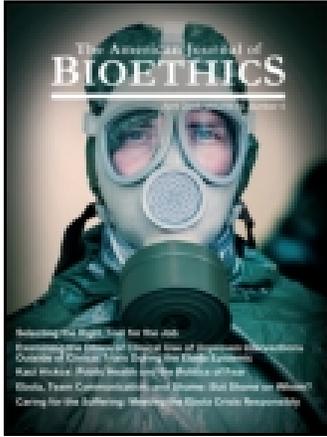


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Letter to the Editor

The Mysterious Disappearance of the Object of Inquiry: Jacobs and Arora's Defense of Circumcision

Robert Darby, Independent Research

Jacobs and Arora (2015) offer a spirited defence of “ritual circumcision” of male infants, arguing that it is medically beneficial and both ethically and legally permissible. Some of the flaws in their reasoning have been identified by the peer reviewers, who have nonetheless overlooked what I perceive as a more fundamental problem. The most serious weaknesses in their article are (1) their attempt to specify the situations in which circumcision is acceptable is logically incoherent; and (2) that they seem confused about whether they are arguing merely that the practice should not be legally prohibited (or restricted)—a limited claim—or whether it is consistent with (does not violate) accepted principles of bioethics and human rights—a far more ambitious and contentious claim.

WHAT SORT OF CIRCUMCISION DO THEY MEAN?

Jacobs and Arora's article is called “Ritual Male Infant Circumcision and Human Rights.” In a footnote, they state that for the purposes of the article circumcision means “ritual infant male circumcision”; in a further clarification, they explain that they are discussing only situations where “a trained provider performs the procedure in a hospital or outpatient setting hygienically and with adequate analgesia.” The problem is that these qualifications create a paradox: If circumcision is performed as a medical procedure in a clinical setting, it is usually no longer a ritual. In order to qualify as a ritual, the circumcision operation must be performed in accordance with the ceremonies, prayers, and so on traditionally prescribed by the culture or religion that authorizes it. This definition would include Jewish circumcision practices and tribal initiation rites among many African ethnic groups, and among some Australian Aboriginal nations. It would exclude circumcision as performed by most Muslims, since Islam neither mandates circumcision nor prescribes any associated ritual; among Muslims circumcision may occur in any setting, and these days it is nearly always medicalized and

without ceremony, as many YouTube videos attest. It would also exclude the semi-medicalized circumcision of boys in the Philippines and certain regions of Oceania, where traditional forms of penis cutting (probably involving no more than a slit to the foreskin) have been replaced by full circumcision on the American model. Finally, the definition would also exclude routine nontherapeutic circumcision of baby boys performed for prophylactic health reasons, as is common in the United States, as this is not a ritual procedure.

But the paradox deepens: Since Jacobs and Arora define their target as infant circumcision, nearly all the forms of culturally motivated circumcision just described must be excluded from their purview because they are performed not on infants, but on older boys. In the Muslim world circumcision can take place at any time (commonly 6 to 8 years); as a tribal initiation rite, circumcision normally occurs around puberty; and in South Africa the usual time for the Xhosa “bush” circumcisions is mid to late teens. This winnowing leaves only circumcision as performed among the Jewish people—who are, in fact, the sole ethnic-religious group to prescribe circumcision in infancy. But they would also appear to be largely excluded by Jacobs and Arora's specification that they are referring only to circumcision as performed by “a trained provider . . . in a hospital or outpatient setting hygienically and with adequate analgesia.” To qualify as ritual for the purposes of Judaism, circumcision must be performed on the eighth day of life by an accredited mohel in accordance with prescribed ceremonial forms; if performed in a hospital or other clinical setting without these ceremonies it is no longer a ritual, but mere routine surgery. The requirement for adequate analgesia narrows the field even further, for it is increasingly recognized that it is impossible safely to provide infants with adequate analgesia, and that the only way to ensure a pain-free operation is by means of a general anesthetic (Bellieni et al. 2013).

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We are therefore left with the paradox that the combined effect of Jacobs and Arora's qualifications and definitions is to exclude all forms of circumcision from their consideration. Ritual circumcision is excluded because it is not performed on infants or because it is performed without ceremony in a hospital or clinic; hospital circumcisions are excluded because they are not ritual; infant circumcision is excluded because it is impossible to give infants safe, adequate analgesia. In other words, the authors have gone to a great deal of trouble to defend the permissibility of an operation that should not, in terms of their own definitions, ever be performed.

LEGAL OR ETHICAL PERMISSIBILITY?

There is another major problem with the article: It is not clear whether Jacobs and Arora are arguing that circumcision (however defined) should remain legally permitted (and probably unregulated), or whether it is ethically unobjectionable. Their argument seems to be that because it is not a violation of the child's human rights, circumcision should be legally permitted—implying, incidentally, that if it were a violation of their human rights it should not be legally permitted. (Hence the centrality of human rights to the debate.) But in fact, these two issues—law and ethics—are quite distinct and should be debated separately. As Beauchamp and Childress (2009, 9–10) point out, there are many ethically problematic (and even objectionable) practices that are legally tolerated; conversely, there are many other practices to which there are no ethical or human rights objections that are nonetheless legally prohibited. (Many sexual practices fell into this category until recently, and still so fall in unreconstructed regions of the world.) In addition, the discourses of law and those of ethics/human rights are quite different, with the former based on the enactments of fallible legislatures, and the latter drawing their concepts and strengths from philosophical, social, and political thought. Jacobs and Arora's argument tends to slip erratically between these two discourses, thus muddying the issues at stake.

Judging from an earlier article (Jacobs and Arora 2013), it would appear that Jacobs and Arora were inspired to take up their pen in defense of traditional circumcision practices in response to the ill-fated attempt by anticircumcision activists in California to initiate a citizens' ballot in favor of a law that would have outlawed circumcision below the age of 18 years. Their basic objective would thus seem to be to preserve the legality of circumcision and ensure that it remains an unrestricted parental prerogative, and it follows that their interest in ethics and human rights is subordinate to this overriding imperative. The problem is that in their efforts to defend the legal permissibility of ritual infant circumcision, the arguments they deploy cast the net far more widely, and actually amount to the contention that all circumcisions in any circumstances are permissible (legally, ethically, and in terms of human rights),

and that all parents should be free (i.e., have untrammelled power) to have any boy circumcised for any reason at all. Indeed, with their heavy stress on the purported medical benefits of circumcision, Jacobs and Arora ought to be arguing that it should be widely performed, if not universal.

The result is the King Herod approach to circumcision. As recorded in Matthew 2:16, in order to deal with a limited threat—the birth of a child prophesied to be king of the Jews—Herod ordered all the babies born at that time in Judaea to be slaughtered. Likewise (conceding that being killed is worse than being circumcised), in order to defend the legal permissibility of ritual circumcision, Jacobs and Arora develop a general argument that applies to all boys, not merely those born to parents who adhere to the relevant cultural/religious groups. In the final analysis, their argument is that any and every parent should be entitled to have his or her boys circumcised for any reason (medical, cultural, aesthetic, and why not sheer sadism?), thus placing all boys at risk. Just as seriously, their determination to prove that circumcision is legally permissible because it does not violate human rights principles leads them to a highly original interpretation of the latter. As Burgess and Murray (2015) argue, this so attenuated that it slides into a form of cultural relativism where human rights lose their universality and become subordinated to specific theologies. Since organized religions have historically been among the worst violators of human rights, and it was only the decline of church authority and the secularization of the state that brought toleration and personal freedoms to Europe (and then America), this conflation does not augur well for individual autonomy (Glick 2013; Israel 2011).

What Jacobs and Arora really seem to be on about are, as Lyons and O'Dwyer (2015) observe, not human rights but parental power. In this connection, a revealing phrase appears in the first paragraph of their article, where they state that circumcision critics such as myself "claim that circumcision of minors violates prerogatives of those circumcised." I have never used the word "prerogative" in this context and would never do so, for a prerogative is power to do something or have something done, as in the old Royal Prerogative that gave the English monarch the power to dissolve parliament when it became troublesome. A right is the precise opposite of a prerogative: It is an assertion against power on the part of those who lack the capacity to defend their interests. Citizens need rights because they are effectively powerless in the face of the armed state; the reason children need rights is because they are similarly powerless against the omnipotence of their godlike parents. They are the ones with the prerogative. As Michael Ignatieff (2001, 83) puts it, human rights

are necessary to protect individuals from violence and abuse. . . . Human rights is the language through which individuals have created a defence of their autonomy against the

oppression of religion, state, family and group. Conceivably, other languages for the defence of human beings could be invented, but this one is what is historically available to human beings here and now.

Without such rights, citizens would be at the mercy of the state and children at the mercy of their parents.

Our consolation is that, whatever the bioethical and human rights status of nontherapeutic circumcision of minors, Jacobs and Arora have defined it in such strict terms that the only situation in which it can be ethically or legally permissible is where it is performed hygienically in a hospital by an accredited mohel or other qualified operator, using full anesthesia, accompanied by the prescribed ceremonies and prayers in accordance with ritual requirements. On that basis I am happy to agree with their proposal. ■

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