

Reasonable disagreement and the neutralist dilemma:

Abortion and circumcision in Matthew Kramer's *Liberalism with Excellence*

Clare Chambers*

Faculty of Philosophy

University of Cambridge

Cambridge, UK

Address for correspondence:

Jesus College

Cambridge

CB5 8BL

UK

Telephone: +44 (0)1223 339494

Email: cec66@cam.ac.uk

* University Senior Lecturer in Philosophy, University of Cambridge. The author would like to thank the organisers and participants of the Symposium on Matthew Kramer's *Liberalism with Excellence*, including Matthew Kramer himself, as well as the participants in the University of Cambridge Workshop in Political Philosophy for their comments on earlier versions of this paper. Address for correspondence: Jesus College, Cambridge CB5 8BL, UK; cec66@cam.ac.uk

Reasonable disagreement and the neutralist dilemma:

Abortion and circumcision in Matthew Kramer's *Liberalism with Excellence*

Abstract: This paper starts by investigating the idea of reasonable disagreement. It then considers Matthew Kramer's argument that there is no neutral solution available to the disagreement over abortion. The paper argues that Kramer's account has wider application, and identifies a neutralist dilemma. The neutralist dilemma applies when, of two policy options available to the state, one is unreasonable. It follows that the state should enact only the reasonable policy. However, in a neutralist dilemma the fact of reasonable disagreement due to the burdens of judgment means that it is not possible for the state to act at all, whether legislating or not, without deviating from neutrality. The paper develops the concept of the neutralist dilemma and then applies it to another case discussed by Kramer: infant circumcision. The paper argues that the debate over infant circumcision can be framed as a neutralist dilemma, but that the most plausible resolution of the dilemma results in an argument in favour of the legal prohibition of the practice. This is a surprising result, since most liberal states do not restrict circumcision and since prohibition of circumcision might initially appear to be non-neutral or even illiberal; however it is consistent with the tenets of neutralist liberalism.

Liberal neutralism is the position that the state should remain neutral between reasonable conceptions of the good. Reasonable conceptions of the good are those whose proponents are willing to cooperate fairly with others under conditions of diversity. In other words, reasonable people will not use the coercive powers of the state to impose their judgments on

people who reasonably disagree, which is to say on those who similarly do not try to impose their own judgments.

Consider a standard neutralist case. There is reasonable disagreement between Christians and non-Christians as to whether Jesus is the Son of God and should be worshipped as such:

Reasonable disagreement about Christianity: whether Jesus is the Son of God and should be worshipped as such.

For the neutralist, the state should be neutral on matters of reasonable disagreement. It should proceed using public reason alone, without endorsing one conception of the good over another. If the state were to be non-neutral and take a side in the reasonable disagreement about Christianity, one of two unreasonable policies might result:

Unreasonable policy on Christianity I: the state should encourage Christian worship, because Jesus is the Son of God and should be worshipped as such.

Unreasonable policy on Christianity II: the state should discourage Christian worship, because Jesus is not the Son of God and should not be worshipped as such.

In contrast to these unreasonable policies, liberal neutralists advocate that the state refrain from making a judgment on a matter that is subject to reasonable disagreement that cannot be resolved using public reason.¹ Doing so will result in a neutral policy:

Neutral policy on Christianity: Jesus may or may not be the Son of God. The state should neither encourage nor discourage Christian worship.

¹ The issue of what it means to resolve a dispute using public reason is discussed in more depth later.

This position is neutral because it does not take a stance on the matter of reasonable disagreement. It is also a reasonable policy, because it will appear as reasonable from both sides of the disagreement.

In the superbly-argued *Liberalism with Excellence* Matthew Kramer argues that liberal neutralism is not a convincing political philosophy. I agree with much of his analysis. Like Kramer, I am not an advocate of state neutrality all things considered. In this paper, then, I will not be taking issue with Kramer's general critique of neutralism and I will not be attempting to defend neutralism as a political philosophy. Instead, I want to delve deeper into a particular type of debate that Kramer identifies, one that causes problems for liberal neutralists. I call this *the neutralist dilemma*.

The neutralist dilemma is a phenomenon, identified by Kramer but not named that by him, whereby the state cannot remain neutral on some question of reasonable disagreement. In a standard neutralist case both sides can agree that the neutral policy is reasonable. Both Christians and non-Christians can agree that it is reasonable for the state to neither encourage nor discourage Christian worship, because that neutral position does not depend on the state either affirming or denying the controversial claim that Jesus is the Son of God and should be worshipped as such. In cases of the neutralist dilemma, though, *any* state action requires the state to either affirm or deny one side of a reasonable disagreement, meaning that *any* state action looks unreasonable from one point of view. The neutralist dilemma applies when, of two options available to the state, one is unreasonable. It follows that the state should enact only the reasonable policy. However, in a neutralist dilemma the fact of reasonable disagreement due to the burdens of judgment means that it is not possible for the state to act at all (including by refraining from legislating) without deviating from neutrality.

This paper discusses the neutralist dilemma as Kramer sets it out in relation to abortion, and then considers whether it is of wider application. In particular it considers whether another

case Kramer discusses, that of circumcision, is properly described as a neutralist dilemma. I argue that, while there can be versions of the circumcision debate that are neutralist dilemmas, their most plausible resolution results in prohibition.

1. Two sorts of reasonable disagreement

Before proceeding we need a clearer account of what it is for a disagreement to be reasonable. Kramer notes that there are various ways of understanding this idea.² Let us focus on two. Both are found in Rawls, though they are not always clearly distinguished. We can separate them by thinking of the adjective “reasonable” as applying either to the disagreement itself, or to the way the disagreement is resolved and the policies that are reached and enacted.

The first version of reasonable disagreement uses the term “reasonable” primarily to describe the disagreement itself. For a disagreement to be reasonable in this sense it must be *about* a matter on which it is reasonable to disagree. I label this version “reasonable disagreement due to the burdens of judgment”.

The second version of reasonable disagreement uses the term “reasonable” to apply to the conclusion of the debate, or to the way either side of a debate recommends treating others. For a disagreement to be reasonable in this sense, both sides must adopt positions or recommend policies that treat others reasonably. I label this version “reasonable disagreement with respect to freedom and equality”.

Consider first reasonable disagreement due to the burdens of judgment. People may reasonably disagree about some issue because reaching a conclusion on that issue is extremely difficult. The burdens of judgment apply when some matter of debate is complex, rests on vague or competing principles, is of questionable empirical standing (empirical evidence can

² Matthew H. Kramer, *Liberalism with Excellence* (Oxford University Press, 2017) p. 6.

be offered on both sides and is not decisive for either), involves a variety of ethical values which must be traded off against each other, and when one's views on the matter are likely shaped by one's social and cultural background.³ Reasonable disagreement due to the burdens of judgment means that reasonable citizens recognise those burdens and are therefore tolerant of citizens who reach different conclusions.

Consider some examples. On this understanding of reasonable disagreement, it is reasonable to disagree about whether Britain should exit the European Union because that is a matter of enormous ethical and empirical complexity. It follows that the correct way to proceed on this matter, for neutralists such as Rawls, is for both sides of the debate to put forward public reasons for their view, and to vote if a consensus cannot be reached, with voters taking into account only the public reasons that have been advanced on both sides. The state legitimately takes a position on Brexit only when it implements the decision that has been reached through this process of public reason.⁴

On the other hand, there is not a reasonable disagreement due to the burdens of judgment about whether $2 + 2 = 4$, because that is a matter of basic mathematics that is simple to demonstrate. The state need not, then, be neutral on that question.

Some matters may move, over time, from being matters that are subject to reasonable disagreement due to the burdens of judgment to ones that are not. For example, the weight of scientific evidence means it is no longer reasonable to disagree about whether the earth is flat, even though disagreement on that issue was reasonable once. The balance of public reason lies overwhelmingly on one side and so the state need not reserve judgment.

³ This is a brief overview of John Rawls's burdens of judgment; a full account is given in Kramer, *Liberalism with Excellence* p. 8-12.

⁴ As Rawls writes, when reasonable disagreement due to the burdens of judgment means that consensus cannot be reached "citizens should simply vote for the ordering of political values they sincerely think most reasonable." See John Rawls, *Political Liberalism* (Columbia University Press, 1993) p. lv.

The second category is reasonable disagreement with respect to freedom and equality. It applies when both sides of a debate advocate only those policies that are compatible with the freedom and equality of citizens. A disagreement that is reasonable with respect to freedom and equality is thus one in which all parties to a debate are willing to cooperate fairly under conditions of diversity.⁵

In the context of reasonable disagreement with respect to freedom and equality it *is* reasonable to disagree about whether $2 + 2 = 4$, so long as neither side proposes to impose their answer on others in a way that would undermine freedom and equality (for example, by jailing all those on one side of the debate). But it is *not* reasonable to disagree about whether the state should prohibit homosexuality, because the policy advocated by the prohibitionists does not treat lesbians and gays as free and equal citizens. A debate is thus unreasonable with respect to freedom and equality if the resolution favoured by one or both of the sides violates the freedom and equality of (some) citizens.

These two sorts of reasonable disagreement intersect in complex ways, with correspondingly complex implications for neutrality. For example, there is reasonable disagreement due to the burdens of judgment as to whether homosexuality is compatible with receiving God's grace. Since theological reasons cannot be public reasons there is no way of engaging in this debate, let alone settling it, using public reason. The neutral state therefore should not take any position at all on this question. On the other hand, there is only *unreasonable* disagreement with respect to freedom and equality as to whether gay and lesbian people may be discriminated against. Therefore the state should not remain neutral on that issue and should not leave it open to public debate.

The question of whether the earth is flat is not a matter of reasonable disagreement due to the burdens of judgment. The evidence for one side is clear and compelling. It follows that the

⁵ Kramer, *Liberalism with Excellence* p. 8.

state does not have to be neutral on this question of fact: the view that the earth is flat does not need to be taught in public schools, and state geographers and astronomers can proceed on the basis that the earth is round. Nevertheless, it would be unreasonable with respect to freedom and equality to suppress and silence Flat-Earthers, so they must be allowed to express their views even if they cannot influence policy.

It is beyond the scope of this paper to offer an exhaustive account of the two forms of reasonable disagreement. But these remarks and examples demonstrate that the question of whether some matter of disagreement is reasonable, and what that implies for neutrality, is not simple. The next section considers the particular problems that arise when an issue is a matter of reasonable disagreement due to burdens of judgment, but when there can be only unreasonable disagreement on that issue with respect to freedom and equality.

2. From reasonable disagreement to unreasonable policy: abortion

In Chapter 3 of *Liberalism with Excellence* Kramer considers whether there can be a neutral account of abortion. He notes that most advocates of political neutrality claim that their neutrality allows them to endorse permitting first-trimester abortions. Kramer discusses the accounts of Ronald Dworkin, Thomas Nagel, and Jonathan Quong. Though these accounts are importantly different, Kramer argues that they all suffer from a common flaw: they attempt to demonstrate the permissibility of abortion without taking a stance on the controversial question of whether or not the foetus is a person. They need to refrain from taking a stance on this question since it is a matter of reasonable disagreement due to the burdens of judgment. But, as Kramer convincingly argues, neutrality on this question is impossible.

The problem is as follows: if foetuses are part of the Rawlsian category of full moral persons (henceforth simply “persons”), then any conception of the good that permits abortion is

unreasonable with respect to freedom and equality, because it denies equality to foetuses and thus to some persons. So permitting abortion is justifiable only if foetuses are *not* persons. But that view is itself incompatible with those conceptions of the good that assert that foetuses *are* persons. Thus, Kramer concludes, “[w]hen we ascertain whether the laws in a jurisdiction conform to the requirement of neutrality, we are consciously or implicitly adopting a position on the question whether foetuses are persons.”⁶

According to Kramer, the state simply cannot avoid taking a stance on the question of whether foetuses are persons. If foetuses *are* persons then it would be utterly unreasonable for the state to permit abortion, since abortion would be murder. But if foetuses are *not* persons, then it is similarly unreasonable to prohibit abortion, because to do so would be to impose “major curbs on the freedom of women that are not paralleled by any curbs on the freedom of men ... even though they are not necessary to avert the infliction of harm on other persons.”⁷ If foetuses are not persons, that is, then the principles of equality and autonomy require that the state permit abortion.

One way of interpreting Kramer’s argument is to say that the debate about abortion contains matters of both reasonable and unreasonable disagreement. It starts from a matter of reasonable disagreement:

Reasonable disagreement on abortion: Whether the foetus is a person.

This is a reasonable disagreement due to the burdens of judgement. Indeed, the burdens may be particularly heavy in this case. The concept of personhood relies partly on scientific facts about what constitutes life, humanity, and so on, but relies most strongly on controversial philosophical, moral, and religious questions about the boundaries of personhood. So

⁶ Kramer, *Liberalism with Excellence* p. 110.

⁷ Kramer, *Liberalism with Excellence* p. 115.

neutralism seems to require that the state remain neutral on the question of whether the foetus is a person. The question is, what policy follows?

Neutral policy on abortion: The foetus may or not be a person. Therefore the state should...?

The state cannot remain neutral on the question of whether or not abortion should be permitted: it necessarily picks a side by either legislating or not. Kramer's argument is that picking a side on the question of whether abortion is permitted requires taking a side on the question of whether the foetus is a person. This is because either answer to the question of whether the foetus is a person leads to one of the possible state positions on abortion being unreasonable with respect to freedom and equality. The state should not be neutral between a reasonable and an unreasonable position: it must choose the reasonable position. But to identify the reasonable position the state must reach a conclusion on the question of foetal personhood.

On Kramer's analysis, the state must choose one of the following:

Policy on abortion I: The foetus is not a person. Therefore the state should permit abortion because forbidding abortion would be to deny women's equality and autonomy.

Policy on abortion II: The foetus is a person. Therefore the state should forbid abortion because abortion is murder, which denies foetus's freedom and equality.

In response to Kramer, one might ask why the state cannot simply proceed via public reason. In other cases of reasonable disagreement due to the burdens of judgment, such as Brexit, neutralism recommends debating the matter using public reason and voting if consensus

cannot be reached. And Rawls recommends this approach for abortion. He writes: “disputed questions, such as that of abortion, may lead to a stand-off between different political conceptions, and citizens must simply vote on the question.”⁸

The problem with this solution, Kramer argues, is that in the case of abortion both policies are potentially *unreasonable* with respect to freedom and equality. Policy I is potentially unreasonable because it succeeds only if the foetus is not a person. If the foetus is a person, the policy is an unreasonable act of murder. Policy II is potentially unreasonable because it succeeds only if the foetus is a person. If the foetus is not a person, the policy is an unreasonable violation of women’s freedom and equality. There is thus no policy available that is neutral on the matter of foetal personhood. The same is not true of Brexit: while one side may be more advisable or plausible than the other, both sides can in principle be argued and implemented in a way that respects the freedom and equality of citizens.

Why have I described the two abortion policies as only potentially unreasonable? This is because the foetus must either be a person or not. It cannot be both person and non-person. So settling the matter of foetal personhood will show that one policy is in fact unreasonable and the other is reasonable. If the foetus is a person then policy I is unreasonable and policy II is reasonable. Since the state need not be neutral between unreasonable and reasonable positions, it should enact policy II. Alternatively, if the foetus is not a person then the opposite conclusion applies.

The problem in the case of abortion, of course, is knowing which position is unreasonable with respect to freedom and equality. We know for sure that one of the positions on abortion must be unreasonable in that sense, but we (collectively, as liberal citizens) do not know which one. We do not know which one is unreasonable because that depends on the question of

⁸ Rawls, *Political Liberalism* p. lv.

whether or not the foetus is a person, and this is a matter on which there is reasonable disagreement due to the burdens of judgment.

In other words, abortion is a matter on which there is unreasonable disagreement with respect to freedom and equality, but this cannot be resolved precisely because there is reasonable disagreement due to the burdens of judgment:

Reasonable disagreement on abortion due to the burdens of judgment: whether the foetus is a person.

Unreasonable disagreement on abortion with respect to freedom and equality: whether abortion should be legally permitted.

There is no neutral way out here. Liberals cannot remain neutral on the question of abortion, and must instead commit to a position that will necessarily be deeply controversial and difficult to justify.

At this point, liberal neutralists might be tempted to defend their position by saying that neutrality can be preserved by allowing women to decide on the question of foetal personhood for themselves. Since that is a question on which there is deep disagreement, neutrality suggests that the state should permit but not advocate abortion, so that pregnant women may follow their own consciences. After all, neutralists might argue, there is a truth of the matter on other cases of reasonable disagreement too. Jesus either is or is not the Son of God. The fact that there is reasonable disagreement on that question does not mean that there is no true answer. Neutralism does not commit us to relativism or the view that there is no truth;⁹ it merely commits us to liberty, to allowing people to decide these matters for themselves and live according to their own consciences.

⁹ See Kramer, *Liberalism with Excellence* p. 11-12; Rawls, *Political Liberalism* p. 63.

The problem with this suggestion in the case of abortion is that the rights of third parties are involved. If someone chooses to live according to their own beliefs about Christianity and those turn out to be false, it is only or primarily they that bear the consequences. The same is not true of abortion. If the foetus is a person then allowing women to choose abortion allows them to commit murder, and so would be an unreasonable position for the state to take. But if the foetus is not a person then preventing women from choosing abortion violates their liberty and equality. It is reasonable to allow women to decide for themselves whether the foetus is a person only if the foetus is not, in fact, a person. And so once again the state would be failing to be neutral on a matter of reasonable disagreement.

3. The neutralist dilemma

The problem that Kramer has identified with abortion is of wider application. Call it the *neutralist dilemma*. For a debate on matter, belief, or principle **X**, the dilemma can be stated as follows:

1. There is reasonable disagreement due to the burdens of judgment as to whether *X* or *not-X*.
2. If *X*, then policy *P* is required so as to avoid violating freedom and equality.
3. If *not-X*, then policy *not-P* is required so as to avoid violating freedom and equality.
4. (From 2 and 3) Either *P* or *not-P* violates freedom and equality.
5. (From 4) Disagreement as to whether *P* or *not-P* is required would be unreasonable with respect to freedom and equality.
6. (From 1) We do not know whether *P* or *not-P* violates the freedom and equality of (some) citizens.
7. Therefore there is no neutral policy available.

Not all disagreements are neutralist dilemmas. But a disagreement will be a neutralist dilemma whenever there is a reasonable disagreement due to the burdens of judgment about whether some individual or category of individuals count as members of the morally-salient class. In the abortion case, the disagreement is about whether foetuses count as persons. But other debates can take the same form.¹⁰ If we can reasonably disagree whether foetuses are full moral persons then perhaps we can reasonably disagree whether children are full moral persons; later in the paper I consider whether there is a neutralist dilemma concerning children's rights. But first consider a more straightforward example:

Neutralist dilemma on animal rights

1. There is reasonable disagreement due to the burdens of judgment as to whether animals have the same moral status as human beings.
2. If animals do have the same moral status as human beings, then meat-eating must be prohibited so as to avoid violating animals' freedom and equality.
3. If animals do not have the same moral status as human beings, then meat-eating must be permitted so as to avoid violating humans' freedom and equality.
4. (From 2 and 3) Either permitting or prohibiting meat-eating violates freedom and equality.
5. (From 4) Disagreement about whether meat-eating should be permitted or prohibited is unreasonable with respect to freedom and equality.
6. (From 1) We do not know whether it is permitting or prohibiting meat-eating that violates freedom and equality.
7. Therefore there is no neutral policy available.

¹⁰ It is possible that a neutralist dilemma might exist concerning the status of immigrants and other non-citizens, though it would need to be carefully formulated.

The neutralist dilemma is thus of wider application than the abortion case, and presents a serious challenge to liberal neutralism.

A neutralist dilemma can be resolved in any particular case by denying one of its premises. Casual reflection suggests that in the neutralist dilemma on animal rights the premise most likely to be denied by mainstream liberal neutralists is premise 1. Most liberal neutralists do not advocate the prohibition of meat-eating and therefore must rely on the assumption that it is not reasonable to think that the moral status of animals is equivalent to that of humans. However, this denial is problematic since many serious thinkers do argue that animals have a moral status that rules out meat-eating.¹¹ The standard way for a neutralist liberal to think about this case is that there is a reasonable disagreement due to the burdens of judgment as to whether or not animals are moral persons, but that there is only unreasonable disagreement on the grounds of freedom and equality about whether meat-eating should be illegal. On the standard neutralist line meat-eating must be legal so as to protect the liberty of those who are not convinced by the case for ethical vegetarianism, and so as to remain neutral on the question of animals' moral status. Kramer's analysis shows that this position is untenable: permitting meat-eating is justifiable only if animals do not have a moral status equivalent to that of persons. The neutralist dilemma is a genuine one.

4. Taking Precautions

One strategy for preserving neutrality in the abortion case is suggested by Jonathan Quong, in an argument that Kramer labels the Precautionary Argument. Kramer reconstructs Quong's argument as follows:

¹¹ That there is genuine debate about the moral status of animals is evident; see, for example, Cass R. Sunstein and Martha C. Nussbaum (eds.) *Animal Rights: Current Debates and New Directions* (Oxford University Press, 2004) and Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press, 2011).

P1. Reasonable comprehensive doctrines disagree about whether the foetus is a full moral person.

P2. In the face of such reasonable disagreement, we should adhere to a precautionary principle and should therefore acquiesce in the proposition that the foetus does have the status of a full moral person.

C. Ergo, whenever we argue in favor of the legal permissibility of abortion, we should assume that the foetus is a full moral person. We are not thereby committed to accepting that such an assumption is true.¹²

This argument is precautionary because it proceeds by taking precautions against the most serious potential harm, which is committing murder. The implication of the Precautionary Argument is that it might be possible to justify the pro-choice position, as most liberal neutralists want to do, but only if one offers weighty reasons in favour of choice that can outweigh potential foetal personhood.

Kramer rejects this argument as a neutral way towards *justifying* abortion, not because it is non-neutral but because it is impossible. If we really did proceed on the assumption that the foetus is a moral person, the only acceptable policy would be to prohibit abortion:

When appraising the moral bearings of acts of murder perpetrated against adults or children, we would be badly misguided if we perceived ourselves as needing to strike a balance between the interests of the victims in bodily integrity and the autonomy of the murderers in wielding their weapons as they see fit. Yet – from the perspective of anyone who believes that foetuses are Rawlsian persons with the same basic rights as those of other persons – that grossly ill-judged angle on acts of murder is comparable to Rawls's and

¹² Kramer, *Liberalism with Excellence* p. 115.

Quong's insistence on striking a balance between a pregnant woman's autonomy and a foetus's interest in survival.¹³

On the other hand, Kramer argues, the Precautionary Argument does not in fact justify a supposedly-neutral *prohibition* of abortion. This is because, if the foetus is *not* a moral person, then prohibiting abortion would be unreasonable. Preventing women from having abortions imposes great limitations on their freedom, bodily integrity, and autonomy, limitations that are not similarly levied on men. These limitations are justified if they are necessary to prevent murder of persons, but they are not justified otherwise. If the foetus is not a person, then the Precautionary Argument unreasonably undermines women's equality and autonomy. In other words, we should not proceed on the assumption that the foetus is a person unless it really is a person. The stakes are too high.

The general problem with taking precautions is that doing so incurs certain costs as insurance against a greater but uncertain harm. And there can, of course, be reasonable disagreement about the appropriate balance between cost and risk; between insurance premium and payout. It is both rational and reasonable to pay even a very high premium to avoid the risk of harm that is both serious and likely. But it is not rational to pay any premium at all, let alone an extremely high one, to avoid a risk that is non-existent, and it would not be reasonable to require others to pay such a premium.

However, the strategy of taking precautions can be successful in some cases. It all depends on the likelihood and severity of the harm that is avoided by taking precautions, and the costs entailed in doing so. Kramer shows us that the only way for a state to proceed is by taking a judgment on these issues. It is for neutralists to show how the state can take such a judgment and remain neutral.

¹³ Kramer, *Liberalism with Excellence* p. 116.

Kramer's conclusion is that the pro-choice position on abortion, favoured by most liberal neutralists, is permissible only if it can be adequately shown that foetuses are *not* persons. Showing this will, Kramer argues, necessarily entail grappling with issues that place neutralists directly in opposition to various comprehensive doctrines. In other words, before it is possible to engage in a debate on abortion that is confined to the constraints of public reason, it is first necessary to settle the deeply controversial question of whether a foetus is a person. And there is no way of having this debate that does not place us outside neutral territory and firmly within controversial, burdened judgment.

The abortion case is therefore an example of a reasonable disagreement on which the state cannot remain neutral, because one side and thus one of the two available policies must be unreasonable. The question is: which one?

5. Circumcision as unreasonable

In this section I discuss a debate with a similar structure to the abortion dilemma. However, I argue that in this case there *is* a neutral solution available. Moreover, the neutral solution that is available contrasts with both Kramer's own arguments and the practice of most liberal states.

The debate is whether the state should permit or prohibit the routine circumcision of babies and children. Kramer considers this case via a country he names Nospipia. In Nospipia the circumcision of babies and children is prohibited, and the prohibition is justified on what looks like neutral grounds. However, as with the case of abortion, Kramer argues that the purportedly-neutral Nospipian prohibition is actually not neutral at all.

In Nospipia a prohibition on circumcision is justified by a neutral appeal to public health. Nospipian data indicates "that the net effect of male circumcision is mildly detrimental rather

than mildly beneficial.”¹⁴ Since an appeal to public health is neutral between conceptions of the good, prohibition of circumcision appears similarly neutral. And yet Kramer is highly critical of the Nosnipian officials:

The people directly responsible for the legal interdiction of the practice of male circumcision in Nosnipia might not be aware of any biases on their part and might therefore be fully earnest in claiming that their issuance or sustainment of that interdiction is oriented purely toward public health. Nevertheless ... those people are deluding themselves about their own intentions. Because the ritual of circumcising male infants is of such salience in Judaism and Islam, and because those two religions and that specific ritual have been subjected to ferocious bigotry in Western countries over the centuries, and because the detrimental effect of that ritual on male health in the counterfactual world which we are contemplating here is so mild [Kramer maintains that in the real world circumcision is *beneficial* to health], and because parents in Nosnipia are left with ample latitude to interact with their children in other ways which are more harmful and which are of no religious significance to the parents, we should conclude that the aim of the Nosnipian ban on male circumcision consists predominantly in the suppression of a religious practice that has long been an object of subrational antipathy. Although the proponents of that ban might *sincerely* disavow any such aim, they are thereby displaying a dearth of self-knowledge. ...

In other words, the Nosnipian prohibition is not an instance of a law that is neutral in its intention but non-neutral in its effects. It is of course non-neutral in its effects, but its underlying intention is also non-neutral.¹⁵

¹⁴ Kramer, *Liberalism with Excellence* p. 85.

¹⁵ Kramer, *Liberalism with Excellence* p. 86.

Kramer's account suggests that the Nosnippians think of themselves as having a reasonable neutral policy:

Self-deluding Nosnippian supposedly-neutral policy on circumcision: Circumcision is bad for public health. Therefore, the state should prohibit it.

However, Kramer claims that their policy is actually non-neutral. It must rely on the decidedly non-neutral claim in the following description, placed in parentheses to show that the Nosnippian officials do not publicly avow it and may not be aware of its salience:

Honest Nosnippian unreasonable policy on circumcision: Circumcision is no worse for public health than many practices that are permitted. Circumcision is salient in Judaism and Islam. (Judaism and Islam should be suppressed.) Therefore, the state should prohibit circumcision.

Kramer argues that neutrality can be restored only by what Brian Barry would call a rule-and-exemption approach,¹⁶ which would mean modifying the policy as follows:

Kramerian neutral policy on circumcision: Circumcision is bad for public health. Therefore, the state could prohibit it. But circumcision is salient in Judaism and Islam, and those religions have been subject to ferocious bigotry. Circumcision is no worse for public health than many practices that are permitted. Therefore, even if the state prohibits circumcision generally, it should allow circumcision within Judaism and Islam.

Kramer's claim is that a blanket prohibition on infant circumcision would be unreasonable with respect to freedom and equality, even if apparently-neutral public reasons were offered in its support. In this sense, circumcision resembles the abortion case.

¹⁶ Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Polity Press, 2001) p. 40-50.

I want to challenge Kramer's position. There is in fact an available neutral policy justifying the prohibition of infant circumcision. As with the abortion case, the state cannot avoid taking a side between those who advocate permission and those who advocate prohibition. But unlike the abortion case, the state can take a side on the matter of policy *without* taking a side on any matter on which there is reasonable disagreement. And unlike the abortion case, where neutralists tend to opt for permission, in the circumcision case the neutral policy would be to *prohibit* the practice.

I do not want to defend the legislators of Nosnipia (I've never met them) or any other polity. Kramer is right that the movement to proscribe circumcision can mobilise racism and religious bigotry.¹⁷ But its justification need not be bigoted.

First it is important to note that the Nosnipian policy, and the policy that I am defending, forbids parents and doctors to forcibly circumcise *children*, who are too young to consent to the procedure; it does not forbid adult men to choose circumcision for themselves. Forbidding adults to choose circumcision for themselves would involve the state taking a side on a matter about which there is reasonable disagreement due to the burdens of judgment, as we shall see shortly. But since we are considering the circumcision of children, the debate is between the religious liberty and equality of *parents* (emphasized by the pro-circumcision side) and the bodily integrity and autonomy of *children* (emphasized by the anti-circumcision side). From the perspective of advocates of circumcision, such as Kramer, preventing the practice looks like an unreasonable restriction of parents' freedom and equality. From the perspective of critics of the practice, such as myself, permitting it looks like an unreasonable violation of the children's freedom and equality.

¹⁷ For discussion see Eric Rassbach, "Coming Soon to a Court Near You: Religious Male Circumcision" in *University of Illinois Law Review* 2016, no. 4 p. 1356; Ayreh Tuchman, "Circumcision" in Richard S. Levy, *Antisemitism: A Historical Encyclopedia of Prejudice and Persecution* (ABC - CLIO, 2005) p. 128.

The debate about circumcision can thus be stated as a neutralist dilemma. Consider one version:

Neutralist dilemma on circumcision I

1. There is reasonable disagreement due to the burdens of judgment as to whether circumcision is harmful.
2. If circumcision is harmful then circumcision of children must be prohibited so as to avoid violating children's freedom and equality.
3. If circumcision is not harmful, then circumcision must be permitted so as to avoid violating parents' freedom and equality.
4. (From 2 and 3) Either permitting or prohibiting circumcision violates freedom and equality.
5. (From 4) Disagreement about whether circumcision of children should be permitted or prohibited is unreasonable with respect to freedom and equality.
6. (From 1) We do not know whether it is permitting or prohibiting circumcision that violates freedom and equality.
7. Therefore there is no neutral policy available.

However, this version of the neutralist dilemma on circumcision can be resolved. As we saw earlier, resolving a neutralist dilemma requires rejecting one of its premises. In this version of the dilemma, premise 3 fails, as I show shortly. First I show that premise 1 succeeds.

Premise 1 states that there is a reasonable disagreement due to the burdens of judgment as to whether circumcision is harmful. There are two aspects to this disagreement: religion and public health. For some people, circumcision is justified on religious grounds, as Kramer notes. For such people, circumcision is not harmful precisely because it is a requirement of religion. The fact that circumcision is a religious tradition is for such people enough to

outweigh any purported harms of the practice. Others might reasonably disagree in one of two ways. They might not be members of circumcising religions, and so might not endorse the idea that *any* of the tenets of the religion are properly understood as requirements or can have any justificatory weight. Or, people might be members of a circumcising religion and so agree in general that the tenets of that religion are requirements, but they might disagree on the question of whether circumcision really is a proper requirement of their religion.¹⁸ Combining these options gives the following reasonable disagreement:

Reasonable disagreement on circumcision due to burdens of judgment I: Whether circumcision is required or justified by religion.

Little discussion is needed to establish that this is a reasonable disagreement, since it very closely mirrors the standard neutralist case set out at the start of this paper, and since disagreement on these questions is readily apparent.

The second aspect of the reasonable disagreement concerning circumcision is whether it is harmful in another way, which is to say whether removing a boy's foreskin constitutes an overall loss or gain to his health and wellbeing. Kramer himself argues that circumcision is mildly beneficial, and implies that there is not a reasonable disagreement on that question (although he is willing to concede this point for the sake of argument). He writes:

On the one hand, bodies of experts such as the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists and the Center for Disease Control have in recent years concluded that the mildly beneficial effects of the circumcision of male infants outweigh the extremely

¹⁸ For a historical discussion of the role of circumcision in Judaism, including dissenting voices, see Leonard B. Glick, *Marked in Your Flesh: Circumcision from Ancient Judea to Modern America* (Oxford University Press, 2005). For discussion of different circumcision practices in Islam see S. A. H. Rizvi, S. A. A. Naqvi, M. Hussain, and A. S. Hasan, "Religious Circumcision: A Muslim View" in *BJU International* 1999 vol. 83 no. 1 p. 13-16.

small risks involved (Stobbe 2014; Task Force on Circumcision 2012). In light of those expert judgments, the crusades against male circumcision that are currently being conducted by some knights of the foreskin are especially dubious.¹⁹

In defence of Kramer's position note that most liberal states do not prohibit circumcision and in some, such as the USA, it is practised routinely. So there certainly are those who argue that circumcision is not harmful and may be beneficial to health and wellbeing.

However, while Kramer is right about the American Academy of Pediatrics (AAP), he gives a highly partial account of expert opinion. For one, while the AAP does judge that the benefits of circumcision outweigh the risks, it also states that the benefits are not significant enough to recommend the practice.²⁰ Other medical authorities take stronger positions against circumcision. The UK National Health Service (NHS) website describes circumcision as "a treatment of last resort" and states "It's rare for circumcision to be recommended for medical reasons in children. This is because other, less invasive and less risky treatments are usually available."²¹ With respect to therapeutic circumcision, the British Medical Association (BMA) advises "to circumcise for therapeutic reasons where medical research has shown other techniques to be at least as effective and less invasive would be unethical and inappropriate. ... there is rarely a clinical indication for circumcision." With respect to routine or ritual circumcision, the BMA states:

¹⁹ Kramer, *Liberalism with Excellence*, p. 85.

²⁰ In Clare Chambers, "Normal Bodies: Cultural, Cosmetic, and Clinical Surgery" (MS) I examine the position of the American Academy of Pediatricians in detail. To summarise that analysis: the AAP's discussion of the medical complications and implications of circumcision is skewed strongly towards the practice, in contravention of its own stated recommendation; and it actively recommends that parents make the choice based on cultural and religious reasons rather than medical ones, even though it is a medical organisation not a religious or cultural one. The AAP's position on circumcision is comparable to the Nosnopian policy as Kramer interprets it: it is a policy that, whether intentionally and explicitly or not, reflects and furthers a particular cultural and religious conception above others.

²¹ NHS Choices, "Circumcision in Boys" at <http://www.nhs.uk/conditions/Circumcision-in-children/Pages/Introduction.aspx> Accessed on 20 December 2017.

There is a spectrum of views within the BMA's membership about whether non-therapeutic male circumcision is a beneficial, neutral, or harmful procedure or whether it is superfluous, and whether it should ever be done on a child who is not capable of deciding for himself. The medical harms or benefits have not been unequivocally proven but there are clear risks of harm if the procedure is done inexpertly.²²

The medical authorities of other countries concur with the BMA.²³

It is also important to note that the medical benefits claimed by the AAP do not depend on circumcision being performed in childhood. Many of the benefits that the AAP claim for circumcision concern the prevention of diseases that do not generally present until adulthood, and so nothing is lost from a health perspective if circumcision is delayed until it can be consented to.²⁴

As for men who have been circumcised, many of them are indifferent about or positively happy with being circumcised. However, there are a significant number of men who were circumcised as children who regret that fact, and some who experience severe mental distress

²² British Medical Association, "The Law and Ethics of Male Circumcision" at <https://www.bma.org.uk/advice/employment/ethics/children-and-young-people/male-circumcision> Accessed on 20 December 2017.

²³ The Canadian Pediatric Association states: "While there may be a benefit for some boys in high risk populations and the procedure could be considered as a treatment or to reduce disease, in most cases, the benefits of circumcision do not outweigh the risks." <http://www.cps.ca/en/media/release-communique/canadian-paediatricians-revisit-newborn-male-circumcision-recommendations> Accessed on 20 December 2017.

²⁴ The German Pediatric Association states "there is but one of the arguments put forward by the AAP that has some theoretical relevance in relation to infant male circumcision, namely the possible protection against urinary tract infections in infant boys, which can be easily treated with antibiotics without tissue loss. The other claimed health benefits, including protection against HIV/AIDS, genital herpes, genital warts and penile cancer, are questionable, weak and likely to have little public health relevance in a Western context, and do not represent compelling reasons for surgery before boys are old enough to decide for themselves." See <https://www.circinfo.org/doctors.html> Accessed on 20 December 2017.

or physical complications.²⁵ There is also a problem with evidence-collection since few men have experience of both conditions and there is a potential problem of adaptive preferences.²⁶

In sum, there is ample evidence for the existence of a second reasonable disagreement:

Reasonable disagreement on circumcision due to burdens of judgment II: Whether circumcision is beneficial or harmful to health.

Premise 1 of the neutralist dilemma on circumcision stands.

However, the existence of reasonable disagreement due to the burdens of judgment as to whether circumcision is beneficial or harmful does not mean that the state should permit the circumcision of babies and children. This is because the circumcision of babies and children violates their freedom and equality, whichever way you resolve the matter of reasonable disagreement due to burdens of judgment. The first version of the neutralist dilemma on circumcision can be resolved by rejecting premise 3. The disagreement due to burdens of judgment does not need to be resolved in order to identify which side violates the freedom and equality of (some) citizens.

In contrast to the abortion case, *the very fact that there is a reasonable disagreement about the harms of circumcision* means that it is a violation of freedom and equality to circumcise someone without his consent. The state must choose whether to permit or prohibit circumcision, but it can do so without taking a stance on the matter of reasonable disagreement due to burdens of judgment, because remaining neutral on that question would mean allowing men to choose *for*

²⁵ For discussion and testimony from men who reject their childhood circumcision see Intact America at <http://intactamerica.org>; the National Organization of Circumcision Information Resource Centers at <http://www.nocirc.org>; 15 square at <https://www.15square.org.uk/>; and The Intactivism Pages at <http://www.circumstitutions.com>. For discussion of the outcomes for men who are happy with their circumcision see Clare Chambers, *Sex, Culture, and Justice: The Limits of Choice* (Penn State University Press, 2008) Chapter 1.

²⁶ B. D. Earp, L. M. Sardi, & W. A. Jellison, "False beliefs predict increased circumcision satisfaction in a sample of US American men" in *Culture, Health & Sexuality* (December 2017).

themselves whether to undergo circumcision.

Permitting circumcision of children is unreasonable with respect to freedom and equality. It undermines equality because in many liberal countries only boys, or even only boys belonging to particular cultures and religions, lack legal protection from unnecessary surgical modification. It undermines freedom because it reduces a man's bodily autonomy and religious liberty. Permitting infant circumcision involves allowing parents to authorise the irreversible removal of a healthy, functioning part of their son's body.²⁷ It thus undermines that boy's bodily autonomy, since he will no longer be able to make his own decision about circumcision (on either religious or health grounds) and cannot choose to keep his foreskin. And it undermines his bodily integrity, since a healthy, functioning, erogenous part of his body has been removed without his consent. Since there is reasonable disagreement as to whether that removal is harmful, it follows that children should be able to decide the matter for themselves on reaching adulthood.

A neutral policy on circumcision would run as follows:

Reasonable neutral policy on circumcision: There is reasonable disagreement as to whether circumcision is harmful. Therefore each man should be able to decide this question for his own body for himself. Permitting the circumcision of children violates their freedom and equality.

This reasonable neutral policy has the same conclusion as *Self-deluding Nosnipian supposedly-neutral policy on circumcision* and *Honest Nosnipian unreasonable policy on circumcision*, but it is distinct from those policies and does not suffer from the same problems.

²⁷ For a clinical description of the anatomy and function of the foreskin see C. J. Cold and J. R. Taylor, "The prepuce" in *BJU International* 1999 vol. 20 no. 83.

The reasonable neutral policy contrasts with two non-neutral policies:

Non-neutral policy on circumcision I: Circumcision is beneficial. Therefore the circumcision of babies and boys should be permitted.

Non-neutral policy on circumcision II: Circumcision is harmful. Therefore the circumcision of adult men should be prohibited.

These policies are non-neutral because they take a side on matters on which there is reasonable disagreement due to burdens of judgment (whether religion requires circumcision, and whether circumcision is good for public health) when it is possible to take a neutral stance on those questions. But notice that, *regardless of which side of the reasonable disagreement one lies*, it is unreasonable to impose that judgment on the babies and children who face circumcision without their consent. As adults those men could reasonably disagree with their parents about whether circumcision is justified by either religious or health considerations, but if they were circumcised as children then it will be too late for them to act on their own judgment. The decision will already have been taken for them – irreversibly and unreasonably – by their parents. It follows that it is unreasonable with respect to freedom and equality to permit the circumcision of children. Premise 3 fails. Circumcision is not a neutralist dilemma.

6. A second neutralist dilemma on circumcision

The conclusion of the previous section relies on the claim that one person's religious liberty cannot justify violating another person's freedom and equality, regardless of whether the violation is harmful or not. After all, religious liberty does not justify one adult forcing another adult to be circumcised against his will, even if the first adult does sincerely believe that her religion requires it. And this conclusion is generalizable, regardless of whether circumcision is harmful or beneficial. One adult cannot use her religious liberty to justify forcing another

adult to have his hair cut, even if the haircut is not harmful to him and even if she sincerely believes that her religion requires her do the forcing. Similarly, one adult cannot use her religious liberty to justify coercing another adult to attend religious worship.

However, an objector might use these examples against me. They might point out that parents are generally permitted to force their *children* to have haircuts against their will, on the basis that haircuts are not harmful and parents have rights over their children. They might point out that parents are generally permitted to force their children to attend religious worship, justified by the parents' religious liberty. Thus, the objection proceeds, circumcision is a neutralist dilemma after all: if circumcision is not harmful then prohibiting it would be like prohibiting parents from choosing to cut their children's hair, and such prohibitions would violate parents' freedom and equality.

This objection suggests that the debate over circumcision can be turned into a neutralist dilemma by questioning the moral status of children. This version of the circumcision dilemma runs as follows:

Neutralist dilemma on circumcision II

1. There is reasonable disagreement due to the burdens of judgment as to whether children are full moral persons.²⁸
2. If children are full moral persons, then it is unreasonable for parents to authorise circumcision of their children, since this denies the children's freedom and equality.
3. If children are not full moral persons, then it is unreasonable to prohibit parents from authorising circumcision, since prohibition would restrict the religious

²⁸ This argument could be framed in a variety of ways: whether children are full moral persons, whether children deserve full freedom and equality, whether they have the same moral status as citizens, whether parents have full authority over their children. Different framings will be differently plausible; what matters is that they be consistent throughout the dilemma.

liberty of parents without being justified by the freedom and equality of other persons.

4. (From 2 and 3) Either permitting or prohibiting circumcision violates freedom and equality.
5. (From 4) Disagreement about whether circumcision of children should be permitted or prohibited is unreasonable with respect to freedom and equality.
6. (From 1) We do not know whether it is permitting or prohibiting circumcision that violates freedom and equality.
7. Therefore there is no neutral policy available.

Framed this way, the argument is once again a neutralist dilemma, and there is no way of settling it without engaging in the question of whether children are full moral persons.

If it is at least possible that foetuses are full moral persons then it must surely be possible that children are, and so the problem seems even more intractable than the abortion case. However, a defender of parents' right to circumcise their sons might argue that there is a disanalogy between abortion and circumcision. If foetuses are full moral persons then abortion certainly violates their freedom and equality because it kills them, but the harm of circumcision is not comparable. According to this objection, it is possible both to believe that children are full moral persons and that circumcision of children is permissible, because parents generally have the right to authorise medical procedures on their children, and because parents' religious liberty means that they can bring their children up according to their own religious beliefs, and because any harm entailed in circumcision is not serious.

Many issues are raised here, and it is beyond the scope of this paper to engage them all fully, so a few remarks must suffice. First, it would be implausible to argue that parents may in general exercise their liberty via their children's bodies. The related principles of bodily integrity and bodily autonomy place limits on parental action. Parents should not be able to

express their religious liberty by tattooing their children with religious symbols.²⁹ Parents should also not have complete authority to submit their children to surgical procedures: they may not authorise cosmetic surgery on their children so as to shape them to their own tastes. And parents should not be able to deny their children life-saving treatments on religious grounds.

So it is not plausible to say that there is reasonable disagreement on children's moral status of the sort that would truly leave open the possibility that children's freedom, equality, bodily integrity, and bodily autonomy, count for *nothing*.³⁰ Parents need to act as guardians, meaning that they can make decisions for their children when necessary to secure their children's interests. But they may not treat their children as accessories for their own interests.

Kramer's argument against Nosnipia invites us to weigh up bodily integrity vs. religious liberty. Both bodily integrity and religious liberty are weighty values. However, in the case of circumcision of babies and children they are not symmetrical, because to permit circumcision is to value the religious liberty of parents against the bodily integrity and autonomy of children, and this is not a reasonable trade off. This conclusion does not depend on one's view about whether religious reasons favour circumcision. If circumcision were not required for religious reasons, then it would be unreasonable to circumcise babies and children since this would violate their bodily integrity and autonomy without justification. But if circumcision were required for religious reasons, it would still be unreasonable to circumcise babies and children since this would violate their bodily integrity and autonomy without contributing to

²⁹ The claim is *not* that there is something particularly dishonourable about religious symbols: parents should similarly not be allowed to tattoo their children with symbols reflecting the parents' aesthetic taste, or parental allegiance to a sports team, or any other commitment. My claim is that *even* religious liberty, though weighty and important, does not justify allowing parents to undermine their children's bodily integrity and autonomy.

³⁰ Rawls describes full moral persons as "someone who can be a citizen, that is, a normal and fully cooperating member of society over a complete life" and that society must make room for "all the necessities and activities of life, from birth until death." These remarks are generally taken to indicate that children are persons in the relevant sense. See Rawls, *Political Liberalism* p. 18

their religious liberty.³¹

The practice of circumcision is particularly significant because it is a practice that undermines bodily integrity in an irreversible way. Forcing a child to have a hair cut that he does not want violates his bodily integrity, and thus may sometimes be wrong, but hair grows back and so even a forced hair cut does not prevent the child from making his own decisions about his hair when he becomes an adult. But circumcision is irreversible: parents' decision to circumcise cannot be undone.

In one respect, everything a parent does to her children is irreversible: we cannot reverse time and create alternative childhoods. So irreversibility alone cannot be a barrier to parental action. But some sorts of parental action are irreversible not just in the time-travelling sense, but in the more interesting sense that they close future options: they prevent future choices, they remove capabilities, or they undermine autonomy. A boy who is not circumcised can choose circumcision for himself later; a boy who is circumcised cannot choose to be intact later.³²

This consideration makes circumcision unlike other aspects of parents' religious liberty, such as attendance at religious worship. Parents may legitimately take their children to worship,

³¹ A Rawlsian way of putting this point would be to say that using parental religious liberty to justify the circumcision of children violates the separateness of persons.

³² One anonymous reviewer objected that circumcision is a requirement in Judaism, such that failing to circumcise a baby boy prevents him from having a properly Jewish childhood. In response, note first that not all Jewish people feel that circumcision is essential to a properly Jewish childhood. Some Jews support Brit Shalom as an alternative to circumcision, meaning that some Jewish boys are uncircumcised. For discussion and first-hand accounts see www.beyondthebris.com. Nevertheless, Brit Shalom remains a minority practice and so many Jewish people may agree with the reviewer that an uncircumcised boy cannot have a properly Jewish childhood. On this account, not circumcising a boy *irreversibly* prevents him from accessing the value of a traditional Jewish childhood.

However, there are a vast number of ways of preventing a child from accessing the value of a traditional or properly Jewish childhood, such bringing him or her up in a different religion or without religion. Indeed, every parenting decision can be described similarly. Bringing up a child speaking only English irreversibly prevents her from accessing the value of a Spanish-speaking childhood; failing to teach a child piano from an early age irreversibly prevents her from accessing the value of being a child prodigy at piano-playing; bringing a child up in one country irreversibly prevents her from accessing the value of a childhood spent in a different country. So this objection cannot be decisive.

since that choice serves the parents' religious liberty and does not prevent those children from making their own decisions about whether to worship as adults. Childhood acts of religious worship cannot be reversed, but childhood acts of worship do not prevent adult from choice about worship. And the same is true in reverse of an atheist upbringing.³³

However, a challenger might claim that the circumcision of babies and children could be permissible if it improved public health. In this case, the objection would run, it is justifiable to circumcise babies and children even if that means violating their bodily integrity and autonomy, since we make a similar trade off in other cases. For example, we allow parents to submit their children to vaccination so as to improve public health. Moreover, Kramer notes that parents in Nosnipia remain at liberty to harm their children in other ways, such as by feeding them fattening food.

But circumcision is not a good analogy to vaccination, because while there *is* disagreement on the clinical benefits of vaccination it is *not* reasonable due to the burdens of judgment. Clinical judgment on the benefits of vaccination is overwhelming, whereas even the pro-circumcision AAP states that the benefits of the practice are not sufficient to *recommend* it. And vaccination does not involve the permanent removal of body parts.

Plying children with fattening food may or may not be a good analogy for circumcision, depending on its extent. It may well do damage to them and be wrong in various ways. Quite possibly, the freedom that parents have to feed their children unhealthy food should be constrained. For example, many state schools in the UK do not allow parents to include sweets and chocolate in packed lunches, or require that playtime snacks consist only of fruits

³³ Some parental actions prevent children from exercising some relevant liberty in the future, such as religious upbringings that amount to brainwashing and deny autonomy. It is an important aspect of liberalism that education should be autonomy-promoting, and so the liberal state may legitimately prevent parents from denying their children the opportunity to develop autonomously. See, for example, Meira Levinson, *The Demands of Liberal Education* (Oxford University Press, 1999); Eamonn Callan, *Creating Citizens* (Oxford University Press, 1997).

and vegetables. Even more plausibly, parents who persistently restrict their children's diet despite damaging their health, particularly if the damage to health is so extreme as to be irreversible or to cause the loss of body parts, should be guilty of an offence. But simply giving one's child unhealthy food occasionally, or even frequently, is not analogous to the permanent removal of healthy body parts.

7. Taking precautions again

In the abortion case, Kramer argued convincingly that Quong's Precautionary Argument does not work. In the circumcision case, the Precautionary Argument is successful. A version of it applied to circumcision would go something like this:

P1. Reasonable comprehensive doctrines disagree about whether circumcision is required for religious or clinical reasons.

P2. In the face of such reasonable disagreement, we should adhere to a precautionary principle and should therefore acquiesce to the proposition that the foreskin is valuable and should not be removed. We are not thereby committed to accepting that such an assumption is true.

C. Ergo, since both bodily integrity and autonomy *are* generally-accepted political values, we should argue against the legal permissibility of the circumcision of children, so that adult men may decide for themselves whether circumcision is required for religious or health reasons.

This version of the Precautionary Argument is not subject to the objections that Kramer raises to its use in the abortion case. The values of bodily integrity and bodily autonomy are vital here. Even if one believes that the foreskin is valuable and should not be removed, one can also believe that bodily autonomy makes it reasonable for an adult man to choose circumcision for himself, whether for religious or health reasons. Even if one believes that

circumcision is required for religious or clinical reasons, one can also believe that bodily autonomy makes it reasonable to preserve a man's right to make this choice for himself.

Indeed, as Kramer himself argues, the value of the freedom to choose is not dependent on the value of the thing one chooses. It is valuable simply to be treated as someone who is able to deliberate for oneself. In Chapter 5 Kramer takes this point to grisly extremes, telling us that even the "freedom to disembowel oneself is important because it is typically a hallmark of respect for one's deliberative maturity. ... Normally, then, a mentally sound adult who has been deprived of the freedom to resort to self-disembowelment should feel aggrieved."³⁴ There is no reason not to make a similar claim about the man who has been deprived of the freedom to keep his foreskin. After all, as Kramer argues about freedom in general, "Even when ϕ -ing is itself of no positive value, being free to ϕ is almost always of positive value."³⁵ For many men the foreskin is of great positive value, but even those who do not value it derive value from the freedom to choose its fate for themselves.

In order to believe that the law should permit circumcision of babies, which is what Kramer wants it to do, one must believe that bodily integrity and personal freedom is either not valuable at all, or that it is less valuable than the religious convictions of people whose body it isn't. As Kramer shows in the case of abortion, this would be an unreasonable position.

Kramer suggests that banning circumcision would be bigoted, because it would be a form of discrimination or oppression against those religions that practise it. This is an important consideration, and one of the greatest challenges for any anti-circumcision position. However, the fact that a view can sometimes mobilise racism or other unreasonable positions cannot be a decisive strike against it, because that would rule out many reasonable political perspectives.³⁶ It is also a challenge for the much more mainstream view that Female Genital

³⁴ Kramer, *Liberalism with Excellence*, p. 201.

³⁵ Kramer, *Liberalism with Excellence*, p. 231.

³⁶ For example, it is true that pro-Brexit opinion may mobilise racism. It would be wrong to endorse Brexit for racist reasons. But this does not mean that it is necessarily unreasonable to endorse Brexit for non-racist reasons. Similarly, it is possible to oppose pornography for oppressive reasons, but this does not mean that it is unreasonable to oppose pornography for feminist reasons. And it is possible to use

Mutilation (FGM) is wrong. In countries such as the UK FGM is illegal when performed for cultural reasons, even when performed on consenting adult women. But cosmetic surgery on the genitals (Female Genital Cosmetic Surgery or FGCS), including that which has surgical equivalence to FGM, is permitted – including for children.³⁷ This position strikes many as discriminatory or racist.³⁸

What policies would be needed to rectify any racism? Kramer's position on child circumcision is that racism could be avoided by forbidding it generally permitting it for Jewish and Muslim parents. Applying this logic to FGM might support a reversal in current practice: forbidding FGCS but allowing FGM members of practising cultures. But anti-FGM campaigners, including those who have experienced FGM themselves, would not advocate this position.

support for abortion to mobilise anti-Catholicism, but this does not mean that all support for abortion is unreasonable.

³⁷ FGCS is widely available in the UK, openly advertised, and sometimes provided by the NHS. This is possible because the UK Female Genital Mutilation Act 2003 states “no offence is committed by an approved person who performs a surgical operation on a girl which is necessary for her physical or mental health.” There are restrictions on what sorts of things count as making surgery “necessary”: the Act stipulates “For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.” (Crown Prosecution Service, “Female Genital Mutilation Legal Guidance” at http://www.cps.gov.uk/legal/d_to_g/female_genital_mutilation/#a01) However, the guidance notes for the legislation say that procedures that are necessary for mental health can include “cosmetic surgery resulting from the distress caused by a perception of abnormality.” (UK Female Genital Mutilation Act 2003 “Guidance” at <http://www.legislation.gov.uk/ukpga/2003/31/contents>). For extensive discussion of the UK legal position on FGCS see Clare Chambers, “Choice and Female Genital Cosmetic Surgery” in Sarah Creighton and Lih-Mei Liao, *Female Genital Cosmetic Surgery: Interdisciplinary Analysis & Solution* (Cambridge University Press, forthcoming); Clare Chambers, “Normal Bodies: Cultural, Cosmetic, and Clinical Surgery” (MS); M. Berer, “Labia reduction for non-therapeutic purposes vs. female genital mutilation: contradictions in law and practice in Britain” in *Reproductive Health Matters* Vol. 18 No. 35 (2010); Moira Dustin, “Female Genital Mutilation/Cutting in the UK: Challenging the Inconsistencies” in *European Journal of Women's Studies* Vol. 17 No. 1 (2010); B. Kelly B and C. Foster, “Should female genital cosmetic surgery and genital piercing be regarded ethically and legally as female genital mutilation?” in *BJOG* Vol. 119 (2012).

³⁸ See Moira Dustin, “Female Genital Mutilation/Cutting in the UK: Challenging the Inconsistencies” in *European Journal of Women's Studies* Vol. 17 No. 1 (2010); Arianne Shahvisi, “Why UK doctors should be troubled by female genital mutilation legislation” in *Clinical Ethics* Vol. 12 No. 2 (2017). For discussion of a racist double-standard in the Scandinavian context see B. Essén, and S. Johnsdotter, “Female genital mutilation in the West: traditional circumcision versus genital cosmetic surgery” in *Acta Obstetrica et Gynecologica Scandinavica* Vol. 83 (2004). For critique of the UN position see Bronwyn Winter, Denise Thompson, and Sheila Jeffreys, “The UN Approach to Harmful Traditional Practices” in *International Feminist Journal of Politics* Vol. 4 No. 1 (2002).

They argue that any racism in the status quo comes from a *lack* of successful prosecutions of FGM, which amount to failing to protect black girls from abuse.³⁹

Cultural and religious exemptions from laws are generally treated as benefitting the members of those cultures and religions. However, where the justification of a law is to protect the vulnerable or to secure freedom and equality, legal exemptions harm the vulnerable members of the culture or religion at the expense of the powerful.⁴⁰ Permitting only religious circumcision would be to selectively fail to protect the bodily autonomy of Jewish and Muslim boys. Similarly, many anti-circumcision campaigners argue that allowing male circumcision and forbidding FGM selectively fails to protect the bodily autonomy of boys as compared to girls.⁴¹

In *neutralist dilemma on circumcision II* the most plausible resolution of the dilemma is to deny premise 1. Children's moral status must be at least adequate to protect them from practices about which there is reasonable disagreement due to the burdens of judgment and which irreversibly undermine their bodily integrity and autonomy. To think otherwise would be unreasonable. And if premise 1 fails, then so does premise 3, and the dilemma is solved in favour of prohibition. One implication of this argument, which counters the charge of bigotry, is that infant circumcision should not be singled out for prohibition: states should legislate generally against all forms of non-therapeutic irreversible body modification on children.⁴²

³⁹ British anti-FGM campaigner Hibo Wardere reports the words of fellow campaigner Waris Dirie: "If a white girl is abused, the police come and break the door down. If a black girl is mutilated, nobody takes care of her. This is what I call racism." Hibo Wardere, *Cut: One Woman's Fight Against FGM in Britain Today* (Simon and Schuster, 2016) p. 215.

⁴⁰ For further development of this argument see Clare Chambers, *Against Marriage: An Egalitarian Defence of the Marriage-Free State* (Oxford University Press, 2017) Chapter 6.

⁴¹ See, for example, B. D. Earp, "Female genital mutilation (FGM) and male circumcision: Should there be a separate ethical discourse?" (2014) Available at https://www.academia.edu/8817976/Female_genital_mutilation_FGM_and_male_circumcision_Should_there_be_a_separate_ethical_discourse

⁴² For an argument in favour of tougher legislation against cosmetic procedures being performed on children see Nuffield Council on Bioethics, *Cosmetic Procedures: Ethical Issues* (Nuffield Council on Bioethics, 2017). Available at <http://nuffieldbioethics.org/project/cosmetic-procedures>

Conclusion

This paper considered Kramer's argument about the impossibility of a neutral position on abortion and argued that it could be generalized into what I call a "neutralist dilemma". Neutralist dilemmas might occur in various forms. However, I argued that the case of circumcision is a neutralist dilemma only if there is a serious possibility that children are not full moral persons. If they are full moral persons, or at least have weighty moral status, then it is not justifiable to subject them to irreversible bodily procedures that are not clinically required treatments of a presenting health problem, and about which there is reasonable disagreement. It is much more plausible, I argued, to suppose that children have at least the moral status that would grant them protection against such procedures until they can decide for themselves.