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# Ways of Exclusion in Catholic and Protestant Communities

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## ABSTRACT

This chapter tries to follow the historical transformations of excommunication, used to define the “sacral community” through a judgement of judicial exclusion of the impure. In the Catholic Church, during the High Middle Ages, it preceded a period of punishment through purification and was concluded by a solemn ritual of public penance and reconciliation. In the Later Middle Ages, it was used to select a whole class of serious dogmatic and moral crimes, which could be absolved only by those – Pope or bishops – who had sanctioned them through excommunication. In the 15th century absolution, in case of sins punished by excommunication, was “reserved” to the bishops or the pope; reservation was used both in the *forum externum* – process in the public bishop’s court – and in a double *forum internum*: when parsons met these crimes, reserved to the absolution of their superiors, they were forbidden to absolve them, and had to send secretly their penitents to a *forum conscientiae*, a third, secret forum in the bishop’s court: in this way a true contamination was created between judicial process and sacramental confession, and was later used by the Inquisition to detect heretics.

In the Protestant Churches excommunication was no longer enforceable through coercion, becoming a purely “spiritual” weapon, and lost any link with confession. Lutheran Churches used the *Bann* mainly to exclude ministers guilty of dogmatic errors, could depose them from their chairs or send them into exile. Calvinist Consistories applied the *ban* mainly to exclude and bring to correction public sinners guilty of immoral behaviour.

*In questo saggio si vogliono seguire le molte, successive trasformazioni storiche della scomunica, come sacramento inteso ad assicurare la purità della comunità sacrale mediante l'esclusione degli impuri. Nell'Alto Medioevo alla scomunica doveva seguire un lungo periodo di purificazione, concluso da una solenne penitenza pubblica prima della riconciliazione. Nel Basso Medioevo fu usata per individuare un'intera classe di reati dogmatici e morali, che potevano essere assolti solo da coloro che avevano promulgato la scomunica, vescovi o il papa stesso. Nel XV secolo l'assoluzione, nel caso di reati-peccati così sanzionati dalla scomunica, fu riservata ai superiori dei parroci sia nel foro esterno – il processo ordinario nel foro pubblico del vescovo – sia nel foro interno: ai parroci fu vietato assolvere questi “casi riservati”, e fu imposto di inviare i penitenti in un terzo foro segreto nel tribu-*

*nale del vescovo, detto anche “foro della coscienza”: in tal modo, si realizzò una pericolosa contaminazione tra confessione sacramentale e processo giudiziario, che venne quindi usata dall’Inquisizione per scoprire gli eretici anche attraverso la confessione.*

*Nelle chiese protestanti la scomunica cessò di essere applicabile con la coercizione, diventando per la prima volta un’arma soltanto “spirituale”. Le chiese Luterane usarono il Bann principalmente per colpire ministri giudicati colpevoli di opinioni dogmaticamente scorrette, che poterono esser deposti dalla cattedra e sin mandati in esilio. I Concistori Calvinisti usarono il ban principalmente per escludere e correggere i peccatori pubblici rei di condotta immorale.*

I intend to contribute to the theme “Religion and Community” by examining excommunication, as a particular religious weapon of exclusion from what has been called by Bernd Moeller<sup>1</sup> the “sacral community.” To this community everyone had to belong: it was secular and ecclesiastical, civil and religious at one and the same time. The means by which all men and women were included in it were the sacraments, beginning with baptism: they had a double efficacy, both as symbols of religious membership, and as signs of basic (‘anagraphical’) inscription into civil society.

Most of the sacraments were religious rites of passage<sup>2</sup>: they sanctioned and celebrated the transition of every individual to the next phase of his or her biological life-cycle; at the same time, they also marked his or her passage to the next civil (or ‘anagraphical’) status, from birth to marriage to death. For this reason we might call this set of sacraments “rituals of status definition”: they marked the transition from infancy to adolescence through the sacrament of confirmation, from celibacy to marriage (or to the permanent condition of priestly celibacy) through the sacraments either of marriage or holy vows, and finally ritualized the passage from life to death with extreme unction and the ceremonies of religious burial.

A different system governed the inclusion into the *political* community. Membership here was not extended to everybody, but was limited to a minority of adult males who were selected either by census, or by the condition of guild masters, or by the inclusion in lists of patrician families, and so on. It was celebrated and certified through declarations of allegiance or signs of obligation such as civic oaths, inclusion in fiscal roles, militia duties etc., which sanctioned the enjoyment of political rights, and granted access to public offices.

Besides the sacraments which accompanied and registered changes in civil or ‘anagraphical’ (on the basis of biological) status, there existed another powerful set of sacraments. These were confession and communion: their purpose was to sanction and publicize the inclusion in both the sacral and the secular community of all the pure believers, as well as the exclusion from it of all kinds of ‘impure’ individuals, such as those suspected of heresy and those who had been excommunicated. These two sacraments might therefore be defined as “rituals of communal selection”.

In order to account for the double role, both of inclusion and exclusion, that characterized the sacral system of confession and communion (or Holy Supper), one must not only consider the sacraments in themselves, but also the judiciary means used by ecclesiastical judges to exclude rebellious or guilty individuals from participating in them: the public refusal of absolution, commonly called excommunication. The sacraments of communal selection began with auricular confession, which was meant to prepare the worthy for the Eucharistic communion, but also to exclude the unworthy from it, through refusal of absolution; the sacramental sequence culminated with the ‘eating’ of the Eucharist by those selected as pure and worthy, during the Catholic Mass or the protestant Holy Supper.

If the sacramental cycle of confession and communion was the most powerful means to define and bring together the community, excommunication in the public space of the church building (or its counterpart, refusal of absolution in confession, in the secret space of the conscience) were the sacramental rites which decided the crucial issue of who was to be included in, and who had to be excluded from, the common ritual. Excommunication defined the limits, or even more literally, the borders of the community. It was the supreme filter, both conceived and used to guarantee the purity of the communal partaking of the Eucharist.

In the Catholic Church, public excommunication gave the bishops and parsons the power to exclude the impious and the unworthy from the “sacral community” united in Holy Communion. They might exclude whole categories of individuals: 1) those who, having been converted forcibly from their Jewish or Muslim religion, were suspected of returning to their native rites (which was considered apostasy and was also the cause of the introduction of the Inquisition in Spain); 2) those guilty of heresy or apostasy (excluded through “minor” or “major” excommunication, which was used by parsons at parish level, bishops at diocesan level and inquisitors at “universal” level); 3) those guilty of “public” and “notorious” moral sins or continuous, gross misconduct (through “minor” excommunication, managed directly by parsons within the parish community).

Apart from the widely resented use of excommunication in civil and real estate litigation in the episcopal courts, major excommunication was applied in the bishops’ courts, not only to civil cases (such as a refusal to pay dues and tithes, or to renounce ecclesiastical property), but, more importantly, also to moral and penal cases, which, being particularly serious, were said to be “reserved” for the absolution of the bishop, or his vicar as a Penitentiary official. Such “reserved” cases were excluded from the simple absolution conferred by parsons for “normal” sins, such as the seven deadly sins listed in catechisms or the biblical Ten Commandments. To be forgiven, these special cases had to include absolution from an implied or “automatic” excommunication (which will be also treated later), and so they had to be delegated to higher officials in the ecclesiastical hierarchy, such as the bishops or their vicars, or even directly to the pope (for all those capital or “enormous” sins or crimes, whose list was published by the Papal Curia in the yearly bull promulgated on the day of Christ’s Last Supper, the so-called *Bulla in Coena Domini*).

These cases, which were excluded from absolution in confession, were commonly called “reserved cases”. They included heresy, blasphemy and sacrilege, bigamy, concubinage and incest, abortion and adultery, and could also include many other ‘sins’ or crimes, varying from one diocese to another. In these cases, major excommunication was used to compel public sinners to obey the court’s summons and to undergo the whole range of ecclesiastical penalties. The first was the ritual of public penance, which was combined, at the episcopal judge’s discretion, with a whole array of other sanctions, both economic (fines, restitutions of usury, compensations for damages), afflictive (prison in monastic or episcopal jails, flogging, confinement under surveillance, temporary ban), and ritual (judicial pilgrimage, compulsory fasts, frequent resort to confession and mass), to be enforced under strict parish surveillance and certificates signed by the local parson.

Another, perhaps more pervasive power of inclusion and exclusion from the community was that wielded by the parson or curate at the primary level of the parish through the enforcement of the double obligation to confess and communicate once every year. The parish priest was charged with the basic police function of registering and denouncing to the bishop both the “secret” and the “public” sinners in his parish, the latter to be openly excommunicated, the former to be excluded from Easter communion by refusing them absolution in sacramental confession. Thus the process of exclusion, at the parish level had two forms: a public one, through “minor excommunication”, followed by the highly humiliating ritual of public penance, and a secret one, through refusal of absolution in confession and therefore exclusion from the communal, compulsory ritual of Easter communion, to be followed by a special, secret absolution from excommunication, which could not be conceded by the parson, but was reserved to his superior, the bishop or his general vicar.

I propose now to describe the rites of excommunication from, and reconciliation to the religious community at diocesan and parish level, and I will begin with the solemn rites which were typical of the central Middle Ages (9th -12th centuries).

After the dominance of the Anglo-Irish and Frankish monks during the 6th-7th centuries, the Carolingian period (8th -10th centuries) saw the resurgence a strong “universal” or “imperial” Church, based on the wide authority of the bishops, invested by the king with “temporal” powers; that is, feudal and judiciary powers. Bishops in *Francia* worked as imperial judges alongside the Counts in the course of the new judicial rite of episcopal visitations. To discipline their flocks, they included a whole range of moral sins, or rather moral crimes, in their new codes of synodal or episcopal law, which they promulgated between the 9th and the 10th century<sup>3</sup>.

Those guilty of these serious moral crimes (derived from the Penitential Books of the Anglo-Irish monks, which included adultery, abortion, infanticide and many more of the same kind) were refused absolution and excluded from Holy Communion through excommunication. They were punished by the imposition of a penitential discipline which could last from one to seven years (for homicide) and which consisted of a regime of purification through fast, abstinence from sex, and prayer, especially the chant-

ing of Psalms. Public perpetrators of these crimes could be publicly excommunicated and punished by the bishops on their own initiative (*ex officio*) without the need of any formal indictment, but simply on the basis of public knowledge within the community (*publica vox et fama*, public rumour and notoriety). The same procedure could be followed by those new members of the lower clergy, archdeacons and parsons, who were then beginning to operate in the minor subdivisions – decanates and parishes – into which the dioceses were dividing<sup>4</sup>. Not only bishops, but also deacons and parsons could use excommunication on the same basis of “public rumour” in order to exclude from the yearly ritual of Easter communion those public sinners who appeared to be both obstinate and impudent in their bad ways.

At the lower level of the parish, this was called “minor excommunication”, and it was different from its episcopal counterpart for two reasons: because it was applied to a more limited territory, and also because it did not deprive the excommunicated person of the civil rights received with baptism, as episcopal excommunication did. Instead, it just excluded him or her from Easter communion, as had been practiced in the earlier monasteries of the High Middle Ages. Minor excommunication was not connected with the civil rights and territorial residence and identity bestowed by baptism within the *pieve* or parish, but with the yearly cycles of collective purification: Lent before Easter, Advent before Christmas. Episcopal or “major” excommunication, originated in Late Antiquity, was a civil sanction, and deprived its victims of those civil rights which had been bestowed with baptism<sup>5</sup>. “Minor” excommunication, adding itself to its older variant during the later Middle Ages, was a police or penal sanction, excluding its victims from the community ritual of the Eucharist<sup>6</sup>.

While baptism included every infant born within the territory of a parish into the one and only universal Church, Easter confession and communion could be envisaged as a “ritual of judicial selection”, using excommunication and reconciliation first to exclude, and later to re-admit serious sinners to the yearly sacrament of the Eucharist. Baptism operated since infancy, registering the compulsory inclusion of all into the religious community, and endowing all of their basic civil rights; but it also denied the same rights to every non-Christian, such as Jews, Muslims, heretical communities such as the Cathars and Albigensians. Excommunication operated the selection of the adult members of the community on the basis of a new kind of penal law. It separated the faithful and pure from those who had been found impure, and had therefore been excluded from Holy Communion because of capital, “enormous” sins. These were kept separate from all the others until they had gone through the rites of penance for purification and could be “reconciled” and admitted anew to the Eucharistic community. The rite was a very solemn part of the Easter ritual during the 10th and 11th centuries. On Ash Wednesday, before the first Sunday of Lent, those who had been found guilty of the gravest sins were excommunicated. On Holy Thursday, those who had completed their penance had to present themselves at the doors of the cathedral church, their head bowed, covered with ashes, barefoot, dressed only in sackcloth. They were received into the church amid the chanting of Psalms by the bishop or the parson who had pro-

nounced the excommunication, and they were sprinkled with holy water and finally absolved or “reconciled” by the imposition of hands<sup>7</sup>.

In the powerful episcopal churches of the post-Carolingian period, the bishops produced new “synodal” legislation, which was promulgated at the general assembly of their clergy and was collected in new books of canon law. The oldest of these episcopal collections include the list of those most atrocious and momentous crimes that were sanctioned by episcopal excommunication, so that their absolution had to be reserved for the bishops themselves.

Through episcopal codes of canon law (such as those by Rabanus Maurus and Burkardus), the recourse to excommunication was extended from the bishops to their minor and dependent clerks, the archdeacons and parsons. The latter could also inflict excommunication and public penance to correct the most notorious sinners in their parish, provided that they did not reconcile them without the knowledge and consent of their bishop<sup>8</sup>.

Once the secret, auricular confession was made compulsory before the Easter communion by the canons of the Fourth Lateran Council (1215), two different procedures emerged within the Lent-Easter ritual sequence to deal with those found guilty of the most heinous moral crimes, *crimina maxima* o *graviora*. One dealt with “public” sinners, publicly excluded from the Eucharist by judicial excommunication, while the other dealt with “secret” sins or crimes, secretly punished by an excommunication which was considered to be inflicted by God himself, even without human knowledge. It was the so-called excommunication *latae sententiae* or *ipso facto*, which was believed to be active within the heart of the guilty man or woman since the very moment he, or she, had committed the crime. A simple rule governed the two procedures. Public sins were sanctioned through judicial excommunication by the bishop, or priest, as the public judge through the public or external procedure of the ecclesiastical court, or *forum externum*, and had to be followed by public penance<sup>9</sup>. Secret or hidden sins had to be sanctioned by a new procedure respectful of the secret of sacramental confession and yet in such a way as to be reserved for absolution, even in the secret of the heart, not by the simple parson, but by the higher authority of the bishop or pope, who had pronounced that major sin as worthy of excommunication.

Secret sins, then, had to correspond to a secret way of absolution from excommunication in a new, so-called *forum internum*, half-way between the public court of the ecclesiastical judge and the secret court of the confessor. This could be done in two ways. The easier way was for the pope himself, or the bishop, to confer to learned theologians – usually friars – the double faculty and privilege to absolve, in one and the same ritual of sacramental confession, both ordinary sins and excommunications. This was the “indulgent” way, and it was practiced widely, not only to assuage the fears of hell by pious Christians, but also to collect great amounts of “voluntary” alms in exchange for such special absolutions or “indulgences”. However, it was highly disliked by the secular clergy, both priests and bishops, since it had the result of disempowering them to the advantage of friars, members of the regular clergy, who gave free absolutions or “indul-

gences” even for those *graviora crimina* which the bishops and parsons had reserved for their exclusive absolution.

After the second half of the 15th century, this “easier” way was made even more indulgent by the popes. In 1484 Sisto IV – a franciscan friar from the Genoese Riviera – declared in a bull that absolution from excommunication, imparted by friars in the *forum internum*, also had to be considered valid in the external spiritual courts. This became a reason for even wider opposition and scandal, since it meant that those who had been absolved by friars, endowed with the special faculties to absolve through confession from excommunications, were given, against money alms or compensation, a certificate of general or *plenary* absolution that they could present to their parsons and to the bishop’s court, so that the latter could no longer proceed to sentence and punish them, although they were the authors of the excommunication.

In this way serious sins, normally subject to public penance in the episcopal court, or *forum externum*, could more easily be absolved in sacramental confession, or *forum internum*, thanks to the special powers of absolution from excommunications which were conferred on many friars by their superiors, or by the pope and his main court of grace, the Papal Penitentiary. Using these powers of “indulgence”, friars could absolve even the most unforgivable sins and atrocious crimes – including adultery, incest, arson, sacrilege, infanticide, violence against parents, magic and sorcery, and many others. In fact, they could forgive all those serious crimes, which were widely called “*episcopal reserved cases*”, because the bishops had sanctioned them through excommunication and had thus reserved them for their own absolution.

From the end of the 15th century, therefore, a reaction set in against the diffusion of this system of indulgences, compensated by alms, which were bestowed on penitents by friars who had received the double or special power to absolve both from sins and excommunications. They were now able to confer absolutions which were considered canonically valid, not only in the secret confession (*forum internum*), but also in the public episcopal courts (*forum externum*). The opponents of this system criticized both the excessive facility of such indulgences or full (*plenary*) absolutions and the disempowerment of the secular clergy (parsons and bishops) in their judiciary faculties, to the advantage of ever moving and preaching friars.

In Florence a dominican bishop, Saint Antonino, who wrote extensively both learned treatises on excommunication (in Latin), and small, portable and easy manuals for penitents (in the vernacular) which enjoyed a wide and durable success<sup>10</sup>, proposed, in the latter, a compromise between the powers of the friars and those of the parsons. Friars with special powers of absolution could not preach and confess in any diocese unless they addressed themselves to the bishop and obtained from him a special licence to administer confession in his territory. This prescription was especially obeyed by friars belonging to (as Antonino himself did) the Observance movements, movements of disciplinary self-reform, active both in the Franciscan and Dominican Orders, which intended to take friars back to the stricter obedience to the norms of their original rule.

On the other hand, bishops had to call in these friars to help local parsons in the administration of confessions during the compulsory Easter cycle of collective confession and communion in the parishes. It was better to exclude simple parsons from the sacrament of confession, which implied knowledge of the difficult subject of “reserved cases”, since they did not have the necessary theological education, whereas friars, thanks to their theological studies, had a deeper understanding of the many different kinds of sins and absolutions, and were able to distinguish “simple” deadly sins which could be absolved without further investigation, and episcopal or papal “reserved cases” which had to be brought to the secret tribunal of the bishop or even further up to the Papal Penitentiary in Rome.

This method did not appear to be introducing any great change into the practice followed by bishops. However, in practice episcopal justice was greatly widened in scope by it. Reserved crimes were not tried any more only in the external *forum* of the bishop’s court, where they had to be proved by due process. They could also be investigated and detected directly in the secret of sacramental confession, and, thanks to the cooperation of the learned friars, able to recognize reserved cases, they could be transferred from confession to the secret justice of the bishop’s penitential *forum*. Here reserved cases still remained in the *forum internum*, but were transferred from the secret of the confession to a new, secret episcopal forum for secret penance: here they could be subjected to special punishment and a sterner penance; they could be absolved only at particular conditions (for instance, forcing an adulterer to abandon his concubine and to pay for her upkeep in a Charity House for female penitents).

Parsons, for their part, were excluded not only, as was canonically right, from absolving those judicial excommunications which had been inflicted on public sinners by judges in the bishop’s court, but also from forgiving those same “reserved sins” when they learned of them from their penitents during sacramental confession. In these cases, as has already been said, excommunication was believed to become active *ipso facto* or *latae sententiae*, meaning that it was thought that a judgment was passed by God Himself, and became immediately effective. God could look directly into the heart of the sinner, and pronounced His sentence at the very moment when the “reserved” sin was committed.

The fact that parsons did not wield the power to absolve from excommunications pronounced by their bishops without their bishop’s licence was really quite normal. But in Antonino’s system, they were also compelled to refuse absolution of all sins sanctioned by excommunication, even if they only met them in the course of the secret, sacramental confession. In such cases, they had to interrupt or suspend the confession and send secretly their penitents either to the judge (usually the spiritual vicar) at the bishop’s court, or to a friar with special powers of absolution from excommunications and a special licence granted by the bishop of doing so within the diocese. In this way, bishops could expand their judicial powers enormously, extending them from cases which were publicly known and tried in their public court, to a whole range of secret “reserved cases” that penitents could confess to their parsons during the compulsory rituals of Easter confession and communion.

Whereas letters of “indulgence” and special faculties of absolution, which were granted to the mendicant friars by the pope and his tribunal of grace (the Apostolic Penitentiary) ignored or impaired the penal authority of the bishops as magistrates, Antonino’s new system of “reserved episcopal cases” extended their powers from *public* to *secret* sins, granting the bishops a new, fearsome ability to discover canonical crimes and forbidden behaviour even in the inner conscience of their flock. They could now extend their jurisdiction from the outer to the inner *forum*, creating a true contamination between judicial process and sacramental confession.

The rule at work here was apparently simple. Any public, notorious, reserved sin must be punished by public penance in the outer *forum* of the bishop’s tribunal; any secret sin revealed in confession, if it belonged to those same, “reserved” cases which, if public, would be punished with excommunication, could be absolved only by the bishop. In this case an episcopal, “penitential” judge would transform the public penance and the fines that would be given to the public sinner, into other, discretionary, secret penances – both voluntary fines, or rather alms, and prescriptions for pious behaviour.

As a result of this system, bishops acquired a new, keen weapon to control the inner workings of the heart. When bishops received, in their “secret” penitential tribunal, those guilty of the “reserved” sins that parsons were not allowed to absolve, they were put into the powerful position of being able to penetrate the inner workings of the penitents’ conscience, and to proceed even against such sins and crimes that might never have come to light in an ordinary, episcopal process. Episcopal “reserved cases” were moved from the secret space of the confession to a higher, equally secret space in the bishop’s court. There were therefore three seats or *loci* of penitence in the secular clergy’s powers as judges. First, the ordinary public court for public sinners, and second and third, a “double” secret *forum*: confession and the secret or penitential episcopal *forum* (also called “forum of conscience”) where reserved cases were transferred for absolution<sup>11</sup>.

I must point out that when the danger of Lutheran heresy became serious in Italy, this system was also used against the secret “reserved” sin of heresy<sup>12</sup>. Not only bishops, but the inquisitors themselves could count on parsons to suspend the confession of their penitents (who were under strict obligation of submitting to confession at least once a year before Easter), as soon as any of them came up with a suspicion of heresy. In such cases, the suspected heretics were sent for a secret, so-called “spontaneous” self-presentation to the nearest inquisitor, who rewarded their “voluntary” appearance with a secret abjuration which suspended the ordinary procedure and, as a reward for voluntary confession and abjuration, spared them the strictures of the formal process, provided they denounced anybody they knew who might also be suspected of heresy.

II. Rather than following the use (or rather abuse) of auricular confession to extract information from, and about, heretics within the Mediterranean Inquisitions, I shall now follow the various ways in which the ancient rites of exclusion and excommunication

were abolished, or partly survived, in the Churches of the Reformation. Excommunication did not disappear suddenly as soon as the new Protestant churches were organized. However, it ceased to be enforceable by coercion, as it had been thanks to the role of the bishops' courts as state tribunals, and to the "temporal", meaning political and judiciary, powers of the clergy. On such a basis, Catholic bishops and even parsons had the full right to order any police force to execute their decrees, from the inquisitor's sentences against heretics, to the bishops' and parsons' excommunications against notorious sinners.

In the protestant Churches, excommunication only survived in its "spiritual" form, stripped of any of its former associations with the judiciary and police powers of the clergy, and of any of their authority to impose obedience using the police forces. *Bann*, the German term for excommunication, was used by the Lutheran Church Councils (*Kirchenräte*, *Konsistorien*) to remove dissenting pastors or ministers from their chairs or offices, and, in the last resort, to ban theological dissenters from both Church and State, compelling them to emigrate, although allowing them to sell and take with them their patrimony in liquid assets.

The implantation of a Lutheran Church in a formerly Catholic state required a "constitutional" act, modifying both the Church, the State and their reciprocal relations. The transition to the Lutheran faith and its ecclesiastical organization required a constitutional proclamation which could only be promulgated by the supreme authority, the prince. This constitutional act was often defined *jus reformandi* (which is also the reason why Lutheran Churches are often defined "princes' Churches"). Since sacraments giving "status definition" (baptism, marriage etc.) defined one's civil (or "anagraphical") status both in Church and State, the prince, who personified the State, had to decide officially, in case of competing Churches, which Church's sacraments were to have civil effects; in so doing, he was also defining who his subjects were. If the choice fell on Lutheran sacraments, then all infants who had been baptized according to the Lutheran ritual received both religious and civil rights; whereas only some of them (adult, male, proprietary Lutherans) were also allowed political rights and access to public offices.

Lutheran Churches operated a clear division between those "spiritual" and "temporal" powers which had been united in the Catholic ecclesiastical hierarchy. Lutherans distinguished them as two great subdivisions, which Samuel Pufendorf<sup>13</sup> called, at the end of the 17th century, *directorium* and *ministerium*. The former included the powers of government and financial administration, while the latter included the preaching the word of God and the administration of sacraments.

The *directorium* included all acts of political leadership, especially nominations to public ecclesiastical offices. These were now financed by the state through the secularized rents of once ecclesiastical lands: the *directorium* also included the financial and economic administration of this patrimony set aside by the State to finance the pastors. The responsibility for these tasks was entrusted to two new State offices which cooperated with the prince. The first ones were political Councils and supreme courts,

entrusted with nominations and other political-ecclesiastical affairs: they were called Spiritual Councils (*Kirchenräte*), or Consistories (*Konsistorien*, not to be confused with the grassroots assemblies of the Calvinist Church). The second ones were responsible for the economic administration of ecclesiastical lands and rents, and were called ecclesiastical Treasuries (*Kirchenkassen*). Both were new, collegial ministries of the central government for the management of ecclesiastical affairs, the first ones on the political, the others on the financial side.<sup>14</sup> They were composed of an equal number of jurists and theologians and they replaced the Catholic hierarchy in what had been its joint direction of all so-called “temporal” affairs.

As for the “spiritual” functions entrusted to the sector that Pufendorf called *ministerium*, they remained the exclusive preserve of Lutheran pastors, who preached the Word of God and administered the two surviving sacraments (baptism and the Holy Supper). They operated at parish level under the supervision of a hierarchy of local and provincial Superintendents, who were, in some measure, the heirs of the bishops; at the top, there was a central, general Superintendent. But in their office no traces were left of the judiciary tasks that had been so central in the Catholic system of bishoprics, which had administered both dogmatic and moral justice, and had condemned both heretics and public sinners. The Superintendents maintained supervision of the lower pastorate and the ancient tradition of visitations<sup>15</sup>, in order to identify local needs and correct any faults in the ecclesiastical life of their clergy and parishes. But the former bishops’ judiciary powers were integrally transferred to secular courts: communal courts at town level, and state courts (*Schöffengerichte*, *Amtmänner*) depending from the prince. In this series of tribunals the prince’s Consistories (*Konsistorien*) acted as courts of last instance; in Southern Germany they were called matrimonial Courts (*Ehegerichte*) since they particularly treated all matters pertaining to marriage.

All three, the Lutheran, Zwinglian and Calvinist Churches, were of one mind in preserving baptism at birth as a sacrament to be administered to all the newly born. With a single symbolic sign, infant baptism guaranteed the symbiotic, compulsory inclusion of anybody into the double community of Church and State. Both Lutherans and Calvinists intended to ward off the dangers of those selective, separatist sects which refused to include all, and accepted only the voluntary baptism of adults. They also intended to fight those individualist sectarians, such as Schwenkfeld’s followers, Socinians and Anti-Trinitarians, who refused the public liturgy of an all-including church. But whereas all protestant, territorial (as opposed to sectarian) churches agreed on baptism at birth, they were bitterly divided on the Eucharist or Holy Supper, which was, as already said, a ritual of “judicial selection of the community”<sup>16</sup>.

Lutheran Churches retained excommunication, the German *Bann*, mainly to exclude unbelievers who erred on dogmatic truths (*Bekennnisbann*). They fully renounced to the prince and his courts all legislative and judiciary powers, and all powers of correction, coercion and police, that had been at the disposal of Catholic bishops and parsons to prosecute religious crimes. In this way, the German religious *Bann* became really devoid of any coercive power. Just as confession and penance did not depend on the

priest's absolution, but on true faith, so the *Bann*, as an exclusion from the Holy Supper, did not carry with it any civil or penal consequences. It implied only, according to its ancient meaning, the refusal to communicate with those who were thought to be mistaken in matters of faith.

An example of such a refusal to communicate with heretics was given by Luther himself during the attempt, arranged by Prince Philip of Hesse in the colloquy at Marburg in 1529, to reconcile the Lutheran and "sacramentarian" (Zwinglian) positions on the Eucharist. Luther refused to communicate with Zwingli because of his different views on the sacrament, although he abstained from formally excommunicating him. This reconciliation failure had serious political consequences, since after the Augsburg Diet of 1530, the "sacramentarian" city-states, such as Zürich and Strasburg, were not included in the League of the Protestant princes, and were left to fight alone against the Catholic Swiss Cantons, which were powerfully aided by the Habsburgs.

Lutheran Churches maintained, from their origins in the Augustinian monastery and the University of Wittenberg, where Luther had worked and studied, a very learned and "professorial" profile, together with a strong theological and dogmatic vocation. In order to draw up the Confessions of Faith, and to define controversial points of doctrine, a leading role was played by theological expert opinions (*Gutachten*), written by the teaching staff of the new Theological Faculties (also called *Spruchkollegien*, Colleges of Doctors). The Confessions of Faith were promulgated as the law of the land by the territorial princes, with the counsel of theologians and the consent of pastors. Doctors of Divinity became extremely prominent as counsellors of the princes in matters of theological doctrine. But, when compared with their Catholic counterparts, Lutheran doctors appear to have lost, both their own, privileged law (canon law), and the right to promulgate new laws using their own authority, without confirmation by the secular prince.

Besides questions of faith and dogmatic controversy, moral sins and moral crimes were also included in the "spiritual" jurisdiction of papal and episcopal courts. In Lutheran states, during the course of the 16th century, these matters, from conflicts on civil or "anagraphical" registration to matrimonial litigation, were transferred to the new princely, ecclesiastical Councils – *Konsistorien* or *Kirchenräte* – that had been instituted to replace synods and bishops in assisting the secular prince. These Councils acted as matrimonial courts in the northern system, modelled on the Saxon ecclesiastical constitution<sup>17</sup>. In Southern Germany, where the models came from Zürich<sup>18</sup> and Württemberg, they were set up as separate matrimonial courts (*Ehegerichte*) to replace bishops' courts in litigation concerning marriage, illegitimacy and other such matters.

Both types of court soon produced a Protestant matrimonial law whose principles were, in many respects, quite opposed to those of Catholic canon law<sup>19</sup>. Many Southern cities (Ulm, Costanz, Memmingen, Lindau, Isny and the Duchy of Württemberg) also created a special urban magistracy, the *Zuchtherren* (Disciplinary Judges) which had the task of correcting public and notorious sinners according to the Evangelical model, the

so called “fraternal correction” (Mt. 18, 16, and Acts 1 Cor. 5,1). This method was close to what was to become Calvinist discipline. The *Zuchtherren* were entrusted with the power of the *Bann* as minor excommunication, without penal or civil effects in secular law. As a college of laymen presided over by a pastor, they prefigured Calvinist Consistories and inflicted the *Bann* only after having admonished the sinners three times. In this case, the *Bann* was a symbolic act, dishonouring the sinner in the eyes of the whole community, and was particularly used to punish such “scandalous” citizens as public adulterers, blasphemers and suchlike, who refused to mend their ways<sup>20</sup>.

Marriage litigation was often close to moral sins derived from sexual relations, such as the refusal of the male partner to marry his spouse after they had had sexual relations. Such cases had been once decided by episcopal courts. Now such matters, however, were considered to pertain to secular law: together with all coercive and legislative powers of the clergy, they were transferred to the jurisdiction of the secular prince. In this way, German rulers acquired a new, patriarchal and minute responsibility toward their subjects. They could add, to their already vast production of Police ordinances for the good order of their communities, a new series of detailed decrees on ecclesiastical discipline (*Kirchenzucht*) to enforce good behaviour and punish debauchery and misrule.

Reformed theologians, as has already been said, fully surrendered to the secular authority, whether it was a sovereign prince or a city government, the monopoly of all legislative powers, including those required to organize the Lutheran churches. These princely powers, to be applied to the organization of the Church, were justified by theologians as an equivalent of the powers of an external, emergency bishop (*Notbischof*, *Summepiscopus*). These powers of “outer bishops” were the legal foundation of many of the decrees that the German princes began to publish after the Reformation on matters of ecclesiastical and moral discipline. Such legislation, moreover, was a continuation and an extension of the well-established princely tradition of publishing ordinances for the good order and policing of their villages<sup>21</sup>. Princely decrees went hand in hand with the *Kirchenvisitationen* carried out by Superintendents and members of the *Kirchenräte*. Both governed, controlled and disciplined the moral and religious behaviour of their subjects and faithful according to principles of confessional morality, and also in the name of the “common good” (*Gemeiner Nutz*) and good order (*Policey*). Village life was minutely regulated in all its communal feasts and events; thrift and good behaviour were recommended in baptisms, marriages, funerals, the observance of Holy days, and all other festivals.

III. Excommunication (*ban* in French), was widely used by Calvinist Consistories too, with the aim of excluding those who were judged unworthy of partaking in the quarterly, or yearly, solemn Holy Supper: participation to this ritual clearly defined the confines of the sacral community.

Calvinist churches did not give their Confessions of Faith the same fundamental importance they received in the Lutheran world. Among Lutherans, signing a common

Confession of Faith was a precondition for entering into political alliances. When four cities (including Zürich) did not subscribe the Augsburg Confession (1530), but presented one of their own (the *Tetrapolitana*), they were for this reason excluded from the Smalkaldic League. The same can be said of the 1580 “Formula of Concord”, conceived to become the basis for an anti-Catholic League of all Lutheran, orthodox princes. Calvinist churches, of course, did have their statements of faith, such as the Heidelberg Catechism, or later the *Confessio Sigismundi* for Brandenburg, included in that movement of princely conversions to the Calvinist faith which has been called a “Second Reformation” (ca. 1580 - 1618)<sup>22</sup>.

But in Calvinist churches, the fundamental principle of membership was not primarily adherence to the tenets of a dogmatic truth. It was rather moral excellence. To choose such a principle was fraught with no little danger, since it tended to belie another fundamental principle, that Calvinist churches had kept in common with all other territorial churches, Catholic and Lutheran alike: they had to be compulsory churches meant to include all and everybody through the ritual of infant baptism.

In the Calvinist system, the importance given to righteous behaviour tended to encourage people to distinguish between the moral and the immoral, just as between the Elect and the Damned. This meant that the Church might be defined not as including all and pertaining to all, but as limited to the truly and visibly pious only. The principle of moral honesty and discipline, as a fundamental trait to characterize the true Church, was also common to Baptists, who did not want to be an all-including Church, but were just a sect, whose Election was made immediately visible thanks to the superior conduct and morality of its adult, voluntary members.

Calvinist churches were not theocracies. Notwithstanding the bitter debate which followed the death sentence against Michael Servetus in Geneva, the sentence itself was not pronounced by Calvin but by the secular magistrate: the Small or Executive Council of the city, which applied here an Imperial Mandate promulgated by Charles V in 1528, which ordered the pain of death against all Baptists, Antitrinitarians and Atheists. However, a central and prolonged conflict took place within the “sacramentarian” churches concerning the use of the *ban*, which was not applied here as an exclusion of dissenters for errors of faith, but (as in the case of the *Zuchtherren*, already mentioned above) in order to exclude the morally impure from participating to the Holy Supper. The Calvinist *ban* was applied mainly to impose good morals, and not true faith. It was not a dogmatic excommunication, but a disciplinary one.

The exclusion of the unworthy from the Holy Supper was so central to the communal practice of Puritan churches that in many places, beginning with Geneva itself, special registers were kept, not only to have the lists of the baptized, but also of the excommunicated<sup>23</sup>. Excommunication was rarely used against the unfaithful, who, in the gravest cases, were punished with public penance and exile. It was mostly used against the morally unworthy, and for this reason it was called moral excommunication, or *Sittenbann*. Calvinist Consistories were the heirs of the bishops’ courts not in enforcing true doc-

trine, but in imposing good behaviour. “Sacramentarians” used excommunication to curb immorality rather than to defend true faith. The Puritan *ban* was a public excommunication, and its procedure literally followed the scriptural norm (Mt. 18, 15-16). It prescribed three admonitions of growing severity. The first was given privately by one of the Seniors, the second by the whole Consistory, but still in private, and only if both steps failed recourse was to be had to the third sanction: the solemn, public exclusion from the Holy Supper, decreed by the Consistory in the presence of the full assembled Church.

Such an exclusion for reasons of moral misconduct always implied a risk. There was the danger that the morally righteous might want to divide themselves from the “multitudinarian” church, which must include all, and would insensibly move toward the form of those sectarian communities that only included the pure of heart, such as Baptists. These did not want to mix with the world of sin; rather, they wanted to separate themselves from the rituals common to all, in order to build a true community of the Elect, which had to be exclusive and not inclusive. They might easily convince themselves that the Elect were recognizable in this world, thanks to their superior morals, and were not invisible within the “universal” Church, although mysteriously predestined to salvation by the unknowable mind of God. Whereas baptism included everybody, the *Sittenbann*, by excluding public sinners from the Holy Supper, worked as a filter to protect the immaculate sacrality of the ritual. It divided the pure from the unredeemed, and put into sharp relief the visible communion of the true and honest, who already felt elected.

The Consistory bans have been the subject of quite a number of studies. They were first implemented to weed out the ancient idolatrous practices of the Catholic tradition. Later they privileged the punishment of blasphemy, refusal to obey the court, negligence in attending church services and catechism lessons. But almost everywhere the primary function of the ban (not so far from the episcopal courts’ specialty in authorizing separation on the grounds of a wife’s mistreatment by her husband) was to reconcile warring spouses, to pacify brawls, impose good-will and matrimonial harmony<sup>24</sup>.

Spiritual excommunication was also used by sectarian, voluntary movements such as the Baptists to exclude heretical dissenters, giving rise to schisms, divisions and ramifications in their history. But its central use, especially among the Calvinists, was to stigmatise those excluded from the sacral community when it met to celebrate its unity in the symbolic ritual of the Holy Supper, in memory of Christ’s sacrifice. Excommunication by the Calvinist Consistory excluded the unworthy from communion for moral sins in order to protect the purity of the community of the Elects.

## NOTES

<sup>1</sup> B. Moeller, *Imperial Cities and the Reformation. Three Essays*, ed. and trans. E. Midelfort, M.U. Edwards Jr., Durham N.C. 1982 (1972).

<sup>2</sup> J. Bossy, *Blood and Baptism: Kinship, Community and Christianity in Western Europe from the Fourteenth to the Seventeenth Century*, in D. Baker (ed.), *Sanctity and Secularity. The Church and the World*

- (Studies in Church History, vol. X), Oxford 1973, pp. 129-143; also by the same, *Christianity in the West. 1400-1700*, Oxford 1985.
- <sup>3</sup> P. Fournier, G. Le Bras, *Histoire des collections canoniques en Occident*, T.I, Paris 1931.
- <sup>4</sup> G. Constable, *Rural Churches of Monasteries*, in Id., *Religious Life and Thought (11th-12th centuries)*, London 1979; *Cristianizzazione ed organizzazione ecclesiastica delle campagne*, Spoleto 1982, vol. 2; *Pievi e parrocchie in Italia nel basso Medioevo (secc. XIII-XV). Relazioni regionali*, VI Convegno di storia della Chiesa, Firenze 21-25 Settembre 1981, Bologna 1981.
- <sup>5</sup> E. Brambilla, *The Definitions of Citizenship and the Sacramental System of the Churches*, in A. Cimdina (ed.), *Religion and Political Change in Europe: Past and Present*, Pisa 2003, pp. 75-86; also E. Brambilla, J. Carvalho, *Religion and Citizenship from the Ancien Regime to the French Revolution*, in S.G. Ellis, G. Hålfdanarson, A. K. Isaacs (eds.), *Citizenship in Historical Perspective*, Pisa 2006, pp. 35-60.
- <sup>6</sup> A very different kind of procedure for excommunication was in use in England, were the clergy could never use such sanctions outside the framework of royal justice: T.P. Oakley, *English Penitential Discipline and Anglo-Saxon Law in their Joint Influence*, New York 1923, and T.P. Oakley, *The Cooperation of Medieval Penance and Secular Law*, in «Speculum», 1932, 7, pp. 515-524.
- <sup>7</sup> For further details of the ceremony, from the middle of the 10th century onwards, C. Vogel, *Les rites de la pénitence publique aux Xe et XIe siècles*, in P. Gallias, Y.-J. Riou (eds.), *Mélanges offerts à René Crozet*, Poitiers 1966, vol. I, pp. 137-144.
- <sup>8</sup> R.R. Reynolds, *Rites of Separation and Reconciliation in the Early Middle Ages*, and R. Kottje, *Busspraxis und Bussritus*, in *Segni e riti nella Chiesa altomedievale occidentale*, Spoleto 1987, vol. I, pp. 205-23 and 369-395.
- <sup>9</sup> Examples in J. Toussaert, *Le sentiment religieux en Flandres à la fin du Moyen Age*, préface de M. Mollet, Paris 1963; L. Binz, *Vie religieuse et réforme ecclésiastique dans le diocèse de Genève pendant le Grand Schisme et la crise conciliaire (1378-1450)*, T.I, Genève 1973.
- <sup>10</sup> M. Turrini, *La coscienza e le leggi. Morale e diritto nei testi per la confessione della prima età moderna*, Bologna 1991, Bibliographical Appendix.
- <sup>11</sup> “Advertendum [est] tripliciter ab auctoribus communiter distingui forum: ita ut aliud dicatur externum, quod contentiosum dicitur seu forum fori, eo quod in loco publico exerceatur. Aliud dicunt forum Poenitentiae, in quo secrete exercetur animae iudicium per sententiam Sacramentalem seu per confessionem. Aliud vero dicitur forum conscientiae, in quo iudicium secrete quidem exercetur, sed tamen extra confessionem. Quae duo fora uno nomine dicuntur forum Poli, quatenus distinguuntur a foro fori... absolutio a censura, quae in foro externo impenditur, ea est quae cum strepitu iudiciali impenditur et publice, adhibitis testibus. Quae impenditur in foro poenitentiae ea est, quae impenditur audita confessione peccatorum, et per absolutionem sacramentalem. Quae vero impenditur in foro conscientiae ea est, quae extra forum sacramentale impenditur et occulte, non adhibitis testibus aut Notario. Quinimmo, etiamsi ea detur aliquibus videntibus, quoties tamen detur sine strepitu, adhuc dicitur in foro conscientiae collata”, in *Tractatus de casibus reservatis in Dioecesi Mediolanensi*, auctore Oliverio Mazuchello Oblato S.T.D., Mediolani, Apud Impressores Archiepiscopales, 1641, p.114.
- <sup>12</sup> I treated this theme extensively in two books: E. Brambilla, *Alle origini del Sant’Uffizio. Penitenza, confessione e giustizia spirituale dal IV al XVI secolo*, Bologna 2000; E. Brambilla, *La giustizia intollerante. Inquisizione e tribunali confessionali dal IV al XVIII secolo*, Roma 2006.
- <sup>13</sup> S. Pufendorf, *The History of the Popedom, Containing the Rise, Progress, and Decay Thereof, &c.*, Written in High Dutch by Samuel Puffendorf, Trans J.C., London 1691 (1 ed. 1679): L. Krieger, *The Politics of Discretion. Pufendorf and the Acceptance of Natural Law*, Chicago - London 1965, pp. 235-236.
- <sup>14</sup> H.J. Cohn, *Church Property in the German Protestant Principalities*, in E.I. Kouri, T. Scott (eds.), *Politics and Society in Reformation Europe: Essays for sir Geoffrey Elton on his Sixty-fifth Birthday*, New York 1987, pp. 158-187.
- <sup>15</sup> E.W. Zeeden, P.T. Lang (eds.), *Kirche und Visitation. Beiträge zur Erforschung des frühneuzeitlichen Visitationswesens in Europa*, Stuttgart 1984, and for the Catholic counterpart P.T. Lang, *La riforma*

- in trasformazione. *I questionari delle visite pastorali cattoliche in Germania nel XVI e XVII secolo*, in U. Mazzone, A. Turchini (ed.), *Le visite pastorali. Analisi di una fonte*, Bologna 1985, pp. 57-95.
- <sup>16</sup> E. Brambilla, *The Definitions of Citizenship* cit., pp. 75-86; E. Brambilla, J. Carvalho, *Religion and Citizenship from the Ancien Regime to the French Revolution* cit., pp. 35-60.
- <sup>17</sup> W. Heun, *Konsistorium*, in *Theologische Realenzyklopädie*, vol. XIX, Walter de Gruyter, Berlin 1989, pp. 483-488.
- <sup>18</sup> W. Köhler, *Zürcher Ehegericht und Genfer Konsistorium*, II, *Das Ehe- und Sittengericht in den Süddeutschen Reichstädten, dem Herzogtum Württemberg und in Genf*, Leipzig 1942.
- <sup>19</sup> S.E. Ozment, *When Fathers Ruled. Family Life in Reformation Europe*, Cambridge (Mass.) - London 1983; J.R. Watt, *The Making of Modern Marriage. Matrimonial Control and the Rise of Sentiment in Neuchâtel, 1550-1800*, Ithaca - London 1994; J.F. Harrington, *Reordering Marriage and Society in Reformation Germany*, Cambridge 1995. But still, especially, W. Köhler, *Zürcher Ehegericht und Genfer Konsistorium*, II, *Das Ehe- und Sittengericht in den Süddeutschen Reichstädten, dem Herzogtum Württemberg und in Genf*, Leipzig 1942.
- <sup>20</sup> W. Köhler, *Zürcher Ehegericht und Genfer Konsistorium* cit., pp. 241-242.
- <sup>21</sup> K. Härter, M. Stolleis (eds.), *Repertorium der Policyordnungen der frühen Neuzeit*, 10 vols., Frankfurt am Main 1996-2004.
- <sup>22</sup> H. Schilling (ed.), *Die reformierte Konfessionalisierung in Deutschland: das Problem der "Zweiten Reformation"*; M. Prestwich (ed.), *International Calvinism 1541-1715*, Oxford 1985.
- <sup>23</sup> W. Monter, *The Consistory of Geneva, 1559-1569*, in "Bibliothèque d'humanisme et Renaissance", 1976, 38, pp. 468-484, p. 474, now in W. Monter, *Enforcing Morality in Early Modern Europe*, London 1987.
- <sup>24</sup> Some of the many studies on puritan Consistories: M. Kingdon, *Adultery and Divorce in Calvin's Geneva*, Cambridge Mass. - London 1995; B. Vogler, J. Estèbe, *Consistoires protestants*, in "Annales ESC", 1976, 31, pp. 362-388; W. Monter, *The Consistory of Geneva, 1559-1569*; R. A. Mentzer, *Disciplina nervus ecclesiae: the Calvinist reform of morals at Nîmes*, in "The Sixteenth Century Journal", 1987, 18, pp. 89-115; R. Mitchison, L. Leneman, *Sexuality and Social Control: Scotland, 1660-1780*, Oxford 1989; S. Burghartz, *Zeiten der Reinheit - Orte der Unzucht. Ehe und Sexualität in Basel während der frühen Neuzeit*, Paderborn - Munich - Vienna - Zurich, 1999.

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