

# Is the Body Natural? Bodily Integrity and Religion

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In June 2012, a court in Cologne ruled that a four-year-old boy's "fundamental right to bodily integrity" outweighed his Muslim parents' right to have had him circumcised. The decision ignited a wide-ranging controversy about, *inter alia*, the status of Muslims and Jews in Germany, and, following months of debate, the Bundestag voted in December 2012 to allow the practice of circumcision under certain conditions [1].

One of the ways this debate was commonly framed was as a contest between fundamental rights, in which *bodily integrity* was pitted against *religious freedom*. Those in favor of a ban on circumcision tended to raise concerns about the inability of young children to consent to having their bodily integrity violated, whereas those opposed often condemned the court's perceived paternalism and insensitivity to the traditions of religious and cultural minorities.

Stepping back from the specifics of the Cologne case, this paper seeks to unsettle two prevalent tendencies in thinking about these rights generally. The first is the way that the concept of religious freedom places "religion" within the ostensibly neutral framework of rights, as something to which individuals *have* a right, but which cannot meaningfully challenge the framework itself. If religion is elective – a matter in some sense of choice – whereas bodies, by contrast, are material conditions of the subject who is the bearer of rights, and whose freedom and dignity rights-talk is meant to safeguard – if, that is, a religion is something one *has*, whereas a body is something one *is* – then it is not difficult to understand why bodily integrity might be viewed as taking precedence over practices viewed as "religious": the claims of religion can be accommodated only insofar as they are freely consented to and do not impinge upon other rights and, more fundamentally, on the subject who is the bearer of those rights. Thus, the Cologne court held that religious freedom "would not be unduly impaired" because individuals could decide later whether or not to be circumcised [1]. The second is the idea of the body as something *natural*, which serves as a limit to culture. While it may be tempting to view bodily integrity as a material condition of what is merely conceptual, I argue that such a framing misconstrues what is ultimately at stake in debates about "the body" and its relation to law and "religion".

First, then, a brief comment on the notion of religion as elective: though I lack the space here to explore this idea adequately, it is worth noting that such an understanding is encouraged by the modern concept of

religion as a differentiated sphere of life and/or of society characterized principally by private *belief*. Whereas in antiquity the term *religio* referred to binding obligations, including but not limited to cultic rites, the modern understanding of religion as interior and voluntary – and with it the idea of religion as something that cannot be compelled – can be traced partly to Protestant theology. The distinctive cultural history of the modern category of "religion" ought at least to caution against any cross-cultural application of the term that ignores this voluntaristic theological bias.

That the body is also culturally constructed is today a view commonly associated with Foucault's writings on sexuality, a central burden of which was to reject the notion of the body as anterior to law. Rather than treating the body as something pre-given, which resists or is in need of liberation from various artificial attempts at regulation, Foucault held that "the body" is produced through relations of power. After noting that the concept of the body has a history which cannot be reduced to universal biological functions, Foucault writes in *Discipline and Punish* that "the body is also directly involved in a political field; power relations have an immediate hold upon it; they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs" [2].

More recently, Judith Butler has argued that, insofar as it treats bodies as "surfaces" or sites of cultural contest on which regimes of power seek to inscribe themselves, Foucault's own formulation of the problematic does not go far enough. "Foucault's efforts to describe the mechanism by which bodies are constituted as cultural constructions [...] raises the question of whether there is in fact a body which is external to its construction, invariant in some of its structures, and which, in fact, represents a dynamic locus of resistance to culture per se." [3] The problem, as Butler diagnoses it, is that, notwithstanding his emphasis on construction, Foucault remained indebted to a conception of history that requires the body as its contrast case. She writes:

*That history is 'inscribed' or 'imprinted' onto a body that is not history suggests not only that the body constitutes the material surface preconditional to history, but that the deregulation and subversion of given regimes of power are effected by the body's resistance against the workings of history itself. In other words, Foucault appears to have identified in a prediscursive and prehistorical 'body' a source of resistance to history and to culture, where history and culture are finally and paradoxically conceived in juridical terms.*

*That this is contrary to Foucault's stated program to formulate power in its generative as well as juridical modes seems clear. Yet his statements on 'history' appear to undermine precisely the insight into the constructed status of the body which his studies on sexuality and criminality were supposed to establish [3].*

Butler argues that because the distinction between history and body underwrites Foucault's approach to genealogy, it is never itself subjected to genealogical critique. Doing so, she suggests, would yield a more consistent view in which the "culturally constructed body would be the result of a diffuse and active structuring of the social field with no magical or ontotheological origins, structuralist distinctions, or fictions of bodies, subversive or otherwise, ontologically intact before the law" [3].

Bodily integrity is today a widely cited human right. However, Nathalie Maillard and Simone Romagnoli have called attention to two slightly different conceptions of bodily integrity – a "liberal" understanding, which emphasizes *consent*, and a more robust, but potentially more problematic, view, which makes the body itself, rather than autonomy, the central normative issue [4]. But it is worth noting that even the liberal account operates with an implicit normative understanding of the body's morphology. The "body" the alteration of which requires consent is the body so idealized. What counts as a bodily disfiguration or flaw that might be "corrected" without the consent of an infant (for example, a cleft lip) is determined relative to this ideal. Expanding the sphere of consent – for example, to include so-called gender assignment surgeries in the case of intersexuality – involves challenging received understandings of what constitutes a "normal" body. The demand for consent can be understood as an attempt to avoid imposing any particular culturally determined understanding of what is proper, but such understandings resurface in the question of what must be consented *to*. With respect to circumcision, diverging social norms can be seen as playing a role not simply in the case of specific religious communities, but also in the difference in prevailing attitudes between, say, the United States, where post-birth circumcision remains the norm, irrespective of religious identification, and Europe.

The point of this paper is not to take any particular side in these ongoing debates, but rather to suggest that "bodily integrity" cannot be determined independently of or set against what is somewhat misleadingly construed as "culture". To pit bodily integrity against "religion" or "culture" is, in effect, to recur to one particular culturally conditioned understanding of the body among others, which has, for a certain audience,

become so normalized as to appear neutral. As Talal Asad puts the point in a discussion of Martha Nussbaum's capabilities approach:

*A subject possessing bodily integrity, able freely to express himself or herself, and entitled to choose for herself or himself what to believe and how to behave is not simply a 'freestanding moral core of a political conception' to which people sign on. It is itself a thick account of what being human is – and one that underpins human rights [5].*

When it comes to debates such as that over circumcision, what counts as a *whole body* and what as a violation of its integrity belongs to what is in dispute. Having been "settled" within one particular community, we are apt mistakenly to take it to be removed from debate altogether and to forget that it cannot be used to arbitrate disputes with communities for whom it is not settled, or has been settled differently. The recognition that there are varying conceptions of embodiment – and thus of bodily integrity, where this is prized – need not result in cultural relativism, but it cautions against treating one's preferred understanding as neutral and fixed. Indeed, what allows certain conceptions of the body to possess moral force – and so to feature in rights claims – is also what renders all such conceptions vulnerable (under appropriate conditions) to contestation, namely, their presentation to us through normative (moral; theological; aesthetic) modes of discourse. Normative discourses on embodiment must begin not from the presumed facticity of something called "the body", which exists prior to something called "culture", but from within the intersubjective domain of signified and interpreted embodiment.

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