S. 993.
59 Gunning I. Modernizing customary international law: the challenge of human rights. *VA J Int Law* 1991;31:211–47, 214.
60 Restatement (Third) of the Foreign Relations Law of the United States § 111, comments d and e.
61 Stephens B. The law of our land: customary international law as federal law after *Erie*. *Fordham Law Rev* 1998;66:393–461, 460, 394.
62 Svoboda JS. Routine infant male circumcision: examining the human rights and constitutional issues. In: Denniston GC, Milos MF, eds. *Sexual mutilations: a human tragedy*. New York: Plenum Press, 1997:205–15.
63 Ludbrook R. The child's right to bodily integrity. *Current Issues Crim Just* 1995;7:123–32, 128, citing Concluding Observations on Report by Canada CRC/C/15/Add.37 (20 June 1995) at para. 25; Concluding Observations on Report by United Kingdom CRC/C/15/Add.34 (January 1995) at 6.
64 Bollinger D. Lost boys: an estimate of U.S. circumcision-related infant deaths. *THYMOS: J Boyhood Studies* 2010;4:78–90.
65 Blower SM, McLean AR. Prophylactic vaccines, risk behavior change, and the probability of eradicating HIV in San Francisco. *Science* 1994;265:1451–4.
66 Lima A, Anema A, Wood R, *et al*. The combined impact of male circumcision, condom use and HAART coverage on the HIV-1 epidemic in South Africa: a mathematical model. *5th IAS Conference on HIV Treatment, Pathogenesis and Prevention*; Cape Town. Abstract Number WEAC105. 19–22 July 2009.
67 Wallerstein E. *Circumcision: an American health fallacy*. New York: Springer Publishing Company, 1980.
68 Van Howe RS. Personal communication, 24 May 2011.
69 American Medical Association Council on Ethical and Judicial Affairs. *The Code of Medical Ethics: Current Opinions with Annotations*. 1996–1997 Edition. Chicago: American Medical Association, 1997.
70 Gonik B, Barrett K. The persistence of newborn circumcision: an American perspective. *BJOG* 1995;102:940–1.
71 Gordon A. Why do we still circumcise male babies? *BJOG* 1995;102:939–40.
72 Van Howe RS. Why does neonatal circumcision persist in the United States? In: Denniston GC, Milos MF, eds. *Sexual mutilations: a human tragedy*. New York: Plenum Press, 1997: 111–19.
73 Bcheraoui C El, Greenspan J, Kretsinger K, *et al*. Rates of selected neonatal male circumcision-associated severe adverse events in the United States, 2007–2009. Abstract. XVIII International AIDS Conference, Vienna, Austria. 18–23 July 2010.
74 Rabin RC. Steep drop seen in circumcisions in US. *NY Times* 17 August 2010:D6.
75 McGrath K, Young H. A review of circumcision in New Zealand: "I never like doing them and I was pleased to give them up". In: Denniston GC, Hodges FM, Milos MF, eds. *Understanding circumcision: a multidisciplinary approach to a multi-dimensional problem*. New York: Kluwer Academic/Plenum Publishers, 2001: 129–46.
76 Shannon FT, Horwood LJ, Fergusson DM. Infant circumcision. *NZ Med J* 1979;90:283–4.