

What Right of Appeal is Open to an Excommunicate? A Study of Excommunication

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In the Begleitschreiben which accompanied this divine Call to deal with the particular subject of our theme it was pointed out that the subject was chosen because “we have discovered quite a bit of confusion relative to the question ‘For what is a person excommunicated? What is an invalid excommunication? What right of appeal does an excommunicate have and whom to whom? What is the relationship of the excommunicate and the excommunicating congregation to the Conference Visitor or district officials relative to an appeal?’ Therefore the topic is not meant to exclude a concise but complete treatment of excommunication as such, particularly the reasons for excommunication. We feel the question of valid or invalid excommunication is germane to the topic.” So far the Begleitschreiben.

Guided by the Holy Spirit, the committee chose as essayist on this topic one who in his parish ministry short duration had no case or cause of excommunication and in his sheltered academic life within these hallowed halls of learning has had no theology testing or tempering experiences in this field. No doubt, the Holy Spirit in His way was wondering what a complete novice and neophyte could and would do in such an unaccustomed and unacquainted field.

My approach, therefore, was not, in the main, so much that of an exegete, interpreting what the Scripture says on the subject, for this my abilities are too limited, but was rather a research project to discover what the accepted theologians of renown among us had always held and taught concerning excommunication; and this paper is a report of my findings.

What right of appeal is open to an excommunicate? I have attempted to reach the answer to this question by seeking answers to the simple but logical questions leading to the answer of our theme. And the first of these questions is:

1. What is Excommunication?

The simple Webster definition is: excommunication is the exclusion from fellowship; especially an ecclesiastical censure whereby the person against whom it is pronounced is for the time cast out of the communion of the Church.

When we study ‘sedes doctrinae’ of excommunication in the Scriptures we find that excommunication does not only exclude the excommunicate from all rights and benefits of the church, except the right of hearing the preaching of the Gospel, but also excludes the excommunicate from all the rights and benefits of heaven, exclude the excommunicate from eternal salvation. Matt. 16:19, “And I will give into thee the keys of the kingdom of heaven; and whatsoever thou shalt bind on earth shall be bound in heaven; and whatsoever thou shalt loose on earth shall be loosed in heaven.” John 20:21-23, “Then said Jesus to them again, peace be unto you; as my Father has sent me, even so send I you. And when he had said this he breathed on them, and saith unto them, Receive ye the Holy Ghost. Whose soever sins ye remit, they are remitted unto them; and whose soever sins ye retain, they are retained.” Matt. 18:17, “And if he shall neglect to hear them, tell it unto the church; but if he neglect to hear the church let him be unto thee as an heathen man and a publican.” I Cor. 5:5, “To deliver such an one unto Satan for the destruction of the flesh, that the spirit may be saved in the day of the Lord Jesus.” Thus a

valid excommunication by the Church declares the excommunicate an unbeliever, a heathen and a publican; retains his sins unto him and excludes him from eternal salvation. We dare never forget that excommunication is not merely a suspension of fellowship, or an exclusion from the rights and privileges of the congregation, with the thought, “we as a congregation will no longer have anything to do with him; whether God will accept him into heaven or not is God’s business.” No, when we as a congregation pronounce a valid excommunication we are saying to the excommunicate, “You have publicly and grievously sinned; in spite all repeated exhortations and admonitions you are unrepentant of your sin; therefore we, by the power given to us by God’s command and the instructions given to us in God’s Word, exclude you from our earthly congregation and from eternal life in heaven as long as you do not, and until you do repent.” This fact ought to impress upon us how grave and serious this matter of excommunication is, and surely we ought never excommunicate, we ought never exclude anyone from eternal life unless we can with surety know and prove that according to God’s command and instruction God himself wants us to exclude him from eternal life.

Excommunication was practiced in the Old Testament and New Testament Church. As Israel’s theocracy is not completely analogous to the conditions surrounding the New Testament Church; we shall content ourselves with the statement that excommunication was practiced. Examples of excommunication in the early New Testament Church we find in the excommunication of the fornicator at Corinth, (I Cor. 5); Hymenaeus and Alexander at Ephesus, Hymenaeus for insisting that the resurrection was already past—false doctrine in essentials of the faith,—Alexander as one “who made shipwreck concerning the faith.” (I Tim. 1:20) Simon Magus of Samaria, the converted sorcerer, whose heart was not right with God, (Acts 8:21).

Except for these and perhaps a few other instances of excommunication and the procedure of treating with an errant brother mentioned in Matt. 10, little is recorded in the New Testament concerning any definite system or practice developed in the early Church. But already by the time of the Council of Nicaea, 325 A.D., a distinction had developed between what was known as *Excommunicatio Maior* and *Excommunicatio Minor*, the former excluding the excommunicate from all rights and privileges of the Church, including social and business intercourse with its members, and definitely pronouncing eternal damnation unless repentant; the latter, *Excommunicatio Minor*, being only a suspension from the Lord’s Supper, plus at times a suspension from certain other Church rites, such as confirmation, marriage, burial, etc., depending upon the severity of the transgression.

Together with the development of a distinction between *Excommunicatio Maior* and *Minor* developed also a prescribed series of penances to remove the excommunication. The early four stage of penance for *Excommunicatio Maior*, which were later enlarged to seven, were these: During the first year the excommunicate lay prostrate and weeping in the vestibule of the church and begged those entering into the church to pray for him. Next, commonly for three years, he had a place in the back of the church with the unbaptized catechumens, where he was allowed to hear the reading of the Scriptures. Then he was allowed to enter the body of the church and to pray prostrate, while the bishop and the faithful interceded for him. After further penitential exercise he was finally allowed to pray standing with the rest of the congregation and to be present at the most sacred portion of the liturgy, the *missa fidelium*, the Lord’s Supper.

As the Christian Church slowly but steadily lost the true faith of salvation by faith alone, and began to add more and more the religion of man, salvation by good works and ritual excommunication also developed into a system of temporal punishment and supposed divine threats designed not so much to win souls for eternal life, but to keep the people amenable, to

keep the people subject and obedient to the Church, and here the word ‘church’ began to mean more and more the hierarchy, the priests, bishops, cardinals, and pope. And since the state was subject to the Church, excommunication became a system of threats, punishments and penalties designed to keep all men, from peasant to emperor, subject and obedient to the pope. Thus excommunication lost its God-given purpose and function—to regain and protect souls for God’s kingdom—and became a method of enforcing the temporal and so-called spiritual authority of the Church, especially the pope. *It was one of the important contributions of the Lutheran Reformation that it once again restored excommunication to its proper place and purpose.*

With the separation of Church and state, brought about by the Reformation, the distinction between Excommunicatio Maior and Minor was abolished, and only one form of excommunication was retained, namely that excommunication in which the excommunicate is excluded from all rights, rites, and benefits of the Church and declared subject to eternal damnation. It is true, some of our theologians still speak of Excommunicatio Maior and Minor, referring to proper and complete excommunication by the congregation as Excommunicatio Maior, and suspension from Lord’s Supper by the pastor as Excommunicatio Minor. But the use of this terminology is no longer common; besides it is too easily misleading, and helps to becloud the real meaning of excommunication. It would certainly add to simplicity, clarity, and uniformity if we would refer to the act of a pastor, a church council, or a congregation excluding a member from the Lord’s Supper or other rites of the Church as suspension or some similar term, and retain the word excommunication alone for that act whereby the congregation by command and instruction of God excludes an open and manifestly impenitent sinner not only from all the rights and privileges of the Church on earth but also from the Church in heaven.

2. A second question to be answered is: Why do we excommunicate?

We shall consider a number of reasons and purposes for excommunication. Reason number one: we excommunicate to protect and defend God’s honor among us. God says to us, Ex. 20:5, “I the Lord, thy God am a jealous God.” And again in Is. 42:8, “I am the Lord; that, is my name; and my glory will I not give to another, neither my praise to graven images.” God’s name would not be hallowed among us, God’s honor would be degraded and besmirched, the Gospel of salvation would be despised and shamed, if open, unrepentant sinners, sinners refusing to be guided or bound by the clear Word of God, mould be permitted to remain members of God’s Church, of a Christian congregation.

Reason number two: we excommunicate to protect the congregation from, the accusation of complicity, of being partaker of another man’s faults. If open and unrepentant sinners are permitted to remain within the congregation, and the congregation takes no action against them, the congregation itself becomes guilty of complicity, partakes of that man’s sins. A curse rested upon the entire congregation of Israel as long as Achan, who had taken of the accursed thing at Jericho, was permitted to dwell among them, Josh. 7. In Lev. 19:17 God addresses the members of the congregation of Israel saying, “thou shalt in anywise rebuke thy neighbor, and not suffer sin upon him. Ez. 33:8, “When I say unto the wicked, O wicked man, thou shalt surely die; if thou doest not speak to warn the wicked from his way, that wicked man shall die in his iniquity; but his blood will I require at thine hand.” After the congregation at Corinth took no action against the man living incestuously with his father’s wife, Paul wrote to them admonishing them to action against this sinner, and when the congregation took prompt and proper action, he wrote to them in II Cor. 7: last part of 11, “In all things ye have approved yourselves to be clear—that is pure, not guilty of complicity—in this matter.” In the case of open, unrepentant sinners within

our congregation the words of our Lord in Matt. 7:6, certainly apply, "Give not that which is holy unto the dogs, neither cast ye your pearls before the swine, lest they trample them under their feet, and turn again and rend you."

Reason number three: we excommunicate to protect against offense and contagion.

When we are speaking about offense here in connection with excommunication we are including only definitely sinful acts which lead a weak fellow-Christian to become even weaker in his faith and perhaps even partaker in this sin. The giving of offense in matters of indifference, in adiaphora, is a different matter and is dealt with differently. The clearest instructions we have as to how to proceed in matters of church discipline and excommunication are given to us in Matt. 18:15-17. In the verses just preceding these instructions our Lord in answer to the question, "Who is the greatest in the kingdom of heaven?" had graphically admonished his disciples to have the simple faith of a little child, and then speaks those well-known words of warning and woe upon those who give offense to these simple believers, who by their actions or words cause those of simple, child-like faith to be weakened or lose their faith, Matt. 18:6&7, "But whoso shall offend one of these little ones which believe in me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea. Woe unto the world because of offence! for must needs be that offence come; but was to that man by whom the offence cometh! Therefore if thy hand or thy foot offend thee, cut them off, and cast them from thee; it is better for thee to enter into life halt or maimed, rather than having two hands or two feet to be cast into everlasting fire." It is certainly indicative of the purpose of excommunication that our Lord's explicit instructions concerning Church, discipline and excommunication follow directly after these words on offense.

And in this connection we might well remember that excommunication is also designed to avoid and prevent contagion in the congregation. Due to the very nature of our sinful flesh, there is nothing as contagious as sin. If open, unrepentant sinners are not dealt with, are not quarantined, as it were, their sins can easily become rampant throughout the congregation. Paul writes II Cor. 5:6&7 "Know ye not that a little leaven leaveneth the whole lump? Purge out therefore the old leaven, neither with the leaven of malice; and wickedness; but with the unleavened bread of sincerity and truth."

And yet, the purposes and reasons for excommunication we have thus far discussed are really only fringe benefits, for the real main purpose of excommunication must always be to save the immortal soul of the individual sinner. Our entire approach to Church discipline and excommunication must be guided and determined by this main consideration, how can I, the pastor, how can I, the individual Christian, how can we, the congregation, save the immortal soul of this sinner? To this our Lord points in Matt. 18:15b, "Go and tell him his fault between thee and him alone; if he shall hear these *thou hast gained thy brother*." This Paul stresses in I Cor. 5:5, concerning the incestuous person, "To deliver such an one unto Satan for the destruction of the flesh, that the *spirit may be saved in the day of the Lord Jesus*." I Tim. 1:20. "Of whom is Hymeneus and Alexander; whom I have delivered unto Satan, that *they may learn not to blaspheme*." II Tim. 2:25 and 26, "In meekness instructing those that oppose themselves; if God peradventure will give them repentance to the acknowledging of the truth, and that they may recover themselves out of the snare of the devil, who are taken captive by him at his will". II Thes. 3:14, "And if any man obey not our word by this epistle, note that man and have no company with him, that he may be ashamed." On this point Luther wrote, "It is certainly true that the ban, where it is justly and deservedly applied, is a sign, an admonition, and a penalty whereby the one under the ban "should recognize that he himself has delivered his soul to the

devil by his transgression and sin and has deprived himself of the fellowship of all the saints and of Christ. For by the penalty of the ban our mother, the holy Church, would show her dear son the awful consequences of sin and thereby bring him back from the devil to God. The same method is employed by an earthly mother. When she threatens and chastises her son after he has committed an offense, she thereby does not turn him over to the hangman or the wolves; nor does she make a knave of him. On the contrary, by the very chastisement she administers she restrains him and shows him that he is in danger of the hangman. Thus she keeps him as his father's heir."

Did our Savior come, not to condemn, but to seek and save sinners. Is it the one aim and purpose of the preaching of the Gospel and administering of the sacraments to lead souls to Christ and not away from Christ. Then also the purpose of all Church discipline and excommunication can be no other than the winning and regaining of the sinner. When all other means have failed, this is the last desperate effort *of love* to save a lost sinner. We would but to heal. Our purpose dare never be to get rid of a troublesome, unwanted thorn in the flesh, or only to appear honorable, honest, and sincere before the world. No, to win a soul from death, to regain a lost brother, what a blessed purpose! James 5:19,20, "Brethren, if any of you do err from the truth, and one convert him, let him know that he which converteth the sinner from the error of his way shall save a soul from death, and shall hide a multitude of sins."

And when we keep this in mind that the main and most important purpose of excommunication is the saving of his eternal soul, that consideration will also dictate our very method of procedure; our love and concern for our brother will show through every step of the way. In private sin as well as wherever possible also in public sin we will go to our brother, we will tell him his Fault between him and us alone. We will not broadcast it, neither will we go only once. It is certainly significant that the steps of Matt. 18 are followed immediately in the same chapter by Peter's question, "Lord, how oft shall my brother sin against me and I forgive him? till seven times?" And Jesus said to him, "I say not unto these, until seven times; but until seventy times seven." And then Jesus continues with the parable of the unmerciful servant, concluding, "So likewise shall my heavenly Father also unto you, if ye from your hearts forgive not everyone his brother their trespasses." This every step of the way is to be done in an evangelical manner—we are out to *win* our brother—all legalism, harshness, anger, must be avoided. The Law is to be used only to bring our brother to the knowledge of his sin, not as a club or a threat. Law and legalism always have and always will only lead to anger, opposition, and hardening of the heart. All appearance of a trial or of facing a tribunal must be avoided; as also strict and letter-of-the-law adherence to outward form; and certainly also all kinds of outward penances and church punishments, as was done in the Middle Ages. We ourselves are to be meek and humble, mindful of the fact that we too are sinners; we will not be in a hurry, and no effort or repeated effort will discourage us. If our Lord could say, "O Jerusalem, Jerusalem, thou that killest the prophets and stonest them that are sent unto thee, how oft would I have gathered thy children together, even as a hen gathereth her chickens under her wing, and ye would not," we too should be willing to use repeated and long-drawn-out efforts to regain our brother.

3. We now turn to question number three: Who has the right to excommunicate?

In Matt. 19,17 our Lord said, "And if he shall neglect to hear them, (the two or three witnesses) tell it unto the Church; but if he neglect to hear the church, let him be unto thee as an heathen man and a publican." This indicates that the third step of Church discipline, the

excommunication, belongs in the hands of the Church, and the local congregation is meant, for it would be impossible to practice effectual Church discipline if the universal Church were meant. When Paul writes to the Corinthians concerning the incestuous person, he faults the congregation for not having dealt with the fornicator, not the pastor or bishop, and admonishes, “In the name of our Lord Jesus Christ, when ye are gathered together...deliver such an one unto Satan for the destruction of the flesh.” And that it was not Paul, but the congregation which dealt in the case we see from II Cor. 2:6, where Paul, speaking concerning their action against this fornicator, writes, “Sufficient to such a man is this punishment which was inflicted of many.” Thus it is not the pastor but the congregation which has the right and power to excommunicate. In the Third Epistle of John, John rebukes Diotrephes for excommunicating on his own, “I wrote unto the Church, but Diotrephes, who loveth to have the prominence among them, receiveth us not. Wherefore if I come, I will remember, his deeds which he doeth, prating against us with malicious words; and not content therewith, neither doth he himself receive the brethren, and forbiddeth them that would, and casteth them out of the Church.”

This does not say that there might not be an occasional or unusual instance—for example, a completely new mission field without any even remote form or semblance of organized congregation—where the pastor would have the right to excommunicate—Cf. Peter in the case of Simon Magus of Samaria and Paul in the case of Hymenaeus and Alexander at Ephesus—but this would be an exception to the rule that the congregation itself only has the right to excommunicate. The pastor, however, is also a member of the congregation. Thus he is partaker of the act of excommunication. The congregation can not excommunicate without his consent.

The Lutheran Church—Mo. Synod, restricts this right to excommunicate to the local congregation, insisting that the local congregation alone is a divinely instituted organization for the purpose of preaching the Gospel and administering the sacraments; that all conferences and synods are merely human organizations designed to implement and coordinate the work of the local congregations, and as such are not Church, and therefore can neither issue a divine Call nor practice Church discipline, especially not the third step of excommunication.

Our Synod has always taught that Christ did not restrict the command to preach the Gospel and administer the sacraments, and thus also the right to practice Church discipline, which is a part of preaching the Gospel, to any group of Christians organized in one special or particular way or place. (Cf. John Schaller’s *Pastorale Praxis in der Evangelischen Lutherischen Freikirche Amerikas*, pp. 95-96). Immediately following the passage on Church discipline in Matt. 18:15-17, in verses 18-20 Christ says, “Verily I say unto you, whatsoever ye shall bind on earth shall be bound in heaven, and whatsoever ye shall loose on earth shall be loosed in heaven.” Although this verse could be restricted to the little congregation of disciples to whom He was speaking, and thus be representative of the local congregation, the following verses give it a different meaning. Christ continues, “Again I say unto you, that if two or you shall agree on earth as touching anything that they shall ask, it shall be done for them of my Father which is in heaven. For where two or three are gathered together in my name there am I in the midst of them.” Thus we hold that any group of Christians organized to do Christ’s work on earth, and clearly recognizable as such, has the right and command to preach the Gospel, administer the sacraments, and practice Church discipline, including a conference or a synod.

However, it is to be noted that no organized communion of Christians, such as a conference or a synod, can excommunicate a member of another communion of Christians, such as a congregation, without the latter’s consent. Just as a member of a congregation can not be excommunicated without the unanimous consent of the congregation, just so no conference or

synod can excommunicate one of its members without the consent of the local congregation to which he belongs. Although synod, conference, and congregation owe each other mutual Christian trust and confidence, this does not only mean that the congregation would and should accept the excommunication of its member by synod as being valid, but also means that synod would and should not excommunicate without the consent of the congregation. Such cases, however, are more hypothetical than real, for, as excommunication applies only to an individual, never to a group as a group, in by the far greatest majority of cases it is the local congregation which is called upon to make use of the authority and power to excommunicate.

Because the excommunication of one of its members affects all the members and must be the concern of all the members, the congregation should not excommunicate without the knowledge and consent of all of its members. An excommunication is not a valid excommunication unless it has the consent of all communicant members. Although this *does mean* that all communicant members of the congregation should have opportunity to know what is going on, and a chance to speak their piece, it does not mean that all must be present and vote when the congregation excommunicates. The excommunication can be carried out by a legally assembled congregational meeting, even if not all communicant members are present; for the congregational meeting is the legally and orderly appointed means and method whereby the congregation carries out its business, and just as absence or silence is legal assent to the decisions of the congregational meeting, so also in the case of excommunication, as long as the facts are known and the meeting publicly and legally called, absence from the meeting or silence is assent.

But there must be unanimous consent before excommunication can take place. No one can be excommunicated by a majority vote, no matter how large the majority. As long as there is one dissenting voice, the congregation can not excommunicate; it can suspend, but not excommunicate. For excommunication the matter must be so obvious and clear that all can understand it and see that the person being dealt with is indeed a heathen and a publican, is truly an unrepentant sinner. Thus, before such a person can be excommunicate, those who object must be dealt with. If it is found that they object because the matter can not be clearly understood by them, and no amount of explanation can seemingly clarify the point, the congregation can not pronounce a valid excommunication. On the other hand, if it becomes clear that the objections to the excommunication are willful and stubborn resistance to God's will and command, the objectors must first be dealt with and, if necessary, excommunicated, before the original case can be decided.

It would be contrary to God's will for a congregation to include the power of excommunication in the Call extended to their pastor, and no pastor could accept such a responsibility. Although a congregation could empower its Church council or some other Church board to excommunicate, and such an excommunication would be valid, all other requirements, of course, having been met, it would not be wise at any time to do so. It is to the entire congregation the Lord gave the right and power to excommunicate; it is the business, responsibility and obligation of all the members of the congregation what happens to the eternal souls of its members; the wholesome benefits and blessings which accompany a valid excommunication are to be felt by all the members. Thus not a board of the congregation, not a small percentage, but the entire congregation should know what it is all about and be given opportunity to express itself and to vote according to the method provided by the constitution of the congregation.

In particularly serious or difficult cases it would certainly be wise for the pastor and the congregation to seek outside advice, especially from the Conference Visitor or the District officials. Who of us does not realize how biased and blind each of us can become in the midst of a fight. With the blood pressure up and tempers at the boiling point no one, but no one, sees things as they really are. Our brethren in the ministry will seldomly seek us out and offer their help and advice on their own, but surely they can and are more than willing to give needed help and wise counsel when we seek them out.

4. The next question to consider is: Whom and for what reason must we excommunicate?

A congregation can excommunicate only someone who is a member of the congregation and has been considered a brother in faith. Matt. 18:15, “Moreover, *if thy brother* shall trespass against thee, go and tell him his fault...Thou has gained thy brother.” Matt. 5:23, “Therefore if thou bring thy gift to the altar, and there rememberest that thy brother hath ought against thee; leave there thy gift before the altar, and go thy way; first *be reconciled to thy brother*, and then come and offer thy gift.” I Cor. 5:11-13, “But now I have written unto you not to keep company *if any man that is called a brother* be a fornicator, or covetous, or an idolater, or a railer, or a drunkard, or an extortioner; with such an one no not to eat. For what have I to do to judge them also that are without? Do not ye judge them that are within? But them that are without God judgeth. Therefore put away from among yourselves that wicked person.” A congregation can not excommunicate someone who is not a member of the congregation. Thus E. Eckhardt in his *Homiletisches Reallexikon*, (St. Louis, 1907) states, “*Ist jemand bereits von una ausgegangen, so soll man ihm nicht noch einen Bann nachachleudern.*” Freely translated: has a former brother already withdrawn himself from our congregation or brotherhood, we should not hurl an excommunication after him. As soon as he withdrew himself from our communion, our congregation, he was no longer our Christian brother, and we have no further duty or obligation over against him.

Dr. Francis Pieper in his *Christian Dogmatics* indicates that even a false teacher is excommunicated only if he insists on remaining within the brotherhood, within the fellowship of believers. We are to testify against the false teacher, we are to have no fellowship with him, but we are to excommunicate them only if they do not themselves sever their connection with the Church. I quote: “But the Church may not tolerate the false teacher in the Church. God has commanded the church to take up arms against them and oppose them with the Word of God. This means that the Church must (a) realize that he who departs from the Word of the Apostles is a false teacher (Rom. 16:17: “Mark them which cause divisions and offenses contrary to the doctrine which ye have learned”); must (b) disprove their teaching (Titus 1:9,11: Convince the gainsayers...whose mouth must be stopped”); and finally (c) must isolate them, that is, have not church fellowship with them (Rom. 16:17: “Avoid them”; 2 John 10: “neither bid him God-speed”), and eventually, *if they do not themselves sever their connections with the church*, formally excommunicate them (I Tim. 1:20: Hymenaeus and Alexander expelled from the church).

Only individual persons can be excommunicated. Since in the judgment of God each individual will be held accountable for himself, will be declared righteous or condemned on the basis of his own personal individual faith, no congregation can excommunicate a family, a club, or a group of persons guilty of the same sin. The Lutheran Church knows nothing of mass excommunication, and therefore also no congregation can be excommunicated. As long as a

vestige of the Gospel remains and is preached there may be faithful Christians there, even if it be but the baptized infants.

A congregation can not excommunicate a member in absentia. Only if the congregation has dealt with the sinner and in its presence sees and learns that the sinner is obviously and obstinately impenitent can they excommunicate.

Where a brother's sin and impenitence is properly established and proven and all possible steps of Church discipline have been taken, but the brother refuses to be present before the congregation, the congregation can not rightfully excommunicate, but can only simply announce that the brother has separated himself, that is, has excluded himself from the true Church; that we can no longer consider and accept him as a brother in faith, but we do not pronounce final judgment upon him, since we do not know whether he has separated himself from us out of weakness of faith or out of obstinate impenitence. Schaller, in his *Pastorale*, believes that in the final analysis this distinction between excommunication and self-excommunication is inexact and unnecessary, is really only semantic. The end result remains the same; yet Schaller himself defines excommunication thus: "To excommunicate can therefore really not mean to exclude from the communion or congregation, but to declare that one can not have fellowship with someone even if he desires it. (Schaller's *Pastorale*, p. 101)

Although there are certain open, public, mortal sins which lead us more quickly to begin church discipline than certain other sins, it still is impossible to make two lists of sins, the one making the unrepentant sinner subject to excommunication and the other not, for not sin, but obstinate manifest impenitence leads to excommunication, and therefore any sin could be dealt with long enough and severely enough to finally lead to excommunication.

Excommunication is the last and final, drastic act in a long series of admonitions and discussions. It is the most serious and far-reaching action the Church can take. It is to be used only when all else has failed repeatedly. Frequent and indiscriminate use of excommunication would lead merely to a lessening of the importance and meaning of excommunication. Familiarity breeds contempt. Tossing out excommunications at the drop of a hat would make excommunication common, unimportant, meaningless. Therefore excommunication ought not be used for sins of weakness, sins that are common to us all, that almost every Christian commits daily. With such sins friendly admonition and encouragement against them is enough. Nor is it to be used against those who transgress or refuse to abide by merely human congregational rules and regulations.

It is in the case of grave, serious, public sins, sins that are a threat to faith and destroy faith, that excommunication must be used. Before Judas publicly betrayed our Lord he committed that same grave, serious sins in his heart. Jesus knew it, but only Jesus knew it. It was not public, and so Jesus did not excommunicate him. A list of such grave and serious sins would include those mentioned in I Cor. 5:11, "fornication, covetousness, idolatry, railing, drunkenness, extortion." Such a list would include Paul's list of Gal. 5:19-21, "Now the works of the flesh are manifest, which are these: adultery, fornication, uncleanness, lasciviousness, idolatry, witchcraft, hatred, variance, emulations, wrath, strife, seditions, heresies, envyings, murders, drunkenness, revelings, and such like; of the which I tell you before, as I have also told you in time past, that they which do such things shall not inherit the kingdom of God." Such a list would include all serious, public sins against the Ten Commandments. E. Eckhardt writes in his *Reallexikon*, freely translated, "Open and public is a sin where everyone recognizes the act as a sin, and even the one to be excommunicated recognizes it as a sin, but refuses to recant or repent. As long as there is strife or debate within the congregation whether a certain act is sin or not, no

excommunication can take place.” We know that even in 1533 yet Luther, Jonas, Bugenhagen and Melancton, because of the chaotic conditions and inability to properly teach the people what is sin and what not, restricted themselves to practicing Church discipline through dealing with the people at Communion announcements and suspending from Lord’s Supper. Thus in times of radical change, of religious upheaval, of a decided departure from the status quo, one ought always proceed in matters of Church discipline with extreme caution, with a full realization of the difficulties involved in bringing all the members of the congregation to a full realization of all the implications of the new situation.

Public false doctrine must always finally lead to excommunication if adhered to. It is a different thing if the false doctrine or belief is in a teaching of the Scripture which is not absolutely essential or necessary for eternal salvation, such as to whether Mary had other children besides Jesus or not, and is held privately without any effort to spread it or convert others to it. Here friendly instruction is in order and finally a warning not to promulgate this doctrine. But it need not lead to Church discipline or excommunication.

Schaller writes in his Pastoral, freely translated: “With errors which do not strike at the fundamental of the faith, one may finally also be forced to suspend the errorist, but not in the sense as if the errorist were declared a heathen and a publican.”

When, however, the doctrine directly affects the Gospel of salvation in Christ through faith it must be dealt with in the steps of Matt. 18, and this is the more urgent when such a false doctrine is publicly held and promulgated. If it is already true with any sin that a little leaven leaveneth the whole lump, how much more is this true with false doctrine and teaching, and when this is in a fundamental doctrine how serious and far-reaching the consequences thereof. In these cases we are to be guided by Rom. 16:17, “Now I beseech you, brethren, mark them which cause divisions and offenses contrary to the doctrine which ye have learned, and avoid them.” II John, 10:11, “If there come any unto you, and bring not this doctrine, receive him not into your house, neither bid him God speed. For he that biddeth him God speed is partaker of his evil deeds.” Titus 3:10, “A man that is an heretick after the first and second admonition reject.” I Tim. 6:3-5, “If any man teach otherwise and consent not to wholesome words, even the words of our Lord Jesus Christ, and to the doctrine which is according to godliness; he is proud, knowing nothing, but doting about questions and strifes of words, whereof cometh envy, strife, railings, evil surmisings, perverse disputings of men of corrupt minds, and destitute of the truth, supposing that gain is godliness; from such withdraw thyself.”

But even here we are to excommunicate only if the false teacher insists on remaining with us. These passages admonish us to avoid them, to receive him not, neither bid him God-speed, reject, from such withdraw thyself; but only if he insists on working and staying in our midst are we to excommunicate. (Cf. Previous quot. from Pieper)

5. We now come to the question: Under what conditions and by whom is the excommunicate to be received back into the Church of God?

The excommunicate is to be received back into the Church when he professes repentance of the sin for which he was excommunicated, and promises henceforth to amend his sinful life, as Nathan reinstated a repentant David, our Lord a repentant Peter and Mary Magdalene, or the Corinthian congregation the incestuous man at Corinth. And this should be done in love and rejoicing, without the laying on of penances or all kinds of conditions, as Paul wrote to the Corinthian congregation concerning the incestuous man who had repented, “Sufficient to such a man is this punishment which was inflicted of many (his excommunication). So that contrariwise

ye ought rather to forgive him, and comfort him lest perhaps such a one should be swallowed up with overmuch sorrow.” Asking pardon and forgiveness is necessary, but this can be done in many different ways without forcing the repentant sinner to make a public spectacle of himself, just as long as every member of the congregation has opportunity to learn that the excommunicate has repented and has been reinstated into the congregation.

Although the excommunicate’s repentance must be sincere and true, we are not to approach him with doubt. We are to accept his word. Nor are we to play detective in an effort to ferret out whether his repentance is true. We are to accept his word. And as, to a repentant Christian, forgiveness of sin is unconditional, so we ought not to reinstate an excommunicate only after a period of probation, as, for example, a drunkard who is reinstated after a certain probationary period in which he is to show he can refrain from drunkenness. We are to apply no further probation or penance, even though we must rightly admonish, “God and sin no more.”

And who has the right to reinstate the excommunicate? Even though a synod or conference has the right to practice Church discipline and excommunicate, in the final analysis it can not do so without the consent of the congregation to which the excommunicate belongs. It therefore boils down to the fact that the excommunicating congregation is the final and supreme authority. Although synod and conference officials may advise the congregation, the congregation has the final word. Therefore also only the excommunicating congregation has the right to reinstate a repentant brother it has excommunicated. What disorder and offence would be created if another congregation, conference, or a synod could annul an excommunication or reinstate an excommunicate without the consent of the excommunicating congregation. What chaos and disorder we would have if one congregation has the right to excommunicate its member and another the right to reinstate such a member without the consent of the excommunicating congregation, as has been at times informally done when a second congregation without further ado, or simply upon the stated repentance of the excommunicate has accepted someone into membership excommunicated by the first congregation.

When such cases arise, as they frequently can with our mobile and transient population, when an excommunicate applies for membership at another congregation, if it can be determined that the excommunicate is repentant, it should lay this matter before the first congregation and on the basis of his repentance ask the excommunicating congregation to lift its excommunication. And the first congregation should not insist upon its pound of flesh, but accept the repentance as sincere, and reinstate the excommunicate, giving him a peaceful transfer to his new Church home.

When, however, the excommunicating congregation refuses to reinstate the excommunicate, the second congregation must for the time being hold the excommunication binding, till it can determine through a review of the case whether it was a valid excommunication or not, or whether the first congregation has proper reason not to withdraw the excommunication. Mutual love and respect for the excommunicating congregation will cause us to accept the excommunication of the first congregation as valid; love and regard for an eternal soul will lead the second congregation to review the whole case, to determine whether or not the excommunication was valid, or whether it has good cause not to reinstate the excommunicate. And in this the excommunicating congregation should be glad and willing to take part. It is not an insult or a dishonor when such a request is made upon an excommunicating congregation. Honor, dishonor, trust or mistrust be hanged. We are dealing not with adjectives, not with human emotions, but with an eternal soul.

And the excommunicating congregation not only should have clear, factual, and complete written records, but should be willing to open up its records of the case to the inquiring congregation. In such a serious matter as excommunication written records should be kept and should be so extensive and so clear that those reading the records can become convinced as to the validity or invalidity of the excommunication.

If the second congregation becomes convinced that the excommunication was valid, it can do no else than commit the excommunicate to the care and jurisdiction of the excommunicating congregation, advising him and encouraging him to make his peace first with the excommunicating congregation.

If the reviewing congregation from all evidence at its disposal, including the written records of the case, is led to doubt the validity of the excommunication or the reason for not rescinding the excommunication, it is not yet free to accept the excommunicate into its membership, but must first deal with the excommunicating congregation in an all-out effort to convince it that the excommunication is open to doubt or is invalid, or the reasons for not rescinding the excommunication are invalid. And again such an effort should not be received by the excommunicating congregation as in insult and dishonor. By our Lord's example and command we are on earth solely to save souls for Christ, not to condemn them to Satan, and if the slightest possibility exists that the excommunication is open to doubt by fellow Christians, then it is invalid, and the excommunicating congregation should bow to the request of the second congregation. The cause for excommunication must be clear, obstinate, obdurate, manifest impenitence of a sin or sins, and if the brothers of a brotherhood cannot agree that something is a sin, or whether the excommunicated sinner is penitent or not, excommunication is not valid or in order. I add here a lengthy quotation from Schaller's Pastorale, p. 105, freely translated: "From the foregoing it follows that the impenitence of the sinner must be publicly substantiated, so that every Christian can recognize it. As long, therefore, as there is a protest against the excommunication of a sinner, (whether from members of the excommunicating congregation or from other Christians is immaterial) the excommunication can not be pronounced until the protest has been settled and withdrawn; only thus can it be determined that the reason for the excommunication is recognized as such on all sides. Therefore in such a case it is necessary that one first of all try to persuade the protester. Is it found that the protester himself stands in disobedience to God's Word and remains impenitent, then the judgment against the protester finally must be the same as the sinner to whose aid he has come with his protest. Therefore if the congregation is to pronounce an excommunication it must be done unanimously. Is it impossible, therefore, to convince a great part of the congregation that a certain sinner must be excommunicated, the excommunication can not be effected. In such cases one must entrust the affair to God and content oneself that the sinner at least has received the necessary admonition before the entire congregation."

In view of this, certainly the excommunicating congregation should honor the doubts or protest of a sister congregation and should reinstate the excommunicated person. If the excommunicating congregation in spite of obvious doubt on the part of other Christian brothers, or in spite of inability to answer the protest, or cause the protest to be withdrawn, refuses to reinstate the excommunicate, the protesting congregation is free to accept the excommunicate into full membership, having declared the excommunication invalid; and the excommunicating congregation must bear on its conscience the full responsibility for the resultant disorder, disunity, offence, and straining of brotherly unity.

To the question, who can reinstate an excommunicate we add the thought that in cases of extreme emergency the pastor or any Christian can remove the excommunication, as for example at a death-bed confession. Even here, if possible, this should be done before witnesses, but in times of extreme necessity not the forms, not the rules, but the absolution is important.

6. This brings us to the final question of this essay. In view of all this, what right of appeal is open to an excommunicate?

All that has gone before was designed to lead us to a correct answer to this question. We have found that the excommunicating congregation is the final excommunicating authority, therefore it also is the highest court of appeal. It alone can excommunicate its member, it alone can remove a valid excommunication. It is, therefore, to the excommunicating congregation that the excommunicate must address his first and final appeal. This is not to say that he cannot appeal to others to help him in his appeal to the excommunicating congregation, that he cannot turn to others to help determine whether the excommunication is valid or not. Eckhardt mentions the following occasions for re-examining an excommunication by another congregation or officials:

1. If the excommunication has caused great excitement and debate in a community;
2. If conflicting stories are being circulated;
3. If the excommunicate himself turns to another congregation and claims he was done an injustice.

Thus when an excommunicate, convinced that he has been done an injustice, having appealed to the excommunicating congregation, perhaps even repeatedly, can no longer get a hearing in the excommunicating congregation, he may seek membership in another sister congregation, thus obligating that congregation to restudy and re-examine the case. Christian brotherly love for the brethren of the faith as well as for the excommunicate would dictate that both congregations would be willing to review the case, and that this be done with all patience and consideration. If the two congregations together can bring the affair to a successful resolution, they have gained their brother. If both congregations, however, agree that the excommunication is valid, it stands until on the basis of repentance the excommunicate is reinstated by the excommunicating congregation.

There are still others to whom the excommunicate can turn for help. In our system of outward organization each conference or group of churches elect a Conference Visitor. Because we elect him that he might encourage us in our work, help us in our problems, advise us in our indecisions, we elect someone whose experience, opinions, and religious convictions we trust and respect. And then, via our District Constitution, we instruct this visitor that he shall visit each conference pastor at least every four years for the purpose of strengthening the unity of the Spirit. He shall also review the work of the pastor. He shall discuss the manner in which the goals and program of the synod are being carried out and shall offer assistance in solving local problems; and that he be available to come to any of the conference congregations at the request of the pastor, congregation or the District President. Although such a Conference Visitor has no official power whatsoever, although he certainly cannot remove an excommunication or demand even that the congregation review its action, our placing him into this office of confidence and trust surely gives him the right and privilege, without any taint of officiousness or offense, to ask the excommunicating congregation and pastor for a chance to examine the case, and to advise the congregation concerning his findings and opinions. And if such a Conference Visitor, after a thorough review of the case, cannot be completely convinced that the excommunication was

valid or not, or that the excommunication should not be rescinded, his very doubt in the matter should be a directive to the excommunicating congregation to rescind the excommunication. There is no longer unanimity among the brethren concerning the case, and it matters not whether we are fully convinced that we have dealt correctly, as long as and until this Christian brother, whom we have entrusted with this office and therefore has a right to deal with us concerning congregational matters, can be convinced that we have acted correctly we should rescind the excommunication. And we as pastor and congregation surely ought not be perturbed or insulted because some rightly appointed or elected official comes to examine our actions in such a case, for such an attitude could easily be mistaken to mean that we are more interested in our honor and rights than in the soul of a sinner.

According to our District Constitution, the excommunicate can also take his case to the District President or the convention of the District, but not to both successively. The method of procedure is outlined in the District Constitution and need not be gone into here. The excommunicate may finally also carry his appeal to the Synod President or the Synod Convention, but he may do so only after a convention of the District has acted on the matter. A Synod convention may not act upon a matter of discipline until the District convention has acted on the matter.

Yet a District president or convention, a Synod president or convention can not remove the excommunication without the consent of the excommunicating congregation. They can declare the excommunication valid or invalid, and demand that the congregation act accordingly. If the congregation refuses to do so, the congregation must be subjected to Church discipline and, if stubbornly impenitent, suspended from the brotherhood. If this is done the excommunication becomes invalid by itself.

I said at the beginning that this was a study of excommunication, and that is all it proposes to be. You may not agree with me in all, many or any of the conclusions I have presented, but if through the essay and its discussion we as brethren have come to a better understanding and a more uniform practice, the time will have been well spent. In any event, one of us has learned a great deal, this I know, and I don't mean you.

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