

On the impermissibility of infant male circumcision: a response to Mazor (2013)

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ABSTRACT

This is a response to Dr Joseph Mazor's paper *'The child's interests and the case for the permissibility of male infant circumcision.'*

I argue that Dr Mazor fails to prove that bodily integrity and self-determination are mere interests as opposed to genuine rights in the case of infant male circumcision. Moreover, I cast doubt on the interest calculus that Dr Mazor employs to arrive at his conclusions about circumcision.

Prompted by last year's court ruling in Germany that sought to make the circumcision of minors illegal,¹ Joseph Mazor, a political philosopher at the London School of Economics, published an article in this journal entitled *'The child's interests and the case for the permissibility of male infant circumcision.'*² Mazor's argument is rather subtle and worth reviewing point by point. The position he arrives at is an evolution of the Benatars' 2003 position.³ While he argues that an orphan ward of the state should probably not be circumcised, he agrees with the Benatars that parents should be able to decide one way or the other, and he suggests that Orthodox Jewish parents in particular have good reason to circumcise their children. In this essay, I will directly address Dr Mazor's central arguments and explain why they are ultimately unconvincing.

THE RIGHT TO BODILY INTEGRITY

In the German court's decision to make circumcision of minors illegal, there were two guiding principles. The first was that circumcision violates a minor's right to bodily integrity and the second was that it violates his right to self-determination. Mazor correctly points out that the word 'right' in this context is being used in the interest-trumping Ronald Dworkin sense of the word. He goes on to argue that these interest-trumping rights do not properly apply in the case of infant circumcision.

Mazor constructs a four-part argument against the notion that bodily integrity is an interest-trumping right in the case of an infant circumcision:

1. The right to bodily integrity is not absolute, because violations of the child's bodily integrity are permissible in instances of medical necessity.
2. It is also permissible to violate a child's bodily integrity when interests that do not rise to the level of rights are at stake. For example, surgery to correct a minor cleft lip.
3. In the cases of circumcision and minor cleft lip surgery, the child's body is not being used as a means for others' ends.
4. Therefore, bodily integrity in the case of circumcision is an interest, not a right.

Parenting is a special situation in which one autonomous person has the responsibility of protecting the rights and interests of another preautonomous person. This raises many difficult cases in which out of practical necessity a parent must make decisions for their child, but this does not mean that the child does not have rights in these scenarios and only interests. Rights don't disappear in this kind of situation; they simply become harder to discern. Nevertheless, the first part of Mazor's argument as summarised above is undoubtedly true. If a child is wounded in a car accident and the only way for him to survive is for a physician to amputate a limb, then this surgery is permissible, because the child's right to life trumps his right to bodily integrity. The second part is where Mazor's construction begins to falter.

Minor cleft lip surgery is a deceptive case. To begin, it concerns a less severe form of a condition that all would agree rises to the level of medical necessity. Unlike other forms of cleft lip surgery, however, this form is not medically necessary and neither social convention, nor intuition alone is sufficient to deem it morally permissible. Indeed, it properly belongs in the morally difficult category of cosmetic surgeries performed on minors.

Imagine a Chinese couple who immigrate to Mississippi and experience

anti-Asian racism upon arrival. When they have their first child, they decide that she should undergo cosmetic eyelid surgery to make her look more Caucasian. Is such a procedure a violation of her right to bodily integrity? I would argue that it clearly is. But according to Mazor, who believes that the only criteria for the right to bodily integrity is that the body not be used as a means for others' ends, the right to bodily integrity would not be in play here. Now Mazor might still conclude that this surgery is impermissible because he accepts that there is an interest in bodily integrity, but the case would be much more difficult to make on his own terms.

The problem, of course, is with what Mazor considers to be a legitimate justification for the right to bodily integrity. Protecting a person's body from being used as a means to an end is certainly an important justification, but surely it is not the only valid justification. Protecting an individual's body from unasked for, irreversible changes comes to mind as a valid justification as well. Under normal circumstances this is not a difficult right to uphold. People are generally forthcoming when they want changes made to their bodies and unless otherwise instructed, we may not impose irreversible changes on them. So the normal manner in which this right functions is that it is in force until the individual explicitly states otherwise. In the special case of a parent contemplating an unnecessary, but potentially beneficial intervention for their child, we are incapable of knowing what the child would want were he or she autonomous. But this ignorance should not be taken as a *carte blanche* by parents to start making permanent modifications to their children's bodies. On the contrary, following the normal function of this right, our inability to know the desires of the individual should recommend a conservative approach as a way of preserving the individual's right to bodily integrity. Having said that, there are some exceptional situations in which intervention is time-sensitive and a parent is forced to make an educated guess about what her child would want.

To this end, I would like to propose the following three criteria as a guide to identifying beneficial permanent body modifications that do not violate the right of bodily integrity:

1. The benefit of the modification in question cannot be achieved in any other, less drastic way.
2. The modification in question cannot be delayed until the child is autonomous.

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3. The modification in question does not impair the function of the individual's body.ⁱ

Here are some examples of modifications that meet these criteria: Orthotics and growth hormones for height-deficient children. Here are some examples that do not meet these criteria: Mole removal, ear piercing, foot binding as was once practiced by the Chinese, tooth pulling as is currently practiced by some of the Amish, and ethnic eyelid surgery. I accept that there will be difficult cases even with my criteria as a guide. Indeed, the case of minor cleft lip surgery passes the first and third criteria, but it is unclear whether it passes the second. It would seem that the case of minor cleft lip surgery ultimately turns on whether or not the procedure can be postponed due to the structural changes that come with growth.ⁱⁱ What I don't accept is that infant male circumcision is a difficult or exceptional case. Its purported benefits can be achieved by far less drastic means, it can be delayed until the child is autonomous, and it impairs the normal function of the penis.⁴ It would seem, therefore, to be an unambiguous violation of the right to bodily integrity.

The third part of Mazor's argument is also problematic. The mere fact that the parents claim to be circumcising their infant for his own benefit does not foreclose the possibility that the child's body is actually being used as a means for others' ends. The most obvious example of this is the fact that hospitals sell amputated infant foreskin for medical research

and cosmetics.⁵ I will return to the issue of circumcision as an instance of the infant's body being used as a means for others' ends later.

THE RIGHT TO SELF-DETERMINATION

Mazor goes on to make a separate argument against self-determination as an interest-trumping right in the case of infant circumcision:

1. Sometimes doing something at an earlier age is less costly than doing the same thing at a later age. For example, learning math.
2. In order to avoid the higher cost of learning math later, a child's self-determination might need to be violated.
3. Circumcision is more costly later in life.
4. Therefore, self-determination is an interest and not a right in the case of infant circumcision.

As with the right to bodily integrity, the right to self-determination is more difficult to discern in the special case of the preautonomous child. Under normal circumstances, the right to self-determination takes for granted that the individual's will is known. We cannot take this for granted with children. For the first few years of life, in the absence of language, knowing what a child wants is not simple. Moreover, when they do acquire language, children might not actually have the cognitive capacity to know what they really want. In these situations, for practical reasons, parents must make decisions for their children. But the reality of this difficulty does not imply that children do not have a right to self-determination. Society trusts parents to make decisions for their children right up until they reach majority and this is typically standardised around a specific age for the convenience of the law. But the truth is that virtually all children have the cognitive capacity to know what they want well before that age. And an ethical parent should seek to respect her child's present *and future* right to self-determination to the best of her ability.

Once again, the first step of Mazor's argument is true. Certain skills like math, reading and languages are much harder to acquire later on. But this fact in and of itself is not sufficient to establish that it is permissible for a parent to force her child to acquire these skills. For example, it may be more difficult to learn chess later in life, but this does not mean that it would be morally permissible for a grand chess master to override her child's right to self-determination and force him to play chess. Making an argument that parents can override their children's right

to self-determination for the sake of education necessitates an extra step.

Some skills are required to navigate the world efficiently. Other skills act as multipliers in that they make the attainment of yet further skills possible. If a skill falls into one or both of these categories, one can make an argument that the child's future right to self-determination is best served by overriding his present right to self-determination. But this is a case of a right trumping a right. It does not mean that in the case of education children do not *have* a right to self-determination. To the extent that parents and educators require their children and students to study skills that demonstrably fall into either the navigational or the multiplier category, they will be supporting their children and students' future right to self-determination and this is morally permissible. On the other hand, skills that fall outside of these two categories ought not to be forced upon children who explicitly do not wish to acquire them as this would indeed be a violation of their right to self-determination.

But even if we were to grant Mazor that self-determination is a mere interest when it comes to the entire category of education, there are morally relevant differences between education and permanent body modifications that would prevent the same logic from applying to the latter. Permanent body modifications like circumcision are irreversible in a way that education is not. The son of the chess master can grow up and decide never to play another game of chess again in his life. He might very well forget (ie, unlearn) much of the chess strategy that was once drilled into his head. But a circumcised person cannot decide to not be circumcised anymore. He cannot undo the surgery. For this reason, permanent body modifications like infant circumcision are a clear and uncomplicated violation of the child's *future* right to self-determination.ⁱⁱⁱ

Furthermore, the argument that circumcision is costlier at a later age is not quite as clear as Mazor asserts. Here are the reasons why Mazor believes adult

ⁱThe purpose here is not to point to some sort of ideal human body, but rather to expand the definition of bodily integrity to include function. This third criterion recognises that modifications to the human body can have morally relevant consequences beyond the change to the tissue itself. For example, foot binding is more than just a physical change to the feet. It also has functional consequences for walking. This criterion argues that the functional consequences of body modifications ought to be considered as part of the violation.

ⁱⁱThe consensus surgical opinion on the subject seems to be that the 1st year of life is the best age for the surgery, but that may simply be when surgeons feel they can achieve the best results, which does not in and of itself answer the question of whether the surgery can be postponed. It is important to note that whether or not minor cleft lip surgery is a violation of the right to bodily integrity, it may very well still be impermissible upon weighing the interests of the child. One factor that is particularly disturbing about this surgery is that it requires general anaesthesia which is dangerous in infancy (http://bjao.oxfordjournals.org/content/105/suppl_1/i61.full).

ⁱⁱⁱWhat emerges from this discussion is the notion that there are three sequential stages in the right to self-determination. The first is the indeterminate stage that lasts until a child knows what he wants. The second is the determinate minor stage when a child knows what he wants, but is still under the jurisdiction of his parents. The third is fully fledged adult self-determination. It is clear that decisions made in the first two stages may have positive or negative consequences for the third stage. In the case of infant circumcision, a parenting decision made in the first stage has unambiguously negative consequences for the fully fledged self-determination of the third stage.

circumcision to be more severe than infant circumcision:

- A. The dangers of medical complications.
- B. The anticipatory dread.
- C. The disruption to life.
- D. The unease relating to a change in what one is used to.

The first contention is dubious. The infant penis is such a small structure that it is more difficult to operate upon with precision than the adult penis. This is why partial glans amputation, buried penis and total penectomies are complications that are limited to infant circumcision. In addition, due to the fact that infants are so small, the amount of blood loss that would result in exsanguination is so minimal that it is often difficult to catch before it is too late.⁶ Finally, the risk that an infection may become life threatening is higher in infants due to their small size—the infection has less distance to travel—and inability to communicate with language.

It is true that adults face anticipatory dread when contemplating surgery, but this is usually mitigated by other psychological factors especially when the surgery is voluntary. It is further true that circumcision poses a disruption to adult life, but it does so as well to infant life. There is evidence, for example, that circumcision interrupts breastfeeding cycles and thereby impairs the mother-child bonding process.⁷

The conscious awareness of a change in one's body is obviously not something that the infant experiences, but violent and traumatic experiences early in one's life tend to have lasting, difficult-to-measure effects.⁸ We know, for example, that circumcised boys have a lower pain threshold than their intact counterparts.⁹ Moreover, at birth, the foreskin is fused to the head of the penis by a membrane.¹⁰ The first step in infant circumcision is to break this membrane with a probe and tear the two structures apart. This step, which is extremely painful to the infant, does not exist in adult circumcision as the two structures are no longer fused.¹¹ On the subject of pain, providing adequate analgesia is very difficult in the case of infant circumcision as general anaesthesia is contraindicated at this age. An adult, by contrast, can demand adequate pain control, and can receive it safely.

I bring these objections to argue that at the very least, it is problematic to assert that adult circumcision is more costly than infant circumcision. The task of comparing the costs of a surgical intervention at different ages is not simple, but based on

the above realities, I think that there is a compelling case to be made that infant circumcision is costlier, all things considered, than adult circumcision.

THE BALANCE SHEET OF INTERESTS

Building on the above arguments, Mazor concludes that bodily integrity and self-determination are genuine interests, but not trumping rights in the case of infant circumcision. He then attempts to weigh up the various conflicting interests in the hopes of arriving at a conclusion about what is in the overall best interest of the child. In this part of my analysis I will assume for the sake of argument that Joseph Mazor has come up with elegant, rational defenses to all of my above objections. In other words, I will assume that bodily-integrity and self-determination are mere interests and focus on whether or not Dr Mazor's interest math adds up.

THE SECULAR CASE

In the secular case, Mazor considers two scenarios. The first is an orphan who is a ward of the state. In the costs of circumcision column for this scenario, he counts the violation of the interest to bodily integrity, the violation of the interest to self-determination, the reduction in sexual pleasure, pain and risks of medical complications. In the costs of not circumcising column he counts the slight increase in risk of minor medical problems (urinary tract infections), a slight increase in serious medical problems (HIV and penile cancer), and the extra costs that the boy has to bear if he chooses to be circumcised as an adult. Here Mazor argues that the interests of the child probably weigh against circumcision.

The second scenario is that of parents motivated by non-religious concerns. Here, Mazor believes that parents ought to be allowed to make a decision one way or the other for the following five reasons:

1. There is reasonable disagreement about the medical benefits of circumcision.
2. There is reasonable disagreement about the reduction in sexual pleasure.
3. There is reasonable disagreement about the effects of non-drastic reductions in sexual pleasure on human flourishing.
4. There is reasonable disagreement about the moral importance of self-determination.
5. There is reasonable disagreement about how to weigh the medical and non-medical benefits and costs.

There is reasonable disagreement on the medical benefits of circumcision—that much is true. But what no one disagrees with is the fact that infant male circumcision is an unnecessary procedure that carries serious risks. As it happens, there is reasonable disagreement on the medical benefits of prophylactic appendectomy, but no one takes seriously the argument that routinely removing the appendices of infants is permissible. Nor does anyone argue that *not* removing the appendices of infants constitutes an 'extra cost' an individual has to bear due to the fact that she might grow up and choose to have her appendix removed. There are two reasons that don't resort to the language of rights that explain why no one takes these arguments seriously. First, the notion of cutting away healthy, functioning tissue in the hopes of achieving some sort of probabilistic future health advantage is the very definition of throwing out the baby with the bathwater. Second, when a surgery is medically unnecessary, the tolerance for risk/complication is incredibly low and should weigh strongly against intervention. These basic principles are so widely accepted in the medical profession that there is a serious debate over whether elective coincidental appendectomies ought to be performed.¹²

On the matter of sexual pleasure, Mazor asks us to imagine a procedure that can only be performed in childhood that would reduce the pleasure obtained from eating sweets. A child who was subject to this procedure might be at an advantage in avoiding diseases that are linked to the overconsumption of sweet foods. This is meant to be an analogy to the loss in sexual pleasure that accompanies circumcision. He tries to argue that the fact that reasonable people could disagree about the permissibility of such a procedure means that they could also disagree about the permissibility of reducing a person's ability to experience sexual pleasure. This strikes me as a very weak argument. Even if we grant that bodily integrity and self-determination are only interests, the math doesn't add up. On the one hand, is the interest of having access to all of your sensory end organs and the experiences that accompany their presence. On the other hand, you have hypothetical advantages that are not proven and can be achieved by other, less destructive means. How can reasonable people disagree that the balance of interests weighs heavily against such a procedure?

But the fourth reason here is the weakest part of Mazor's argument. Regarding the moral importance of self-

determination, he tries to argue that when it comes to circumcision, the interest of self-determination is not as strong as it might seem. He grants that the procedure's irreversibility and the fact that it's on an intimate part of the body strengthens the interest of self-determination, but he argues that three factors weaken it:

1. The higher cost of adult circumcision.
2. The young adult is likely to be uninformed about the risks and benefits.
3. The decision is subject to biases.

As I've already addressed the first claim, let us take a closer look at claims 2 and 3. Mazor tries to argue that a parent with children is more likely to be informed about the costs and benefits of circumcision and less likely to be subject to present and status quo biases than a childless young adult. This, according to Mazor, weakens the infant's interest of self-determination.

But as Gillian Longley has documented,¹³ the level of information provided by the medical establishment to expectant parents about circumcision is so poor that it is actually inadequate for the purposes of informed consent. Given this and given the fact that in today's world access to information through technology is ubiquitous (and younger people tend to be *more* technologically savvy than their parents), I find it unreasonable to suggest that a young adult would be less informed than his parents about the risks and benefits of circumcision. Certainly a young adult would be highly motivated to investigate a procedure that has permanent consequences for his genitals.

Moreover, one of the most popular reasons that parents give for circumcision is for the son to 'look like' the father.¹⁴ At first glance, this justification may seem reasonable. After all, one might imagine that these parents are simply trying to avoid unnecessary confusion for their son. Upon further reflection, however, the justification is anything but reasonable. There are many ways in which a father may look different from his son and none of them warrant the permanent alteration of his son's body for any reason. If we learned of a father who had lost a toe and was planning to amputate his son's toe to avoid 'unnecessary confusion', we would probably call child protective services. This justification would seem to be more about the father and the way he feels about his body than it is about the son and his imagined confusion. This empirical reality contradicts Mazor's biases contention, and it may indicate another way in which the child's body is being used as a means for others' ends.

THE RELIGIOUS CASE

In the religious case, Mazor considers an infant born to Orthodox Jewish parents who are motivated by religious concerns. Here he argues that there are two salient factors that distinguish this case from the secular case and therefore change the calculus of interests. First, the chances that the child himself would choose to become circumcised as an adult are higher than in the secular case. This attenuates the self-determination argument and raises the child's interests in avoiding the higher cost of adult circumcision. Second, the Orthodox Jewish child who grows up intact might feel alienated from his religion.

I have already explained why I don't accept the assertion that adult circumcision carries a higher cost than infant circumcision all things considered. In the case of Orthodox Jewish circumcision, I think it is fair to say that the risk of complication and pain are actually significantly higher than in a hospital setting.¹⁵ Orthodox mohels, for the most part, are not trained medical professionals and the use of any form of anaesthetic is controversial in Jewish law. This without mentioning *Metzitzah B'Peh*, the direct oral-to-genital sucking practice which has been definitively linked with life-threatening infections and continues to be practiced in some Orthodox communities with impunity.¹⁶ Moreover, if the motivation is religious, postponing the decision until the child reaches majority would actually enhance the religious experience of the practice, because the individual would be cognisant of the fact that he is fulfilling a commandment.

The possibility that an intact Orthodox Jew might feel alienated from his religion does not constitute a particularly strong interest in my estimation. As the philosopher Raja Halwani argues in my film, *Cut*,¹⁷ the relevant question is not whether or not a person feels shame about his intact genitals. The question is whether or not that shame is merited, and Halwani argues that it is not. After all, if a community would seek to shame an individual for not having had a part of his genitals removed when he was an infant, this would seem to reflect poorly on the community, not on the individual. Might an intact Orthodox Jew feel alienated from Judaism as a result of his foreskin? Possibly. But contrary to common belief, there is not a single ritual that an intact Jewish man is excluded from in contemporary religious life according to the strictest letter of Orthodox law.¹⁸ So his feelings of alienation would be unmerited,

not to mention reversible. And when we limit this argument to the fringe case of a weak-willed individual as Mazor does, the interest is weakened to the point of irrelevance.

The fact of the matter is that we don't know whether the Orthodox child will grow up to be grateful or resentful of the fact that he was circumcised. Circumcision is a roll of the dice in this regard, which is why leaving the choice up to the individual makes so much sense. Are the dice weighted in the case of a child born to an Orthodox family? Maybe. For the sake of argument, I'd be willing to grant Mazor that a child born to Orthodox parents is more likely to choose circumcision when he reaches adulthood than someone born to a secular family. But I don't see how this statistical probability outweighs any of the aforementioned risks and costs of infant circumcision. And if we're talking about an Orthodox Jewish circumcision, the problems are compounded by the fact that in Jewish law, the commandment is first and foremost incumbent upon the father.¹⁹ In other words, for an Orthodox Jewish man to fulfil his religious obligations, he must use his son's body as a means to the end of following religious law.¹⁷

CONCLUSION

While Dr Mazor's argument at first glance appears to be somewhat compelling, upon closer examination it really falls apart. As I've sought to demonstrate above, he doesn't actually prove that bodily integrity and self-determination are mere interests in the case of infant circumcision. Moreover, there are serious problems with the manner in which he weighs the various conflicting interests to arrive at his conclusions. Parenting is an ethical minefield and I'm willing to concede that under certain circumstances the child's rights to bodily integrity and self-determination can be overridden. But nothing in Mazor's argument convinces me that being born male is a sufficiently compelling circumstance to justify infant circumcision.

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