

## Correspondence

# Where Is the Voice of the Man the Child Will Become?

John V. Geisheker

*To the Editor:*

In the Fall 2009 issue of *The Journal of Clinical Ethics*, the authors of papers from a panel discussion at the 2008 Annual Meeting of the American Society for Bioethics and the Humanities reported on a common quandary in clinical ethics, made more challenging by the age of the child-patient. This was the case of “Misha” (Jimmy) Boldt, an Oregon child who faced, for five years, uninvited conversion, including circumcision, occasioned by a religious epiphany his custodial father claimed to have undergone. Each of the authors on the panel had a different perspective: Dena S. Davis, JD, PhD, was the originator and moderator of the panel;<sup>1</sup> Janet L. Dolgin, PhD, JD, commented on the legal/sociological aspects;<sup>2</sup> Douglas S. Diekema, MD, MPH, commented on the medical/clinical aspects;<sup>3</sup> and Noam Zohar, PhD, commented on the religious/philosophical issues.<sup>4</sup>

Our international physicians’ organization, Doctors Opposing Circumcision (D.O.C.), filed two *amicus curiae* (friend of the court) briefs in the case,<sup>5</sup> and attended a hearing on 22 April 2009 during which the child, by then 14, testified under oath and on the record in an Oregon court that he did *not* wish to convert to Judaism (his father’s newly adopted religion), he did *not* wish to be circumcised, and he did *not* wish to live with his father any longer.<sup>6</sup>

The child’s testimony showed courage and took a risk that he would be ignored, as children too often are. Because it would have been far easier for Misha to accede to his custodial father’s wishes than to defy him in public, perhaps it can be as-

sumed his testimony was truthful. Indeed, the child returned home with his father that day.

None of the *amicus* groups that supported the father’s legal position all the way to the U.S. Supreme Court — and back to Oregon — appeared at the hearing on 22 April 2009 to hear the child’s actual “voice” (nor did they express any written sympathy for the plight of the child throughout the proceedings).<sup>7</sup>

In September 2009, facing a custody hearing he was likely to lose, the father voluntarily agreed to give up physical custody of Misha to his mother, with court approval. The child’s proposed circumcision, at one point only hours away, remains judicially prohibited.

Our international physicians’ group was pleased to read that Diekema and Zohar<sup>8</sup> stated that the child’s preference must be sought. In this instance that would have been problematic, because there was no way to determine whether the father, who had full custody of the boy for many years, had not systematically steeped the child in his own beliefs. This is a common and challenging scenario in pediatric bioethics.

There was, our physicians’ group believed, another voice that needed to be heard — that of the man Misha would soon become.

Thus we were stung by the suggestion of Dolgin in *JCE* that we had ignored the voice of Misha,<sup>9</sup> and so did him a disservice for our own ideological reasons. We *did* urge the court to protect the child from an irrevocable decision he might later regret — but only if Misha supported his father reflexively. In that sense Dolgin was half correct — and only in the short-term.

It is overly simplistic to frame this ethical puzzle as fully solvable by merely listening attentively to the voice of the child. Our entire rationale in this case was not only to defend, cautiously, the voice of the child — which might potentially have been manipulated by adults — but also to *give a voice to the man this boy is soon to become*. That voice, or any voice from within the child, was entirely missing until the end of the five-year litigation.

But it may be found throughout our two voluminous briefs on Misha's behalf.<sup>10</sup> In all, four attorneys eventually contributed more than \$80,000 in *pro bono* legal time to hear the voice of Misha, the future man, and, by inference, others in his situation. Contributions poured in from a half-dozen countries. Even so, ultimately Misha did the heavy lifting, finding within himself the beginnings of his forthright *adult voice*.

We live the bulk of our lives — 60 or so years — intellectually independent from our birth families, even if we are emotionally tied to them, as autonomous individuals with the right to determine our own beliefs and the responsibility to extend the same freedom to our children. The late philosopher Joel Feinberg said that children are entitled to an “open future,” one whose options are not foreclosed by whimsical (or even pious, heartfelt) decisions of their parents, and who ought to be protected from decisions of their own that they may come to regret.<sup>11</sup> The cosmetic surgery or tattoo a discontented young adolescent might crave, as Diekema warns, comes to mind.<sup>12</sup>

Misha/Jimmy Boldt now has an open future; he can schedule his own circumcision at age 18 for religious reasons — or for no reason at all. He can study to become an observant Jew if he wishes, which would be much more credible for being his personal choice. Following the path of millions of secular Jews worldwide, he could also become an agnostic or an atheist, or anything in between. Indeed, we have no way of knowing what personal beliefs a child will develop. We would argue further that parents have no right to force a child to adopt their beliefs merely to reaffirm their own choices. Beyond issues of belief, do we, as parents, acquire a derivative right to mark our child's body with an indelible symbol of our own belief?

For example, in some quarters of fundamentalist Shiite belief, parents slash their child's forehead three times during *Ashura*, so that blood

flows down the child's face to memorialize the death of the martyred saint Imam Hussein, beheaded by Sunnis in the year 780. The child is then said to be protected from pain or harm by his or her faith. The ritual is repeated each year, even with toddlers.<sup>13</sup> Should Shiite parents be credited with honest piety and their toddlers with independent belief? Or should we attempt to forbid this practice (in the United States), as it presents risks to children whose beliefs cannot yet be determined and whose scars, physical and psychological, may be permanent? One reason this particular religious practice may seem repellant is that, like female genital cutting, it is unfamiliar. Richard Dawkins, DPhil, Oxford University, has suggested that raising a child in a specific religion, to the exclusion of exposure to other beliefs including skepticism, constitutes child abuse.<sup>14</sup> Perhaps that is too drastic, but it is a provocative thought in a world that includes too many young suicide bombers.

There is a lesson, in Misha's case, to guide pediatric careproviders: the voice of the child, as Diekema touches upon but does not elaborate, may be the product of many sources: whims of the child, whims of the family, remnant memes of culture the child has been taught to parrot. Thus careproviders will do well to ignore the clamor and remain focused on what is best for the child *qua* future adult, preserving, when possible, all of the child's options to be exercised, autonomously, later. That logically eliminates all occasions in which the child's options are foreclosed, without therapeutic justification, for reasons the child-now-an-adult may regret.

In the medical setting, that means avoiding procedures that humor the family at the expense of the child, who is the *only* patient and an adult-in-process, whom we are charged to protect. Examples include therapeutically premature, cosmetic “normalization” surgeries like otoplasty or blepharoplasty (changing an Asian double eyelid), or precipitous gender assignment of the intersexed, when these could wait for the adult child's expressed preference.

Respect for a child's right to an open future fully obviates the merely cultural, non-therapeutic, surgical modification of minors, including cosmetic labioplasty (alas, on the rise),<sup>15</sup> labial or preputial<sup>16</sup> cosmetic piercing or reduction, tattooing, scarification, circumcision of either gender, and the like. All reduce a child's options and

brand the child as the possession of the parents, with no regard to his or her autonomy as a future adult. Without proven therapeutic justification and pressing necessity, none enhance the child or credit his or her right to an open future or the right to choices — including physical appearance and sexual functioning — of his or her own.

Finally, we were disturbed and dismayed by a footnote in Dolgin's article that could be seen to suggest that the president of Doctors Opposing Circumcision, George C. Denniston, MD, may be anti-Semitic, which is entirely unfounded.<sup>17</sup>

In closing: children who are welcomed, gently, into their birth communities have been given the gift of Joel Feinberg's "open future." They may embrace their community or they may eventually drift away; there is no way to tell, in advance, what they will choose. But, importantly, their options are left open, and none of their body parts will have been surgically modified or removed — without their consent — prior to the moment when we will be able to hear *the voices of the adults they will become*.

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### NOTES

1. D.S. Davis, "*Boldt v. Boldt*," *The Journal of Clinical Ethics* 20, no. 3 (Fall 2009): 241-3.

2. J.L. Dolgin, "Where Is the Child? Circumcision and Custody in *Boldt v. Boldt*," *The Journal of Clinical Ethics* 20, no. 3 (Fall 2009): 244-50.

3. D.S. Diekema, "*Boldt v. Boldt*: A Pediatric Ethics Perspective," *The Journal of Clinical Ethics* 20, no. 3 (Fall 2009): 251-7.

4. N. Zohar, "Circumcision, Conversion, and Deciding for a Minor: Some Jewish Perspectives," *The Journal of Clinical Ethics* 20, no. 3 (Fall 2009): 258-61.

5. "*Boldt v. Boldt*: Brief of Amicus Curiae, Doctors Opposing Circumcision, in Support of the Petition for Review," <http://www.doctorsopposingcircumcision.org/pdf/2007-04BoldtReview.pdf>, p. 3, accessed 13 November 2009, and as a record of the State of Oregon Court system; "Brief on the Merits of Amicus Curiae, Doctors Opposing Circumcision," <http://www.doctorsopposingcircumcision.org/pdf/2007-04BoldtReview.pdf>, p. 2, accessed 13 November 2009, also as a record of the State of Oregon Court system.

6. **Please provide a legal citation for the hearing on**

**22 April 2009 — I can't find one via google search.**

7. Through their lawyers, the American Jewish Congress, the American Jewish Committee, the Anti-Defamation League, and the Union of Orthodox Jewish Congregations of America.

8. Zohar writes, "Since the validity of the conversion will depend on the eventual assent of the young man, it seems nothing much would be lost by waiting with the ritual until he reaches the age of competence, at which point he shall be able to decide for himself, both with regard to the circumcision and to the conversion as a whole." Zohar, see note 4 above, p. 261.

9. Dolgin writes, "The assumptions behind that convergence of opinion reflect a model of childhood . . . on which the parents and the *amici curiae* all relied — a model here referred to as "traditional." . . . between the traditional model of childhood and the individualist model, society and the law have etched a third model of childhood. Referred to here as the "transforming" model of childhood, it bears incidents of each of the other two models and differs from both. This model recognizes the autonomy and individuality of some children, in some settings, to some degree, and it defines some children, in other settings, as dependent and unequal." Dolgin, see note 2 above, p. 247.

10. At no time did any staff member of Doctors Opposed to Circumcision, legal or medical, have even the slightest contact with the mother or the child, lest we be accused in open court of influencing the child's "voice" ourselves, risking our neutral *amicus* status. We urged the Oregon Supreme Court to bifurcate and analyze separately the issues of custody and the claimed legality of the impending circumcision, whether unwanted or not (issues the court eventually commingled, unfortunately). At no time did we take any position with respect to which parent might be the better custodian for the child. See: "*Boldt v. Boldt*: Brief of Amicus Curiae," note 5 above.

11. J. Feinberg, "The Child's Right to an Open Future," in *Whose Child? Children's Rights, Parental Authority, and State Power*, ed. W. Aiken and H. LaFollette (Totawa, N.J.: Littlefield, Adams, 1980).

12. Diekema, see note 3 above, p. 255.

13. Some recent photos of toddlers commemorating *Ashura* are posted at [http://atlasshrugs2000.typepad.com/atlas\\_shrugs/2009/01/islam-celebrate.html](http://atlasshrugs2000.typepad.com/atlas_shrugs/2009/01/islam-celebrate.html), accessed 13 November 2009.

14. R. Dawkins, "Childhood, Abuse, and the Escape from Religion," in *The God Delusion* (New York: Houghton Mifflin, 2006), 309 *et seq.*

15. See, for instance, <http://www.ncbi.nlm.nih.gov/pubmed/19906048>, accessed 13 November 2009.

16. Preputial glands in humans are also called Tyson's glands; these are modified sebaceous glands located around the corona and inner surface of the prepuce of the penis; their secretion is one of the components of smegma. W. Cowper: *Myotomia reformata; or, An anatomical treatise on the muscles of the human body* (London, 1694), 1724.

17. Dolgin, see note 2 above, note 41, p. 249.