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Op-Ed

Tim Rutten: S.F. circumcision proposition doesn't belong on the ballot

There is something so breathtakingly wrong about this San Francisco measure.

May 21, 2011 | Tim Rutten

In November, the residents of San Francisco will not only cast their ballots on pressing state and local issues, they also will decide whether to approve a proposition banning the circumcision of male children.

The immediate temptation, of course, is to roll the eyes and dismiss the measure as another reminder that, along with the wild yeast that produces terrific sourdough bread, a strain of lunacy floats on the Bay Area breezes. Moreover, even if it were to pass, the proposal does such obvious violence to the 1st Amendment that its chances of surviving constitutional review are even more improbable than Donald Trump's hair color.

Still, there's something so breathtakingly wrong about the presence of such a proposition on any ballot that its implications are worth at least a few minutes of reflection. On one level, it's simply the most recent and egregious example of how California's long experiment with direct democracy has gone stunningly wrong at every level of government. Simply because more than 12,000 residents signed a petition, you have the people of an American city voting on whether or not to proscribe one of the central rituals of an entire religious community — in this case, Jews, who have been required to circumcise male infants within eight days of birth since the time of Abraham. Many Muslims also practice circumcision for religious reasons, while significant numbers of other American parents elect the procedure for hygienic or health reasons. The San Francisco measure proposes to make the circumcision of males under 18 a misdemeanor punishable by a \$1,000 fine or a year in jail.

Will such a ban ever survive a legal challenge based on the 1st Amendment's free exercise clause? No, but California has no mechanism for short-circuiting these wasteful and painful exercises in communal willfulness.

That's true even when, as in this instance, a measure clearly is aimed at a particular part of the community, and there's no doubt that this proposition knowingly targets Jews. Marc Stern, a lawyer for the American Jewish Committee, had the matter exactly right when said: "This is the most direct assault on Jewish religious practice in the United States. It's unprecedented in Jewish life."

While the measure's promoters speak about circumcision in general terms — insisting it constitutes "mutilation" — it's clear from the language of the proposed statute whom they have in mind: "No account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that or any other person that the operation is required as a matter of custom or ritual."

Jews are understandably affronted and alarmed by this proposition, but we all have a stake not only in the protection of religious freedom but in understanding how it is that this sort of thinking infects our politics. America is hardly the only country in the world with an extra share of eccentrics, contrarians and holders of just plain odd ideas about every aspect of life. For all its reputation for restraint, reticence and moderation, for example, English society throws up a lake full of odd ducks in every generation. But Americans are the rare people who regularly come to believe that their private moral revelations ought to be ratified in law.

It's a particularly virulent form of self-righteousness, one that's been with us since the earliest days of the Puritan settlement, when the legislation of virtue and prohibition of vice was supposed to usher in a new Eden. Good Augustinians that they were, the Puritan fathers shared his delusion that "error has no rights." Convinced that they alone possess the truth — however eccentric or novel — some among us have gone on believing that to this very day.

Somehow, we never seem to learn: Privately practiced, temperance is a virtue; the 18th Amendment and the Volstead Act were social insanity.

What's at work here is a kind of narcissism empowered by the particular moral authority our current outlook grants to those who count themselves aggrieved. In this instance, the group behind the San Francisco proposition is made up of people who call themselves "intactivists" — you really can't make this stuff up — and all seem to bear some sort of simmering resentment over a choice they believe their parents usurped from them.

That's the sort of issue you work out in therapy, not at a polling place.

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