



The Circumcision Crisis: Challenges for European and World Jewry

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ABSTRACT

Against the background of demographic shifts including the mass migration of non-European populations to Europe, the recent attempt to ban circumcision in Germany could be viewed as the latest juridical aspect of a larger pan-European identity backlash against multi-cultural policies. While apparently directed mainly against Muslims, this new and vigorous opposition to particularist religious rituals also affects the religious practices and hence the status of Judaism, and may, in the long term, pose a serious challenge to the future thriving of European Jewish communities.

Even if each discrete restriction on traditional Jewish life appears to be anchored in universal values and in interests of general societal concern, their cumulative effect does not bode well for the future of organized European Jewries. These include: the recent German ban on circumcision (supported by 45% of Germans and resting on human rights and medical claims), the ban on Jewish ritual slaughter (already effective in Switzerland, Sweden, Norway and Iceland – resting on animal rights claims), the proposed abolition of eternal cemeteries (in Switzerland, resting on a claim of environmental interest), the rejection of requests for accommodation of public examinations in light of the Jewish calendar (in France and Switzerland, resting on a claim of separation between Church and State), the rejection of requests for non-electric entry access in private condominiums (in France, resting on security claims), the reconsideration of the traditional massive public funding of Jewish cultural institutions (in France and other countries, resting on equity claims), the increasing pressure on Jewish day schools (all over Europe, resting on ethnic non-discrimination claims), and more. Taken together, the effect on the daily life of committed Jews as part of the general society is significant.

The traditional European Jewish response to such impediments to Jewish life has been to seek a private solution based on personal relationships. Well-known personalities of Jewish descent (rabbis' representatives and/or Jewish communal leaders) – continuing the medieval tradition of the "court Jew" – would approach local top-level politicians and ask them to intervene. Yet, in a world that is becoming juridically globalized, and in which every legal precedent counts, we must consider whether Jewish and Israeli policy makers should, instead, begin to coordinate a comprehensive, professional response.

Shaping an effective Jewish response to this phenomenon first requires consideration of analytical questions and policy dilemmas of several different types:

Political – It is important to distinguish between actions taken by the Jewish people as a whole, by American Jewry's involvement and by Israeli intervention in this matter: they could stem from different considerations and here lies one of the sensitivities of the issue. Should Israel be involved and/or lead in these Diaspora affairs? Should Israeli top-level politicians address this issue with their European



counterparts? Should American Jewry lobby the Congress and the State Department's Office of International Religious Freedom to address the issue to the European Parliament?

Also, should the Jewish communities coalesce with the much more numerous Muslim communities? What are likely to be the costs and benefits of such a strategy?

Communal –What could be the cumulative effects of what we call a growing de-legitimization of the Jewish religion on the core Jewish population and on disaffiliated Jewish families? What will be the symbolic and economic effects on communal life?

Should the European Jewish community privilege low-profile or high-profile strategies? Should they seek the intervention of international and Israeli actors and how would that impact the community's status? Should Jews claim that Judaism and liberalism share the same basic universal values? Should Jews, two centuries and half after 1789, request the return of derogatory status in order to get the rights to observe their religious rituals¹?

Ways and means – Should we develop a Jewish legal mechanism to confront existing and expectable new claims against Jewish rituals? Will advancing the 2,000-year-long contribution of Judaism to European civilization along with our identification with Western values be useful? Should we build coalitions with the numerous opponents of state intrusion in religious life, and should we refuse such state interference into religious affairs with a strategy built around the right to religious freedom? Many are the dilemmas facing Jewish policy makers.

Today, Europe is at a crossroad and we do not yet know whether it will become more open to religious diversity or more closed to it. The Jewish people must be prepared to confront all possible scenarios.

INTRODUCTION – A HISTORIC RULING

On June 26, 2012, a Cologne court acquitted a Muslim doctor of willful wrongdoing in the ritual circumcision of a four-year-old Muslim boy. However, the court ruled that the right of the child to be protected from bodily harm outweighed the religious rights of his parents. Accordingly, the court stated that circumcision of a minor for non-medical reasons may be considered a criminal act. Two Berlin hospitals that routinely perform the surgery, mostly for Muslims also for Jews, have temporarily stopped the practice.

On July 9th, the Knesset Diaspora Affairs Committee dedicated a session to German action regarding *Brit Milah*, during which the German ambassador in Israel reassured the audience – which included some ten Knesset members and several rabbis – by saying that "Milah is not, and will not be forbidden in Germany: a local court's decision is not a valid precedent. The German government could not interfere in court proceedings, no more than the Israeli government could." In the meanwhile, Europe's main Orthodox rabbinical body has urged Jews in Germany to uphold the commandment to circumcise newborn sons

¹Such an exceptional arrangement that is working satisfactorily can be seen in Italy's "*Concordato*" with the Jewish Community, which grants Jews the right to abstain from working and/or going to school and/or taking exams on Saturday and Jewish holidays, while requiring Universities and public offices to refrain from setting exams and other obligations during Jewish festivals. See G. Sacerdoti, *L'Intesa tra Stato e Unione delle Comunita' Ebraiche del 1987 e la sua attuazione*: <http://www.governo.it/Presidenza/USRI/confessioni/doc/sacerdoti.pdf>



regardless of the recent court ruling. The president of the organization, Rabbi Pinchas Goldschmidt, said he found it alarming that recent polls show that as many as 45% of Germans support the court's decision. American Jewry didn't stay idle and, as part of the effort, a bipartisan group of twenty US Congresspersons sent a severe protest letter to the German ambassador in the United States.² Following Jewish and Muslim local and international protests, Chancellor Angela Merkel was quoted as saying in a closed meeting of her Christian Democrats (CDU): "I do not want Germany to be the only country in the world where Jews cannot practice their rituals. Otherwise we will become a laughingstock." But the court ruling has drawn support from some, including Britain's Secular Medical Forum which has urged Chancellor Merkel to resist pressure to formally make non-consensual circumcision lawful: "We are shocked that religious groups deny the harm [caused by circumcision] and at the distorted and disingenuous claims made by those opposing the court's decision, wrongly suggesting that it is an indication of anti-Semitism. We urge you not to let such emotional blackmail persuade you to change the law or criticize the court's decision."³

Whatever the final political outcome in Germany concerning circumcision, the case has snowballed⁴: as of July 23, two Swiss hospitals have temporarily suspended all circumcisions, pending a reassessment of policy; as of July 30, the governor of Austria's westernmost province has advised doctors to suspend circumcisions; and as of August 6, Norway's ombudsman for children's rights has proposed that Jews and Muslim replace male circumcision with a symbolic, non-surgical ritual; and on August 20, criminal charges of committing bodily harm were filed against Rabbi David Goldberg in Northern Bavaria for performing circumcisions.⁵

BACKGROUND

A. Human Rights: A new universal faith in the making?

The main opposition to circumcision rests on a human rights claim that associates the ritual act with a criminal mutilation of a minor person. While the growing awareness of human rights is certainly a desirable development in which prominent Jews have often been engaged, this mark of positive humanistic progress is also associated with some worrying drifts. According to the legal theory expert Suzanne Last Stone (full disclosure: Prof. Stone is also JPPI's academic counsel), "this language of human rights has become the dominant mode of public moral discourse, replacing such discourses as distributive justice, the common good, and solidarity. Indeed, it has become something of a faith of its own."⁶ This view echoes other recent assessments from within the legal academy, such as that of Upendra Baxi who observed that the human rights discourse has emerged out of a failure of preceding

²<http://waxman.house.gov/sites/waxman.house.gov/files/documents/UploadedFiles/Letter%20on%20Circumcision%20in%20Germany%202012.08.08.pdf>

³*The Express Tribune*, July 17, 2012, [Circumcision ban makes Germany 'laughing stock': Merkel](#)

⁴For a presentation of the diverse national legislations regarding circumcision, see the recent comprehensive Australian report: *Non-Therapeutic Male Circumcision*, Tasmania Law Reform Institute, August 2012. <http://www.law.utas.edu.au/reform/documents/CircumcisionFinal.pdf>

⁵<http://www.juedische-allgemeine.de/article/view/id/13824>

⁶Suzanne Last Stone, "Religion and Human Rights: Babel or Translation, Conflict or Convergence", paper presented at an International Conference on Religion and Human Rights, IDI, May 2012. p. 6.



ideologies: "Much of the twentieth century of the Christian Era (CE), especially its latter half, stands justly hailed as the Age of Human Rights. ... No previous century has witnessed the proliferation of human rights standards as a core aspect of intergovernmental desire ... constitut[ing] 'a common language of humanity.' Indeed, in some ways, [a] human rights sociolect (social dialect) emerges, in this era of the end of ideology, as the only universal ideology in the making, enabling both the legitimation of power and praxes of emancipatory politics."⁷

The same diagnostic about the centrality of human rights discourse and its negative extremist drift is shared by several Jewish and non-Jewish European thinkers such as Jean-Claude Milner⁸ and Britain's Chief Rabbi Sir Jonathan Sacks. During a 2007 meeting of religious leaders at the E.U. headquarters in Brussels (with Angela Merkel present), Rabbi Sacks stated: "I have argued for some years that an assault on Jewish life always needs justification by the highest source of authority in the culture at any given age. Throughout the Middle Ages the highest authority in Europe was the Church. Hence anti-Semitism took the form of Christian anti-Judaism. In the post-Enlightenment Europe of the 19th century the highest authority was no longer the Church. Instead it was science. Thus was born racial anti-Semitism, based on two disciplines regarded as science in their day: the "scientific study of race" and the Social Darwinism of Herbert Spencer and Ernst Haeckel. ... Since Hiroshima and the Holocaust, science no longer holds its pristine place as the highest moral authority. Instead, that role is taken by human rights. It follows that any assault on Jewish life – on Jews or Judaism or the Jewish state – must be cast in the language of human rights. Hence the by-now routine accusation that Israel has committed the five cardinal sins against human rights: racism, apartheid, ethnic cleansing, attempted genocide and crimes against humanity. This is not because the people making these accusations seriously believe them – some do, some don't. It is because this is the only form in which an assault on Jews can be stated today."⁹ If Rabbi Sacks is right, the latest events are intertwined with latent anti-Semitism and with the absolutist approach of activists who adopt an extreme faith in human rights as the only viable moral code for our times.

This power and status that human rights possesses thus makes its construction and interpretation crucial. As we shall see, a new discourse of human rights is now emerging which is a return to an individualist, universalist, and modernist reading of human rights. It is this reading that potentially challenges circumcision.

B. Tolerance threshold and reaction against cultural transformation

To understand how the human rights discourse has become so central, we need to delve into the history of multiculturalism in Europe.¹⁰ It seems indeed that it is out of the ashes of multiculturalism and as a reaction to it that the *human rights ideology* has succeeded in establishing itself as a valid alternative.

Multiculturalism in Europe started in Great Britain in the mid-1960s: governments attempted (especially in Great Britain, Germany, and Scandinavia) to facilitate integration of the 'new' ethnic groups by

⁷See UpendraBaxi, *The Future of Human Rights* (Oxford 2006), quoted by Suzanne Stone, op.cit. p. 4.

⁸See Jean-Claude Milner, *Les penchants criminels de l'Europe démocratique*, Verdier, 2003

⁹<http://www.ejpress.org/article/60212>

¹⁰See Christopher McCrudden, Multiculturalism, Freedom of Religion, Equality, and the British Constitution: the JFS case considered (2011) *International Journal of Constitutional Law*



incorporating 'their modes of cultural/religious difference' into national society. However, since the early years of this century, and certainly since the terrorist attacks of September 2001 in the United States and July 2005 in London, multiculturalism has faced mounting criticism and has gradually been sidelined by a new post-multiculturalism, considerably more hostile to certain practices associated with ethnic minorities and immigrants.

As Christopher McCrudden argued in the British context, (and his argument is valid for all Europe): "Multiculturalism has been criticized from several different angles: that multiculturalism stifles debate, that it has fostered separateness, that it provides encouragement to terrorism, and that it denies economic and social problems associated with particular ethnic groups. Prominent among the criticisms, however, has been the view that multiculturalism fosters cultural relativism and that it protects from criticism cultural and religious practices associated with particular ethnic minority groups that are viewed by these critics as inconsistent with British liberal values. Criticism of the supposed cultural relativism of multiculturalism has, on occasion, been used to criticize particular ethnic minorities for their supposed opposition to freedom of expression, in the wake of the Salman Rushdie affair. Most prominent among these criticisms have been attacks on the treatment of women, involving criticism of forced marriages, arranged marriages, honor killings, and female genital mutilation. So, too, the treatment of sexual minorities within particular ethnic minority groups has led to sustained criticism on the basis of their incompatibility with 'liberal' principles."¹¹

As long as Jewish slaughter and Jewish circumcision were carried out on a very small scale, they were not regarded as a public policy issue worthy of attention and were tolerated under special arrangements. The scaling-up of these practices as a result of the growing Muslim presence in several European countries now seems to require official regulation. Opposition to these practices, as of now, therefore seems to be directed not toward Jews in particular, but rather toward Muslim populations. Islam is in the process of becoming a major component of the European cultural landscape, with an increasing number of Muslims holding leading public and private positions. As a reaction to this demographic shift, popular voices advocate a return to "European core values" while nationalist and Christian parties gain substantial political influence. Muslims are not going to return to their countries of origin, so they are requested to adopt a low "Muslim profile," to adapt to the European ethos and to privatize their ethnic and religious practices. The ban against the minarets in Switzerland, which was supported by 57.5% at the polls, and the ban of the Burqa in France can be seen as expressions of this "assimilationist" political determination.

C. Resurgent anti-Semitism

While anti-Semitic motives per se have never been officially mentioned- as of now – with regard to the recent developments, in its past Europe has known several bans of Jewish ritual slaughter (such as the one enforced in Switzerland in 1897 and in Norway in 1929) that were and are still regarded as having been motivated by anti-Semitic purposes, including to deter Jewish immigration to these countries. Even if the prevalence of anti-Semitic intellectual predispositions and tendencies within public opinion is not easily quantifiable, we cannot ignore it when we observe evidence of loathing toward "non-European barbaric" practices.

¹¹Christopher McCrudden, op. cit. p.5



The recent opposition to Jewish ritual circumcision has to be seen in the light of other growing difficulties that Jews encounter in the practice of their religion in today's Europe. At the above-mentioned Knesset committee session, Manfred Gerstenfeld, a Dutch-born expert on European anti-Semitism, put the German court case into the context of a growing de-legitimization of Judaism in one country after another, touching not only on Milah but on many more aspects of daily Jewish practice: examples range from the recent proposal of a member of a major Swiss party to forbid “eternal” cemeteries, which are a religious obligation for Jews and Muslims (most Swiss choose cremation, and those who choose burial are dug up after 30, 50 or 100 years and removed, in order to clear room for the next ones), to the current prohibition of Kosher ritual slaughter in countries like Switzerland and Sweden.¹² There is no end to markers of Jewishness that could be attacked, or markers of Islam that may damage Jews in the process. Moreover, issues of varying gravity, taken together, are culminating in a perception held by some European Jews of one big unquestionable indicator of a growing general anti-Semitism. For instance in France (which is home to the largest Jewish community in Europe and is the second largest Diaspora Jewish community after the US), the traditional massive public funding of Jewish schools and Jewish community centers is under reconsideration; the accommodation of the Jewish religious calendar in universities – allowing special arrangements for observant Jews who are unable to take examinations on the Sabbath and on Jewish festivals – is less and less practiced¹³; and requests by observant Jews for non-electric entry access in private condos are systematically rejected by the courts.¹⁴ These restrictions on Jewish practices occur in a context in which anti-Semitic discourse is no longer taboo and anti-Jewish violence makes the daily life of recognizable Jews more and more uneasy.

Given this larger context, are Jews what we could call “collateral damage” from a backlash aimed against the increasing Muslim presence, or does the European nationalistic resurgence specifically target \ Jews as well? Is Europe's latent (undeniably existing, and often undeniably resurging) anti-Semitism taking new forms and seeking new expressions now that its “post-Shoah guilt” has largely abated?

PROBLEM DEFINITION & DIMENSIONS

Now that we have analyzed the changing European context, in which the Jewish community finds itself dealing with a sudden expression of opposition to a Jewish ancient ritual that has been silently practiced in Germany for the past 1700 years¹⁵, we need to identify and understand further aspects of this issue in

¹² On Jewish slaughter in Europe today, see [Estonia to change shechita law based on ‘new scientific knowledge’](http://www.eurojewcong.org/ejc/news.php?id_article=8101) http://www.eurojewcong.org/ejc/news.php?id_article=8101

¹³ As already mentioned, an optimal solution to this question may be seen in Italy's “*Concordato*” with the Jewish Community, op. cit.

¹⁴ For a discussion of the human rights dimension of the legal precedents that limit Jewish daily life of observant Jews in France, including restrictions regarding mezuzot, sukkot and intercoms, see [Jacques Amar, Laïcité 2005 : zones d'ombre et droits de l'individu, l'exclusion rampante des juifs pratiquants, Controverses, n° 1, mars 2006, p. 176-193](http://www.controverses.fr/articles/numero1/amar1.htm) <http://www.controverses.fr/articles/numero1/amar1.htm>. Let's mention that this ban is a step up: Traditionally, the secularization process in Europe was accompanied by a separation between private space, in which religion expression is allowed, and public space, in which religious expression should be avoided. Whereas observant Jews cannot anymore go to the synagogue on Shabbat because of the electric access door, there are de facto locked in their private space and prevented from accessing public space.

¹⁵ There was a Jewish community in Cologne by the year 321, when the Roman emperor Constantine sent it a letter, which has been preserved. New excavations under the medieval Cologne synagogue have revealed structures



order to better focus on possible intervention options for local-communal, international Jewish and Israeli actors. These aspects, all of them interconnected, may be simplified as a series of contrapositions between increasingly opposing values:

A. CONTRAPOSITION 1: FREEDOM OF RELIGION VS. PERSONAL INTEGRITY

The emergent human rights ideology is beset by increasingly visible contradictions that are particularly relevant to the current issue. The **Universal Declaration of Human Rights**, proclaimed and adopted by the UN General Assembly in 1948, states in article 18 that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, *practice*, worship and observance." On the other hand, article 5 states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." At the same time, article 10 of the **Charter of Fundamental Rights of the European Union**¹⁶ states that "Everyone has the right to freedom of thought, conscience and religion. This right includes freedom ... to manifest religion or belief, in worship, teaching, *practice* and observance" while article 3 states that "Everyone has the right to respect for his or her physical and mental integrity." Given such religious or cultural practices as female genital mutilation, which most Westerners would characterize as "cruel" and/or "inhuman" treatment, the issue becomes choosing between two "universal rights": freedom of religion on the one hand, and the forbiddance of bodily harm on the other. As of now, it seems that Western opinion is increasingly split as to which pole is primary; whether circumcision fits the definition of "cruel" and/or "inhuman" and/or harm to one's "physical integrity" becomes, therefore, the core factor for some, while the freedom to practice it as part of one's own private religion is the core issue for others. In other words, we may frame the debate as being between defenders of "religious/cultural rights" on the one hand, and defenders of "individual rights" on the other.

Complicating this tension between freedom of religion and the right to personal bodily integrity is the equivocal status of religious practice as opposed to religious belief. Religious practices tend to be accorded less constitutional protection than religious beliefs – even in the United States, a country generally open to religion.

B. CONTRAPOSITION 2: STATE RESPONSIBILITY VS. PARENTAL ROLE

The Cologne ruling pointed out that religion should be a matter of personal choice; therefore, the child can autonomously choose religion when he/she is older but it should not be imposed on him/her unduly (and certainly not through what is seen as a permanent body modification). Again, we face two different views as to who holds the supreme right over a child. In one view, the state has the primary obligation of shaping children as future citizens, a key value underpinning the European liberal state. In the second view, guaranteeing the religious life of the child, including through circumcision, is the parents'

dating back to Roman times, with parts of the synagogue going back to Roman times and being in continuous use until the 15th century. <http://www.museenkoeln.de/archaeologische-zone/default.asp?s=3013>

¹⁶The Charter was formally proclaimed in Nice in December 2000 by the European Parliament, Council and Commission as a consolidation of the fundamental rights applicable at European Union (EU) level.



responsibility, that they have an inviolable right to choose the future path of their child. The constitutional culture of the United States is very different from that of Europe. Parental autonomy is highly valued because privacy and the family are highly valued; at the same time, it is important to remember that the founders of the United States fled to America seeking freedom of religion – and religious freedom became a core American value. In Europe, however, religion came to be seen as negative and “backwards” ever since the French Revolution and its aim to break free from the controlling Church – thus, a case like *Wisconsin v. Yoder* (1972), where the United States Supreme Court upheld the right of Amish parents to restrict access of their children to a high school education – is viewed as incomprehensible by many Europeans.

C. CONTRAPOSITION 3: MULTICULTURALISM VS. NATIONALISM

As mentioned above, it seems that part of Europe is reacting to what some perceive as the "Muslim invasion": Islam has become a major component of the European cultural landscape. Following massive immigration from Muslim countries of young populations with relatively high birthrates, Islam is now omnipresent in Western Europe. In a context of growing economic instability and social uncertainty, rapid globalization and technological shifts, welfare state erosion and increased social gaps, the presence of massive exogenous populations nurtures a growing popular resentment and Islam is perceived as a heterogeneous component of traditional European culture. A resurgence of strong nationalistic feeling is expressed in different European countries by a political shift to the right, while defenders of multiculturalism advocate respect and acceptance of difference (be it religion, culture, sexual orientation) as the only way to the full integration of society.

This cultural dilemma expresses itself through two clearly different understandings of the "human rights" concept that are often mixed and therefore confused. In fact, the "human rights" concept is not monolithic: it includes various discourses and what we observe is a move from one discourse of human rights – post-modern, multicultural and connected to identity politics – to another – modernist, individualist with universal claims, i.e. the discourse of 1789 embedded in white European Christian history. For the past twenty years, until very recently, the dominant discourse of human rights was the post-modern one: one has a right to recognition and especially the recognition of difference (I have to be recognized specifically as *gay*, *black* or a *woman*, not as only a human being). This of course includes cultural difference: "I have a basic human right to practice my culture in a group, and my group has its own rights." **What we are seeing now is backlash and a return to the more classical discourse of human rights, which tends to privilege individual rights over group rights.**¹⁷

D. CONTRAPOSITION 4: RELIGIOUS AUTHORITY VS. SECULAR MORALITY

The issue of circumcision brings to light the growing pains of Europe's intellectual evolution: ethics and morality, once fully in the realm of religion, now increasingly appear to be denuded of any religious connotation and, in many cases, it is even in the name of this new, secular form of morality that religion itself is condemned. In such a context of apparent (and in many cases strongly felt) contradiction

¹⁷See, for example, the Fall 2000 issue of *Daedalus* (Journal of the American Academy of Arts and Sciences), which discusses these issues in a very "balanced" way.



between religious ethics and secular ethics, and in the battle over which of the two should dominate in 21st century Europe, we must understand whether those who support the Cologne decision are mainly:

- Horrified by the act itself;
- Disgusted by religion;
- Upset with the public presence of Muslim (and Jewish) allegedly non-European behaviors; or
- A mix of two or more of the above

Answering this question is important because it will presumably give measure to the room Jews have and will have in this evolving Europe, especially given the centrality of the circumcision ritual in the Jewish religion and for the sense of belonging to the Jewish people. If the main "ethical" problem Europeans have is related to what they perceive as a barbaric ritual, then there is room for constructive debate; if on the other hand, we are witnessing a backlash against Muslim and Jewish religious values perceived as opposed to the new secular identity of Europe, then there may be little room left for Jews who have always kept their identity alive mainly through the practice of their religious rituals.

E. CONTRAPOSITION 5: THE MINOR VS. MAJOR BODILY HARM ISSUE

In this context of growing contrapositions between collective/cultural rights and individual rights, we would like to point out that the case for treating female genital mutilation and circumcision as legally distinct is not easy to make. The Cologne ruling held that circumcision represents "*minor* bodily harm" to children. Here, the terminology is legally important, because public prosecutors are not required to pursue cases of minor bodily harm. However, if the general opinion drifts toward a position that classifies male circumcision as a major bodily harm (today, female genital mutilation is seen as a major body harm), the situation will dramatically change.

F. CONTRAPOSITION 6: INTERNAL VS. EXTERNAL JEWISH LIFE

The European Jewish community has a long history of internal and external struggles to reach a satisfying set of dynamics both for its members and for the rest of the non-Jewish population. Following the Shoah, Europe has given more and more room to Jews not only to practice their religion privately, but even to do so in a public way. Thus, public Jewish celebrations have become part of the landscape of many European countries (be it on *Hanukah*, or on *Sukkoth*) as well as local and European events dedicated to the discovery of the Jewish culture (during which synagogues are open to the public and the Jewish community organizes all sorts of activities).

In the currently evolving Europe, less and less room may be available for Jews on a public level (both because of the increasing Muslim presence in that sphere and because of the general backlash against religion) and, paradoxically, on an internal level as well. If such primary rituals as circumcision and ritual slaughter end up being forbidden on a pan-European scale, Jews will have no choice but to either comply (and compromise their own identity) or find "creative" solutions to bypass the problem (e.g. going to Israel for circumcision and importing kosher meat if such importation is not outlawed). At the same time, it is important to note that not all Jews share the "pro-circumcision" position: a growing portion of the



Jewish community sees circumcision as an outdated, barbaric act which is still performed only as a link to the ancestors¹⁸, or not performed at all as they feel it is not required to define their Judaism. In any case, practices that have until now represented a base of unity in the Jewish community may engender a dangerous split in the community (will there be a non-circumcised Jewish community vs. a circumcised one?). The impact on communal life may therefore be unexpectedly vast and could touch various legal, economic and social aspects.¹⁹

POLICY DILEMMAS

Because intervening in European social megatrends is beyond the capabilities of the Jewish people, the goal of our intervention is much more modest: to avoid, as far as we can, becoming "collateral damage" in a civilization quarrel – or becoming the direct victims of Europeans that see Jews as a part of the quarrel itself. In other words, whether directed mainly at Jews or mainly at Muslims, **the current situation requires consideration whether and how intervention should take place in order to ensure a thriving future for the European Jewish communities.**

Having looked at different dimensions of the issue, it appears fairly clear that Europe is torn between different dilemmas, mainly:

- Freedom of religion vs. the physical integrity of individuals;
- Multiculturalism vs. nationalism;
- State rights vs. parental rights;
- Secular morality vs. religious morality

The first step toward the identification of the best Jewish strategy to be adopted would thus be to try to understand which direction is the most likely one for Europe (and the larger Western world) to take in this evolution. Following this, dilemmas and possible approaches will have to be further analyzed:

A. Concerning Human Rights: will Jewish authorities want to point out to decision makers that **Judaism is in line with liberal rights** and with the new "human rights ideology," rather than trying to keep their rituals private and unknown because it has been "this way" for centuries? If they choose to adopt such a line, it may be very important to refer to the vast scientific literature that has already tried to prove the benefits of circumcision *as performed by the Jews* as well as the ritual slaughter *as performed by the Jews*.²⁰ Conferences on the subject should be organized, and new research financed

¹⁸On this perspective, see Jake Wallis Simons' article "Circumcision and the ancestor factor", published on The Telegraph on August 6th, 2012 <http://www.telegraph.co.uk/health/9453664/Circumcision-and-the-ancestor-factor.html>

¹⁹ For a comprehensive presentation of the different future scenarios for European Jewries, see Dov Maimon, [European Jewry in 2030](#), JPPI, 2010, p. 63-100.

²⁰See the World Health Organization's research and conclusions concerning the benefits of circumcision on HIV prevention, Temple Grandin's comprehensive research on all kinds of slaughter including the Kosher one and E.U. Dialrel's *Religious rules and requirements – Judaism* Report <http://www.dialrel.eu/images/dialrel-wp1-final.pdf>



and conducted to provide further scientific proof.²¹ The Jewish communities may want to be pro-active in declaring the proven and transparent health benefits of defamed Jewish religious practices, while avoiding protesting the latest trends *only* on the grounds of freedom of religion. The European and liberal cultures have proven in various cases that religious freedom, when comprised of specific practices, is subordinate to other human and secular rights (as is the case for polygamy, or wearing the Burqa in public). If this is the trend, then defending solely on the grounds of freedom of religion will not likely be enough.

B. Concerning the multiculturalism vs. nationalism debate: could it be a valid point for Jews to underline that **proselytism is not a Jewish fundamental theological requirement** and that, unlike Muslims and Christians, Jews do not engage in efforts to systematically convert all humanity to their faith (quite the opposite, in fact)? Should Jews underscore the fact that they, therefore, do not represent a danger in the multi-cultural European clash? Rather, they represent a successful example of keeping one's identity alive while integrating with the local society and its values. Moreover, Jewish law itself demands that Jews respect local state laws, as long as they do not abrogate Jewish practices, in order to avoid clashing with the "host" population. Unlike Muslims, who in some cases advocate Sharia law in several European countries, Jews have never asked that Jewish law apply to the rest of the nation they live in.

C. Concerning parental rights over the child, as well as the bodily harm issue, a more aggressive position could consist in proceeding with legal action against the Cologne ruling: **is there room for such a legal intervention at the local level but also (and mainly) at the European Union level?** Petitioning the European Court of Justice (Luxembourg) and/or the European Court of Human Rights (Strasbourg) declare the ban illegal or clearly rule that circumcision must be legal throughout the European Union would make it extremely difficult, if not impossible, for individual European countries to adopt the ban. Such a procedure should be investigated further to avoid counterproductive results.

Part of this strategy may include pointing out some patent contradictions in the general feeling that circumcision is the mutilation of a minor without his informed consent: if consent were necessary for every permanent modification of a child's body, then it would surely be needed for such otherwise socially accepted invasive actions as ear piercing (almost entirely unregulated), prophylactic tonsillectomies, orthodontic interventions (performed primarily for aesthetic purposes), preventative extraction wisdom teeth, vaccinations, and so on.

D. **With whom should we coalesce?** Uniting resources, and mainly numbers, with the Muslim European population seems to some as a valid course of action. Muslims seem to be the main target of the Christian and nationalist reactionary movements, but coalescing with them may not be the best strategy. Whether or not Jews should emphasize the differences between their rituals and the Muslim

²¹ To have a positive impact on public opinion concerning Jewish practices, the Jewish people could choose a proactive stand and, for instance, establish laboratories to investigate whether animals slaughtered according to Jewish ritual suffer more than with other methods; create research centers and organize international conferences to demonstrate that circumcision has a lifelong medical benefit and does not harm sexual pleasure; or even launch public campaigns in support of circumcision.



ones (Jewish circumcision, done on a new-born, may appear relatively less barbaric than the Muslim circumcision, which is carried out on a young boys or even a teenagers, and Jewish slaughter houses are under stricter veterinary and hygienic control than the Muslim ones, etc.) is a question that requires deeper attention and merits further reflection.

Moreover, in the European zero-sum game, the balance of power in which victory of the multiculturalism partisans is a defeat of the central governments (which throughout history have demonstrated themselves to be the main protectors of the Jews), such a Jewish-Muslim coalition might ultimately empower the Muslim activists while doing a disservice to Jews. Whereas Jews have been part of the European intellectual landscape throughout the Common Era and share with Europeans a liberal and democratic ethos, the recent wave of Muslim immigrants are newcomers to the continent and their commitment to social and cultural integration is still being tested. As the French sociologist Shmuel Trigano²² claimed a decade ago, demonstrating with Muslims and appearing to national audiences that Jews are associated with Muslims, is a questionable strategy in an environment that is unresolved about multiculturalism. Regarding the impact of such a coalition on Muslim anti-Semitism, studies have shown that professionally integrated migrants experience less social jealousy toward Jews, but in the reality of the unresolved Israeli-Palestinian conflict, such resentment against Jews may persist despite common local political alignments.

Another possible alliance may be with Christians, who have, so far, not put forth an official position concerning the Cologne ruling. It is certainly important to try to understand how the Vatican positions itself in this debate, as well as the Protestant churches – their support possibly being decisive for European decision-makers. This alliance, however, may be problematic if one of the reasons for the recent developments is in fact European anti-Semitism, which has always had Christian roots.

E. Should we encourage protest and resistance, or laying low? European Jews have a long history of inaction in the face of mounting problems confronting them. Following the German ruling, Jews may prefer to watch and wait for further developments. While this may have the positive effect of avoiding focusing more attention (and possible opposition) to the matter, it may also mean ending up facing an irreversible reality in the not-too-distant future. This could lead to a massive Aliyah to Israel by those who refuse give up their traditions and values, but it could also mean a gigantic step further into assimilation for all those who would choose to stay. Here again, whether the Jews who will decide to leave Europe will choose to relocate in Israel or in other diaspora communities will depend on the ability of the State of Israel to offer attractive benefits packages and effective immigration mechanisms. As studies have shown, much could be done in this respect to exploit this window of opportunity and ease the professional and social integration of these potential immigrants.²³

²²See S. Trigano, *The Democratic Ideal and the Shoah: The Unthought in Political Modernity*, SUNY Press, 2009

²³See the 4-step plan to increase significantly Aliyah from Europe in the JPI 2011-2012 annual assessment report, "[A Window of Opportunity for Aliyah from Europe?](http://jppi.org.il/uploads/Annual_Assessment_2011-2012.pdf)", pages 207-208.http://jppi.org.il/uploads/Annual_Assessment_2011-2012.pdf



POSSIBLE ACTION BODIES

Confronted with new trans-European developments, the European Jewries, which have traditionally been autonomous and separated, may investigate the creation of a new, coordinating body to deal with the current situation.²⁴ Such a body could include both religious representatives as well as community leaders in the common effort to preserve what is perceived as a fundamental ritual marking the entrance of new-born males into the Jewish community on the one hand, and his Jewish covenant with God on the other.

It is important to distinguish between actions taken by the Jewish people as a whole, with American Jewry's involvement and Israeli intervention in this matter as they could stem from different considerations, and here lies one of the sensitivities of the issue. While the vibrancy of European Jewish communities will be impacted by the future of Europe and its attitude toward Muslims, Jews, and Israel, it is also very likely that – in case of unfavorable conditions – the most committed of the 1.3 million European Jews will relocate to more hospitable environments. In this context, Israel and North America Jewries may have conflicting vested interests.

The role of American and international Jewish secular and religious organizations is clear: they have to support, as they are used to doing, local Jewish organizations to defend and present in the best professional manner their juridical, medical, rabbinical and historical arguments to legal and political decision-makers. International Jewish leaders have to be careful to coordinate with the local community leaders, and discreetly demonstrate to public authorities that local Jews are not alone in this fight. This kind of demonstration of international Jewish solidarity is not solely altruistic: even if the ban of circumcision (or un-stunned slaughter) is not foreseeable in the near future in North America (we observed in 2011, however, a first circumcision ban attempt in San Francisco led by so-called "intactivists"²⁵), in our globalized world every legal precedent counts.

Regarding a possible intervention by the State of Israel, things are more delicate: it can certainly be seen as a foreign country's interference and it may put local Jewish leadership in an uncomfortable position. At the same time, remaining silent is not less problematic for the Jewish state. Concretely, Israelis see themselves as defenders of the small Jewish communities, while European ambassadors on the other hand (whose main responsibility is to improve bilateral relations) are more than happy to have the opportunity to publicly advocate the pro-Jewish and pro-Israeli stances of their countries. Thus, we have recently had the opportunity to see at some Knesset committee meetings the French ambassador presenting his government's efforts to confront anti-Semitism (June 27), the Ambassador of Germany explaining his government's determination to oppose the circumcision ban attempt (July 9), and the Ambassador of Great Britain presenting his government's efforts to confront anti-Israeli bias (July 10). Whereas discreet diplomatic interventions of Israeli embassies are often useful, a public intervention by the Israeli government in the local media is a delicate issue that may exacerbate charges of dual loyalty leveled at European Jews and should be considered with caution.

²⁴See a comprehensive presentation of the challenges that European Jewries are confronted with and possible intervention policies in JPPI's *European Jewry in 2030* study, op. cit.

²⁵"[Judge Moves to block San Francisco Circumcision Ban Vote](#)" *Los Angeles Times*, July 27, 2011.



Israeli and American participation in such a body should not be excluded; this European evolution concerns the Jewish world at large and not just the Europeans (although they are, at the moment, on the front line). One direction to be investigated for an effective executive body could take the form of a *sextet* including four Europeans (a leading rabbi, a leading jurist, a communal leader and one politician of Jewish descent), one American representative, and one Israeli government official.

CONCLUSION

The effort to ban circumcision we are observing today seems to be part of a wider cultural backlash. This megatrend – which is not disconnected from the political, economic, demographic and European identity crisis – attacks Islam and Judaism head on. European Jewry is therefore at a crossroads today, between survival, decline or even a possible renaissance. There is no certainty that answers and institutions that have been effective in the past will adequately fit tomorrow's challenges. There is a need to assess existing national and trans-European communal mechanisms and to launch an "out-of-the-box" process to develop a bold vision able to meet future developments as they emerge. Israeli government officials and North-American Jewish leaders will probably need to be involved in the process in order to elaborate a global coordination mechanism and propose a comprehensive and professional response.

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