

Part III. Ostracism Among Humans, Formal and Informal Laws

Ostracism on Trial: The Limits of Individual Rights

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In 1947, a case of ostracism was tried in the Common Pleas Court of Wooster, county seat of Wayne County, Ohio. The plaintiff, Andrew J. Yoder, filed suit against an old Order Amish Bishop and two preachers asking for \$40,000 in damages and a court injunction against a "boycott" that he alleged had been organized against him throughout the Amish Church. The verdict was based on a concept of justice embodied in the "reasonable man" doctrine. The jury intended to remedy severe "injustice" inflicted on the petitioner, a former member of the Old Order Amish Church, represented by the bishop and the preachers. The defendants, on the other hand, were steadfast in their belief that their actions were in compliance with the commandments of God - God's justice could not be questioned. This "Meidung" case, a public dispute between Amish mores and American Civil Law, could not solve the underlying issue of conflicting values. The trial led to results that were distasteful to the contesting parties, as well as to the jury, the presiding judge, the officials involved in executing the verdict, and the general public.

REJECTION AND THE BIOLOGICAL LIMITS OF INDIVIDUAL RIGHTS

Rejection takes a multitude of shapes, It can occur everywhere, The degree of rejection is wide spanning intensities from mild to severe and time dimensions from a short rebuff to eternal exclusion including 'life ever after.' The basic question posed by this issue seems to me to be this: What are a person's rights to social participation? Under what conditions can such rights be abrogated? Are there biological limits to such rights?

The legal system confronts this problem in all areas of human interaction. Rejection is regulated, moderated, channeled, invoked, or condemned and prohibited by the law depending on the environmental and ideological context. In family law, for example, the integrity of the family has been protected to some degree by law in most cultures. This requires parental

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care and personal and financial responsibility for offspring and spouses. Therefore, in this context, rejection is usually outlawed. Although most legal systems permit certain types of rejection, these often are clearly defined as exceptions.

Social legislation has built effectively on rejection in order to ameliorate imbalances in the social structure brought on by modern technology. Employment relationships have changed drastically in the course, and as a consequence, of the industrial revolution. To reject an employee by firing him can have detrimental consequences for the employer if the action is not within the limits set by law. On the other hand, employees have been given rights to reject formerly binding contracts. The right to strike is one of the most powerful weapons of the worker. Yet unions use rejection to limit the number of workers available for certain jobs and to increase their bargaining power.

Social groups will use ostracism, a social form of rejection, to protect their continuity or cohesiveness. All definitions of ostracism contain the core idea of rejection; some of them refer to the classical Greek concept (where supposedly no moral condemnation entered into the practice), others to the modern psychologically based American idea (in which moral judgment is implied in ostracism). Ostracism, along with other related ideas like avoidance, exile, exclusion, banishment, and shunning, contains the basic act of rejection by society. We can call ostracism a form of rejection by a group of conspecifics - rejection by an organism or a society that acts as a unity and that, in rejecting, might or might not correct some imbalance. By excluding a nonfunctioning or destructive element, it may repair, so to speak, the circuitry necessary for organizational functioning. The parallel to biological organisms rejecting foreign bodies or parasites is obvious. Although there is never any moral dimension to rejection in biology, we tend to consider the above two examples of rejection as beneficial.

The present question is, what have rejection and avoidance to do with several basic elements in the conceptual world of human beings - such basic elements as the sense of justice on the one hand (Gruter 1977) and, on the other, the brain reward following the exercises of what B. Hoebel has called "mode matching value judgments" (Hoebel 1982).

In this paper, I provide a case of ostracism from a modern court in the State of Ohio in which various conflicting interests or rights are evident. It seems that we can build in four levels (the specific number is, of course, an artifact of my analysis): the biological level, the individual level, the social group level, and the formal legal level. I then point to some aspects of the case that will illuminate questions arising at all four levels, all basic to conflicts between the individual and his group. (Most of the questions cannot yet be answered because the research has not yet been done.) We might ask: does the Old Order Amish legal system make intelligent use of rejection? Does this particular law (Meidung) have a high degree of effectiveness? If so, why and under what circumstances?

We might further ask: what can we learn about the correlation between brain reward -resulting in the feeling of righteousness or justice-and the effectiveness of laws or about the connection between verdict and the enforcement of a verdict?

MEIDUNG AMONG THE OLD ORDER AMISH

Meidung is a form of ostracism among the Old Order Amish. The word is often translated as "shunning." The practice is far different from that of Classical Greece because it is based exclusively on culture-specific moral judgment and because no rational justification is ever attempted.

This case occurred some 35 years ago in the middle of a prosperous county in Ohio. There have been cases of this kind before and since. What makes this specific case interesting is that it led to a legal suit for damages and a court trial that took place in 1947 in the Common Pleas Court of Wooster, county seat of Wayne County. The trial was an attempt to use established means of conflict resolution to relieve severe "injustice" done to a former member of the Old Order Amish Church. The four defendants, representing the Church, were convinced that they had acted as the arm of God's justice. Their arguments were based on faith. They made no attempt to explain their actions rationally. The jury, in making its verdict, used a concept of justice that is expressed in the "reasonable man" doctrine of present day legal thinking.

The case illustrates what enormous impact a simple act of excluding one person from his kinship group and his peers can have. Not only emotional damage is done, but adverse economic consequences follow that can lead to financial ruin.

THE CASE

On March 24, 1947, Andy J. Yoder filed a civil suit in the Common Pleas Court of Wooster, Ohio, asking \$40,000 damages and a court injunction against ostracism perpetuated against him by representatives of the Old Order Amish Church to which he had previously belonged. Ostracism, or Meidung, as practiced by the Old Order Amish, is a commandment of the church going back to the year 1632, when Article 17 of the Dortrecht Confession of Faith established this means of disciplining church members.

The plaintiff, 33 years old, father of seven children, was represented by two attorneys. The local newspaper (*Wooster Daily Record*) described him during the trial as frail and pale, but speaking with a distinct clear voice. His manner showed signs of ostracism which made him feel like a "whipped dog" (Schreiber 1962). Andy Yoder explained the reason for his action: his daughter Lizzie was 1 year old in 1942 when he purchased a car and a

consequence was shunned. Due to some physical ailment, originally attributed to poliomyelitis, Lizzie needed prolonged medical treatment twice a week in Wooster, approximately 15 miles away from the farm on which the Yoders lived. Fearing the consequences that might arise from the purchase of the car, a 1937 Chevrolet, Yoder had left the church and joined another more liberal one. The plaintiff explained to the court that he had filed suit because he saw no other way to assure the survival of himself and his family. "Meidung," so he explained, meant "slow death" in the rural setting in which he, a farmer, lived.

At the time when suit was filed, the "Meidung" against the plaintiff had been in effect for 5 years. The punishment had brought the intended consequences: Yoder was unable to pursue his daily tasks as a farmer. His neighbors, even close members of his family, could not speak with him or eat with him, if they did not want to incur the ban for themselves, nor could there be the usual interchange of necessary reciprocal services, from shoe repairs to assistance with plowing or harvesting. The four defendants - Bishop Helmuth, preachers Nisley and Miller, and Deacon Wengerd - were not represented by legal counsel. Yoder claimed that these four men by their actions against him had deprived him of his rights guaranteed under the United States Constitution, namely his natural and inalienable right to worship God, and that they had ruined his health - he had stomach ulcers.

After a short rebuttal in which they stated that they had acted in accordance with Articles 16 (excommunication) and 17 (shunning) of the Confession of Faith written in Dortrecht, Holland in 1632, the four defendants were interrogated as witnesses. They admitted that they had put the ban on Andy Yoder, and they displayed unshakable belief in the 'Christian-ness' or righteousness of the Meidung practice. God's law required that Yoder be punished for leaving his church. His only way of atonement was by returning to the habits and customs of the church - by obedience to the rules. The defendants did not attempt to justify their moral code. God's law needed no explanation, their actions were based on their faith. An amusing detail reported in the local press was that during the trial the defendants were driven to the courthouse in a rented car. It is only the possession or ownership of the car, not its use, which is sinful.

The attorneys for the plaintiff limited their arguments to an appeal for the end of "psychological warfare." They called "Meidung" the most vicious practice of modern times, a kind of slavery.

In his charge to the jury, consisting of three women and nine men, Judge Walter J. Mougey, himself of Alsatian Mennonite descent, asked for a decision on (1) whether the civil rights of the plaintiff had been invaded and violated and whether the defendants' actions had caused him injury and loss, and (2) if so, the proper amount of damages due him. The jurors were instructed to use as basis for their deliberations the first article of the Bill of Rights of the United States Constitution and Article I, Section 7 of the Ohio State Constitution (Ohio Code, Vol. II, Page 112). Within 1 hour and 25

minutes the jury returned an unanimous verdict for the plaintiff awarding him \$5000 in damages.

The judge then ordered the four defendants to abandon their boycott against Yoder and granted an injunction restraining them from imposing any shun, avoidance, or boycott against Yoder that would deny him the right to religious liberty or deprive him of any business or social relations with his fellow church members.

The verdict was not appealed by the defendants. But they also did not make the necessary financial settlement in compliance with the court order. This fact led to the most painful part of this public dispute: The sale of the chattel property of the defendants by the County Sheriff.

The farmland of the first defendant, Bishop Helmuth, was not included in the court action because there was a mortgage on the land. However, all his chattel property was put up for auction by the Sheriff in December, 1947. The sale of the items - all of them such essential possessions for a farmer as chickens, hogs, cows, a buggy, a corn sheller, a work horse, a hand plow - raised only a total of \$2276.51 to be credited toward the \$5000 judgment. One month later, in January 1948, the Sheriff's department of Wayne County took steps to proceed with the sale of the property of the second defendant, Preacher Nisley, who not only owned chattels but also owned his prosperous farmland which, because it was unencumbered, was subject to court indemnity. Two days later Nisley paid in cash the amount needed to comply with the judgment. The law of the land had prevailed "in protecting an individual's freedom of worship against the dictates of God's Law as interpreted by the Old Order Amish Church."

Andy Yoder received his \$5,000 in damages, but his isolation continued. With or without a ban, his neighbors avoided him. Financial compensation had been made - money had been handed over - but it did not relieve the misery. Rejection, which lies behind social ostracism, would seem to be deeply rooted in human nature so that throughout millions of years of evolutionary history it has become a powerful factor in organizing social structure and assuring stability of social organization. This basic human mode of handling some social problems withstood all attempts of secular law aimed at protecting an individual's freedom and happiness.

Tragic events followed in the lives of the various actors of this drama. About 1 year after the trial, Yoder's small daughter, Lizzie, died. She was the child for whose medical treatments the car that led to the dispute had originally been bought. A few months after that, Preacher Nisley's wife died. Nisley himself soon followed. Bishop Helmuth died shortly afterwards.

REJECTION, BIOLOGY, AND THE SENSE OF JUSTICE

Rejection is a basic behavior trait in the animal world, one of the fundamental modes of social relationship. To emerge as an individual within a social

group, each member of the group rejects some intrusion by, and contacts with, others. There can be, moreover, a kind of passive rejection; the individual can withdraw. Withdrawal behavior is presumably limited by the need for social interaction, also a basic need. At the other end of the scale is active rejection by the group or the individual, which may at times lead to aggression.

During the hundreds of millions of years of evolutionary development of the human brain, the cortex joined the previously existing parts of the brain (MacLean 1983, pp. 74-90). We may assume that all the parts cojoined in the mechanisms that serve in rejection. This condition may have resulted in contradictory uses of this behavior (like any other), depending on the origin of the rejection impulse within the brain.

To survive in today's Western society, an individual learns to choose among alternatives. He learns to find priorities. In the act of selecting specific goals, he has to reject other possibilities. Expressions like "let us reason together" or "let reason decide" as well as concepts like the doctrine of the 'reasonable man', in law, which admonishes Judges to decide the way a "reasonable" man would decide under the given circumstances - all these commandments are concepts of Western law that emphasize the role of the cortex in decision making. The cortex is that part of the brain that gives the individual the ability to choose and thus to reject.

Rejection, of course, has always been used as a tool in the manifold structures and concepts of law - religious as well as secular - for punishment as well as in self-defense. Like most basic human behavior traits, rejection has become part of the law. Rejection is also part of the various concepts of justice. Depending on the circumstances, or on the environmental pressure (economic or social) facing the individual, he will reject whatever has become too burdensome or oppressive whether it be people, rules, customs, mores, or laws. He will do this in the name of justice.

Andy Yoder rejected the rules, the commandments of God which proscribed the ownership of a car. He did it when his child's well-being and the economic pressure (inability to pay for rented transportation) made him feel "right" in owning an automobile. Economic pressure, no doubt, brought Preacher Nisley to the Wayne County Sheriff's Department with the cash necessary to satisfy secular demands in spite of his hitherto open disregard for this type of justice. Andy Yoder felt that he had acted as a "just" man even when he infringed upon the laws that had been part of his well-ordered life since his birth. But the social institutions of the group in which he lived defended these laws with the same vehement fervor that Andy used to protect his individual status. The power of the sanction of ostracism was not so much the ban against Yoder, who had left the group. Rather, it was the threat of or the actual shunning of those remaining members of the group who continued to associate with Yoder that brought about Andy Yoder's isolation and desperation.

The group could have continued to exist without Andy Yoder. But to

to avoid the spread of individual decisions conflicting with the laws of the group, this group, like a living organism fighting a contagious disease, brought all the available defense mechanisms into action. The most effective defense against contamination was isolation and the threat of rejection addressed to other group members who would expose themselves to contamination by associating with Yoder. No attempt was made before the court to explain the group action with rational arguments. The decision to reject, based on faith, needed no rational basis. Justice in the eyes of the group was served by obedience to "God's Law."

This case of 'rejection', illustrates impressively how serious conflicts between individual and group behavior can arise, even if identical behavior (namely rejection) is used by both the individual and the group. First Andy Yoder rejected the group, the Old Order Amish Church, an action he deemed not only beneficial for his own or his family's welfare, but also as "right." Next his group rejected him according to its rules and laws. Neither Andy nor the group acted aggressively or violently. Andy essentially withdrew. And so did the group, enforcing withdrawal on the part of all group members.

Conflicts of this nature occur daily. It is rare, however, that they are aired in public and tried before a jury. In this case the jury came to the aid of an individual's right. Here, as in other cases, the right to individual freedom was interpreted and defined by the jurors based on their own values. They decided that Andy Yoder had to be compensated with the payment of money for the economic consequences of his decision to withdraw from the group.

The judge attempted to stop Yoder's isolation by Court Order. This isolation was originally caused by Yoder's withdrawal from the group, which in response rejected him. The judge used secular law to condemn and attempt to change the behavior of Yoder's former friends who, in turn, based their actions on the same right as had Andy Yoder, namely freedom of religion. The concept of individual rights is always based on faith. It varies in different societies, groups, and subgroups. Rational explanation can help to solve conflicts only to the extent to which decision making is accessible to reason. Strong emotions based on value judgments or religious and ideological convictions are not accessible to reasoning. Neither is it possible to solve conflicts arising from such emotions by legal reasoning or court orders. *Basic behavior traits fulfill survival functions*. Rejection is one of them. *Laws that complement the functions of such behavior traits tend to have a high degree of effectiveness.* The Old Order Amish group's laws prevailed in the outcome in spite of the decisions by judge and jury. Andy Yoder remained isolated.

VERDICTS, ENFORCEMENT, AND FURTHER RESEARCH

A further aspect of this case is the link between verdict and enforcement of a verdict. It is an important point if we are to examine the effectiveness of

law. Exercise of power or lapse of time in executing the sentence often prevent effectiveness of the law. It is one thing to say of a sadistic murderer or rapist, "he deserves to die." It is quite another matter actually to put him to death after a long time lapse. Such problems and conflicts have been with us for a long time, and we are constantly made aware of them by the news media and by legislative attempts to ameliorate the dilemma.

In the case in hand, the verdict in a civil suit, asking a mere \$5000 in damages, created serious conflicts in public opinion in rural Wayne County. The majority agreed with the jurors' verdict that Andy Yoder's civil rights were invaded and violated, and that he should be compensated for his financial loss. But public opinion was divided when it came to auctioning the tools of a farmer in order to collect the money - his plow, his cows, his chickens, even his home - farm. We need to examine whether condemning an action might be a different mental process from enforcing a punishment.

Hopefully we may also find ways to investigate the correlation of brain rewards with rejection. If we assume that brain reward (see Gruter 1979; Danielli 1980; Hoebel 1982) makes us feel right about our own actions or about events that we observe, we can ask: what is the reason for this difference in our mental processes, our reactions to a verdict and to the execution of this same verdict? Is there a predisposition in our primate heritage to receive brain reward when we see or hear a reprimand or immediate punishment for violating our ontogenetically developed models of "right behavior?"

Going a little further, does this same predisposition require (for the release of brain reward) that certain behaviors occur in sequence? Conflict settlement in nonhuman primate groups often involves the sequence dominance - submission - reassurance. Playing all the way through the sequence may restore a balance permitting normal social contacts. Could this be seen as a proto - legal model for human mental processes by which triggering the brain reward mechanism creates the feeling of righteousness, of justice? The exercise of power (dominance behavior of nonhuman primates) followed by submissive behavior and the important third sequence, reassurance behavior, may be a vital sequence. Stated another way, the verdict (or immediate punishment) can trigger brain reward; so can the whole sequence when it is a single process: verdict - punishment - atonement. Yet punishment alone without atonement - because of the great lapse of time that normally occurs between the different events - would seem not to generate brain reward. It might even adversely affect this mechanism.

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