

An Ethical Evaluation of the Practice of
Non-Therapeutic Underage Boy Circumcision in The Netherlands

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Abstract

In the last decade, various religious rituals have been heavily discussed, which for some led to prohibition of corresponding practice. In 2004, France enacted a law that forbids wearing a headscarf in public schools. Another example of this tendency is the fact that ritual slaughtering is a hot topic of debate in several Western countries. Freedom of religion on the other hand is considered as one of the historical roots of liberalism. Recently, June 2012, The German Regional Court of Cologne ruled that religious circumcision of boys who are unable to give their medical consent constitutes bodily harm. In light of this ruling, the research question of this thesis reads as follows: Is non-therapeutic underage boy circumcision (NTUBC) morally justifiable in a liberal democratic society such as the Netherlands? In order to give a comprehensive answer to this question, the case of NTUBC is investigated from three different perspectives: a medical ethical, a parental, and a policy perspective. Despite the fact that the development of religious tolerance is considered to be one of the historical roots of liberalism, elementary individual rights – including those of children – have gained, and as I will argue should gain, more and more importance in liberal societies. Therefore the conclusion of this thesis is that it is difficult, if not impossible, to morally justify the practice of NTUBC.

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Introduction

In the last decade, various religious practices have been criticized and banned in the Western world. In 2004, France enacted a law that forbids wearing a headscarf in public (government-operated) primary and secondary schools (Wing & Smith, 2006). Ritual slaughtering is a hot topic of debate in Germany, Denmark, The UK, and The Netherlands (Bergeaud-Blacker, 2007). Recently the German Regional Court of Cologne ruled that circumcision of underage boys is a form of child abuse (Günzel, 2013). Other religious habits or practices like building mosques, arranged marriages, polygamy, and female discrimination (the latter being part of the political program of the Dutch political party called SGP) are also heavily criticized and debated.

This tendency is notable, especially when considering what the well-known political philosopher John Rawls once stated: we should draw lessons from our political history following the Reformation and the European wars of religion. The plurality of conflicting, and indeed sometimes incommensurable conceptions of the good held by the members of existing democratic societies should be recognized. According to Rawls, the development of religious tolerance is one of the historical roots of liberalism (Rawls, 1985, p. 230). Due to the above considerations, the thought is that the legal order in a liberal society (not a totalitarian one), should have a neutral character. The state should not force people into a specific morality. It is up to the citizens – within the boundaries of the law – to live in accordance with their own morals (Galenkamp, 2002, p. 76).

Another political philosopher, Isaiah Berlin, stated in his book called *Two concepts of liberty* the following: “If, as I believe, the ends of men are many, and not all of them are in principle compatible with each other, then the possibility of conflict – and tragedy – can never wholly be eliminated from human life, either personal or social.” (Berlin, 1969, p. 30) Berlin distinguishes between two different concepts of liberty, positive and negative liberty. “Liberty in the negative sense involves an answer to the question: What is the area in which the subject – a person or group of persons – is or should be left to do or be what he is able to do or be, without interference by other persons?” Berlin was a passionate advocate of this so-called negative liberty. Now the questions remains: What would these advocates of state tolerance towards different conceptions of the good, hence also different religions, like Rawls and Berlin think of this tendency in Western Europe to curtail religious practices?

Recently (June 2012) the German Regional Court of Cologne ruled that the practice of non-therapeutic underage boys circumcision constitutes bodily harm and violates the right to choose a religion later in life. The court took three articles from the basic law into consideration – the rights of parents, the freedom of religious practice and the right of the child to bodily integrity – before coming to the conclusion that the procedure was not in the child's interest (The Guardian, 27 June). The Royal Dutch Medical Association (KNMG) also maintains a discouraging policy towards non-therapeutic underage boy circumcision (from now on referred to as NTUBC), even though 10 to 15 thousand boys are circumcised in The Netherlands each year. Islamic and Jewish people feel attacked by this ruling. Representatives of the two religious communities called the ruling insensitive and discriminatory, stating it was an attack on centuries of religious tradition. The main question of this thesis therefore is the following: is non-therapeutic underage boy circumcision morally justifiable in a liberal-democratic society like The Netherlands or not?

The starting point of this thesis will be the recent rejection of non-therapeutic underage boy circumcision. First, the position of the KNMG, which is the authority in The Netherlands regarding medicine, will be elaborated. In this first chapter the focus is mainly on the medical-ethical perspective of NTUBC and will give an answer to the research question of this thesis from that point of view. But in order to give a more comprehensive answer to the research question, the case of NTUBC will also be considered from a parental perspective; why do parents have power over their children and what limits this power? And from a policy perspective; what kind of responsibility has the state towards religious groups and towards children?

There are different reasons why people decide to circumcise their child. One could distinguish between medical-therapeutic, medical preventive, religious and cultural reasons. These reasons, however, do not exclude one another (Dekkers et al., 2006, p. 40). Circumcision is a central feature of Islam and Judaism. In early Christianity, circumcision was a topic of much discussion. Opposition to circumcision was a crucial element for the identity of the early Christians (Dekkers et al., 2005). In The Netherlands circumcision is mainly performed on male children of Islamic or Jewish parents for religious reasons. A change in the policy regarding NTUBC will mainly affect these religious groups. For Jewish people circumcision expresses a covenant between God and man, as described in the Torah

(Gollaher, 2000):

“This is my covenant with you and your descendants after you, the covenant you are to keep: Every male among you shall be circumcised. You are to undergo circumcision, and it will be the sign of the covenant between me and you. For the generations to come every male among you. You shall circumcise the flesh of your foreskin, and it shall be the sign of the covenant between us. Every male among you who is eight days old must be circumcised, including those born in your household or bought with money from a foreigner—those who are not your offspring. Whether born in your household or bought with your money, they must be circumcised. My covenant in your flesh is to be an everlasting covenant.” Genesis 17:10-13

Historical anthropologist Howard Eilberg-Schwartz points out that the Hebrew word to characterize between the circumcision and the covenant is *‘ôt*, meaning that the two words are integrally connected. Circumcision was not merely a sign of the covenant; it constituted a vital part of the covenant itself. One could say that circumcision, in a sense, *was* the covenant (Eilberg-Schwartz, cited by Gollaher, 2000).

Almost all Islamic boys are circumcised. However, circumcision is not mentioned once in the Quran. In Muslim societies circumcision is attributed to the Prophet of Islam, Muhammad. Circumcision has therefore the status of ‘Sunnah’ prophetic tradition. Circumcision is mentioned under ‘Tahara’, which means cleanliness, together with clipping of the nails, the use of toothpicks, the cutting of moustaches etc. In this sense circumcision is in Islam culture also performed for hygienic reasons (Rizvi et al., 1999).

Circumcision for medical preventive reasons originates from the nineteenth century. It was thought to be a hygienic procedure with medical preventive effects. It was grounded on the belief that it would decrease masturbation and thereby associated diseases like tuberculosis, cancer, polio, idiocy, etc., with the argument that the penis, and the foreskin in particular, were pathogenically dirty (Hodges, 1999, p. 37). Since nowadays the procedure is still performed almost routinely without medical indication, it has evolved into a cultural norm (Dekkers, 2006, p. 48). This type of circumcision does not occur very often in The Netherlands. The focus of this thesis is on religious and cultural motivated circumcision. In Judaism, as in Islam, circumcision is a religious ritual. But in Judaism circumcision is obligatory and in Islam it is recommended. But, as already mentioned, almost all Islamic

groups circumcise their underage boys. In the first chapter circumcision will be considered from a medical ethical perspective and will become clear why the KNMG holds a discouraging policy towards NTUBC.

Chapter 1: A medical ethical perspective

1.1 Introduction

In this chapter, I consider NTUBC from a ‘purely’ medical ethical perspective. A parental request for NTUBC may confront the physician with a moral dilemma. He may have the feeling that he is acting against the oath he took as a physician: “I will use treatments for the benefit of the ill in accordance with my ability and my judgment, but from what is to their harm and injustice I will keep them ” (Hippocratic oath, Sokol, 2013). He may also feel that this type of circumcision reaches beyond his duties as a doctor, especially if he thinks that his main task is to make people healthy and not performing religious rituals (Medisch Contact, 20 August 2004, p. 1295). In light of these types of moral intuitions, the main question of this chapter is therefore whether circumcision without medical indication is ethical justifiable for a physician to perform? In order to answer that question I am going to distinguish between two different views. I will start by illuminating the current view of the Dutch Medical Association (KNMG) on the basis of their position paper on NTUBC, which appeared in 2010. I will compare their point of view with that of the American Academy for Paediatricians (AAP), from which also appeared a position paper on NTUBC in 2012. Since the KNMG and the AAP disagree on different medical facts, these facts will be closer examined. After that I will try to unravel and explain the different normative assumptions supporting their perspectives.

1.2 The position of the KNMG regarding NTUBC

Each year 13 billion male circumcisions take place over the whole world, of which 10 to 15 thousand in The Netherlands. That is around 40 to 50 circumcisions a day, mostly performed because of religious or cultural reasons (see table 1 for different countries and their circumcision rate). Jewish people have their sons circumcised by a Mohel. A Mohel is a specially trained person to perform the *brit milah* (covenant of circumcision), who is not a physician. The procedure happens at home without anaesthesia, which is financed by the Jewish community. However, most of the circumcisions performed in The Netherlands are on Islamic boys. The Islamic community does not have, in contrast with to Jewish community, a unified regulation. Circumcision of Islamic boys happens mostly in special circumcision clinics under local anaesthesia and cost between 250 and 350 euros. In case of a medical

indication, circumcision happens in a hospital under general anaesthesia.

In 2010 a position paper of the KNMG appeared in which they formulated their point of view towards non-therapeutic under age boy circumcision. One of the reasons why the KNMG published the paper in the first place, was because they felt the need to formulate a position towards NTUBC, since there is almost a worldwide opposition against Female Genital Mutilation (FGM) and FGM and NTUBC are at some points similar. The KNMG concluded after consulting with different relevant scientific associations that circumcision is a violation of the bodily integrity of the human body. According to the KNMG the right to bodily integrity is a fundamental human right and it exists to protect people against unwanted interference to their body. The KNMG holds the conviction that underage children should only be subjected to medical treatment when a child has a disease or a disorder, or when it can be justified that it is in the child's best interest (like vaccinations) to do so. The reasoning behind the KNMG's stance includes recognition of the child's right to be protected against non-therapeutic medical treatments as formulated in the Convention of the Child (ref). The KNMG also emphasizes that circumcision on children sometimes has severe complications like bleedings, inflammation or penile amputations. Therefore the KNMG has at this moment a strong discouraging policy towards non-therapeutic circumcision for underage boys and they urge physicians to inform parents (which are considering the surgery) about the potential risks and the fact that there is a lack of evidence to proof any medical advantage of the surgery. The KNMG hopes to start a social debate about NTUBC. Their ultimate goal is to reduce the non-therapeutic surgery as much as possible. Other authoritative associations of medical professions in the Netherlands support this standpoint (KNMG, 2010, p. 3).

Table 1: Circumcised males by country (the following rates are based on estimation, as the real rate is unknown since circumcision is not registered)

Country	Muslim (%)	Jewish (%)	Circumcised (%)	Total males in country	Total circumcised males
Netherlands	5.7	0.2	5.9	8338418	490299
United Kingdom	2.7	0.5	15.8	31032523	4903139

United States	0.8	1.8	79.0	154231006	121842495
Canada	2.0	1.2	43.6	16843423	7343732
Australia	1.7	0.5	58.7	10883356	6388530
Saudi Arabia	97.0	0.0	97.0	14089444	13666761

Source: <http://www.circs.org/index.php/Reviews/Rates/Global>

Box 1

Criticism

After publication of the KNMG position paper, the RVZ, the Council for Public Health, published an article “Not all circumcisions are the same. A response on the KNMG stance towards boy circumcision” (June, 2012). In this article the KNMG is accused of being superannuated and too simplistic in her stance, because emphasizes is too much made on the value of bodily integrity. This doesn’t do right to the freedom of religion of the parents and their right to raise their children according to their own (religious) view. According to the author, religious male circumcision should not be viewed as a medical procedure, but as a religious practice. The view that boy circumcision and female circumcision are ‘at some points similar’ is according to the author also false. The practices are not comparable: the two practices are in most respects not comparable because of the extent and the severity of the violation of bodily integrity in almost all forms of female circumcision. Besnijdenisinfo.nl, a Dutch site about circumcision that offers information for people, who are considering a circumcision either for themselves or their children, has reacted critical to this standpoint. According to the site, parents attach great value to circumcision while it is an age-old and in general safe and simple surgery. Further more they also add that the KNMG attaches too much value to the risks associated with the procedure.

Was the KNMG right in formulating their point of view? Or do they attach too much value on the fact that there are some complications, one of the criticism that has been formulated after publication of the position paper (see Box 1). In order to determine the answer to these questions the scientific facts regarding circumcision will be further investigated.

1.3 Scientific basis for medical position

The KNMG is a medical organisation, which mainly grounds its view on medical facts. These facts and other medical facts found in medical literature about circumcision will be presented in this paragraph. Questions like: When is circumcision medically needed? Are there medical benefits to circumcision and what are the risks? How should these facts be interpreted? Are examples of questions, which will be elaborated in the next subsections.

1.3.1 Therapeutic reasons for performing circumcision

Until the age of seven or ten the foreskin of a boy is physiologically unable to be fully retracted. First of all, the inner skin is still attached to the glans and second, the outer skin is still narrow. Because of the natural production of liposomes produced by the skin glands around the corona of the glans, the skin will get separated from the adhesion with the glans. Certain medical conditions like phimosis (foreskin cannot fully be retracted) will be solved naturally through time. In the case that the foreskin is so narrow that it gives complaints, there are several options for treatment. One example of treatment is retraction dilatation combined with local steroid cream. If the results of this treatment are not sufficient one can consider a foreskin expanding surgery. In this surgery much foreskin will remain spared and has good esthetical results as well. The option of complete circumcision of the foreskin is more radical and has more complications (Klijn, 2012).

In the guideline ‘diagnostics and treatments of foreskin pathology’ for urologists formulated in 1996, balanitis (inflammation of the glans), paraphimosis (foreskin is trapped behind the glans) and phimosis (foreskin cannot fully be retracted) are mentioned as medical indications for radical circumcision. That is also why the KNMG states that for these conditions circumcision is an accepted treatment (KNMG, p. 6, 2010). Klijn (2012) even disagrees with this conclusion and points out that this guideline is out-dated and nowadays there are good

alternative treatments for these conditions, which give fewer complications than a radical circumcision. The only conditions where radical circumcision is medically necessary are balanitis xerotica obliterans (hardened tissue is formed on the foreskin) and lichen sclerosus et atrophicus (scarring on and around the genital skin) (Malone & Steinbrecher, 2008).

It is very hard to separate data of circumcision performed because of medical reasons or because of religious reasons. Islamic and Jewish parents will opt faster and more easily for circumcision when foreskin related trouble appear under the name of phimosis (Dekkers, 2005, p. 67). According to Klijn circumcision performed because of phimosis is mostly an 'unnecessary and costly overtreatment of incompetent children'. And because circumcision centers do not registrar their patients (or their religious background) it is impossible to separate and give an exact overview of the amount of circumcisions performed purely because of religious and or cultural reasons or because of medical reasons.

1.3.2 Does circumcision have medical preventive effects?

Besides medical therapeutic reasons there are also scientists and paediatricians who believe that circumcision has preventive health effects. For some the underlying assumption is that, if circumcision has medical benefits, it will make the procedure a morally justifiable medical practice. The main reason why circumcision became so popular in the United States in the first place, was because of the alleged medical benefits. Lewis Sayre, a prominent surgeon and teacher in the nineteenth century, published in 1870 an article in which he claimed that circumcision could cure (partial) paralysis. According to him there was also a causal relation between genital irritation and mental disturbance (Dekkers et al., 2006, p. 50). During this Victorian period people were obsessed with hygiene. Physicians started to associate the foreskin with potential risks factors for diseases. This idea became stronger with the arrival of the science of bacteriology that came up around the end of the nineteenth century. Smegma was considered as infectious material, which could cause diseases. Not long after that it was thought that circumcision could prevent: gout, syphilis, epilepsy, headaches, osteoarthritis, alcoholism, groin rupture, asthma, bad digestion, eczema and excessive masturbation (KNMG, 2010, p. 6). The idea came into existence that circumcision could be beneficial for every boy or man, regardless whether he has any condition or not. Along with these ideas the arrival of antiseptics and anaesthesia took place. Circumcision rapidly became a routine, preventive, hygienic measure, which could, when applied widely, significantly increase the

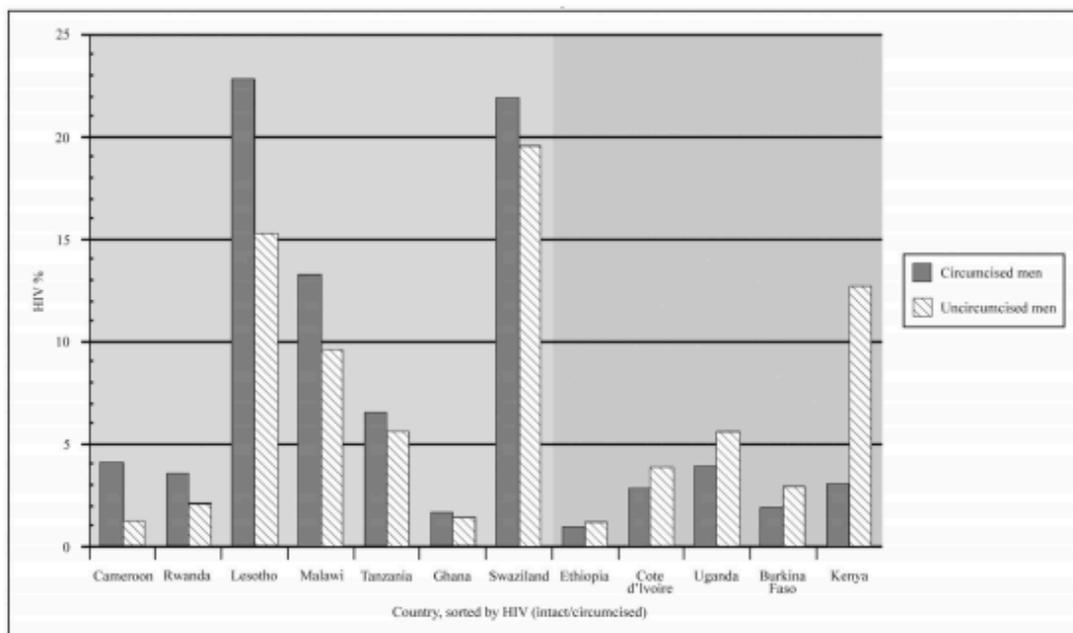
public health. It was also considered to be a simple routine procedure (like vaccinations) instead of a surgical procedure (Dekkers et al., 2006, p. 52).

Nowadays most of the former assumed benefits have proven to be wrong. It was therefore for a long time said that ‘circumcision is a procedure in need for justification’ (KNMG, 2010, p. 6). However, nowadays circumcision is still believed to have health benefits. In an article, published by the ‘Official Journal of the American Academy of Pediatrics’ written by Schoen (2006), several medical benefits are mentioned in one paragraph. Schoen claims that circumcision would benefit man against infant Urinary Tract Infection (UTI), HIV acquisition, penile cancer and penile dermatoses. It also seems to have medical benefits for women against cervical cancer and against chlamydia. The technical report of the American Academy of Pediatrics (AAP) on circumcision, which appeared in 2012, also supports different medical benefits: protection for men against HIV/AIDS, syphilis, UTI, a possibly small contribution of protection against cervical cancer, but no protection for women against chlamydia.

However – as one already can note – Schoen claims that circumcision protects women against chlamydia and the AAP report disagrees. The results of different studies towards the risks and benefits of circumcision seem to conflict (Dekkers et al., 2006, p. 52). The most debated topic concerning circumcision at this moment is whether the procedure has protective effects in acquiring HIV/AIDS. In 2007 the WHO/UNAIDS organisation recommended male circumcision as a HIV-preventive measure in Africa based on three sub-Saharan African randomised clinical trials (Boye & Hill, 2011). The outcome of the discussion whether circumcision protects against acquiring HIV/AIDS or not has far reaching implications since NTUBC might be a widely and systematically used instrument in sub-Saharan Africa against HIV/AIDS. Several medical reviews do in fact conclude that circumcision does have a positive effect in decreasing the chance on acquiring HIV/AIDS. Results from randomised controlled trials conducted in Africa show evidence that male circumcision prevents men in the general population from acquiring HIV from heterosexual sex (Larke, 2010; Siegfried et al., 2009). Lerman & Lia (2001) therefore conclude that arguments can be made that in populations in which safe sexual practices are not adhered to, routine circumcision may provide future medical benefit. Malone & Steinbrecher (2008) on the other hand conclude that even though ‘circumcision seems to have a protective effect against HIV acquisition in countries where HIV is endemic, it cannot be said that

circumcision would show the degree of benefit in societies where the prevalence of HIV and its pattern of spread are different.’ One could indeed conclude with Malone & Steinbrecher (2008) that the relationship between HIV/AIDS and circumcision is obscure. This appears when comparing the situation in the United States, where a high prevalence of HIV/AIDS infections occur in combination with a high percentage of routine circumcision whereas in The Netherlands it is exactly the contrary, a low prevalence of HIV/AIDS in combination with a relative low percentage of circumcisions. Boye & Hill (2011) argue against the idea that circumcision has preventive effects on acquiring HIV/AIDS. They have methodological concerns towards studies that show circumcision to be beneficial for men against HIV/AIDS. Their first point is that almost all studies focus on men in the population. It is reported that male circumcision reduces female-to-male sexual transmission of HIV. In contrast, a parallel-randomised clinical trial into male-to-female sexual transmission of HIV/AIDS done in Uganda, demonstrated that male circumcision increases male-to-female transmission of HIV/AIDS (Boye & Hill, 2011, p. 317). According to their examination of epidemiological data of circumcised men in sub-Saharan Africa doesn’t support the claim that circumcision protects against sexual transmission of HIV/AIDS (see FIGURE 1).

FIGURE 1 Does circumcision protect?



From <http://www.circumstitions.com> viewed 23 October 2011; reproduced with permission from the author, Hugh Young (email: hugh@buzz.net.nz).

Boye & Hill therefore conclude that the decision by WHO/UNAIDS to recommend male circumcision was unwarranted (Boye & Hill, 2011, p. 317). Behavioural conduct seems to

play a more important role than having a foreskin or not (KNMG, 2010, p. 6). Another argument is that, even if circumcision has a positive effect in decreasing the chance of acquiring HIV/AIDS and other sexual transmitted diseases, then it is reasonable to postpone the procedure to an age in which this chance is relevant and the boy is able to decide for himself whether to circumcise or to choose for other alternatives (KNMG, 2010, p. 4). The AAP report however states that ‘one study with fair evidence found that male circumcision before puberty (specifically before 12 years of age) is more protective than circumcision occurring at a later age’ (AAP report, 2012, p. 764). I consider this argument irrelevant since the AAP refers to one study done in rural Uganda, and because the relationship between circumcision and HIV/AIDS is obscure and inconclusive plus the fact that this thesis focuses on religious or cultural based circumcision performed in liberal societies.

1.3.4 What are the possible risks of circumcision?

Some people consider neonatal circumcision a minor surgery, which most of the times succeeds without any trouble. Circumcision is therefore sometimes compared with getting one’s tonsils out (Dekkers et al., 2006, p. 52). But the fact that circumcision – in fact any procedure – has medical risks, plus the fact that it is not a medically necessary procedure, make it for some scientists or paediatricians a morally unjustifiable medical practice.

Until around the eighties NTUBC was commonly performed without anaesthesia. It was thought that new-borns could not experience pain or that they would forget the pain very fast (Dekkers et al., 2006, p. 52). However, infants undergoing circumcision without anaesthesia demonstrate physiological responses suggesting that they are experiencing pain. It has also been reported that circumcised infants exhibit a stronger pain response to subsequent routine vaccination than uncircumcised infants (Taddio et al., 1997). Nowadays we know that new-borns can experience pain and that circumcision without anaesthesia is painful and traumatic for a baby (Dekkers et al., 2006, p. 53). In The Netherlands most boys are circumcised under local or general anaesthesia. Only the Jewish infants are not. Pain therefore is one the most direct consequences of circumcision performed without anaesthesia. The most common complications just after the procedure – regardless whether used anaesthesia or not – are bleedings and local infections. Sometimes more severe complications are reported like urinary tract infection, meatal stenosis (urethral stricture) and fibrosis. Rare complications are sepsis, meningitis and severe local complications like necrosis, which can lead to partial or complete penile amputations. Deaths are reported as well, the American Academy of Family

Paediatricians (AAFP) estimated that 1 child out of 500.000 dies after circumcision. This means that in the United States annually two children die as a consequence of circumcision (KNMG, 2010, p. 6). Long-term effects of circumcision are reported as well. Later on in life a stricture of the urethra develops in up to 20% of circumcised boys, causing bladder and urination problems (Joudi et al., 2010). Upon reaching the age of sexual activity, circumcised men develop sexual problems three times as often as non-circumcised men, due to decreased sensitivity of the penis (Frisch et al., 2011). Not only physical complications occur, also psychological problems and difficulties in sexual behaviour as a result of circumcision are reported. As well as extreme sensations of pain in new-borns, which can, even years later, lead to behavioural changes (KNMG, 2010, p. 7). Negative psychological long-term effects of circumcision, are mainly reported by men that were circumcised when they were a child, and which later in maturity contacted the Circumcision Resource Center (CRC). They feel themselves a victim, affected in their bodily integrity. They report feelings of anger, loss, shame, but also jealousy towards men, which are uncircumcised. This group of men are however not representative for all circumcised man. Most men circumcised do not seem to *feel* harmed by it. But, as the Moroccan Dutch writer Said El Haji wrote, one can be harmed by it, without knowing it. He wrote an opinion article in 'de Volkskrant' titled 'Why I do not circumcise my son'. In this article he states that even though his circumcision does personally not damage him, he does not want to circumcise his son (he considers circumcision to be a ritual, which has lost its meaning). But just a couple of months later he wrote an opinion article titled 'How afraid my circumcision made me', in which he stated that his circumcision did damage him, but that he did not know until recently. After a conversation he had with his mother, he came to the conclusion that his circumcision made him into an unsociable person (de Volkskrant, 6-10-2012). This is just one personal story, and unfortunately there are not yet systematic studies conducted towards the psychological impact of NTUBC. Connections between neonatal circumcision and psychological problems are therefore vague.

In the last two sections the potential medical risks and benefits have been elaborated. I have to conclude that most facts are still disputed. Schoen (2006) and the AAP (2012) claim several benefits like protection against UTI, HIV/AIDS acquisition, penile cancer and penile dermatoses and protection for women against cervical cancer and against chlamydia. The risks of NTUBC can be divided in different categories. First, there is the direct effect of pain, which boys feel when they are circumcised without anaesthesia. Subsequently there are the postoperative risks like bleedings and infections. Then there are the possible long-term

physical effects of NTUBC like bladder and urination problems, and sexual problems plus the possible psychological problems. Medical facts are important in the circumcision debate, but these facts only get meaningful when they are interpreted. One could consider a 0,0002% chance on death as a very small, hence acceptable risk. Someone else could think that every death for a medically unnecessary operation is one death too many. In the next paragraph I will try to unfold the different normative assumptions of the AAP and the KNMG behind their standpoint regarding NTUBC.

1.4 AAP versus KNMG

Beauchamp & Childress (2007) developed a set of four principles suitable for biomedical ethics. The principles can be grouped under four general categories: (1) respect for autonomy, a principle requiring respect for the decision-making capacity of autonomous persons. (2) Nonmaleficence, a principle requiring not causing harm to others. (3) Beneficence, a group of principles requiring that we prevent harm, provide benefits and balance benefits against risks and costs. (4) Justice, a group of principles requiring appropriate distribution of benefits, risks and costs fairly (Beauchamp, 2007, p. 4). Sometimes these principles can come into conflict. How does one respect the patient's autonomy, while doing what one believes (knows) is medically best for the patient (beneficence)? Or how does one resolve the conflict between doing what is medically best for the patient (beneficence) versus what is best for the patient's family or society at large (justice)? The case of circumcision is precisely so difficult because there are more people involved. When one speaks of autonomy – whose autonomy? – That of the child or that of the parents? When one deals with beneficence – beneficence towards whom? – The child, the parents or the whole religious community?

The standpoint of the AAP at this moment can be summarized as follows:

“Evaluation of current evidence indicates that the health benefits of newborn male circumcision outweigh the risks and that the procedure's benefits justify access to this procedure for families who choose it [...] Although health benefits are not great enough to recommend routine circumcision for all male newborns, the benefits of circumcision are sufficient to justify access to this procedure for families choosing it and to warrant third-party payment for circumcision of male newborns. It is important that clinicians routinely inform parents of the health benefits and risks of male newborn circumcision in an unbiased

and accurate manner.” (Circumcision Policy Statement AAP, 2012, p. 585)

The AAP thinks that the procedure of NTUBC meets up to the principle of beneficence, nonmaleficence, and justice and therefore the autonomy of the parents should be respected by allowing them access to the procedure. If the AAP would have to answer the research question of this thesis they would probably say that NTUBC is a medically justifiable surgery and therefore an ethical justifiable procedure in a liberal society.

The main premise of the KNMG is one of beneficence; children should *only* be subjected to medical treatments when they suffer a disease or an anomaly and this moral principle can only be overruled when it can be argued that it is in the child’s best interest to do so. Because NTUBC is a surgery performed on a healthy child, it is according to the KNMG very hard to argue that the procedure is in the child’s best interest. One general moral rule in medicine is not to operate a healthy human: the principle of non-maleficence. Removing a healthy part of the body (and thereby causing pain) is doing harm according to the KNMG. The analysis of possible medical risks against the possible medical benefits doesn’t even matter that much to the KNMG. Circumcision is a surgery and every surgery has risks, *the greatest harm of circumcision is in performing an operation without a clear indication on an infant, which also means that it is a surgery without consent.* This makes the KNMG come to the conclusion that only the consent of the parents is not enough to operate on a healthy child. If the KNMG would answer the research question of this thesis, they would say that the procedure is not medically justifiable; hence the freedom of religion of the parents should not rightfully overrule the freedom to bodily integrity of the child.

How come that two medical organisations work according to different moral principles? The AAP acknowledges that self-determination and informed consent are important values in medicine. However, minors are not considered competent to provide legally binding consent regarding their healthcare, and parents are empowered to make healthcare decisions on their behalf. Parents are in most situations granted wide latitude in terms of decisions they make on behalf of their children, and the law respects those decisions except where they are clearly contrary to the best interest of the child or place the child’s health, well-being, or life at significant risk of serious harm (AAP report on circumcision, 2012, p. 759). The AAP also considers the principle of autonomy as important, but applies this principle to the parents, not to the child, as the KNMG does. The principle of beneficence is satisfied and the principle of

non-maleficence is not at stake, since the AAP concludes that the medical benefits of the procedure slightly outweigh the risks.

At this point the most crucial difference between the AAP and the KNMG becomes visible. The AAP applies the principle of autonomy to the parents and argue that parents should be able to make decisions regarding their children. The only case in which the state should intervene is in the case where parents make decisions *contrary to the best interest* of their child. Since the AAP does not consider circumcision contrary to the best interest of the child, or as serious harm, NTUBC should remain a family choice. The basic assumption is that parents should be able to make decisions for their children and this right can only be declined when it can be proven that a parental decision is contrary to the best interest of the child. The KNMG thinks parents should only be able to authorize whether their children get operated, when this is *in the best interest of the child*. They appeal to the Convention of the Right of the Child, ‘the best interest of the child should be the primary consideration in all actions concerning children.’ (Blachfield, 2009). Furthermore, since the KNMG doesn’t think it can be argued that NTUBC is in the best interest of the child – they consider NTUBC to harm a child – they conclude that it is not morally justifiable for parents to make this decision for the child. The KNMG argues from the point of view of the child. Since the child is healthy, it must be argued that circumcision is in the best interest of (beneficence), or at least does not harm (nonmaleficence), the child. Whereas the AAP thinks that parents should have the freedom to take decisions concerning their children with the limitation that this decision is not *contrary to the best interest* of their child.

Could these different positions be explained by the different historical context of NTUBC in the United States and in The Netherlands? In the US circumcision is mostly performed because of the alleged medical preventive benefits. From this point of view it is more natural to weigh the risks against benefits than in the case of religious circumcision. Religious circumcision is namely not performed because of possible medical benefits. It is mainly therefore that the KNMG thinks that the possible medical complications might be acceptable when it concerns a medical surgery, but not when it concerns a surgery with only a religious motive. However, In March 2013 a European study appeared in the Official Journal of the American Academy of Pediatrics titled ‘Cultural Bias in the AAP's 2012 Technical Report and Policy Statement on Male Circumcision’. In this European commentary the AAP’s report

is accused of cultural bias. Medical procedures always need to be justified because of their invasive nature and possible damaging effects. Preventive medical procedures need more and stricter justification than therapeutic medical procedures, as they are aimed at people who are generally free of medical problems. Even stricter criteria apply for procedures in children, who cannot weigh the evidence themselves and cannot legally consent to the procedure (Frisch et al., 2013, p. 797). The AAP report points to 4 health-related arguments in favor of circumcision: the reduced risk of UTIs, penile cancer, some sexually transmitted diseases (STDs), and HIV/AIDS infection. According to the commentary this claimed health benefits are questionable, weak, and likely to have little public health relevance in a Western context, and they do not represent compelling reasons for the surgery before boys are old enough to decide for themselves (Frisch et al., 2013, p. 798). The conclusion of the commentary therefore is that the practice of NTUBC doesn't meet up to the criteria of a medical preventive procedure in children: “[...] *the procedure must effectively lead to the prevention of a serious medical problem, that there is no less intrusive means of reaching the same goal, and that the risks of the procedure are proportional to the intended benefit. In addition, when performed in childhood, it needs to be clearly demonstrated that it is essential to perform the procedure before an age at which the individual can make a decision about the procedure for him- or herself.*” (Frisch et al., 2013, p. 797) According to this European study circumcision cannot be justifiably viewed as preventive health measure.

Financial considerations

In an interview I had with Gert van Dijk (17-01-13), ethicist of the KNMG, he told me that the difference in standpoint between the AAP and the KNMG could best be explained on the basis of money. Circumcision of men is a big industry in America. A ban on circumcision would mean a great loss for this specific industry. Gert van Dijk thinks that in the AAP report on circumcision not only medical ethical facts play a role, but financial considerations as well. This might be true since in the AAP report on circumcision is also stated that: “[...] *the benefits of circumcision are sufficient to justify access to this procedure for families choosing it and to warrant third-party payment for circumcision of male newborns.*” (Circumcision Policy Statement AAP, 2012, p. 585)

So far it can be concluded that there is written a lot about the possible medical benefits and the possible risks, and not without any bias. Even if I could at this point conclude that the procedure of NTUBC is not justifiable as preventive health measure, this doesn't mean I can give an answer to the question whether circumcision with religious motive is justifiable in a liberal-democratic society (since the religious practice is not performed because of possible medical health benefits). However, to some opponents in the medical world of the procedure, risks and benefits are not important at all. There are people who fundamentally object to operate on a healthy child. The KNMG – even though they do emphasize on the risks of circumcision – could be considered as a party, which holds that view. In article 2 (non discrimination) of the Convention of the Right of the Child is stated the following:

“The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.”

The KNMG interpreted this non-discrimination article as the duty to safeguard all children against non-therapeutic surgeries, not just the non-religious children. The KNMG holds this view because they attach high value to bodily integrity in combination with informed consent. In order to determine whether the medical ethical concepts of bodily integrity and informed consent indeed will constitute a fundamental objection against the practice of NTUBC, these concepts will be elaborated in more detail.

1.5 Different medical ethical concepts – an introduction

The concept of harm is an important principle since it is often *the justification* of restriction of one's freedom. The scope of one's freedom is namely limited by harm to others (Mill, 2002 (1859), p. 79). The 'harm principle', formulated by John Stuart Mill, will be further elaborated in chapter 3 (A policy perspective). The question whether circumcision harms is therefore an important question but until now I can still from a medical ethical view not give an unambiguous answer to this question (since medical facts are still disputed). To recapitulate: the KNMG considers circumcision as harm to a child, the AAP thinks the benefits slightly outweigh the risks and thinks it should remain a family matter, where Jewish

and Islamic parents might from a religious point of view even consider not circumcising their child as doing harm, since circumcision for them is a positively valued physical mark, a sign of honour, adjusted for the better of the child. As already mentioned, to some the medical ethical moral concepts of bodily integrity and informed consent are at stake in the case of NTUBC. In the next section I will try to determine whether bodily integrity is violated in the case of NTUBC and whether this is justifiable or not.

1.5.1 Bodily integrity

“The term integrity is derived from the Latin verb integrare and literally means wholeness, completeness, intactness. Intactness is closely connected with the verb tangere, to touch. Thus, intactness simply means untouched. Integrity refers to an intact (untouched) totality, something which ought not to be touched, hurt, damaged or altered, but respected and protected.” (Zwart, 2000)

If you consider bodily integrity to be related with the concept of ‘wholeness’ (see quotation of Zwart (2000)) than it may seem paradoxical that bodily integrity represents a central notion in both Islam and Judaism (as in Christianity), while both these religions prescribe circumcision. Dekker et al. (2005) investigated how this intuitively inconsistency can be explained. They try to unfold this seemingly paradox on the basis of four different interpretations of the notion of bodily integrity. They make an initial distinction between person-oriented and bodily-oriented integrity. This distinction is made because bodily integrity should not be confused with the notion of personal autonomy and control over one’s own body. Bodily integrity is an ethical principle in it’s own right, closely connected with personal autonomy but still fundamentally different from it.

The person-oriented approach is very common in modern medical ethics and has generally been accepted by law. Article 11 of the Dutch law concerns bodily integrity and is connected with article 10, which concerns the right of privacy. The explanation of Article 11 states that:

“Everybody is the ruler of his or her own body. The state is not allowed to use your body if you do not consent, as well as others are not. Nobody is allowed to hurt you. Also nobody is allowed to give you any medication if you do not consent. Even a medical test or cutting your hair is not allowed before you consent to it.”

Two interpretations of this right exist, (1) the right to be safeguarded against violations by others and (2) the right of self-control over the body. Both interpretations are based on the idea of a personal right to bodily integrity and remain in the context of a (neo) liberal society, because emphasis is made on the individual's right (Dekkers et al., 2005). From this point of view, circumcision without explicit consent may be considered to violate the individual's right to bodily integrity. The problem with circumcision from this point of view is that a vital part of the body is removed without the consent of the person who has to live the rest of his life with the consequences of that removal. The main point of this liberal view is the duty to others to respect the integrity of my body.

The body-oriented approach is central to many religious views as well as in classic Greek and Roman thought of the human body, but this line of thought can also be found in the works of Thomas of Aquinas and Kant. This tradition primarily focuses on the duties we have towards our own bodies rather than to those of others. Sometimes God is thought to be the owner of 'my' body, because he is the creator of it. From this perspective, the notion of bodily integrity can be opposed to the idea of personal autonomy and self-determination over the body. The body-orientated approach implies that the body has a moral value of its own and it therefore cannot be fully owned or controlled. People are for this reason not allowed to do everything with their body, as they want. Dekkers et al. (2005), state that the duty to maintain bodily integrity conflicts with the view that the body is the property of the person and that therefore the paradigm of bodily integrity contradicts the paradigm of personal ownership and property.

Dekkers et al., state that it follows from the idea that you are not the owner of your body that you are not allowed to do with your body, as you want. But that does not make the opposite true either: if you own your body you can do whatever you want with it. The fact that the person-oriented approach emphasis on the individual's right to bodily integrity – this notion is common in modern medical ethics and has generally been accepted by law – does not imply that the body has no value in itself. You can own an animal or a monument (or your body) this makes it is your property, but that does not mean that you can do anything with it. You cannot set a monument on fire and you may also not set your dog on fire. That you own something does not mean it has no moral value in itself. The same can be said from a person-orientated view of bodily integrity. In modern medicine personal autonomy is emphasized,

but this does not mean that a human is allowed to do whatever he wants with his body. The emphasis is more on the fact that informed consent is very important. In medicine the (healthy) body is considered to have moral value, physicians therefore operate from the moral principle ‘to do no harm’ (nonmaleficence). If someone wants his leg amputated just because he wants it, doctors will not do so. And if someone’s leg has to get amputated in order for the patient to be alive, the patient still has to give consent. If the patient does not consent, doctors are not allowed to operate. So I would think that in modern medicine the notion of bodily integrity is a mix between the person- and body-orientated approaches. I do not think these two approaches can be entirely separated from each other. The distinction Dekkers et al. make between a person-orientated notion on the one hand and a body orientated notion on the other hand is too simplistic and doesn’t match the way bodily integrity is used in medical practice. The fact that you own a body tells more about the fact that you are the one that has to give consent to a certain practice that involves your body, than the fact that the moral value of your body is dependent of you and that you can do with it whatever you want.

Common to all opponents of any form against circumcision is the appeal to bodily integrity as a concept of ‘wholeness’ as an argument against circumcision. According to Dekkers et al. (2005), the seemingly paradox between the fact that bodily integrity is a central notion in Islam and Judaism and the fact that in both these religions circumcision is commanded and recommended, can be explained by the fact that Jews and Muslims do not consider circumcision to be a violation of the bodily integrity. They do not consider bodily integrity as a *prima facie* principle that can be overruled by religious command (or by medical reasons). On the contrary, male circumcision is considered as a perfection of the human body, not as violating the human body. The foreskin is regarded as an unnecessary body part and its removal is needed in order for the body to get its ideal form. One could even think circumcision to contribute to the integrity of the body.

The fact that these different interpretations of the notion of bodily integrity are pitted against each other, does not give much clearance in the debate about the moral permissibility of NTUBC. One could debate about which interpretation of bodily integrity is the correct one, but that is always strongly normative determined. Apparently Muslims and Jews do not consider circumcision as a violation of the bodily integrity while other liberal thinkers – who consider bodily integrity to be connected with the concept of wholeness – do consider circumcision to be a violation of the bodily integrity. It can be concluded that the concept of

bodily integrity is an ambiguous notion. It is therefore hard to conclude whether circumcision is a violation of the bodily integrity or not.

It is remarkable that the KNMG appeals to the fact that the bodily integrity of the child is violated with circumcision, since every surgery can be considered (when you relate bodily integrity with the concepts of wholeness) as a violation of bodily integrity. However, this is not considered as a problem since ‘normally’ this violation has as intention to promote the well-being of the patient. This violation of the bodily integrity is accepted when it promotes the well-being of the patient and if the patient gives consent to the surgery. The consenting part, which is missing in the case of circumcision, is of much more importance than the fact that the surgery is a violation of the bodily integrity (since every surgery is). Therefore the concept of informed consent will be elaborated in more detail in the next paragraph.

1.5.2 Informed consent

In this paragraph I will go into the concept of informed consent. I will elaborate questions like: why is informed consent important in medicine? Is informed consent a necessary condition for a surgery to be ethically justifiable? Is informed consent a sufficient condition for a surgery to be acceptable? And finally the most important question of this paragraph: what are the moral implications of the fact that informed consent is not present, or even impossible in the case of NTUBC?

The doctrine of informed consent has been very influential in the thinking about the morally justified behaviour of healthcare professionals. It is generally considered to be one of the central concepts in modern medical ethics (Nijsingh, 2012). The origin of the concept of informed consent can be traced back to the period after WW2. Because of the ‘sickening medical experiments’ the Nazi’s conducted on human subjects before and during the war, the Nuremberg Code was formulated in 1947. The purpose of this code was to bind medical professionals to a certain ethical standard beyond the traditional ‘Hippocratic’ values. The Nuremberg Code states about consent that the person involved should have sufficient knowledge and comprehension of the elements of the subject matter involved to enable him to make an understanding and enlightened decision. The underlying principle about consent in this code is the ‘volenti maxim’ principle. This principle holds that no injury is done when the subject is willing (Nijsingh, 2012, pp. 33-34). Informed consent is commonly viewed as

the key to respect the patient's autonomy. However, about individual autonomy many different conceptions are in circulation. O'Neill (2003) noted that it has been equated with:

“Liberty (positive or negative), dignity, integrity, individuality, independence, responsibility and self knowledge, self assertion, critical reflection, freedom from obligation, absence of external causation and knowledge of one's own interests [...] privacy, voluntariness, self mastery, choosing freely, choosing one's own moral position and accepting responsibility for one's choices.” According to O'Neill informed consent is not ethically important because it secures some of the just summed up forms of individual autonomy, but the ethical importance of informed consent – in and beyond medical practice – is more elementary, namely the fact that informed consent can give reasonable assurance that the patient *has not been deceived or coerced* (O'Neill, 2003, p. 5).

Only libertarian thinkers consider informed consent to be a necessary and sufficient condition before action. For libertarians everything is morally justifiable between consenting adults. Most other ethical positions do not consider informed consent as a sufficient condition for all actions. Even if there is consent, we may judge surgery without medical purpose, medical practice by the unqualified, or unnecessarily risky treatment, unacceptable (O'Neill, 2003, p. 5). This probably has to do with the earlier discussed notion of bodily integrity, namely the fact that the healthy body is considered to have value independent of the one who is valuing it.

At this moment the most important question comes forward: how should the practice of NTUBC be viewed in the light of informed consent? O'Neill states that *'evidently informed consent cannot be relevant to all medical decisions, because it cannot be provided by patients who are incompetent to consent.'* (O'Neill, 2003, p. 5). It looks like she means by this statement that informed consent is irrelevant in the case of NTUBC. But is it? Is not the fact that someone else makes the decision to operate on your body at the time you were not able to give consent plus the fact that you have the ability to become a person, which can make these kinds of decisions, precisely what makes it morally problematic?

The son is and cannot be asked for permission, even the limited but most fundamental character of informed consent, authorisation, to participate or not ('yes' or 'no') is withheld in the case of NTUBC. The child is not the author of this choice, its parents are. If informed

consent is important because it should prevent coercion, than it follows from this fact that NTUBC is a case, which fails to achieve this goal. Parents have a religion, or have a certain cultural background, and they therefore want their sons to be circumcised. The son, in this case the patient, is inevitable coerced into the surgery.

Normally the absence of consent is all that is required in the case of competent adults – under normal circumstances – to preserve an individual’s bodily integrity. For adults no affirmative withholding of consent is needed. With some exceptions like medical treatment required safeguarding the community. If informed consent is a means to respect people in their decision-making capacity and this is a requirement that applies to all, than respecting this capacity requires that I do not make decision for others (Nijsingh, 2012, p. 49). According to Povenmire (1998) the absence of consent should operate in a similar manner for minors, with the distinction that a presumption of effective consent is warranted once it is demonstrated that the medical treatment is necessary to preserve the infant’s life.

If normally the absence of consent is a sufficient reason not to operate, then why do we make an exception for circumcision? If parents have their sons being circumcised, do they thereby not respect the prospective decision-making capacity of their children? Or is NTUBC justifiable because of the fact that the minor would have given consent if shown competent to do so? Or do we consider the freedom, which parents have to raise their children according to their (religious) view, of that importance in liberal societies that parents should have the freedom to circumcise their sons?

As already noted, whatever notion of informed consent one holds, in circumcision there is definitely no informed consent of the patient, that is one of the main reasons what makes it for physicians problematic. Informed consent is impossible in the case of NTUBC since the child does not have the decision-making capacity yet. One could argue however that very often consent of the child is not needed for decisions parents make which can, sometimes greatly, influence the life of their children. If we accept that authorisation is a central feature of informed consent and we accept that parents are the authorities over their children, we can also accept that the parents are the ones that have to consent before a medical procedure takes place. But circumcision is somewhat different than the normal occasions in which parents have to consent to medical interventions.

Normally children are sick and a medical intervention is necessary for the child to get better. In those cases it is almost certain that the procedure is in the child's best interest, because it will promote its health and well-being. Informed consent has to be *given*, because the child *needs* the operation in order to get better. That is also the reason why the physician wants to have its patient consent so he can practice his profession: making people healthy. The parent acts in this case as a proxy decision-maker for its child. A proxy decision maker is to make decision that most faithfully reflect the patient's wishes or, if those wishes cannot be known, the best interest of the patient (Diekema, 2005, p. 245). The case of circumcision is therefore a special case since the physician does not want to do the procedure, parents request him to do it. One reason why a physician could not want to perform circumcision is because he has doubts on whether the surgery most faithfully reflects the patient wish or whether the surgery is in the best interest of the child. Other doctors do not want to be used as an instrument for religious practice (Medisch Contact, 20 August 2004, p. 1295). Since the surgery is not a medically necessary, one can even wonder whether the use of the concept of informed consent is in place. If parents request a surgery another notion like 'informed request' – in which parents declare to be aware of the potential risks and damage – would probably be a more suitable concept (O'Neill, 2002, p. 6).

One example of an exception on the principle of informed consent is vaccinations. In the case of vaccinations the general well-being and health of society prevails. The question arises which values are able to prevail over the value of informed consent. Apparently it is in medicine accepted that the health of society is able to outweigh individual consent. Should an exception also be allowed when there is clear and convincing evidence that indicates that the minor would have given consent if shown competent to do so (Povenmire, 1998, p. 102)? But this is exactly the point; we can inevitably not know whether the minor wants the surgery or not. Courts typically place a high burden on states to interfere with family life, before they will compel medical treatment over parental objections. The case of NTUBC is exactly so special because of the fact that parents request for a surgery on their healthy child for the sake of religious or cultural reasons. Should the burden in this not be reversed? Should the state not have the obligation to ensure the health of children against questionable medical procedures authorized by the parents on the child's behalf (Povenmire, 1998, p. 106)? A different question is whether medical benefits are the only benefits which count and which are able to outdo informed consent? Why would not social or cultural benefits be legitimate reasons? If education, for example, may be used for medical or cultural benefit and if

engineering may be used for social benefit, why may medicine not be used (within appropriate limits) for cultural or other human benefit? If parents and the religious community attach high value to circumcision, how should this be weighed in the debate about the morally justifiability of NTUBC? These questions will get more attention in the following chapters 2 and 3.

At this moment we can conclude that informed consent is under normal circumstances considered to be an important notion in modern medical ethics. In some cases there are circumstances like life-threatening situation for the patient or the community, which can prevail above consent of the patient. Apparently there are exceptions, but there is debate on which benefits (only medical, or social/cultural as well) are morally justified to prevail above consent. For physicians, or we can take the KNMG as example, the notion of informed consent and bodily integrity are closely connected. Even if there is consent, a surgery without medical purpose or with unnecessarily risky treatment, is considered to be unacceptable. The healthy body is considered to have value in itself. A physician may judge NTUBC morally problematic precisely because of these two concepts: to operate on a healthy body without consent. Another fact is that children are not capable of giving informed consent, but that children do however have the capacity to become people who can give consent. Therefore there are people that recommended postponing the surgery to an age of 14 (like the Regional Court of Cologne did). Until so far I have to conclude that NTUBC is from a medical ethical perspective difficult to justify, because the claimed health benefits are questionable, weak, and likely to have little public health relevance in a Western context, and they do not represent compelling reasons for the surgery before boys are old enough to decide for themselves. Even if we do not consider the benefits or risks, bodily integrity and informed consent are two important and high valued notions in modern medicine, which are both at stake in the case of NTUBC. However, others outline that it is not only the value of bodily integrity (and lack of informed consent) of the child that is at stake, but freedom of religion and the right of parents to raise their children according to their own view. That are human rights as well and these rights are at stake and therefore count as well. Others could therefore argue that parents are the authorities over their children and an accepted consequence of this fact is that parents therefore have the right to make decisions regarding their children. This presumption will be the main focus of the next section of this thesis. Why do parents have parental rights and what is the scope of this right?

1.6 Conclusion

Some proponents of circumcision state that the practice of NTUBC is justifiable because of the medical benefits the procedure has, whereas opponents state that there are certain risks, which make the procedure unjustifiable. Therefore this chapter investigated the medical facts regarding circumcision. I unfortunately have to conclude that the represented facts conflict with each other, may be culturally biased, hence are still disputed. Schoen (2006) and the AAP (2012) claim several benefits like protection against UTI, HIV acquisition, penile cancer and penile dermatoses and protection for women against cervical cancer and against chlamydia. Others think that the medical benefits are irrelevant or negligible compared to the risks. The risks of NTUBC can be divided in different categories. First there is the direct effect of pain, which boys feel when they are circumcised without anaesthesia – this applies mainly to Jewish boys, the only group that still gets circumcised without anaesthesia. Subsequently there are the postoperative risks like bleedings and infections. Next to that there are the possible long-term physical effects of NTUBC like bladder and urination problems and sexual problems. Psychological problems are also reported, but unfortunately there are not yet systematic studies conducted towards the psychological impact of NTUBC. Instead of utilitarian reasoning in terms of risks and benefits, some opponents of NTUBC refer to ethical concepts as bodily integrity and informed consent when advocating against the practice, hence these concepts have been elaborated in this chapter. I have to conclude that the concept of bodily integrity is an ambiguous notion, because it can be used to argue for as well as against the practice of NTUBC. Informed consent is considered to be an important notion in modern medical ethics. Informed consent is important because it can give reasonable assurance that the patient has not been deceived or coerced into a surgery. NTUBC is a practice in which there is no consent of the child, hence it is can be stated that the child is coerced. Even though there are cases or circumstances like life-threatening situations for the patient or the community, which can prevail above consent of the patient, there is debate on which benefits (only medical, or social and cultural as well) are morally justified to prevail above consent. A physician may judge NTUBC morally problematic precisely because of the relation between his conception of the two concepts of bodily integrity and informed consent: to operate on a healthy body without consent. Since NTUBC also cannot be justifiably viewed as a preventive health measure, the conclusion of this first chapter is that the practice of NTUBC is medically ethically not justifiable. However, others

will point to another value, which is also important in the debate on NTUBC: the freedom of parents to raise their children according to their own view. This is a human right as well and should therefore be counted as well in the debate about the justifiability of NTUBC (RVZ, 2012). Parents are considered to be the authorities over their children and an accepted consequence of this fact is that parents therefore have the right to make decisions regarding their children, which can sometimes greatly influence their lives. This presumption will be the main focus of the next chapter: A parental perspective.

Chapter 2: A parental perspective

2.1 Introduction

In this chapter the moral foundation of extensive parental rights will be investigated in order to determine whether parents should have the rights to circumcise their children, or not. Nowadays we think it is reasonable to have the right to raise our own children, but the Ancient Greek philosopher Plato held a different view. In ‘The Republic’ he describes that the state should have an educational function. The child is a future citizen and it therefore belongs to the state. Education is compulsory and the state is responsible for this education. In ‘Laws’ Plato allows family raising for all citizens, but with restrictions on child rearing and inheritance. These were restrictions like regulations on the amount of children and if too many children were born in one family these children should be adopted by families who have no children of their own. From our contemporary (liberal) point of view these are quite strict regulations concerning matters we now view as private family matters. It is also written in the Convention on the Right of the Child that the child has the right to live with its parents, unless it is bad for them (article 9). One child-centred argument for why parents have so much latitude in raising their children is because too much regulations would make parenting less enjoyable and would have as a result that the family institution works less well (Brighouse & Swift, 2006, p. 86). However, there are still certain restrictions and regulations towards family matters. And since our morals constantly evolve, our idea about what ‘good’ parenting is, changes as well. According to Brighouse (2003), the increasing tendency of adults to listen to children probably constitutes a distinct moral improvement (Brighouse, 2003, p. 692). But not only a child gets more heard than fifty years ago, affections like child obesity were never an issue. But recently, in June 2012, three children in The Netherlands were placed under supervision orders because they were obese (Lindhout, 2012). Child obesity is now considered to be harmful for the health of the child. Apparently there is a certain scope in which parents may legitimately raise their children according to their norms. But when parents go beyond that scope the state will interfere. This chapter will investigate the right of parents (parental rights) and the scope of this right; how much power should parents have over their children? But first the more fundamental question: ‘why should parents be granted extensive permission to direct their children’s lives?’ will be elaborated.

2.2 Why should parents be granted extensive rights to direct their children's lives?

Arguments why parents should have parental rights can be separated into non-parent-centred arguments and parent-centred arguments. One powerful non-parent-centred argument – which focuses on the interest of children – runs as follows: the family is the institution best suited to meeting children's interest. In order for this institution to work well people must have incentives to be parents and to be the kind of parents who will do well regarding their children. Control, regulation, and monitoring will make parenting less enjoyable. Parents must have a sense that parenting is serving their own flourishing and well-being. Children will therefore suffer in a society in which parenting is a case monitoring and regulations (Brighthouse & Swift, 2006, p. 85). A second argument in this category considers children as public goods (like Plato did) and focuses on the future social and economic benefits of children. Well-raised children are public goods in many senses. They are future workers and consumers that will pay taxes. Parental rights will help to secure parental investment in children. Another argument, formulated by Vernonique Munoz-Darde – which she attributes to Bertrand Russell – is that the family is necessary for maintaining the background of diversity against which people can make a wide range of choices about how to live. Another variant of this argument claims that the family is causally necessary, if not itself constitutive, for a just society. All these arguments focus on the interest of children or third parties not solely on the parents. Brighthouse & Swift (2006) however claim that parents also have fundamental rights with respect to their children (p. 86). A fundamental right is a right someone has in virtue of being a person, and in this case in virtue of being a parent. Its justification is granted into the benefits it brings for that person and not to others (this however does not exclude that it could benefit others as well). One example of a fundamental right in liberal societies is the right to freedom of conscience and of association. However the fact that (some) parental rights are fundamental, does not make them absolute; they are conditional and limited. They are conditional in the sense that in some way the interest of the child is sufficiently being protected (one can discuss on what 'sufficiently' is). Finally parental rights are limited in the sense that they cannot decide everything for their child. For example, under normal circumstances a child is obliged to go to school whether a parent wants it or not.

But why exactly do parents have fundamental parental rights? Brighthouse & Swift draw upon an argument made by Schoenman (1980). Schoenman claims that relationships involving

personal commitment to others give meaning to our lives. Intimacy is an essential feature of such relationship. If outsiders control the terms of such relationship, then the conditions for intimacy are jeopardized. The state should therefore not interfere (unless some threshold of treatment is not met) with the relationship between parent and child because an authentic relationship is crucial for the well-being of both parent and child. Intimacy is namely essential for the significance of a family relationship. This argument is however a parent-child centred arguments since state intervention could be harmful, because it violates the intimacy for both parties. The argument doesn't claim or explain that a parental-child relationship is different from an intimate relationship between adults. Adults can have intimacy with other consenting adults and so, it seems, do not need to have intimate relationships with children in order to have the intimacy so important to human flourishing. The parent-child relationship however, is of a different moral quality than any other relationship. To see why, the distinguishable features of the parents-child relationship will be further discussed.

The way in which a parent-child relationship differs from a relationship between adults exists first of all in the asymmetry of power that parents have over children. Parents have the power to make the lives of their children miserable or happy. Young children cannot deliberately control the lives of their parents. The second difference lies in the fact that adults normally have the power to exit a certain relationship with someone else, whereas children do not have a real exit option in the relationship (until they reach a sufficient age to escape) (Brighouse & Swift, 2006, p. 92). Third, there is a difference in quality of intimacy between parent and child. The love a parent receives from a child (especially in early years) is spontaneously and unconditional and in particular outside the rational control of the child. The child trusts the parent completely – unless it is systematically abandoned for a long period. The parent does not express, as the child does, all his spontaneous reactions or all his emotional responses. Because of this moral inequality of the relationship parents are responsible for the immediate well-being of the child and the development of future capabilities. Parents have a non-fiduciary interest in playing this fiduciary role. This role enables them to exercise and develop capacities of which the development and exercise are for many people – though not for all – crucial to their fully flourishing of their lives. A parent develops as person and derives satisfactions that otherwise would be unavailable. The successful exercise of this role contributes to the success of one's life (Brighouse & Swift, 2006, p. 95). No other relationship contains all these specific features like the parent-child relationship and these

specific features contribute to the well-being of the parent in a quite distinctive way. The bottom-line of the argument, why parents should have fundamental parental rights to raise their children, is because being a parent and having an intimate relationship with your child, contributes to the flourishing of the parent.

I wonder however whether parents without extensive power and freedom would be unable or unwilling to raise their children well? The special features of the parent-child relationship: the asymmetry of power between parent and child, the fact that children have no real exit option, and the difference in quality of intimacy, are according to Brighthouse & Swift arguments why parents should have fundamental rights. The first two features of this relationship: the absolute difference in power between parent and child and the fact that children do not have a real exit option, are more convincing to give children fundamental rights instead of the parents. Is it not because of these features that parental rights are conditional and limited? Are rights not mainly meant to protect the vulnerable? That children should be protected with certain rights is formulated in the United Nations Convention on Right of the Child.

Convention on the Rights of the Child

The UN adopted the Convention on the Rights of the Child in 1989. It was the first international treaty to state the full range of civil, political, economic, social and cultural rights belonging to children. The convention deals with child-specific needs and rights. It requires that states acts in the best interest of the child (Article 3). Common law of many countries had previously treated children as possessions or chattels. The Convention acknowledges that every child should have certain basic rights. The four core principles of the Convention - non-discrimination; the best interest of the child; the right to life, survival and development; and respect for the views of the child - apply to all actions concerning children. Every decision concerning children should take into account the obligation to promote the harmonious development of every child.

2.3 What are the restrictions on parental rights?

Since we now have an idea why parents should have the right to raise their own children, the next step is determining the content of parental rights. What does it mean that people have a fundamental right in raising their children? Do parental rights have priority over other principles such as fair equality of opportunity? Or more relevant, do parental rights have priority over other liberal rights like the bodily integrity of the child? The starting point of this thesis was the ruling of the German regional court, which thought that parental rights on circumcision should be restricted because it is a violation of the bodily integrity of the child and conflicts with the interest of the child of being able to make his decision on his religious affiliation. According to the court, circumcision permanently and irreparably changes the child's body. This change conflicts with the child's interest of later being able to make his own decisions on his religious affiliation (BBC News, July 13th 2012).

The first thing that can be said about the fundamental right to raise one's children is that it does indeed not mean that this right is unlimited. One clear example is that the right to suicide appears to follow from the right to self-governance, but clearly the right to infanticide does not follow from the right to raise a child. Suppose a drug that would produce firm and unshakable belief in the divine rights of kings were available. The right to self-governance might give one the right to administer that drug to oneself, but it would not justify giving it to one's children (Brighouse & Swift, 2006, p. 102). The Convention is also set up because children should not be viewed and treated as possessions: they have basic rights as well. The implication of this argument is the following: even if we argue, or think, that non-therapeutic circumcision – or circumcision because of religious or cultural reasons – is justifiable because it is a case of self-governance to get circumcised or not, then this does not justify that parents have their children circumcised. One needs a different argument to argue why parents have the right to circumcise their children.

Parents do however have the right to determine whether the child will attend a church, a mosque or neither, they have the right to live with their child and spend a substantial part of the day with him or her. They have the right to share their enthusiasms with their children, including, for example, their enthusiasm regarding their own particular cultural heritage, but there are limits. Liberals think that parents may not legitimately indoctrinate their children. Liberal thinkers assert that children have a fundamental interest in prospective autonomy.

Parents do have a legitimate interest in being able to deliberately influence their children's values and beliefs insofar as they can do so without compromising the child's prospective autonomy. It is however difficult to separate between the right to enthusiastically raise your children with a certain religion – or with certain norms – and the indoctrination of children with a certain faith (Brighouse & Swift, 2006, p. 104).

At this point it can be concluded that parents should have fundamental parental rights because being a parent and having an intimate relationship with your child, contributes to the flourishing of the parent. But these rights, even though being fundamental are conditional and limited as well. These rights should be limited because parental rights are rights over others who have no realistic exit options. Hence, limited in the sense that they do not have extensive rights in transmitting their values on their children. Conditional in the sense that parents should provide their children in their basic need and rights as formulated in the Convention. About the content of the upbringing of children like religious beliefs can be stated that the purpose of parental rights is to protect the parental interest in having and maintaining a relationship of that kind, hence parental rights are justified insofar as they are required for protecting that relationship. Even though it is formulated in the Convention that states should act in the best interest of the child (Article 3), parents are not under a legal obligation to do so. As long as parents are ensuring that the child's interests are well-enough served, parents are not under an obligation to be considering the child's best interests as they exercise these rights (Brighouse & Swift, 2006, p. 102). If we want to test the case of circumcision on the purpose of parental rights: to protect the parental interest in having and maintaining a relationship of that kind, hence parental rights are justified insofar as they are required for protecting that relationship. We have to answer the question whether the right of parents to circumcise their children is required to protect the specific parent-child relationship? Or, this question can also be asked the other way around: would a ban on circumcision be a violation of the intimate parent-child relationship, which is needed for the parent (and child) to flourish? If circumcision would be considered unethical and therefore banned, would this make parents unable to create an intimate parent-child relationship?

I think it is very hard to argue that the right to circumcise your child is necessary to protect the specific parent-child relationship. The fact that Muslim and Jewish parents attach great value to the practice of circumcision, doesn't justify the practice. A ban on circumcision would also not enable the parent to have an intimate relationship with his child. If a family

from Somalia immigrates to The Netherlands, they are also not allowed to circumcise their daughter(s). Maybe parents can *feel* violated in their parental rights, but in The Netherlands – as in most other countries – circumcision of girls, named Female Genital Mutilation, is forbidden. Children are right bearers as well and often the restriction of individual rights is the violation of someone's else's right as described by Mill's harm principle (which will be elaborated in the next chapter). According to the German court NTUBC is a violation of different rights of the child. Parents should have and do have the right to raise their children in a certain religion or in a certain culture, but the right to circumcise your child should be out of the scope of this right. The court's argument is that circumcision is a violation of the child's right to bodily integrity and it conflicts with the child's interest of later being able to make his own decision on his religious affiliation. The concept of bodily integrity has already been elaborated in the previous chapter, but the right to an open future has not been. The main question of the next paragraph therefore is whether NTUBC should be considered as a violation of the child's interest of later being able to make his own decision on his religious affiliation. This idea is connected with the concept of the right to an open future.

2.4 Right to an open future

Different philosopher advocate the concept of the right to an open future for children. One of these advocates is Joel Feinberg. He argues that children possess anticipatory autonomy rights, which are violated when children's future options are prematurely closed, and respected when children's future options are kept open (Mills, 2003, p. 499). Kenneth Henley also argues that children's liberty rights to an open future are more important than their parents' liberty rights to raise them according their own lights. He argues that the state should protect children from the tendency of their parents to force them into a kind of life they want for them. According to Henley parents have a moral duty, if not a legal duty, to foster the unfolding liberties of the child (Mills, 2003, p. 499). From this point of view NTUBC is a form of not respecting the anticipatory autonomy rights of children. If parents want to educate their child as 'neutral' as possible, then they should not circumcise their child. However, every parent wants to raise his child as good as possible, and Jewish people or Islamic people, do not want to raise their children 'neutral', they want to raise their children to become 'good' Jews or Muslims and being circumcised is according to them, part of being a good Jew or Muslim. The standing of children in this debate precisely reveals tension between two values to which liberals are committed: toleration and autonomy. The principle

of toleration says that we should not interfere with the moral beliefs and practices of others – as long as the practices done out of these beliefs do no harm to nonconsenting others. The principle of autonomy says that every individual should have the internal resources and skills necessary to rationally evaluate and revise their autonomy. To coerce someone, without justification in terms of harm to nonconsenting others, violates both their autonomy and the prohibition on intolerance. The claim of parents to raise their children as they see fit, even in ways that will inhibit the development of their children's capacity for autonomy, throws this tension into sharp relief (Brighouse & Swift, 2006, pp. 82-83).

2.5 Conclusion

In this chapter the fundament of parental rights is elaborated. Parents should have fundamental parental rights, because being a parent contributes to the flourishing of the parent. These rights are however not unconditional and unlimited. They are conditional because parents should ensure their children in certain basic needs and rights. They are limited because parents are not allowed to indoctrinate their children. If we formulate the purpose of parental rights to be the protection of the parental interest in having and maintaining a relationship of that kind, means that parental rights are justified insofar as they are required for protecting that relationship. Because it is very hard to argue that the right to circumcise your child is necessary to protect the specific parent-child relationship, the right to circumcise your child should not be regarded as a parental right. Circumcision is a form of not respecting the child's anticipatory autonomy rights. This however does not necessarily imply that NTUBC should be legally banned in The Netherlands. Freedom of religion is a fundamental right as well in The Netherlands and religious toleration has long been the paradigm of the liberal ideal of toleration. In the next chapter it will be investigated whether a liberal society should tolerate NTUBC as a form of religious practice, or should a liberal society protect the child bodily integrity and prospective autonomy and therefore protect children from their parents?

Chapter 3: A policy perspective

3.1 Introduction

Liberal democratic societies take autonomous individuals as the primary objects of moral concern and take the primary attributions of rights to be of individuals over themselves. Liberals have therefore reason to be suspicious of the idea that parents have fundamental rights to direct the lives of their children (Brighthouse & Swifts, p. 81, 2006; Galenkamp, p. 82, 2012). One may ask what the role of governments should be in the case of a possible violation of a child's right? According to the Convention of the Rights of the Child governments have the responsibility to take all available measures to make sure children's right are respected (Article 4). According to the Regional Court of Cologne the practice of NTUBC is against the interest of the child because it leads to a physical alteration of the body, and because people other than the child are determining its religious affiliation (The Guardian, June 27th 2012). In the Convention is also stated that when parents make decisions that affect children, they should respect the view of the child (Article 12). Since we do not know what kind of religious affiliation (if any) the child will have, we shouldn't make this decision for the child. The case of NTUBC confronts the state with a dilemma: on the one hand society should guarantee individual rights and on the other hand it should respect and tolerate different beliefs. Rawls stated about toleration that we should draw lessons from our political history of the European wars of religion, and we therefore have to accommodate the plurality of conflicting and incommensurable conceptions of the good held by the different members of our democratic societies (Rawls, 1985, p. 230). This other side of the liberal medal is also supported by the Convention of the Right of the Child:

“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.” (Article 30)

The first part of this chapter will be an analysis why a liberal society should tolerate the practice of NTUBC. The second part of this chapter will be an elaboration of reasons why a liberal society should forbid NTUBC. Subsequently the question will be elaborated whether a

legal ban on NTUBC is the right way to go when one considers the practice of NTUBC ethically unjustifiable.

3.2 Why tolerate NTUBC?

3.2.1 Introduction

It is often argued that NTUBC is a form of freedom of religious practice. The fundamental right of freedom of religion is stipulated in article 6 of the Dutch basic law: *“Everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law. Rules concerning the exercise of this right other than in buildings and enclosed places may be laid down by Act of Parliament for protection of health, in the interest of traffic and to combat or prevent disorders.”* This article states that people have the right to profess freely their religion or belief, individually or in community. Therefore the state has the obligation to let people believe what they want to believe. Locke gives another argument for religious toleration:

“I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other. If this be not done, there can be no end put to controversies that will be always arising”

(John Locke, 1983)

The concern of the church is the salvation of souls, whereas the concern of the state is a secular one. Namely the protection of civil goods: life, liberty and estate. The state cannot have authority of man’s soul, by imposing one kind of religious worship or by forbidding others. The state should play a quite limited role; it should abstain from any intervention in the religious sphere (Locke, 1983). The Regional Court of Cologne weighed three articles from the basic law: the right of the parents, the freedom of religious practice and the right of the child to bodily integrity, before coming to the conclusion that the procedure was not in the interest of the child. The Regional Court is of the opinion that NTUBC is a form of conflicting bodily harm on boys too young to consent and that it contravenes the right to choose religion in later life. In the next subsection this ruling will be criticized from a legal point of view, after that I will try to find philosophical support for a defence of NTUBC through elaboration of the concept of toleration.

3.2.2 A legal defence of NTUBC

Günzel (2013) accuses the Regional Court of bad interpretation of the three articles. It greatly underestimates the importance and constitutional value of the right to parental care. This is a natural right; it is first and foremost their duty to care for their children and to bring them up. This right does not just only strengthen to serve the child's well-being, but as discussed in chapter in two (A parental perspective), parents have a fundamental right in raising their children because it serves their well-being and flourishing as well. Parents have therefore the right to take important decisions regarding their children. The best interest of the child not only encompasses his physical well-being, but also his religious upbringing and identity. The exact definition of the best interest of the child is a case for the parents to find out, not for the state. Only in case of misuse, when the best interest of the child is clearly endangered, does the state have the right and the duty to step in, to limit parental rights. The Regional Court did not take the freedom of religion of the parents into account the way it should have done. It did not explore the religious foundations of circumcision in Islam and the meaning and significance of the practice. Therefore the court overlooks the great importance the act has for the exercise of their religion. Freedom of religion of parents in this case stretches to the religious, cultural and ethical education of the child. This is also supported by the Convention of the Child. It is written that a child belonging to a religious minority shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture and to profess and practice his or her religion (Article 30). Just as the child learns his parents' mother tongue and becomes integrated into the social circles to which they belong, the child is also introduced to his parents' religion. And since religion is not something that can be really learned and understood in depth without being a part of it, it is only natural that the child has to be treated as a full member of the religion with all his rights and duties. Consequently, religious education means to perform all the relevant rituals (Günzel, 2013, p. 3). Ascribing the right to bodily integrity a very high value and ranking amongst the fundamental rights, is like reducing the well-being of the child to solely physical well-being (Günzel, 2013, p. 3). This high ranking of bodily integrity can be questioned considering the fact that it can be easily regulated by law – as opposed to parental rights and religious freedom. The irreversibility of the procedure alone does not render the act an unconstitutional infringement upon bodily integrity: most parental decisions are irreversible. The most important of all, since a prohibition of circumcision constitute a restriction of parental right, the state has to prove that this act harms the child to such a great extent that it overrides the

precedence of the parent's right to define the best interest of the child. This proof has not been put forward (Günzel, 2013, p. 4).

3.2.3 Philosophical support

3.2.3.1 Unwanted interference?

In the previous section the high ranking of the child's right to bodily integrity opposed to the parental rights by the Regional Court, has been criticized. Another point, that has not been stressed yet, is the fact that the right to bodily integrity exists to protect people against unwanted interference to their body. I wonder however, whether NTUBC should be regarded as an *unwanted* interference?

Parents have the right to raise their children according to their ideal. In chapter 2 is argued why parents should have, even though limited and conditional, fundamental rights: because it contributes to the flourishing of the parent. Religion is also an ideal with specific norms and rituals. Since in Judaism and Islam circumcision is obliged or recommended, most parents circumcise their sons. The Regional Court considers circumcision to violate the bodily integrity. This right exists to protect people against unwanted interference to their body. But how many circumcised boys, consider their circumcision as an unwanted interference to their body? Povenmire has argued that there are justified exceptions to overrule the right to freedom of bodily integrity. One exception could be that a violation is needed in order to maintain the well-being of a person, or when a violation is necessary for the general well-being (vaccinations). But he also argues that an exception is allowed when: '*clear and convincing evidence indicates that the minor would have given consent if shown competent to do so*' (Povenmire, 1998, p. 102). What are the implications of the fact that most boys do not feel damaged by their circumcision and some, or even most, are happy with their religious covenant? Isn't it true that most Jewish children, stay Jewish and most Islamic children, stay Islamic? Of course there is a small group of children, who will actively choose for another religion or no religion, but still this does not mean that their circumcision is unwanted. They can consider it to be a cultural and religious symbol of their parents, carried with pride. If, in the case of NTUBC, one appeals to the right to bodily integrity and the fact that this right exist to protect people against unwanted interference, practice shows that for most boys NTUBC is not unwanted interference. Then why should the state protect children against

NTUBC? A prohibition of circumcision will constitute a restriction of parental right, therefore the state has to prove that NTUBC harms the child to such a great extent that it overrides the precedence of the parent's right to define the best interest of the child (Günzel, 2013, p. 4). A small group of boys indeed feel damaged by their circumcision, being permanently marked for life, but if the practice contributes to the flourishing of the whole family or a whole religious community, should not in that case a ban on NTUBC in the Netherlands be considered as an expression of our own hegemonic ethical vision of the good? Would a legal ban not have as result a greater loss for society as a whole? A ban could, on the other side, be considered as a victory for children's and individual rights. A consequence could be that the Jewish and Islamic community feels of no longer being able to profess their religion in our liberal society. One can wonder whether society is the total sum of all individuals taken together, or does a society exist in different groups? One could say that The Netherlands most likely is a combination of individuals and religious groups together. Should not therefore the state exempt religious claims of conscience from the burden of its law? In order to answer this question, the concept of (religious) toleration will be investigated.

3.2.3.2 Principled toleration

In the Netherlands multiple religions and cultures live next to each other. Religious toleration has therefore long been the paradigm of the liberal ideal of toleration. This makes the Netherlands not only a liberal democratic society; it is a multicultural society as well. Bernard Williams formulated principled toleration the following:

“A practice of toleration means only that one group as a matter of fact puts up with the existence of the other, differing, group [...] One possible basis of such an attitude [...] is a virtue of toleration, which emphasizes the moral good involved in putting up with beliefs one finds offensive [...] If there is to be a question of toleration, it is necessary that there should be some belief or practice or way of life that one group thinks (however fanatically or unreasonably) wrong, mistaken or undesirably.”

(Williams, 1996)

This means that for there to be a practice of toleration one group must deem another differing group's belief or practices 'wrong, mistaken or undesirable' and yet put up with them nonetheless. That means that toleration does not exist where one group is simply indifferent

to another. One group should actively concern itself with what the other is doing (Leiter, 2013, p. 8; Forst, 2003). Obviously in many cases, the attitude of indifference is morally preferable to that of toleration, if we consider for example the sexual orientation of one's neighbours.

Much that has the appearance of principled toleration is nothing more than pragmatic. One group would gladly stamp out the others' belief and practices, but has reconciled itself to the practical reality that it cannot get away with it. The need for tolerance suddenly becomes clear when religious groups become a minority and are not able to convince or suppress other religions or opinions. Mill described this phenomenon according the next example:

“Those who first broke the yoke of what called itself the Universal Church, were in general as little willing to permit difference of religious opinion as that church itself. But when the heat of the conflict was over, without giving a complete victory to any party, and each church or sect was reduced to limit its hopes retaining possession of the ground it already occupied; minorities, seeing that they had no chance of becoming majorities, were under the necessity of pleading to those whom they could not convert, for permission to differ. ” (Mill, 2002, p. 7)

To an outsider this might look like toleration, one group seems to put up with the other, but it does not embody that what Williams called a *virtue* of tolerance (Leiter, 2013, p. 9). You can only speak of genuine 'principled toleration' in cases where one group actively disapproves of what another group believes or does, where that dominant group has the means at its disposal to effectively and reliably change or end the disfavoured group's beliefs or practices, and yet still the dominant group acknowledges that there are moral or epistemic reasons to permit the disfavoured group to keep on believing and doing what it does (Leiter, 2013, p. 13).

The strictly moral arguments for toleration claim either that there is a right to the liberty to hold the beliefs and engage in the practices of which toleration is required, or that toleration of those beliefs and practices is essential to the realization of morally important goods. The moral arguments divide, predictably enough, into deontological and utilitarian forms. John Rawls gives in *A theory of justice* a deontological argument for toleration. Toleration would follow from the principle of equal liberty. Rawls argues that if rational people would be

behind a veil of ignorance opt for toleration, if they were deprived of the kind of information about their future place in society, before choosing what they think are the basic principles of justice.

“If the parties don’t know how their religious or moral view fares in their society, whether, for example, it is in the majority or minority [...] [E]qual liberty of conscience is the only principle that the persons in the original position can acknowledge. They cannot take chances with their liberty by permitting the dominant religious or moral doctrine to persecute or to suppress others if it wishes. Even granting ... that it is more probable than not one will turn out to belong to the majority (if a majority exists), to gamble this way would show that one did not take one’s religious or moral convictions seriously, or highly value the liberty to examine one’s belief.”

The utilitarian arguments come in many different varieties, but all share the core idea it maximizes human well-being to protect liberty of conscience against infringement by the state. Mill’s work *On Liberty* draws upon the same principles, but uses an epistemic argument as well. He emphasizes on the contribution that tolerance makes to knowledge. The reason why liberty of conscience promotes human well-being rests on a simple idea: namely, that being able to choose what to believe makes for a better life, conversely, make life worse (Leiter, 2013, pp. 17-18).

As already shortly mentioned, the scope of tolerance varies. The degrees, practices and limits of tolerance are dependent of the context. Tolerance towards attitudes, thoughts and beliefs of others should be maximal (Dekkers, 2006). Moral truths however, supply the ground for a wider scope of toleration, one that encompasses practices, not just beliefs (Leiter, 2013, p. 20). The worth of different modes of life should be proved practically through experiments in living. It is not enough to hear about differences in the way of living, one should empirically experience differences. However, all arguments for toleration recognize side-constraints on the scope of toleration (Leiter, 2013, p. 21).

For the Rawlsian the limitation of liberty is justified only when it is necessary for liberty itself, to prevent an invasion of freedom that would be still worse, so liberty of conscience is to be limited only when there is a reasonable expectation that not doing so will damage the public order, which government ought to maintain (Leiter, 2013, p. 22). For the utilitarian, by

contrast, the side constraints typically rest on some form of the harm principle formulated by Mill. The harm principle entails justification of restricting liberty to engage in actions that cause harm or threaten imminent harm to others. On either theoretical approach, the liberty interests or well-being of others in the community sets the limits of tolerance. These limits apply not to beliefs of others, but to practices that emanate from those beliefs. When everything is tolerated, also wrong practices will be tolerated. One you acts this way, or precisely not acts, will tolerate injustice and oppression. At this point, tolerance will become immoral (Dekkers, 2006, p. 188).

3.2.3.3 Religion

At this point the question arises what the principled reasons are – if there are any – for the state to exempt religious claims of conscience from the burden of its law? Brian Leiter tried to discover the special features of religion that bears for religious toleration. The first two features that single out religious states of mind of other states of mind is that for all religions there are at least some beliefs central to the religion that:

“(1) Issue in categorical demands on action - that is, demands must be satisfied no matter what an individual’s antecedent desires and no matter what incentives or disincentives the world offers up; and

(2) do not answer ultimately (or at limit) to evidence and reasons, as these are understood in other domains concerned with knowledge of the world. Religious beliefs, in virtue of being based on ‘faith’, are insulated from ordinary standards of evidence and rational justification, the ones we employ in both common sense and in science.” (Leiter, 2013, p. 34)

The first categorical feature has to do with the fact that believer experience religious commands as categorical. The second feature of insulation has to do with the fact that religious beliefs are purportedly supported by evidence, but they are still insulated from revision in light of evidence (Leiter, 2013, p. 40). The third feature Leiter comes up with is the fact that:

(3) religious beliefs involve, explicitly or implicitly, a metaphysics of ultimate reality. (Leiter, 2013, p. 47)

This claim seems to be a variant of the second distinctive feature of religion, but it adds to the second claim that it not only is insulated in the sense that it doesn't answer to empirical evidence, but also in the sense that it does not even aspire to answer to such evidence. The fourth feature of religion concerns existential consolation, namely the fact that there are some beliefs in religion that:

(4) render intelligible and tolerable the basic existential facts about human life, such as suffering and death. (Leiter, 2013, p. 52)

If these claims about religion are right, would that constitute any reason to think that principled toleration demands tolerance of those beliefs in particular? As already discussed, there are compelling reasons for the state to respect liberty of conscience, but there is no apparent reason why states should carve out special protections that encourage individuals to structure their lives around categorical demands that are insulated from the standard of evidence and reasoning we everywhere else expect to constitute constraints on judgements and actions. Singling out religion for toleration would be equivalent to the idea that we ought to encourage the conjunction of categorical demands and its basis in epistemic indifference. If matters of religious conscience deserve toleration, then they do so because they involve matters of conscience, not matters of religion (Leiter, 2013, p. 64).

One could even wonder whether these distinguishable features of religious beliefs, being both categorical and insulated from evidence, should not be considered as reasons to worry that religious beliefs are far more likely to cause harm and infringe of liberty to others? And might this not be the reason that there are special reasons not to tolerate religion? In the next subsection the question will be elaborated why a liberal should forbid the practice of NTUBC.

3.3 Why should a liberal society forbid the practice of NTUBC?

3.3.1 Introduction

As earlier stated liberalism takes the individual as the primary object of moral concern. Individuals should therefore have the right to control their own lives, rights that may not be overridden except when they conflict with others, or to avert great disaster. Variants of

liberalism differ on the question what these rights exactly are, or when they can be overridden, but the basic idea is undisputed (Brighouse & Swift, 2006, p. 80). The German Regional Court is of the opinion that NTUBC is a form of conflicting bodily harm on boys too young to consent and that it contravenes the right to choose religion in later life. The court weighed up three articles from the basic law; the right of the parents, the freedom of religious practice and the right of the child to bodily integrity, before coming to the conclusion that the procedure was not in the interest of the child. Because they consider NTUBC to harm a child, physically and in its future right to choose religion in later life (hence in its prospective autonomy), they think the rights of parents should not be able to overrule these rights of the child. Harm is indeed a general accepted principle that restricts individual freedom when conflicting with others' individual freedom. The philosophical background of this principle will be elaborated in the next section.

3.3.2 Philosophical background: individual rights and their restriction

Often it is thought that toleration of the state towards individuals should end when practices harm non-consenting others (Brighouse & Swift, 2006, p. 83). The German Court considered NTUBC to be a practice, which harms non-consenting others. The question whether NTUBC should be considered as bodily harm has already been elaborated in the first chapter, which concerned the medical ethical perspective of NTUBC. The KNMG considered circumcision as harm to a child; the AAP thinks the benefits slightly outweigh the risk and thinks it should remain a family matter. Jewish and Islamic parents might from their religious point of view even consider *not* circumcising as doing harm to their child, in the paragraph about bodily integrity was explained why. Opponents of circumcision often connect the concept of bodily integrity with wholeness and use this as argument to oppose to circumcision as being a violation of bodily integrity. Bodily integrity is however a central notion both in Judaism as Islam, but they do not consider circumcision to violate the integrity of the body. Male circumcision is considered to improve the human body. The foreskin is regarded as an unnecessary body part and its removal is needed in order for the body to get its ideal form. In this way one could even think circumcision to contribute to the integrity of the body (Dekkers, 2005).

The right to bodily integrity is formulated in article 11 of the Dutch law under the name of 'Inviolability of the body'. This right entails that everybody is allowed to determine what

happens with his or her body, which medical treatments will be conducted and which medicines will be taken (Article 11, Dutch basic law). NTUBC can be considered, like the German court did, as a practice, which directly harms the child in this right. According to the court NTUBC doesn't only harm the child in the right to bodily integrity, but in the right to choose religion in later life as well. Therefore the case of NTUBC calls for a restriction of parental rights.

John Stuart Mill gives the reason why in a liberal society freedom is restricted when it has as result harm to others. In his book *On liberty* he elaborates different important questions concerning the authority of society over the individual. What is the rightful limit to sovereignty of the individual over himself? Where does the authority of society begin? How much of human life should be assigned to individuality, and how much to society? Mill first argues why society should not interfere with the individual when it 'purely' concerns personal conduct: "But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it." (Mill, 2002, p. 64) The opinion of the majority should not be imposed as a law on the minority – on questions of self-regarding conduct – because this opinion is quite as likely to be wrong as right. Different people have different preferences and everyone should therefore have the freedom to decide on questions of self-regarding conduct (Mill, pp. 70-71, 2002). People should have the freedom to live their life according to their own conception of the good, because we can never know the truth about what the good life is. Mill considers the truth as an important good. Despite Mill's robust rationale for individual freedom of thought and speech, he does not think there is an unqualified right to liberty. The limit to sovereignty of the individual over himself is the following: "As soon as any part of a person's conduct affects prejudicially the interest of others, society has jurisdiction over it, (and the question whether the general welfare will or will not be promoted by interfering with it, becomes open for discussion.)" (Mill, 2002, pp. 63-64) According to Mill the only legitimate reason for state interfering in individual liberty is 'damage, or the probability of damage, to the interest of others' (Mill, 2002, p. 79).

The harm principle entails justification of restricting liberty to engage in actions that cause harm or threaten imminent harm to others. The state is bound to maintain a vigilant control over the exercise of any power over others, because of the fact that the state should respect the liberty of individuals concerning conduct regarding the self. Mill however states about

this obligation, that it can almost entirely be disregarded in the case of family relations. Family relations have a direct influence on human happiness, more important than all the others taken together. The almost despotic power of husbands over wives needs not to be enlarged upon here. “Because nothing more is needed for the complete removal of the evil, than that wives should have the same rights, and receive the same protection of law in the same manner, as all other persons; and because, on this subject, the defenders of established injustice do not avail themselves of the plea of liberty, but stand forth openly as the champions of power.” (Mill, 2002, p. 88) Mill states that exactly in the case of children, very often, misapplied notions of liberty are the real obstacles to the fulfilment by the state of its duties. “One would almost think that a man’s children were supposed to be literally, and not metaphorically, a part of himself, so jealous is opinion of the smallest interference of law with his absolute and exclusive control over them.” (Mill, 2002, p. 89)

If someone would argue that NTUBC is an expression of the freedom of religion of the parents, Mill would argue that this would be a misapplied notion of freedom. Children are not literally a part of their parents. Parents have, and also should have, freedom of consciousness and freedom of religion. But this applies to their children as well. The freedom of religion of the parents should end where the rights of their children begin. The state should be maximally tolerant towards the freedom of conscience, hence the freedom of religion of the parents. To make an appeal to one’s right, in this case the freedom of religion, always presupposes some responsibility towards others. Reformulated in legal terms, a rights bearer may not abuse his rights in order to make an irreversible religious mark on their child. The state cannot, and should not, be maximally tolerant towards practices and actions. There is no need for the state to facilitate the almost despotic power parents have over their children. The state has the duty to secure and protect children’s right to bodily integrity. Mill would therefore agree with Povenmire (1998) that normally the absence of consent is all that is required in the case of competent adults, to preserve an individual’s bodily integrity and this should also be the case with children (Povenmire, 1998, p. 102). The state should also secure children’s right to choose their own religion in later life. Children namely have the capacity to become competent adults and that is also the reason why in liberal societies the development of children in their personal and moral autonomy is a fundamental value and why parents should have this development as a major aim in the upbringing of their children (McLaughin, 1994, p. 171).

Even if most Western democratic states no longer endorse a distinctively religious vision. No state is completely neutral. Every state stands for and enacts a vision of the good. That the good life is necessarily a freely chosen one in which a person develops his unique capacities as part of a plan of life is probably the dominant liberal ethic of the past century (Gaus et al., 2011). In a liberal society much value is attached to individual freedom and to the individual choice to live your life according your own conception of the good. Hence, much value is attached to the concept of consent and to freedom of religion. From this point of view a ban on NTUBC seems reasonable, since an irreversible religious mark is made on the child without its consent. Parents ask physicians to physically mark their healthy child. When a Hell's Angel goes to a tattoo shop, because he wants his baby son to get the same tattoo he has on his butt, this would not be tolerated in our society. We think that a child should have to opportunity to give consent for such a tattoo. Then why do we in a liberal society tolerate religious people to make an irreversible mark on their child and non-religious people not? For what reasons has religion this special position in society to deviate from our democratic laws? It has already been argued that if matters of religious conscience deserve toleration, then they do so because they involve matters of conscience, not matters of religion (Leiter, 2013, p. 64). NTUBC is therefore hardly morally justifiable. The reason why we still tolerate NTUBC has a practical reason. It is a tradition that has been practiced for almost six thousand years (Rizvi et al., 1999, p. 13). People have grown into the practice. The Moroccan Dutch writer Said El Haji has serious objections to NTUBC but he doesn't think a legal ban on NTUBC is the right way to go. He thinks a ban would only stimulate the need to keep to ritual alive, because bans have an affirmative effect on the shared identity of a group, in this case, Muslims and Jews. A religious perpetuated tradition only changes unseen and over a long period of time, because it concerns a group of people who draw strength from the fact that they are a collective unit. Here is a rationalization for compulsively maintaining circumcision: cultivation of group identity. Or as Maimonides in *The Guide to the perplexed* puts it: "A physical sign for unification of the people who believe in the oneness of God and therefore belong together, so that a stranger will not be able to be part of the community as such". In Islam, circumcision is not a religious obligation. Nowhere in the Qur'an is written that boys ought to be circumcised. Yet the social pressure is intense. A Muslim man, who is not circumcised, is not a 'real' Muslim. But is it not callous to base a group's identity on a tradition of idle hope and unnecessary pain (de Volkrant, October 6, 2012)?

3.4 Conclusion

The starting point of this chapter was the ruling of Regional Court of Cologne. The court ruled that NTUBC is a form of conflicting bodily harm on boys too young to consent and that it contravenes the right to choose religion in later life. The right of the parents therefore should not be able to outweigh the child's right to bodily integrity. This ruling is however, not undisputed. It is argued that parental rights and freedom of religious practice are more important than the right to bodily integrity of the child, since the right to bodily integrity is easily regulated by law, as opposed to parental rights and freedom of religion. And if the right to bodily integrity exists to protect people against unwanted interference, practice shows that NTUBC is most often not an unwanted interference, hence why should the practice be banned? After all, religious toleration has long been the paradigm of the liberal ideal of toleration. But an investigation of the concept of toleration showed that all arguments for toleration recognize side-constraints on the scope of toleration and that matters of religious conscience deserve toleration, but only because it concerns matters of conscience, not matters of religion. In liberal societies individuals are considered the primary objects of moral concerns. Restriction of individual rights, hence the only legitimate reason for state interference is damage, or the probability of damage, to the interest of others. I therefore have to conclude that the freedom of religion of the parents should not include the right to circumcise their children. To argue that the practice of NTUBC is a form of freedom of religion would be a misapplied notion of freedom. Children are right bearers as well and NTUBC clearly violates the right to bodily integrity of the child. A legal ban on NTUBC would probably not be a good idea since bans have an affirmative effect on the shared identity of a group, in this case, Muslims and Jews. A ban will therefore only stimulate the need to keep the ritual alive. Elaboration of the practice of NTUBC from a policy perspective shows that there is an almost untenable tension in our society between on the one hand the liberal, multicultural ethics of religious tolerance and on the other hand the liberal ethics of elementary, individual rights.

Conclusion

In this thesis I investigated the practice of underage boy circumcision in The Netherlands. The research question of this thesis was whether non-therapeutic underage boy circumcision (NTUBC) is morally justifiable in a liberal-democratic society like The Netherlands. In order to get a comprehensive answer to this question, the practice of NTUBC was considered from three different perspectives: a medical ethical, a parental and a policy perspective.

In the first chapter, which concerns the medical ethical perspective, potential risks and benefits of NTUBC have been elaborated. This is done on the basis of the position papers of the Royal Dutch Medical Organisation (KNMG) and the American Academy of Pediatrics (AAP). The conclusion of this chapter was that it is very hard to methodologically determine the effects of NTUBC. Several benefits are claimed by the AAP like protection against: urinary tract infection (UTI), certain sexual transmitted diseases (STDs), HIV/AIDS acquisition, and penile cancer. Other studies also claim male circumcision to protect women against cervical cancer and chlamydia. The KNMG and a European commentary on the AAP report think that these claimed benefits are weak, questionable, and likely to have little public health relevance in a Western context. The KNMG mainly emphasizes on the risks of NTUBC, which can be divided in different categories: first there is the direct effect of pain that boys feel when they are circumcised without anaesthesia. This effect mainly applies to the Jewish boys that get circumcised, because only this group still gets circumcised without anaesthesia. Subsequently there are the postoperative risks like bleedings and infections. Possible long-term physical effects of NTUBC are bladder and urination problems, and sexual problems. Apart from physical problems, men also contacted the Circumcision Resource Center for psychological complaints due to their circumcision. Because of the conflicting positions of the AAP and the KNMG, I have to conclude that evidence concerning medical risks and benefits of circumcision found in the literature, is often conflicting, culturally biased or inconclusive.

After this conclusion the normative assumptions in the medical ethical debate of proponents and opponents of circumcision were investigated. Opponents of the practice often refer to the concepts of 'bodily integrity' and 'informed consent' when arguing against NTUBC. People who argue against circumcision often connect bodily integrity with the concept of

‘wholeness’. However, Muslim and Jewish people do not consider NTUBC to be a violation of bodily integrity. Male circumcision is considered as a perfection of the human body. I therefore had to conclude that the concept of bodily integrity is an ambiguous notion. After that conclusion the concept of informed consent was elaborated. Informed consent is under normal circumstances considered to be an important notion in modern medical ethics. It is important because it can give reasonable assurance that the patient has not been deceived or coerced. There are cases or circumstances – like life-threatening situations for the patient or the community – which can prevail above consent of the patient, but there is debate on which benefits (not only medical, but social or cultural as well) are morally justified to prevail above consent. NTUBC is a practice in which there is no consent of the child, hence it is coerced. A physician may judge NTUBC morally problematic precisely because of the relation between his conception of bodily integrity and informed consent: to operate on a healthy body without consent. Others will however, argue that the parental right to raise your children is a fundamental right as well. Parents should therefore be considered as authorities over their children and an accepted consequence of this fact is that parents therefore have the right to make decisions regarding their children, which can sometimes greatly influence their lives. This presumption was the main focus of the second chapter: A parental perspective.

In the second chapter the main question was why parents have parental rights and the corresponding question regarding the scope of this right. The parent-child relationship has certain features and being involved in such a relationship can make a crucial contribution to the flourishing of the adult. This however doesn’t mean that parental rights are unconditional and unlimited. They are conditional because parents should ensure their children in certain basic needs and rights. As long as parents secure their children in their basic needs, parents have the right to determine whether the child will attend a church, a mosque or neither. They also have the right to share their enthusiasms with their children, including, their enthusiasm regarding their own particular cultural heritage. But of course there are limits to this right. Liberals think that parents may not legitimately indoctrinate their children, because they assert that children have a fundamental interest in prospective autonomy. At this point the question arises whether the rights of parents to circumcise their children is essential to protect the specific parent-child relationship. This question can also be asked the other way around: would a ban on circumcision be a violation of the intimate parent-child relationship, which could be necessary for the parent (and child) to flourish? Based on the used literature I find it very hard to argue that the right to circumcise your child is necessary to protect the specific

parent-child relationship. The fact that Islamic and Jewish parents attach great value to the practice of circumcision, does not justify the practice. I believe that a ban on NTUBC, like the ban on Female Genital Mutilation, would not enable a parent to have an intimate relationship with his child.

In the third chapter, which concerns the policy perspective regarding NTUBC, the main question regards the weighing of different rights. Are children's liberty rights to an open future more important than their parents' liberty rights to raise them according to their own insights? The regional court of Cologne (Germany) ruled that NTUBC is a form of conflicting bodily harm on boys too young to consent and that it contravenes the right to choose religion in later life. The right of the parents therefore should not be able to outweigh the child's right to bodily integrity. This ruling is however, not undisputed. It is argued that parental rights and freedom of religious practice are more important than the right to bodily integrity of the child, since the right to bodily integrity is easily regulated by law, as opposed to parental rights and freedom of religion. If the right to bodily integrity exists to protect people against unwanted interference, practice shows that NTUBC is most often not considered as an unwanted interference, hence why should the practice be banned? After all, religious toleration has long been the paradigm of the liberal ideal of toleration. However, an investigation of the concept of toleration showed that all arguments for toleration recognize side-constraints on the scope of toleration and that matters of religious conscience deserve toleration, but only because it concerns matters of conscience, not matters of religion. In liberal societies individuals are considered the primary objects of moral concern. Restriction of individual rights, hence the only legitimate reason for state interference, is damage or the probability of damage, to the interest of others. Arguing that NTUBC is a form of freedom of religion would be a misapplied notion of freedom, because children are not literally a part of their parent. Children are right bearers as well. Parental freedom should be restricted when their children's rights are clearly violated.

In this thesis I have argued that NTUBC is not medically ethically justifiable because the procedure does not meet up to the standard of being a preventive health measure and because of the child's inability to give consent at the time of underage circumcision. A vital part of the body is removed without the consent of the child that has to live with the consequences for the rest of his life. After this conclusion I have argued that circumcision should be considered to be outside the scope of parental rights. The right to circumcise your child does

not seem necessary to create an intimate relationship with your child – think of the ban on the female form of circumcision. The fact that parents attach great value to the practice of circumcision does not justify the practice. To argue that the practice of NTUBC is a form of freedom of religion would be a misapplied notion of freedom. Children are not literally a part of their parents. Parents (should) have the right to freedom of consciousness and freedom of religion. But this applies to their children as well. Children are right bearers, just as their parents are. The practice of NTUBC cannot be supported from any of the three perspectives I investigated: a medical ethical, a parental and a policy perspective, I therefore have to conclude that the practice of NTUBC is morally not justifiable. A legal ban on NTUBC could however lead to an affirmative effect on the shared identity of a group, in this case, Muslims and Jews. A ban will therefore only stimulate the need to keep the ritual alive. In this thesis it did not only become clear that the practice of NTUBC is not morally justifiable, but elaboration also shows that there is an almost untenable tension in our society between on the one hand the liberal, multicultural ethics of religious tolerance and on the other hand the liberal ethics of elementary, individual rights.

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