

## Ethics Pertaining to the Legalities of Male Routine Infant Circumcision and Surrogate Consent to Non-Therapeutic Surgery

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### Abstract

Circumcision is the most contentious surgery performed in the world today. Approximately 38% of the world male population has been circumcised, mostly during the neonatal and prepubescent periods. Circumcision is regularly practiced ubiquitously throughout the Islamic countries, Israel, and the United States; the US is only country who regularly circumcises its boys for a non-religious reason. No world health body advocates circumcision prior to adulthood. Routine Infant Circumcision (RIC) violates the United Nations Policy on Genital Integrity, the Hippocratic Oath taken by doctors, and the rules for surrogate consent to surgery. Studies have shown no benefits to circumcision during the neonatal period, and only potentially marginal benefits later in life. The decision of the parent to have their infant boy circumcised is a clear violation of the boys' right to grow up naturally. Cultural and religious biases serve to make the subject of circumcision taboo, where an attack upon it is seen to be an assault on American culture or freedom of religion. Ethically the choice is clear, maintain the child of sound mind and body until he reaches the age of majority, at which point he may decide for himself whether or not to be circumcised. To do otherwise is to irrevocably alter the boys' body and mind, destroying the most basic right, the right to bodily integrity.

**Keywords:** Routine infant circumcision; Ethics; Surrogate consent; Law

### Introduction

Every mammal, male and female, is born with a prepuce (foreskin) [1]. It is illegal to remove or alter in any way the foreskin of any mammal other than a human male child without an explicit medical issue. Female circumcision is known as Female Genital Mutilation and circumcising any non-human is deemed cruelty to animals. Most men living in the world today are uncircumcised, as were most men who have ever lived on Earth. The foreskin is much more than a simple fold of skin; it is a highly specialized area consisting of blood vessels, nerves, muscle fibers and mucosa [1,2]. Throughout a man's life, the foreskin serves to protect the glans penis from injury and abrasion, lubricate during sex, aid in sexual satisfaction and ejaculation [1], and some studies suggest that it may also have immunological functions [3,4]. The unaltered male foreskin contains extensive enervation, making it the most sensitive part of the males' body [5-7]. The practice of circumcision has a very long history, dating back to some of the earliest written historical records; it was practiced by the Egyptian Pharaohs and most notably by Jews and Muslims to fulfill a covenant with their god [8,9]. The ancient Greeks and Romans abhorred the procedure, seeing it as a barbaric attack on the beauty of the human body [10]. Interestingly, circumcision was banned by the Catholic faith at the Council of Jerusalem in 48 C.E. Due to the fact that circumcision has been practiced since ancient times, effective justification and viable proof of its efficacy are not necessary to perpetrate the continuance of the procedure. Studies proving the efficacy of circumcision are rare, highly biased, easily contested, and in some cases potentially dangerous [11]. If circumcision were to have been invented recently, since the advent of medical standards, the studies in support would not show a great enough benefit obtained when compared to the damage

caused or the risks of not circumcising. The argument over whether or not circumcision is medically beneficial, takes a backseat to parents choosing the surgery for its aesthetic results [12]. Circumcision has been touted throughout the ages to prevent and cure myriad diseases and disorders from clubfoot and blindness, to venereal diseases and cancer. In truth, the procedure cures/prevents none of these [13-20]. It was originally introduced to the English speaking world in the nineteenth century as a punishment for masturbation, to be performed without anesthesia, explicitly intended to diminish sexual pleasure [21].

### Short Term Side Effects of Circumcision

Short term side effects of circumcision are very well documented albeit often ignored or presented as necessary risks. The removal of the foreskin in hospitals within the first few days of birth, or in the Jewish faith on the eighth day after birth, require the forcible separation of the prepuce from the glans penis, which are fused at birth. The foreskin usually becomes fully retractable between the ages of 6-18 [22]. This forcible separation has been likened to "skinning a squirrel" [23]; the fused skin is much like fingernails to the finger, or mammals whose eyes are closed at birth. The aggressive separation of this skin, which is fused because it is not finished growing, is exceedingly painful and causes inherent injury to the glans penis [23]. As with any surgery, circumcision has the natural potential for problems, such as excessive bleeding [24,25], infection [24], and human error [26]. Infection can lead to septicemia [27], meningitis [27,28], tuberculosis [29,30], necrotizing fasciitis [31], gangrene [32-34], increased urinary tract infections [27,35,36] and Methicillin-resistant *Staphylococcus aureus* (MRSA) infections [37-39]. Human error may lead to surgical accidents such as denuding the penis [40], urethral injuries [41], urethral fistulas [26], excision of part or all of the glans penis [27,42-45], necrosis [26], and full ablation of the penis [46,47].

Infections, human error and blood loss can all lead to the death of the child [25,28,48]. Complications do not stop after the surgery; improperly cared for freshly circumcised penises may develop skin bridges and adhesions requiring more surgery to repair [23,49-51]. Accurate numbers of skin bridges are unknown; owing to the fact that there has been no study directly addressing this on the large scale, it is possible that skin bridges affect a significant population of men. Also, circumcised boys are at risk for urinary retention [27,52], ruptured bladder [53], renal failure [54,55], meatal ulceration [56] and stenosis [47,57-59]. Often, circumcised boys have problems suckling after the surgery, leading to a break in the natural relationship between mother and infant [60-62]. While early complications such as bleeding or infection are seen as rare, ranging from 1-100 acquiring a localized infection, to 1-20,000 requiring a blood transfusion [63], this is not a necessary risk. All of these conditions are purely iatrogenic, caused solely by the circumcision and are not present in uncircumcised boys or men. Even if the circumcision was performed perfectly, with no short term side effects causing problems, there is still the tremendous risk of long term adverse effects, in this case life-long, which unfortunately are not nearly as well researched and often quickly denounced, without proof, by pro-circumcision advocates. Pro-circumcision advocates quote myriad reasons to support the procedure; none more so than the decrease in the risk for urinary tract infections [64]. This data shows that newborn boys who are circumcised have a decreased chance of acquiring UTI's, however only during the first year of life. Is it ethical to deprive a boy of healthy functioning sexual skin in order to decrease the potential for a disease which is easily cured by antibiotics? Also, the report shows that uncircumcised boys are still less likely to get a UTI than females. The second most quoted medical benefit to RIC is a decrease in the potential for HIV infection, as recommended by the World Health Organization based upon certain African trials [65]. First and foremost, these studies have serious flaws ranging from ethical issues to possible legal problems, in addition to suspected expectation bias and methodological concerns, which place serious concerns on the validity of their findings [11]. In addition, the trials only take into account female to male transmission of HIV, disregarding male to female transmission, men who have sex with men, and non-sexual means of transmission. Is it ethical to perform a preventative surgery on a child who cannot consent, while the potential danger comes from risky behavior? Furthermore, newborn males are not sexually active and therefore not at risk for acquiring HIV through sex; if the male decides to become circumcised later in life to decrease the potential for HIV that would be his decision and it should ethically be left up to him. Finally, conditions in Africa are different than in the United States; a study that looks at full grown African men and their risks for acquiring HIV is not comparable to newborn baby boys in the United States.

### Long Term Side Effects of Circumcision

Long-term side effects are very taboo and often completely dismissed, disregarding the literature elucidating the continued problems caused by circumcision. Although no studies have been performed, based upon personal testimony in blogs and the use of foreskin restoration devices, many men are deeply disturbed with the fact that they have been circumcised. The fact that so many men have "restored" their foreskins, by surgery or manual stretching, and are now becoming much more vocal about their dissatisfaction justifies looking in to this problem. It was regularly believed that infant pain receptors are not fully formed, and therefore cannot fully register pain;

this is entirely false, infants' pain receptors are super-sensitive, meaning they feel even greater amounts of pain than adults [66,67]. Circumcised boys have been shown to have a much more adverse effect to the pain of routine vaccinations than either girls or uncircumcised boys, crying afterwards for excessively longer periods of time [68]. This has led to the belief that early circumcision may "rewire" the brain [69]. Post-Traumatic Stress Disorder (PTSD) is being diagnosed more and more often in the victims of circumcision, leading to intense fear of doctors, hospitals, and all forms of medical intervention [70,71]. PTSD may also lead to "adamant father syndrome," where doctors and circumcised men continue to perpetrate circumcisions because they have compulsions to reenact the trauma, or are unable to accept that their children may be natural while they themselves were violated [70]. One report of older children, aged 4-7, in Turkey stated "circumcision is perceived as an aggressive attack on his body, which damaged, humiliated and, in some cases totally destroyed him" [72]. PTSD can lead to destructive behaviors later in life [73-75]; by examining testimony from family and friends of combat soldiers experiencing PTSD [76], trends in destructive behavior have been well documented [69]. The human foreskin secretes many substances, such as lysozyme, which destroys bacterial cell walls, and langerin, which protects against T-Cell infection of HIV by viral clearance [4,77]. It is clear that the foreskin has a continued purpose throughout a man's life, as the first line of bodily defense against pathogenic invaders, ranging from Urinary Tract Infections (UTI) to HIV. Circumcision removes the nerves of the foreskin, naturally decreasing the sensitivity of the penis overall, possibly leading to greater numbers of impotent men. Without a foreskin, which provides lubrication during sex, coitus may become uncomfortable for both male and female partners [7,78]; vaginal dryness, chafing, friction [79], and tight circumcisions all lead to a decrease in sexual satisfaction. In addition to all of this, there is also believed to be many societal effects: circumcised men may experience rampant feelings of low self-esteem, shame, fear, distrust, jealousy of uncircumcised men, victimization and rage [71,80]. Men avoid intimacy, potentially leading to an increase in violence, rape and suicide [71].

### International Human Rights and Special Protections for the Rights of the Child

Although laws and conditions vary astronomically across the world, a standard for human rights was established by the United Nations along with special provisions for the rights of children. The United Nations Children's Fund states, "human rights are those rights which are essential to live as human beings - basic standards without which people cannot survive and develop in dignity. They are inherent to the human person, inalienable and universal" [81]. The statement goes on to say, "Human rights apply to all age groups; children have the same general human rights as adults. But children are particularly vulnerable and so they also have particular rights that recognize their special need for protection" [81]. In 1966 The General Assembly adopted the Covenant on Civil and Political Rights, ratified by the United States in 1992, which by Article 9 provides everyone with the right to liberty and security of person [82]. Adopted in 1959, the Declaration on the Rights of the Child grants children special protections, stating in Principle 10 "The child shall be protected from practices which may foster racial, religious and any other form of discrimination" [83]. Circumcision may easily foster religious, racial and socioeconomic discrimination; they are seen as religious brands by Jews and Muslims, while many Americans equate uncircumcised men with minorities,

immigrants, and those living in poverty. In 1989 this policy was strengthened with the Convention on the Rights of the Child; the only two states-parties who have not ratified this convention are Somalia and the United States. The Convention states in Article 24.3: "States-Parties shall take all effective and appropriate measures, with a view of abolishing traditional practices prejudicial to the health of children" [84]. Owing to the fact that circumcision is an ancient procedure performed with no verifiable medicinal benefit to neonates and children, it is therefore a traditional practice; this is even truer when the circumcision is performed for religious purposes. Article 34 says: "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse" [84]. Circumcision removes healthy viable skin, so the practice is abusive to the child, while doctors make money from performing the surgery, thereby exploiting the male sex of the child for profit. Although many States-Parties who did ratify these documents continue to have human rights violations, they are generally on a much greater scale than circumcision, such as denying their citizens freedom of religion, expression, and even life itself. The United States, as a modern civilized nation, must do all in its power to cease human rights violations on its own land.

### **Medical Ethics: The Doctor and Their Hippocratic Oath and Surrogate Consent to Surgery**

Doctors, whatever branch of medicine they practice, have a duty to their patient to provide competent and informed treatment. They are bound by the oath taken at the time they receive their Medical Degree, the Hippocratic Oath; never are doctors allowed to violate their oaths, regardless of the wishes of the patient, family, society or their own personal beliefs. The modern version of the ancient oath, originally stated by Hippocrates delineates [85]:

1. I will apply, for the benefit of the sick, all measures which are required, avoiding those twin traps of overtreatment and therapeutic nihilism.
2. I will remember that there is art to medicine as well as science, and that warmth, sympathy, and understanding may outweigh the surgeon's knife or the chemist's drug.
3. I will respect the privacy of my patients, for their problems are not disclosed to me that the world may know. Most especially must I tread with care in matters of life and death. If it is given me to save a life, all thanks. But it may also be within my power to take a life; this awesome responsibility must be faced with great humbleness and awareness of my own frailty. Above all, I must not play God.
4. I will remember that I do not treat a fever chart, a cancerous growth, but a sick human being, whose illness may affect the person's family and economic stability. My responsibility includes these related problems, if I am to care adequately for the sick.
5. I will prevent disease whenever I can, for prevention is preferable to cure.

Many parts of this oath may be easily applied to show how non-therapeutic routine infant male circumcision is in fact unethical. First, doctors must avoid overtreatment and therapeutic nihilism; because RIC is performed without a medical problem it is the very definition of nihilistic overtreatment. Second the oath states that compassion and understanding may outweigh the surgeons' knife; compassion and understanding for the innocent baby, who is unable to express his opinion, should in all cases outweigh the parents' desire for the surgeons' knife. Third, the doctor must not play God, which is exactly

the guise under which most infant circumcisions are performed; the belief that the body was born imperfectly and must be fixed by surgical means, or that the foreskin is vestigial. "But in fact, God has arranged the members of the body, every one of them, according to His design" (1 Corinthians 12:18). Foreskins are completely natural, ubiquitous to mammals, and not a deformity; it is consequently not in the doctors rights to fix without explicit consent from the patient. Finally, although the statement that the doctor must prevent diseases, as prevention is preferable to curing, may appear to justify the procedure (according to studies claiming prophylactic benefits later in life), the fact is that the patient in this case is under the age of majority and cannot consent on their own. As a result of this situation, in order to protect the child from unnecessary medical intervention, traditional or otherwise unproven medicine, and futile or ineffective treatments, surrogate consent must be obtained. The American Academy of Pediatrics limits the power of surrogate consent to providing "informed permission for diagnosis and treatment of children" [86], and contains the following prerequisites:

1. A physical complaint; followed by
2. A diagnosis by a medical doctor; followed by
3. A medical recommendation for treatment; followed by
4. A trial of conservative treatment; followed by
5. A recommendation for [circumcision], only after conservative treatment fails, and where [circumcision] is proven to be effective; followed by
6. Presentation of all relevant material information; followed by
7. Granting of consent by the surrogate [86].

If we were to ignore the fact that routine infant circumcision is neither diagnosis nor treatment, and as a result is not permissible by surrogate consent, circumcision also clearly violates the first five prerequisites mandatory for consent to be given. The foreskin is a healthy, functional, and natural part of the boys' body; no physical complaint exists. This immediately negates all further steps, rendering every non-therapeutic circumcision performed by doctors on an infant or child, to have been outside of the rights of surrogate consent, a violation of the patients' basic human rights, and a breaking of the doctors' oath. A doctor has a duty to their patient, or in the case of RIC, a duty to the person that their patient will become if they are allowed to grow to maturity unimpeded. Is it ethical for parents to disregard the right to bodily integrity for their child because of potential medical benefits or societal pressure? No national health body advocates routine infant circumcision; in 1999 the American Academy of Pediatrics released a policy statement which found "potential medical benefits" but not sufficient to recommend routine infant circumcision; it also mentioned men who say that infant circumcision violated their basic rights [87]. In 2012 the statement was amended to read "the benefits are not great enough to recommend universal newborn circumcision" and says that "parents ultimately should decide whether circumcision is in the best interests of their male child" [88]. This statement chose to disregard men who feel they have had their basic rights violated and in actuality shows no regard whatsoever for human rights, only the potential medical benefits. The Canadian Paediatric Society also claims potential medical benefits, but does not recommend routine circumcision; "the benefits of circumcision do not outweigh the risks" [89]. The Royal Australasian College of Physicians (RACP) "believes that the frequency of diseases modifiable by circumcision, the level of protection offered by circumcision and the complication rates of circumcision do not warrant routine infant circumcision in Australia and New Zealand



[90]. The RACP does go on to say that children may grow up to disagree with decisions that their parents have made for them, and may deeply resent the circumcision. Dr. Benjamin Spock, who had originally supported circumcision, later retracted his support saying “We now know that it is not the only choice, nor is it agreed that it is the most sensible choice. My own preference, if I had the good fortune to have another son, would be to leave his little penis alone” [91].

### **Ethics As It Pertains to the Role of the Parents**

The role of the parent has changed drastically throughout history; it was once universally thought that children are the possessions of their parents. This is clearly erroneous and can be disproved with a simple logical statement; no possession ceases to be yours simply upon attaining a certain age. The modern role of the parent, as charged by society, is to maintain the bodily, mental, and spiritual health of the child, along with their rights and interests, until that child reaches the age when they may make decisions for themselves. Maintaining a child of sound mind and body, is in the best interests of the child, parents, and society as a whole. Circumcision immediately denies the child a sound body, and therefore does not fall under the domain of parental rights. No other surgery can be performed on a child without an express medical emergency; surgeries such as a tonsillectomy or appendectomy cannot be performed on a child without a problem existing in their body, requiring the removal of these body parts after conservative treatments have failed. This is regardless of a potentially long family history of illnesses and complications. In the medical community, in regards to illnesses, it is always the hope that a more effective, less invasive or otherwise more beneficial treatment or cure will be developed; medical intervention is for those who cannot wait or choose for themselves to undergo medical procedures. An argument which compares circumcising one's son to routine vaccinations is irrelevant. People who contract polio, measles, mumps, rubella, etc., have the ability to pass on those diseases on by simple contact with an uninfected and unvaccinated person, potentially leading to death. The acquisition or transmission of all venereal diseases can be effectively mitigated by use of condoms, with exceptionally high efficacy rates according to the CDC [92]. Furthermore, diseases commonly vaccinated against are capable of infecting anyone at any age, while sexually transmitted venereal diseases are regularly seen in sexually active adults who have failed to use prophylactics or have engaged in other risky sexual behaviors.

### **Religious Circumcision and Its Violation of Ethics**

According to myriad court cases, ranging from local and states courts all the way up to the Supreme Court, freedom of religion applies indefinitely in the direction of belief but is and must be curtailed in the direction of practice. The International Covenant on Civil and Political Rights, adopted by the United States in 1992, limits a parent's religious right over their child to “religious and moral education of their children in conformity with their own convictions” [82]. Religious circumcision is not education and thereby cannot fall under the religious rights of a parent. Whether circumcision is truly required by those of the Islamic and Judaic faiths is a theocratic debate, and not the focus of this paper. However, where religious freedoms impose bodily modifications on one unable to choose the religion for themselves, the freedom does not in actuality exist for it directly violates the First Amendment to the United States Constitution, granting every citizen the right to freedom of religion [93]. No one person's religious beliefs

may interfere with the freedoms of another. The US Supreme Court case *Prince v. Massachusetts* explains:

“The zealous though lawful exercise of the right to engage in propagandizing the community, whether in religious, political or other matters, may, and at times does, create situations difficult enough for adults to cope with and wholly inappropriate for children, especially of tender years, to face. Other harmful possibilities could be stated, of emotional excitement and psychological or physical injury. Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves” [94].

Circumcision, performed for a religious reason, is a clear example of physical injury, and a situation wholly inappropriate for children. This case does not allow parents to martyr their children, or in any way make them the victim of religion or discrimination against said religion. It stipulates the importance of allowing children to grow unhindered, to full and legal competence, before they can make that decision for themselves. Although the case may seem old, rulings in Supreme Court cases are valid unless later overturned and this case still stands. As an extreme example, several “religions” throughout history have required the ritual sacrifice of persons, either of the same religion willingly or against their desires [95,96]; this is illegal in the modern world as it violates the inalienable rights of another person. Furthermore, female children are protected by federal law from genital cutting, whether or not it is required by religious doctrine [97], therein showing that freedom of religious practice must take a backseat to the laws of the land, displacing any consideration of the parents' cultural or religious beliefs. This paper does not attack any religious belief, and focus here on mainly Jews and Muslims, because they are the only two major religions which advocate the genital cutting of minors. All other world religions, Christianity included, forbid the process. “Behold, I, Paul, tell you that if you be circumcised, Christ will be of no advantage to you. And I testify again to every male who receives circumcision, that he is in debt to keep the whole Law. You who do so have been severed from Christ...you have fallen from grace.” (Gal 5:2-3). Religion cannot be an ethical excuse for violating a person's right to freedom of bodily integrity; it is inadmissible as a justification for female circumcision, and logic dictates that the same protection should extend to males.

### **Conclusion**

Cultural and religious biases perpetrate an atrocity, physical and mental, upon innocent children who are unable to defend themselves. With no verifiable benefits to neonates and children, the practice of circumcision is the mutilation of an innocent child. Unnecessary or elective surgeries, such as aesthetic procedures, do not fall under the domain of parental rights; they in no way affect the parent, only the child. The greatest effect is that boys have had choices made for them; parents and doctors regularly overstep their duties and rights, forever destroying and demeaning those they were supposed to protect. It is more than possible that the society today in the United States, often quoted as being misogynistic, is a direct result of circumcision. Mothers, who are meant to be their child's protector, chose to believe that the baby was born imperfect and must be fixed by surgical means. It is easy to see how men may grow up with the idea that their bodies were imperfect (or at least perceived so by women) and fixed by surgery. In addition, the anger and rage experienced by many men having had a portion of their penis amputated, especially for no

acceptable reason, may lead to an increase in violence in general, as well as rape, sodomy, and other aggravated sexual assaults. Men may subconsciously compensate for their loss, prohibiting free expression of their feelings; the taboo surrounding discussions of the penis, male genital health, and circumcision may be a product of compensation. Mothers have ultimate power over the views of men in this country; teach a boy that he was born as he was supposed to be and to respect women, and the man will grow up with that view. Positive social changes are bound to follow. Circumcision is an unethical surgery, demoralizing and emasculating men, placing the United States of America in the company of countries where Human Rights are regularly violated or ignored. Article XIV section 1 of the United States Constitution reads:

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person the equal protection of the laws” [93].

Every American child is as much an American citizen as every American adult; adults and children are protected by law from threats to ones' physical integrity, and abuse at the hands of another. Furthermore they are given legal recourse should this law be broken; the same is not true for male circumcision. Finally, while female circumcision is thankfully prohibited by law, regardless of any potential medical benefit, religious or cultural beliefs, male circumcision is not; this procedure is sexist and in violation of the clause granting equal protection of the laws to all American citizens.

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