CHAPTER TWO

Excommunication as a Complex Condition

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The relationship between the excommunicated person and the community is a complex one. First, there is a tension between the way the community distances him (by labeling him, limiting substantive communication with him, and making him an object of disgust, as we saw in the preceding chapter) and the fact that the very act of excommunication (*niddui*) shows that he matters to the community. Second, we saw that he is never wholly removed from the community. He may ascend the Temple Mount, for example, although he is forbidden to enter the Temple courtyard. Two questions are at the heart of this chapter. First, how can we characterize his membership in the community more precisely? Second, what place does he occupy in it in terms of his physical presence? As to membership, I want to show that he remains a social agent even as he loses his social face. This is a peculiar and painful condition, for it obliges him to experience his own social death over and over again. As to his presence in the community, I want to show that here, too, he is in a sense both present and absent. He inhabits the community's physical spaces, yet he is forbidden to take part in the rituals through which the community constitutes itself as a community.

The Excommunicated Person's Membership in the Community

The Prohibition on Joining a *Zimmun* or a *Minyan* — The Medieval Halakhic Authorities' Addition as a Test Case

The rabbinic sources say nothing about prohibiting an excommunicated person from joining a *zimmun* (the invitation to recite grace together after a meal) or a *minyan* (the quorum of ten). Maimonides and, after him, other medieval authorities add these prohibitions to the list. Rabbi Menaḥem ha-Meiri (thirteenth-century France) writes, "It has been explained elsewhere that he does not count toward a *zimmun*, nor is he counted among the ten for anything that requires ten" (*Beit ha-Beḥirah*, Moʻed Katan, 97). By "elsewhere" the Meiri appears to mean Maimonides' legal code, the *Mishneh Torah*. Maimonides rules, "What practices must the excommunicated person observe? […] Nor is he counted among the ten for anything that requires ten" (*Mishneh Torah*, Laws of Torah Study 7:4). Gideon Libson comments, "The early authorities discuss additional restrictions that distanced the excommunicated person from others. Thus they rule that he may not be counted in a *minyan* […] On this A. Aptowitzer remarked that 'the law is not expressly stated in the Talmud, but it is self-evident, since it is forbidden to sit within his four cubits'" (Libson 1978–80, 193). In other words, what we find in rabbinic literature is the prohibition on sitting within four cubits of the excommunicated person, along with the prohibition on eating and drinking with him. As I have tried to show, these prohibitions have to do with distancing him, labeling him, and making him an object of disgust. From them Maimonides drew a further conclusion about his legal capacity to join a *minyan* or a *zimmun*. What is at issue here is whether he can be counted among those who constitute the public (*tzibbur*). Halakhah requires a *minyan* for every "matter of sanctity." What counts as a "matter of sanctity"?

> With fewer than ten, one may not lead the recitation of the Shema [recite the Shema in public], go before the ark [recite the Eighteen Benedictions in public], raise the hands [for the priests to confer the priestly blessing on the people], read from the Torah, read the concluding lesson from the Prophets, or observe the standing and sitting [on returning from a burial people used to stand and sit seven times]. Nor may one pronounce the mourners' blessing, offer the mourners consolation, recite the bridegrooms' blessing, or issue the invitation in God's name [invite those who have eaten together to say grace after the meal] with fewer than ten. (Mishnah, Megillah 4:3)

The Gemara that follows offers scriptural support for this ruling.

> From where do we know these things [how do we learn that everything listed above requires at least ten]? Rabbi Ḥiyya bar Abba said in the name of Rabbi Yoḥanan that Scripture says [it is written in the Torah], "I shall be sanctified in the midst of the children of Israel." No matter of sanctity may be undertaken with fewer than ten. How does this follow [how does this verse imply that ten are required]? *Detani Rabbi Ḥiyya* [for Rabbi Ḥiyya taught] that "in the midst" is derived from "in the midst" [a verbal analogy is drawn from the use of the word "midst" in two places]. It is written here [in this passage], "I shall be sanctified in the midst of the children of Israel," and it is written there [in the passage about Korah and his congregation], "Separate yourselves from the midst of the congregation." And "congregation" is derived from "congregation" [how do we know that in Korah's case a congregation means ten? A verbal analogy is drawn from the use of "congregation" in two places]. For there it is written [of the spies who spoke ill of the land], "How long [must I bear] with this evil congregation?" Just as there the number was ten, so here it is ten. (Babylonian Talmud, Megillah 23b)

In the Laws of Prayer, Maimonides rules that only free, adult males can count toward a matter of sanctity (Laws of Prayer 8:4, following Babylonian Talmud, Berakhot 47b). Matters of sanctity, then, are those that require a "public" to perform them, and only full members of the community can constitute such a public. Strikingly, the biblical allusions by which ten people constitute a public are to the congregation of Korah and the congregation of the spies. The premise is that a congregation (*edah*) numbers ten, since the word "congregation" occurs several times in the account of the sin of the spies. Why ten? The twelve chieftains of the tribes of Israel went as spies. Caleb son of Jephunneh and Joshua son of Nun are excluded from the count because they did not speak ill of the land. After Korah and his congregation challenged the authority of Moses and Aaron, God sought to destroy Korah and all who had joined the rebellion. He told Moses and Aaron, "Separate yourselves from the midst of this congregation, and I will consume them in a moment" (Numbers 16:21). The word "midst" also occurs in connection with the indwelling of the Divine Presence, for God's holiness is said to dwell "in the midst of the children of Israel" ("I shall be sanctified in the midst of the children of Israel," Leviticus 22:32). Hence the inference that sanctity requires ten.

The existence of a "public" with a sufficient quorum for the Divine Presence to dwell in its midst is inferred from God's request that Moses and Aaron separate themselves from Korah's congregation. The size of such a public is inferred from the spies who spoke ill of the land and caused Israel to wander in the wilderness for forty years. We might find here a justification for the harsh punishment of Korah and his congregation. On this reading, Korah brought a separate congregation, a separate public, into being, and for this reason he and his congregation were punished so severely. The opposite reading is also possible. The comparison may harbor a criticism of the harsh punishment imposed on Korah and his congregation. The very constitution of a public in which the Divine Presence dwells is inferred from Korah and his congregation and from the sin

of the spies. In their open rebellion against authority, they embody the basic characteristics of what we call a "public."

In any event, the medieval authorities' addition, which bars the excommunicated person from joining in anything that requires ten, means depriving him of his standing as a social agent. He no longer counts as a member of the community and lacks the capacity to serve in it or perform social roles. In making this addition, Maimonides passes over the ambivalence of excommunication. We see that ambivalence in the permission to ascend the Temple Mount alongside the prohibition on entering the courtyard, and in the prohibition on sitting within four cubits of the excommunicated person alongside the permission to speak to him. Excommunication leaves him a social agent while limiting human communication with him. In tractate Nedarim of the Babylonian Talmud (20b), Rabbi Levi said, "These are the children of the nine traits [children considered blemished from the moment of conception in their mother's womb]. Children of fear [when a woman fears her husband and has intercourse out of fear], children of a woman who was raped, children of a hated woman [a woman her husband hates], children of excommunication [one parent was under the ban at the time of intercourse], children of substitution [when the man thinks of another woman during intercourse], children of a quarrel [intercourse took place during a quarrel], children of drunkenness [the parents were drunk at the time of intercourse], children of a woman divorced in her husband's heart [intercourse took place when the man had already decided to divorce her], children of confusion [the man does not know with which woman he had intercourse], children of a brazen woman [a woman who demands intercourse of her husband]." From this Rabbenu Nissim ben Reuben of Girona (the Ran, fourteenth-century Spain) inferred that an excommunicated person is forbidden to have sexual intercourse. Rabbi Abraham ben David (the Rabad, twelfth century), however, interpreted "children of *niddui*" as "children of a woman in *niddah* [menstrual impurity]." In any event, even if Rabbi Levi meant the children of an excommunicated person, his was an individual opinion that was not accepted as law. Nor need he have considered it an actual legal prohibition in the way that cutting one's hair is prohibited to a person under the ban. Halakhah does not, after all, forbid a man to have intercourse with a wife he hates or to have intercourse with his wife while thinking of another woman ("children of substitution"). For our purposes, whether the excommunicated man may have intercourse with his wife or is forbidden to do so points to his social and legal potential as a member of the community. Intercourse is also a means of creating life, and this act of creation, this mending of the world (*tikkun olam*), depends on a person's being a social agent. In the model that emerges here, the man under the ban is not forbidden to have intercourse. That is to say, he loses his social face while retaining his standing as a social agent. This is crucial to excommunication. It makes him feel the full force of his excommunication again and again. He lives in the community and has rights in it, yet he experiences what it is to be ignored and treated with contempt. This also explains why, on Rav Yosef's reading, the excommunicated person may send offerings to the Temple (Babylonian Talmud, Mo'ed Katan 15b). In rabbinic literature he remains a social agent, and it is precisely this that makes excommunication so harsh and violent a system for him. The ruling of the medieval authorities, following Maimonides, that he may not be counted for anything requiring ten thus misses the very nature of excommunication in rabbinic literature.

A Comparison with Hannah Arendt's *The Jew as Pariah*

The situation of the Jews after emancipation is strongly reminiscent of the complex condition of the excommunicated person in rabbinic literature. As early as the nineteenth century one finds references to the Jews as pariahs (Momigliano 1980, 313). Weber used the term "pariah" to describe the Jews. He borrowed it from Indian usage, where it denotes strangers or guests who do

not live on their own land and are subject to forms of distancing that have a ritual character. Hannah Arendt explicitly invokes the condition of the pariah to describe the Jews after emancipation (Arendt 1978, 67). Why speak of ostracism? Because the Jews lived among the peoples of Europe, yet found no social acceptance there. Arendt distinguishes between the "conscious pariah" and the *parvenu*, the latter being those Jews who wished to disregard their Jewishness and enter the non-Jewish world on an equal footing with everyone else. It is the conscious pariahs whom Arendt celebrates. These Jews found a place in society at large while holding fast to their identity and to their desire to contribute to humanity at large through that Jewish identity, without relinquishing it.

Heinrich Heine is the archetype of the conscious pariah, able to form a bond with ordinary people by virtue of his very condition. The experience of being a pariah gives pride of place in his scale of values to things that express universal longings — life, work, family, children. His condition leads the Jewish pariah to dismiss fame and brings him to recognize the equality of human beings. The sun shines on everyone alike. It is those who have no place in the political and social world who prize what is universal. For the pariah, these things therefore count as "true reality." From his place in society, or from his very lack of a place, he learns to reject the social order and to challenge it. Standing outside it enables him to understand that human beings possess a natural freedom which depends neither on any particular social status nor on any institution or person to bestow it. Arendt recognizes the danger of utopianism in remaining on the sidelines and having no social roots. Yet she makes the case for Heine as the archetype of the conscious pariah. His artistic impulse never led him to espouse a utopian doctrine. It moved him to hold a mirror up to the world.

Arendt finds another kind of pariah in Kafka. Kafka's pariah bears a closer resemblance to the excommunicated person in rabbinic literature. Where there are positive aspects to the condition of a conscious pariah such as Heine, in Kafka, Arendt argues, the pariah comes to doubt his very existence. In his own eyes he becomes nothing at all. Arendt reads the novel *The Castle* as a metaphor for the condition of Jews as pariahs in post-emancipation Europe. K. is a Jew who can never gain entry into society because he belongs neither to the common people nor to the ruling class. His citizenship therefore exists only on paper. It is on account of the rulers that he enters the town, yet he has no legal right to stay. K. himself believes that everything depends on his being indistinguishable from others, a man people look right through. Two possibilities lie before him. He can work in the village as the rulers' representative, in which case he will be a plaything in their hands and will derive all his rights from them. Or he can join the ordinary people of the village and let the court messenger determine his occupation — in other words, throw in his lot with the masses. *The Castle* takes up this second possibility. Arendt reads the novel as the course of a Jew's attempt to obtain the rights due to any human being — a home, a family, work, and citizenship. K. is portrayed as the only Jew in the world, just as the ideal of assimilation and absorption demands. But his desire for the rights of an ordinary human being meets with the villagers' suspicion. Earlier, when he enjoyed the rights and protection of the Castle, they treated him with a mixture of respect and hostility. Now his willingness to give up his special rights and come and live among them arouses their anxiety and suspicion. Arendt argues that K. ultimately discovers, to his alarm, that those universal things he had taken for granted as the birthright of every human being — human rights, a simple and normal life — scarcely exist among the villagers. Such things as they do have are granted, as it were, from above, by the Castle. Yet Arendt maintains that K.'s journey was not in vain. It allows the villagers to see that human rights are worth fighting for and that the law of the Castle is no divine law. They can challenge it and undermine it. Gershon Shaked reads *The Castle* more pessimistically. In his reading K. internalizes his rejection, without overcoming it or trying to instill a new set of priorities in the villagers (Shaked 2005–06, 358–359).

Arendt, then, offers several models of what it is to be a pariah. The first is the pariah who stands outside society and holds a mirror up to its face. He can grasp what matters in life and understands that freedom belongs to every human being without having to be bestowed. From where he stands outside he also understands that all human beings are equal and that any social order that calls this equality into question is a false one. The second is the pariah who decides to take responsibility for the world. He tries to translate his equal standing before the law into concrete political terms. Yet he runs up against a wall and is branded a traitor for daring to disturb the status quo of his condition. The third is the pariah who retreats into science and art. In the realms of aesthetics and truth there is no distinction between human beings, and here the pariah can feel himself an equal among equals. Yet these realms, too, ultimately represent the long arm of society. Here, too, he finds no consolation. The fourth is the pariah represented by K., who decides to give up his immunity and join the masses. He discovers that his assumptions about freedom and human rights were mistaken, and that ordinary people do not take them for granted either. The life this pariah leads among the masses serves as a kind of compass for society, showing that freedom and equality are indeed fundamental rights.

This discussion of Arendt's models of the conscious pariah brings out the distinction between legal right and social integration. It also shows how the gulf between the two becomes a source of tension, disappointment, and anxiety for the pariah and for society. Just as Jews have equal legal rights on paper yet in practice are not part of the social body, so it is with the person under the rabbinic ban. He still counts as a social agent, yet he has no social face. In the first three of Arendt's types, the pariah has no wish to enter society. He tries to use his position outside it to reflect back its ills or the falsity of its social order, or he retreats into art and science, where everyone is equal. The person under the rabbinic ban, by contrast, longs to return to the heart of society as a full member. The tension between his legal and his social standing is more than he can bear, for he lives within society and experiences his own social death again and again.

Like K. in *The Castle*, the excommunicated person feels that his excommunication makes him a nobody. People look right through him. He walks among them a dead man, a walking corpse. In rabbinic literature excommunication is a means of disciplining him, of making him "fall into line" with society and with the sages. It is a mechanism that can be used for a limited time. It is meant to make him suffer, but it causes the community unease as well. As with the person under the rabbinic ban, the Jew's journey into European or Western society, where he is ostracized and attacked despite being a member on paper, cultivates in him sensibilities and perspectives that may have universal significance and importance. Complete assimilation is impossible, since it would require the Jew to relinquish the heritage and tradition he carries with him. Like the person under the rabbinic ban, the rejected Jew experiences his rejection again and again and is deeply wounded by the gulf between his legal and his social standing.

The Excommunication of Rabbi Eliezer in Light of the Themes of Distancing and Death

The Oven of Akhnai is one of the best-known stories in the Talmud. Scholars in many disciplines have analyzed it from a variety of perspectives (see, for example, Sagi 1996, 11, and Englard 1973–74, 45). Two passages in the Babylonian Talmud (Bava Metzia 59b and Berakhot 19a) and one in the Jerusalem Talmud (Mo'ed Katan 3:1) recount a dispute between Rabbi Eliezer ben Hyrcanus and the sages. The dispute concerned an impure oven. It had been cut into rings, with sand placed between one ring and the next. Rabbi Eliezer held that the oven was pure and refused to accept the sages' opinion. To prove his case he worked miracles. He uprooted a carob tree, made the water in

a channel flow backward, and made the walls of the study house lean. None of this moved the sages from their position. A heavenly voice proclaimed that the law followed Rabbi Eliezer in every instance. This too failed to move them. Rabbi Yehoshua answers the heavenly voice, “It is not in heaven.” Despite the sages’ opposition, Rabbi Eliezer stood his ground. The sages then burn all the things that he had ruled pure and excommunicate him. Rabbi Akiva is sent to inform him of the ban. Rabbi Akiva dresses in black and tells Rabbi Eliezer. On hearing the news, Rabbi Eliezer tears his clothes and removes his shoes. As I have said, many have analyzed different aspects of the story. I want to concentrate on one, the connection between Rabbi Eliezer’s dispute with the sages and his excommunication.

What is the issue of principle between Rabbi Eliezer and the sages over the oven? At the simplest level, the sages believe that the oven before them is the same impure oven. Cutting it into rings and putting sand between them has altered neither its nature nor its impurity. Rabbi Eliezer thinks that cutting it up and putting it back together with the sand produces a different oven from the one that existed before. The impurity therefore does not attach to it. Thus the dispute about the oven concerns the very possibility of change, of going from impure to pure, as well as the process such a change requires. For Rabbi Eliezer ben Hyrcanus, cutting the oven into pieces, inserting sand between those pieces, and fastening them together again is a procedure that frees the oven from the impurity of its former state. The sages held that this was insufficient. Only smashing the oven and firing the clay anew would purify it.

The link between this dispute and excommunication appears at the end of the talmudic discussion of the ban.

> What is *shamta* [what does the term *shamta*, used of both *niddui* and *ḥerem*, mean]? Rav said, “Death is there” (*sham mitah*). Shmuel said, “Desolation shall befall him” (*shemamah yihyeh*). It takes effect in him like grease in an oven [the ban enters him like grease entering an oven. Just as grease is absorbed into an oven, something of the effect of excommunication always remains, even after the ban is lifted]. This differs from the view of Resh Lakish [the view that the ban never leaves a person is at odds with that of Resh Lakish]. For Resh Lakish said, “Just as it enters the two hundred and forty-eight limbs, so, when it leaves, it leaves all two hundred and forty-eight limbs.” That it enters we know from the verse “The city shall be under the ban.” The numerical value of *ḥerem* [ban] is two hundred and forty-eight. That it leaves we know from the verse “In wrath remember mercy.” The numerical value of *raḥem* [mercy] is the same [the numerical value of *raḥem* is likewise two hundred and forty-eight]. (Babylonian Talmud, Mo‘ed Katan 17a)

According to Shmuel, the effects of excommunication are always discernible and one can never be free of them. Resh Lakish argues that excommunication is no trauma engraved forever on the psyche. One can free oneself from it. Shmuel’s metaphor is the grease that enters an oven, where the heat causes it to be absorbed so completely that it can never be removed. In this light, the dispute between Rabbi Eliezer and the sages extends beyond the oven’s capacity to change. The oven itself is a metaphor for a human being’s capacity to change. Rabbi Eliezer believes that a person can change and that past acts do not determine present standing (impurity can leave if there has been a fundamental change). The sages, for their part, believe that in certain circumstances change is impossible.

The story is thus an ironic one. Rabbi Eliezer, who believed that a person could change, is excommunicated by the sages. The ban enters him like grease into an oven and does not leave him until the day he dies. The sages show Rabbi Eliezer, in his own flesh, how wrong he was about a human being’s capacity for change.

Yet an inquiry into what the practices of excommunication mean takes us beyond the comparison between the capacity to change and the metaphor of the oven. Rabbi Eliezer becomes impure through the very act of being excommunicated. Excommunication makes him a dead man who still walks among the living. As I have shown, the sages sought to make him an object of disgust and to turn him, quite literally, into a walking corpse. In excommunicating Rabbi Eliezer, one might say, the sages render him impure. He observes the practices of mourning as a mourner would. He mourns himself, mourns his own death. He has himself become an impure object.

Ultimately, the Oven of Akhnai is more than a story about the authority of the sages in relation to divine authority or about the limits of their authority over individuals. It is a story about a human being's capacity to change and the decisive effect of excommunication on the life of the person under the ban, now and in the future. Rabbi Eliezer believed that the individual could exist even without the sages, that there were places beyond their reach, and that a person could renew himself and move on. He discovers, however, that excommunication can have a lasting, even permanent, effect on a person, the very opposite of what he had supposed. In this sense both the story and the discussion in Mo'ed Katan stand as warning signs to the sages, signs that caution them to exercise their authority by less violent means. For *niddui* and *ḥerem* can have irreversible consequences, as the final words of the discussion in Mo'ed Katan put it: "For it was taught that Rabban Shimon ben Gamliel said, 'Wherever the sages have fixed their gaze, either death or poverty follows.'"

Social Visibility as the Basic Context of Excommunication

The condition of the excommunicated person in rabbinic literature is thus a complex one. He is a social agent who can count toward both a *zimmun* and a *minyan*, yet he loses his social face. What, then, of his presence in the physical space of the community? The sages discuss several practices he is expected to observe in the context of the festival pilgrimage. I want to show why it matters that they imagined him on pilgrimage. This picture presupposes that he is present in social space, yet absent from the very spaces in which the public constitutes itself as a public.

The Mishnah at the opening of the third chapter of Mo'ed Katan rules, "The following may cut their hair during the festival: one who comes from overseas, one released from captivity, one who comes out of prison, and an excommunicated person whom the sages have released from the ban […]. And the following may launder their clothes during the festival: one who comes from overseas, one released from captivity, one who comes out of prison, and an excommunicated person whom the sages have released from the ban […]" (Mishnah, Mo'ed Katan 3:1–2). Cutting one's hair and washing one's clothes are forbidden on the intermediate days of the festival so as to encourage people to prepare for the pilgrimage festival ahead of time. The Mishnah sets out the law for all those who had no opportunity to cut their hair or wash their clothes beforehand. These people may cut their hair during the festival because they could not do so earlier. As we saw above, this is one source for the prohibition on haircutting and laundering imposed on the person under the ban. His inclusion in the list of those unable to cut their hair is readily intelligible. He had been forbidden to cut his hair or wash his clothes and so could not have had his hair cut before the festival. If the sages lifted his ban on one of the intermediate days, the Mishnah permits him to cut his hair just as it permits someone who had been on the road far from home until the festival began to do so, since the traveler had no opportunity to cut his hair or wash his clothes. Even so, I would like to press the point a little. Is the person under the ban really like someone coming from overseas or out of captivity? After all, his status depends to a great extent on his conduct, whereas the status of someone arriving from overseas or coming out of captivity depends on external circumstances. One could stretch a point and suggest that the excommunicated person had already renounced his

former conduct and that only the formal lifting of the ban had been delayed until the festival because of the court's workload. But this is hardly the plain sense of the Mishnah. "One who comes out of prison," one who comes "out of captivity," and "one who comes from overseas" all describe a person's external circumstances. To speak of an "excommunicated person" is to say something about his personal identity as well. It was for his own deeds that he was excommunicated, and only he himself can bring about his release by accepting the sages' authority. Why, then, is he included in the list of people who may cut their hair during the festival? What is the significance of including him? He appears on this list because rabbinic literature generally portrays excommunication through the lens of the festival pilgrimage. When the sages pictured the person under the ban, they imagined the ban and the forms of distancing that accompanied it in the setting of the pilgrimage. As we saw, the festival (Passover) is also evoked by an allusion in the prohibition on entering the courtyard, which is inferred from Mishnah Eduyot. "Rabbi Yehudah said, 'Heaven forbid that Akavya should have been excommunicated! For the courtyard is not closed in the face of any Israelite the equal of Akavya ben Mahalalel in wisdom and fear of sin'" (Mishnah, Eduyot 5:6). In discussing that prohibition, I showed that the simplest way to read the Mishnah on its own terms is to see in it a reference to the account of the people standing in the courtyard at Passover. When it says that the courtyard is not closed in Akavya ben Mahalalel's face, the point is that on the eve of Passover, when the courtyard is filled to capacity, its gates are closed to the excommunicated person. Yet Akavya ben Mahalalel is a man of such stature that they are not closed to him. Standing in the courtyard is one of the most important moments of the pilgrimage. It was in this very setting that the sages mentioned both the prohibition on an excommunicated person entering the courtyard and Akavya's exceptional standing. The Mishnah went beyond a general prohibition on entering the courtyard and spoke specifically of its gates being closed to the person under the ban on Passover eve. The link between the ban and the festival also appears in the discussion in Mo'ed Katan. The Gemara states that "a mourner does not observe his mourning during the pilgrimage festival." It then asks, "Does the excommunicated person continue to observe his ban during the festival?" Mourning ceases as soon as the festival begins because all three pilgrimage festivals have an element of "rejoicing." The source for the interruption of mourning by the festival is the Mishnah (Mo'ed Katan 3:5).

> If a man buries his dead three days before the festival, the decree of seven days lapses for him [because once the festival begins, mourning ceases and he stops sitting *shivah*]. If eight [days before the festival], the decree of thirty days lapses for him [he sits *shivah*, but the observances of the thirty days cease when the festival begins]. For they said, "The Sabbath counts and does not interrupt [the Sabbath does not interrupt mourning or cancel the days of *shivah*. One continues to sit *shivah* after the Sabbath]. The pilgrimage festivals interrupt and do not count [the festivals interrupt mourning and do not count toward the seven days of *shivah*. Thus, if a relative dies before the festival, mourning ceases when the festival begins. If a relative dies during the festival, the seven days begin after it. A similar ruling appears in *Evel Rabbati* 7:1–7]."

The *She'iltot* of Rav Aḥai Gaon (eighth century CE) puts it this way: "The Sabbath counts [toward the days of mourning] and does not interrupt [mourning]. Why? Because what Scripture says of it is 'delight.' The pilgrimage festivals interrupt [mourning] and do not count. Why? Because what Scripture says of them is 'rejoicing'" (*She'iltot de-Rav Aḥai*, Ḥayyei Sarah, 104).

The "pilgrimage festival," as is well known, encompasses three commandments: appearing before God, offering the festival sacrifice, and bringing the well-being offerings of rejoicing. Let us concentrate on the commandment to rejoice. One is to bring well-being offerings in addition to the festival well-being offerings. These additional offerings are the offerings of rejoicing ("You shall rejoice in your festival" — "There is no rejoicing except with meat, as it is said, 'You shall

sacrifice well-being offerings and eat there, and you shall rejoice before the Lord your God'" [Deuteronomy 27:7]). The central element of the commandment is thus eating meat before the Lord, which is why one may also fulfill the obligation with votive offerings, freewill offerings, and the tithe of livestock. The commandment to rejoice applies equally to women and men and thus gives the observance of the pilgrimage festival a broad social basis. In the discussion in Mo'ed Katan, scriptural support for the prohibition on observing mourning during the festival is drawn from the words "You shall rejoice in your festival." These words are the source of the commandment to rejoice on the pilgrimage festival. "You shall keep the Feast of Weeks for the Lord your God […] and you shall rejoice before the Lord your God, you and your son and your daughter, your male and female slaves, and the Levite within your gates […]. You shall keep the Feast of Booths for seven days, when you gather in the produce from your threshing floor and your winepress. You shall rejoice in your festival, you and your son and your daughter, your male and female slaves […]" (Deuteronomy 16:10–15). These verses point to two sources of "rejoicing." Joy may spring from standing "before the Lord" — "you shall rejoice before the Lord" — or from the fact that the extended family, the needy, and those who own no land are all together — "you shall rejoice in your festival, you and your son and your daughter." A reading of the context in which the commandment to rejoice at the festival appears bears out both suppositions (Leviticus 23:40). In these verses joy comes both from standing before the Lord and from being together, and the two are bound up with each other. Standing before the Lord is pictured as standing *together* before God. Joy has to do at once with standing before God and with the shared, collective nature of the occasion. Mourning therefore does not apply during the festival, on the premise that collective rejoicing cancels mourning.

I showed above that the pilgrimage generally, and standing in the courtyard in particular, go beyond public ritual. They help shape and constitute the public as a "public," a social body. At the moment Jewish public life takes shape, a joy with a collective element arises. In this joy there is no room for private feelings (hence the cancellation of mourning). The differences between the individuals who make up the public must be blurred. A position that qualifies this tendency appears in *Evel Rabbati* and in the Babylonian Talmud. "For a mourner, the pilgrimage festival counts toward the thirty days, but it does not count toward the seven. A mourner during the festival is as if he were no mourner. The mourner observes his mourning in private. The general rule is this. In everything that involves the public, the festival counts toward the tally of his days. In everything that does not involve the public, the festival does not count toward the tally of his days" (*Evel Rabbati* 7:7). According to this ruling, when Passover, Shavuot, or Sukkot begins, mourning ceases, but the festival counts toward the thirty days. Yet despite the cancellation of mourning, the mourner may mourn privately. The rule is that a matter of public concern (such as comforting mourners) is attended to even during the festival. A matter that is not considered a communal or public concern is not attended to (Zlotnick 1966, 52). The version in the Babylonian Talmud (Mo'ed Katan 20a) reads, "The general rule is this. Whatever is observed on account of the mourner [or 'on account of mourning' — Y.E.], the festival interrupts. Whatever is observed on account of the affairs of the public, the festival does not interrupt." Here we have a more complex statement. Comforting mourners is a matter of public concern and continues during the festival, while the mourning practices cease. In other words, there is a certain place for mourning during the festival. It does not cease altogether. What, then, does the statement mean that "a mourner during the festival is as if he were no mourner. The mourner observes his mourning in private"? He is not required to put away his mourning entirely (or to put away his feeling of grief). It is *as if* he were no mourner, yet no one expects him to set his mourning aside altogether. The setting aside of mourning during the festival, however partial, throws into relief the sages' insistence on discussing

excommunication in the setting of the festival. The mourner's own observances are suspended, but people continue to offer him consolation. The community makes room for the mourner's sorrow, anger, and guilt. With the excommunicated person, things are different. The festival is where public life takes shape and where the community is imagined by its members. Against this background we can understand the claim that "the excommunicated person observes his ban during the festival," and the practice of viewing the observances of excommunication in that setting. His distancing from society is seen most sharply and clearly at the very site where society, or the community, constitutes itself. "The pilgrim was not only impressed by the ceremonies in the Temple but also came under the influence of the sages of Jerusalem — the sages of the Sanhedrin and the leaders of the Pharisees who taught there in public. The willingness to accept the authority and counsel of this leadership grew stronger and deeper during the days of pilgrimage" (Gafni 1977–78, 17–18). Consider, too, the words of Josephus in his *Jewish Antiquities*.

> Three times a year the Hebrews shall assemble in the city where they will build the Temple. They shall come from every corner of the land they are to conquer, to thank God for the blessings they have received and pray for them in the future, and to form ties with one another by assembling and keeping festival together. For it is well that they should not be strangers to one another, belonging as they do to one people and sharing the same customs. This too will come about through such contact, as they see one another and talk, and each becomes fixed in the others' memory. If they remain without such contact, each will regard his fellow as a complete stranger. (Josephus, *Jewish Antiquities* 4.203–204)

For the excommunicated person to observe his ban at the festival means that he has no part in the formation of the community's consciousness or of its solidarity. At the same time, his physical presence on the pilgrimage, the very fact of his observing the ban during the festival, greatly intensifies its effect, for his isolation is there for all to see. With this point clarified, it may be possible to trace further connections between the practices of excommunication and the pilgrimage. I noted above the importance of Torah study both as a form of basic communication and as a way of establishing common ground among those who study Torah as members of one community. There is a close link between pilgrimage and Torah study. "During their stay in the city we find the pilgrims occupied chiefly with two things, sacred meals taken in groups and the study of Torah" (Safrai 1993–94b, 76). And again, "There can be no doubt that the stay [in Jerusalem] lasted quite a long time, since it offered a one-time opportunity both to offer sacrifices and to spend time in the company of the leading figures of the nation, its sages and its officials. Pilgrimage thus came to be associated with Torah study as well" (Gafni 1977–78, 17).

The prohibition on sitting within four cubits of the person under the ban also takes on further significance in the context of the three pilgrimage festivals. As already noted, the pilgrims would travel up to Jerusalem and stay there in groups (Safrai 1993–94b, 74). The prohibition on standing within four cubits of him means that he is isolated even from his own group. I also showed above how people are described as standing crowded together in the courtyard and suggested a possible connection between the prohibition on standing within four cubits of the excommunicated person and the prohibition on his entering the courtyard. Whereas the bans on entering the courtyard, studying Torah, and sitting within his four cubits are all mentioned in this setting, the mourning practices that label him, mark him out, and make him an object of disgust are not mentioned in connection with the pilgrimage or with Jerusalem, with the exception of the requirement that he go around the Temple Mount to the left. In light of this I would like to state my claim more precisely. Going on pilgrimage, as we know, was a rare event in a Jew's life, not an annual occurrence (Safrai 1993–94a, 43). My claim is therefore a symbolic one, rather than a claim about what actually happened. The practices of excommunication are mentioned in the setting of the festival because it

is there that they find their sharpest expression and there that the distinctive character and purpose of each practice become apparent. This is because excommunication and pilgrimage work in opposite directions. One isolates and distances, the other draws people close and brings them together. What is at issue is a symbolic context, a way of seeing the excommunicated person during the festival within that context. The discussion in tractate Sanhedrin (Mishnah 11:4) of the execution of the rebellious elder [a sage who issues a ruling contrary to the decision of the Great Court in Jerusalem] brings the point into focus.

> They do not put him to death in the court of his own town or in the court at Yavneh. They bring him up to the Great Court in Jerusalem and keep him under guard until the pilgrimage festival. They put him to death during the festival, for it is said, "All the people shall hear and fear, and shall act presumptuously no more." These are the words of Rabbi Akiva. Rabbi Yehudah says, "One must not keep this man waiting for his sentence to be carried out. They put him to death at once, write a notice, and send messengers everywhere with the message, 'So-and-so, son of so-and-so, has been sentenced to death by the court.'"

According to Rabbi Akiva, it is precisely at the gathering for the pilgrimage festival that the rebellious elder must be executed. It is on that occasion that "all the people shall hear and fear" takes on its meaning. As in Kafka's story "In the Penal Colony," the emphasis in the execution falls on deterrence more than on retribution. What matters above all is the disciplinary effect on those who witness the execution and on those who hear of it. Every transgression challenges the sages' authority to some extent. In the case of the rebellious elder, however, the injury to the legitimacy of the sages and of the institutions through which they issue rulings is the substance of the offense. The injury therefore demands a response in public, before the community. So it is with the excommunicated person. His refusal to accept the sages' authority requires a public response. He is not actually put to death, yet he walks among the living as a dead man, watching life go on as usual in his absence. When the sages imagine him, they do so chiefly against the background of the festival pilgrimage. He looks on from outside as the public takes shape as a public, as the community and its values take shape. He walks among those studying Torah and among those eating and drinking, yet he can join none of them. To set the practices of excommunication against the background of pilgrimage is to throw into sharper relief both the hardship and the peculiarity of his condition. He belongs to the community even as he is excluded from the principal settings in which its members are socialized.

Conclusion

In rabbinic literature there is a deep thematic connection between excommunication and death. Excommunication is a system that gives expression to the social death of the person under the ban. This is no merely "potential" death. One might say that excommunication is a script and that he has a part in a film in which he is counted as dead. The sages take this feeling one step further. In practice they turn him into a dead man who still walks among the living. He becomes a walking corpse and is treated as one. He stinks and is filthy. The people in his immediate social surroundings are disgusted by him because, like a corpse, he reminds them of the organic process of life. His basic human needs — for control, for belonging, for self-worth, and for meaning in life — are gradually eroded. More than that, he himself seems to disappear. The rites of mourning he observes label him (going around to the left on entering the Temple Mount, the prohibition on cutting his hair), limit substantive communication with him (the bans on exchanging greetings and on Torah study), and make him an object of disgust to those around him (the prohibitions on sitting within his four cubits, on bathing, and on wearing sandals). The psychological process he

undergoes is one of melancholia. This powerful mechanism leads him into a disordered form of mourning for his own social death. He cannot detach himself from the object he mourns — society. The liminal condition in which he finds himself compounds this inability. One of the central points to emerge from the discussion of the person under the ban and the practices of mourning is how much depends on the setting in which these practices are observed. It will not do to speak simply of "mourning in the case of the excommunicated person." We must speak of mourning in his case in a context of distancing, or of mourning in his case in a context of drawing close.

The excommunicated person observes the practices of mourning in a setting in which he remains a social agent, yet loses his social face. As I explained above, this condition makes him feel his own social death over and over again, in every social encounter. In *The Rites of Passage*, Arnold van Gennep examined the passage from one social status to another. He identified three stages: separation from the former status, a period of transition in which one learns about and adjusts to the new condition, and passage into that new condition (separation, transition, and reincorporation). Liminality, then, is a condition in which a person is between two social roles and has no single, clearly defined role. Rites of passage are intended to lessen the disruption that a change of status brings to the group and to the individual. Marriage rites emphasize the element of joining, funerals the element of severance, and coming-of-age rites the liminal element. Yet van Gennep shows that each of these rites also contains elements of the other two stages. Victor Turner identified characteristics of the liminal stage as expressed in the ritual process. Markers of hierarchy become blurred (for example, by going naked), individual activity is denied, and sexual activity is denied (Turner 2004, 88).

As I have said, we might call the excommunicated person's standing liminal in the sense that he is less than a full member of the community. He is there, alive and legally competent to act within it, yet he is distanced and silenced, unable either to receive substantive messages or to convey them. But if we examine his standing in light of the characteristics of the liminal condition in the passage from one social status to another, we find fundamental differences between the two mechanisms. The liminal mechanism, whose purpose is to ease the passage from one social standing to another, places a person in a kind of suspended space, a condition in which the world is held in suspension, as is one's capacity to act in it. The excommunicated person, by contrast, stands on the dividing line. He is in the community but feels that it is suspending his membership. Moreover, in excommunication the liminal element actually impedes the passage from one social identity to another, since it offers no entry into a liminal "world" in which a person has time and space to consider the changes he is undergoing. On the contrary, under the ban the passage from the old social identity to the new one is "stuck." The excommunicated person hovers over his own social death, recognizing it and experiencing it anew at every moment.

One objection to the liminal model is that it is too schematic and lacks complexity, and that the concepts of boundary and margin may serve cultural studies better. Liminality represents an outlook committed to preserving a particular social structure. The model can therefore accommodate neither subversion nor patterns of social marginality, nor can it accommodate more complex and chaotic social structures. In the case of excommunication, one might say that the very act of placing the excommunicated person in a liminal condition bears out the validity of the systems of power operating against him. The liminal points to a passage from one social status to another and therefore contains an accepted model of society. Thus the social institutions that forced him into his present condition belong to the liminal model itself. It would be more accurate, then, to speak of center and margins. In the case of excommunication, the practices the person under the ban observes are instruments for disciplining him and imposing authority. The center, acting to

preserve its social power, pushes him to the margins of society. To point out the coercive and disciplining elements that attend the practices of excommunication is also to open up the possibility of turning the margins into the center and of showing to what extent these concepts are constructs of thought and how thoroughly they seep into one another.

The model of center and margins contains a potential for destabilizing the social structure in question that the liminal model lacks. This potential is part of the rabbinic system of excommunication. The talmudic model brings out the extremity of a situation in which one party to a conflict is distanced yet left within the same physical space and, for all that distancing, still retains the capacity for social action. The marginal position in which he finds himself intensifies his sense of being ostracized and acts as a catalyst, driving the conflict to an extreme in one direction or the other. The harsh implications of this condition and its strong association with death can teach us something about the use of mechanisms of distancing in a conflict. These mechanisms reach their most extreme form in precisely that complex condition in which a person under the ban retains his capacity for social action even as he loses his social face. His position at the margins is thus a peculiar one. The margins in question are conceptual (physical marginality finds fuller expression in his exclusion from the public sphere). He is deprived of a social face, yet remains an active force, present in the community. Such marginality is a powerful means of disciplining him. At the same time, it causes unease and discomfort for the community that imposed the ban. For that reason it too is limited in time.

The sages discuss several practices of excommunication in the context of the public sphere. They portray the ban against the very background of the event in which the community constitutes itself and comes together. The meaning of the ban comes into sharper focus when the person subject to it is present at a public event. His exclusion from that event despite his physical presence, and his continued capacity to act as a member of the community, are central features of excommunication. Because the ban is portrayed against the background of pilgrimage, his exclusion extends beyond public space itself to the very place where a sense of social solidarity takes shape and a sense of mutual responsibility takes root. He sees it all before his eyes, yet takes no part. He does not enter the courtyard during the festival. He cannot sit with a group and eat and drink with them, or study Torah with his companions or learn it from the sages.

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