

CUTTING BOTH WAYS: ON THE ETHICAL ENTANGLEMENTS OF HUMAN RIGHTS, RITES, AND GENITAL MUTILATION

Sarah Burgess, University of San Francisco

Stuart J. Murray, Carleton University

Authors' copy, accepted manuscript in press, *American Journal of Bioethics*

S. Burgess & S.J. Murray, "Cutting both ways: On the ethical entanglements of human rights, rites, and genital mutilation," *American Journal of Bioethics* (in press).

This is a preprint of an article which will appear in the *American Journal of Bioethics*, © Taylor & Francis:

<http://www.tandfonline.com/toc/uajb20/current#.VH3rT4uppFI>

The title of Allan J. Jacobs and Kavita Shah Arora's essay, "Ritual male infant circumcision and human rights" (forthcoming), reflects the conjunction and, we will argue, the conflation of rites and rights found in their analysis. Against those who would argue that male infant circumcision violates fundamental, universal rights to bodily integrity and autonomy, the authors contend that circumcision is, in fact, "compatible with a contemporary Western understanding of the concept of human rights." To support this claim, they suggest that, while circumcision itself is not an "absolute right," it is nevertheless a legitimate "parental prerogative"—a local right—which "carries low health risks, conveys medical benefits, satisfies religious requirements, and may confer social advantages, all of which weigh in favor of the children's best interest." As a ritualized practice that fails to "rise to the level of a human right" and yet passes ethical "tests" that would otherwise mandate government interference, circumcision, they conclude, can be sanctioned or prohibited according to the values expressed by local states and cultural norms.

We do not intend to refute this argument in order to recover an ethical or legal position that might be used to prohibit male infant circumcision. Instead, we demonstrate that the authors' argument disqualifies the terms of human rights by deploying biomedical discourses that stand in the place of cultural norms. This substitution ultimately evacuates all discourses on human rights, turning rights into local rites or rituals, and so by sleight of hand immunizes their argument from critique on its own terms. It is precisely the ethical authorization of these terms that we question here.

Although the authors invoke a familiar definition of human rights as privileges that secure the dignity of each individual, their conception of human rights exposes the limits of their own ethical claims. They cite the abstraction of human rights—the ways in which their application is “fraught with difficulty”—to justify segregating particular legal rights from universal principles. Reminding us that “many legal rights have little to do with human rights,” the authors reject human rights claims about circumcision by re-defining how we are meant to identify these rights in the first place. In their logic, human rights “ought to be recognized only in important and unambiguous situations.” Controversy, such as we find in debates over male infant circumcision, marks the right as one that, by definition, cannot be a human right because it is not “generally or universally appreciated.”

This curious logic has significant implications. The source or authorization of human rights no longer resides in an individual’s humanity or personhood; instead, it belongs to an intangible (and perhaps disembodied or dislocated) “appreciation” or acceptance of the right. What can “human rights” be, if the only right worthy of this designation is one that cannot appreciably be contested? Under the terms laid out within the essay, it is difficult to imagine how any human right could claim to meet this standard. Instead, the article suggests that any rite—any ritualization or routinization—is ethically permissible because it is locally acceptable.

Perhaps the unintended lesson here is that human rights are constituted in and through a practice of recognition. As Costas Douzinas (2002) explains, “To have human rights, which in modernity is synonymous for being human, you must claim them. This claim attaches a demand for social recognition or legal protection to the floating signifier. A new right is recognized, if it succeeds in fixing a—temporary or partial—determination on the word ‘human,’ if it manages to arrest its flight. This process is carried out in political, ideological, and institutional struggles” (p. 399). Human rights, in other words, are a product of discourses (and the production of discourse) that define, if only for a short time or in a specific instance, what it means to be human. For Douzinas, this means that human rights are not set over and against controversies or conflicts between rights; they are constituted in them. Human rights emerge, we might say, when the basis of a rights claim—one’s humanity, dignity, autonomy, bodily integrity—are terms that are undecided or undecidable.

A claim to or for human rights then is ultimately an occasion to question and account for the conditions in which such a claim arises, to “know how we question ourselves—and how, according to what or whose terms, and in what idiom, under what conditions, such a questioning might proceed” (Murray and Holmes 2013, 343). What do such claims tell us about how we define the “human”? How do they reveal the conditions for belonging to a community? Ethicists are called on to answer these questions, to examine the semantic and cultural conditions of a claim’s reception, to bear responsibility for the ways in which human rights claims are heard, interpreted, and deemed worthy of reflection.

The argument presented by Jacobs and Arora, however, eclipses the very possibility to give an account of the conditions in which human rights claims about circumcision are made possible. They use the discursivity of human rights—their dependence on a “universal appreciation”—to set aside human rights claims in favor of

reading debates over circumcision as an issue of competing rights. Without the abstract horizon of human rights, the available terms of critique are limited to those already endorsed in practice and/or in law. There exists no available position, no possible discourse, from or through which an ethical or rights-based claim might be advanced. The authors seem to appeal to the statutory limits of any such claim: in the inevitable contest of claims, those that hold sway within the community of reception—the status quo—will obtain. We see this clearly in their defense of parents who choose circumcision for religious reasons: “Even if an individual child does not practice the religion as an adult, the strong presumption, based on historical observation, is that most adult Jews and Muslims either practice their religion or identify with their respective religious communities (Mazor 2013). Thus,” they continue, “it is reasonable to conclude that parents from a religious community that practices circumcision are exercising substituted judgment of behalf of their children when having the procedure performed in infancy.” The child who chooses not to assume his parents’ religious practices—the child who might desire to raise a question about the ethics of infant circumcision as an unquestionable condition of belonging—is effaced by the normative force given to “historical observation.” Brian D. Earp (2014) points to one disturbing consequence of observing historical practice: “in the United States, anyone, with any instrument, and any degree of medical training (including none) can attempt to perform a circumcision on a non-consenting child” (Earp 2014).

If Jacques Derrida is right, if circumcision is not just a cut, a mark, that signifies belonging to a community, but is also “for the purpose of denying the other, of denying him passage or life” (qtd. in Caputo 1997, 251), then this impossibility to question the terms of belonging to a community might sanction forms of oppression or violence. The conflict of religious or cultural rights and state “disgust” that Jacobs and Arora identify seize on bodies to give them meaning and life. But, there is no law for these bodies. In the case of male infant circumcision, the body of the child, or to be more specific, his penis, is claimed by culture and reproduced in its image. Culture’s claim overdetermines the meaning of the penis, making it the truth of who the child is, inducting him into a community whose norms mandate that this penis be made to be “attractive” to a woman. This body, before it is claimed in the name of culture, as Hannah Arendt ([1951] 1968) might say, has “no right to have rights” (p. 296)—no means by which to demand that the terms of culture be examined or challenged.

One practical upshot of this claim is that, in Jacobs and Arora’s terms, it is unclear how we might oppose female genital mutilation or infant sex assignment surgery (see Earp 2014). Surely others have made claims supporting these practices in a way that would pass the authors’ ethical “tests.” But such practices increasingly are condemned precisely because appeals to human rights offer a manner by which to address those structures of inequality and oppression that constitute these bodies culturally, or in the case of intersex infants, bodies deemed not to be biologically male (enough).

In place of a discussion that might admit of the necessity of human rights discourses, the authors employ biomedical claims that stand in for universal claims. They cite the biomedical “benefits” of male circumcision, many of which are debatable or ancillary, while they fail to acknowledge how this very discourse operates in the service of their own particular culture or ethos. Ironically, the colonizing force of biomedical

“truth” tacitly invokes human rights discourse, and in a universalizing gesture stands in once again for the manner in which human rights become displaced by rites, rituals, or routines that forcibly preclude the legitimacy and language of any rights claim.

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