

## Legally allowing Circumcision?

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The Bundestag's decision from 7/19/2012 demands of the Federal Government the drafting of a bill. It shall ensure that “medically professional circumcisions of boys without unnecessary pain are generally permitted.” It also shall take into account legal rights that are guaranteed by the Constitution, among others, the right to bodily integrity. How so? The proposal would allow the amputation of the foreskin, which can only be achieved by violating the right to bodily integrity. To “take into account” must surely mean to honor that right, thus adhering to the prohibition arising from Constitutional law. Yet, in this case to “take into account” appears to mean that that right may be partially disregarded (with a few boundaries) in the permitted exception of amputating children’s foreskins.

In the beginning of October 2012 the Federal Government presented a first draft by the Federal Ministry of Justice entitled “Draft of a law about the extent of custody in the circumcision of a male child”. It proposes a regulation text to be adopted as § 531d in the BGB (civil code):

“Circumcision of the male child

(1) The custody includes the right to consent to a medically unnecessary circumcision of a male child who lacks ability to reason and power of judgement if it is executed *lege artis*. This does not apply if by circumcision the child's well-being is jeopardized

(2) During the first six months after birth of the child individuals who are designated to do so by a religious community are allowed to perform circumcisions according to paragraph 1, if they are specifically trained for it and – without being medical doctors – comparably qualified to perform circumcisions.”

**I.** The preceding resolution consists of one single sentence, which already indicates that the stipulated legalisation will be very difficult to integrate into existing legislation and can hardly be consistent with the German Constitution. Bodily injury without medical indication shall still remain unlawful, yet a certain one “Circumcision of male children” shall – within limits – be permitted, even though being medically unnecessary. I have an acquaintance, who suffers to this day from having been submitted to circumcision as a five year old – under anesthesia – by his Christian parents. Their only reason was the wish to have him outwardly match his younger brother, whose circumcision had been medically indicated. The parents feared psychological damage for him if he felt lacking something that his older brother had, for whom this remains his most horrific childhood experience. I understand the resolution to the effect that

the law shall also declare such a motivation for circumcision as permissible. (see II. for the statement of the relevant bill)

There will be objections that this would go too far; the law shall give the free exercise of religion what it is due and eliminate erroneous judgements, like the one rendered by the regional court in Cologne. Therefore, legitimacy should be limited to cases of ritual religious circumcision.<sup>1</sup> Yet, for the time being, the resolution appears to indicate that the Bundestag has not planned such a limitation. "Circumcision of male children" shall be "generally permitted" and not solely religiously motivated ones. Some parents wish to circumcise their son for other reasons. Reasons they consider as important as religious parents consider theirs. As in every discussion forum on the topic, defenders of the Jewish-Muslim religious circumcision practice refer to the USA, in no way condemning, but rather approving the fact that there, *without* religious reasoning, many male infants are still routinely circumcised. Even in their assessment of values and interests, exercising religion does not have to be factored into the balance; an entirely differently motivated parental decision to circumcise their son is enough to completely justify the act.

Let us take for example the motivation of controlling masturbation. Here the widespread infant circumcision practice in the USA has its historical roots. *Lewis Sayre and John Harvey Kellogg*, physicians and moralizers of the Victorian era, fought this battle in the 1870's with missionary zeal. They were successful in as far as more and more parents followed their gruesome therapy recommendation to make the loathsome activity difficult and curtail pleasure by cutting off the foreskin.<sup>2</sup> If today a father and mother pursue this goal for their six year old, after they have caught him a few times, the proposed new law permits the *lege artis* circumcision of their son, it just has to be performed "without unnecessary pain". What a revolting ruling and an outright preposterous one at that, because any other child-rearing abuse remains strictly illegal as per § 1631 s. 2 BGB. If the father decides to discourage his son from masturbation by way of "a box on the ear" or a "good smacking", because these acts "never have hurt anyone", he commits the punishable crime of battery, while the "properly" performed genital mutilation would be allowed.

**II.** Now the following has certainly to be considered: If someone is allowed to kill or injure under certain circumstances, usually the justification of this act is not cancelled for acting out of a questionable or even ugly motivation. A veterinarian for example is allowed on request by the owner to euthanize a suffering dog. He is allowed to do so, even if he secretly satisfies his sadism, or, without empathy, does it only for the professional fee he receives for it. Similarly, looking at boys' circumcision, which is exclusively tied to parental consent, one must consider that proponents of legalization can invoke the *objective advancement of the child's well-being*. Thus, initiating the act could be a motivation as disconcerting as prevention of masturbation or matching the looks of brothers, of whom one had been circumcised with medical indication, or the aesthetic fancy of a mother who answered her son in the Dutch documentary "Mom, why did you circumcise me?"<sup>3</sup> Maybe it could be stated that, objectively viewed, *every* circumcision has its effect to the "benefit of the child" (§ 1627 BGB), or at least "at the end of the day" does not affect the child adversely, and that therefore a good motivation does not matter at all. Even the

young urologist would act legally who, while not expecting any benefits for the three year old, nonetheless circumcises him simply to practice the surgery.

The Government bill sees it differently. It suggests the creation of grounds for justification that the criminal judge has to deny if he sees “the well-being of the child endangered by subjecting him to circumcision, also taking its purpose into account”. In the abstract, via this clause the judge could deny justification to any non-medically indicated circumcision. He would only have to assess the act to be a physical injury that is irreversible, risky, and is accompanied by considerable pain that endangers the well-being of the child (and de facto impacts it negatively), which happens in *all* cases, including the most relevant one of ritual circumcision. Yet, the genesis of the new § 1631d BGB would teach us that the judge is not supposed to view it that way. He may not apply a strict interpretation of the child's well-being, as plausible it may be, by which the justification norm would become redundant. Instead, he shall extract a kind of *absolute presumption* from its content, so that by all means a circumcision that serves Jewish-religious or Muslim-religious purposes and is performed lege artis does *not* endanger the well-being of the child. On the other hand, the justification shall not be limited to religious motivation either. “The proposed ruling does [...] not differentiate by parental motivation, specifically it does not contain special provisions for religiously motivated circumcisions [...]”, is how the statement of grounds reads. It distinguishes between circumcisions for religious reasons, for cultural tradition, or for the purpose of preventative health care; and circumcisions for esthetic reasons or for the purpose of impeding masturbation.” But the list of suggested recommendations for assessment of the purpose does not constitute stipulations established by law. Outside of the (religious) core area, the assessment demanded in Abs. 1 S. 2 is ultimately left to the judge's discretion. The judge does not have to, but he can condemn the purposes of masturbation-prevention, penis-beautification, ease-of-genital-hygiene, or sibling-matching (v. s. I) and punish the so motivated act. He could argue that with such an intent the adverse effect on the well-being of the child through robbing him of the most sensitive part of his penis is not being offset by a good intention.

This freedom of assessment gives rise to a vast legal uncertainty. It can be avoided if no relevance at all is given to the motivation. Thus, as already mentioned under I., the Bundestag resolution could be interpreted, a view which appears to be spreading, as moving away from the extremely precarious appeal to religious freedom - which causes any thinking mind to ask immediately how one can ever claim the right to exercise one's religion by injuring one's own children, be it e.g. through their flagellation on Good Friday - and moving towards a secular reasoning, which naturally forbids flagellation, but leaves circumcision as an acceptable act justifiable for the child's well-being, as well as towards arbitrary parental decisions, without asking in any way for the motivation or, in reversion of the draft, *without* “taking the purpose into account”.

We have heard arguments in this spirit regarding the legitimization of the expected law from *Wolfram Höfling* in the session of the Ethics Council from 8/23/2012. *Bijan Fateh-Moghadam* has also tried to find grounds for justification in established law and to exclusively reason, without regard for motivation, with parental right and the child's well-being. His results state that circumcisions, when covered by “vicarious consent” of the adult entitled to custody,

and performed *lege artis*, normally should be justified, even without “curative-medical indication”. The motivation would be irrelevant. Permission would follow from the regulation of the extent of parental custody rights, which are applicable to everybody. So may secular American parents living in Germany decide to circumcise their son for cultural, traditional, esthetic or preventative-medical reasons”.<sup>4</sup> The author supports his claim that this decision is consistent with the criterion of the child's well-being (§ 1627 BGB) by referring to “significant hygienic and preventative-medical benefits“, which balance the detriments of the injury. Therefore he sees no need to “resort to religious freedom as reason for justification”<sup>5</sup> This finding makes it clear that the law itself is not backed up by religion, even where it creates a sphere of freedom for religious practices. The legal permissibility of circumcision of boys rests on the referenced system of legislation, not of religion.<sup>6</sup>

But this rationale is not valid. On the one hand, the “hygienic and preventative-medical benefits” of a circumcision which is considered “curative-medically unnecessary” are highly ambiguous.<sup>7</sup> If indeed they were to be acknowledged they could all be achieved without submitting the child to forced surgery, through careful washing and later, in cases of especially risky sexual behavior, through condom use or, at the utmost, though circumcision, which then would be decided for *on his own authority* by the adolescent or young adult *himself*. The basis of the Government draft gives weight to the statement of the American Academy of Pediatrics from August 2012, according to which the health benefits weigh more heavily than the risks”. To rule out any (pecuniary) self interest here is unrealistic, and to attach importance to the statement is out of the question, not least because it reasons almost exclusively with prevention of AIDS.<sup>8</sup> It goes without saying that for the German legislator this health aspect cannot be a reason to allow the amputation of infants’ foreskins, The American pediatricians’ opinion stands utterly isolated. Around the world physicians speak out *against* circumcision of a normal and healthy penis. Also in Germany physicians do not see the claimed benefits, let alone that they “outweigh the risks”. Listening to religiously motivated proponents of circumcision it appears that the wish that there were such benefits was father to the thought. There is hardly a country that watches itself more carefully in health concerns than Germany. Has this observation ever confirmed any of the claimed benefits? German boys and men who never had a circumcision, because it was never medically indicated, who keep their foreskins all through life, do they suffer frequently from illness that ritually circumcised men are spared from? One never hears about it. One more frequently hears testimony of complications and suffering by circumcised men, especially now.

On the other hand, non-medically indicated severing of the prepuce from the infant penis, although often deliberately trivialized, is in reality a serious surgery; in many cases excruciating and always risky, irreversible and attended with the danger of burdening the victim for life. Scientific research has found that the removal of the foreskin during infancy or childhood constitutes a trauma that can (not must!) lead to substantial physical, sexual or psychological complications and suffering conditions, which still impact the circumcised male as an adult.<sup>9</sup> Just the scientifically backed insight alone that the foreskin accounts for nearly 70% of the penile sensory tissue, thus being the essential “erogenous zone” of the male genitalia makes it outright absurd to justify its permanent removal by claiming the well-being of the child.

No other section of the bill's basis reveals the questionable character of an ordered evaluation more clearly than the hurried-brief section concerning "Medical risks and consequences of circumcisions" (A. II. 4.) Undeniably there are grounds at hand here that carry heavy weight and decidedly speak *against* subservience to the child's well-being and *against* permission of non-medically indicated circumcision. But the referent's aim is to play down all reasons and to preferably meet them all with the suggestion they are non-empirical and scientifically contested. Significant beginning and end: "Surgically performed circumcisions lack significant numbers of incidents of complications [...]. Furthermore the concern about traumatising has been met with the "evidence of normal paths through life", pointing towards the fact that worldwide around 30% of males are circumcised [...]. "

But the *emotional* well-being, one hears again and again, is fostered through circumcision in cases where the purpose is to integrate the child into the parents' religious community, when circumcision serves, as it were, as the seal of belonging, promising the comfort, safety and warmth of the community. A reasoning which, although limited to ritual circumcision being related to religious practice, does not act on the authority of religious freedom but exclusively refers to the parental right and duty to "exercise parental custody [...] to the benefit of the child" (§ 1627 BGB). It is understood that this consideration accordingly endorses the decision of Christian parents to have their child baptized.

What is immediately puzzling is the indirect allegation, recognizable in the inversion of the argument, that the many Christian, Jewish and Muslim parents who do *not* let their child be baptized or circumcised, because they want to let him decide on his own later whether or not to be baptized or circumcised, that these parents *neglect* to foster the well-being of the child, that they withhold the prospect of the warm feeling of security – for which, naturally, they should be reproached. But what kind of reproach it would be that liberal-minded parents would rightfully reject as infamy. Their downright outrage must be triggered by *Dr. Johannes Friedrich*, - retired regional bishop, member of the Council of the German Evangelical Church and publisher of the magazine *Chrismon* – who accuses them of being guilty of "denying a life ritual", because they "withhold their Jewish son a tradition that is important for his religious identity" He would suffer damage to his "emotional integrity", once he realizes that his father failed to attend to his religious duty, thereby robbing him of his religious home." <sup>10</sup> Thusly, Jewish parents injure their son emotionally if they let him grow up physically uninjured so he can decide on his own authority about his foreskin. *Friedrich* calls it a "scandal", if parents were to be legal obligated to honor his bodily integrity and autonomous self-determination by sparing him from childhood circumcision. No, in his judgment a scandal occurs when parents respect their child's rights.

I hope that the *author* has realized this by now, after studying the reader comments <sup>11</sup> . The commentators are, without exception, against ritual circumcision of children. They express their surprise and displeasure over *Friedrich's* scandal thesis and are revolted by the eagerness of many clergymen to smarm over the spokesmen from neighbor religions, instead of doing all they can in the spirit of brotherly love to prevent defense-less children from being robbed of their most sensitive part of their genitals. Things are being turned upside down in ethical-humanitarian respects, if one makes out that Jewish parents who withstand the peer pressure and rally to their sons will later have to face *allegations* by the protected. *Friedrich* could not

substantiate these speculations in a single case. There are thousands of professing Jews, who remain uncircumcised throughout their lives, yet without feeling deprived of their “religious home”. There are, however, many young Jews who feel deprived of their foreskin, who sometimes try to restore it, and who form organisations to fight for the abolishment of the ritual.

Leaving *Friedrich's* extreme views aside, I concede that integration in a religious community can also have its positive aspects. The question stands whether parents, in order to make the positive available to their child, must act that early on baptism and circumcision, rather than to defer to later years, when the child has matured and can freely consent. To lend relevance to the argument of fostering the emotional well-being, religious communities would first have to take an inhumane position against the un-baptized and uncircumcised, and to be after extorting the baptism or the bloody cut from them. I do not see any danger here. To be baptized or circumcised is nowhere in Germany a condition for favorable acceptance into a Christian, Jewish or Muslim community, if the parents express that wish for their child.<sup>12</sup> Yet, I will also consider the exceptional case. The parents wish for their child to be left un-baptized or uncircumcised, as long as he cannot decide for himself. At the same time, they want their child to be accepted into the religious community unconditionally and without reservation. The responsible priest/rabbi, however, insists on prior baptism or circumcision. How should the parents react? Having the heart in the right place, one knows the answer. They should turn on their heels and find a different priest. For being integrated into the community of the first one they asked would be to *any* child's detriment (including one who would already have been baptized or circumcised).

**III.** Let us look back to the new §1631d BGB, as it is put up for debate in the Government's draft. I assess it as *contradicting established law*, that is to say the “UN Convention on the Rights of the Child”. This requires an explanation.

The intended permission to circumcise falls into line with an array of provisions that specifically define which rights and duties parents have - within the framework of custody that always has to be exercised for the “well-being” of the child. Yet, the grave injury afflicted by the circumciser is not at all consistent with the well-being of the *child*. The arguments of advancing the child's well-being prove to be – as presented – not valid on closer examination. If it is about someone's well-being within the family, then it is the parents', who strive to fulfill a religious duty by circumcising their son. They feel the need to abide by a custom and perhaps to obey peer pressure. Intuitively, even the apologists for the parental right to children's circumcision realize this, because they always put the accent on the parental right to exercise their religion, never on the parental duty to “nurture” their child. It is already on first sight a ludicrous assumption that one could nurture a child and serve his well-being by cutting off the most sensitive part of his genitals, the part especially important for feeling sexual pleasure. The proposed justification norm feigns, as it were, the compatibility of a surgery with the child's well-being, without owning up to the fact that it constitutes a grievous bodily injury, which, in truth, is *detrimental* to the child's well-being. In the authors' lengthy deliberations there is nowhere a reason to be found, why in the normal case of circumcision, covered in Abs. 1 S. 1, the severing of an important, protective, highly sensitive healthy body part from a healthy body would *not* immediately compromise the child's well-being and endanger it in the future. This is just being

alleged in the regulatory content by making hazards to the child's well-being out to be an exception (Abs. 1 S. 2 ).

Thus the bill obfuscates the real matter. At hand is actually a physical injury that has all the elements of the offense, which, in actual fact, is permitted not or the well-being of the child (as would be an appendix surgery, or possibly corrective surgery of protruding ears), but, while accepting the impairment of the child's well-being, in order to satisfy the interest of *other* individuals. The child is *victim* of a bodily injury that is supposed to be permissible, because important external interests demand it. In most cases it is the parents' interest to fulfill their religious duty, which makes their situation comparable to a hardship. They are under pressure of a religious imperative, peer expectation, tradition and custom. They can only get rid of it by giving in, i.e. inflicting bodily harm upon their son by having the expected and demanded circumcision performed on him. Therefore, it would be appropriate to insert the permission, for instance as § 228a, into the criminal code, in which tacitly the assessment would apply that in the conflict between parental and child's interests the parents' "protected interest" "significantly outweighs" the child's "constricted interest" (cf. § 34 StGB).

However, circumcision, as severe bodily injury that cannot be compensated by any healing success or any other health benefits, is detrimental to the health of the child. According to section 24 UNCRC, the signatory states have to adopt measures, namely "any effective and suitable measures to abolish traditional customs that are detrimental to children's health". *Holm Putzke* states rightly: "Religious circumcision is such a custom", and he rejects the objection "that only genital mutilation is meant by it"; this view is not supported, neither by the wording nor by the genesis of the text".<sup>13</sup> By adopting the new § 1631d BGB the legislature would dismiss the duty of this signatory state (Germany) to "abolish" the custom of circumcision; on the contrary, the custom would be promoted by legalizing it. One could point out the interests that speak in favor of retention of the custom and for circumcision in the individual case which have to be weighed against the child's health interest. Yet, precisely this conflict of interests has already been decided in section 24 UNCRC, and while giving the child's health interest priority it just repeats for the individual case of the damaging custom what is generally stated in section 3 Abs. 1: "All measures concerning children, regardless whether adopted by government or private institutions of social welfare, by court, by administrative or legislative organs, have to consider the child's health interests with the highest priority."

A second contradiction exists, to which the authors of the draft have paid no attention at all. I refer to the discrepancy between the proposed § 1631d BGB and the existing § 1631b BGB. The right to consent that parents shall be entitled to implies for the parents the permission to initiate the commission of bodily injury (§ 223 StGB) to the detriment of the child, and for the circumciser the justification under presence of legal prerequisite. Naturally, the writers of the draft bill were aware of one thing. They must not tie these permissions to the condition that circumcision, despite being without healing objective, positively advances the child's well-being. It's not that the many Muslim and Jewish parents, who spare their child the genital mutilation and allow the option for the child's own decision later, were guilty of denying their child a benefit necessary for his well-being. That is why the authors had to settle for an exception, which, though being wrong also, but not as blatantly wrong; the medically unnecessary

circumcision is normally neutral to the child's well-being; only in the exceptional case does it endanger the child's well-being. Parents would have the choice between two decisions, equal under the aspect of the child's well-being, like Christian parents who ponder whether to let their infant be baptized or rather let him decide on his own after having reached the age of religious majority. Thus the referents have only drawn a negative line to justification. It is enough that circumcision does not endanger the well-being of the child. Circumcision does not have to be necessary for the child's well-being.

Now let us compare this ruling with the existing one of § 1631b BGB. There too it is about a measure of custody, which constitutes an offence to the detriment of the child, namely § 239 Abs. 1 StGB (false imprisonment). That makes the measure especially problematic. Therefore parents do not have free reign. It is not enough that false imprisonment does not endanger the well-being of the child. No, the measure requires firstly the "sanction by Family Court" and secondly, must positively "advance the child's well-being" i.e. comparable to a surgery, which, although causing pain, is necessary for health reasons. Thus, far stricter conditions are imposed on the permission of temporary deprivation of liberty than on permission of bodily injury that is accompanied by pain, risks and the permanent loss of an important body part.

This contradiction in valuation supports our finding. Different from the legal permission to deprive of liberty, the proposed permission to circumcise is not about the child's interest, nor the advancement of his well-being. Instead, it is a matter of conflict of interests that legislature shall decide, in favor of the parents at the expense of the child. The justification norm making this decision should not disguise itself as a provision that allows a special measure of "custody" to "nurture" and to "the child's benefit". It belongs in the penal code!

I will not get to the bottom of what it means juristically that the proposed § 1631d BGB flies in the face of the UNCRC. Instead I look at another bill, one competing with the Government draft. It, too, collides with the UNCRC, but it admits more clearly the conflict of interests and thus the victim status of the child, by naming religious self-conception as the driving force that prompts parents to consent to hurting their child. *Hans Michael Heinig* suggests to insert a § 3a into the law that regulates religious education of children; "The parental custody in religious affairs includes also the consent to circumcision, if it is stringently required according to the religious self-conception of the adult entitled to custody, and if it is performed *lege artis* by a medically qualified person, [...]".<sup>14</sup> As it stands, *Heinig* wants to restrict the permission of bodily injury to the compliance with two conditions. Firstly, it must be a circumcision and, secondly the act must be religiously motivated.

But this leads to no good. Firstly, the restriction would blatantly be in violation of the decree of equality (Art. 3 GG), which, in principle, is understood by the authors of the official draft. If American parents in Germany want to have their infant circumcised, they would be indignant at the law that forbids them to follow their secular family custom, while it permits the Jewish parents to follow their religious tradition. And here is a second comparison. A Jewish or Muslim sect, progressive in its own way, embraces equal rights and wants to offer the same pious-religious "gift of God" to the girls in the community. They perform a moderate form of female circumcision that does not reduce sexual sensibility more than male circumcision does.

By what right could this religiously ennobled genital mutilation remain outlawed, while male circumcision would be permitted? The question is anything but merely theoretical. *Thomas von der Osten-Sacken* reports among Shafi'i "circumcision obligatory upon men and women". He continues: "Because for the Shafi'i it is "supposedly only about the tip of the clitoris, which they see as a kind of female foreskin, they reject [...] having their practice put on the same level as other [...] forms of genital mutilation. They argue rather similarly to the proponents of circumcision in Germany these days. Medically, their form of female circumcision would have no consequences, whereby one likes to point to expert opinions and begins to explicitly condemn FGM".<sup>15</sup> In the current controversy the damnation of any form of female circumcision, even the mildest version, is a highly gratifying commonality. But female circumcision, too, can be custom and religious imperative. It can be performed so moderately that it hardly affects sexual experience. Intellectual integrity commands that the argument, deduced from the equality principle, be accepted, in whatever direction it may aim, be it pro-female, or - as until now exclusively - contra-male circumcision. Yet, it can be observed that in discussions one side reacts every time with agitated outrage, when the other side requests comparison and consideration of the point. The reason for this reaction is obvious. The argument is simply too strong, one has to refuse its admission. That is why all speakers of the Bundestag party factions that support the resolution from July 19, 2012 rushed to deny the factual connection, even to the mild form of girl's circumcision. A hopeless strategy! Any glance at reader comments to relevant essays and interviews on the internet shows that the parallelism forces itself upon the unbiased observer. One stultifies oneself, even exposes oneself to ridicule if one argues that a "nicking" of the labia majora is worse than an amputation of the male prepuce and that female cutting is "absolutely incomparable" to male circumcision. To recognize this as a lie and to supply evidence would hardly be possible. Parents, who desperately want to cut off their child's foreskin, be it because of masturbation or for esthetic reasons could claim that they too, as Christians, feel obliged to follow the Bible and the Divine circumcision command. To recognize this as a lie and to supply evidence would hardly be possible.

And above all thirdly, nowhere else is the right to freedom of religious practice (Art. 4 GG) linked to the curtailment of the rights of others and one's own duties. This is explicitly expressed in Art. 140 GG, as it adopts the ordinance of Art. 136 of the Weimar Constitution. This categorical ruling, which gets too little attention in the circumcision controversy, stands firm before the bar of reason. Let somebody practice his religion by saying daily at the same time in the same church at a late hour his nightly prayers. If one night he finds the church door locked, he hardly can take the liberty -viewed legally – to force entry to the church or else he would commit trespassing. He who slaughters in some backyard a sheep cannot be released from abiding by the same legal provision that a Christian butcher committing the same act, would be in violation of. (cf. §§ 4 Abs. 1 S. 3; 4a Abs. 2 Nr. 2 animal protection act) The pious lady whose rendering of assistance in an accident is essential can hardly be excused from her obligation, because she continues her rosary prayer or demonstratively continues to observe the Sabbath rest. And even with something as mundane as the property of a candle religious practice, be it as devout as it may, has to consider other laws. If there were 50 cents to be paid for a votive candle, then the worshipper shall not light it without payment. If he can't pay he must restrict his religious practice to praying without lit candle. Lighting it would, despite being religious practice, constitute an unlawful interference with other people's property (§ 1004 BGB).

Thus, “religious practice” can be free and “undisturbed” (Art. 4 Abs. 2 GG) only within limits drawn by governing law. Therefore this is not about “weighing up” that of course would make it easy for the superficial reflection to let the religious interest prevail in all sorts of conflicts of interests by following one's personal value opinion. Thus is the pattern of argument used by circumcision defenders. In no way do they intend to deny the child his fundamental rights. But they consider the freedom of identity-establishing religious practice that maintains tradition so precious and weighty that conflicting fundamental rights of the child must take second place, meaning the child's right to keep his bodily integrity and his right to free development of his sexuality. Yet, a closer look is needed. In reality, neither conflict, nor necessity to weigh opposing points against each other, exists. *Bockemühl* turns therefore quite rightly against the common perception. “In the circumcision controversy a conflict between two fundamental rights is made the subject of discussion, the right to bodily integrity and the right to free religious practice. Yet, this conflict has already been resolved by the constitution. According to the German constitution, civil rights are neither determined nor restricted by the exercise of the right to freedom of religion, i.e. the right to bodily integrity takes absolute and unrestricted priority over the right to free exercise of religion”.<sup>16</sup> And not only the right to bodily integrity takes this priority. The constitution rules that our religious practice does not allow any infringement of any rights of others, be it what it may, domiciliary rights, property, or honor. It also rules that our religious practice cannot release us from our legal duties, be it the duty to abide by prohibitions and decrees of criminal law or the road traffic act. Naturally, these limits are *adjustable* in favor of religious practice. But if this practice occurs against the rules it is only justified in the case that such an adjustment has taken place prior through a legally valid directive, e.g. through an administrative act that blocks traffic, for allowing the participants of a Corpus Christi procession to use the full width of the road.

Such detailed sounding out of the legal ramification, whereby also considering Art. 140 of the German Basic Law, as well as Art 136 of the Weimar Constitution, is not *Bielefeldt's* thing. Loose assessments, unburdened by legal provisions answer his line of arguments' purpose, assessment like this one: Religious practice “does not give a carte blanche for overriding other human rights or further important legally protected interests. Concrete restrictions of religious freedom [...] however, must take place with caution and in strict accordance with the criteria prescribed for it. A general ban of circumcision of boys, fortified by criminal law would by all means be too drastic a measure”.<sup>17</sup> Remaining on this level of reasoning, I should like to point out its inversion: The right to bodily integrity does not guarantee the exemption from all infringements, which are inevitable for the sake of the rights of others. Concrete restrictions of the fundamental right as granted in Art. 2 Abs. 2 S. 1 GG, however, must take place with caution and in strict accordance with the criteria prescribed for it. A general permission of ritual circumcision of boys would by all means be too drastic a measure.

**VI.** To figure out “Why the Cologne regional court ruling over religiously motivated circumcision is unconvincing” was *Werner Beulke's* and *Annika Dießner's* intention in this journal.<sup>18</sup> For them, Art. 4 Abs. 2 GG is the key-provision, but based *on the child* as the fundamental law's subject. The authors view the situation such that for instance in baptism the child himself “exercises religion” and the parents' decision has to be viewed as the child's own. The parents, one could say, do not decide in religious affairs *over* but *for* the child. Initially, this

approach does not cause any damage, because *Beulke* and *Dießner* emphasize in the beginning that the child's "presumed interest" as the guideline. Reaching a decision *for* the child in this way, notionally made *by* the child, can only be considered legal, if it at least does not violate the child's interests. This amounts to the same as the common view that parents who may decide for or against baptizing their child exercise their own right to religious practice, as per Art. 4 Abs. 2 and Art. 6 Abs. 2 S. 1 GG. They have to be guided by the "child's well-being", which, however, is not positively ascertainable for the question of the child's first integration into a religious community; whether the parents decide for or against the bonding ritual, whether they let the infant be baptized or retain his full freedom of choice at a later time, these are equivalent decisions under the aspect of the child's well-being. They are also equal under the aspect of the child's "presumed interest". The purpose of "religious freedom and parental right", says *Heining*, "is exactly to make coexistence of different convictions possible within our society. The devout believer deems it necessary to raise his children in his faith – the atheist on the other hand considers this a great mistake [...]. Liberal constitutions' solution is to leave this question to the parent, because the legislator does not know any better"<sup>19</sup>.

On this basis *Beulke* and *Dießner* now baffle the reader by setting the direction that parents are allowed to literally hand over their child to the religious community of their own creed, since in the case of the integration into the religious community the child's "presumed interest" shall entail submission to the respective pending ritual of any kind whatsoever. "What is to be viewed as 'pending' in the religious sense lies at the discretion of the respective religion". This bold thesis is also being justified thusly "If the legislature would issue a regulation in this regard, it would violate the requirement of religious neutrality and would set itself up as religious scholar". *Beulke* and *Dießner* view my thoughts on the issue as a terrible vision: "The commentary *Herzbergs* [...] who was fooled into reflecting on ways how Judaism, resp. Islam could bridge the time of waiting that he deems necessary until the child has matured to an age of self-determined (refusal of) circumcision"<sup>20</sup>. It does not work that way, reckon my critics, and prefer to let the *real* "religious scholars" and preachers of faith decide over justice and injustice. They tell us which ritual injuries of the child are "pending" and therefore serve the "presumed interest" of the child. This could, for instance, be the particularly painful circumcision, because Abraham, too, endured it without anesthesia. . This way, even the most palpable conflict of interests – e.g. the one between resolute parents and their five year old son who, frantically balking, begs for mercy – vanishes into thin air. "If the parents consent instead of their son to the religiously motivated circumcision, they carry out his right to religious practice and effectively waive, in this case, the child's right to bodily integrity."

To me it seems obvious that *Beulke* and *Dießner* got on the wrong track during their endeavor to argue traditional circumcision as being already permitted *de lege lata*. The secular legislature, as they see it, has to practice "religious neutrality" and leave it up to the religion chosen by the child, represented by his parents, to decide which sacrifice the child has to make in order to be admitted in the religious community. If religious teachers deduct from Genesis 17, 10-12, the religious duty to have one's foreskin cut off and to offer it as sacrifice to God, then the secular fundamental right to bodily integrity becomes immaterial; the child has effectively waived his right, there is nothing to be weighed against. If a girl confesses, represented by her parents, to the Shafi'i doctrine that might dictate that girls, too, must make a sacrifice and be

submitted to similar genital mutilation as boys, then this bodily injury is justified. Or if parents are obedient members of a community, which, according to some archaic motivation demands to offer the first born's manhood as a sacrifice to their God<sup>22</sup>. No prosecutor could prosecute the abusers; they would be in the right, in spite of the horribleness of the injury, by virtue of religious freedom – of the injured! – and the interpretation of “public morals” (§ 228 StGB), and the legislator would have to tolerate this barbaric nonsense, because he has to follow the requirement to “religious neutrality” and may not “set himself up as religious scholar”.

This we should also consider in viewing § 1631 Abs. 2 BGB. “What constitutes violence in the sense of the norm requires precisely an interpretation that is in conformity with the constitution”<sup>23</sup>. Thus, the question whether the parents have the right to chastise their son with a switch is decided by the answer to the other question whether perpetrator and victim exercise their religion. This will no doubt always be the case, if the parents have let themselves be indoctrinated by the religious authorities, and have been told that in educating their son they have to follow Salomo's Book of Proverbs (cf. there 13, 24; 22,15; 23, 13, 14; 29, 17). The father who, in such pious spirit, beats his child, does not practice violence in the sense of § 1631 Abs. 2 BGB, as per the author duo! And is the five year old being “forced” in the sense of Art. 136 Abs. 4 WRV, if he struggles with all his might and the circumcisers brutally push and hold him down? No, say *Beulke and Dießner*, because they think they have interpreted the constitutional ban of using force in conformity with the constitution, and they consider Herzberg's assertion that in such a case he is being “forced” to participate in a religious practice. There is a screaming boy who wants to get away being pushed onto the table with a firm grip and being forced to undergo circumcision - yet, in the sense of Art. 136 Abs. 4 WRV he is *not* being forced, because he himself, in exercising his religious freedom, has decided to be circumcised. One has to ask if this can really be meant with any seriousness.

Another protected interest, even if of lower rank, is rendered ineffective according to *Beulke's and Dießner's* theory for the benefit of religious freedom. Suppose that the clever leader of a Christian sect ties acceptance into the community, and the special blessing of God associated therewith, to an adequate sacrifice from the person concerned, to be made from his personal assets to God, in other words to the congregation. The parents, confessing to this faith, have a son who can already achieve this as infant, for he has inherited. He now practices his religion by paying generously, naturally represented by his parents. The prohibition of § 1641 S. 1 BGB, that shall protect him from such loss, proves ineffective, because the giving is conveniently made out to be expression of the child's religious practice. Like the foreskin, money can naturally become the religious sacrifice, and just as little as detachment of a part of his body would appear unjust to anyone, so would detachment of part of his assets.

All this seems absurd to me. It cannot be right that parents be allowed to injure their child because of a decision of theirs concerning religion, simply because the act can be interpreted as a religious exercise of the child himself.

I also take issue with *Heinig*, who concludes the statements cited above with the sentence: “Only if severe irreparable damage is inflicted the state interferes”. I leave aside that ritual circumcision does exactly that, inflicting “severe irreparable damage”. More fundamentally, it has to be asked, if a parental right *ever at all* legitimizes bodily injury that does

not benefit health. No! The legislature imposes a ban against *any* bodily injury, including religiously and educationally reasoned ones; whether they are “severe” or “irreparable” does not even matter, as, for instance, the modest flagellation of one's children on Good Friday, which a Christian sect bizarrely demands of its followers. To go with *Heinig*, and *not* see an illegal bodily injury therein reveals an understanding of the constitution that contradicts § 1631 Abs. 2 BGB. Does *Heinig* ultimately intend to call this regulation unconstitutional, because so much protection of the child from violence is incompatible with parental rights to freedom in raising children and exercise their religion, as well as the child's own freedom to religious practice (*Beulke/Dießner!*)?

With these thoughts I also counter *Höfling* and his reasoning in the session of the Ethics Council on 8/23/2012. *Höfling* creates criteria that do not leave all possible bodily injuries, but common ritual circumcision to the say of the parents, as long as certain limits are observed. He overlooks that the right of the child to *bodily* integrity, poses a particular barrier to parental decision power, compared to, say, his right to freedom (house arrest!), and that specifically the non-medically indicated circumcision of boys is inconsistent with the parental duty “to exercise parental care [...] to the well-being of the child”, which is certainly tacitly being denied by the current draft, as it recommends integrating the justifying regulation into the civil code as § 1631d BGB, instead of placing it within the penal code (see above III.).

**VI.** Thus the insight gained under IV. stands: The fact that parents practice their religion, be it for themselves or for the child as his representative does not allow them even the smallest infringement of another person's rights, including their own child's rights, be it his bodily integrity or his assets. This is determined by our constitution. Therefore, the legislator would have to *change the constitution* in the pending case, if, contrary to Art. 140 GG, Art. 136 Abs. 1 WRV, a special act of religious practice, namely ritual circumcision, shall restrict the rights of the child who is intended to be circumcised and the duties (of omission) of the individuals executing the circumcision. Parents shall be allowed to interfere (or let such interference happen) with the fundamental rights of male children to bodily integrity and to free development of personality (with regard to sexuality) to a degree as deemed necessary for the performance of a ritual circumcision. Only if, according to the policy of legislation -as proposed by the draft – a circumcision can have other than a religious motivation, the *special* constitutional problem is cancelled, not without immediately creating *other* constitutional problems, which weigh every bit as heavily. For instance, is a circumcision, desired by the parents for no other reason than their families' tradition, consistent with the child's fundamental rights to bodily integrity and (sexual) self-determination?

Changes to the constitution require two thirds majority in the Bundestag, according to Art. 79 GG. Is that really achievable, if the delegates take into consideration all of what it includes that they have to permit, in order to make “a continued living in Germany possible” for religious communities in the view of their spokesmen? They already declared it as impossible, if they were asked to sublimate the bloody ritual on the child into something symbolic and to wait with the question of circumcision until the juvenile has reached the age of religious self-determination. To me it seems indisputable that the legislature cannot permit a religiously motivated disregard for the child's fundamental right to bodily integrity, without degrading the

constitution's ethical substance. Could this be reason enough for the spokesmen of communities to accept, for Germany at least, a kind of veto power by the child? Would they approve of a regulation that would insist on (criminal) prohibition, if the child expresses through words, gestures, tears, or physical resistance that he does not want to be circumcised? The proposed bill does not provide for that kind of regulation. It views the parent, according to § 1626 Abs. 2 S. 2 BGB as only being “obliged to deal with the opposing will of the child“ With regard to its own wording, under the proposed regulation, the opposing will of the child “in the individual case” could “be taken into account”, as per Abs. 1 S. 2 (S.24) . This leaves it all open and basically up to the parents to dismiss the opposing will.

Unlike *Bijan Fateh-Moghadam's* view: Under already established governing law must “the recognizable opposing will of minors be respected, even if they are not yet able to consent themselves“. <sup>24</sup> For the normal case of ritual-religious circumcision he could have verified this to be a constitutional norm, for it reads in the fourth paragraph of the still valid Art. 136 WRV: “Nobody shall [...] be forced to participate [...] in religious exercise”.<sup>25</sup> The spokesmen of respective religious communities emphasize incessantly that circumcision is a case of religious exercise and religious ritual, where upon their constitutional argument rests. The child who is intended for circumcision, therefore, participates, more or less consciously, in a religious exercise, just like a person does who is being baptized or lets himself be baptized.

A child is certainly not being illicitly “forced”, in the sense of Art. 136 WRV, if the religious act performed on/with the infant does not trigger any physical reaction, or none to speak of. Participation in a baptism, if it consists of praying, vows and a little pouring of water, does not constitute “forcing” the child to be baptized - although, naturally, his expressed will to have the sacrament administered is lacking. *Circumcision* of an infant, however, has to be viewed differently, especially if performed without anesthesia, according to Jewish ritual. One only has to witness the procedure or watch it in a documentary. The child writhes in pain like a wounded animal, his movements must be stifled (particulars see below) Not only the will for the act is lacking, as is with the child to be baptized, but the child to be circumcised expresses his will that it cease, that such pain not be inflicted on him. There can be no doubt that the infant is being “forced” in the sense of Art.136 WRV.

Yet, likewise without doubt does a boy s at the age of four or six suffer the same force in experiencing his circumcision in the Muslim tradition. This makes me guess that Muslim proponents of circumcision would only be satisfied by the legitimization of the act if it also removes the constitutional ban of use of force (Art. 140 GG in connection with Art. 136 Abs. 4 WRV) Even if one interprets Art. 136 Abs. 4 WRV only as prohibition of threat and of physical violence, Muslim practice would offend against it in many cases. If the law shall reach its political goal, it must, for better or worse, permit even the forced and violent circumcision and explicitly give up the ban of Art. 136 Abs. 4 WRV. <sup>26</sup> This s also how I take *Heinig's* proposal. The opposing will of the child, even though of “merely” animal-like nature, as it were, which is always a given and has to be overcome by force, does not seem to be an issue for *Heinig*. He apparently does not see a problem with Jewish infant circumcision. But even the older child's cognizant protest that seems to be on the mind of *Fateh-Moghadam* as he acknowledges permission restriction is not being regarded a barrier to permission in *Heinig's* proposal. In

*Heinig's* view the *lex artis* almost demands to use suppressive (fixating) force against the struggling child, in order to prevent the bloody amputation from causing “unnecessary” bodily harm. Maybe the appointed legislator can't help it and bow to the demand for permission of threat and brutal force – although not being openly made openly but hidden in the call for respect and reverence for traditional religious custom. With regard to the coming special law, I confess that a I am overcome by a slight horror, given the fact that the first bill proposals already omitted to strictly forbid circumcision, if it can only be performed by use of threat or violently.

**VII.** The defenders of a circumcision that is imposed on a child reason with the normative power of factual circumstances: worldwide prevalence and a tradition that is millennia old. *Heinig* finds “the debate in Germany [...] a little Eurocentric”, and he puts forth “Nearly one third of the world's population is circumcised – across cultures. In South Korea half of the men are circumcised, in Arabic countries 80 percent in the USA more than half”.<sup>27</sup> In any TV-talk show on the topic one party always cites such statistics, without mentioning the global downward trend of circumcision and the existing worldwide movements against the practice. This suggests to the viewer the famous “naturalistic fallacy” from ‘Is being done to ought to be done to legalisation’. If circumcision is so common, then one should do it too, and parents should be allowed as well. But this kind of argument is as absurd as it would be to deduce from 70% of uncircumcised males that religious circumcision should not occur and should be forbidden. The question of whether it ‘ought’ to continue and/or be legalized is not one of statistics, but one of ethics and law.

What applies to the current prevalence of circumcision practices also applies to their duration. These are by themselves no arguments. The question, whether an imposed removal of the prepuce equals an injustice done to the child, cannot be answered by pointing out that many children are circumcised for hundreds or thousands of years. It is downright absurd to extrapolate from a historical fact to a moral imperative (“for the well-being of the child”), as it is done by *Swatek-Evenstein*: “The parents' decision for a circumcision of their son should therefore be looked upon as serving the well-being of the child, if it is a conscious decision for the continuance of a [...] tradition that is thousands-of-years old”.<sup>28</sup> Rather, the reverse is true. Looking back thousands of years, we are led into an era when sacrifices were made to gods in the hope to appease or please them, when children were the property of their father who could do to them as he pleased, or as he felt obliged to do in obedience to a Divine command that he believed to hear; even if it be a command to sacrifice his own son (Isaac, Genesis 22), or to cut off his own foreskin, as well as the foreskins of all sons and servants and to eradicate any male from his community who refuses to comply (Genesis 17).<sup>29</sup> The authors of the Bible were *humans*. Humans wrote the texts that claim God actually spoke to Abraham and actually gave him such orders. Even still today, some infer God's commands from Genesis 17, and take them as orders they believe must be obeyed. An alternative to the traditional *brit milah* has been suggested to Jewish believers, the proposal of sublimation of the *bris* ritual of the eighth day into a symbolic bloodless act, combined with the suggestion to be circumcised at a later time, when the male concerned can decide for himself. When this was put as a question in an interview to *Dieter Graumann*, President of the Central Council of Jews in Germany, he answered with a no, because God demanded the real circumcision on the eighth day, and there is no negotiation with God. Does *Graumann* not realize the contradiction? The most pious Jew no longer sees it as his

obligation to insist on circumcision of his employees or on “eradication” of those who refuse. He tacitly acknowledges it to be understood that God-given commands, with the passage of time and changes, can *expire*. Why should he not be allowed to *interpret the commands to produce a mitigated impact*? Some of the duties that God placed on Abraham's people under Genesis 17 are no longer valid today, because they are incompatible with the current stage of our civilization and, without any doubt, are inconsistent with our legislation. This is being accepted. Consequently, one should also open up to the insight that infant circumcision - leftover as bloody ritual and strict obedience of command - could possibly be inconsistent with an ethical principle that forbids inflicting harm on children, inconsistent also with legislation that guarantees everybody, including every child, the “right to bodily integrity”.

**VIII.** A serious prosecution of ritual circumcision as a criminal act would drive pious parents into the arms of quacks and would bring more harm than benefit to the well-being of the child! This argument is frequently brought up by defenders of the religious custom during discussions, and made out to be self-evident, which usually makes a strong impression. Yet, when reflecting upon it, the argument proves null and void. An act can, indeed, wrongfully be declared as a punishable crime (just think of homosexual acts between adults in the old version of § 175 StGB), but the expectation that an act causes particularly severe harm, if perpetrators are threatened with punishment cannot be reason for its legalisation. For instance, the act of using children's bodies for sexual arousal and satisfaction is a severely punishable crime (§ 176 StGB). If it were not subject to prosecution, many a child would still be alive who were killed by perpetrators who feared punishment for their sex crime. Should that be reason to decriminalize such abuse? And, for a more similar comparison, is anybody demanding the same (legalisation) for even the mildest forms of FGM, which is something that is often practiced in Germany by immigrants (grade IV of WHO- classification: Nicking or onetime piercing of the labia majora)? For this type of female circumcision, too, it is said that threat of punishment drives its practice into the shadows. Yet, it crosses nobody's mind to fight against its status as criminal act and to ask for its legalisation. One cannot invalidate the law's justification simply by using arguments about “risks and side effects” from the threat of punishment under a criminal law. This applies to equally to circumcision of male minors.

The usual view of the consequences that the proposed bill will have is also one-sided, because the drawbacks in the fight against girls' circumcision are not being considered. The circumcisers of girls outside of Germany will gratefully accept the German permission of circumcision, because, as they will be able to say in the future to justify their practice, even a democracy like Germany allows religiously motivated interference with the genitals of small children, a country whose constitution grants the fundamental right to bodily integrity. Furthermore, the assumption that Jewish and Moslem parents would now have their children circumcised in backrooms is defamatory to them. Doesn't one have to start from the premise that Jewish and Muslim parents love their children and have their best interest at heart? Of course. This, however, is contested by any discussant who argues male children would, if necessary, have to go under the knife in the backrooms of quacks. Wouldn't Jewish and Muslim believers feel insulted by the suspicion by some that they would not abide by a plausible and democratically legitimized prohibition law? If the majority of Bundestag members come to the realization that parents do not have the right, and shall not have the right to let an erogenous zone

of their child's body be amputated, then it is anything but prudent to make parents appear incapable of reaching the same insight. What shall be valid, if in the end a different constitutional body, the Federal Constitutional Court, decides the matter (and the Justice Minister assumes it will)? If the constitutional judges assess the permission to circumcise as unconstitutional, they have to nullify the law. Who would want to allege that religious believers would disobey the ruling and hold on to circumcision? Should, in fact, the Constitutional Court take that into account? No, an act that is ethically and legally prohibited may not be permitted by the constitutional state simply because potential perpetrators announce their intention, or are expected by others, to violate the ban.

**IX.** My entire line of argument submitted so far has agreed with the ruling of LG Cologne. That is to say, it has found within governing law a punishable prohibition of non-medically indicated circumcision of children. At the same time it has been a plea *not* to change existing law. The ethical duty to protect children from pain and harm and the constitutional right of children to bodily integrity form the consistent substantive essence of the reasoning.

However, this plea has been, and I strongly emphasize this, *one-sided*. Let's presume that the prohibition, acknowledged by the Cologne court as applicable law, will be generally observed. That will *prevent suffering* for many children, but will cause *adult suffering* in its wake. They suffer from the fact that their child's religious circumcision that they desire has been omitted, from the fact that in their religious community a tradition is no longer kept, from the obligation to submit to a law that is opposed to their culture, a law of which they fear it will, in the long run, lead to erosion of their religious community. On closer inspection, the adult suffering in the presumed case consists of anger, grief, pain of loss and a feeling of humiliation (regarding the significance of this suffering to legislation, see X.).

What prompted me to ponder in this direction was a long conversation with a good friend, who confesses to Judaism, without being a practicing Jew. He is highly competent in rational thinking and debating, which is why he was far from ridiculing the Cologne ruling, as *Seligman* did who called it a "backcountry farce", or *Bielefeldt* who saw it as "spewing bloody nonsense". Nor did he agree with Angela Merkel's opinion who uttered that Germany would be viewed as a "nation of comics" if its legislation should prohibit circumcision. On the contrary, he was, as a non-jurist, willing to accept that the Cologne ruling conclusively substantiated the illegality of circumcision, according to governing law, and that the judges had to feel obliged to rule as they did.<sup>30</sup>

By the same token, he had me consider how most adult Jews must experience the judgement as a "hostile act", in cold application of law, directed against them, their identity-establishing tradition and their religion.<sup>31</sup> Of course, he knows that the understanding of the Bible is subject to change, as well as the if and how of carrying out the actions demanded in the Bible. He sees that, evidently, this holds true for the circumcision ritual. There is no authority who would demand that still today everything must be done just like the God of Genesis 17 (12-14) orders it done. He wishes that sometime in the future an interpretation of the commandment to infant circumcision will prevail, which suggests performing the ritual in a symbolic and unbloody way; or maybe that the order will even be allowed to expire in real life, because it does not fit with our times and legislation, just like the imperative to circumcise one's servants

doesn't. Yet, such a change would have to take place *from within*. Currently, Jews perceive the dispensation with traditional circumcision, if it comes to that, as *imposed on them from without*, justified by a legal ban, which up to now not a single prosecutor has observed and which appears to many like the rabbit suddenly pulled out of the hat, rather than taken from governing law. Thus, this prohibition is felt as the latest on the list of many, many regulations that the (Christian) majority of society has created since centuries to bully and harass Jews (to wear special clothing or symbols on it, or pointy hats, living in ghettos, living monogamously, special taxes, to be restricted to certain professions, and ultimately, during the darkest of times, to stay away from freeways, public swimming pools, and forests, to not own a radio, to not keep a pet, etc.) Now, out of the blue, and in Germany of all things, triggered by the Cologne ruling, comes this wave of public expression that circumcision is an unlawful bodily injury, which has to be criminally prosecuted – whereas it was previously tolerated by the state of law. That causes resentment and outrage, and it gives bitter pain to many.

To this, I have, with all compassionate reflection, many a reply. Firstly, it is about a bodily injury, which, although not serving any health need, is nonetheless inflicted on a child through his loving parents who believe they have a valid reason to do so. The reason can be religious or, in the long view, hygienic. It is not self-evident to everyone that such an injury not only fulfills the elements of the offense of § 223 StGB, but also constitutes an injustice. In fact, its *justification* for circumcision has come under serious deliberation. The justification could arise out of Art. 6 Abs. 2 S. 1 GG (“care and education of children are natural parental rights”) as well as out of Art. 4 Abs. 2 GG (“the unimpeded practice of religion is guaranteed”). These justifications, by the way, were used by the Cologne district court’s to assess the Muslim physician’s act as lawful. It also explains the verdict of the acquittal because of an “unavoidable mistake regarding prohibition” in the second instance. It is a matter of conjecture that over decades prosecutors tended to assume the legality of the worldwide practice of religiously motivated circumcision. They felt obliged to tradition and therefore did not want to explore the legal question all too deeply.

But besides criminal justice there is penology. It recognized that tolerance was allowed to prevail at the expense of third parties, at the expense of children. For that reason, *Graumann’s* point, demanding that opponents of circumcision don’t have to endorse it, but just *tolerate* it, is invalid. With that he says that the state may not and shall not intervene. But whether the state may and shall intervene is exactly the question which our debate has to answer. Instead, what should be proven, namely that the state may not and shall not intervene, has been presupposed, while demanding tolerance towards the circumcision act. In a dispute about parental right to corporal punishment, how odd would a contribution be that demands tolerance towards beating! After the problem, which for the longest time was not seen by anybody, had come into penology’s field of vision, it was the duty and task of penologists to deliberate more thoroughly and raise their voices against non-medically indicated circumcision, if they have so identified its unlawfulness. At the moment, one criminal division has allowed itself to be convinced by the reasons presented in literature and has ruled circumcision as a tort in the case to be judged. The validity of this assessment may be disputed, as many do, yet the fact that no other court has previously ruled that way in similar cases cannot count as an argument against it.

Secondly, it is obvious that penologists, prosecutors and judges who come to such an assessment must be allowed to say so. Many who feel affected may deplore this as strong-arm tactics “*from without*”. Many an open-minded Jewish and Muslim fellow citizen might have preferred to wait for the religious custom to mutate to a milder form “*from within*”. Yet, the constitution in connection with the criminal code has demanded this “adjustment to a milder form” from the very beginning, being in effect since 63 years. In all that time, justice has not been all too meticulous about the legal principles surrounding circumcision and has, unconsciously, given ample time for a development from within. Such development has remained altogether absent, despite of growing scepticism among the affected, too. Should then not *everybody* welcome the judgement, as did *Memet Kiliç*, spokesman for integration politics of the Green party, in an interview? “I take the ruling as a thought-provoking impulse, which, by all means, befits justice in a secular state. If all religions together turn against this judgment, it arouses the suspicion in me that they are defending their own sphere of influence. All religious communities that trace back to the patriarch Abraham, demand the use of prudence. This means: New insights must allow old practices to change”.<sup>32</sup> Quite similarly it is voiced by the historian *Michael Wolffsohn*: “However one views the Cologne circumcision ruling, it would have been an opportunity, especially for us Jews, to reassess the meaning of Jewishness and, with renewed inner strength, to keep or change it.”<sup>33</sup>

Thirdly, the historical comparison is unwarranted and unfair. Contrary to, let’s say, the medieval prohibition to pursue a trade, the prohibition of medically unnecessary circumcision is not geared towards a religious minority. It is rather a segment of the prohibition of bodily injury that has always been in effect from the German Reich through the German Federal Republic. The judges in Cologne would have found the act equally unlawful, if it had been committed by a Christian physician, occasioned by devout Catholic parents’ anxiety to protect their son from the big sin of unchastity, masturbation. Let us relate this Catholic act to the statement of Rabbi and pediatric urologist *Antje Yael Deusel*, who said that the Cologne ruling wants to “see circumcision for religious reasons classified as a crime”.<sup>34</sup> Would a circumcision for this purpose not be a crime? If, however, “religious reasons” do not justify the act in this case, why should it be different in cases of Jewish infant circumcision? Where there are equally religiously motivated acts, there is no rational argument for bestowing a privilege on God-covenant-circumcision over sin-prevention-circumcision.<sup>35</sup>

Ritual circumcision is, de facto, indeed privileged. If one asks how in Germany criminal justice handles this type of physical injury, the answer must be: It is not prosecuted, but is tolerated to a degree that would be impossible for other comparable physical injuries. Even the investigation proceedings into the Cologne case - a single one among thousands that could have been undertaken - resulted in acquittals in two instances. The act is lawful, according to the district court, and the accused is not guilty, according to the regional court.

The accusation of hostility toward religion and the historical comparison would not be warranted, even if the ritual physical injury were isolated from the vast field of physical injuries (§ 223 StGB). *Deusel* pretends that only now, with the Cologne ruling, this single and very special physical injury that previously had been permitted “became classified as crime”. Starting from this (wrong) premise, she then accuses many who approve of the ruling of “dismaying

polemics” and “general criticism of religion”. *Deusel* finds also “utterly alarming” that defenders of the ruling “lack respect” in advocating in “a foaming-mouthed fanatical way” freedom *from* religion, instead of freedom *of* religious practice. The journalist *Richard Syklorz* shares *Deusel*’s view and chooses the following words: “After the judicial ban of circumcision, Jews appear in public perception to have arrived, where they in reality always have been: in the position of a foreign minority, which can be harassed whenever necessary [...]. Such a voyeuristic view onto an undoubtedly sensitive body part, such flaunted concern about the well-being of the concerned children has not been experienced by this country before [...]. Rejoicing in interfering and geared towards the media, many followers of the Cologne ruling point to protection of the child’s bodily integrity, which, as a last consequence, means an invitation to both religious communities to self-abnegate or to leave the country”.<sup>36</sup> The same tone is adopted by *Maram Stern* in his high position of vice president of the Jewish World Congress. Those daring to express critical remarks about ritual circumcision do not receive an answer to their relevant arguments, but are compared to “medieval inquisitors” and reproached with terms like “hypocrisy” and “mendacity”, because they hide their “hatred behind a medical argumentation”.<sup>37</sup>

In light of this resorting to subjective responses and seeking to defame the opponent, I question whether there are possibilities of objective ones! Nobody knows all the readers’ letters and internet comments that agree with the Cologne court. Without doubt, there are vicious ones among them, especially out of “the extreme right-wing corner”. But among the serious comments in newspapers, jurist publications, and as well among readers’ letters that I have read, there was not a single one that tries to lure people away from their religion, or fights against the freedom of religious practice. And none at all pleads disrespectfully or even ‘foaming-mouthed fanatically’ against the ritual circumcision of children. It is hateful nonsense to state that the critics of the custom place Jews in the minority position “to be harassed whenever necessary”, or that they demand of Jews and Muslims “to abnegate or leave the country”. *Wolffsohn* calls these allegations “insubstantial and tactless”. What the opponents of circumcision say and demand is essentially this: All the freedom to religious exercise – within the limits of the law! Religious practice can never justify physically injuring children. Those who say that are neither voyeurs, nor inquisitors, nor hypocritical nor mendacious. They do not flaunt the concern for children’s well-being, but they simply feel that children need to be safeguarded from physical harm and infliction of pain. It may be deeply pious and signify a union with Jesus, but placing a crown of thorns on the head of one’s child on Good Friday is forbidden, too.

X. “No thoughtful and compassionate person will approve that a part of an infant’s body is cut off [...]”.<sup>38</sup> For most people of society’s majority, to whom the circumcision custom does not hold any personal religious or traditional value, it is almost beyond conception that this argument in the debate does not unsettle the opponent, or at least have a thought-provoking effect. But perhaps most people would find food for thought on their part and a certain willingness to concession, if they were made to realize that not only the penis-injuring circumcision act *causes suffering*, but also a prohibition that effectively suppresses it.<sup>39</sup> Simplistically, I have called it “adult suffering”, because, naturally only individuals feel it who are aware of their own concernment and who understand the circumcision battle in society.

I anticipate the harsh objection, stating that ‘it is out of the question to compare this in any way with the suffering of the children who are put under the knife. Government power, taking action against the circumcision custom, may cause annoyance, anger and rage in those who want to hold on to it, but not suffering’. This may well be the correct characterization of their feelings, yet there are also others who feel more deeply. For them, the bloody cutting of the foreskin is so much a part of what they consider their religious duty and tradition that they no longer would wish to live in a Germany that prohibits this genital injury and prosecutes it as crime. Such assertions are not always believable. They are, nevertheless, some peoples’ honest expressions of deeply painful anxiety about the future loss of a religious home in this country. Those deeply hurt may most likely be found among mothers (to-be) and fathers, whose circumcision ritual for their son still lies ahead. I imagine though, that most parents would not feel burdened, but relieved by the fact that, by law, they must spare their son – if only the authority of religious leadership would give their blessing to it, i.e. if they would decide to offer to parents a bloodless-symbolic touching of the penis as a fully adequate alternative religious ritual.

According to governing law, the distress of adult suffering can certainly not justify the physical injury. But perhaps can it be conceded to the legislator to change the current legal situation and create the permission. Lawmakers could think about a redistribution of suffering and, in a balanced ruling (which might make a change in the constitution necessary!) accept the child’s circumcision-suffering within limits, and reduce the adults’ suffering to a degree that they could possibly accept as bearable. Looked at it in the cold light of day, what then is the goal of the Bundestag’s decision? It’s a law amendment that shifts suffering to the benefit of adults, at the expense of children. The decision acknowledges indirectly that the conventional practice of medically unnecessary religiously motivated circumcision is illegal. It says explicitly that this shall change, within limits, but only within the framework of the law that at least “considers” the right to bodily integrity.

Entirely one-sided in comparison is the aim of combative circumcision proponents inside and outside of religious communities. They want legalisation of what previously had only been tolerated, namely the circumcision practice, as descended by tradition; a tradition in which the fundamental right of the child to bodily integrity is not an issue. Control over circumcision is given exclusively to religion and parental will, determining what can be done to a child and what he has to put up with (e.g. forced circumcision, if the victim struggles against it, or circumcision without anesthesia).

With such one-sidedness, the strong emphasis on adult suffering is evident. In a press release, we read for instance *Charlotte Knobloch*, vice president of the Jewish World Congress: “We Jews in Germany are the ones who have to be afraid that we may no longer be able to freely exercise our religion in our – in any case not unencumbered – homeland. Soon we could be forced to leave the country [...]”.<sup>40</sup> Or one can read the understanding words of UN special commissioner for freedom of religion and ideology, *Heiner Bielefeldt*: “Many Jewish and Muslim parents, residing in Germany, would view a general prohibition ruling as the state’s denial of the right to ritually introduce their sons in their religious community. Discrediting

labeling of circumcision as “barbaric practice”, “mutilation” or “attack on defenceless children” have led to deep bitterness among Jews and Muslims.<sup>41</sup>

Proponents of circumcision do not only speak of woe and bitterness, they too explore circumcision-suffering, i.e. the question if and to what degree infants and boys suffer under the act of circumcision and its consequences. The defenders of the tradition realize full well that a *relation* between children’s suffering and adult suffering *exists*. The more severe the circumcision suffering, the more easily adults, who want to hold on to the tradition, can be expected to put up with their pain of loss. Here I see, in spite of all the hardened fronts, the possibility for self-aware shifting of previously held positions.

I became aware that there is some hope while watching the ARD TV-program “Menschen bei Maischberger” on 8/14/2012, a discussion forum, where three proponents of the traditional circumcision practice: *Dieter Graumann* (Chairman of the Central Council of Jews in Germany), *Bilkay Öney* (SPD-integration minister from Baden-Württemberg) and *Sebastian Isik* (general practitioner and circumcision specialist). All three gave relevance to the question of circumcision-suffering, particularly *Graumann* with the remarkable statement: “If we knew that it were damaging, we would certainly not do it”. This “If damaging, then none of that!” is not to be taken for granted. He also could have said that the ritual of cutting off the foreskin is so important to Judaism that it has to be kept, even at the expense of considerable pain, suffering and damage to the child. Yet, he does not, but opens up, with regard to harmfulness, to guidance and better knowledge, at least theoretically.<sup>42</sup> Certainly, something very obvious has to be taken into account: “It is particularly difficult to recognize such objectively damaging behavior, if it is being demanded by a religious tradition, for which it is considered identity-establishing [...]. This leads to a strong aversion among religiously motivated circumcision proponents against any concern with the rationale of empiric science, in as far as science is at odds with their own convictions.”<sup>43</sup> Here could be the explanation for why *Graumann*, using a quite peculiar argument, dismisses traumatization and impairment of sexual experience, which are frequent consequences of circumcision according to scientific recognition and testimony of affected men. *Graumann* simply calls it “undocumented”.<sup>44</sup> And here I see also the reason why *Graumann* disputes that anything at all painful and agonizing or potentially detrimental to the child’s well-being is associated with circumcision; the parents who arrange for circumcision of their son do love their children. They only want the best for their little one. It is absurd and insulting to allege they would torture and hurt him. “Are all these parents child abusers?” This argument is also used by *Öney*: “As if Jews and Muslims would not have the child’s best interest at heart; I find this outrageous”.<sup>45</sup> It’s stated even more succinctly by *Knobloch*: “We do not hurt our children”.<sup>46</sup>

Their error is apparent. They extrapolate from the good intention to the good action. To believe I do not hurt a newborn child does not mean that I actually do not hurt him. And that I have the child’s best interest at heart does not necessarily mean that I truly serve the child’s best interest. Parents could, for instance, for their son’s well-being, isolate him from the “infidels” by sending him for years to Qur’anic School, where, in truth, he withers mentally. Cutting off the foreskin of an eight day old newborn is objectively, in the sense of § 223 StGB, damaging to his health as well as physical abuse, and an excruciating one at that, which is proven at the present day. The physician Prof. *Dr. Feurle* reports in the FAZ [German newspaper] from June 7, 2012

on his own experiences in a hospital in New Jersey, USA: “After local disinfection, first the foreskin had to be gripped with serrated forceps and then separated from the glans. During this process the children already cried miserably. As the foreskin was then cut off in several steps around the shaft with curved scissors, the children screamed so much that at times their breathing faltered and they turned blue in the face. With all their might they tried to free themselves from the restraints”.<sup>47</sup> Later, circumcision has the effect that the victim has lost almost 70 % of sensitive penile tissue, with the inevitable consequence of a substantial loss of sensitivity. It is absurd to deny abuse, agony and violation of the child’s well being, by pointing out that the parents want the surgery for the good of the child and that they act out of love and religious care.

In the discussion forum, minister *Öney* thought of the conventional circumcision practice as proper; the function of the penis is “not in the least“ being impaired and to her, no case is known that a man has declared himself traumatized (meaning: suffering from permanent and long-term consequences).<sup>48</sup> Minister *Öney* has not in the least acquainted herself with the facts. There are actually hundreds of such testimonies, e.g. this one from August 7, 2010: “I am one of those males who were genitally mutilated as boys under pain and against their will under the pretext of religious obligation. I do not reproach my parents, because, as believers, they did not know any better. Today, 40 years later, they regret it, as they see how their son suffers from it.”<sup>49</sup> Two years later, the Cologne ruling has triggered a tidal wave of such complaints and testimonies. Minister *Öney* should study the interview that *Ali Utlu* gave to *Christian Mentz*. The ex-Muslim from Berlin tells about his own and experiences of others, and highly convincingly conveys that losses in sexual experience are common, but rarely talked about consequences of circumcision “it is simply a taboo, so no-one talks about it. Most grow up with it and will never argue against it. But if one talks to one another in confidence many admit that they have problems. Yet, they would never speak about it publicly, because they would lose their face as a man”.<sup>50</sup> Minister *Öney* should also read the appeal by *Eran Sadeh*, Israeli Jew and founder of “Protect the Child”, who directed the harrowingly reasoned plea in the federal press conference from September 12, 2012 to Chancellor Angela Merkel, the members of the Bundestag and all parents world-wide, who intend to have their child circumcised: “The more I read and the more I understood the function of the foreskin, the more difficult it became to dodge the painful and disturbing insight that my penis was damaged and diminished in its ability to sense pleasure, and that I would never be able to enjoy sex as nature intended. The amputation of the foreskin removes highly erogenous tissue, in an adult male of the size of a credit card. A man who lacks this protective penile shaft tissue senses less pleasure, because thousands of nerve endings are missing, being permanently removed with the amputated foreskin. The foreskin serves as a protective sheath that glides up and down the shaft, lessening friction, stimulating the specialized nerve endings and the penile head, whereby the sexual act becomes more comfortable and pleasurable for both partners.”<sup>51</sup>

The third defender of conventional circumcision practice in Maischberger’s discussion forum was *Dr. Isik*, who has professionally circumcised children by the hundreds and who wants to continue to circumcise children. According to his description, a circumcision that is performed *lege artis* is not at all associated with suffering.<sup>52</sup> “The child does not feel a thing” (besides the anesthesia prick), “the healing is wonderful”. The act would be health-enhancing and comparable to inoculation or fitting of dental braces. Parents should initiate it as early as possible, firstly,

because newborns are not yet afraid and secondly, because sixteen year olds by a majority would probably object to the cutting.<sup>53</sup> Not a single word to the Cologne case of a healthy four year old, in which the *lege artis* performed circumcision was associated with dangerous complications and hospitalization – in intensive care! – for ten days, as well as several follow-up surgeries; not a single word about the effects on adult sexual life (which, of course, does not concern him anymore); not a single word to the recently published Spiegel-article, in which the pediatric surgeon *Maximilian Stehr* sums up: “With circumcision for religious reasons, there is no medical benefit. Therefore it weighs that much more heavily, that it is a serious procedure, associated with risks and complications. Circumcision inflicts on the child unreasonable pain, even under full- or local anesthesia. From the medical-ethical viewpoint this procedure is to be declined.”<sup>54</sup>

Whoever defends ritual circumcision must turn a blind eye to the matters of fact! For instance the Green party politician *Volker Beck* on July 14, 2012 in the Bundestag: There is “no health detriment” associated with circumcision, it does not leave a “pathological result”. This is just as if a biker, who after having fallen from his bicycle, is getting up, bleeding and with bruises and abrasions, is being consoled with the lecture that health-wise he is not compromised and there is nothing of the sort of pathological findings. Does *Beck* really not know that whoever robs a child of his foreskin, *thereby exactly* does compromise the child’s health and creates a pathological result? When intention blocks the entry for insight, there fails to appear the simplest controlling reflection. *Beck* should assess the following scenario: Fanatical warriors for God kidnap little boys, expertly put them under anesthesia and perform circumcisions on them, completely *lege artis*. They then return them, well provided for, to their parents. Would *Beck* be consistent? Would he appease the outraged parents with the explanation that, although the act was not correct, the health of the boy has not been compromised and no pathological findings can be made when examining his penis, despite the foreskin's amputation?<sup>55</sup> Or let us imagine another scenario where *Beck* would thus console a colleague, whose urologist, in the course of a prostatectomy, incidentally amputated the foreskin for hygienic reasons! If, however, the politician-victim is inconsolable and goes public with the accusation that he is left genitally mutilated, due to the physician's unauthorized action, he can prepare for the next lecture. This one would be a rebuke by *Bielefeldt*, letting him know that the use of such “discrediting label” is inappropriate, because it equates the innocuous act in a scandalous manner with female genital mutilation, which “must cause therefore deep resentment among Jews and Muslims”. It is certainly nonsense to forbid affected males and critics the use of the word “mutilation”, because circumcision proponents prefer to hear and use the horticultural euphemism of “trimming”. If a human, child or adult, is robbed of the most sensitive part of his genitalia, this organ is mutilated, just like the hand is mutilated by the amputation of the little finger. The fact that the penis remains more or less suitable for sexual intercourse, just as the hand remains able to grip, is irrelevant. The spirit, in which the act is carried out, may make it in the eyes of the religious believer to be a holy, divinely ordained mutilation, however, it remains what it is: a mutilation. “If we set aside all religious and political rhetoric, then circumcision of boys remains a sexual mutilation. I know this, because I was circumcised as an adult. I have had a sexual life before being circumcised and I have one after -I can compare [...] It is more than 30 years, since I lay on the operating table. I am married and have two children. Two boys. And I swear: No knife, no scissors will ever get close to their foreskins.”<sup>56</sup>

Some of those who have even cut off foreskins with a knife, and perhaps still do it, are conscience-stricken. One should listen to the honest profession of Rabbi *Worch*: “It’s painful. It’s abusive. It’s traumatic. And if anybody who is not in a covenant does it, I think they should be put in prison. I don’t think anybody has an excuse for mutilating a child, depriving them of their glans penis. We don’t have rights to other people’s bodies and a baby needs to have its rights protected. I think anybody who circumcises a baby is an abuser, unless it’s absolutely medically advised because of some complication that a urologist says, this baby has to be circumcised. Otherwise, what for? [...] I’m an abuser. I do abusive things because I’m in covenant with God.”<sup>57</sup>

**XI.** The Legislature will likely permit the mutilation within limits. With it, the choice in the conflict of interests between threatened children and adults, who adhere to the circumcision custom, will be a compromise at the expense of the children. According to governing law, as the regional court Cologne ruled correctly, any child's circumcision that is not medically indicated, including those wanted by parents and religiously motivated ones, is prohibited as physical injury. To now permit it within limits is a grave decision, because the then permitted injuries are grave, too. “Circumcision of the foreskin is a procedure of [...] a high-risk, painful, sometimes traumatizing nature that involves the irreversible amputation of a highly sensitive, functionally valuable body part”.<sup>58</sup> “Without medical reason, the boy permanently loses a healthy, erogenous part of his body; verifiably, circumcision has the consequence of sensitivity loss. Moreover, the child suffers pain, also when anesthesia is used, during and post-surgery. In Judaism, circumcisions are mainly performed without anesthesia. Studies show that this causes extreme distress for the sensitive infant. Pain traumata are the consequence. [...]. There is also the fact of surgical and complication risk [...]. Exactly because of the lack of any medical indication is the risk by no means what jurists call “tolerable risk“. Apart from this, complication rates are in some cases higher than 10%.”<sup>59</sup>

Roma locuta, causa finite (Rome has spoken, case is closed), if the law comes about? No. Firstly, it will become necessary to decide on the question whether the law is consistent with the constitution. Secondly, concerned parents, physicians and religious leaders will ask themselves if the injuries of children that are now *permitted should* also be done. “If we knew that it were damaging, we certainly would not do it.” (*Graumann*) “We would have to give up the ritual, if scientific studies would convincingly show that circumcision inflicts considerable damage to the affected.”(*Soussan*). Such studies have been presented in the course of the current discussion.<sup>60</sup> It is a scientifically-backed fact that the foreskin contains 70% of sensory penile tissue and that its removal diminishes sensitivity. This alone should be enough to depart from the common trivialization of the surgery and to recognize that “considerable damage” is done. If one does acknowledge this as a determinative criterion, like *Graumann* and *Soussan* do, then, consequently, one has to be against the demand of ritual circumcisions by parents and spokesmen of religious communities – and one must be for education of parents and religious leaders about the surgery's pain and risks and about its effects on the sexual life, which would dissuade them from demanding circumcisions.

Measured against the basic principles of our legal system, the law can, if it comes about, only be a vulnerable and deeply questionable one. The foreskin is an important part of the body,

an erogenous zone. To cut it off a child's penis without medical necessity should be forbidden. Most policy-makers who want the change in the legal situation, will propose, decide and ratify the law not in the least out of ethical conviction, but for political reasons. However, isn't there a deeper wisdom in the political motivation, and should we not hope that in the end circumcision suffering will be more effectively curbed than under the continued status quo? The law accommodates those who want to hold on to a rite and tradition and saves them from humiliation and from being frowned upon. But by the manner of the law's genesis, after insistent discussion and under consideration of empiric findings, it will reflect much of the ethical demand for honoring the right of the child to bodily integrity. Circumcision is, as the law will indicate, a severe procedure and the child would be better off if he were spared the surgery. This is a good basis, provided "from without", on which change can evolve "from within" over time, as was hoped for by my Jewish friend.. What already has changed in the view of many, due to the current debate and scientific contributions, is the valuation and weighting of circumcision suffering. Attaching importance to this suffering in forming one's own judgement, as any passionate human would do, be they Jew, Muslim or Christian, means in the long run to advocate protection of children from this suffering and to favor an alternative ritual instead. I think nobody can remain untouched by a reader's internet reply to *Maram Stern's* compassionless contribution (see <sup>37</sup>): "The circumcision debate is all about justifying why one breaches the natural protective instinct of parents towards their newborn by means of group pressure, in order [...] to violate the newborn's basic trust in protection from suffering and death, provided by the parents [...]. Infant circumcision constitutes a breach within the most important interpersonal relationship there is. There is hardly any greater transgression against natural human feelings than the injury of an exposed and powerless infant through his parents. Therein is rooted the involuntary self-accusation that shimmers through any defense of the custom. That one does go through with circumcision, although it feels wrong [...]. What remains is the feeling that avoidable harm is done among us".<sup>61</sup>

I admit that most young Jews and Muslims will probably reject having circumcision surgery at an age when they can make their own decision. That would be lamented by many. For instance, the Israeli chief rabbi *Metzger*, expressed himself as follows about the meaning of circumcision: "the Brit Milah, the circumcision, is a covenant, an agreement that every Jew makes with his God".<sup>62</sup> Quite similarly is it said by *Swatek-Evenstein*: "Circumcision is the inextinguishable sign of belonging to the Jewish People. [...]"<sup>63</sup> The intention can hardly be stated more clearly: It shall be made difficult for the marked one, to ever in his life be able to shed his Jewishness. Is this consistent with the general right to personality and the much-cited religious freedom? In the proposed bill these rights are not worth a single line.