

# **THE BOUNDARIES OF JUDAISM**

**By**

**Donniel Hartman**

He only says, 'Good fences make good neighbors'.  
Spring is the mischief in me, and I wonder  
If I could put a notion in his head:  
'Why do they make good neighbors? Isn't it  
Where there are cows?  
But here there are no cows.  
Before I built a wall I'd ask to know  
What I was walling in or walling out,  
And to whom I was like to give offence.

**(Robert Frost "Mending Wall)**

## INTRODUCTION

**THE MODERN PROBLEM OF “WHO ARE THE JEWS?”**

The Lord spoke to Moses: 'Go down, for your people, whom you brought out of Egypt have acted corruptly.' (Exodus 32:7). What [did God] mean when [God said] 'Go down?' Rabbi Elazar said: 'The Holy One said to Moses: Moses, Go down from *your* greatness. I have only given you greatness for the sake of the people, and now that Israel have sinned – what need do I have for you? (BT, Tractate Berakhot 32a).

The sin of the Golden Calf did not simply result in the banishment of Moses from Mount Sinai, but more importantly, from his exclusive paradise. No matter how meritorious, the individual alone has no access to God in the Jewish tradition when standing apart from the Jewish people. God is interested in individuals only to the extent that the individual is grounded in, attached to and responsible for the Jewish people.

Judaism at its core is a collective enterprise, a religion invested in a people. However, it is precisely on this collective level that one finds one of the central paradoxes of contemporary Jewish life. On a national political level, in particular in times of crisis, the Jewish people are a paradigm of collective responsibility. However when it comes to issues relating to our collective religion, we cease to function as one people and allow sectarian and denominational forces to take over. We are a people who are willing to die for each other, but at the same time have great difficulty living with and respecting each other as Jews. In cities across North America, Jews from all denominational movements unite to march together at Israel Day Parades, but those same denominational rabbis will not share a public platform or sit on a shared rabbinic council, less it be perceived that by doing so one is granting legitimacy to the other. Jews across the globe unite in times of crisis and raise unparalleled amounts of money for each other, but rarely share everyday ritual

and holiday services together. A Russian new immigrant to Israel, the child of a Jewish father and non-Jewish mother, is welcomed as a Jew into Israeli society and is able to serve in the most elite combat units in the Israeli army. However, if God forbids he is killed, is not accepted for burial in a Jewish cemetery.

Who are the Jews? What do we mean when we refer to the Jewish people? What is it that all who are Jews share and hold in common, by virtue of which we are in fact one people? The problem is that Judaism, instead of serving as the uniting force around which our community is formed, has become itself the source of our divisiveness. One only has to look at the rancorous debate that arises any time the question of “Who is a Jew” and Israel’s Law of Return is put on the table. This law, which grants automatic citizenship in the State of Israel to anyone who is a Jew, obviously requires some common understanding as to who is a Jew. Such an understanding, however, is sorely lacking. In one of the great paradoxes of contemporary Jewish life, it was decided that the definition of “Jew” vis-à-vis the Law of Return is to be based on the Nazi definition as outlined in the Nuremberg Laws, i.e., a Jew is someone is someone who is the child of a Jewish parent, or married to a Jew or someone with one Jewish grandparent. Since we could not reach an agreement, we have adopted for ourselves the definitions of others.

In many ways the “others” who surround us have always served as the ultimate protector of Jewish collective identity. We could always count on being a people segregated and persecuted by “them,” and the answer to the question of who is a Jew has often been those whom “they” persecute for their

Jewishness. In the context of an anti-Semitic world, Jewish collective life always had a measure of clarity to it. If Hitler did not distinguish between Orthodox, Conservative and Reform, or between the observant and non-observant, who are we to create boundaries on the basis of these considerations? However, as we enter the 21<sup>st</sup> century, a decline in anti-Semitism in many of the centers of Jewish life, in particular in Israel and North America, has created large communities of Jews for whom the hatred of others is neither existentially significant, nor a unifying force. Furthermore, even the classic “safety net” of shared ethnicity is absent as we debate matrilineal vs. patrilineal descent, and as, at least outside of Israel, ever increasing numbers of Jews are born with only one Jewish parent.

If the Jewish people are to continue as a people – that is, as a community that is larger than any specific denomination and encompasses and indeed embraces diverse individuals who live in different locations and hold a multiplicity of ideas and commitments, we need our own answers to the question of what gives form and meaning to our collective enterprise.

This lack of collective clarity and cohesion is a strange condition for a people with a 3000 year old history. Its existence over such a long period of time is testimony to a commonality that must have been clear, self evident and compelling to its members. Without this it would have been difficult to survive so long even under normal conditions, not to speak of the extraordinary conditions that constantly challenged Israel’s survival over the last 2500 years.

The difficulties we face in understanding who are the Jews are in no small measure a modern phenomenon. Prior to the modern era, Jewish life was by

and large shaped by a shared notion of tradition and clear boundaries distinguishing insider from outsider, “us” from “them.”<sup>i</sup> However, with emancipation and the encounter with modernity that began towards the end of the 18<sup>th</sup> century, there is a sense that the Jewish people have entered a new phase in its existence.<sup>ii</sup> As the walls of the ghettos fell, and Jews, particularly those in Central and Western Europe, were granted the opportunity to participate fully in their surrounding cultures, the elements of Judaism and Jewish life that had informed these boundaries were challenged, reinterpreted, and often set aside. The traditional characteristics of Jewish life were exposed to the attacks of individuals and to strains of thought that preached change, integration, secularization, and a new interpretation of Jewish tradition appropriate to the spirit of modernity.<sup>iii</sup> Debates and diverse policies regarding Jewish ideology and practice that in the past had been subjects of widespread consensus, such as belief in God, Shabbat and holiday observance, the centrality of mitzvah and ritual, to name but a few examples, now permeated communal life.

As a consequence of these sweeping changes, it became increasingly difficult to ascertain a shared ethos around which the Jewish community could remain unified. New and diverse notions of Jewish identity led to denominationalism and factionalism unprecedented in Jewish history. The advent and growth of the Reform movement, the formation of Orthodoxy as a distinct denomination, the rise of Zionist nationalist and secular approaches to Judaism and the subsequent development of the Conservative, Reconstructionist and Renewal movements - these are only the most prominent expressions of this

pervasive trend. Within two centuries, the Jewish people were transformed from a more or less cohesive, traditional communal unit into “A House Divided,” as historian Jacob Katz famously put it.<sup>iv</sup>

- - -

The attempt to construct or identify a community’s shared ethos can take two different though not mutually exclusive directions. The first reflects the premise that collective life in general assumes some notion of commonality shared by fellow members by virtue of which they belong to this particular group as apposed to another. This results in attempts to map out core principles or features which one argues are essential to the definition and identity of the group. But in the contemporary Jewish reality, all attempts to identify this commonality - be it practices and/or beliefs necessary for membership - will fail, as they are invariably founded on particular ideological premises that are simply no longer shared. More than serving to identify the core features of the Jewish people’s common identity, most suggestions merely reflect the common identity of the particular denomination which espouses them, while leaving on the outside all those with different denominational affiliations.

Throughout social history, however, there is an additional tool that groups have incorporated - particularly in light of the reality of differences amongst their members - to demarcate their shared collective identity, and that is the instrument of boundaries. As sociologist Kai Erickson explains, these boundaries may be understood as a "symbolic parentheses" delimiting a range of acceptable behaviors and norms. As a result of these boundaries, a community may be said

to occupy a particular territory in the world, known as its "shared cultural space."<sup>v</sup> This cultural space sets the group apart and provides an important point of reference for its members.

Boundaries are particularly useful in the modern context, where people often carry multiple identities simultaneously. While in the past being Jewish may have been a more all-encompassing and exclusive identity, at present it is but one facet of a complex personality in which being for example, a Jew and an Israeli, an American and a Jew, a Jew and a women, a Jew and a an upper middle class businessperson, coexist in the same person at the same time. Communities are thus made up of individuals who may share only one aspect of their identities, and in addition to their internal differences, bring to the collective table a whole array of alternate affiliations and values. In this context, while it may be difficult to positively identify that which is shared, it is still possible to locate that which all fellow members agree to reject, and it is through such an understanding that the process of constructing a shared cultural space can proceed.

- - -

In the bifurcated denominational reality that is the modern Jewish people, the process of demarcating a common identity through shared and agreed-upon boundaries is neither simple nor self-evident, and encounters challenges on both sides of the religious spectrum. Many members, in particular on the more liberal side of the community, feel ill at ease with any conversation about boundaries. Having built a conception of Judaism premised on the values of human

autonomy and the right of individuals to construct a Jewish life in accordance with their individual consciences and religious sensibilities, they view any policy which aims to limit this autonomy as religiously and morally problematic. Their attitude towards individual religious expression is defined by the responses of pluralism and tolerance, rather than boundaries and the judgmental attitudes they are believed to engender.

In addition, large parts of the liberal Jewish community are, if not ideologically then functionally partially anarchic, operating with almost no central legal or institutional governing authority. The law and halakhic committees provide rulings for communities that by a large do not feel compelled or construed by these rulings. As evidence one can take the ever-decreasing levels of commitment by members to the guidelines of even the denomination to which they formally belong. Thus, for example, regular synagogue participation and ongoing involvement in the Jewish calendar life - although technically a part of all streams of Judaism - is statistically marginal in the liberal community. Almost 50% of Jews outside of Orthodoxy intermarry with an individual outside of the Jewish faith, despite the fact that it is a practice that is officially denounced by all the Jewish streams. Conceptual conversations regarding standards and rules are by and large irrelevant, as they do not influence the actual life of the community.

The above attitude poses a challenge because it advocates for a community without boundaries, something that is a sociological anomaly. Social identity is, by definition, always exclusionary. At the foundation of every social

structure, indeed in its conceptual definition, must lie some distinguishable characteristic or boundary by virtue of which its members can choose to belong to "this" as distinct from "that" social structure.<sup>vi</sup> I am not arguing for the need to compel and limit the spiritual choices individuals may make, but rather to recognize that there is a need to distinguish between the right of an individual to choose and the collective and political consequences of those choices. If the Jewish people are in fact to be one people, if there is to be an answer to the question "who are the Jews" then we need to engage in the development of a shared boundary policy. Individuals are still free to make choices, but they must recognize that some of these choices might involve whether to remain or not remain a member of the Jewish people. As a collective identity, by definition Judaism cannot be determined solely by the actions or decisions of individuals but must entail some shared common notion of boundaries which serves to demarcate the space which all who are Jews agree to share.

On the other side of the religious spectrum, individuals with a more traditional bent, in particular those often affiliated with Orthodoxy, have little difficulty with boundary language and formation. More than its fellow denominations, Orthodoxy views Reform, Conservative, Reconstructionist and secular approaches to Jewish life as having deviated from the central principles of Judaism, and from its perspective, as having breached the core boundaries which delineate the central and shared ethos of Jewish life.<sup>vii</sup> The argument is made that Judaism must return to its roots and be in accord with its traditional laws and values, rather than reflect the new directions and directives of the

Jewish people and modernity. To achieve this end, significant numbers of Orthodox Rabbinic figures regularly erect boundaries and utilize boundary claims and language to demarcate the core “cultural space” of Judaism within the realm of their denominational affiliations.

While every social structure is built around boundaries, the difficulty with the boundaries often erected by Orthodoxy is that they do not serve to demarcate the Jewish people, but rather to bifurcate it further. Through the boundaries some Orthodox thinkers erect, ever increasing numbers of Jews, if not the majority of Jews, find themselves ideologically outside the parameters of Jewish collective life. The sad state of contemporary Jewish boundary policies is that instead of serving to unite the Jewish people, they merely serve to separate Orthodoxy from the rest of the Jewish people - and at times to support a position that views Orthodoxy as the sole inheritor, the holy remnant of the collective mantle of Jewish peoplehood. What makes this situation even more troubling is that these boundary policies are represented as being *the* policies of the Jewish tradition, *the* necessary halakhic response to the challenges of modernity.

Contemporary Jewish life seems to be left in the predicament of having to choose between a policy that undermines the possibility of a coherent collective Jewish life by rejecting boundary policies altogether, and one that achieves the same end by advocating socially destructive boundaries. The aim of this book is to offer a third possibility.<sup>viii</sup> This work is founded on the assumption that boundary policies are critical to Jewish social formation, and have always been critical, as I demonstrate through a survey of the boundaries of Jewishness

throughout time. I argue, based on this analysis that precisely in the midst of our denominational disagreements, only boundary policies offer some hope at achieving a functional coherence regarding our collective identity. To achieve this end, however, Jewish political discourse is in need of a more sophisticated approach and understanding of boundaries: how and where to locate them, and what are the tools used to maintain them? What is needed are boundary policies that serve to unite and not divide, which serve the ends of the Jewish people as a whole and not simply those of one denomination.

- - -

In exploring the boundaries of Jewishness, the chapter that follows will begin with an overview of the ways in which social structures deal with the reality of difference and distinguish between acceptable and unacceptable difference. In so doing I will analyze the three categories used to make this assessment - pluralism, tolerance, and deviance.\* Then, focusing on the treatment of deviance, I will characterize the various social arenas or spheres of membership in which the consequences of a Jewish boundary policy play out: the spheres of basic membership, loyalty, ritual and naming. The fact that a certain form of behavior is classified as deviant and outside the shared boundaries of the community does not mean that the response to it is fixed and clear. At the heart of a constructive policy is a complex and varied array of responses influenced by the nature of the deviance and its social significance.

---

\* The distinction between the first two I owe my colleague Avi Sagi, and his article, "*ha-Dat ha-Yehudit: Sovlanut ve-Efsharut ha-Pluralism*," in "*Iyyun*" 44, (April, 1995).

Next, in chapters two and three, I will trace and analyze the central Jewish legal precedents on the subject of boundaries and deviance as found in Rabbinic sources (approx. 50 B.C.E.–500 C.E.) and the three major medieval halakhic codifications, Maimonides' (1135-1204) *Mishneh Torah*, R. Yaakov b. R. Asher's (1269–1343) *Tur*, and R. Joseph Karo's (1488–1575) *Shulhan Arukh*. It is in these sources that the language of boundaries and deviance were first discussed, developed and analyzed. They therefore serve as the legal and intellectual basis for all contemporary halakhic discussion on the subject.

In developing its theories of boundaries over the centuries, Jewish law primarily utilized four categories of deviance. They are the *meshumad*, (which at the end of the Middle-ages was converted into the *mumar*), the *min*, the *apikorus* and the *kofer*. In re-constructing the legal precedents that shaped Jewish boundary theories, I will limit my analysis to the discussion that evolved around those forms of deviance that are classified under one of the above categories. In so doing, the primary tools for explicating the ideas contained in the various sources will not be the historical influences on the authors but rather the texts themselves, that is, the positions and rulings which can be gleaned from these halakhic sources.<sup>ix</sup> As a result, much of the study in these chapters will entail close textual reading and analysis.

After presenting and analyzing this historical legal precedent, I will turn in chapters four and five to the modern (post-Enlightenment) period, where I will present and analyze a dominant and deeply problematic position of Orthodoxy vis-à-vis boundaries. This policy either calls for a complete physical segregation

from the rest of the Jewish people, as is the case with ultra-Orthodoxy, or, as has become the case for the majority of modern or centrist Orthodoxies, involves a cultural, ideological and often social separation from those not living an Orthodox life style. The two leading Orthodox halakhic authorities of this period have set the tone for these boundary policies: Rabbi Moses Sofer (Schreiber) (1762-1839), the Hatam Sofer, (*Hidushei Torat Moshe Sofer*),<sup>x</sup> and Rabbi Moshe Feinstein (1895-1986).<sup>xi</sup> The stature and significance of these two figures in shaping halakhic thinking and law in general, and on these issues in particular, is unparalleled.

The attitudes and rulings of the Hatam Sofer and Rabbi Moshe Feinstein on the boundaries of Jewishness represent two turning points in the history of the bifurcation in contemporary Jewish life. The first is at the beginning of the 19<sup>th</sup> century, when the internal divisions within the Jewish community first began to take root. The rise of assimilation and secularization, and the establishment of Reform Judaism redefined the rules for belonging to the Jewish community and necessitated a reexamination and restructuring of the collective Jewish boundaries. The one who took upon himself to lead this reexamination within Orthodoxy was the Hatam Sofer.<sup>xii</sup>

A second turning point took place when the actual boundaries of Jewish identity and communal life had been completely de-constructed and diversity of Jewish affiliations had become the norm. The Jewish community of North America in the middle and latter part of the 20<sup>th</sup> century is perhaps *the* paradigm of this new reality.<sup>xiii</sup> The most significant Orthodox halakhic figure in America at

this time was unquestionably, Moshe Feinstein, who wrote extensively on this issue.

After completing this legal journey, the final chapter of this book will evaluate these legal precedents and attempt to offer, on the basis of Jewish tradition, an alternative theory of the boundaries that may demarcate the space inhabited by contemporary Jewry. In so doing I hope to show that the sectarian direction adopted by some boundary policies in the name of Jewish law and precedent in fact represents a significant legal innovation. I will argue that this innovation, while a response to the new challenges of modernity to Jewish collective identity, neither serves this identity nor strengthens it.

- - -

As stated, the focus of this work will be on the boundaries of Judaism, or, more precisely, on the way that Jewish law over the centuries has constructed a *theory* as to how and where to erect these boundaries, as well as how to govern and maintain them. In constructing a theory of boundaries I mean to distinguish this work from the project of historically mapping out what halakhic figures over the centuries deemed as “beyond the pale.” The answer to this question is relatively simple, ranging from idolatry and the public desecration of Shabbat to the intentional violation of law out of spite, to the Conservative and Reform and sometimes secular Jew in modern Orthodox halakhic discourse, to the universally rejected contemporary Jews-for-Jesus. However, much of the particular details of past boundaries are by and large irrelevant in the context of the contemporary bifurcated Jewish community that has already breached almost

every one of them. It is not the specific historical answers to the location of the boundaries, but rather the causes and reasons that lay at the foundation for their being so designated, which can serve as a guide in constructing a modern system of boundaries.

In developing a theory of boundaries, I will focus on three different sorts of questions:

1) What central factors influence the identification of certain positions and individuals as unacceptable? What categories of sin are deemed as intolerable, and what factors are considered mitigating or aggravating when it comes to assessing this status. For example, does the deviance reflect a total flouting of the legal system, or is it limited to a localized offence? Does it fall within the parameters of heresy or delinquency? Is it carried out in public or private? Is it prompted by desire and appetite or is its purpose to anger and provoke? Are we speaking of a passive deviant, or only of one who actively denounces the social order? To what extent are the boundaries affected by the actual practices of the community?

2) What are the consequences of being designated as outside the boundary? Special attention will be paid to the diverse forms of marginalization assigned to different types of deviants, and to whether certain forms are associated specifically with certain sorts of deviance. Here too I will attempt to ascertain whether certain types of motivation and external circumstances are considered mitigating or aggravating when it comes to assessing sanctions.

3) What is the correlation between the individual's self-perception of his deviance and the social status given to that individual? I will explore whether a shift in status was descriptive (i.e., self-defined) or prescriptive (i.e., externally imposed). Is there a distinction between a deviant who sees himself as set apart from the community, and one who continues to see himself as a member in good standing?<sup>xiv</sup>

- - -

I first became sensitive to the importance of boundary policies twenty something years ago, when I started my rabbinic career working as the Scholar in Residence of the Jewish Community Center on the Palisades in Tenafly New Jersey. It was a teaching pulpit, and in that capacity, I instituted a weekly Torah study seminar for the board and leadership of the J.C.C., many of whom were prominent individuals who also served in leadership roles on a Jewish national level. One year into my work I received a call from the head of a national Orthodox movement, who upon hearing that an Orthodox Rabbi was working at the J.C.C., asked if I would come to meet him. At the meeting the head of the organization inquired as to my willingness to jointly run a study weekend retreat for my leadership. I gladly agreed, but under one condition. Given the mandate of the J.C.C. as a community organization, we would need to respect the ideological diversity of the community, and as such, we could not run any program, especially on Shabbat that was exclusively affiliated with one denomination alone. I explained that I would be happy to expose the leadership to his organization and ideology so long as the weekend was also open to rabbis

of different denominations. Upon reflection, the rabbi also agreed, but again under one condition. He explained that as an Orthodox Jew he has his *yehareg ve-al ya-avor*, aspects of Jewish law that he could not violate even upon pain of death. This phrase, which literally means, “let him be killed and not violate (the law),” traditionally served to demarcate the main boundaries of Jewish life, boundaries that Jews can not cross even if it meant forfeiting their lives.

As a young rabbi, I recognized the significance of the moment: A leading Orthodox Rabbi was about to outline his position on the core of Judaism, on the lines beyond which no compromise is possible. The rabbi then proceeded to say that he could participate in the retreat with other denominations so long as all prayer services included a *mehitzah*, the division between men and women during prayer services. I was astounded by his answer, for nowhere in Jewish law is *mehitzah* elevated to any level of exceptional significance, and certainly not to the level of *yehareg ve-al ya-avor*. He was also aware of many Orthodox synagogues that were members of his organization and who had been members for decades despite not having a *mehitzah* in their sanctuaries. Furthermore, he could have raised far more important issues such as the observance of Shabbat law, kashrut and the like.

Reflecting later on his answer, I understood the rationale behind his peculiar choice. The significance of *mehitzah* as a boundary did not lie in its inherent importance, but rather in its role as a dividing mechanism between Orthodoxy and non-Orthodoxy. This rabbi knew that just as Orthodox Jews will pray only in a synagogue with a *mehitzah*, non-Orthodox, although willing to

compromise on many other matters, would not surrender the right to sit with men and women together in a synagogue. By demanding that all prayer be with a *mehitzah*, the rabbi was making it impossible for the weekend to happen.

The purpose of his boundary was not to define the core features of his beliefs, nor to challenge others to join him therein, but to serve to divide the community along denominational lines with Orthodoxy standing alone behind its new *yehareg ve-al ya-avor*. For this rabbi the *mehitzah* did not merely serve to divide men and women during prayer, but to divide the Jewish people. I understood that if Jewish collective life was to be possible, by which I mean a Jewish peoplehood that can transcend denominational lines and include all factions of Jewish life, we need to develop an approach to boundaries which allow for a common ground in which all can participate despite our differences. This is the aim of this work.

## **Chapter One**

### **Pluralism, Tolerance and Deviance**

A famous Jewish joke tells of a community which, after the death of its longstanding and revered rabbi, forgot its position on a certain central issue of Jewish law, leaving the community deeply divided between two factions. Not knowing what to do, the communal leaders went to the oldest member of the community, who was on his death bed. "Reb Moshe," they pleaded, "do you recall our tradition?" Immediately one faction began to press its point, arguing "didn't we do it this way..?" Not about to let their adversaries sway Reb Moshe, the second faction started to shout over the other, "Reb Moshe, don't listen to those fools. In truth is this not our tradition?" The shouting continued unabated, with each side trying to drown out the other all throughout the day. When finally a moment of quiet descended on the room, Reb Moshe raised his frail hand and began to speak in a hushed voice. "My memory is not what it used to be," he said, "but this sounds very familiar. I remember that this same issue was raised in the community when I was a child. There were two factions each trying to shout over the other. The shouting, the debating -- that is our tradition."

- - -

The ability of individuals to live together in a common society and to construct their shared and agreed-upon boundaries is contingent on a delicate accommodation between two conflicting features of social life: commonality and difference. On the one hand, a community--as distinct from a crowd--is a collection of individuals who are bound together by virtue of their sharing some thing or things in common. Within the context of this community, the individual member or citizen is supposed to find like-minded individuals united by this

commonality, which serves as both a foundation and a binding force for social life. What the group shares, on the basis of which it forges its union and boundaries, is dependent on the nature of the group as well as on how it understands and sees itself. Families, clubs, neighborhoods, nations, religions, all define and perceive their commonality differently. It may be, for example, a function of race, religion, values, culture, or national origin, or any combination of the above.<sup>xv</sup> Regardless of what it is that is shared, the reality of something shared is the foundation and binding force for collective life.

At the same time, this need for a centralized ethos that circumscribes a community's cultural space often threatens the very collective existence it purports to serve. A community formed around a shared ethos, with all its members inhabiting some common cultural space and with clearly delineated boundaries distinguishing the "insider" from the "outsider," is challenged by the reality of complex social groups. Other than in very specific and narrowly defined social arrangements (e.g., cults), communal life built upon absolute uniformity is simply not possible. In every community, together with that which its members share, there is rarely only one monolithic set of rules, either in their form or in their meaning, accepted by all members or interpreted in the same way.<sup>xvi</sup> Furthermore, even if at one time there was a high measure of commonality and agreement about the community's boundaries, it is only temporary, as the boundaries themselves are rarely fixed; they shift constantly as the members of the group rethink the meaning and purpose of their collective identity in relation to those around them.<sup>xvii</sup>

Further adding to the complexity is the fact that rarely are communities constructed at some mythic founding moment, whereby those with a shared notion of a collective identity join together and form their social enterprise. These founding moments are generally “imagined.” More often than not, we don’t choose our fellow members -- we inherit them, without a collective ethos shaping an admissions policy. We find ourselves bound to fellow members we did not choose and whom in reality we do not know. While collective life still requires that fellow members share something in common, the reality of difference and disparity among them pervades social life. The endeavor of constructing a shared identity becomes a critical dimension of every social enterprise, as well as an ongoing and never ending discussion which accompanies communal life.

Those who participate in communal life must come to terms with the reality of difference and allow for disagreement between members on a wide range of issues, including those which are believed to be fundamental. This disagreement cannot be avoided. When a community cannot assimilate some degree of difference, its collective existence is threatened and its fate becomes one of constant factionalism, strife, and ultimately, bifurcation.

In trying to find the balance between the search for commonality and the reality of difference, social structures use three primary categories to assess, classify and ascertain which difference it allows and which not. These three categories are pluralism, tolerance and deviance. When each is used and why is dependent on the nature of the differences, the communities, and the circumstances in question. The issue here is not to justify the use of one

category over another in any given situation, but rather to point to the variety of responses that communities have at their disposal when attempting to strike the above-mentioned balance.

In this chapter, I will begin by exploring these three categories in terms of the role they play in maintaining social coherence and the way they comprise a spectrum and serve to police and protect communal boundaries. I will then consider the consequences of deviance and the range of responses available within Jewish law to differing forms of deviance. Finally, by way of illustration, I will conclude with the classical Talmudic debates between Bet Hillel and Bet Shammai, which involves an interplay between these categories.

### **Pluralism**

Pluralism is that category which assigns equal value to certain differing positions. At the foundation of pluralism lies, as Isaiah Berlin states, the recognition that “human goals are many, not all of them commensurable, and in perpetual rivalry with each other.”<sup>xviii</sup> Those in a pluralist community are cognizant of the differences among members, but are able to perceive equal value in a multiplicity of positions. While pluralism does not necessitate the acceptance of all positions, and is not to be equated with relativism, it does recognize the possibility of equally valuable though differing goals and values which “cannot be graded on a scale, so that it is a matter of inspection to determine the highest.”<sup>xix</sup>

Difference which falls under the category of pluralism is the easiest and least complicated for individuals and society to assimilate within one social

structure. As they are viewed as having equal value, the diverse positions engender mutual respect amongst their respective advocates, and “opposing” sides have little difficulty accommodating each other within the community’s shared cultural space.

### **Tolerance**

No community can be entirely pluralistic and all difference cannot be contained under the category of pluralism. In fact, if moral and principled judgments are not to be reduced to relativism, the application of pluralism is necessarily limited in its scope. In most instances, individuals neither can nor should assess all difference of opinion as being of equal value. It is natural and often logical that they view some other stances as in some way either wrong or inferior, even if recognizing the subjective nature of their perception; and it precisely because of this valuation that they make their particular choices.

It is within this range of assessment of difference that tolerance comes into play. As distinct from pluralism, tolerance is reserved for difference which one believes to be wrong.<sup>xx</sup> As the 20<sup>th</sup> century English moral philosopher, Bernard Williams argues:

Toleration, we may say, is required only for that which is in principle intolerable.<sup>xxi</sup>

This negative appraisal of that which is tolerated, however, need not engender either defensive or punitive measures, but can in certain circumstances activate a response of tolerance which in essence involves “allowing, leaving undisturbed, something which you think is wrong.”<sup>xxii</sup> The individual in question

remains a member, an “insider” in the full sense of the word, a person with whom one shares one’s collective space, despite the disapproval that his or her behavior may engender.

Once it is recognized that difference is not a passing episode but rather an inherent facet of all social structures, it is precisely tolerance which serves as the foundation for these structures' survival and viability. What is important about tolerance as distinct from pluralism is that it allows fellow members to live together despite not merely differing from each other, but also disagreeing. Disagreement is not something that needs to be feared, nor will it lead to sectarianism and social bifurcation – so long as fellow members can learn to accept the fact that monolithic uniform social groups are neither a plausible reality, nor a necessity, nor possibly even an ideal.

### **Deviance**

Just as pluralism has its limits, so too does tolerance. Independent of the truth question and the significance of debate and disagreement for human development, from a sociological perspective, boundaries must be erected for “each regime of toleration must be singular and unified to some degree, capable of engaging the loyalty of its members.”<sup>xxiii</sup>

There is no viability for social life without some notion of boundaries and limits on the difference which it can accommodate. Without these boundaries it becomes impossible to locate that common core by virtue of which fellow members affiliate with one another and form a social entity.

That which serves to demarcate and govern these boundaries is the notion of deviance. As distinct from difference, which is assessed as tolerable and as such, left alone, deviance is that “conduct which is generally thought to require the attention of social control agencies - that is, conduct about which “something must be done.”<sup>xxiv</sup>

As the American sociologist Erich Goode defines it:

By deviance, I mean one thing and one thing only: behavior that some people in a society find offensive and that excites - or would excite if it were discovered - in these people disapproval, punishment, condemnation of or hostility toward the actor.<sup>xxv</sup>

Through the category of deviance a community distinguishes between the forms of variability and diversity it conceives as threatening to its identity, and those it is able accommodate. Thus, in the societal balance, tolerance and deviance define one another: disagreement which is not deemed deviant is subject to tolerance, while that which is not tolerable is labeled as deviance.

### Tolerable and Intolerable Deviance

The dividing line between deviance and tolerance, and the relationship between them, is, however, far from stable or clear. Further complicating matters is the fact that there is a line of tolerance that often passes through deviance itself, distinguishing between two types of deviance: that which is tolerated and that which is not. Now, the notion of a ‘tolerable deviance’ seems an oxymoron. Deviance is by definition *that which is not tolerated*. In what sense, then, can we speak of deviance which is?

While many forms of deviance generate upon detection an immediate response, there are in reality many others that communities decide to leave alone. As anyone who has ever crossed the street on a red light in plain view of a police officer can attest, neither all rules nor all violators are treated equally.<sup>xxvi</sup> While functionally tolerated, these un-enforced laws and boundaries serve at least to define what is understood by the community to be correct behavior and representative of its values and norms. One of the more interesting and prevalent examples of tolerable deviance is adultery. While universally condemned in almost every moral system, it nevertheless remains generally unsanctioned whether legally or even socially. One of the telling indicators for deviance which has become tolerable is the culture of jokes which can be associated with it. Intolerable deviance is never a laughing matter. Whether it is adultery or speeding, to name but two examples, humor represents the fact that the severity of the deviance is diminished in the eyes of society.

Why certain forms of deviance are treated as tolerable and some laws are left un-enforced, may vary. It may reflect a sense that the deviance is only marginally unacceptable; or it may be the result of an abundance of violators of the law, making sanctions unfeasible. Regardless of the reason, the fact that no formal sanctions are directed against the individual warrants the deviance in question to be classified as tolerable.

As distinct from deviance which is tolerated, the intolerable deviant is one whose transgression is considered to so severely contravene communal standards that it constitutes a renouncement of core values and jeopardizes the

integrity of shared cultural space. In this case, silence or the closing of the collective eye is not possible or desired, and the community responds in a variety of ways. In its most extreme form, “doing something” involves expulsion: stripping the deviant of his membership status and severing all personal and collective ties. It is this forsaking and forsaken figure that one can term the “true outsider.”<sup>xxvii</sup>

Though dramatically compelling, this lone, expelled stranger is in reality exceedingly rare. In the vast majority of instances, deviants, regardless of their crime, remain ‘in’ the community in the sense that they retain their basic status as members. Full expulsion is carried out sparingly, as a measure of last resort;<sup>xxviii</sup> being branded an intolerable deviant in most instances entails relegation to the margins of membership and creates a status which may be termed an “outsider within.” Through marginalization, basic membership status is retained, yet fundamentally altered. The anthropologist and sociologist Robert Scott describes this phenomenon in telling detail:

When a deviant label has been applied to a person, he is often demarcated off from the rest of the group and moved to its margins. As a rule, he is excluded from participating fully in group activities, and he may even be denied the kind of freedoms that are accorded to others as a matter of right. He is sometimes physically confined and denied the sorts of privileges that are routinely granted to people who are considered to be “in good standing.” Thus, when a person has been labeled a deviant, he becomes a second rate citizen, who is in a symbolic sense “in” but not “of” the social community in which he resides.<sup>xxix</sup>

The process of relocating the individual to the status of being not “of” the community involves a “something” which serves to change the deviant’s status and marginalize the individual in question. Of course, it is important to remember

that not every response serves to marginalize, and consequently does not reflect intolerable deviance status. A telling example is the legal and social response to different degrees of speeding violations. In an area where the speed limit is 65 m.p.h., it is generally accepted that a 10 m.p.h. discrepancy is acceptable. Police do not enforce infractions of a lesser degree and such violations are generally not viewed as deviant at all; they are contained under the categories of pluralism or tolerance or in some cases, possibly, tolerable deviance. Speeding in excess of this 10 m.p.h. will generate a legal response in the form of a ticket. This response, however, while constituting "doing something," nevertheless, does not generate intolerable status, but still falls under the classification of tolerable deviance. The fine is not associated with and does not carry with it any social stigmatization or marginalization. The individual is still "in" in the full sense of the word. As proof of this status, the guilty individual will openly tell others (as long as they are not his parents) about the experience and often generate sympathy at "being caught." Furthermore, even from the perspective of the authorities, the status of the individual in question has not changed; once issued the ticket, he is allowed to continue to drive, and merge back into traffic as if nothing occurred. This is not the case, for example, with an individual who exceeds the speed limit by 30 m.p.h. or is caught driving under the influence of alcohol or drugs. Such an individual is taken off the road, an act which begins the process of status change, and the penalty, whether suspension of license or incarceration, is intended to redefine the social status of and attitude towards the deviant in question.

This distinction between penalties which generate and reflect intolerable status and those which retain the status of tolerability is especially important when dealing with religious law in general and Jewish law in particular. Given that under Jewish law all violation (even inadvertent) of any negative precept engenders some sanction, the tolerable deviant who eludes penalty altogether will not be a common figure in Jewish legal sources. However, different sanctions - from the mildest fines to the strictest forms of corporal punishment - can be viewed in a strong (if not initially obvious) sense as reflecting tolerability. This formulation goes to the nature of sanctions. While initially seen as conveying intolerance, sanctions in fact express simultaneously a community's rejection of certain behaviors/ideas and its desire to retain all of its members - even those who may temporarily have strayed outside of acceptable boundaries - and returning them to good standing. Far from effecting a rejection of deviants, sanctions often serve as vehicles for their rehabilitation in society's eyes. A midrashic passage concisely illustrates the point:

*Then your brother should be dishonored before your eyes (Deuteronomy 25:3): Once he has been beaten, he is [again] your brother. Hence the Sages have said: As soon as those who are liable to the penalty of excision are beaten, they are immediately released from this liability. R. Hananiah ben Gamliel says: All along Scripture calls him wicked," as it is said, *Then it shall be, if the wicked man deserve to be beaten (25:2)*, but once he had been beaten, it calls him "your brother as it says, *then your brother should be dishonored.*<sup>xxx</sup>*

It is precisely through the processes of sanction that deviant behavior can be expiated and the (former) deviant reintegrated into society. Indeed, it would not be inaccurate to refer to communities' standard repertoire of sanctions as

mechanisms of toleration. It is only when sanctions entail an ongoing change in relationship or status and serve to marginalize the deviant in questions, such as, for example, incarceration or differing forms of shunning, that the sanctions represent the assessment of intolerable deviance.

Thus, what I will refer to in the following chapters as tolerable deviance includes cases in which the deviant is sanctioned, but not relegated to society's margins. He retains (or recovers) his standing as "*ahikha*," ("your brother") and despite deviant behavior is still considered 'of' the community and not merely 'in' it. Conversely, when sanctioning involves exclusionary measures that amount not only to a rejection of deviant behavior but the marginalization of the deviant himself, this deviance will be classified as intolerable.

### **The Relationship between the Categories**

A community's ability to live with difference is enhanced in direct proportion to the rich variety of ways in which it is able to assess its diversity. Without some measure of pluralism, difference is always classified in terms of someone being right and someone wrong. It requires an act of significant self-restraint, humility and largess of spirit to declare that one thinks the other opinion to be wrong, yet nevertheless, to fight for its right to not merely exist, but to grow and influence others. The notion of pluralism enhances our ability to accommodate difference by educating people to the prospect that difference may exist without there necessarily being a hierarchy of value. Without tolerance, however, individuals are taught that the only difference they can live with is that

difference to which they are willing to ascribe equal value. Given the value conflicts which often lay at the core of our disagreements, especially in the context of religious life, such an assessment of the other is difficult and rare. More often than not, we see the other as wrong, and it is because of this assessment that we make our choices. Tolerance enables us to remain committed to our own truth while at the same time allowing others to decide for themselves, even if we believe their decisions to be wrong.

Finally, without the notion of tolerable deviance, the range of disagreement with which we can live would be too narrow. Tolerance is simply not broad enough a category to contain the spectrum of differences which modern multi-cultural and multi-religious societies must incorporate. In particular, in the contemporary context, when the sense is that even before the boundary is erected, there are some who have already crossed it, there is a need for a broader and more subtle array of responses towards difference if communal life is to be possible. Through tolerable deviance, one can make the distinction between that which is outside one's notion of socially sanctioned norms and the need always to respond to every breach of these norms. Through the notion of tolerable deviance one learns the virtue of sometimes ignoring that which one believes to be wrong. Modern multicultural collective life (not to speak of families with adolescent children), is well served by members who, while severely disagreeing, are still capable of not paying too close attention to everything that one's fellow citizens say, do and believe.

The need for mutual accommodation notwithstanding, without intolerable deviance we would not be able to sustain communities of meaning, communities which have some measure of social cohesion. Some difference needs to be rejected, not just in theory, but in practice, if fellow members are to be able to identify the shared cultural space which they inhabit. Furthermore, while it seems counter-intuitive, it is precisely in the context of social realities where disagreement is most rampant that the category of intolerable deviance plays a central role in creating social cohesion. When it is most difficult to identify the positive content of a community's shared cultural space, instead of agreeing upon that which they hold in common, members can begin the process of creating their shared social identity by structuring an agreement with regards to that which they reject and place outside their cultural boundaries. This agreement with regards to that which every member rejects is strong enough to maintain social cohesion while undergoing the ongoing (and possibly never-ending) process of social identity building on a positive level.

- - -

While all the categories play an essential role in the formation of social identity and cohesion, it is important to be cognizant that their role is not identical. Shared collective life is possible even when fellow members do not agree whether a particular difference is to be assessed under the category of pluralism, tolerance or tolerable deviance. Regardless of the particular classification, in each instance, the existence of the differing position does not necessitate a social or legal response. That is not the case when it comes to intolerable

deviance. Here a high level of unanimity is necessary. Where there is debate as to what is beyond the boundaries, constant strife and sectarian tendencies will dominate, as one group attempts to marginalize some members with whom others live with in a condition of accommodation, if not tolerance or respect.

Second, in the social process of building/identifying a shared collective space, it is important to view pluralism, tolerance, tolerable and intolerable deviance as constituting a spectrum of social responses to difference with pluralism and intolerable deviance serving as the extremes to be assessed more sparingly than tolerance and tolerable deviance. Where pluralism is used to encompass too broad a range of difference, a shared collective space becomes impossible to identify. Independent of the truth question, social identity needs a specific identity, something that is unattainable if everything is of equal value and legitimate. On the other hand, where intolerable deviance is assessed too expansively, this same identity becomes too narrow, leading to too many members finding themselves outside their society's boundaries. An unrestricted use of the category of intolerable deviance, while creating a clear and strong social identity, creates an identity which does not fit any real and complex social group. As a result, one of the more significant conditions for applying intolerable deviance is that it not encompass too many members. Where that occurs, and the social structure is functioning well, that which is intolerable needs to be re-assessed as tolerable. If it does not, then the social group as it is presently known will disintegrate, and the social map will have to be redrawn.

## **Intolerable Deviance and its Spheres of Marginalization**

Marginalization is not a mono-dimensional response, with all forms of deviance classified as intolerable treated in a similar manner. The legal and social responses will vary both in their forms as well as degree, often in accordance with the severity of the deviance in question and/or the danger that such deviance is perceived to pose to the community and to its common values. In fact, the mastery of the art of marginalization is as critical to social life as the boundaries it serves to protect. For our purposes we may consider four spheres of marginalization: basic membership, ritual, loyalty and naming.

### 1. Basic Membership

By definition, marginalization affects the various manifestations of membership. Being classified as an insider is accompanied by various consequences, rights and benefits, all of which may be called in to question when one's basic status is being redefined. In its most radical form, as stated above, the process of marginalization affects the intolerable deviant's standing in the sphere of basic membership. The sphere of basic membership is that sphere which grants the first and most fundamental good distributed by society, membership itself. It serves to delineate and encompass all those who are members/insiders, distinguishing between citizen and non-citizen. Marginalization in this sphere leads to expulsion and to the intolerable deviant being designated as an outsider.

As stated above, marginalization within this sphere is rare, with societies preferring to keep the intolerable deviant within the community. One of the

central reasons for this is not necessary loyalty to the deviant in question, but rather, the social function that the deviant plays in helping to maintain social boundaries and norms. It is precisely by keeping the deviant within, in a status of “in” but not “of,” that the deviant serves to remind others of that which defines the shared cultural space of the community. Once they become outsiders, they cease to be able to serve this function as they are outside the collective radar screen.

When it comes to the Jewish community and Jewish law, marginalization within this sphere was also rarely, and according to some, never used, for yet a different reason. True to its tribal roots, this community maintains an essentially familial structure inasmuch as the most basic way of acquiring membership is through birth. One of the central tenets of shared Jewish cultural space is common kinship and descent, an especially durable form of membership which in theory is immune to expulsion even in the face of the most extreme forms of deviance. No matter how badly a child behaves, and irrespective of the lengths a parent may go to distance themselves from their seed, the biological connection and the familial relationship it has engendered, endure. Consequently, once defined biologically as a Jew – which is to say, once born<sup>xxxii</sup> - according to most halakhic figures, one can never become a true outsider who has completely relinquished one’s status as a Jew.

The classical formulation of the immutability principle of Jewish membership is found in the rabbinic pronouncement: "Even though they have sinned, they are still Israel."<sup>xxxiii</sup> Based on this source, from the Middle Ages

onward, it became axiomatic that, regardless of actions and beliefs, one's Jewishness could not be revoked. Even conversion to a different religion did not engender a complete loss of membership status.<sup>xxxiii</sup> Under Jewish law, one of the key expressions for the immutability of membership is the concept *kiddushav kiddushin*, i.e., that in the case of a Jewish male, his marriage act with a Jew is legally binding.

When [the convert] comes up after his ablution he is deemed to be an Israelite in all respects. What is the practical consequence of this? In that if he retracted [his conversion and returned to his previous religious affiliation] he is regarded as an Israelite *meshumad* and his betrothal is valid (*kiddushav kiddushin*).<sup>xxxiv</sup>

As distinct from the non-Jew who is legally not capable of generating a binding marriage, being part of the "Community of Israel" is attested by the right to marry within the community.<sup>xxxv</sup>

A powerful example of the notion of the immutability membership in the Jewish people at work is found in the responsa of Rabbi Eliezer Valdenberg, head of the Jerusalem Rabbinic court in the 1960s and 70s, regarding the status of a woman who converted to Christianity and who petitioned the court to allow her to return to the fold of Judaism. Valdenberg ruled as follows:

It is obvious and simple that according to Jewish law, a Jew is in no way capable of freeing him or herself from the bonds of the Torah and severing the ties and the roots of his connection to his people. A Jew's fundamental connection to the Jewish people is founded on the fact that he was born to Jewish parents, or more accurately to a Jewish mother.... It is, therefore, a central principal of our religion and our holy Torah that no one of the offspring of Jacob can escape from it, whether voluntarily or non-voluntarily. Against his will, a Jew remains a Jew, connected to the religion of Moshe, with no recourse to free himself from it. It is, therefore, simple and clear that the conversion to a different religion of this woman, who wants to return to Judaism, is something that never

happened. She never left the framework of Judaism, either religiously or nationally, and her return to Judaism is like the return of a daughter to her mother.<sup>xxxvi</sup>

## 2. Ritual

The sphere of basic membership, however, does not exhaust the community's ability to marginalize and affect one's standing as a member *within* in the community.<sup>xxxvii</sup> At issue is not merely the *fact* of membership, but the *nature and quality* of membership. Here, within the context of religious social structures in general, and Jewish law in particular, intolerable deviance status affects three primary spheres of membership rights. They are, as stated above, the spheres of ritual, loyalty, and naming.

By the sphere of ritual, similar to Sagi and Zohar's notion of community of religion,<sup>xxxviii</sup> I mean the ability to participate fully in the ritual life of the community. Various sanctions within this sphere touch primarily the arenas of temple, synagogue or cemetery rituals, whereby the intolerable deviant is not given either the rights or honors allotted to members. Thus, for example, in the Talmud we find some deviants barred from the right to bring sacrifices: "Of you" (Leviticus 1:2) and not all of you, to exclude the *meshumad*,<sup>xxxix</sup> who as will be seen below is one of the intolerable deviants. In the modern context of the debate between Orthodox and liberal Jewish denominations, sanctions within the sphere of ritual often express themselves in the banning of those classified as intolerable deviants from fulfilling any leadership role in prayer services and public recitations of blessings.<sup>xl</sup>

## 3. Loyalty

As to the sphere of loyalty,<sup>xli</sup> it encompasses expressions of mutual care and assistance. As a result of loyalties, the members of a community treat each other as objects of concern. It is through loyalty that the community is transformed from being merely 'of' its members to being 'for' them.<sup>xlii</sup> Within this sphere, more than in others, one can find within Jewish legal sources a wide range of sanctions which serve to marginalize and separate the intolerable deviant. On one side of the spectrum one finds the Talmudic ruling that the intolerable deviant's spiritual wellbeing ceases to be of concern and, consequently, he is not allowed to offer the sin offering, so that he will not repent.<sup>xliii</sup> More extreme in nature, though not dissimilar, Moshe Feinstein encourages a teacher to not teach the children of intolerable deviants Torah.<sup>xliiv</sup> And in one of its most extreme forms, the Hatam Sofer rules that all care and concern are removed, and the hope is expressed that the intolerable deviant will simply leave and be permanently separated from the community.<sup>xliv</sup>

#### 4. Naming

On the surface the sphere of naming is simple. The member bears the name of the group while the outsider, or non-member, does not. Outsider-within status, however, creates complexities. On the one hand, by virtue of formally retaining one's status in the sphere of membership, one retains the group name as well. At the same time, in some instances, the name of Israel is reserved for members in good standing who participate more fully in the community's shared values and beliefs. Certain deviants, while legally incapable of being expelled from the Community of Israel, can, as a form of marginalization and shunning, be

stripped of the name “Israel” while still retaining basic membership status.<sup>xlvi</sup>

They remain formally a member, but lose the right to call oneself by the collective name. Thus, for example, the Hatam Sofer states

He is neither an Israelite nor a Christian nor a Muslim...As a general rule it is as if his name has been erased from Israel.<sup>xlvii</sup>

- - -

The varieties of forms of marginalization are not intended to simply increase the array of possible sanctions to which an intolerable deviant may be subjected. They are not only different in form but in degree as well, and as such carry different consequences for both the individual being so marginalized and the community which is doing the marginalizing. The art of marginalization is to use each sphere selectively while remaining cognizant of the differing costs and benefits which the use of each incurs. The difference between sanctions in the basic sphere of membership--whereby the deviant is reclassified as an outsider--and that of the other spheres--where the individual nevertheless remains a member--is relatively clear. There are also, however, significant differences between the sphere of ritual and loyalty and within the sphere of loyalty itself. Thus, it is one thing to declare that one cannot pray with a fellow Jew, for example, and to declare that one cannot offer them or anyone associated with them any financial assistance in times of need. The sphere of ritual, while central to Jewish collective life, does not exhaust it. The proponents of differing opinions who view one another as deviant can still maintain social bonds of loyalty. Each will go to its own synagogue and never step into the other's, yet each will still care for others as fellow members and stand by them in times of need.

Furthermore within the sphere of loyalty itself, there is a critical difference between holding back assistance and a formal ban on all verbal, social and economic contact. While both generate significant measures of separation, the latter breaks all contact between the individual in question and the community in which he is formally a member.

Thus, just as it is critical to distinguish between tolerable and intolerable deviance, it is equally significant to distinguish between which intolerable deviance is marginalized in which way. Not all intolerability is of equal severity, and a society must use the various spheres of marginalization to express its varying assessments of differing forms of deviance. To treat, for example, financial and corporal crimes in a similar manner, is to fail to give expression to the differing moral assessment that each has within one's social value system.

Furthermore, the truth is that a society can and is willing to live with certain forms of intolerable deviance as well. The fact that basic membership is not withdrawn implies a form of allowance for this deviance. The more complex a society's response to deviance, the more able it will be to weather the ongoing onslaught of difference to which it is subjected, and still maintain its collective framework. So long as the deviant is marginalized, the standards and shared cultural space of the society are maintained. How one marginalizes is then dependant, for example, on the severity of or the social prevalence the deviance, to name but two possibilities. To severely marginalize in the sphere of loyalty all forms of deviance is to deny society its complexity of feelings towards differing

forms and degrees of deviance, as well as its ability to continue despite the inevitability of some of its members adopting deviant positions.

- - -

It is precisely the result of a heightened sensitivity towards the different consequences of the various spheres, forms and degrees of marginalization that one becomes aware of one other status, beyond that of insider, outsider, and outsider-within. This other status is that of “functional-outsider.” It is true that the member in good standing and the outsider-within are indistinguishable vis-à-vis the sphere of basic membership. Nevertheless, their relationship to the community and their experience of communal life can differ so radically, especially when the outsider-within is sanctioned in the sphere of loyalty, that being “within,” becomes trivial. The right/obligation conceded by *kiddushav kiddushin*, that is, that one’s marriages are legally binding, hardly balances out forms of marginalization that can entail a cessation of all daily contact, cessation of all forms of social and economic assistance, a ban on marrying one’s children, and in some cases being declared fair game for ‘fellow’ members to seek one’s physical destruction. The persistence of, for example, ethnically maintained membership in these instances begins to seem at best a curiosity and at worst a kind of albatross, a shackle allowing the community to keep him close at hand for ongoing punishment and humiliation.

In actuality, the fact that formal membership is maintained within the sphere of basic membership often serves as a veil behind which the true reality of functional outsider status is hidden. The fact that one accepts that an Israelite

who has sinned is still an Israelite, does not mean that one accepts the sinning Israelite into one's community, nor exhibits any degree of toleration. It is only by reviewing the whole spectrum of consequences that accompany intolerable status that one can assess the real implications of deviance within one's community.

### **In Conclusion: The Case of Beit Hillel and Beit Shammai**

An example of the use and interplay between pluralism, tolerance, and tolerable and intolerable deviance within Jewish law can be found in the Talmudic account of the attempt to deal with the two consistently disagreeing schools of Beit Hillel and Beit Shammai. These two schools regularly offered conflicting interpretations of the law and engaged in a lengthy struggle for control, a struggle which went beyond the courts and study halls and involved at times, according to one account, bloodshed.<sup>xlviii</sup> The Talmud in Tractate Eruvin tells that:

For three years there was a dispute between Beit Shammai and Beit Hillel, the former asserting: The halakhah is in agreement with our views, and the latter contending: The halakhah is in agreement with our views. A *bat kol* [a voice from heaven] then came forth and declared: "These and these are the words of the living God, but the halakhah is in agreement with the rulings of Beit Hillel." Since, however, both are the words of the living God what was it that entitled Beit Hillel to have the halakhah fixed in agreement with their rulings? Because they were kindly and modest, they studied their own rulings and those of Beit Shammai, and were even so [humble] as to mention the actions of Beit Shammai before theirs.<sup>xlix</sup>

The section begins with the fact that the conflict between the two schools was being waged for years, as each argued for the exclusive legitimacy of their reading and wanted the shared rules of the community to reflect that fact. One of

the more interesting and often overlooked facets of the above description of the debate is that it went on for so long, with each side, while claiming for themselves the mantle of authoritative Jewish law, nevertheless did not stop arguing with each other. No side disqualified the other as a debating partner. No one left the room. In doing so, neither side classified the other as intolerable. The assumption of the text, however, is that a resolution to the debate had to be found. Since humans seemed to be at an impasse, God chose to intervene and resolve the conflict, but in a paradoxical manner. First God stated that “these and these are the words of the living God.” In the eyes of God, neither is wrong; both fall within the range of opinions that represent different dimensions of the will of God. The infinite nature of the One God precludes a monistic approach to God’s will. Pluralism is not in conflict with the notion of one God, but is rather its most logical conclusion. Both the positions of Beit Hillel and Beit Shammai are deemed by God to be legitimate interpretations and expressions of the common ethos of the Jewish law that God promulgates. God in essence is declaring that the proper way to assess the differences between the two schools is through the category of pluralism.

However, after this statement, God proceeds to grant the status of normative law (*halakhah*), to the opinions of Beit Hillel and not to those of Beit Shammai. What is important to recognize is that the Gemara is careful to remind the reader that the decision in favor of Beit Hillel is not the result of their being correct and Beit Shammai wrong. While both are the words of the living God, nevertheless, the position is taken that the law is to follow Beit Hillel, “because

they were kindly and modest, they studied their own rulings and those of Beit Shammai, and were even so [humble] as to mention the actions of Beit Shammai before theirs.”

The implication of being deemed the non-halakhic position is not explicated in the above source, but is subject to debate in BT Tractate Berakhot:

Beit Shammai say: In the evening every man should recline and recite [the sh'ma], and in the morning he should stand, as it says, “when you lie down and when you get up.”(Deuteronomy 6:7). Beit Hillel, however, says that every man should recite it in his own way, as it says, “and when you walk by the way.”(Ibid.) Why then does it say, “and when you lie down and when you get up?” [The meaning of the verse is], at the time when people lie down and at the time when people rise up. R. Tarfon said: I was once walking by the way and I reclined to recite the sh'ma in the manner prescribed by Beit Shammai, and I incurred danger from robbers. They said to him: You deserved to come to harm, because you acted against the opinion of Beit Hillel.<sup>i</sup>

The debate between Beit Hillel and Beit Shammai in this instance evolves around the manner in which one is to recite the *sh'ma* prayer. What is important for our discussion is the final section of the Mishnah, where the opinion is expressed that deviance from the prescribed instructions of Beit Hillel, makes one deserved of death. In the Gemara this opinion is repeated by R. Nahman b. Yitzchak who states that “anyone who acts in accordance with (the ruling of) Beit Shammai, is deserving of death.”<sup>ii</sup> Following Beit Shammai’s rulings is defined as intolerable deviance, and one who does so must be removed.

This, however, is not the sole position. In the Gemara we find two other opinions.

R. Ezekiel learnt: If one acts in accordance with the ruling of Beit Shammai one has done right, if one acts in accordance with the ruling of Beit Hillel one has done right. R. Joseph said: If one acts in accordance with the ruling of Beit Shammai it is as if one has done nothing.<sup>iii</sup>

According to R. Eliezer, the rulings of Beit Shammai are classified as acceptable diversity and representative of the legitimate practices of the community. One who follows their instructions “has done right.” “These and these are the words of the living God” is not only a statement as to the legitimacy of the approaches in the eyes of God, but also in the eyes of the legal system. This opinion is stated with even greater clarity in Tosephta Yevamot.

As a general principle, the halakhah follows Beit Hillel. On one who wants to be more stringent upon oneself and adopt the more stringent rulings of both Beit Shammai and Beit Hillel, may be applied the verse, “A fool walks in darkness.” (Ecclesiastes 2:14). One who adopts the more lenient rulings of both Beit Shammai and Beit Hillel is evil. Rather, if [one adopts the rulings of] Beit Shammai, [one must follow them both] where they are more severe and more lenient, or if [one adopts the rulings of] of Beit Hillel, [one must follow them both] where they are more severe and more lenient.<sup>liii</sup>

While the law follows Beit Hillel, the law as understood and defined by Beit Shammai was accepted as legitimate behavior and removed from the domain of deviance to that of acceptable difference. Members could choose, so long as they chose consistently and did not manipulate the diversity present in the system to support either a lenient or more stringent way of life.<sup>liv</sup>

A third approach to the status of those who follow Beit Shammai’s rulings is offered by R. Joseph. In the section from Tractate Berakhot just quoted he said “if one acts in accordance with the ruling of Beit Shammai it is as if one has done nothing.” Doing nothing is different both from an act which is deemed to be acceptable difference and thus of equal value, on the one hand, and intolerable deviance, on the other. There is a third category being played out here whereby the rulings of Beit Shammai are rejected and placed outside the sphere of legitimate practice, while those who follow them are nevertheless, not subjected

to sanctions. They are acts which “don’t count.” This is a form of what I have referred to above as tolerable deviance

As a follow up to this discussion in the Talmud, it has become generally accepted that both the opinions of Beit Hillel and Beit Shammai fall under the category of acceptable diversity, and the tradition’s ability to preserve both of them serves as an exemplar for the possibility of pluralism in Judaism. When any other approach argues for its legitimacy as an authentic reading of the tradition, and wants to be classified as acceptable diversity, it models itself and bases its argument on the pluralism implied by the precedent of Beit Hillel and Beit Shammai. Those who disagree, on the other hand, and who want to limit the range of pluralism, or classify the specific approach as deviant, present arguments which serve to show why the case in question is different and cannot be included under the Beit Hillel and Beit Shammai precedent.<sup>iv</sup>

- - -

In summary, commonality and the various forms of accommodation of difference, in their own way, characterize and shape the nature and identity of our collective lives. Without commonality, we *would* not see each other as fellow members but rather as strangers. Without accommodation for difference we *could* not be fellow members but merely individuals with no ability to form meaningful social ties with others. We attempt to find a balance between the two through the notions of pluralism, tolerance and deviance. Deviance, in particular intolerable, sets the boundaries and creates the possibility of fellow members

finding their commonality. Pluralism, tolerance and tolerable deviance, on the other hand, create the possibility of collective life despite our differences and disagreements. The building of a healthy and viable community requires that each have their place. Where one is removed, or when one becomes too dominant, the bond between members is weakened and the social fabric begins to unravel. Where pluralism is applied too broadly, it makes it difficult to identify a shared cultural space. While all members may get along, they may find themselves devoid of the commonality which makes getting along a virtue. At the same time, intolerable deviance while a critical feature of every social group, has to be limited in nature. When it is too extensive, it begins to encompass too many members of the society, making sectarianism and social bifurcation inevitable.

What serves to limit both extreme forms of pluralism and radical expressions of intolerable deviance are the categories of tolerance and tolerable deviance. They are the dominant engines of social life. Without some measures of pluralism and intolerable deviance, however, they too are inadequate. If an individual cannot find any forms of difference to which one is willing to ascribe equal value and worth, the problem does not lie in the quality of the differing opinions, but in one's unbridled sense of self-aggrandizement and unwarranted self-certainty. Such a self-worshiper cannot live with others. At the same time, if one recognizes the existence of boundaries, but is never willing to do something about those who violate them, then one's real commitment to these boundaries and to the need of limits for one's community's common space is

questionable. It is through a careful balancing between all four, together with a mastery of the art of marginalization, that social life becomes viable.

---

## Footnotes

### **Introduction: The Modern Problem of “Who are the Jews?”**

<sup>i</sup> Katz, Jacob, “Jewry and Judaism in the Nineteenth Century,” in *Jewish Emancipation and Self-Emancipation*, (Philadelphia 1986), p., 3.

<sup>ii</sup> For a more detailed analysis of the period, when it began, and the transformations which it engendered, see Katz Jacob, *Out of the Ghetto* (Cambridge, 1973), *ha-Halakhah be-Meitzar*, (Jerusalem, 1992), *A House Divided*, (Hanover, 1998), *Tradition and Crisis*, (New York, 1993), pp., 214-236, *Jewish Emancipation and Self Emancipation*, (Philadelphia, 1986), pp., 3-19, and “Orthodoxy in Historical Perspectives,” *Studies in Contemporary Judaism*, II, (Bloomington, 1986), edited by Peter Medding, pp., 3-17. Greenwald, Yekutiel, *Sefer Mekorot ha-Torah ve-ha-Emunah be-Hungariah*, (Budapest, 1921), pp., 21-56. Samet, Moshe, “*Halakhah ve-Reformah*,” Doctoral Thesis, Hebrew University, (1967), and “The Beginning of Orthodoxy,” *Modern Judaism*, 1988, pp., 249-269. Ellenson, David, *Tradition in Transition*, (Lanham, 1989), pp., 161-184. Mendes-Flohr, Paul, and Reinhartz, Judah, *The Jew in the Modern World*, (New York, 1980), pp., 101-181. Meyer, Michael, *Response to Modernity*, (New York, 1988), pp., 10-61; *Jewish Identity in the Modern World*, (Seattle, 1990), pp., 3-32; *The Origins of the Modern Jew*, (Detroit 1967). Silver, Michael, “*Shorshei ha-Pilug be-Yahadut Hungariah*,” Doctoral Thesis, Hebrew University, (1985). Philipson, David, *The Reform Movement in Judaism*, (New York 1907), pp., 3-56. Bleich, Judith, “Rabbinic Responses to Nonobservance in the Modern Era,” in *Jewish Tradition and the Non-Traditional Jew*, edited by Schacter, Jacob, (Northvale, 1992), pp., 37-115. See as well, Michael Meyer, “Where Does the Modern Period of Jewish History Begin,” *Judaism* 24,3 pp., 329-338 who discusses the question of when to locate the turning point of modernity, as well as Shohet, Azriel, *Im Hillufei Tekufot*, (Jerusalem 1960), who identifies the transformation as occurring already at the beginning to mid-eighteenth century.

<sup>iii</sup> See Berger, Peter, *The Heretical Imperative*, (New York, 1980), p., 25-26.

<sup>iv</sup> Katz, Jacob, *A House Divided: Orthodoxy and Schism in Nineteenth Century Central European Jewry*, (Hanover and London, 1998).

<sup>v</sup> Kai T. Erikson, *The Wayward Puritans*, (1966), p. 10.

<sup>vi</sup> Eviatar Zerubavel, *The Fine Line* (New York 1991), p. 41.

<sup>vii</sup> See, Katz, Jacob, “*ha-Ortodoxia ke-teguvah le-Yitizia Min ha-Getto ve-la-Tenuat ha-Reformah*,” in *ha-Halakhah be-Meitzar*, (Jerusalem, 1992), pp., 9-20. Samet, Moshe, “*Halakhah ve-Reformah*,” Doctoral Thesis, Hebrew University, (1967), p., 252. Ellenson, David, *Tradition in Transition*, (Lanham, 1989), p., 162-163. On the other hand, Conservative, Reform, Reconstructionist, and secular approaches to Judaism usually have less difficulty with the legitimacy of each other’s policies and ideologies and with those of Orthodoxy. See, Leibman, Charles, “Orthodoxy in American Jewish Life,” *American Jewish Yearbook* 66, p., 38-39.

<sup>viii</sup> In doing so, I am indebted to the works of Gerald Blidstein in his article “Who is not a Jew,” *Israel Law Review*, Vol. 11, No. 3, 1976; David Ellenson in his book *Tradition in Transition: Orthodoxy, Halakha, and the Boundaries of Modern Jewish Identity*, (Lanham, 1989), Avi Sagi and Zvi Zohar in their work “*Ma-agalei Zehut Yehudit be-Sifrut ha-Hilkhatit*,” (Tel Aviv, 2000) and

---

Adam Ferziger's *Exclusion And Hierarchy: Orthodoxy, Nonobservance, and the Emergence Of Modern Jewish Identity*. (Philadelphia 2005).

<sup>ix</sup> See Sagi, Avi and Zohar, Zvi, *Ma-agalei ha-Zehut ha-Yehudit*, p., 23.

<sup>x</sup> For bibliographical and background information on the Hatam Sofer and his work, see, Katz, Jacob, "Kavim le-Biographiah shel ha-Hatam Sofer," in *Halakhah ve-Kaballah*, pp. 353-386, and "Conservatives in a Quandary," in *Out of the Ghetto*, (Cambridge, 1973), pp., 157-160; Moshe Samet "Halakhah ve-Reformah," Doctoral Thesis, Hebrew University, (1967), pp., 235-253, and "Kavim Nosafim le-Biographiah Shel ha-Hatam Sofer," in *Torah im Derekh Eretz*, edited by Breuer, Mordechai, (Ramat Gan, 1987); Silver, Michael, "Shorshei ha-Pilug be-Yahadut Hungariah," Doctoral Thesis, Hebrew University, (1985), pp., 17-48, and Ferziger, Adam, *ibid.*, 61-89.

<sup>xi</sup> For biographical and background information on Moshe Feinstein and his work, see Rackman, Emanuel, "Halakhic Progress: Rabbi Moshe Feinstein's Igrot Moshe on Even ha-Ezer," *Judaism*, 13,3, pp., 365-373; Kirshenbaum, Aaron, "Rabbi Moshe Feinstein's Responsa: A Major Halakhic Event," *Judaism*, 15,3, pp., 364-373; Angel, Marc, "A Study of the Halakhic approaches of Two Modern Poskim," *Tradition*, 23,3, pp., 41-52; Rosner, Fred, "Rabbi Moshe Feinstein's Influence on Medical Ethics," in *Medicine and Jewish Law* Vol. II, (Northdale, 1993), edited by Fred Rosner, pp., 3-40; Robinson, Ira, "Because of Our May Sins: The Contemporary World as Reflected in the Responsa of Moses Feinstein," *Judaism*, 35,1, pp., 35-46; Leibman, Charles, "Orthodoxy in American Jewish Life," *American Jewish Yearbook* 66, (New York, 1965), p., 86-87; Encyclopedia Judaica, "Feinstein, Moshe; Rand Moshe, *Toldot Anshei Shem*. Finkelman, Shimon, *Reb Moshe*, (New York, 1986).

<sup>xii</sup> See, Samet, Moshe, *ibid.*, and Ferziger, Adam, *ibid.*

<sup>xiii</sup> See, Lazerwitz, Bernard, "Denominations and Synagogue Membership: 1971 and 1990," in *American Jewry Portrait and Prognosis*, edited by David Gordis and Dorit Gary (West Orange, 1997), pp., 199-220.

<sup>xiv</sup> See Edwin Lemert's distinction between primary and secondary deviance in "Secondary Deviance and Role Conceptions", in *Social Pathology: A Systematic Approach to the Theory of Sociopathic Behavior*, (New York 1951), and Edwin Schur's notion of role engulfment in "Role Engulfment", in *Labeling Deviant Behavior*. (New York 1971)

---

## Chapter One: Pluralism, Tolerance and Deviance

---

---

<sup>xv</sup> See Klineberg, Otto, "The Multi-National Society: Some Research Problems," in *Social Sciences Information* 6 (1967) p.81-99.

<sup>xvi</sup> See Jack D. Douglas, "The Experience of the Absurd and the Problem of Social Order" in *Theoretical Perspective on Deviance*, Edited by Robert A. Scott and Jack D. Douglas (New York 1972) pp. 189-214, and Howard S. Becker, *Outsiders – Studies in the Sociology of Deviance*, (New York 1963), p. 15.

<sup>xvii</sup> Kai T. Erikson, *ibid.*, p. 12.

<sup>xviii</sup> Berlin, Isaiah, "Two Concepts of Liberty," in *Four Essays on Liberty*, (Oxford 1969), p., 171.

<sup>xix</sup> *Ibid.*

<sup>xx</sup> See, Heyd, David, *Toleration, an Illusive Virtue*, (Princeton, 1996), p. 4, and Sagi, Avi, "*ha-Dat ha-Yehudit: Sovlanut ve-Efsharut ha-Pluralism*," in "*Iyyun*" 44, (April, 1995). Walzer, Michael, *On Toleration*, pp. 10-12, on the other hand, argues for a continuum of attitudes within the category of tolerance itself, ranging from resigned acceptance to enthusiastic endorsement. He raises the question, "But perhaps this last attitude (of enthusiastic endorsement) falls outside my subject: how can I be said to tolerate what I in fact endorse? If I want the others to be here, in this society, among us, then I don't tolerate otherness – I support it." Nevertheless, he includes this under the definition of tolerance as well, "for they coexist with an otherness that, however much they approve of its presence in the world, is still something different from what they know, something alien and strange." The notion of tolerance as what Walzer calls "resigned acceptance," is the central way the category will be understood in this work.

<sup>xxi</sup> Williams, Bernard, "Toleration: an Impossible Virtue," in *Toleration, an Illusive Virtue*, edited by David Heyd, p. 18.

See as well, Cranston, Maurice, "John Locke and the Case for Toleration", in *On Toleration*, Edited by Susan Mendus and David Edwards, (Oxford, 1987), p. 10. who states:

If there were not things we disapproved of, the concept of 'toleration' need not be introduced at all. It would be enough to talk about 'liberty' or 'freedom.' When we speak of people's liberty or freedom, no criticism is implied of the use to which they put their freedom...we can say that only the undesirable – or at any rate, the undesired – is a candidate for toleration.

<sup>xxii</sup> Raphael, D. D., "The Intolerable," in *Justifying Toleration*, edited by Susan Mendus, (Cambridge, 1988), p. 139. See as well, Horton, John and Nicholson, Peter, *Toleration: Philosophy and Practice* (Aldershot, 1992), p. 2, and Mendus, Susan, *Justifying Toleration*, p. 6

<sup>xxiii</sup> Walzer, Michael, *On Toleration*, p. xii, (New Haven, 1997).

<sup>xxiv</sup> Erikson, Kai T., "Notes on the Sociology of Deviance", in *The Other Side – Perspectives on Deviance*, (London 1964), p. 10-11.

<sup>xxv</sup> Goode, Erich, *Deviant Behavior*, (Englewood Cliffs, 1990), p. 24.

<sup>xxvi</sup> See Joseph R. Gusfield, "Moral Passage – The Symbolic Process in Public Designation of Deviance", in *Social Problems* 15 (1967), who distinguishes between the instrumental and symbolic function of law. The instrumental function lies in the enforcement of the law. Law also has a symbolic aspect, however, whose significance is independent of enforcement, shaping public consciousness and simply existing "on the books" as an ideal expression of the community's shared ethos..

<sup>xxvii</sup> See, Becker, Howard, S., *Outsiders – Studies in the Sociology of Deviance*, p. 15.

<sup>xxviii</sup> Robert A. Dentler and Kai T. Erikson, "The Function of Deviance in Groups", in *Social Deviance*, edited by Ronald A. Farrell and Victoria Lynn Swigert, (Philadelphia 1975), p. 31.

<sup>xxix</sup> Robert A. Scott "Framework for Analyzing Deviance as a Property of Social Order", *ibid.*, p.15.

<sup>xxx</sup> Sifre, Deuteronomy, Piska 286, translated by Hammer, Reuven, (New Haven 1986).

<sup>xxx</sup> Even the convert, it is proposed, undergoes a re-birthing process in becoming a Jew ("A convert who converted is as a baby who was born" (BT Tractate Yevamot 62a), and thus all ties between him and his blood family are considered annulled. See for example, BT Tractate Yevamot 22a, Kiddushin 17b. For a discussion of conversion as rebirth see Avi Sagi and Zvi Zohar, "Giyur ve-Zehut Yehudit," (Jerusalem, 1994), Chapter 14.

<sup>xxxii</sup> B. T. Tractate Sanhedrin 44a

<sup>xxxiii</sup> In addition, see Jacob Katz's article "*Af Al Pi Shehata Yisrael Hu*", in his book *Halakhah and Kabbalah*", (Jerusalem 1986). There he discusses the evolution of the concept through its

---

transformation into a legal and binding principle by the medieval scholar Rashi. See Teshuvot Rashi 171,173, and 175. See as well, Blidstein, Gerald, "Who is not a Jew," *Israel Law Review*, Vol. 11, No. 3, 1976., who reviews the various Gaonic and Medieval sources on the issue of the status of the *mumar*, including those who held the position that the *mumar* was an outsider. See as well, Sagi, Avi and Zohar, Zvi, "*Giyur ve-Zehut Yehudit*," p. 9-11.

<sup>xxxiv</sup> BT Tractate Yevamot 47b. See as well, Leiberman, Saul, Tosephta Ki-Fshutah, D'mai, Chapter 2, p. 69, note on line 11-12, who states:

However, a convert who is suspected, even if he is suspected with regards to the whole Torah, he is not expelled from his Jewishness, and he has the status of an Israelite *meshumad* and *kiddushav kiddushin*.

<sup>xxxv</sup> An example of this notion is found in Genesis 34:13-16, where Shimeon and Levi say to Shechem in the Dina story:

We cannot do this thing, to give our sister to a man who is uncircumcised, for that is a disgrace among us. Only on this condition will we agree with you; that you will become *like us* in that every male among you is circumcised. Then we will give our daughters to you and take your daughters to ourselves; and we will dwell among you and become as *one kindred*. (Emphasis mine.)

See as well, Ezra chapter 9, where marriage is allowed only amongst those who share the "holy seed."

It is important to remember, however, that the primary emphasis with regards to maintaining the status of Jew, is the persistent, immutable claim of one's legal *obligations*. For example, the main significance of *kiddushav kiddushin*, whose positive phrasing seems to connote the conferral of a right, is understood by Jewish law to lie in its halakhic corollary: that the marital bond can only be broken by an official writ of divorce, which the husband is obligated to provide in accordance with all rabbinic requirements and standards. For the intolerable deviant bound by blood to his community, this immutable membership, with all of its unwavering claims, can begin to seem more like an unrelenting burden than an inalienable right

<sup>xxxvi</sup> Responsa Tzitz Eliezer Part 13:93

<sup>xxxvii</sup> Rooted in an awareness of this nuance between rejection and marginalization, between the outsider and the outsider-within, Gerald Blidstein, *ibid.*, p. 374 addresses the status of Judaism's classic intolerable deviant: the apostate. He argues for a reframing of the discussion away from the general question of membership to a more complex and pluralistic approach, which "does not necessarily demand an answer of the either/or variety," but rather allows for the preservation of aspects of membership in certain areas and, simultaneously, exclusion from others. "The Jewishness of the apostate is split," Blidstein argues, inasmuch as he may retain all the obligations of membership even as the rest of the community is relieved of significant obligations towards him. "A Jew who sins remains a Jew nonetheless"—this refers [only] to marriage and divorce, where 'brotherliness' (*ahva*) is no criterion." [i.e., there is nothing in the nature of these rituals that requires others to behave towards the deviant in a brotherly manner.] "*Brotherliness*", the sharing of commitment and loyalty, is a criterion, however, in other areas such as interest-taking and the responsibility for [ensuring his basic physical] survival. Here the biological or purely national community is of no significance; the biological-national community confers status and assures continued obligation to the covenant—it does not sustain the bonds of fellowship and mutuality, nor does it compel the loyalty and responsibility of the community to its renegades. (p. 387).

Along similar lines, Sagi, Avi and Zohar, Zvi, in their work *Ma-agalei Zehut Yehudit ba-Sifrut ha-Hilkhatit*, (Tel Aviv, 2000), address the membership status of the *mehallel Shabbat*, distinguish between two different spheres of membership. The first is membership in the ethnic community of Israel, a function of biological descent. The second is membership in the religious community, participation in the ritual life of Israel. As with Blidstein, the membership question here is not either/or, but *which*: which aspects of membership does the deviant relinquish and retain? In which spheres of communal life is he claimed by his fellows, and in which disavowed? Membership in the ethnic community, while a prerequisite for membership in the religious, is however, in itself, no guarantee: not every member of biological Israel is accepted as a participant in its ritual life.

- 
- <sup>xxviii</sup> Sagi, Avi, and Zohar, Zvi, *ibid.*
- <sup>xxix</sup> BT Tractate Hullin 5a.
- <sup>x</sup> See, Moshe Feinstein's *Igrot Moshe*, Oreh Haim 2:50.
- <sup>xi</sup> This sphere is parallel to Blidstein's notion of "brotherliness." See Blidstein, Gerald, *ibid.*
- <sup>xii</sup> Fletcher, George, *Loyalty*, (New York, 1993), p. 20.
- <sup>xiii</sup> BT Tractate Hullin 5a.
- <sup>xiv</sup> *Igrot Moshe*, Yoreh Deah 2:107.
- <sup>xv</sup> Teshuvot Hatam Sofer, *Likutei She-eilot ve-Teshuvot* 89.
- <sup>xvi</sup> One of the consequences of utilizing the sphere of naming as an independent sphere is that it allows for greater sensitivity in analyzing various halakhic sources which prescribe that certain deviants are not to be included under the category of Israel, and are not a part of "you" when it refers to Israel. Without the sphere of naming these types of sources would be interpreted as entailing a call for expulsion, something which, while possible, is not necessarily what these sources are calling for.
- <sup>xvii</sup> *Ibid.*, Hoshen Mishpat 195.
- <sup>xviii</sup> See JT Tractate Shabbat 1:4.
- <sup>xix</sup> BT Tractate Eruvin 13b.
- <sup>i</sup> Mishnah Berakhot 1:3
- <sup>ii</sup> BT Tractate Berakhot 11a.
- <sup>iii</sup> *ibid.*
- <sup>iiii</sup> Tosephta Yevamot 1:13.
- <sup>lv</sup> See Rashi, BT Tractate Rosh Hashanah 14b "*Mikulei Beit Shammai*", who argues that one can even alternate between the two schools, so long as one is guided by reason and not the desire for leniency or stringency.
- <sup>lv</sup> See, for example, the following argument of Sagi, Avi, in *ha-Dat ha-Yehudit: Sovlanut ve-Efsharut ha-Pluralism*, p. 175-176.
- 'These and these are the words of the living God,' as a characteristic expression of the halakhic culture, is sometimes used as evidence for a philosophy of tolerance or even pluralism within the halakhic world. However, it is incorrect to deduce from the halakhic system's recognition of multiple opinions or even multiple religious practices that the halakhah sides with tolerant or pluralistic positions. For the diversity which the Jewish religion recognizes is diversity within the system itself...However, all that which is not contained within the system is not considered a part of 'the words of the living God.' Rather, it is deviance towards which the halakhic system did not necessarily relate with tolerance, not to speak of with pluralism.