CHAPTER 4

Ordering Discourse and Society: Moral Politics, Marriage, and Fornication during the Reformation and the Confessionalization Process in Germany and Switzerland

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Introduction

In 1540 the Zürich Reformer and successor to Zwingli, Heinrich Bullinger, complained vehemently of the “grave sins and shameless vices that have alas multiplied greatly and grown rampant among many in this recent and most perilous time.” In what followed, he specifically mentioned adultery, fornication (Hurerei), and all manner of impurities such as vile language and unchaste deeds. According to him, the cause of the terrible state of society must be sought in the fundamental semantic disorder of his age: “The reason for all this is that the vices no longer bear their proper names and therefore no one judges them properly as they are upon themselves and before God.”1 The Reformers saw this sorry state of affairs reflected not least in gender relations, whose ambiguity and disorderly nature they regarded as a central threat to their world. These were the roots of the struggle against sexual misconduct that was to become so typical of both the Protestant and Catholic Reform movements. This struggle, so vigorously propagated by Reformers, reveals the fundamental significance that they accorded to the power of naming and definition, particularly in the area of morality and sin. For the Reformers, moral politics was no mere secondary arena, but rather a central means of attaining social power and control.2 The clerical discussions surrounding (clerical) marriage and fornication thus led to a fundamental reorientation of the theology of matrimony,3 which put “the entire social order to the test.”4
With their rhetoric of *Un-Zucht* (lewdness or fornication, but literally “undiscipline”), the Reformers succeeded in establishing their polemical speech about the immorality of their age as a description of reality. In so doing, they set up as absolute their own dividing line between marriage and illicit sexuality, with no room left for transitions or intermediate forms, let alone a third option like chastity. At the same time, they created a yardstick that has largely been adopted by historians to assess behavior in the areas of marriage and sexuality and that implicitly remains alive and well in the concept of social discipline. The history of the social control and disciplining of gender relations, marriage, and sexuality thus becomes a history not just of behaviors and their changes, but equally of perceptions and standards of judgment and demarcation, including their inherent powers of definition. Mary Douglas has drawn our attention to the important function of notions of purity as social boundaries and taboos. Social order is established with their help and maintained by means of their permanent reformulation. Accordingly, talk about pure, undefiled sexuality within marriage and its strict separation from all possible forms of illegitimate, “indecent,” and thus impure sexuality outside marriage assumed an important function in Reformed debates about a new social order and its realization. As Douglas shows elsewhere, the “purity principle” has played a key role in conflicts between the center and periphery of society in various historical configurations.

Such conflicts are often fought out as struggles between orthodoxy and heterodoxy. The struggles between Reformers and the Catholic Church were also often pursued with the weapons of the purity discourse. In this fight there was, however, no obvious victor, since in the course of the Reformation no clear new center emerged. Instead, after the establishment of the Reformation, various confessional centers spent centuries competing to embody orthodoxy. This permanent competition unleashed a discursive dynamism of its own that became historically effective, if not always in the ways intended by those involved. Against this conceptual background, we can analyze moral politics, its developments and booms, during the reformation period and the confessionalization process—that is, from the early fifteenth century to the beginning of the eighteenth century—simultaneously on the level of discourses, institutions, and actions. The question of control and discipline is then no longer limited to the level of behavior, but rather incorporates perceptions and judgments as well. The history of structures and discourses can thus be applied to the arena of marriage, sexuality, and gender relations. Order, like *dis*order, is revealed to be the result of permanent historical effort. Both are thus the consequence of historical processes of construction. In this way, the alleged moral *dis*order of the Reformation period is interpreted not simply as an absence of order, as “immorality,” but rather as an interested ascription within the framework of major processes of reordering. The intersection of confessionalization, state development, and purity discourse reveals once again that questions of purity are questions of power.
Late Medieval Reform Discussions: The Inception of Official Moral Politics

Beginning in the late Middle Ages, the area of matrimony, the regulation of sexual conduct, and the control competence of kin groups came to be discussed in new ways and, above all in the efforts of late medieval cities to maintain order, were newly regulated. This long-term process, which stretched from the thirteenth to the sixteenth or even seventeenth century, has been described by Michael Schröter as part of the civilizing process with corresponding consequences for psychogenesis and sociogenesis. In the course of this process, the secular authorities established new claims to power by shifting marriage more and more exclusively out of the area of competence of kin groups and into the sphere of the Church, while at the same time massively extending the control of the Church over this legal field. Municipal authorities did not just claim control over the legality of marriages, however. Beate Schuster has shown for Konstanz and Basel, encouraged by a new Christian self-understanding, they also began to develop their own morality laws and policies against “living in sin” (zur Unehe sitzen), with the objective of establishing the sole validity of marriage within urban society. A further consequence of this policy was, ultimately, the municipal campaign against prostitutes in the late-fifteenth and early-sixteenth centuries, which culminated in the closure of the municipal brothels.

In this social climate, reformed theological writings such as the *Reformatio Sigismundi* discussed the negative consequences of compulsory celibacy for the sexual order and called for priests to marry. The issue of clerical marriage and thus also of marital sexuality, and sexuality more generally, was by no means new. Repeated reform movements from the tenth century onward led to the introduction of compulsory celibacy for priests in the twelfth century at the First and Second Lateran Councils. Nevertheless, priestly celibacy was no means completely established in practice by the end of the Middle Ages. In their struggle for a pure society, criticisms of the allegedly immoral state of the clergy became a key point for the reformers of the fifteenth century, and above all for proponents of the Reformation in the early sixteenth century, in their conflicts with the Roman Catholic Church and the papacy. In a reformed polemical pamphlet, for example, Sebastian Meyer and Berchtold Haller attacked the income earned by the bishop of Konstanz from clerical concubinage and the newborn children of priests, whose numbers they estimated at fifteen hundred annually. The Reformation and its discussions of compulsory celibacy and clerical marriage thus did not introduce any wholly novel substantive issues into the discursive field of marriage, but it did accelerate and reshape discursive positions, a process that Bernd Hamm has referred to as “normative centering” (*normative Zentrierung*).
In this situation of escalation and intensification, Martin Luther launched an attack against clerical celibacy, among other things, in his 1520 “To the Christian Nobility of the German Nation” and declared the papal law on celibacy to be a diabolical invention. Like other reformers before him (including Erasmus), on several occasions Luther expressed his views on celibacy, clerical marriage, chastity, and logically enough on marriage in general. He declared marriage to be the only estate pleasing to God and distinguished it with severity from all forms of fornication and sexual misconduct. Following Luther, Zwingli also inveighed against compulsory celibacy and in 1522 directly combined the postulate of free preaching based on the Scriptures with his demand that priests be permitted to marry. The new theology of matrimony also contained a new gender anthropology, which declared sexuality, as part of divine creation, to be an inevitable element of human life. For the leading Reformers marriage, not celibacy, now became the site and guarantor of social purity. Outside of matrimony, the option of chastity was rejected as anthropologically impossible. This theological turn was to have far reaching discursive and rhetorical consequences. The nuanced and differentiated late Medieval discussion of different forms of sexuality was replaced by a discourse about sexuality that was clearly binary in structure, recognizing only pure marriage and its opposite. All nonmarital sexuality was declared without distinction to be lewdness (Unzucht, an opaque catch-all term) or fornication (Hurerei). The boom in polarizing “un” words (such as Unehe, adultery or concubinage, literally unmarriage; Unzucht, undiscipline, illicit sexuality, lewdness, fornication; Unreinheit, impurity; etc.) led to the establishment of a rhetoric characterized by sexual vagueness that could be used in correspondingly broad ways. As a paradoxical result of the fight against the indecent and impure world, the discursive reshaping thus brought with it an increasing sexualization of the whole area of matrimony. In the long run, this sexualization, combined with a clearly negative polarization, had substantial mental and practical effects. Its first and foremost effect in the Protestant world was an enormous boost in the status of marriage as the only guarantor of social purity. The need to separate marital sexuality clearly and unambiguously from all other sexuality (Unzucht), and thus to secure the new site of social purity, rose accordingly.

The long-term effects of this reshaping depended not only on theological and thus discursive changes, however, but also on developments in the institutional arena of early modern state building. The Zürich Reformer Zwingli took up the efforts of his municipal authorities to obtain a judicial monopoly and fought the influence of the officiality at Konstanz, among other courts. In 1525 Zwingli and the municipal council in Zürich established the marriage court, which quickly
became a model for other cities in southern Germany and Switzerland. The Reformed marriage court became a new discursive site characterized by a specific combination of circumstances: the municipal Reformed marriage courts represented the practical application of the new teachings on matrimony, but in many respects, they also adopted traditions from canon law. In practical terms the courts had to mediate between the various societal demands for order, an economically motivated social order and a theologically and morally motivated sexual order, and their complex interactions. Where the emphasis was placed apparently differed from city to city.

In Zürich, as in Basel or Augsburg, the activities of the marriage courts at first centered on clarifying the validity of promises of marriage and questions of divorce. The prosecution of illicit sexual behavior was initially delegated to special morals courts, as in Zürich, or to the Unzüchter (the municipal office responsible for maintaining public order and morals), as in Basel or Augsburg, which mainly issued warnings and reprimands. The relationship between the marriage courts and the morals courts was closer in some cities than others. In Zürich, the two courts were practically synonymous, while in Basel the Reformer Johannes Oecolampadius insisted on a strict separation between secular prosecution and the moral control of the Church. The actual criminalization of all nonmarital sexuality occurred only gradually in the second half of the sixteenth century, parallel to the successful establishment of the Church’s exclusive competence in matrimonial marriage.

In the early phase of Protestant moral politics, the new higher status of matrimony and of marital sexuality inextricably linked with it went hand in hand with a sharp separation from prostitution and its traditional acceptance within Catholic teaching as a lesser evil. Demands that brothels be abolished as sites of illicit sexuality in the urban community and as symbols of unacceptable official tolerance or ambiguity in moral matters had their place in the discussion surrounding a purer society. Accordingly, the Reform-oriented authorities devoted their attention to prostitution quite early on. Luther had called for the closure of the brothels in his above-mentioned text “To the Christian Nobility of the German Nation” in 1520. Subsequently, various cities actually closed their brothels. The arguments and justifications invoked by municipal authorities and preachers differed from place to place. In 1532 Basel’s Reformed clergy, for example, explicitly formulated their interest in abolition in terms of confessional politics, since they feared disadvantages for Basel’s doctrine and church ordinance after Anabaptists and Lutherans took the existence of a municipal brothel as the occasion for insults. Confessional competition was probably a significant factor in the persistence of brothel abolition as a topic of moral politics in both Reformed and Catholic cities throughout the sixteenth century. It not only played a role as an argument in discussions surrounding the abolition of bordellos but also accompanied the later history of moral politics during the confessionalization process.
From the beginning, the Reformers’ discussion of celibacy, clerical marriage, and the necessary redefinition of matrimony was orchestrated as a discussion about social order. The new Reformation and morals ordinances aimed accordingly at renewing communal life more generally and putting an end to all abuses and vices. Alongside questions of preaching, ritual, and church organization, the new regulation of the married estate, as a way of life that was now universally binding, became a central aim of these efforts at establishing order.

The Reformed discussion of the necessity of clerical marriage, the impossibility of maintaining celibacy, the omnipresence of illicit sexuality in society, and the revaluation of marriage as the new, and now sole, site of social purity, by no means led to a simply repressive and disciplinal practice in the newly established marriage courts, but to integrative positions as well. The goal was to preserve and establish as many marriages as possible. This orientation is particularly evident in the first years of the Basel marriage court, which was set up at the same time as the Reformation in the city in 1529. In the 1530s the court’s main task was to decide whether promises of marriage were valid and thus whether a marriage existed or not. The chances for plaintiffs, whether male or female, to assert their interests in court were still quite good. The second most common group of cases was suits for divorce, mainly because of adultery or “malicious abandonment.” It is remarkable that the Basel marriage court issued practically no convictions for fornication in the first half of the sixteenth century. The Augsburg marriage court presents a similar picture for the years 1537–1546. Here, too, plaintiffs who came to court to enforce promises of marriage, as well as women seeking compensation for the loss of their virginity or their childbed expenses, or both, had a good chance of winning their cases. Considerations of social utility, which according to Lyndal Roper were in the foreground in the municipal court, meant not least that in most cases the new marriage court (unlike the ecclesiastical court previously responsible in this area) ordered that women be paid compensation. In Augsburg, too, fornication trials did not yet play a role in the new Reformed marriage court at this period. In Zürich, however, the functions of the marriage and morals courts were combined early, although even here decisions were often in favor of the plaintiffs.

With the new institutions of moral discipline, the first phase of Reformed moral politics sought, particularly in the field of marriage and sexuality, to discipline and sanction. At the same time, however, it also pursued an integrative matrimonial policy before the newly established secular marriage courts, and here, at least, in the first half of the sixteenth century the criminalization of all nonmarital sexuality remained incomplete even in the Protestant world. The orientation and effects of Reformed teachings on marriage and moral politics were and remained quite ambiguous. Only in the course of the long-term confessionalization of Europe did the contents and meaning of Reformed matrimonial doctrine and politics become clearer theoretically and above all practically. The new moral politics and the accompanying efforts...
at discipline in the fields of marriage and sexuality were the consequences not merely of new Reformed theological positions on these questions. More decisive was the close intersection of this moral theology with new forms of institutionalization and, as a consequence, with institutional judicial practice, which in turn clarified, developed, or reformulated theory in specific ways. Thus began a long-term process in which Protestant reform, Catholic reform, and confessionalization were all involved. The Council of Trent and its confessional political confrontations over clerical marriage, vows of chastity, and matrimonial law led to a structural parallel development of Catholic doctrine and practice in the field of moral policy. This parallelism was intensified by the marked traditionalism of Protestant matrimonial law and legal practice.

The example of Geneva, however, shows quite clearly that despite all the structural parallels in long-term developments in western and central Europe, these processes could take on very different rhythms, tempos, and forms in different places. Even before the actual breakthrough of the Reformation in Geneva, in May 1536, efforts were underway to institute stronger moral control. Examples are the 1534 municipal laws against fornication and adultery and regulating the bathhouses and the 1536 prohibition of prostitution. According to Kingdon, systematic moral politics was only introduced in practice after Calvin's return to the city in 1541, which was soon followed by the establishment of the consistory. This created an instrument that expanded into a genuine moral reign of terror beginning in the mid-1550s. This politics was apparently so successful ideologically and discursively that during his visit to Geneva in 1556 the Scottish theologian John Knox could note approvingly that, although the true faith might be preached in other cities, “in no other city had he seen such good behavior.” Despite this positive assessment, the Geneva consistory further extended its control activities in the years that followed. Thus, in the 1560s the regulation of marital conflicts and condemnation of extramarital sexuality—and with it the enforcement of a central aim of the consistory, the absolute regard for marriage—were among its central if by no means only duties, while the establishment of the true faith had already retreated into the background. At the same time, according to E.W. Monter, it was evident by the late 1560s that the exaggerated system of moral surveillance had already passed its zenith, even if it was to persist for another four hundred years. Thus, while Reformed moral politics was introduced later in Geneva than in other Protestant cities in southern Germany and Switzerland, it began earlier there to take on a repressive orientation that reached an extraordinary intensity. The socially dysfunctional consequences of exaggerated moral politics became visible in Geneva correspondingly early without, however, the policies being wholly abandoned.
Confessionalization: The Second Phase of the Morals Campaign

Despite all the Reformers' efforts at establishing a genuinely Christian—that is, pure—society, people continued to complain incessantly about the immoral state of affairs throughout the sixteenth century. Beginning in the 1560s, we can see a new wave of moral politics from above, which now drew its dynamism from the ongoing process of confessionalization and its inherent confessional competition, a competition that did not, however, lead to distinct confessional forms of moral politics, but rather to a tendency to parallels. Confessional interactions are already evident in the results of the Council of Trent, which also formalized and heightened the Church's exclusive competence in matrimonial matters for the Catholic realm and in so doing created the preconditions for the reinterpretation of premarital sexuality as fornication. Toward the end of the century, new, more repressive efforts in various places of differing confessional persuasions became evident not only in the fields of theology and canon law but also in that of practical moral politics.

In Basel, for example, in the second half of the sixteenth century, public prosecutions came to predominate over suits brought by private individuals. The recognition of suits involving promises of marriage and thus the creation of new marriages had retreated into the background as had divorces of marriages that no longer functioned and thus threatened the social order. Instead, the courts began in the 1580s to embed the concerns of opposing parties in an increasingly dominant discourse on fornication, which changed perceptions and patterns of argumentation before the court. The marriage court became primarily a site for the prosecution of lewdness and fornication. In Basel, this shift occurred at the same time as conflicts over the confessional orientation of the city, in which the Reformed supporters of Zwingli and Calvin gained the upper hand in the late 1570s. With this change the conflicts surrounding social purity gained new relevance, as statements made by the Calvinist François Hotman, who came to Basel in 1578, show. He criticized circumstances in the city and wrote to Zürich that the reasons for the doctrinal disunity and imperiled harmony among Swiss Protestants must be sought in the lack of effective church discipline. He ended his remarks with the complaint that “Doctrina reformata est, vita deformatissima,” a claim typical of the confessionalization phase, in which the reformation of doctrine had been replaced by the reformation of life. The change in the perception and valuation of previously noncriminalized sexual behaviors, despite the persistence of the old normative framework, by no means ended with developments in the late sixteenth century but rather continued with renewed intensity into the seventeenth century. A significant factor in this change was the continuing purity discourse and its inherent dynamism.

Thus, in the initial years after the Reformation, marriage was an instrument in the fight against lewdness and fornication. After all, the recognition of a promise
of marriage was tantamount to marriage itself, so that illicit sexuality could be transformed into legitimate, marital sexuality. This function was visible as a paradigm in the marriages of the Reformers themselves, who by marrying transformed the otherwise inevitable fornication into marital sexuality. Accordingly, during the early years of its existence, the marriage court laid great stress on a concept of marriage that made it possible to integrate sexuality into a godly, secular matrimonial order. Beginning in the 1580s, in contrast, the fight against fornication was no longer pursued through integration but rather through delimitation and exclusion, that is, the punishment of all nonmarital sexuality. As a consequence, conflicts over the validity of promises of marriage could no longer be simply settled; the decision not to recognize a promise of marriage as binding now inevitably entailed the punishment of tower imprisonment or a monetary fine for “nullity.” Parallel to this development, toward the end of the sixteenth century the courts decided far more frequently that the unmarried people who appeared before them were involved in relationships of lewdness or fornication, and the numbers rose even more sharply in the seventeenth century. As the example of Basel clearly shows, an increase in repressiveness did not always express itself quantitatively, since the number of cases brought before the courts did not rise in relation to population. Instead, a striking, mainly qualitative change occurred: from private suits to ex officio proceedings and thus from decisions about contested promises of marriage to convictions for fornication or “disregard for marriage.”

This qualitative change from a more integrative to a more repressive moral politics is confirmed by studies of other regions of varying denominations during the same period. Uwe Sibeth, for example, has noted a shift in church discipline in the field of marriage and sexuality in Hesse-Kassel, which increasingly moved from the idea of Christian admonition aimed at reconciliation with the congregation to church punishments with the character of criminal sanctions. For the bishopric of Speyer, Andreas Blauert has found that from the end of the sixteenth century on, in the course of the Counter-Reformation, the bishops devoted particular attention to the moral reform of their subjects. This interest is documented above all in adultery cases recorded in the aulic council minutes. Blauert does not attribute the clustering of relevant offenses about 1630 to processes of territorialization, confessionalization, or disciplining, however. Instead, he views this phenomenon as the expression of social crises, the fears they produced and the attempts to master them. Joel Harrington for his part considers a rise in the intensity of prosecution by both Protestant and Catholic authorities in Speyer and Rhineland-Palatinate to have been likely, although gaps in the sources do not permit precise figures. Frank Konersmann also paints an ambivalent picture for Palatinate-Zweibrücken. Depending on the ecclesiastical or secular court and the district, he reaches different conclusions about the repressiveness of the authorities in dealing with marital and sexual offenses. While the normative level appears to have been clearly subject to an increasing density of regulation, the
divergent and often small numbers of cases permit no uniform interpretation.40 The results of the study of so-called serious criminality in Electoral Bavaria undertaken by Wolfgang Behringer are less ambiguous. Morals offenses—chief among them fornication and adultery—underwent a genuine boom at the end of the sixteenth and the beginning of the seventeenth century.41 At 30 percent, they led the list of offenses prosecuted by the aulic council in the first half of the seventeenth century. The growing repression in this field also meant a massive criminalization of women. According to Behringer, the radicalization of the religious world order in the “confessional age,” in Bavaria more specifically a result of the Jesuit-influenced Counter-Reformation, was instrumental in “elevating” misdemeanors to crimes. These criminalization efforts reached their high point in the morality decree of 1635. The quantitative rise in general criminality that followed led to simple morals offenses being delegated to the lower authorities and to the proportion of morals offenses falling substantially to 14 percent in the late-seventeenth century. The offenses studied by Behringer were pursued as serious crimes and thus are not directly comparable to the cases that came before the marriage courts and ecclesiastical morals courts. Ulrike Strasser’s study on Munich, however, shows that comparable developments in official moral politics can be found even on this subordinate level.42

The Seventeenth Century: The High Point of Christian Moral Politics

In the second half of the sixteenth century, long-term confessional competition, with its interest in purity, on the one hand, and the close interaction of the religious and secular authorities under the conditions of an increasingly strong state (which was typical of confessionalization), on the other hand, led to moral politics becoming a new field of activity for Christian, secular authorities of all denominations. This development was intensified and further consolidated in the seventeenth century, as we can see from the example of Electoral Bavaria and its morality decree.

Accordingly, even one hundred years after the establishment of the Reformation and fifty years after Hotman’s complaint, the struggle for a “new purity of life” was as relevant as ever, as the example of Basel shows. Here, after a long conflict between the town council and the clergy, the antistes (the first minister of the Church of Basel) Theodor Zwinger pushed through the introduction of a new, stricter Reformation ordinance whose programmatic significance the theology professor Johann Rudolf Wettstein emphasized in the following terms: “so that the Evangelical chosen people may be easily recognized.”43 Particularly in the struggle against sin, clerics and magistrates could prove themselves as truly Christian authorities. Thus, in the new Reformation ordinance of
1637, all nonmarital sexuality between men and women was clothed in metaphors of defilement and pollution, which also implied disorder, defined as lewdness, penalized and thus implicitly diametrically opposed to pure (because marital) sexuality. Through explicit references to Pauline Bible passages, the theological purity discourse entered into the juridical text. The Reformation purity discourse was thus continued in the confessionalization process and extended into the judicial arena, while at the same time the “new” moral politics remained a central factor in the formation of confessional identity. In its basic characteristics, it led—at once logically and paradoxically—to the same results among the different confessions and served the respective Christian authorities as a means of self-representation. This moral logic, as well as its social limits, is visible in paradigmatic form in the newly invented offense of “premature carnal knowledge” (früher Beischlaf).

“Premature carnal knowledge” was probably made a punishable offense for the first time in 1534 in Zürich in an undated decree. With this law, premarital intercourse was criminalized as fornication even when the couple subsequently married, thus punishing a behavior that had previously been common, legitimate, and recognized by canon law. This penal provision was, however, apparently not yet enforced in judicial practice. In the second half of the sixteenth century, similar decrees were issued in various other cities and territories. Thus, in Hesse-Kassel the synod imposed a church penance for premarital intercourse (anticipatio) beginning in 1556, and the Hessian Reformation ordinance of 1572 also stipulated that the bride could not wear a wreath at her wedding and that the wedding celebration had to occur in private; “premature” childbirth (partus septimestris) was also punished with a sentence for fornication. In contrast to Zürich, Hesse-Kassel, or neighboring Württemberg, this stage in the criminalization process occurred relatively late in Basel, with the introduction of the offense of “premature carnal knowledge” in 1637. Practical enforcement seems to have begun in various places about the same time—the mid-seventeenth century—representing a new high point in policies against fornication. Convictions for so-called premature carnal knowledge represented one-third of convictions for fornication in Basel at the end of the seventeenth century. More than ever before, the fight against fornication now became the chief activity of the marriage courts. Accordingly, this new form of combat led to more rather than fewer cases of fornication being heard by the courts.

At the same time, with the introduction of this new offense, the limits of moral politics and its discursive dynamism became visible. Under the new statutory definition, even valid marriages could be affected by accusations of fornication, and illicit sexuality could extend into marriage without there being any question of adultery. Although sentences were regularly reduced beginning shortly after the introduction of the new offense and the trials were highly standardized, when it came to their own wives, the citizens of Basel found this crimi-
nalization untenable in the long run. In 1718, in order to spare their wives the
disgrace of appearing personally in court, they were still arguing in petitions that
a trial would be deleterious to the health of mother and child. The routine treat-
ment of cases, as well as the persistent resistance from local citizens to the shame
of appearing in court, emphasizes that sexual order and social order clearly col-
lided in this field. The threat to functioning marriages from a conviction and
the reactions to this threat show that the expansion of the fornication discourse
had reached a limit whose overstepping could prove problematic. In their stud-
ies on the Basel countryside in the eighteenth century, Simon and Schnyder found
that the authorities did not really succeed in enforcing their idea that marriage
began with the church ceremony and thus failed in their attempts to penalize
common rural practice, which approved of sexual intercourse once a promise of
marriage had been made.48 The example of Hesse-Kassel points to a similarly tense
competition between sexual and social order as that in Basel. The punishment
of premarital intercourse was introduced relatively early here, but the penaliza-
tion of anticipatio aroused controversy from the beginning. In Hesse-Kassel, too,
the punishment of legally married couples who posed no threat to the social order
revealed the limits of Christian moral politics.49

In principle, however, official moral politics underwent a boom not just in
Bavaria and Basel but also in other (imperial) cities and territories. Ulinka Rublack
has described the heightened “moralism” that prevailed in Württemberg, which
found its expression in the expansion of morals decrees and a strict prosecution
of “sexual immorality” beginning in the second half of the sixteenth century.50
Legislation aimed at punishing “carnal crimes” (Fleischesverbrechen), as a decree
of 1630 called them, reached its apex during the course of the seventeenth cen-
tury, with regionally distinct temporal emphases.51 While this process was com-
plete by the mid-seventeenth century in Württemberg, the first, relatively mild
decrees were introduced in Hall in 1643. In contrast to those in Württemberg,
these laws imposed equal penalties for men and women found guilty of forni-
cation. They were followed in the final third of the century by a campaign of
criminalization directed largely against servants. Taking the vehement attacks on
servants in Hall as an example, we can describe a shift in the early modern dis-
course on order.

The stereotype of the disorderly and debauched servant intensified an omi-
nous scenario for an early modern (mainly urban) society characterized by grow-
ing social differentiation. The stereotype at once aimed at cementing social distinctions
and functioned as part of a distinctive discourse of domination. Here, too, purifi-
cation and sanctification through admonition and reconciliation were replaced
by criminalization and exclusion. Renate Dürr’s work on the imperial city of
Hall underlines very clearly the meaning and dynamism of this increasingly obses-
sive early modern discourse of order.52 In Hall both the penalties for forni-
cation, which could affect women of all social ranks but were presumably
imposed disproportionately on maidservants, and the discursive attribution of lewdness to the social group of servants reached a high point in the second half of the seventeenth century. This occurred at a period characterized by especially low rates of illegitimacy. The social intensification of the discourse on illicit sexuality thus in no way corresponded to a worsening social problem that might have expressed itself in high rates of illegitimacy, impoverishment, and subsequent burdens on municipal poor relief. Instead, developments in Hall, too, revealed themselves as another wave of a dynamic and increasingly repressive discourse on order, with all its fears and rigors.

The figures for illegitimate births in Hall correspond to those obtained by Rainer Beck for Upper Bavaria (Unterfinning) between the final third of the seventeenth century and the end of the eighteenth century. Beck explains the extremely low rates of illegitimacy in terms of a traditional culture of honor, in which young people’s sexual behavior was marked by “chastity.” In this culture, sexuality and the economy were closely linked. The code of honor ultimately guaranteed the close connection between pregnancy and weddings. In his study of so-called wantonness offenses (Leichtfertigkeitsdelikte) in seventeenth- and eighteenth-century Bavaria, Stefan Breit modifies this connection and emphasizes that “honor or virginity became a decisive capital” when women possessed no other property, that is, for women of the lower classes. Taking a long overview, he too concludes that even in late seventeenth-century Bavaria, moral and religious aspects remained in the foreground of state sanctions against illicit sexuality, which were displaced at the end of the eighteenth century by social aspects. In the long term, this shift led to the abolition of penalties for “wantonness” in 1808, but also to the perfecting of restrictive state policies on marriage. Both Breit and Beck stress the acceptance of premarital sexuality in early modern Bavarian rural society. Beck regards the connection he finds between low rates of illegitimacy and a high proportion of premarital pregnancies as an important argument against the efficiency of the repressive intentions of church and secular authorities.

Heinrich R. Schmidt reaches similar conclusions for the Bernese communes of Vechingen and Stettlen. According to him, the mid-seventeenth century and above all the eighteenth century witnessed “an intensification of the situation in the area of premarital sexuality—from a raising of the age of majority, punishments for fornication and adultery, the combating of bridal pregnancies, prohibitions on marriages among the poor to compulsory celibacy and a rise in infanticide.” At this time Berne, too, criminalized bridal pregnancies (“premature” births); they were penalized from 1686 until about 1770, a remarkably short period of time compared with other regions. The offense of Hurerei (fornication, whoring) as well as paternity suits increased in the villages studied. Until about 1735 the Church court (Chorgericht) sought to forbid sexual contacts between unmarried persons even if the woman had not become pregnant. After that date, the courts pursued only those cases of fornication that had led to pregnancy.
At the same time the quantitative relationship between marriages and out-of-wedlock pregnancies changed fundamentally. While in the seventeenth century there had been ten marriages for every pregnancy out of wedlock, in the eighteenth century the ratio was two to one. Particularly in the eighteenth century, then, there is no evidence of a successful policing of morals that succeeded in diminishing the number of illicit sexual relationships.60

Thus, while Schmidt rejects the thesis that social discipline was successful in the long-term in the area of nonmarital sexuality, for the regulation of marital conflicts he follows the coalition thesis, which claims that women and the authorities pursued parallel interests.61 According to Schmidt, the “paterfamilias ideology” was aimed programmatically at “a moral reform of its main pillar, the man” and “for that reason represented a weapon in women’s hands for domesticating men.” Although this thesis may have a certain plausibility for the regulation of marital disputes by the Church court in the Bernese villages studied by Schmidt, in light of the growing repressiveness of the marriage and morals courts in the sixteenth century, and more particularly the seventeenth century, it cannot be generalized to posit a rapprochement between vertical domestication by the authorities and horizontal domestication by wives. Thus, we should reject Safley’s thesis according to which “the Reformation not only centralized institutional control of marriage but inspired greater sensitivity, as revealed in court verdicts, to the needs of the petitioners,” since from the second half of the sixteenth century, women and men were equally unsuccessful in pressing their claims in suits involving marriage or divorce.62 Instead, they saw themselves confronted with an increasingly repressive practice of sanctions as part of an ever more rigid moral politics.63

This interpretation is also substantiated by Watt’s studies of Neuchâtel. The Calvinist city of Neuchâtel also witnessed a clear, long-term criminalization of pre- and nonmarital sexuality.64 Parallel to the massive rise in fornication trials in the seventeenth century, the number of women’s suits to enforce promises of marriage, which now had scarcely any chance of success any more, fell drastically.65 While in the seventeenth century during the consistory’s struggle against sexual impurity and for a pure, Christian way of life, almost equal numbers of men and women were punished for fornication, in the eighteenth century the number of women sentenced rose sharply, by 51 percent, while the number of men convicted dropped by 150 percent during the same period.66 Watt proposes a direct connection between the court’s interest in illegitimate children and the poor relief burdens that were associated with them. Heinz Schilling has noted an intensification of sexual discipline, which was largely directed against lewdness and fornication offenses (Unzucht, Hurerei) and thus primarily against unmarried women and mothers, for the city of Emden as well. There, however, harsher repression only began in the mid-seventeenth century, particularly under the Pietist Church Council in the 1690s.67 In Emden, the stigmatization of anticipatio also began only in the 1740s, far later than elsewhere.68
Places such as Neuchâtel arriving at a new discursive configuration in the eighteenth century can be found about the same time, 1730, in the legislation of various regions. It was characterized by the linking of moral with economic arguments, which were directed at the “temporal welfare” of subjects and the community and had substantial consequences in the long term for the status of unmarried mothers and their children. For Palatinate-Zweibrücken, for example, Frank Konersmann speaks of a program of moral and economic discipline on the part of the welfare-oriented church regime. For Hesse-Kassel, Uwe Sibeth notes that in the course of the eighteenth century, in conjunction with the secularization of marriage legislation, an increasing social differentiation and fiscalization of matrimonial law was established with an increasingly complex system of impediments to marriage, which rendered it a social privilege.

At this time, economic arguments were by no means wholly novel in marriage legislation. Thus, for example, in seventeenth-century Zürich proof of sufficient material means was part of the examination of the couple carried out by pastors and a precondition for marriage. In the early-eighteenth century, however, the whole discursive structure of official moral politics shifted. In her historical overview of moral politics in the German states in the early modern period, Isabel Hull notes that in eighteenth-century legislation religious motivations were supplemented or even supplanted by economic and social arguments. Morality and order remained inextricably linked, but morality was no longer grounded exclusively in the religious arguments of a vengeful God, but increasingly also in secular welfare. Hull stresses at the same time that seventeenth-century efforts at establishing and maintaining order were characterized by futility. In the preambles to ever new decrees, the disillusioned authorities expressed, and at the same time perceived, the hopelessness of their efforts. This insight into their failure led the eighteenth-century authorities to withdraw from total responsibility for the Christian moral state of their subjects with all its transcendental implications, while intensifying the efficiency of bureaucratic control over those subjects at the same time.

This makes it easier to understand why the eighteenth century witnessed two contradictory developments: while the draconian punishment of certain forms of nonmarital sexuality (e.g., adultery) abated in some regions of Europe, there was a strong quantitative increase in the penalization of less serious sexual offenses, including out-of-wedlock pregnancy. Despite secularization, however, the moral political discourse of the eighteenth century, with its new sexual policy regime, remained rooted in the religiously motivated moral political tradition of the Christian absolutist authorities. It thus appears problematic to conclude from the vanitas rhetoric of these authorities that their efforts in the field of moral
politics were especially unsuccessful in the seventeenth century, since these repeated moral offensives led, also and particularly in the seventeenth century, to an increasingly intense criminalization of previously legitimate behaviors. Regardless of developments in the behavior of the population at large, the seventeenth-century theology of the vengeful God depended for its intrinsic functioning on claims of moral decline and decay. Ultimately, the Christianity of the authorities could be demonstrated precisely in a moral politics that was constantly being dramatized and intensified. This was a Christianity whose legitimacy was constantly under threat, at least in comparisons, from ongoing confessionalization, which produced no clear, new orthodox center and which required reassurance to assert its distinction from that of other (less truly Christian) authorities.

Conclusion

Bullinger’s complaints about semantic disorder were typical of his time, but they have also remained extremely influential up to the present day. Numerous recent studies of the fifteenth to seventeenth centuries continue to lament the immorality of the period in question and to note either a lack of order or development toward a higher degree of order. This applies to the theses of legalization and social discipline and, to some extent at least, to the domestication thesis, as well as to the closely related coalition thesis. Implicitly, all of these explanations proceed from deficient regulation or order. Thus, an unspoken continuity arises between the Reformed discourse of order and later historiography. In contrast, studies that enquire into social control functions and codes that directed behavior can note long-term and quite fundamental changes on the level of discursive configurations—and thus also in the fields of perception, judgment, and rhetoric—without having to draw direct conclusions about the deficient structures of patterns of action and behavior. Criminalization and increasing repression in the arena of official moral politics thus need not be interpreted as the success or failure of an officially intended fundamental disciplining of behavior. Instead, reordering becomes a concept with its own discursive logic and dynamics.

In this view, the reorientation of the discourse on marriage in the course of Catholic and Protestant Reform movements led, in conjunction with the emergence of the early modern state, to a lasting change in the frame of reference of those appearing before the marriage courts. This altered frame of reference contained a significant element of discipline. The Church’s exclusive competence in matrimonial matters imposed a new boundary between pure and impure and marital and nonmarital to which everyone would henceforth have to refer. On the level of the conduct of the men and women involved, the code of honor was by no means directly replaced by the new sexual morality. In the courtroom, however, those actors, both male and female, who followed the laws of
honor were compelled to insert themselves ever more clearly into the framework defined by the new morality. The Church’s exclusive competence in matrimonial matters by no means led from a situation of disorder to one of greater order, as the Reformers claimed, but rather above all to a sexualization of gender relations in the relevant court proceedings. Moral politics thus became a vehicle for a specific form of the construction of gender in the early modern period, but at the same time, and far more consciously, also a vehicle for the dramatization of Christian rule and its power to define. This is where the question of the effects of all these efforts at discipline should come in—in a stronger emphasis on the history of discourse and perceptions. We need more than just the mediation between the micro- and macrolevels called for by recent scholars. Equally central is a more complex model of social reality, one more strongly oriented toward the interaction of discourses and practices that also breaks down the simple dichotomy between norms and behavior underlying the classic concept of fundamental or social discipline.

Notes

1. Bullinger, Der Christlich Eestand, fol. 2.
2. Lyndal Roper makes a similar argument for different reasons in The Holy Household, 5.
3. See Burghartz, Zeiten der Reinheit, chap. 2; with a different assessment, see the earlier account by Ozment, When Fathers Ruled, chap. 1. On clerical marriage see Buckwalter, Die Priesterhe in Flugschriften der frühen Reformation.
7. For a more detailed account, see Burghartz, Zeiten der Reinheit, passim.
9. For western Europe more generally see Burgièr and Lebrun, “Priest, Prince and Family”; for Italy see Storia del Matrimonio.
10. Reformation Kaiser Sigismunds, 152. On the discussion more generally, see Harrington, Reordering Marriage and Society, part I.
11. On the history of priestly celibacy, see Denzler, Päpste und Papsttum, vol. 5, I and II.
13. The title of Meyer and Haller’s text was, characteristically, “Ernstliche Ermahnung Hugo von Landenberg’s . . . zu Frieden und christlicher Einigkeit mit schöner Auslegung und Erklärung [samt] Summarium der schädlichen, tödlichen Gifte, so in diesem Mandat inbegriffen, gedruckt zu Augsburg 1522/23,” (Hugo of Landenberg's


17. On the introduction of the Zurich marriage court and its spread down to the introduction of the Geneva consistory, see Walther Köhler’s still fundamental study, Zürcher Ehegericht und Genfer Consistorium.

18. See Harrington, Reordering Marriage and Society; Safley, “Canon Law and Swiss Reform.”


21. This occurred in Zwickau und Konstanz in 1526 (which according to Beate Schuster represented a genuine breakthrough of the Reformed position), in Berne in 1531, in Augsburg in 1533, and in Basel in 1534, but also in 1530 and 1534, respectively, in the Catholic towns of Überlingen and Solothurn. See Beate Schuster, Die freien Frauen, 450–51 and Peter Schuster, Das Frauenhaus, 182–84.


23. See Beate Schuster, Freie Frauen, 451; and above all Strasser, State of Virginity, esp. chap. 2, with interesting observations on the parallels between the abolition of the convents and of the municipal brothel in Munich.

24. See Wunder, “Normen und Institutionen der Geschlechterordnung am Beginn der Frühen Neuzeit,” 70; or Harrington, Reordering Marriage and Society, chap. 1.

25. See the 1529 Reformation Ordinances in Basel, Aktsammlung zur Geschichte der Basler Reformation, vol. 3, no. 473, 383; or Augsburg (see Roper, Holy Household).


29. On the growing tendency toward social control over marriage among both Protestants and Catholics, see Harrington, Reordering Marriage and Society, 97 et seq.: “To portray Protestant and Catholic doctrinal responses as ideologically opposed clearly misrepresents the very nature of all sixteenth-century reform. . . . Perhaps the most persuasive evidence of this common continuity is the striking similarity, by the end of the sixteenth century, between Protestant and Catholic marriage codes” (98). For a general account see also Wiesner, Christianity and Sexuality in the Early Modern World, 259.


they were preoccupied with seeing that as many people as possible were satisfactorily married, and stayed that way; Geneva limited parental authority over marriage far more than most sixteenth-century governments dared to try, and its consistory mediated quarrels after marriage more successfully than most other sixteenth-century institutions.”

33. Ibid., 484.
34. Burghartz, Zeiten der Reinheit, 111 et seq. and 170 et seq.
36. While Safley, Let No Man Put Asunder, 162 believes that the causes of the shift he sees from lawsuits between private individuals to ex officio proceedings cannot be fully explained on the basis of a substantive study of the relevant court records, I regard the altered perception and assessment of certain behaviors as the reason for this shift. See Burghartz, Zeiten der Reinheit, 114 ff.
37. Sibeth, Eherecht und Staatsbildung, 145–46. For the normative level of marriage legislation, however, Sibeth concludes “that the marriage court was not subject to confessionalisation as a fundamental process of social history” (185), which he uses to explain co-operation beyond confessional boundaries. If, unlike Sibeth, one regards confessionalization as a fundamental process that pushed the societies subject to it in the same structural direction, this co-operation is not at all surprising, however.
38. Blauert, ”Kriminaljustiz und Sittenreform als Krisenmanagement?” 129
42. Strasser, State of Virginity, chap. 1.
44. Basel largely took over this Reformation ordinance from Zürich, which had also instituted a new Reformation ordinance the year before. Unlike Zürich, in Basel explicit references to Pauline Bible passages were inserted into the legal text. See Burghartz, Zeiten der Reinheit, 98.
45. Köhler, Zürcher Ehegericht, vol. 1, 104 et seq.; and for the seventeenth century, Bänninger, Untersuchungen über den Einfluss des Polizeistaates, 42 et seq.
46. Sibeth, Eherecht und Staatsbildung, 156–57.
47. Berne followed a good deal later, in 1686. Schmidt, Dorf und Religion, 200.
48. Simon, Unterrännerverhalten und obrigkeitliche Moralphilok, 124 et seq.; and Schnyder-Burghartz, Alltag und Lebensformen auf der Basler Landschaft, 262 et seq.
49. Sibeth, Eherecht und Staatsbildung, 217 et seq.
50. Rublack, Magd, Metz’ oder Mörderin, 10 et seq., 199 et seq., and esp. 203 et seq.
51. In conclusion, Rublack emphasizes that “the specific form assumed by patterns
of prosecution resulted from the local interplay between socio-economic, administrative, institutional and denominational structures: *Magd, Metz' oder Mörderin*, 327.


53. Ibid., 229–30.


56. Ibid., 290–92.


59. Ibid., 220.

60. Ibid., 236.


62. Ibid., 180.

63. At least in the long run, this practice also had quite different consequences for men and women, if we think of the history of “unwed mothers” and the relinquishing of the paternity principle. See Burghartz, *Zeiten der Reinheit*, chap. 7; and Schmidt, *Dorf und Religion*, 230 et seq.


65. “In any event, the low number of female plaintiffs to contract disputes and the high number of women punished for fornication together show that women did not view the consistories, the new judicial organs that enforced morals and upheld domestic stability, as the defenders of their rights;” Watt, *The Making of Modern Marriage*, 112.

66. Ibid., 181 et seq.


68. Ibid., 299.


71. Bänninger, *Untersuchungen über den Einfluss des Polizeistaates*, 42 et seq.


73. Ibid., 104 et seq.

74. The development in Piedmont is also interesting. See Cavallo and Cerutti, “Female Honor and the Social Control of Reproduction in Piedmont between 1600 and 1800.” Cavallo and Cerutti have studied the marital cases that came before the ecclesiastical court in Turin between 1600 and 1800 and explain the early cases, particularly those for breaches of promise to marry, within the framework of the culture of honor. They
observe a slow change in this culture, which led in the long term to a lasting transformation of gender relations that becomes clearly apparent in the mid-eighteenth century. At that period the repression of pre- and extramarital sexuality became particularly intense, responsibility for sexual relations was increasingly concentrated on women alone, illegitimate children were no longer considered the “natural children” of their fathers, and “unwed mothers” had to bear the consequences on their own. Cavallo and Cerutti conclude that this “dynamic appears reducible to a larger process of isolating the individual from the protective context of broader relationships; this was one of the principal effects of the penetration of ecclesiastical institutions into the social fabric,” ibid., 100.