

Circumscribing circumcision: traversing the moral and legal ground around a hidden human rights violation

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Male circumcision is an accepted practice within Australian society, despite the fact that female circumcision is widely reviled in the Western developed world. This article will consider why society and the law treat the circumcision of males and females differently. Analysis will focus upon the circumcision of male children in Australia with reference to the United Kingdom and the United States of America. The similar social history of the practice within these jurisdictions is instructive when critically analysing the Australian context. The discussion will encompass the circumcision of all male children, as the issues of lack of consent and the imposition of a parent's religious and cultural norms upon the child are consistent for all minors, with specific focus on neonatal children where such extreme youth creates additional vulnerability. The absence of domestic law in Australia dealing with the circumcision of male children invites analysis of the protection afforded under international human rights instruments to which Australia is legally bound. This article deconstructs the medical myths that surround the circumcision of male children, and in doing so makes a strong argument for the need to recognise male circumcision of minors as a human rights violation.

Introduction

Attitudes towards the circumcision of children in medical, legal and ethical discourse are sharply polarised, depending on whether the subject is male or female. Prevailing opinion in Western culture denounces female circumcision, yet male circumcision¹ continues unchecked and uncriticised with over 23,000 circumcisions carried out on

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1 Reference to 'male circumcision' for the purposes of this article means the circumcision of male children.

male children in Australia annually (Medicare Australia 2006).² Statutes, international legal instruments and case law condemn and criminalise³ female circumcision. So why do the countries and international bodies which endorse such measures refuse to denounce male circumcision? Both acts involve the irreversible excising of healthy, sensitive genital flesh without consent from the individual, yet non-consensual, non-therapeutic⁴ circumcision of male children is seen as justifiably within the ambit of parental decision making. The majority of literature available focuses on female circumcision, so this article seeks to redress the balance by providing a comprehensive analysis of the circumcision of male children and the influences which maintain its sanctioned status. The literature on female circumcision will be considered if it can inform the discussion of male circumcision, but comparison will not be the focus of this article. The practice of female circumcision has particular characteristics that continue to distinguish it from male circumcision, but there are similarities that allow the discourse of female circumcision to inform analysis within this article. However, the circumcision of male children deserves to be canvassed on its own grounds, not merely because it shares elements with female circumcision. This article will examine the medical issues connected to male circumcision and balance them against the religious and cultural imperatives that drive the practice. This evaluation will then be considered in light of the need to refocus the debate within a children's rights framework.

What is male circumcision?

To consider male circumcision as one consistent act would be erroneous. There are different forms of male circumcision practised, depending upon the social and cultural context. The two forms most widely practised in Western countries are described by Aldeeb Abu-Sahlieh:

- 2 Medicare offers a rebate on male circumcisions in Australia, with 23,985 claims made in 2006: Medicare statistical reporting for item numbers 30653 (children younger than six months), 30656 (children between six months and nine years inclusive), 30659 (children over 10 years when performed by a GP) and 30660 (children over 10 when performed by a specialist). See <www.medicareaustralia.gov.au/providers/health_statistics/statistical_reporting/medicare.htm>.
- 3 In New South Wales, 'female genital mutilation' is criminalised by s 45 of the *Crimes Act 1900* (NSW), with a possible seven year jail sentence.
- 4 In rare circumstances there will be a medical reason for circumcision: balanitis (inflammation of the preputial skin), posthitis (inflammation of the glans penis), phimosis (tightened prepuce, preventing retraction of fully differentiated foreskin), paraphimosis (retention or preputial ring proximal to the coronal sulcus creating tension), localised condyloma acuminata and localised carcinoma (both dermatological conditions). All these conditions occur primarily in adults (Gerharz and Haarmann 2000, 332-33). Non-therapeutic circumcision is primarily performed on neonatal children..

The first type consists of cutting away in part or in totality the skin of the penis [the foreskin or prepuce] that goes beyond the glans.

The second type ... is practiced mainly by the Jews. The circumciser takes firm grip of the foreskin with his left hand ... he clamps a shield on it to protect the glans from injury ... and the foreskin is amputated with one sweep along the shield. This part of the operation is called the *milah*. It reveals the mucous membrane (inner lining of the foreskin), the edge of which is then grasped firmly between the thumbnail and index finger of each hand and is torn down the center as far as the corona. This second part of the operation is called the *periah* ... Its purpose is to split and peel back the mucosal surface of the glans penis. Rabbis introduced *periah* to make restoration of the foreskin more difficult. [Aldeeb Abu-Sahlieh 2001, 9.]⁵

My analysis will focus on male circumcision in Australia, with reference to the UK and the USA. This article examines these jurisdictions because all three share a similar social history in their development of male circumcision as a mainstream practice. The USA is of interest because it has the highest circumcision rate in the Western world, with 64 per cent of newborn males still being circumcised annually (American Academy of Pediatrics 2006, 1846–47).⁶ In Australia it is estimated that 10–15 per cent of neonatal males are circumcised annually (Boyle et al 2000, 301). These statistics demonstrate the importance of re-evaluating male circumcision due to its continuing practice, which this article will address.

Differentiating between female and male circumcision

The distinction drawn by most academics between the shunned practice of female circumcision and the condoned practice of male circumcision is well illustrated by Caroline Bridge's statement:

Ritual circumcision of male infants as religious and cultural practice is lawful in this country ... We allow parents to agree to a relatively minor, albeit irreversible procedure, in the interests of observing religious freedoms in the upbringing of their male children but that freedom stops short at the seriously invasive procedure on young girls. [Bridge 2002, 279.]

5 There are two other types which I will not consider, as they are not widely practiced in Australia. One involves completely peeling the skin off the penis and sometimes the skin off the scrotum and pubis, and the other is subincision (Aldeeb Abu-Sahlieh 2001, 9).

6 Surprisingly, South Korea has higher rates, with approximately 90 per cent of males being circumcised. The anomaly of South Korea's use of the practice is seen to be a result of American trusteeship from 1950 (Pang and Kim 2002, 48–49).

Here Bridge expresses the idea that the human rights violation occasioned by female circumcision is barely comparable to male circumcision, which is characterised instead as a legitimate exercise of the parental right (Fox and Thomson 2005a, 466) to perpetuate religious, cultural or social ideas. The viability of comparison between the two practices has been rejected as 'specious and disingenuous [since] traditional forms of FGM [female genital mutilation] are as different from male circumcision in terms of procedures, physical ramifications and motivations as ear piercing is to a penilectomy' (Coleman 1998, 736). Grounding the debate about male circumcision solely in opposition to the status of female circumcision — and declaring the practice less destructive, and therefore not worthy of discussion — is an artificial and unsatisfactory way of constructing the issue. Many commentators argue that female circumcision is a reprehensible act that causes both physical and psychological damage. There are, however, a range of female circumcision procedures with varying degrees of intrusiveness.⁷ Nevertheless, opponents of female circumcision do not accept the less intrusive forms as an insignificant breach of a victim's human rights, justifiable when balanced with the cultural or religious motivations. Yet that argument is consistently made for male circumcision. Society distinguishes male and female circumcision morally because of perceived justifications and it is these justifications that will be analysed in this article.

The law can only play a partial role in creating change in any democratic society. If societal attitudes are inconsistent with law, particularly law regulating the private sphere, then the efficacy will be minimal. For male circumcision to be considered differently, there must be a fundamental shift in the understanding of those who either continue to actively perpetuate it, or fail to question the practice. To understand how this could be achieved, it is necessary to explore the origins and influences that have rendered the practice mainstream.

Historical origins of male circumcision

Religious male circumcision

The origin of male circumcision is unknown, but is variously estimated as occurring between 2800 BC and 6000 BC (Wallerstein 1983, 87, quoted in Richards 1996, 371;

7 The types of female circumcision are: (1) excision of the prepuce, with or without excision of part or all of the clitoris; (2) excision of the clitoris with partial or total excision of the labia minora; (3) infibulation; and (4) many additional forms of pricking, piercing and incising the clitoris and/or labia and other forms of causing damage to the genitalia (Aldeeb Abu-Sahlieh 2001, 11).

Milos and Macris 1992, 87S). Circumcision in modern society began as a religious rite. Jews and Christians cite Genesis ch 17 as mandating circumcision:

(9) God said to Abraham ... (10) This is my covenant, which you shall keep, between me and you and your offspring after you: Every male among you shall be circumcised. (11) You shall circumcise the flesh of your foreskins ... (12) Throughout your generations every male among you shall be circumcised when he is eight days old ... (14) Any uncircumcised male who is not circumcised in the flesh of his foreskin shall be cut off from his people; he has broken my covenant. [Genesis, ch 17, verses 9–14.]

As Abraham was the father of two sons, Ishmael (the ancestor of the Arabs) and Isaac (the ancestor of the Jews) (Aldeeb Abu-Sahlieh 2001, 23), their circumcision and the covenant that was binding upon them are considered to have commenced the practice by Muslims and Jews.⁸ While recognising that Muslims practice religious male circumcision, this article will only focus upon religious circumcision by Jews and non-religious circumcision. The reason for drawing this distinction is that the ethno-historical influences which have shaped current Australian cultural practice have been predominantly Judeo-Christian in nature.⁹

Jewish ritual circumcision is called a *brit milah*.¹⁰ It is performed by a *mohel*¹¹ when the baby is eight days old, without anaesthetic, in the family home and accompanied by the 'recitation of appropriate liturgy' (Glick 2005, 6–7). Today, many circumcisions of Jewish American boys are done surgically in hospitals, with parents either unaware or unperturbed that in Judaic law the surgery is invalid (Glick 2005, 6–7) since it is not considered to fulfil the child's covenant with God. In these cases an additional ritual circumcision must be carried out, involving prayers and drawing blood from the remnants of the foreskin (Glick 2005, 4). In the absence of the second ritual circumcision, there is no difference between a Jewish boy and a Gentile boy who has been surgically circumcised. This demonstrates that even within the Jewish

8 Although some Christians circumcise their sons for religious reasons, it is not an integral part of the religious identity, or widespread religious practice. Most Christians who circumcise their sons in our current society are influenced by the 'medical' and 'social' reasons, rather than religious motivation. For this reason, they will implicitly be covered in my discussion of such issues, but I will not address the Christian religious approach directly.

9 The increased presence of Muslim culture in Australian society is a more recent phenomenon, and is not as instructive in elucidating the introduction of male circumcision into secular society.

10 This is the Sephardic pronunciation used in Israel. It is alternatively known as a *bris* (covenant), which is Ashkenazic and more common in Australia.

11 Ritual circumciser.

community the act has passed from a religious one to a 'time-honoured ethnic custom divorced from historical or theological context' (Glick 2005, 9).

The way that Judaism is practised has changed considerably since the time of Abraham's covenant with God. Adherence to the cultural rigours of the religion has significantly eroded, with increasingly more Jewish people abandoning traditional practices (Glick 2005, 8).¹² The Council of Jewish Federations 1990 National (American) Jewish Population Survey found that 90 per cent of respondents define being Jewish as being a member of a cultural or ethnic group, rather than religion being the primary factor in determining Jewish identity (Goldman 2004, 172).¹³ The significance of this is that arguments that suggest circumcision 'activates an inner commitment to God and His commandments' (Raul-Friedman 1992, 33, quoted in Goldman 2004, 174) may not resonate with the cultural Jews who continue to circumcise their sons for cultural rather than religious reasons. This is why some academics like Goldman have described male circumcision as an 'embedded cultural practice' (Goldman 2004, 177). To reach such a position, it developed through the force of historical continuity from an act performed without questioning God's will into an equally binding, unquestioned cultural norm, despite losing the original justification.

Academics such as Freeman argue that male circumcision remains so significant that to refuse to circumcise could be harmful (or even an abuse), since it removes the child's ability to participate fully in the religious life of his community, thereby undermining that child's right to cultural heritage and identity (Freeman 1999, 74–77). This position is based on the premise that male circumcision is a cultural prerequisite for full religious and cultural participation in the Jewish and Muslim communities. In practice, circumcision is not integral to the ability to physically participate in religious life and practices, but is connected most strongly to an individual's sense of religious identity, and a community's cultural norms. From the Jewish perspective, Goodman notes that most of the 613 biblical commandments are ignored by Jewish people, leading her to construe the continuing circumcision of baby boys not as the result of a 'sense of divine command' but as a result of 'a fear of not belonging ... the weight of history and the resultant cultural pressure mediated through family are very difficult forces to resist' (Goodman 1999b, 26). These comments contemplate a select few children who may not be circumcised and who may face repercussions within the

12 These include the daily male attendance at synagogue, wearing *tefillin*, Sabbath observance, keeping a kosher diet, fasting on Yom Kippur, Passover dietary regulations, postmenstrual immersion in ritual baths for women (*mikveh*) and the prohibition against intermarriage.

13 United Jewish Communities sponsored a National Jewish Population Survey for 2000–01, but it did not address the issue of identifying as a member of a religious or cultural group.

religious community. However, this article proposes a much broader reconsideration of the practice, from a community perspective. Goodman points out that 'the greatest fear of Jewish parents, that their son will be ostracised from the community if he is not circumcised, turns out to be a circular, self-perpetuating argument, only true so long as everyone believes it' (Goodman 1999b, 26). Opponents of male circumcision, aware of this entrenched belief system and pattern of behaviour, approach the issue with facts, research and evidence, to help break down the cycle and expose the modern reality of the practice. In doing so, it is sought to replace the idea that a few may need to be protected from the psychological harm of not being circumcised, with the understanding that the many who are circumcised need to be protected from physical, psychological and sexual harm, in addition to a potential violation of human rights. Acknowledging the true effects of male circumcision as understood in the 21st century may help the religious communities to embrace an alternative approach to male circumcision in the way that many other traditional practices have been reconsidered for modern life.

Non-religious male circumcision

The development of circumcision as a non-religious mainstream practice can be traced to the 1800s. Due to the rudimentary medical understanding of human physiology at the time, the practice of circumcision grew as a remedy for a litany of problems, including 'alcoholism, epilepsy, gout ... curvature of the spine, headache ... paralysis, malnutrition ... and clubfoot ... mental retardation; promiscuity, syphilis and cancer' (Miller 2002, 527). The most important health benefit claimed of circumcision was its perceived efficacy at treating masturbation (Hutchinson 1890–91, 268, quoted in Miller 2002, 527), which at the time was an accepted cause of degeneracy and insanity (Fox and Thomson 2005a, 464). The puritanical views of the Victorian era fomented a moral panic surrounding masturbation, such that the 'discovery' of circumcision as a remedy for this social ill 'managed cultural anxieties' (Fox and Thomson 2005a, 464). This began a widespread tendency to circumcise young boys, which progressed to circumcising neonates as a prophylactic, due to the pain of the procedure, frequent complications and unpleasant recovery period (Miller 2002, 529). The additional 'benefits' of circumcising newborns perceived by physicians included the belief that infants did not feel pain; that infants could not voice their objections; and that although infants were more likely to move around than adults, they could be easily restrained by being strapped to the table (Miller 2002, 530).¹⁴

14 It is also widely reported in the literature of the time that doctors continued to propagate the practice due to the steady flow of income that it provided, and the ease with which parents could be convinced that circumcision would be in the best interests of their child (Gollaher 2000, 105).

It can be seen that in attempting to curb masturbation, the origin of non-religious male circumcision rested primarily in the suppression of male sexuality. This was expressed by writers of the time, with Dr Kellogg's explication typifying the approach taken:

A remedy [for masturbation] which is almost always successful in small boys is circumcision ... The operation should be performed by a surgeon without administering an anaesthetic, as the pain attending the operation will have a salutary effect upon the mind, especially if it be connected with the idea of punishment. [Kellogg 1888, 295.]¹⁵

This intention to hurt boys, and hinder their personal sexual pleasure, is comparable to objections made about the purpose of female circumcision, which often aims to 'tame women, and reduce their sexual desire' (Aldeeb Abu-Sahlieh 2001, 9). But as fear about the free expression of sexuality in Western society receded, the true history of this practice became hidden.

Support for male circumcision in the 21st century

A multitude of claims are still made today to promote routine circumcision. Lack of pain, minimal risk, absence of harm, no ill-effect on pleasure and/or function of the penis, and 'benefits' from circumcision (Boyle et al 2000, 302) are all common discursal arguments. When these claims fail, the only response that is left is that it is justifiable because religious and cultural benefits outweigh any medical risks and consequences. In order to evaluate the practice of male circumcision, this article will use as its yardstick the test derived from the literature on female circumcision. That test is appropriate because of the similar matrix of factors which inform the debate on both issues, which this article briefly canvasses. The test specifically requires that one examine the medical arguments about circumcision, and balance the evidence of harm against religious and cultural arguments.

Cleanliness and hygiene

In the late 19th century, it was widely believed that an uncircumcised penis led to infection, with suggestions 'in favour of circumcision as a sanitary measure and as a prophylactic against infection with venereal disease' (Wolbarst 1914, 95).¹⁶ The foreskin was continually characterised negatively, a tendency which coincided with a 'social move that saw cleanliness identified with good morals and stigmatised the

15 See also Money 1887, 421; Johnson 1860, 344-45.

16 See also Freeland 1900, 1870.

uncircumcised as not only unclean but — by association — of questionable morals' (Szasz 1996, 137–48, quoted in Fox and Thomson 2005a, 464). It was at this time that the religious and non-religious justifications for circumcision began to intersect, as the identification of uncircumcised people as unclean and impure had always been a part of Jewish rhetoric (Aldeeb Abu-Sahlieh 2001, 27).¹⁷

Even in the present day, hygiene remains one of the most common reasons given for circumcising boys (Haberfield 1997, 95; Aldeeb Abu-Sahlieh 2001, 173). In the late 19th century, when the connection between uncircumcised penises and infection was made, it was acceptable for people to wash infrequently in the absence of easily accessible running water. It is therefore understandable that, faced with poor sanitation, the view developed that uncircumcised penises were more vulnerable to infection. Freeland saw this vulnerability to be because the space between the prepuce and glans provided an 'ideal place for the implantation and multiplication of bacteria of all kinds, the pent-up secretions furnishing them with an efficient nutrient medium in which to grow' (Freeland 1900, 1870). But as the norms surrounding washing have since changed, it seems a drastic step to choose to amputate part of a child's body rather than teach him the basic hygiene required to avoid infection under the foreskin. As Ritter expressively points out:

It's an insult to presume that a child who would grow up to trim his fingernails, blow his nose ... and clean his anus would be too stupid to learn how to retract the foreskin and wash his glans penis, a procedure no more difficult ... than washing a finger. [Ritter 1992, 8, quoted in Aldeeb Abu-Sahlieh 2001, 173.]

Claims of medical benefits

Although constraints of space prevent a full explication of the research into the medical benefits claimed, a brief examination of the main assertions is appropriate. Modern claims about the prophylactic effect of circumcision have included prevention of penile cancer, cervical cancer in the partner, urinary tract infections, sexually transmitted diseases and, most recently, HIV/AIDS. But since the inception of the medical benefits discourse in the 1800s, advances in medical research have discounted most of the diseases circumcision was thought to cure.¹⁸ The balance of research on each issue is against circumcision having a causal prophylactic effect,

17 An example of this attitude is that by reason of their uncleanness, the uncircumcised person is not allowed to celebrate Passover (Exodus, ch 12).

18 The conditions that can still warrant circumcision as treatment are those relating directly to the penis, such as phimosis (see note 4).

leading all major medical associations in Australia, the UK and the USA to make statements rejecting routine male circumcision. The Royal Australasian College of Physicians (RACP) policy statement on circumcision states that '[r]eview of the literature in relation to the risks and benefits shows that there is no evidence of benefit outweighing harm for circumcision as a routine procedure in the neonate' (RACP 2004, 2).

One of the claims made for circumcision is that there is a lower incidence of urinary tract infections (UTI) in circumcised infants. Benatar and Benatar consider the many contradictory studies about the incidence of UTIs and, despite finding the methodology of many of the studies to be flawed, they conclude that uncircumcised boys are 10 times more likely to have a UTI (Benatar and Benatar 2003, 39). This is 'biologically plausible because uropathogens have been shown to bind to the foreskin and then gain access to the renal tract via the ascending route: removal of the foreskin would abolish this mechanism' (RACP 2004, 4). However, this must be understood in the context of the 'absolute incidence of UTI', with only 0.15 per cent of circumcised and 1.5 per cent of uncircumcised male infants developing such an infection (Benatar and Benatar 2003, 40). UTIs are easily diagnosed, and can be conservatively and successfully treated using antibiotics (Boyle et al 2000, 303). With such a low incidence of infection and a simple treatment available, circumcision is not a proportionate preventative procedure.

It has long been argued that circumcision also guards against penile cancer.¹⁹ This form of carcinoma is extremely rare, 'with an annual incidence of approximately 1:100,000 men in developed countries, regardless of whether there is a high or low circumcision rate' (RACP 2004, 5). In 1996 the American Cancer Society made an unequivocal statement requesting the American Academy of Pediatrics to stop promoting routine circumcision as a preventative measure for penile or cervical cancer, due to a lack of evidence connecting the two — highlighting the point that 'fatalities caused by circumcision accidents may approximate the mortality rate from penile cancer' (American Cancer Society 1996). In the prevention of penile cancer, good hygiene is often argued as a more reliable prophylactic method (RACP 2004, 5; QLRC 1993, 24).

One of the most recent benefits claimed of male circumcision has been its capacity to reduce the contraction of HIV/AIDS. On 13 December 2006, the US National

19 In 1932 Dr A Wolbarst wrote an article claiming circumcision made Jews immune to penile cancer, because it was caused by smegma (which he deemed carcinogenic) in the preputial cavity. These claims have since been disproved (Aldeeb Abu-Sahlieh 2001, 188).

Institute of Allergy and Infectious Diseases (NIAID) 'announced an early end to two clinical trials of adult male circumcision because an interim review of trial data revealed that medically performed circumcision significantly reduces a man's risk of acquiring HIV through heterosexual intercourse' (NIAID 2006). The trial in Kenya showed a 53 per cent reduction of HIV acquisition in circumcised men, and the trial in Uganda showed a 48 per cent reduction. The full findings and methodology of these trials are yet to be released for scrutiny by the international medical and scientific community. Despite this, the results have prompted the World Health Organisation and UNAIDS to announce that they will examine the trial results and consider the implications for sub-Saharan Africa, with a detailed policy position on male circumcision to follow (UNAIDS 2006). However, in the context of the present discussion, these findings do not support routine neonatal circumcision in Australia. Significantly, all participants in the African trials were adults and volunteered for the circumcision, as opposed to neonates with no capacity for consent. For the prevention of HIV/AIDS transmitted through sexual intercourse, circumcision can be delayed until each individual can choose to consent to the procedure (before becoming sexually active). In addition, the RACP position statement makes the point that 'while there is some evidence, particularly from sub-Saharan Africa, that male circumcision reduces the risk of acquisition of HIV, evidence is conflicting and would not justify an argument in favour of universal neonatal circumcision in countries with a low prevalence of HIV' (RACP 2004, 1). In a country like Australia, the low incidence of HIV and the accessibility of contraception support the RACP stance. UNAIDS also notes that 'male circumcision should never replace other known effective prevention methods' (UNAIDS 2006) — particularly considering that although the trials show a reduction in HIV infection, they still present a 47–51 per cent infection rate, which mandates continuing safe sex practices.

Opposition to male circumcision

Medical harm

For some time there has been a misapprehension that circumcision only had medical benefits and did not cause any damage to the child. In addition to recognising the pain and risks inherent in the surgery, there is now extensive research to say authoritatively that there will always be permanent damage to the child.

Pain

A compelling argument against circumcision is that the procedure has most commonly been carried out without anaesthesia (RACP 2004, 6). This was originally

based on the belief that infants do not feel pain, a fallacy perpetuated by rabbis from Maimonides in the 12th century to *mohel* Romi Cohn, who claims the procedure is 'absolutely painless, for Jewish law is careful not to cause trauma to the child' (Goldman 1999, 98). In a secular context, as recently as 1994 Weiss and Weiss declared that:

... the concern of pain in the procedure seems little justified in the neonate ... Current studies point to the poorly organized nociceptive reflexes in the newborn. This finding suggests no absolute need for anesthesia in infants before the tenth postnatal day. [Weiss and Weiss 1994, 729.]

This is a curious conclusion, given that Anand and Hickey's seminal paper (1987) on the effect of pain on the neonate and fetus had been published some years prior to Weiss and Weiss's claim, and has since been followed by extensive corroborating research.²⁰ Anand and Hickey found that the:

... pain pathways as well as cortical and subcortical centers necessary for pain perception are well developed late in gestation, and the neurochemical systems now known to be associated with pain transmission and modulation are intact and functional. [Anand and Hickey 1987, 1326.]²¹

The reactions of newborns suggest integrated emotional and behavioural responses to pain, which are retained in the memory long enough to modify subsequent behaviour patterns (Anand and Hickey 1987, 1326).

In addition to the medical myth that infants do not feel pain, the use of anaesthetic does not prevent continuing trauma after the procedure. McDonald raises the concern that, despite the use of anaesthetic, the child will continue to experience extended and continuous pain in the weeks after the procedure (McDonald 2004, 245).²² For neonatal patients, 'the removal of the prepuce exposes the glans to

20 Examples of such research include Williamson and Evans 1986, 412; Dixon et al 1984, 246; Taddio et al 1997.

21 This claim has been validated by research showing that the baby's blood oxygen level decreases; his heart rate, respiratory rate, blood pressure and stress measures increase dramatically; he may also completely dissociate, a response that is similar to post-traumatic stress disorder (Van Howe et al 1999, 68).

22 She points to the 'pain of having to forcibly break the synechia (which fuses the foreskin to the glans in boys under the age of about three). This results in the glans being "skinned alive" or flayed so that the surface is left raw, bleeding and frequently pitted. The second is the transformation of the glans from an internal, moist mucous membrane organ to one that is suddenly dry and external' (McDonald 2004, 245).

ammoniacal substances present in urine-soaked nappies', which can lead to irritation and injury of the external urethral meatus (Gerharz and Haarmann 2000, 335).

That circumcision has continued on unanaesthetised babies, and will certainly continue where a *mohel* performs the circumcision,²³ highlights an important difference in the way we consider male and female circumcision. Female circumcision is also commonly performed without any pain relief, and the victims are old enough to know what is happening (McDonald 2004, 237); they remember the experience, and can recount their pain and trauma (if that is how they perceive it) later. In contrast, the highest percentage of male circumcisions are performed on neonates with no conscious recollection of the experience.²⁴ The absence of firsthand accounts of trauma makes it easier for society to ignore the pain suffered by the male child. This injustice is compounded by the fact that the original reason for non-religious circumcision of neonates rather than older children was precisely because infants could not express objections.²⁵ It is generally accepted that circumcision past early infancy is extremely painful and often a traumatic procedure (Haberfield 1997, 107); coupled with knowledge of infant pain responses, the question must be asked: how can inflicting such pain and trauma upon an infant be justified when he has no capacity to object?

Risks and complications of surgery

The reported complication rate for circumcision is relatively low, at 2–10 per cent (Williams and Kapila 1993, 1232).²⁶ Despite the low rate, 'the chances of these complications being mutilatory, infective or haemorrhagic are high' (Fox and Thomson 2005b, 165). The rate of complications is most significant when balancing the percentage of boys who could reap the benefits of circumcision against the percentage who will develop complications from the procedure. The RACP made this evaluation in their assessment of the prophylactic benefit of circumcision for preventing UTIs, finding that even taking a low estimation of major complications

23 A *mohel* places a cloth with the corner soaked in wine in the child's mouth. This is for ritualistic, not anaesthetic, purposes.

24 When male circumcision is performed on an older child or man, he is physically able to have a general anaesthetic. As a result, the issue of unanaesthetised circumcision is only an issue for neonatal cases.

25 See discussion in this article above, under the heading 'Non-religious male circumcision'.

26 The landmark paper in this area is by Williams and Kapila (1993), who consider the entire spectrum of complications, including sexual and psychological. In the case of *St Margaret's Hospital for Women (Sydney) v McKibbin*, a 19-year-old plaintiff was awarded \$275,000 in damages from loss of the glans of his penis as a result of a negligent neonatal circumcision when he was six days old.

(2 per cent), the incidence of UTIs in neonates is so low that 'of every 1000 infants circumcised, about eight fewer will develop a UTI but 20 will develop a significant complication' (RACP 2004, 4).

Permanent harm to the penis

A significant objection to female circumcision is that it reduces female sexual pleasure, and in some cases makes intercourse painful. In contrast, the prevailing view of male circumcision is that 'it is in no way medically harmful if properly performed' (Brazier 2003, 350). This misconception has been disproved by modern research, but knowledge of a connection between circumcision and loss of sexual pleasure can be traced as far back as Maimonides:

As regards circumcision, I think that one of its objects is to limit sexual intercourse ... The bodily injury caused to the organ is exactly that which is desired; it does not interrupt any vital function ... Circumcision simply counteracts excessive lust; for there is no doubt that circumcision weakens the power of sexual excitement and sometimes lessens the natural enjoyment. [Maimonides (died 1204), ch 49, as quoted in Aldeeb Abu-Sahlieh 2001, 159.]

These sentiments were echoed in a secular context in 1935 by Cockshut, who stated that 'Civilization ... requires chastity, and the glans of the circumcised rapidly assumes a leathery texture less sensitive than skin' (Cockshut 1935, 764). These comments not only reveal the origin of the idea that the procedure caused no harm, but also the context which created such opinions: societies that valued the repression of sexuality. Given the condemnation of women's diminished sexual pleasure as a result of female circumcision, Maimonides's statement that no vital function is interrupted by circumcision can be challenged, because Western societies now construe sexual pleasure to be an essential function and a personal right to which all people are entitled.

A discussion of rights is itself intimately interconnected with the notion of harm. As modern medical research has redefined the function of the prepuce, so it has redrawn the moral boundaries surrounding circumcision. No longer is the prepuce simply extra skin, but it 'contains a rich, complex network of nerves and an abundance of mucocutaneous end organs sensitive to motion, touch, temperature and erogenous stimulation' (Fleiss et al 1998, 365). In contrast, the only part of the body with less fine-touch discrimination than the glans penis is the heel of the foot (Aldeeb Abu-Sahlieh 2001, 160). The innervation of the prepuce is highlighted by all studies,²⁷

27 For examples, see Taylor et al 1996; Cold and Taylor 1999.

with similar nerve endings to fingertips and lips (Taylor et al 1996, 294). The removal of this 'highly sensitive' (Taylor et al 1996, 294) skin by circumcision causes the drying and keratinisation (hardening) of the exposed glans, 'further desensitising the penis, with progressive lifelong loss of sensation' (Boyle et al 2000, 304).

The prepuce also has an important function for facilitating sexual enjoyment. 'The double layered prepuce provides the skin necessary to accommodate the expanded erect organ and to allow the penile skin to slide freely, smoothly and pleurably over the shaft and glans' (Fleiss et al 1998, 365).²⁸ When the prepuce is removed during circumcision, the remaining skin is immobilised, preventing this important sexual function. Fleiss et al found that 'the loss of preputial mobility, primary sensory structures, orgasm triggering nerve endings, and the inevitable desensitisation of the glans may necessitate more vigorous and prolonged thrusting to achieve orgasm' (Fleiss et al 1998, 365). The effect of these medical findings can be understood through Falliers's statement: 'The fundamental biological sex act becomes, for the circumcised male, simply satisfaction of an urge and not the refined sensory experience that it was meant to be' (Falliers 1970, 2194).

Because male circumcision does not prevent the penis from becoming erect, it was considered to have no effect on sexual intercourse. The misconception that 'in male circumcision no parts of the male sex organs are being mutilated, only the foreskin' (Assad 1996, 14, quoted in Bulterman et al 1998, note 44) has been refuted by evidence which shows the foreskin is a part of the 'male sex organ'. The aforementioned research demonstrates that male circumcision irreversibly damages the intricate anatomy and function of the prepuce and its central role in sexual fulfilment. This invites comparison with female circumcision. Except in cases of infibulation, female circumcision does not hinder the capacity for women to physically have intercourse, but damage to, or removal of, the clitoris certainly inhibits sexual pleasure. This damage is deemed integral to the matrix of reasons which condemn female circumcision (McDonald 2004, 238), and encourages the conclusion that equivalent damage to males should be taken seriously as a harmful consequence of circumcision.

Empirical research into the effect of circumcision upon sexual pleasure is only appropriate in the demographic of uncircumcised men who had been sexually active, and then later circumcised. As this is a small percentage of circumcised men, the accumulation of research on this point is in its early stages. A study by Dr George

28 This function enables the penis to slip in and out of the vagina non-abrasively inside its own sheath of self-lubricating, movable skin, stimulating the sexual partner by moving pressure rather than friction alone (Fleiss et al 1998, 365).

Denniston in America found that the majority of respondents felt that intercourse was less enjoyable after circumcision (Denniston 2004, 46). Recent research from South Korea also sheds light on the sexual repercussions of circumcision. In South Korea, circumcision 'has never been predominantly neonatal, most circumcisions were of boys, adolescents and adults', with many men circumcised as adults after having led active sex lives (Kim and Pang 2007, 619–20). As a result, South Korean circumcised men provide an excellent sample population for research on this point. From a survey of both circumcised and uncircumcised men, Kim and Pang found that 'there were no differences in sexual drive, erection and ejaculation but circumcised men reported decreased masturbatory pleasure and sexual enjoyment', with the authors speculating that this reduction in sexual function is due to the loss of nerve endings (Kim and Pang 2007, 621). These findings illustrate how the perception that male circumcision does not affect sexual function has continued to persist. The abilities to achieve an erection and orgasm are the visible signs of sexual function, and experience of pleasure is only known by the individual — with so few men circumcised as adults around the world, it is understandable why the difference in sensation has not been identified publicly until recently. The South Korean research concurs with the findings of Denniston, but there is a continuing need for more research to be done in this area.

Psychological damage

Men's experience or opinions about their circumcision are as varied as the individuals themselves. Factors such as the age at the time of the procedure, religious enculturation and societal norms can affect how much, or even if, men think about their circumcision. However, there is evidence to show that some circumcised men do suffer psychological damage. Some of the effects suffered include diminished self-esteem and body image, sexual deficiencies and self-perception of being deformed or harmed by genital mutilation, all with associated psychological damage (Boyle et al 2000, 304–05).²⁹ Goldman and Goodman both identify compulsive trauma re-enactment in circumcised men (Goldman 1999, 96; Goodman 1999a, 181) who are either fathers having their sons circumcised, or doctors performing the circumcisions: 'We know that circumcision, and female genital mutilation ... are sustained because abuse is self-perpetuating. The victims become the perpetrators, laying their own pain blindly upon their children' (Goodman 1999a, 181). For circumcised men to make the choice not to circumcise their own sons requires accepting that their own circumcision caused them harm — a step that is often

29 Aldeeb Abu-Sahlieh offers a detailed discussion of different aspects of the psychological repercussions of circumcision (2001, 273–83).

difficult to take. There is a gap in the psychological research available, however, because the most frequently circumcised and easily identifiable groups in society — Jewish and Muslim men — are also the less likely to participate in research which critically analyses their religious and cultural practice.

Children's rights

The use of medical evidence is necessary to refute the justifications claimed by proponents of male circumcision. However, simply negating supposed medical benefits continues to work within the 'justification' paradigm created by those proponents. To genuinely analyse male circumcision, it is necessary to step away from the simplistic benefit/harm dichotomy and the religious/cultural rights of parents, to refocus the debate on the rights of children.

Domestic legal status of male circumcision

In contrast to the express prohibition of female circumcision in NSW (s 45 of the *Crimes Act 1900* (NSW)), male circumcision is completely ignored by the law in Australia. It is implicitly legal, as it does not appear in legislation or common law discussion. The only comment on the legality of performing male circumcision is found in the English common law. In the case of *R v Brown*,³⁰ Lord Templeman made an oft-quoted *obiter dicta* statement about instances where consent to deliberately inflicted injury will render the act lawful:

Surgery involves intentional violence resulting in actual or sometimes serious bodily harm but surgery is a lawful activity. Other activities carried on with consent by or on behalf of the injured person have been accepted as lawful notwithstanding that they involve actual bodily harm ... Ritual circumcision, tattooing, ear piercing and violent sports including boxing are lawful activities. [Lord Templeman in *R v Brown*, 1993 at 79a-b.]³¹

Bates makes the pertinent point that the statement is problematic because in the examples given it will usually be 'the participant who consents to the activity, whereas in the case of ritual circumcision, the object of the procedure will not be in a position to protest' (Bates 2001, 69).

30 The case criminalised the infliction of injury during sadomasochistic sexual acts, despite their consensual nature.

31 Despite the *obiter* nature of this statement, it has erroneously been claimed by some commentators as proof of the legality of male circumcision.

The most substantive case to consider male circumcision in common law was in the UK. But the focus of the dispute in *Re J*³² was not the legality of the procedure itself, but the need to have parental consensus. The case examined the conflicting right of the Muslim father to perpetuate his religious practices by having J circumcised, as against the mother's right to resist the procedure on the basis of the 'best interests' of J. In deciding what J's best interests were, the court weighed up the religious motivations of the father against J's secular upbringing and environment, ultimately holding that in the absence of clear religious benefits being demonstrated and with no consensus between the parents, an irreversible surgery like circumcision should not be allowed (Wall J in *Re J*, 1999 at 367–69).³³ In his reasoning, Wall J expressly states that a religious imperative is sufficient to justify circumcision (Wall J in *Re J*, 1999 at 358). His comments reflect the lack of critical analysis of this practice in Western societies.

The question of parental capacity to consent to a non-therapeutic treatment has been considered by the Australian High Court in *Department of Health and Community Services v JWB and SMB (Marion's case)*. The Queensland Law Reform Commission (QLRC) considered male circumcision in light of this case, summarising the *ratio decidendi*:

... if the nature of the proposed treatment is invasive, irreversible and major surgery and for non-therapeutic purposes, then court approval is required before such treatment can proceed. The court will not approve the treatment unless it is necessary and in the young person's best interests. The basis of this attitude is the respect which must be paid to an individual's bodily integrity. [QLRC 1993, 38.]

Haberfield argued that the test from *Marion's case* cannot apply to male circumcision because 'while circumcision is invasive and possibly irreversible, it is far from 'major' surgery' (Haberfield 1997, 110). This is a direct contradiction of the majority of the research already outlined and the position of the QLRC, which described the circumcision procedure as 'invasive, irreversible and major' (QLRC 1993, 39). The QLRC acknowledged that a 'best interests' test may consider religious and cultural beliefs and practices as sufficient justification for the procedure, but expressly stated that 'consent by parents to the procedure being performed may be invalid in light of the common law's restrictions on the ability of parents to consent to non-therapeutic

32 Male circumcision was also considered in *Re S* [2005] 1 FLR 236, which also considered conflicting parental views on circumcision.

33 The decision was upheld on appeal: *Re J* [2000] 1 FCR 307.

treatment of children' (QLRC 1993, 39).³⁴ This indicates that on a strict reading of the common law principle, parents who have their sons circumcised for non-religious reasons are legally unable to consent to that procedure.

International human rights law

Human rights arguments can be constructed to argue both for and against male circumcision. Proponents argue based upon freedom of religious expression, whereas opponents primarily claim that the practice breaches the right to personal integrity (Smith 1998, 473).³⁵ As seen in the English case law, the parents' right to express their religion³⁶ is considered to be a valid, and often decisive, factor in assessing the best interests of the child,³⁷ based upon the proposed initiation of the child into a religious community. Characterisation of circumcision as a valid expression of parental decision making is justified by arguing that it enhances the child's 'culture, religion and family' (Bridge 1999, 5). Although shaped in terms of the 'best interests' of the child, when the child is an infant, or still too young to communicate his wishes, the decision to circumcise for religious reasons imposes the parents' rights upon the child; no regard is had for the child's right to bodily integrity. In the appeal judgment of *Re J*, the court held that 'the newborn does not share the perception of his parents or of the religious community to which the parents belong' (Thorpe LJ in *Re J*, 2000 at 15). With all forms of genital mutilation, parents do not carry out the procedure to hurt or abuse their children intentionally; they conceive of it as actually being in the 'best interests' of the child and therefore do not see it as child abuse (Smith 1998, 481). If the decision is to be made in the best interests of the child (and not the parents), it is a strange intersection of rights to claim that one person's religious freedom can and should be exercised to justify interference with another person's right to bodily integrity (Feldman 1991, 159).

34 The report also noted that, on a strict interpretation, circumcision would be regarded as a criminal act under the Queensland assault provisions.

35 Other rights drawn upon to reject male circumcision include the right not to be subject to 'torture or other cruel, inhumane ... treatment' (Art 37(a) of the United Nations Convention on the Rights of the Child (CRC), protection against 'physical and mental violence ... including sexual abuse' (Art 19) and the safeguard of the survival and development of the child (Art 6(2)). Analysis of these rights is not possible within the confines of this article. For further discussion, see Smith 1998; Boyle et al 2000, 305.

36 In international law, this right is found in Art 18 of the Universal Declaration of Human Rights and in Art 18 of the International Covenant on Civil and Political Rights (ICCPR). Australia has signed and ratified the ICCPR, which means it is binding in international law upon the country.

37 In addition to its use in the case law already discussed, the 'best interests' of the child are a central principle in the CRC, which is legally binding upon Australia.

A more compelling view of the human rights debate sees the issue from a child's rights perspective. International law grants all people basic, inviolable rights, including the right to physical integrity: 'protection against violation of and offences against the body by others, thus from outside, and the right to determine over one's own body, the right to self determination ... It is a right to "freedom"' (Smith 1998, 478).³⁸ With such a fundamental right at risk, if conflict arises with other rights, it is this most basic right to personal integrity that should be respected. It is allowed to be breached under the guise of parental judgment of best interests in the case of male circumcision, but parental authority does not go unchecked in other circumstances where a parent's choice infringes upon the child's bodily integrity.³⁹ Using religion as a justification for this infringement is problematic, because the Article which conveys the right of religious expression to adults curtails that right when needed to 'protect ... health ... or the fundamental rights and freedoms of others' (ICCPR, Art 18.3). This bears directly upon the test extracted from the literature and outlined in this article, which seeks to balance these rights. Article 18.3 supports the conclusion that when conflict arises between the right to religion and personal integrity, personal integrity must prevail.

Circumcision also infringes on the child's right to religious freedom, which is expressly granted in Art 14 of the Convention on the Rights of the Child (CRC). Circumcision is an irreversible sign of commitment to the parents' religion. Although parents have a right to bring up their children 'in conformity with their own convictions' (ICCPR, Art 18.4), to physically mark the child and connect him to a particular faith is a permanent form of religious expression, which fails to honour children's prerogative to freely choose their own beliefs in their lifetime.

The priority given to the parents' choice and exercise of their rights at the behest of the child's rights expresses a social unwillingness to perceive the child as possessing rights independent of the parents' control. Wald suggests that implementing many of the rights claimed for children would involve a substantial altering of the role of the state towards parents and children and the role of parents towards children (Wald 1979, 258). This is supported by O'Donovan's argument that 'the law routinely denies the subjectivity of children, and has structured the parent/child relationship in terms of parental responsibility' (O'Donovan 1993, summarised in Fox and Thomson 2005b, 174). The difficulty with creating a rights discourse for children is

38 This is also entrenched in common law and statute. See Goff LJ, who said 'the fundamental principle, plain and incontestable, is that every person's body is inviolate. It has long been established that any touching of another person, however slight, may amount to a battery' (Goff LJ in *Collins v Wilcock*, 1984 at 1177).

39 The prohibition of physical and sexual abuse is an example of this.

that even as rights holders 'it is difficult for them to assert their rights ... young children are completely and unavoidably dependant on those who have power over their lives' (O'Donovan 1993, 100). These considerations can all be applied with equal force to questions of both female and male circumcision. However, by criminalising the act of female circumcision, the state has stepped in to recognise the female right to bodily integrity as superior to the parents' right to express their religious or cultural beliefs.

The differential legal treatment of male and female circumcision also breaches a central human right that is incorporated into Australian domestic legislation (for example, the *Anti-Discrimination Act 1977* (NSW)) — the right for all people to be treated equally without discrimination. In international law this right is recognised in the CRC in Art 2: 'State parties shall respect and ensure the rights set forth ... to each child ... without discrimination of any kind ... irrespective of race ... sex ... religion ... ethnic or social origin.'⁴⁰ Read with Art 24.3 — 'State parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children' (CRC, Art 24.3) — the lack of protection for males, while protecting females, discriminates on the basis of sex. A common rationalisation for this discriminatory approach is the 'supposedly dramatic contrast in severity between female genital mutilation and male genital mutilation' (Boyle et al 2000, 306); however, 'human rights principles are meant to be absolute, not subject to balancing in the scales of international justice relative to other violations' (Boyle et al 2000, 306).

Construction of Art 24.3 therefore requires two criteria to be fulfilled: that there is a traditional practice; and that it is prejudicial to the health of children. As this article has argued that the legality of non-religious male circumcision is highly questionable,⁴¹ it follows that only religious circumcision could be argued as being in the 'best interests' of the child. As ritual circumcision is based upon either religious belief or cultural practice, both can be construed as 'traditional practices'. In relation to the second criterion, the combination of the pain of the procedure,⁴² possible complications of surgery⁴³ and permanent damage to the male child⁴⁴ are strong arguments for male circumcision to be described as 'prejudicial to the health of the

40 This is further supported by Art 7 of the Universal Declaration of Human Rights, which states: 'All are equal before the law and are entitled without any discrimination to equal protection of the law.'

41 See discussion above under the heading 'Domestic legal status of male circumcision'.

42 See discussion above under the heading 'Pain'.

43 See discussion above under the heading 'Risks and complications of surgery'.

44 See discussion above under the heading 'Permanent harm to the penis'.

child'. Thus, male children are equally owed protection under the CRC from the traditional practice of male circumcision, and a failure to provide that protection can be construed as discriminatory.

What can be justified in the name of religion?

The preceding discussion has shown that contrary to general opinion, the claim of 'medical benefits' of male circumcision cannot be substantiated when balanced with the harm caused by the procedure. This exposes the unique status of male circumcision in our society and legal system: with no other medical procedure are parents free to permit irreversible, non-therapeutic surgery on their child, with the associated risks and harm, and absent medical benefits, solely for cultural or religious reasons. Within international law, a caveat is placed upon completely free expression of religion, but the judgment of what will be an appropriate expression of religion is left to the society interpreting international law. The result is that countries make subjective judgments about other cultural practices from within their own social and cultural context. This 'cultural blindness' has shaped acceptance of various mutilation practices internationally (Boyle et al 2000, 307) — 'while viewed with horror by other cultures, any mutilation is seen by the perpetrating culture as benign at worst' (Boyle et al 2000, 307). This could be rebutted by arguing that the African women who have spoken out in protest over their circumcision do not perceive the practice to be 'benign'. But this diversity of opinion exists in all societies, as evidenced by the existence of people who object to male circumcision although it is socially condoned.

Australian society is most willing to sanction behaviours within our Judeo-Christian paradigm. Religious behaviours under other doctrines like Islam are often viewed with suspicion and hostility, which is connected to its status as the 'other' in our society. It is because of this that it is easier for Australia to criticise and criminalise 'female genital mutilation', as it is construed as a barbaric African or Muslim custom — neither of which is connected to Australia's subjective concept of its societal norms. It is for this same reason that such resistance is met in challenging male circumcision: although there are strong arguments to suggest the practice requires reconsideration, the threat of applying criticism to a practice which is a part of our cultural norms invokes this hypocritical 'cultural blindness'.

Conclusion: an objective test of male circumcision

A final assessment of male circumcision can be informed by the test established in the literature for evaluating female circumcision: a balancing of 'the perceived cultural

and religious benefits' (Bridge 1999, 5) against the 'serious physical and psychological harm to the child' (Bridge 1999, 5). Using this test, male circumcision has been denied a fair evaluation in Australia. This is primarily because of male circumcision's integration as a Western norm, unlike female circumcision.

Using the test above to assess ritual male circumcision leads to the conclusion that the status of the practice in Australia should be re-examined.⁴⁵ Neonatal ritual circumcision is often performed without anaesthetic, causing the child significant pain. It is an 'invasive, irreversible and major' (QLRC 1993, 39) surgery that involves the amputation of healthy, erogenous flesh which has a specialised physiological function — without the consent of the child. The surgery has associated risks and, even in the absence of complications, the effect of every circumcision is permanent impairment of the sensitivity and full sexual function of the penis. With the medical benefits claimed from the procedure too minor to justify the practice, the sole justification is religious or cultural practice. But as discussed, 'simply because a practice is culturally valued does not mean that it is morally acceptable. Sometimes a culture treats people in such harmful ways that these people's rights are violated' (Benatar and Benatar 2003, 43).

Balanced against these factors is the significance of circumcision in Jewish culture. Through the passage of time, religious practices evolve, which can be seen in the move from religious observance of Judaism to cultural identification with being Jewish. This includes the change from a literal interpretation of religious texts to an interpretation that is appropriate to modern life. The recognition that religious texts are mostly symbolic and a product of their historical origins is behind the cultural change, whereby 'practices mandated or sanctioned in the Hebrew Scriptures — animal sacrifice, slavery, polygamy, rites of purification — are utterly distant' from modern Jewish culture (Glick 2005, 281). Construing ritual circumcision as an integral part of Jewish cultural identity explains the retention of circumcision.

So where does this leave the Jewish males who are circumcised in hospitals without ritual? Are they not also Jewish, by virtue of being born to a Jewish mother?⁴⁶ The original circumcision of Abraham was not performed with accompanying ceremony, yet it is now said that without the ritual ceremony, the circumcision is not considered

45 I will consider only ritual circumcision, as non-religious circumcision has been shown to have a questionable legal basis.

46 Jewish ethnicity runs through the matrilineal line, so children born to a Jewish mother will always be 'Jewish', regardless of the level of religious observance of the family (Aldeeb Abu-Sahlieh 2001, 48).

a *bris milah*. With this in mind, the next step in the evolution of the practice is already being taken by Jewish families around the world who choose to have a *bris shalom*,⁴⁷ which recognises that the symbolism of entering into Abraham's covenant can be just that — symbolism — without the accompanying mutilation (Goodman 1999b, 26).

With misconceptions about the effects of male circumcision aside, and with a balancing of the physical effects and rights violations inflicted upon the child with the cultural and religious considerations, it has been shown that there is a need for reassessment of the practice in Australia. To consider the restriction of male circumcision in Australia will require substantial reassessment of the cultural values which have allowed the practice and would require change from within the religious communities. However, resistance from religious groups cannot be a bar to effecting change. An appropriate step would be a national Law Reform Commission inquiry into the legal position of male circumcision in Australia. The growing body of legal and medical literature on male circumcision signals a growing awareness of this hidden human rights question, which can only be adequately answered with widespread, open community discussion. ●

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⁴⁷ Also known as a *bris b'lee milah*, which means covenant without circumcision.

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