Infant circumcision: the last stand for the dead dogma of parental (sovereignal) rights

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ABSTRACT

J S Mill used the term 'dead dogma' to describe a belief that has gone unquestioned for so long and to such a degree that people have little idea why they accept it or why they continue to believe it. When wives and children were considered chattel, it made sense for the head of a household to have a 'sovereignal right' to do as he wished with his property. Now that women and children are considered to have the full complement of human rights and slavery has been abolished, it is no longer acceptable for someone to have a 'right' to completely control the life of another human being. Revealingly, parental rights tend to be invoked only when parents want to do something that is arguably not in their child's best interest. Infant male circumcision is a case in point. Instead of parental *rights*, I claim that parents have an *obligation* to protect their children's rights as well as to preserve the future options of those children so far as possible. In this essay, it is argued that the notion that parents have a right to make decisions concerning their children's bodies and minds—*irrespective of the child's best interests*—is a dead dogma. The ramifications of this argument for the circumcision debate are then spelled out and discussed.

> We all declare for liberty; but in using the same word we do not all mean the same thing. With some the word liberty may mean for each man to do as he pleases with himself, and the product of his labor; while with others the same word may mean for some men to do as they please with other men.... Here are two, not only different, but incompatible things, called by the same name—liberty. And it follows that each of the things is, by the respective parties, called by different and incompatible names—liberty and tyranny. The shepherd drives the wolf from the sheep's throat, for which the sheep thanks the shepherd as a liberator, while the wolf denounces him for the same act as the destroyer of liberty.
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> Abraham Lincoln, Address at the Sanitary Fair, Baltimore, 18 April 1864.

INTRODUCTION

In *Freedom in the making of Western culture*, Orlando Patterson identifies three meanings of freedom that have been intertwined throughout the course of civilisation, with different elements predominating at different periods: personal freedom (absence of constraint); civic freedom (participation in government); and sovereignal freedom (power over others).[1] In the past century, as evidenced by the widespread adoption of key international and/or universal declarations and covenants,[2 3] personal freedom has been on the ascent. Rights designed to protect individual freedoms have increasingly been assigned to historically excluded persons including women and children. By contrast, sovereignal freedoms, whether in the form of a monarch over his subjects, religious leaders over their followers, owners over their slaves, husbands over their wives, or parents over their children, have been, and continue to be, on the decline. Shifts away from the hegemony of sovereignal freedom have been marked by such conflicts as the Protestant Reformation, the American Revolutionary War, and the American Civil War. The last remaining holdout for sovereignal freedom in the modern era, I claim, is the 'dead dogma' (see abstract) of parental rights.

Recognition of the full moral worth of every human, including women and children, did not happen overnight. Slavery was abolished 150 years ago, women have only had the vote for 90 years, and the Convention for the Rights of the Child was formulated a mere 20 years ago.[3] As the West moves further in the direction of acknowledging the individual welfare interests of all her citizens, these interests come into conflict with historically established sovereignal freedoms. The question becomes whether these lingering sovereignal freedoms serve any legitimate purpose in contemporary societies, or at least any purpose that could be seen as over-riding the individual-based welfare interests that have increasingly been usurping their throne. To illustrate, John Rawls writes extensively on the question of what role and level of influence comprehensive doctrines, including those manifested in the major religions, should have in a pluralistic, modern society.[4 5] Similarly, it should be asked of sovereignal parental rights whether they serve a useful function in the post-Enlightenment era, and, if they do serve some function, whether these rights could be seen as providing an adequate moral justification for such autonomy-violating practices as infant male circumcision. In this essay, I argue: that the doctrine of parental rights has outlived its usefulness for determining the relationship between parents and their children; that parents should be seen as having, not rights (qua parents), but indeed an *obligation* to protect the rights of their children and to make decisions in their children's bests interests; and that infant male circumcision, whether performed for quasi-medical ('health') reasons or for reasons of culture or religion, is unlikely to be in any child's objective[i] best interests.

[i]This means that I am committed to the view that parents who authorise circumcision for their children with even the best of intentions vis-à-vis the child's own well-being, are fundamentally misguided—are making a mistake. In many cases this is due to a lack of proper information. I will offer support for this argument in detail in what follows.

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CHILDREARING AND THE NEED FOR FLOURISHING

In a secular, pluralist society, the proper role of parents has been compellingly articulated by Rawls, who notes that parents take on an obligation to guard their children from harm and to guide their development by maximising their potential to become good citizens.[5 6] To do so, parents are expected by society to exercise control over their child's environment and to apply their substitute decision-making authority so as to promote the advancement of their child's best interests. Rawls further notes that parents should 'be guided by the principles of justice and what is known about the subject's (ie, the child's) more permanent aims and preferences'[4] (p250). He also argues for essential constraints on families to guarantee the basic rights and liberties of all their members, and suggests that parents should show due respect to each of their children, acknowledging that they have interests independent of the parents' own[5 6] (p102 and p164–6 respectively). To become a respectful, responsible, autonomous future citizen, a child needs to be afforded the full complement of human rights and have an assurance that those rights will be protected. To accomplish this, parents should be seen, not as having *rights* (qua parents, at least), but rather a *responsibility* to secure and protect the rights of their children.[7] On this view—the view I will adopt, expound and defend over the course of the following pages—parental sovereignal rights are simply not needed to rear children successfully and ethically in the modern world.

This Rawlsian framework is not universally accepted. Nor is it the traditional view, historically. A competing argument is that, when a woman chooses not to abort, the resulting child owes her a debt of gratitude, which justifies some sacrifice of his future welfare[8] (p241). As Thomas Hobbes made this case in the 17th century, children are not in a position to complain, so parents can hold dominion over them by a kind of hypothetical consent—better in any case than having their parents simply kill them outright.[9] But, surely, these crass arguments should be considered straw men—at least by contemporary standards. More realistically, what compelling justification can be given for the ongoing acceptance of present-day parental sovereignal rights? A typical contender includes the notion that parents are best situated to understand the unique needs of their children[10 11] and to weigh the competing interests of family members.[10 12] Hence, this argument runs, they should be afforded the freedom to make decisions with respect to their children with minimal outside interference.[13] The fear is that, as Douglas Diekema has put it: '[w]ithout some decision-making autonomy, families would not flourish, and the important function served by families in society would suffer.'[10 11]

This point is valid so far as it goes. Parents certainly do need to be able to make a wide range of decisions on behalf of their children, as well as in the interests of the flourishing of their respective families. Yet it does not follow from this observation that sovereignal 'rights' are needed to accomplish these ends. Indeed, the childrearing and social-functional goals that are at stake in this line of reasoning—including the advancement of a child's best interests and the transmission of standards and values—can be achieved without the need to refer to any parental 'rights' whatsoever. Instead, parents who respect their children as individuals, and who take the protection of their *children's* rights as being paramount, will ensure the promotion of their family's flourishing irrespective of any (parental) rights of their own.

In addition to being unnecessary, the doctrine of parental rights can actually work *against* the desired outcomes just described. Of course, it is *hoped* that parents will properly care for their children, but there is little empirical evidence that they are uniquely qualified to do so, and some parents mistreat their children. Unfortunately, when parent–child interests conflict, the interests of the parents often prevail. In this situation, the assumption that parents have sovereignal rights over their children can directly harm the interests of the latter. Most child abuse occurs within the family, within which this abuse of parental 'freedom' is difficult to check. And while states in the USA have the authority to remove children from abusive and negligent guardians, they often hesitate to intervene out of respect for family privacy, saying, in effect, as James Dwyer has summarised the view, 'We are protecting the traditional right of adults to possess the children they produce, which by the way is usually not horrible for children'[8] (p136). When actual mistreatment is noted, however, perpetrators often appeal to parental rights and the privacy of the family. In response, states, by deferring to such notions—as they frequently and effortlessly do[14]—in essence give a green light to parental behaviours that may amount to child abuse.[ii] As Dwyer has noted, parental rights are most typically invoked when parents want to do what is not in their child's best interests.[7]

PARENTAL RIGHTS, HUMAN RIGHTS, AND AUTHORISATION OF SURGICAL PROCEDURES

There is no empirical evidence that increasing parental authority is associated with the protection of a child's welfare interests; and there are irreversible medical procedures that permanently affect a child's quality of life that are decidedly *not* within the scope of parental power.[18] Thus, even if one remains convinced that parental rights are valid (and that there may therefore be at least some sovereignal authority of parents worth defending), one can still ask whether an irreversible surgical procedure such as non-therapeutic circumcision is within the purview of any reasonable account of this supposed authority.

Circumcision involves the removal of the foreskin. Whenever the skin is broken, as it is with all forms of circumcision, bodily integrity is violated. When this occurs intentionally, without adequate justification (such as in treating an illness or correcting a deformity), or without consent, it is, by definition, a human rights violation: the right to bodily integrity is foundational in human rights law. Non-therapeutic infant circumcision intentionally violates bodily integrity and is, ipso facto, a human rights violation.[iii] The question then becomes whether parents have a 'right' to violate the bodily integrity of their children.[20] This can be addressed in several ways: by demonstrating that circumcision does not violate bodily integrity, that the violation can be justified, that children do not have basic human rights, or that parents simply have the sovereignal right to authorise circumcision independent of these considerations.[iv]

Circumcision proponents have argued that infant circumcision is analogous to activities commonly accepted to be within

[ii]Infant male circumcision satisfies the statutory definition of child abuse in most states of the USA, leading several states to list male circumcision as an exception to their statutes.[15–17] To demonstrate the ethical impermissibility of infant circumcision, it is only necessary to show that it is either a human rights violation or that parents do not have the authority to commission it. Fitting the criteria for child abuse is not necessary for this argument, although it may be sufficient.

[iii]The issue of whether infant male circumcision is a human rights violation is addressed in more detail elsewhere.[19]

[iv]The issue of proxy decision-making for infant circumcision has been addressed in a previous publication and will not be explored here.[21]

parental authority, such as clipping fingernails, giving haircuts,[v] allowing participation in snow sports or contact sports,[23 24] and authorising vaccination.[25 26] While these activities certainly are compatible with the aim of guarding the child from needless harm, guiding his development, and looking after his best interests overall, the analogy with infant circumcision is strained. The removal of hair and fingernails—tissues that spontaneously regenerate—is not painful and, if performed correctly, does not break the skin. Sports participation includes the age-appropriate consent of the participant and is usually enjoyable. Vaccines, whose administration does not require the removal of any functional tissue, have been shown to be efficacious and effective and are also the *most* effective, least expensive, least invasive approach to preventing the disease in question. Circumcision fails each one of these criteria[27]: circumcision is harmful, painful, is not consensual, is not enjoyable, does not influence a child's ability to develop into a good citizen, and is not an intervention on health grounds that the average individual would choose for himself if competent.

What about religious circumcision? Viens argues that parents are entitled to have their infant son circumcised because it does not violate his human rights. He argues that the popularity of circumcision is sufficient to make it a 'reasonable' practice, and thus not a human rights violation on just those grounds.[13] Yet using popularity as an ethical defence is a non-sequitur (many practices that were once extremely popular, such as slavery, are now universally condemned); and his reliance on the Rawlsian concept of reasonableness ignores Rawls's underlying primacy of basic human rights, which I address in detail elsewhere.[20] Alternatively one could argue that international human rights provisions do not apply to either male infants or infant circumcision; or, in the case of ritual circumcision, that the right of the child to change religions (or to adopt no religion at all) without being marked by a permanent brand on his penis is subordinate to the parental sovereignal right to alter his genitals in the service of their own beliefs.[vi]

Indeed, a minority of ethicists do in fact argue that children do not have basic human rights, based on the fact that infants and children do not have the power to extract the duties owed to them by others.[vii] Included in this minority are Lanie Friedman Ross and Douglas Diekema, neither of whom acknowledge that children have basic human rights per se, meaning that parents and the state would not need to consider such rights when making decisions affecting them. Rawls, by contrast, as well as a preponderance of mainstream philosophers, defend the primacy of protecting the individual child's basic human rights.[4 20 viii] The latter approach is one with which I am plainly sympathetic and is one whose soundness I will continue to defend in what follows.

RELIGIOUS CIRCUMCISION: ADDITIONAL DEFENCES

What other justifications are given for ritual circumcision as a function of parental authority? The first is that 'parents should be permitted to raise their children according to their own chosen standards and values and to transmit those to their children.'[10 ix] The question, then, is whether parents have the authority to violate the bodily integrity of their children because of the value placed on religious obligation or cultural identity.

The extreme position, argued by Viens—and chiefly by appeals to canonical texts—views infant circumcision simply as a religious mandate: no further discussion.[13] Given that we do not live in a theocracy, however, but rather in a liberal, pluralistic, secular society in which apostasy is not a crime[5] (pp93, p156), blind adherence to theological dogma should not go uncontested. Instead, ideas are, and ought to be, publicly discussed and debated to determine if they are reasonable through a process Rawls calls public reason[5] (p92). Policies based on comprehensive doctrines, including religious beliefs, are not accepted without careful consideration.[6 20] For example, Sharia Law would not be applied without being vetted and publicly debated. The violation of basic human rights—among which is the right to bodily integrity—is rarely, if ever, considered reasonable.

Alternatively, Viens appeals to 'the parents' conception of the good.'[13] Parents may believe that cutting the genitals of their children (both male and female) will allow them to be welcomed as members in their community and that forgoing the ritual will cause the community to ostracise them and their children. Of course, all that this may show is that it is time for the community to reconsider the grounds on which it would seek to ostracise a child or his parents from participation in its activities.[x] Indeed, too often communities can be blind to the harm they generate, firmly believing that they have nothing but good intentions for those whom they oppress and consequently bear the burden of their authority 'with benevolent fortitude'[30] (p38).[32] Despite the beneficent intent, however, in pluralistic societies, one's 'community' cannot be taken for granted as a static given, nor is one's community likely to be completely insular: citizens are allowed to move freely between communities based on their own free will and (possibly changing) beliefs. Notably, a Pew survey recently found that a substantial percentage of adults no longer adhere to the religion into which they were indoctrinated[xi] as children.[33]

[v]Sam Mullet, Sr and 15 others were sentenced to 15 years of prison for forcibly cutting the beards and hair of men who defied Mullet's authority within an Amish community in Ohio.[22]

[vi]Violation of bodily integrity in which parents mark their children as belonging to their cultural group include body piercing, scarification, tattooing and genital cutting. None are necessary for good health, psychological well-being, or normal development. All can safely wait until the child is old enough to choose for himself. While tattoos do not interfere with function, do not remove tissue, are not markedly invasive, and may be reversible, in the USA, tattooing of minors has resulted in the arrest of their parents.[28 29]

[vii]The conflict between Power Theorists, who argue that rights can only be assigned to those who have power to act on their own, and Interest Theorists, who argue that everyone has basic interests worthy of protection through rights, is an ongoing debate that is well argued by O'Neill,[30] Campbell,[31] and Dwyer.[8] Even Power Theorists such as O'Neill recognise that, without rights, children become chattel.[30]

[viii]Rawls argues that an individual's basic human rights can only be violated if there is a concomitant enhancement of another basic human right for that individual. The violation of the infant's bodily integrity with circumcision is not offset by any enhancement of his other basic human rights. Furthermore, Rawls argues that an uncompensated violation of a basic human right is never reasonable.

[ix]Alternatively, parents need 'the freedom to raise their children under the tenets of a particular religious doctrine or community.'[13]

[x]In other words, if declining to cut off part of the penis of one's own son without asking his permission first is to subject oneself (and one's son) to alienation from a valued community, it would seem that *the community* might have some reason to take critical stock of its ostracisation criteria. These need not be simply taken for granted.

[xi]The paternalistic goal of ritual infant circumcision is to maintain the status quo, regardless of any cognitive dissonance, through indoctrination—what some would consider 'brainwashing'—before the age of consent (ref 8, p152). Given the influence that parents have on their children and their ability to isolate their families from outside influences, indoctrination can easily be accomplished.

While parents may be motivated to project their own belief structures on to their children, infants are not similarly interested in making social, cultural or religious statements on their parents' behalf. Unless a clear, consistent cultural benefit for the child can be demonstrated, it follows that circumcisions are performed for the benefit of the parents and the community,[xii] while the infant, who lacks the freedom to choose his own religion, is used instrumentally to achieve their goals[8] (p185).[xiii]

Another problem with encouraging parental authority to raise a child within a religious framework (without stopping to consider the limits of such authority) is that it can encourage the Old Testament wisdom of 'spare the rod and spoil the child.'[xiv] An extreme example of this is the parenting advice given in *To train up a child*. After the methods described in this book had been followed, several children died at the hands of their parents.[36] Diekema appears to have endorsed a similar view, having testified on behalf of parents convicted of child neglect who failed, on religious grounds, to seek medical care for their seriously ill child.[37]

BEST INTERESTS OF THE CHILD?

Thus far we have been considering justifications for infant circumcision—with a focus on the ritual form of the surgery—that appeal chiefly to parental sovereignal rights. Using a Rawlsian approach, however, I have suggested that the parental rights model may be outdated, and have offered in its stead a 'parental obligation' model which focuses on the best interests of the child. Yet what of those arguments for the permissibility of infant circumcision that are couched in precisely these terms—that is, that claim that infant circumcision, quite independently of the supposed 'rights' of parents, actually *is* in the best interests of the child?

Typically, a best interests assessment involves weighing harms and benefits. The harm of circumcision begins the moment the foreskin is cut, crushed or torn. The infant loses the most sensitive portion of his penis[38] and faces the risks of the many complications associated with the procedure, including infection, bleeding, meatal stenosis, altered sexual function, and death.[39–44 xv] Definitions of 'harm' are, of course, slippery and often culturally determined, so it must be remembered that cultural norms can interfere with the recognition of the otherwise-obvious physical and functional harms arising from circumcision.[32]

To put the harm of infant circumcision into perspective, the American Academy of Pediatrics (AAP) has characterised genital cutting as an 'elective' procedure.[47] The acceptable level of harm from an elective—that is, non-medically indicated—procedure should be on par with that set for participants in clinical research involving children: the harm encountered in the activities of daily living.[48 49] Cutting the genitals, let alone amputating the foreskin, easily exceeds the level of harm encountered in the activities of daily living and thus the level of harm that would be acceptable for an 'elective' procedure on a minor.

Circumcision proponents sometimes argue that the claimed medical benefits of circumcision justify the procedure in infants. This position has at least one fatal flaw, namely that the actual benefits to the infant, if they exist at all, are quite small. In fact, the only identified medical benefit *for infants* (as opposed to the sexually active adults those infants will one day presumably become) is a reduction in the risk of acquiring a urinary tract infection, which can indeed happen before the age of sexual maturity, although such infections, in boys, are vanishingly rare. To obtain this benefit, 195 circumcisions must be performed to prevent one urinary tract infection.[50] Yet urinary tract infections can be easily treated with inexpensive oral antibiotics, just as they are for girls—surgery should be an extreme last resort.[51] By contrast, the most common surgical complication of circumcision, meatal stenosis, affects 5–20% of circumcised boys and often requires corrective surgery called a meatotomy.[40 41] For every urinary tract infection prevented, then, 10–39 boys will develop meatal stenosis. As the harm easily outweighs any benefit for an infant, in keeping with the 1995 recommendations of the AAP Committee on Bioethics,[52] the decision whether to circumcise should be delayed until the child has reached an age of consent.

One recent attempt to leverage 'health benefits' into something approximating a 'best interests' argument was given by the AAP in its 2012 report on circumcision. As the AAP concluded: '… the health benefits of newborn male circumcision outweigh the risks; furthermore, the benefits of newborn male circumcision justify access to this procedure for families who choose it.'[47] Whether or not this conclusion is justified by the evidence (a point hotly debated[53]), the claimed benefits of circumcision are really a red herring: if they were *sufficient* to justify the practice, then the AAP would have recommended circumcision. Tellingly, the AAP does not even attempt to argue that the available medical evidence concerning the possible benefits of circumcision constitutes sufficient ethical justification for the procedure. Instead, the AAP, as it did in 1999,[54] simply passes the buck and the authority to parents, throwing in a facile reference to the 'best interests' of the child just for good measure.[55] The 2012 report concludes:

> In cases such as the decision to perform a circumcision in the newborn period (where there is reasonable disagreement about the balance between medical benefits and harms, where there are nonmedical benefits and harms that can result from a decision on whether to perform the procedure, and where the procedure is not essential to the child's immediate well-being), the parents should determine what is in the best interest of the child.[47]

Yet the AAP makes no attempt to demonstrate that circumcision actually is in the best interests of the child, nor do they require that parents should muster such a demonstration

[xii] In the latter case, it merely replaces the paternalism associated with the sovereignal freedoms of the parents with paternalism associated with the sovereignal freedoms of the community. In either case the child is used instrumentally.

[xiii] Kant proposes that persons should never be treated as a means to an end but always as an end in themselves. For children, this entails treating them as persons simply because they are persons and not property or appendages. For example, circumcision is most commonly performed so the boy can look like his father.[34] By doing so, parents are treating their children as extensions of themselves.[35]

[xiv] Attributed to Samuel Butler with its origins in Proverbs: 'He who spareth the rod hateth his son: but he that loveth him correcteth him betimes' (Proverbs 13:24) and 'Withhold not correction from a child: for if thou strike him with the rod, he shall not die. Thou shalt beat him with the rod, and deliver his soul from hell.' (Proverbs 23:13–14)

[xv] Other than losing the most sensitive portion of the penis,[38] meatal stenosis (narrowing of the opening of the urethra) is the most common complication.[40 41] Infections and excessive bleeding are each seen after 1–2% of circumcisions.[45 46] Reports of amputation of all or part of the glans during infant circumcision are common, as are reports of gangrene and abnormal urinary retention. It is estimated that infant circumcision contributes to over 100 deaths each year in the USA.[44]

themselves.[xvi] This easy allusion to a child's best interests, then, is empty and principally without force. Indeed, the attempted ethical justification for infant circumcision does *not* rest on the available medical evidence nor on a genuine appeal to the actual best interests of the child, but instead on an asserted parental right to make this decision in lieu of the child himself at an appropriate age.

IF NOT 'BEST INTERESTS'...THEN WHAT?

In contrast with the AAP in its latest proclamation, which at least *mentions* the child's best interest as a relevant consideration, some ethicists elect to eschew this standard altogether. Hence, while I have claimed that parental rights are a dead dogma, it is perhaps more accurate to say that they are something like a *zombie* dogma, resurrected and sustained by the concerted efforts of this scholarly minority. Friedman Ross, for example, rejects the best interests standard because, she argues, it fails to give parents enough flexibility to carry out their requisite childrearing functions. Furthermore: 'to hold that the needs and interests of children must be given *absolute* priority *at all times and in all circumstances* is untenable' (ref 56, p21). As a replacement, she suggests a model of 'constrained parental autonomy,' which holds that parents should be allowed to do as they please with their children so long as the 'basic needs' of each child are secured (ref 56, p135).[xvii] Abuse and neglect, which she does not clearly define, are prohibited.

Friedman Ross further argues, without empirical support, that 'the presumption of parental autonomy is often enough to motivate parents to promote their child's *basic needs*, if not their child's *best interest*.'[56] While she argues that providing a floor does not negate striving for more,[60] establishing a minimum threshold can often be a self-fulfilling prophecy. Her failure to allocate human rights to children and her disparaging of a child's best interests are consistent with her broadly reactionary defence of parental sovereignal rights.

Diekema likewise argues that focusing on the child's best interests is misguided and advocates replacing the best interests standard with the 'harm principle.' This would give parents unlimited authority over their children so long as the harm done to the child does not exceed an arbitrary threshold.[10] To illustrate the harm principle, Diekema gives the example of a boy with Burkitt's lymphoma with a 40% chance of survival after chemotherapy and no chance without chemotherapy, whose parents wanted to withhold therapy. The court sided with the parents on the basis that treatment offered only a 40% chance of survival and was itself '...extremely risky, toxic and dangerously life-threatening.' Consequently, the treatment did not provide enough net benefit to justify the harm of interfering with parental decision-making and autonomy.[61] Diekema believes that 'the harm principle adequately focuses on the proper concern in this case: harm to the child.'[10]

Diekema is mistaken. Rather than addressing the harm to the boy, the court refused to interfere with parental sovereignal rights. Had the court considered (a) the boy's best interests, (b) what he would likely choose for himself if competent (few people would choose certain death over a 40% chance of survival), and (c) his right to an open future, there is a 40% chance that he would be alive today.[xviii] The 'harm principle' is merely a shell game that preserves parental power. Unfortunately, neither the 'harm principle' nor 'constrained parental autonomy' offers much practical guidance for evaluating the permissibility of parental actions. Both Diekema and Friedman Ross are generally evasive about harm thresholds, yet they are confident, without providing any supportive evidence, that infant male circumcision does not exceed their arbitrary thresholds.[62] As Sirkuu Hellsten observes, commenting on ritual circumcisions specifically, the problem with failing to recognise the harm of circumcision is that,

> If we allow parents to decide what is best for their children on the basis of the children's religious or cultural identity, we would have no justification for stopping them cutting off their children's ears, fingers, or noses if their religious and cultural beliefs demanded this.[63]

Indeed, harm alone is an inadequate standard for judging interventions on children's bodies because there are no generally accepted benchmarks for assessing harm; it is simply too subjective and vulnerable to deck-stacking. In other words, no matter what it is that adults want to do to a child's body, all they have to do is to define harm in such a way that the intervention is categorised as harmless or insufficiently harmful to warrant ethical (let alone legal) concern. In the case of circumcision, advocates ignore the physical and functional facts—as well as abundant testimony from men who insist that they have been harmed by circumcision—and go on blandly asserting that circumcision either makes no difference to sexual experience or even enhances it. Their nineteenth century predecessors were more consistent and more honest, admitting that they wanted to destroy the foreskin precisely because they knew very well that it would make a (diminishing) difference to sexual experience.

What Friedman Ross and Diekema are really asserting, at base, is that children should have less protection from surgical and quasi-surgical interventions than adults.[xix] This is to turn accepted bioethical and legal principles upside down. Adults are protected by three sets of principles: the four principles of bioethics formulated by Beauchamp and Childress (autonomy, non-maleficence, beneficence and justice) [65]; the substituted judgment principle; and numerous conventions on human rights, consumer protection laws, professional conduct rules, etc. Being vulnerable and incapable of defending their own autonomy and other interests, children actually need more protection than adults, not less. Hence the formulation of

[xvi] Parents only need to request circumcision for their infant son, regardless of their motivation or reasons.

[xvii] Basic needs would 'include the basic goods, skills, and liberties, and opportunities essential for the adequate development and full exercise of moral personality' (ref 56, pp5–6) with the goal of becoming autonomous adults capable of devising and implementing their own life plans.[57 58] Darby argues elsewhere that infant circumcision interferes with this goal.[59]

[xviii] Rawls and Dwyer recommend using substitute judgement, in which proxy decision-makers base their decision on what the incompetent person would choose for himself if competent (ref 4, pp208–209,8). Dwyer argues that this approach has several advantages over the best interests standard.[8] Both Friedman Ross and Diekema summarily reject substitute judgement, arguing that it is impossible to know what a child would choose if competent.[10 56] This evasive argument is easily dismissed as it can be determined that a child would choose to live, choose to avoid unnecessary pain, choose to be healthy, and choose to have his basic rights respected and protected.

[xix] Friedman Ross was a member, and Diekema the chairman, of the AAP Committee on Bioethics that supported 'mild' forms of female genital cutting.[62] Diekema was also the bioethicist on the Circumcision Task Force.[47] The AAP policies on both male and female genital cutting reflect their views favouring parental rights over the interests of children. In both policy positions, the AAP acknowledged neither the child's moral standing nor any parental obligation to protect a child's rights by acting in his or her best interests.[47 62 64]

additional safeguards, such as special laws against sexual interference, the Convention on the Rights of the Child, the concept of the child's right to an open future, and so on. One does not imagine that Ross and Diekema propose the repeal of laws that constrain parents from having sex with their children; but if it is wrong for a parent to fiddle with their children's genitals, it must be even more wrong to damage them outright.

CONCLUSION

Parental sovereignal rights are not needed to raise a respectful, responsible, autonomous future citizen or for families to flourish. Too often these 'rights' are used to justify harming children. If one accepts the primacy of protecting the individual child's basic human rights, the relationship between children and parents goes from one in which parents have power over their children to one in which parents have the responsibility to promote and protect the basic human rights of their child. This includes the right of a child to an open future in which he can choose his own belief structures and exercise control of his own body.

With increasing awareness of the moral worth of infants and children, genital cutting in infants, both male and female, has been condemned on bioethical, human rights and legal grounds. In contrast with the res ipsa loquitor nature of the harm of circumcision, the claims that male circumcision has medical value are based on studies with questionable internal and external validity that do not apply to infants. Recognising the weakness of medical arguments, one of the few justifications for infant circumcision remaining is an appeal to parental rights and authority, making it the last stand of those who wish to promote genital cutting on babies and young children.

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