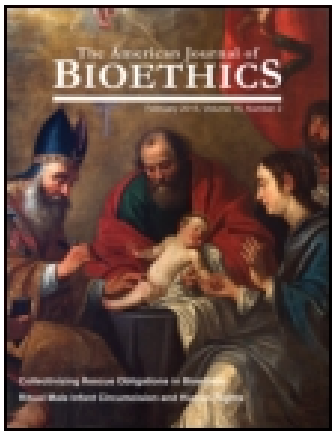

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The Jacobs Parental Prerogative Test

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> *"What was the purpose, children, for which I reared you?"* (Euripides)

To be clear from the outset, the self-referential Jacobs Test has little to do with examining the practice of male infant circumcision (MIC) in light of children's (or human) rights. Instead, its function is the protection of parental power, with the test simply being a device employed to safeguard "practices that might ethically trigger government interference with parental religious or cultural decisions for children."

In order to defend their position, Jacobs and Arora (2015) seek to maximize claims of the prophylactic efficacy of MIC and minimize those of harm. Among their arguments is the assertion that "the totality of current medical knowledge reasonably supports the conclusion that the health benefits may outweigh the medical risks." Given the qualifiers, this is a weak claim, understandably so as it relies on insecure and tenuous justification. In fact, the American Academy of Pediatrics (AAP) Policy Statement on Circumcision (2012) is cited as its main support, because it entailed "a thorough analysis of all available good quality evidence prepared by eminent, impartial authors in a nation with cultural tolerance of both the circumcised and uncircumcised penis." Notwithstanding the oddity of using a policy statement to defend an empirical claim, one can read from this that the equivalent organizations in the United Kingdom, Australia, and the Netherlands, among others, which all separately came to a different conclusion than the AAP after evaluation of the same data, must have done so because they lacked thoroughness or eminence, or impartiality, or were culturally intolerant. While any of these are, perhaps, possible, an alternative perspective that has been put forward is that it was the AAP that was culturally biased. The commentary reflecting this position was co-authored by a large group of "non–US-based physicians and representatives of general medical associations and societies for pediatrics, pediatric surgery, and pediatric urology in Northern Europe." In their view, routine MIC held only one potential positive effect, the possible protection against urinary-tract infections, which in any case "can easily be treated with antibiotics without tissue loss" (Frisch et al. 2013). In response, the AAP (2013) disagreed, alleging European intolerance in return, and denying the charge that it had insufficiently considered the ethical arguments concerning the right of the child to bodily integrity.

What are we to make of all of this? Ultimately, what both Jacobs and the AAP are proposing is that there is a parental right to choose MIC for a child, regardless of whether that right is exercised for religious, cultural, or putative future health care benefits. Jacobs thus seems to have invented a "test" that would vindicate this outcome. It is interesting to note that the Jacobs test would also legitimize some forms of what has been labeled as female genital mutilation (FGM), such as clitoral nicks or pinpricks. Thus, Jacobs conclusion on conducting his three-point analysis might be rewritten:

> It is evident that the infant clitoral pinprick has little effect on the general society or its members. It also is safe and is unlikely to impact adversely on quality of life. . . . Thus, clitoral pinpricking as a religious or cultural practice fulfills the Jacobs test as a parental prerogative and does not constitute a human rights violation.

In 2010, the AAP issued a policy statement endorsing a clitoral nick or pinprick to satisfy parental requests for the "female genital cutting" (FGC) of young girls (AAP 2010). Less than 1 month later the policy was retired following a public outcry. However, the AAP was only being consistent in its approach to genital cutting. In the initial policy statement it justified its approach to FGC by referring to its position on MIC:

> [The AAP] policy statement on newborn male circumcision expresses respect for parental decision-making and acknowledges the legitimacy of including cultural, religious, and ethnic traditions when making the choice of whether to surgically alter a male infant's genitals. . . . Most forms of FGC are decidedly harmful, and pediatricians should decline to perform them. . . . However, the ritual nick suggested by some pediatricians is not physically harmful and is much less extensive than routine newborn male genital cutting.

This ardent interpretation of parental privilege led the AAP to approve of FGC at a time when most countries were legislating against such interventions on the grounds that they were cruel, harmful, and constituted a human rights abuse. The AAP apparently is the only Western medical organization to contemplate such a move.

What we wish to suggest in this commentary is not that Jacobs, Arora, and the AAP are culturally biased toward infant circumcision, although this may well be the case, but rather that they are culturally biased toward privileging

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parental power over infant welfare. With regard to the AAP, the relevant committees/taskforces responsible for the various statements about female and male genital cutting contained members who had previously robustly defended parental prerogative. For example, Dikiema (2010) has repeatedly endorsed the "treatment" of Ashley X (a young girl with significant intellectual and physical disability) by medically unecessary growth retardation, bilateral mastectomy, and hysterectomy, all at the behest of Ashley's parents. By this standard, the removal of a small piece of skin from the penis warrants little consideration.

Another example is Ross, whose thesis (1998) on health care decision making for children echoes the vision of parenting articulated by Goldstein and colleagues (1996). They submitted that parents have the right to make all kinds of decisions about their children and, even if harmful to the child, these should be respected unless they constitute frank abuse. Within this theory, children's main entitlement is not to bodily integrity, but to autonomous parents and family privacy, as (it is proposed) they benefit from having authoritative and omniscient parents. Ross points out that theories that solely focus on the nurturing aspect of parenthood fail to grasp "the importance that adults ascribe to the creation of a home in which their values flourish" and is dismissive of models that suggest that parents must act in a child's best interests, arguing that parents may legitimately use their power to make self-regarding choices. This allows parents to "exercise authority over children that would be impermissible in other contexts between citizens or even between incompetents and state appointed guardians" (Schoeman 1985).

There seems a clear distinction between the approach of northern European practitioners, and the approach of those from the United States. In *God and the Atlantic*, Howard (2011) notes "the transatlantic religious gap, the abiding religiosity of the United States and the contrasting secularity of Western Europe." One consequence of this might be the divergence between the U.S. privileging of parental religious (and other) rights on the one hand, and the evolving Europe position where human rights discourse is gradually replacing reliance on religious doctrine as a moral framework, on the other. As a result there is, perhaps, greater European questioning of what parents might do to their children. Thus, the network of European organizations questioning the bias of the AAP declared that nontherapeutic MIC "constitutes a violation of the United Nations' Declaration of the Rights of the Child." The Swedish Pediatric Surgeons Association reportedly identified that two out of every three pediatric surgeons did not want to perform nontherapeutic circumcisions, perceiving it to be an infringement of the child's human rights. Twelve of 21 Swedish local municipalities also refused to perform the procedure for similar reasons (The Local 2009). Similarly, the Royal Dutch Medical Association (KNMG 2010) stated that "non-therapeutic circumcision of male minors conflicts with the child's right to autonomy and physical integrity." Unlike in Europe, children's rights discourse has failed to gain traction in the United States, where there has been long-standing governmental antipathy to ratifying the United Nations Convention on the Rights of the Child, largely on the basis that it conflicts "with U.S. laws regarding privacy and family rights" (Blanchfield 2009).

The prioritizing of parental religious over children's corporeal rights permits Jacobs to make positive claims about religiously motivated MIC—because this is a conceptual paradigm that allows equating the imposition of religious disfigurement with an infant's "choice" to practice a religion. By contrast, given a culturally developing secularism and a perspective that infants in no way "practice" a religion, there is growing European questioning of whether surgical proselytism such as MIC should be allowable. It is uncertain what the target of Jacobs's article is. It does seem improbable that the arguments it contains would sway the views of the aforementioned network of European organizations. However, it does raise the serious question as to whether it is only European children who might be afforded an entitlement to bodily rights. ■

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