

## Preprint

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### **Ordering Discourse and Society.**

### **Moral Politics, Marriage and Fornication during the Reformation and the Confessionalisation Process in Germany and Switzerland**

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#### Introduction

In 1540 the Zurich 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'.<sup>1</sup> 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.<sup>2</sup> The discussions surrounding (clerical) marriage

and fornication thus led to a fundamental reorientation of the theology of matrimony,<sup>3</sup> which put 'the entire social order to the test'.<sup>4</sup> With their rhetoric of *Un-Zucht* (lewdness or fornication, but literally 'un-discipline') 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 behaviour 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 behaviours and their changes, but equally of perceptions, standards of judgement 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.<sup>5</sup> 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 realisation. As Douglas shows elsewhere, the 'purity principle' has played a key role in conflicts between the centre and periphery of society in various historical configurations.<sup>6</sup> 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 centre emerged. Instead, after the establishment of the Reformation various confessional centres 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 analyse moral politics, its developments and booms during the Reformation period and the confessionalisation process – that is, from the early fifteenth century to the beginning of the eighteenth century – simultaneously on the level of discourses, institutions and actions.<sup>7</sup> The question of control and discipline is then no longer limited to the level of behaviour, but

rather incorporates perceptions and judgements 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 re-ordering. The intersection of confessionalisation, state development and purity discourse reveals once again that questions of purity are questions of power.

#### I. 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 civilising process with corresponding consequences for psychogenesis and sociogenesis.<sup>8</sup> In the course of this process, the secular authorities established new claims to power by shifting marriage increasingly 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.<sup>9</sup> Municipal authorities did not just claim control over the legality of marriages, however. As Beate Schuster has shown for Konstanz and Basle, 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 century, 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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 new-born children of priests, whose numbers they estimated at 1500 annually.<sup>13</sup> 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 centring' (*normative Zentrierung*).<sup>14</sup>

## II. The Reformation period: calls for moral renewal

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.<sup>15</sup> 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 according 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.<sup>16</sup> 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, recognising only pure marriage and its opposite. All non-marital sexuality was declared without distinction to be lewdness (*Unzucht*, an opaque catch-all term) or fornication (*Hurerei*). The boom in polarising 'un' words (such as *Unehe* [adultery or concubinage, literally unmarriage], *Unzucht* [undiscipline, illicit sexuality, lewdness, fornication], *Unreinheit* [impurity] etc.) led, as Helmut Puff has shown, to the establishment of a rhetoric characterised 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 sexualisation of the whole area of matrimony. In the long run, this sexualisation, combined with a clearly negative polarisation, 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 Zurich 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 Zurich established the marriage court, which quickly became a model for other cities in southern Germany and Switzerland.<sup>17</sup> The reformed marriage court became a new discursive site characterised by a specific combination of circumstances: the municipal reformed marriage courts represented the practical application of the new teachings on matrimony; in many respects, however, they also adopted traditions from canon law.<sup>18</sup> 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 Zurich, as in Basle or Augsburg, the activities of the marriage courts at first centred on clarifying the validity of promises of marriage and questions of divorce. The prosecution of illicit sexual behaviour was initially delegated to special morals courts, as in Zurich, 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 Zurich, the two courts were practically synonymous,<sup>19</sup> while in Basle the Reformer Johannes Oecolampadius insisted on a strict separation between secular prosecution and the moral control of the church.<sup>20</sup> The actual criminalisation of all non-marital 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 the 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.<sup>21</sup> The arguments and justifications invoked by municipal authorities and preachers differed from place to place. In 1532 Basle's Reformed clergy, for example, explicitly formulated their interest in abolition in terms of confessional politics, since they feared disadvantages for Basle's doctrine and church ordinance after Anabaptists and Lutherans took the existence of a municipal brothel as the occasion for insults.<sup>22</sup> 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.<sup>23</sup> 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 confessionalisation 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.<sup>24</sup> The new Reformation and morals ordinances aimed accordingly at renewing communal life more generally and putting an end to all abuses and vices.<sup>25</sup> Alongside questions of preaching, ritual and church organisation, 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 disciplinary 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 Basle 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 were suits for divorce, mainly because of adultery or 'malicious abandonment'. It is remarkable that the Basle marriage court issued practically no convictions for fornication in the first half of the sixteenth century.<sup>26</sup> 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 and/or their childbed expenses 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.<sup>27</sup> In Augsburg, too, fornication trials did not yet play a role in the new Reformed marriage court at this period. In Zurich, however, the functions of the marriage and morals courts were combined early, although even here

decisions were often in favour of the plaintiffs.<sup>28</sup> 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 criminalisation of all non-marital 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 confessionalisation 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 institutionalisation 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 confessionalisation 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.<sup>29</sup> 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 taken 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.<sup>30</sup> 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 behaviour’.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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.

### III. Confessionalisation: 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 confessionalisation 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 formalised 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 Basle, 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 marriage ties 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.<sup>34</sup> The marriage court became primarily a site for the prosecution of lewdness and fornication. In Basle, 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 Basle in 1578, show. He criticised circumstances in the city and wrote to Zurich that the reasons for the doctrinal disunity and imperilled 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*',<sup>35</sup> a claim typical of the confessionalisation phase, in which the reformation of doctrine had been replaced by the reformation of life. The change in the perception and valuation of previously non-criminalised sexual behaviours 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.<sup>36</sup> 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 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 non-marital sexuality. As a consequence, conflicts over the validity of promises of marriage could no longer be simply settled; the decision not to recognise a promise of marriage as binding now inevitably entailed

the punishment of tower imprisonment or a monetary fine for 'nullity'. Parallel to this development, towards 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 Basle 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.<sup>37</sup> 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.<sup>38</sup> Blauert does not attribute the clustering of relevant offences about 1630 to processes of territorialisation, confessionalisation or disciplining, however. Instead, he views this phenomenon as the expression of social crises, the fears they produced and 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.<sup>39</sup> 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 offences. 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.<sup>40</sup> The results of the study of so-called serious criminality in Electoral Bavaria undertaken by Wolfgang Behringer are less ambiguous. Moral offences –

chief among them fornication and adultery – underwent a genuine boom at the end of the sixteenth and the beginning of the seventeenth century.<sup>41</sup> At 30%, they led the list of offences prosecuted by the aulic council in the first half of the seventeenth century. The growing repression in this field also meant a massive criminalisation of women. According to Behringer, the radicalisation 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' misdemeanours to crimes. These criminalisation efforts reached their high point in the morality decree of 1635. The quantitative rise in general criminality that followed led to simple morals offences being delegated to the lower authorities and to the proportion of morals offences falling substantially to 14% in the late seventeenth century. The offences 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 studies on Munich, however, show that comparable developments in official moral politics can be found even on this subordinate level.<sup>42</sup>

#### IV. 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 confessionalisation), on the other, 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 Basle shows. Here, after a long conflict between the town council and the clergy, the *antistes* Theodor Zwinger pushed through the introduction of a new, stricter Reformation ordinance whose programmatic significance the theology professor Johann Rudolf Wettstein emphasised in the following terms: 'ut ex ea populus evangelicus facile internosci posset'.<sup>43</sup> 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 non-marital sexuality between men and women was clothed in metaphors of defilement and pollution, which also implied disorder, defined as lewdness, penalised and thus implicitly diametrically opposed to pure (because marital) sexuality.<sup>44</sup> 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 confessionalisation 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 offence of 'premature carnal knowledge' (*früher Beischlaf*).

'Premature carnal knowledge' was probably made a punishable offence for the first time in 1534 in Zurich in an undated decree.<sup>45</sup> With this law, premarital intercourse was criminalised as fornication even when the couple subsequently married, thus punishing a behaviour that had previously been common, legitimate and recognised 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.<sup>46</sup> In contrast to Zurich, Hesse or neighbouring Württemberg, this stage in the criminalisation process occurred relatively late in Basle, with the introduction of the offence of 'premature carnal knowledge' in 1637.<sup>47</sup> 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 Basle 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 offence 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 offence, and the trials were highly standardised, when it came to their own wives, the citizens of Basle found this criminalisation 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 treatment of cases as well as the persistent resistance from local citizens to the shame of appearing in court emphasise that sexual order and social order clearly collided 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 studies on the Basle 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 penalise common rural practice, which approved of sexual intercourse once a promise of marriage had been made.<sup>48</sup> The example of Hesse (-Kassel) points to a similarly tense competition between sexual and social order as that in Basle. The punishment of premarital intercourse was introduced relatively early here, but the sanctioning 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.<sup>49</sup>

In principle, however, official moral politics underwent a boom not just in Bavaria and Basle, 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.<sup>50</sup> Legislation aimed at punishing 'carnal crimes' (*Fleischesverbrechen*), as a decree of 1630 called them, reached its apex in the course of seventeenth century, with

regionally distinct temporal emphases.<sup>51</sup> While this process was complete 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 fornication. They were followed in the final third of the century by a campaign of criminalisation directed largely against servants. Taking the vehement attacks on servants in Hall as an example, we can describe a shift in the early modern discourse on order.

The stereotype of the disorderly and debauched servant intensified an ominous scenario for an early modern (mainly urban) society characterised by growing social differentiation. The stereotype at once aimed at cementing social distinctions and functioned as part of a distinctive discourse of domination. Here, too, purification and sanctification through admonition and reconciliation were replaced by criminalisation and exclusion. Renate Dürr's work on the imperial city of Hall underlines very clearly the meaning and dynamism of this increasingly obsessive early modern discourse of order.<sup>52</sup> In Hall both the penalties for fornication, 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 characterised by especially low rates of illegitimacy.<sup>53</sup> 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, impoverisation 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 rigours.

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 honour, in which young people's sexual behaviour was marked by 'chastity'. In this culture, sexuality and the economy were closely linked. The code of honour ultimately guaranteed the close connection between pregnancy and weddings.<sup>54</sup> In his study of

so-called wantonness offences (*Leichtfertigkeitsdelikte*) in seventeenth- and eighteenth-century Bavaria, Stefan Breit modifies this connection and emphasises that 'honour or virginity became a decisive capital' when women possessed no other property, that is, for women of the lower classes.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup>

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 bride pregnancies, prohibitions on marriages among the poor to compulsory celibacy and a rise in infanticide.<sup>58</sup> At this time Berne, too, criminalised bride pregnancies ('premature' births); they were penalised from 1686 until about 1770, a remarkably short period of time compared with other regions. The offence 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 before the woman became pregnant. After that date, the courts pursued only those cases of fornication that had led to pregnancy.<sup>59</sup> 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.<sup>60</sup> Thus while Schmidt rejects the thesis that social discipline was successful in

the long-term in the area of non-marital sexuality, for the regulation of marital conflicts he follows the coalition thesis, which claims that women and the authorities pursued parallel interests.<sup>61</sup> 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 generalised 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'<sup>62</sup>, since beginning in the second half of the sixteenth century women and men were equally unsuccessful in pressing their claims in suits involving marriage or divorce. Instead, they saw themselves confronted with an increasingly repressive practice of sanctions as part of an ever more rigid moral politics.<sup>63</sup> This interpretation is also substantiated by Watt's studies of Neuchâtel. The Calvinist city of Neuchâtel also witnessed a clear, long term criminalisation of pre- and non-marital sexuality.<sup>64</sup> 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.<sup>65</sup> 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%, while the number of men convicted dropped by 150% during the same period.<sup>66</sup> 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 offences (*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.<sup>67</sup> In Emden, the stigmatisation of *anticipatio* also only began in the 1740s, far later than elsewhere.<sup>68</sup>

#### V. The early eighteenth century: from morality to 'welfare'

Places such as Neuchâtel arrived at a new discursive configuration in the eighteenth century, which can be found about the same time – c. 1730 – in the legislation of various regions. It was characterised 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 programme of moral and economic social discipline on the part of the welfare-state church regime.<sup>69</sup> For Hesse (-Kassel), Uwe Sibeth notes that in the course of the eighteenth century, in conjunction with the secularisation of marriage legislation, an increasing social differentiation and fiscalisation of matrimonial law was established with an increasingly complex system of impediments to marriage, which rendered it a social privilege.<sup>70</sup> At this time, economic arguments were by no means wholly novel in marriage legislation. Thus for example in seventeenth-century Zurich proof of sufficient material means was part of the examination of the couple carried out by pastors and a precondition for marriage.<sup>71</sup> 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.<sup>72</sup> 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 characterised 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.<sup>73</sup> This makes it easier to understand why the eighteenth century witnessed two contradictory developments: while the draconian punishment of certain forms of non-marital sexuality (e.g., adultery) abated in some regions of Europe, there was a strong quantitative increase in the penalisation of less serious sexual offences, including out-of-wedlock pregnancy.<sup>74</sup> Despite secularisation, 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 criminalisation of previously legitimate behaviours. Regardless of developments in the behaviour 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 dramatised and intensified. This was a Christianity whose legitimacy was constantly under threat, at least in comparisons, from ongoing confessionalisation, which produced no clear, new orthodox centre, and which required reassurance to assert its distinction from that of other (less truly Christian) authorities.

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 legalisation 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 behaviour can note long term and quite fundamental changes on the level of discursive configurations – and thus also in the fields of

perception, judgement and rhetoric – without having to draw direct conclusions about the deficient structures of patterns of action and behaviour. Criminalisation 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 behaviour. Instead, (re-)ordering 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 non-marital to which everyone would henceforth have to refer. On the level of the conduct of the men and women involved, the code of honour 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 honour 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 more order, as the Reformers claimed, but rather above all to a sexualisation 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 dramatisation 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 macro-levels 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 behaviour underlying the classic concept of fundamental or social discipline.

(Translation: Pamela Selwyn)

Notes :

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<sup>1</sup> Heinrich Bullinger, *Der Christlich Eestand*, Zurich 1540, fol. 2.

<sup>2</sup> Lyndal Roper makes a similar argument for different reasons in *The Holy Household. Women and Morals in Reformation Augsburg*, Oxford 1991, 5.

<sup>3</sup> See Susanna Burghartz, *Zeiten der Reinheit–Orte der Unzucht*, Paderborn 1999, chap. 2.1; with a different assessment, see the earlier account by Steven Ozment, *When Fathers Ruled: Family Life in Reformation Europe*, Cambridge 1983, chap. 1. On clerical marriage see Stephen E. Buckwalter, *Die Priesterehe in Flugschriften der frühen Reformation*, Quellen und Forschungen zur Reformationsgeschichte, 68, Gütersloh 1998.

<sup>4</sup> Helmut Puff, “... ein schul / darinn wir allerlay Christliche tugend vnd zucht lernen.” Ein Vergleich zweier ehedidaktischer Schriften des 16. Jahrhunderts’, in Rüdiger Schnell (ed.), *Geschlechterbeziehungen und Textfunktionen. Studien zu Eheschriften der Frühen Neuzeit*, Tübingen 1998, 59-88, 59.

<sup>5</sup> Mary Douglas, *Purity and Danger: An analysis of concepts of pollution and taboo*, London 1966, 4-5.

<sup>6</sup> Mary Douglas, ‘Das Prinzip Reinheit und Verschmutzung’, *Sozialwissenschaftliche Information* 11/2 (1982), 67-78.

<sup>7</sup> For a more detailed account see Burghartz, *Zeiten der Reinheit*, passim.

<sup>8</sup> Michael Schröter, ‘Staatsbildung und Triebkontrolle. Zur gesellschaftlichen Regulierung des Sexualverhaltens vom 13. bis 16. Jahrhundert’, in Peter Gleichmann, Hermann Korte et al (eds), *Macht und Zivilisation*, Frankfurt am Main 1984, 148-192, and “Wo zwei zusammenkommen in rechter Ehe ....” *Sozio- und psychogenetische Studien über Eheschließungsvorgänge vom 12. bis 15. Jahrhundert*, Frankfurt am Main 1985.

<sup>9</sup> For western Europe more generally see André Burgière and François Lebrun, ‘Priest, Prince and Family’, in *A History of the Family*, vol. 2, *The impact of modernity*, ed. André Burgière, Christiane Klapisch-Zuber, Martine Segalen and Françoise Zonabend, trans. Sarah Hanbury-Tenison, Cambridge 1996, 95-158; for Italy see *Storia del Matrimonio*, ed. Michela De Giorgio and Christiane Klapisch-Zuber, Rome-Bari 1996.

<sup>10</sup> *Reformation Kaiser Sigismunds*, ed. Heinrich Koller (Stuttgart, 1964), 152. On the discussion more generally see Joel Harrington, *Reordering marriage and society in Reformation Germany*, Cambridge 1995, part I.

<sup>11</sup> On the history of priestly celibacy see Georg Denzler, *Päpste und Papsttum*, vol. 5, I and II: *Das Papsttum und der Amtszölibat*, Stuttgart 1973 and 1976.

<sup>12</sup> Tilmann Walter, *Unkeuschheit und Werk der Liebe. Diskurse über Sexualität am Beginn der Neuzeit in Deutschland*, Berlin 1998, *Studia Linguistica Germanica* 48, esp. chap. 1.

<sup>13</sup> The title of Meyer and Haller’s text was, characteristically, ‘Ernstliche Ermahnung Hugo von Landenbergs ... 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 earnest admonition ... to peace and Christian unity, with a pretty interpretation and explanation [including] a summary of the pernicious, deadly poisons contained in this decree, printed at Augsburg in 1522-23’), in Otto Clemen, ed., *Flugschriften aus den ersten Jahren der Reformation*, vol.4, no. 5, Leipzig and New York 1911.

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<sup>14</sup> Berndt Hamm, 'Von der spätmittelalterlichen reformatio zur Reformation: Der Prozeß normativer Zentrierung von Religion und Gesellschaft in Deutschland', *Archiv für Reformationsgeschichte* 84 (1993), 7-82.

<sup>15</sup> Martin Luther, 'An den christlichen Adel deutscher Nation von des christlichen Standes Besserung', *Werkausgabe*, vol. 6, 405-69.

<sup>16</sup> Helmut Puff (Ms. final chapter, esp. 32 ff.)

<sup>17</sup> 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*, vol. 1, Leipzig 1932, vol. 2, 1942.

<sup>18</sup> See Harrington, *Reordering marriage*; Thomas M. Safley, 'Canon Law and Swiss Reform: Legal Theory and Practice in the Marital Courts of Zurich, Bern, Basel, and St. Gall', in *Canon Law in Protestant Lands*, ed. Richard H. Helmholz, Comparative Studies in Continental and Anglo-American Legal History, 11, Berlin 1992, 187-201.

<sup>19</sup> Köhler, *Zürcher Ehegericht*, vol. 1, 142 ff.

<sup>20</sup> Olaf Kuhr, 'Die Macht des Bannes und der Buße'. *Kirchenzucht und Erneuerung der Kirche bei Johannes Oekolampad (1482-1531)*, Bern 1999.

<sup>21</sup> 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 Basle in 1534, but also in 1530 and 1534, respectively, in the Catholic towns of Überlingen and Solothurn. See Beate Schuster, *Die freien Frauen. Dirnen und Frauenhäuser im 15. und 16. Jahrhundert*, Geschichte und Geschlechter, 12, Frankfurt am Main 1995; and Peter Schuster, *Das Frauenhaus. Städtische Bordelle in Deutschland (1350-1600)*, Paderborn 1992.

<sup>22</sup> *Aktensammlung zur Geschichte der Basler Reformation in den Jahren 1519 bis Anfang 1534*, ed. E. Dürr und P. Roth, 6 vols, Basle 1921-1950, vol. VI, no. 170, 136.

<sup>23</sup> See Beate Schuster, 451 and above all Ulrike Strasser, 'Bones of Contention: Cloistered Nuns, Decorated Relics, and the Contest over Women's Place in the Public Sphere of Counter-Reformation Munich', *Archiv für Reformationsgeschichte* 90 (1999), 255-88, with interesting observations on the parallels between the abolition of the convents and of the municipal brothel in Munich.

<sup>24</sup> See Heide Wunder, 'Normen und Institutionen der Geschlechterordnung am Beginn der Frühen Neuzeit', in Heide Wunder and Gisela Engel (eds), *Geschlechterperspektiven. Forschungen zur Frühen Neuzeit*, Frankfurt a. M. 1998, 70 or Joel Harrington, *Reordering marriage*, chap.1.

<sup>25</sup> See the 1529 Reformation Ordinances in Basle, ABR III, no. 473, 383 or Augsburg (see Roper, *Holy Household*).

<sup>26</sup> Susanna Burghartz, *Zeiten der Reinheit*, 118 ff.

<sup>27</sup> Lyndal Roper, *Holy Household*, 158-62.

<sup>28</sup> Köhler, *Zürcher Ehegericht*, vol.1, 73 ff., esp. 87 ff.

<sup>29</sup> On the growing tendency toward social control over marriage among both Protestants and Catholics, see Harrington, *Reordering marriage*, 97ff. '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

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marriage codes' (98.) For a general account see also Merry E. Wiesner, *Christianity and sexuality in the early modern world: regulating desire, reforming practice*, London 2000, esp. 259.

<sup>30</sup> Robert M. Kingdon, 'The Control of Morals in Calvin's Geneva', in *The Social History of the Reformation*, ed. Lawrence P. Buck and Jonathan W. Zophy, Columbus, Ohio 1972, 3-16, esp. 12.

<sup>31</sup> Letter of 9 December 1556 from John Knox to Mrs. Locke, in David Laing (ed). *The Work of John Knox*, vol. 4 (Edinburgh, 1855), 240.

<sup>32</sup> E. W. Monter, 'The Consistory of Geneva, 1559-1569', *Bibliothèque d'Humanisme et Renaissance* 38 (1976), 467-84, esp. 473-74: 'In general, however, 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'.

<sup>33</sup> Monter, 'The Consistory of Geneva', 484.

<sup>34</sup> Burghartz, *Zeiten der Reinheit*, 111 ff. and 170ff.

<sup>35</sup> Quoted in Max Geiger, *Die Basler Kirche und Theologie im Zeitalter der Hochorthodoxie*, Zollikon-Zurich 1952, 37.

<sup>36</sup> While Thomas M. Safley believes that the causes of the shift he sees from lawsuits between private individuals to *ex-officio* proceedings cannot be fully explained (*Let No Man Put Asunder: The Control of Marriage in the German Southwest: A Comparative Study, 1550-1600*, Kirksville, Missouri 1984, 162), on the basis of a substantive study of the relevant court records I regard the altered perception and assessment of certain behaviours as the reason for this shift. See Burghartz, *Zeiten der Reinheit*, 114 ff.

<sup>37</sup> Uwe Sibeth, *Eherecht und Staatsbildung. Ehegesetzgebung und Eherechtsprechung in der Landgrafschaft Hessen (-Kassel) in der frühen Neuzeit*, Quellen und Forschungen zur hessischen Geschichte, 98, Darmstadt and Marburg 1994, 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 confessionalisation 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.

<sup>38</sup> Andreas Blauert, 'Kriminaljustiz und Sittenreform als Krisenmanagement? Das Hochstift Speyer im 16. und 17. Jahrhundert', in A. Blauert and Gerd Schwerhoff, (eds.) *Mit den Waffen der Justiz. Zur Kriminalitätsgeschichte des späten Mittelalters und der Frühen Neuzeit*, Frankfurt am Main 1993, 115-36.

<sup>39</sup> Harrington, *Reordering marriage*, 248-49.

<sup>40</sup> Frank Konersmann, *Kirchenregiment und Kirchenzucht im frühneuzeitlichen Kleinstaat : Studien zu den herrschaftlichen und gesellschaftlichen Grundlagen des Kirchenregiments der Herzöge von Pfalz-Zweibrücken 1410-1793*, Speyer 1996, 339-40.

<sup>41</sup> Wolfgang Behringer, 'Mörder, Diebe, Ehebrecher. Verbrechen und Strafen in Kurbayern vom 16. bis 18. Jahrhundert', in Richard van Dülmen (ed.), *Verbrechen, Strafen und soziale Kontrolle*, Studien zur historischen Kulturforschung, III, Frankfurt am Main 1995, 85-132.

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<sup>42</sup> Ulrike Strasser, 'Aut Murus Aut Maritus? Women's Lives in Counter-Reformation Munich (1571-1651)', Ph. D. diss., University of Minnesota, 1997, and *State of Virginity: Gender, Religion and Politics in Early Modern Germany*, Ann Arbor, Mich., forthcoming.

<sup>43</sup> 'Damit dadurch das evangelische/auserwählte Volk leicht erkannt werden könne.' (So that the Lutheran chosen people may be easily recognised.) *Memoria Benedicta Dn. D. Theodori Zvingeri à Joh. Rodolpho Wetstenio S.S. Theol. Doct. & Professore*, Basle 1655, 29-30; on the development of the church in Basle in this period more generally, see Geiger, *Die Basler Kirche*.

<sup>44</sup> Basle largely took over this Reformation ordinance from Zurich, which had also instituted a new Reformation ordinance the year before. Unlike Zurich, in Basle explicit references to Pauline Bible passages were inserted into the legal text. See Burghartz, *Zeiten der Reinheit*, 98.

<sup>45</sup> Köhler, *Zürcher Ehegericht*, vol.1, 104 ff., and for the seventeenth century, Hans Bänninger, 'Untersuchungen über den Einfluss des Polizeistaates im 17. und 18. Jahrhundert auf das Recht der Eheschliessung in Stadt und Landschaft Zürich', Ph.D. diss, Zurich 1948, 42ff.

<sup>46</sup> Sibeth, *Eherecht und Staatsbildung*, 156-57.

<sup>47</sup> Berne followed a good deal later, in 1686. Heinrich Richard Schmidt, *Dorf und Religion. Reformierte Sittenzucht in Berner Landgemeinden der Frühen Neuzeit*, Quellen und Forschungen zur Agrargeschichte, 41, Stuttgart 1995, 200.

<sup>48</sup> Christian Simon, 'Untertanenverhalten und obrigkeitliche Moralpolitik', Ph. D. diss., Basel 1981, 124ff.; and Albert Schnyder-Burghartz, *Alltag und Lebensformen auf der Basler Landschaft um 1700. Vorindustrielle, ländliche Kultur und Gesellschaft aus mikrohistorischer Perspektive - Bretzwil und das obere Waldenburger Amt von 1690 bis 1750*, Liestal 1992, 262ff.

<sup>49</sup> Sibeth, *Eherecht und Staatsbildung*, 217 ff.

<sup>50</sup> Ulinka Rublack, *Magd, Metz' oder Mörderin, Frauen vor frühneuzeitlichen Gerichten*, Frankfurt am Main 1998, 10ff., 199ff., and esp. 203ff.

<sup>51</sup> In conclusion, Rublack emphasises 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.

<sup>52</sup> Renate Dürr, *Mägde in der Stadt. Das Beispiel Schwäbisch Hall in der Frühen Neuzeit*, Frankfurt am Main 1995, chap. 6.

<sup>53</sup> Dürr, *Mägde in der Stadt*, 229-30.

<sup>54</sup> Rainer Beck, 'Illegitimität und voreheliche Sexualität auf dem Land. Unterfinning, 1671-1770', in *Kultur der einfachen Leute*, ed. Richard van Dülmen, Munich 1983, 112-50, esp. 122, 135ff., 138.

<sup>55</sup> Stefan Breit, '*Leichtfertigkeit*' und ländliche Gesellschaft. *Voreheliche Sexualität in der frühen Neuzeit*, Munich 1991, 109.

<sup>56</sup> Breit, '*Leichtfertigkeit*', 290-92.

<sup>57</sup> Beck, 'Illegitimität', 131.

<sup>58</sup> Schmidt, *Dorf und Religion*, 202.

<sup>59</sup> *Ibid.*, 220.

<sup>60</sup> *Ibid.*, 236.

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<sup>61</sup> See Safley on Basle, *Let no man put asunder*, 176 ff.

<sup>62</sup> *Ibid.*, 180.

<sup>63</sup> 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. 7.4., and Schmidt, *Dorf und Religion*, 230ff.

<sup>64</sup> Jeffrey Watt, *The Making of Modern Marriage: Matrimonial Control and the Rise of Sentiment in Neuchâtel, 1550-1800*, Ithaca and London 1992, 107.

<sup>65</sup> '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, 112.

<sup>66</sup> *Ibid.*, 181ff.

<sup>67</sup> Heinz Schilling, 'Sündenzucht und Frühneuzeitliche Sozialdisziplinierung. Die Calvinistische presbyteriale Kirchengzucht in Emden vom 16. bis 19. Jahrhundert', in *Stände und Gesellschaft im Alten Reich*, ed. Georg Schmidt, Stuttgart 1989, 265-302, esp. 292-93.

<sup>68</sup> *Ibid.*, 299.

<sup>69</sup> Konersmann, *Kirchenregiment*, chap. 6, passim.

<sup>70</sup> Sibeth, *Eherecht und Staatsbildung*, 221, 232ff. As rising illegitimacy rates show, this development further intensified in the late eighteenth and early nineteenth century. For a general account, see Michael Mitterauer, *Ledige Mütter. Zur Geschichte unehelicher Geburten in Europa*, Munich 1983; for further examples, see Wolfgang Kaschuba and Carola Lipp for Württemberg, *Dörfliches Überleben. Zur Geschichte materieller und sozialer Reproduktion ländlicher Gesellschaft im 19. und frühen 20. Jahrhundert*, Ph. D. diss. Tübingen 1992; Eva Sutter for Zurich, 'Ein Act des Leichtsinns und der Sünde'. Illegitimität im Kanton Zürich: Recht, Moral und Lebensrealität (1800-1860), Zurich 1995; and Annamarie Ryter for the Basle countryside, *Als Weibsbild bevoget. Zum Alltag von Frauen im 19. Jahrhundert. Geschlechtsvormundschaft und Ehebeschränkungen im Kanton Basel-Landschaft*, Quellen und Forschungen zur Geschichte und Landeskunde des Kantons Basel-Landschaft 46, Liestal 1994.

<sup>71</sup> Bänninger (wie Anm. 46), S. 42 ff.

<sup>72</sup> Isabel V. Hull, *Sexuality, State, and Civil Society in Germany, 1700-1815*, Ithaca, N. Y. and London 1996, 67, 94-95.

<sup>73</sup> *Ibid.*, 104 ff.

<sup>74</sup> The development in Piedmont is also interesting. See Sandra Cavallo and Simona Cerutti, 'Female Honor and the Social Control of Reproduction in Piedmont between 1600 and 1800', in *Sex and Gender in Historical Perspective*, ed. Edward Muir and Guido Ruggiero, Baltimore and London 1990, 73-109. 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 honour. 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,

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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', 100.