CHAPTER 5

BIOMEDICAL PRACTICES AND THE CHILD: RIGHTS IN QUESTION

The two theoretical frameworks in which harmful traditional practices are commonly discussed and the difficulties with their application in the context of children were considered in the preceding chapter. It was argued that the scholastic debate about minorities, the question of state accommodation, and the cross-cultural moral evaluation were not suitable to fully address children’s bioethical (and other) rights. For the most part, the discussion was in the abstract, and the rights of the child that are in question were not elaborated. However, to establish the content of states’ duties in the context of children and biomedical practices, it is essential to specify which rights are violated. It is also imperative to evaluate whether the approach taken by states and the international agencies in this area is the most appropriate and effective for the promoting children’s rights.

International and national analyses of traditional biomedical practices have typically fallen under the umbrella of children’s protection rights. Specifically, scholars and human rights activists raise the following rights of the child as being violated: abuse/neglect; freedom from torture, cruel, inhuman, and degrading treatment; and freedom from violence. These are often intertwined with the reference to the child’s right to health and to his or her right to life. Literature in the twenty-first century also brought some of the so-called participatory rights into the discussion. Building on the international trend and the Western underlying principle of an individual’s autonomy, scholars refer to the child’s right of self-determination as the basic source for analysis. Particularly in the context of religiocultural bodily practices, they emphasize the child’s right to religious freedom and point to complexities related to the doctrine of informed consent.

This chapter examines the arguments raised for and against each of these rights. The appropriateness of using the protective (or welfare) approach and the question of the suitability of the participatory model for resolving biomedical conflicts concerning children is examined, yet neither approach is found adequate to the task of handling such complex issues. Drawing on the anthropological and sociopolitical literature, as well as the international legal interpretation of the various traditional bodily practices under consideration (i.e., male circumcision, scarification, extraction of milk teeth, and neck elongation), it can be argued that these models tend to be not only unhelpful, but also destructive in the way they approach children’s bioethical rights.
A. ABUSE AND NEGLECT

Both Article 19 of the International Convention on the Rights of the Child (Children’s Convention or Convention)¹ and Article 16 of the African Charter on the Rights and Welfare of the Child (African Charter)² stipulate that states have the responsibility to protect the child from all forms of abuse, neglect, and maltreatment, with specific reference to such acts that cause physical or mental harm and including sexual abuse.³ Accordingly, if male circumcision, scarification, the extraction of milk teeth, and neck elongation are defined as abusive, states are required to protect the child, with specific legislative, administrative, social, and educational measures, against the parents, legal guardians, or any other persons responsible for the care of the child who allow the practices to take place. The general question then is whether the customs under consideration indeed fall within the scope of these articles.

William Brigman is one of the scholars who answers the question in the affirmative.⁴ He makes an explicit comparison between male circumcision and other bodily modifying rites, such as the removal of earlobes, fingers, and toes, the binding of female feet, infanticide, ritual sacrifice, and “other disfiguring practices around the world,” arguing that they all fall within the scope of the term “abuse,” from which children are entitled to be protected. “Despite the great concern about child abuse among scholars and legislators in the past twenty years,” he charges, “the same type of cultural astigmatism which prevented past generations from perceiving their actions as child abuse prevent contemporary American from perceiving or acknowledging the most widespread form of child abuse in society today: child mutilation through routine neonatal circumcision of males.”⁵ Charles A. Boner and Michael J. Kinane, Jacqueline Smith, and others make similar accusations, equating circumcision and other forms of ritual body modification with child abuse, hence calling for intervention and legal prohibition.⁶

Whether this is the case, however, is open to debate. To begin with, the concept of child abuse and neglect is hard to pin down, particularly within the international context. The variations in child-rearing beliefs and practices are substantial both across cultures and also within cultures. Just as various

---

³ Article 19 of the Children’s Convention; Article 16 of the African Charter.
⁵ Ibid.