The Reformation in Eastern and Central Europe

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Morals courts in rural Berne during the early modern period

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This chapter investigates the role of the morals courts in the everyday life of the ordinary Reformed Protestant believers in Berne until the end of the eighteenth century. Our main focus is on the long-term effects, and not on the causes of the Reformation, and we stress the actions of peasants and craftsmen who, as believers, formed the church together with the pastor and who sat as elders in the morals courts. Consequently, we will be offering a view of the everyday life of the Reformed Church rather than of its doctrine or its written norms. In the second place our intention is to provide an insight into the motives and influences that may have formed the evangelical movement, seen retrospectively from the point of view of confessionalization. This chapter summarizes a detailed published study,[1] in which the presbytery records of morals courts from the canton of Berne, and the city of Biel, between 1540 and 1800, were analysed against the background of leading theories about the role of the church in early modern times.[2]

The grand theories of Max Weber, Norbert Elias and Gerhard Oestreich have all explained the development of European culture in the early modern period through similar concepts.[3] They all assume a more or less linear process of 'modernization'. The thesis of Oestreich is of particular importance since research into confessionalization, which is the focus of my own study, has adopted it as an essential paradigm.

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[1] Heinrich Richard Schmidt, *Dorf und Religion. Reformierte Sittenzucht in Berner Landgemeinden der Frühen Neuzeit* (Stuttgart, Jena, New York, 1995).

[2] I will not repeat the apparatus of footnotes taken from the book, but mention only some of the most important titles. Facts taken from the study itself, especially those depending on the examination of the Bernese archives, will not be noted. I thank Dr Wulf von Lucius for his permission to take the English summary of the book as basis for this essay. Mark Furner was very helpful with the English translation of the text.

[3] Schmidt, *Dorf*, pp. 360–75 for a detailed discussion of their concepts. For a first approach see Schmidt, 'Die Christianisierung des Sozialverhaltens als permanente Reformation. Aus der Praxis reformierter Sittengerichte in der Schweiz während der frühen Neuzeit', in Peter Blickle and Johannes Kunisch (eds), *Kommunalisierung und Christianisierung* (Zeitschrift für Historische Forschung, Supplement 9, Berlin, 1989), pp. 113–63.

Gerhard Oestreich has described the process of the diffusion of civilized standards as 'social disciplining'. Disciplining was a long-term process, which began with the employees of the absolutist states, the army and the civil servants (*Stabsdisziplinierung*),[4] but during the eighteenth century widened into a disciplining of the whole society (*Fundamentaldisziplinierung*).[5] All these disciplining processes, according to Oestreich, 'combine together into a forceful process of empowerment that fundamentally changed the basic structures of political, social and intellectual life, concentrating them towards a central authority'.[6] Oestreich's ideas are marked by a bias towards the state and by their teleological character. He accordingly attributes the crucial role in the modernization of human character (in Europe) to the state-enforced impulse towards discipline. His concept is therefore very 'etatist'.[7] The contribution of the church is seen as only marginal.[8] This is purely a consequence of the concept alone, because Oestreich defines social disciplining (*Sozialdisziplinierung*) as a reaction to confessionalization.[9]

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4   Gerhard Oestreich, 'Justus Lipsius als Theoretiker des neuzeitlichen Machtstaates', in Gerhard Oestreich, *Geist und Gestalt des frühmodernen Staates. Ausgewählte Aufsätze* (Berlin, 1969), pp. 35–79, here p. 64; also Oestreich, 'Strukturprobleme des europäischen Absolutismus', in Oestreich, *Geist und Gestalt*, pp. 179–97, here p. 194 f., for the eighteenth century. See also Gerhard Oestreich, 'Policey und Prudentia civilis in der barocken Gesellschaft von Stadt und Staat', in his *Strukturprobleme der frühen Neuzeit. Ausgewählte Aufsätze* (Berlin, 1980), pp. 367–9, here pp. 377–9 (concerning Elias). Siegfried Breuer, 'Sozialdisziplinierung. Probleme und Problemverlagerungen eines Konzepts bei Max Weber, Gerhard Oestreich und Michel Foucault', in Christian Sachße and Friedrich Tennstedt (eds), *Soziale Sicherheit und soziale Disziplinierung* (Frankfurt am Main, 1986), pp. 45–69, here p. 55: 'Parallel dazu gewinnt der Neustoizismus auch für das "sitzende Heer" der Beamten an Bedeutung, deren höhere Ränge an den Universitäten zunehmend unter den Einfluß der "prudentia civilis" geraten, einer Morallehre, die Gehorsam und Disziplin sowie die "Meisterung der Affekte zur Bewältigung des individuellen Lebens wie zur widerstandslosen politischen Unterordnung lehrt" ... [und] als Voraussetzung einer geordneten Herrschaft betont.'
5   Oestreich, 'Strukturprobleme des Absolutismus', p. 193 f.
6   Breuer, 'Sozialdisziplinierung', p. 55. All quotations in the text are translated by me. The original text is written in the footnotes, here 'Alle diese Disziplinierungsprozesse addieren sich nach Oestreich zu einem gewaltigen "Vermachtungsprozeß", der die Grundstrukturen des politischen, gesellschaftlichen und geistigen Lebens tiefgreifend umgestaltet, indem er sie auf eine Zentralinstanz hinordnet.'
7   Heinz Schilling, 'Die Kirchenzucht im frühneuzeitlichen Europa in interkonfessionell vergleichender und interdisziplinärer Perspektive – eine Zwischenbilanz', in Heinz Schilling (ed.), *Kirchenzucht und Sozialdisziplinierung im frühneuzeitlichen Europa* (Zeitschrift für Historische Forschung, Supplement 16, Berlin, 1994), pp. 11–40, here p. 12.
8   Paul Münch, *Zucht und Ordnung. Reformierte Kirchenverfassungen im 16. und 17. Jahrhundert (Nassau-Dillenburg, Kurpfalz, Hessen-Kassel)* (Stuttgart, 1978), p. 183, note 61.
9   Oestreich, 'Strukturprobleme des Absolutismus', p. 189 f. On Calvin and Puritanism see ibid., p. 192.

Nevertheless research into the early modern period, in so far as it studies the influence of confession and church on social historical development, has adopted social disciplining as a central paradigm,[10] but has changed it fundamentally by integrating religion and extending the temporal space back into the years 1530–1650.[11] Confessionalization becomes, according to Wolfgang Reinhard and Heinz Schilling, part of the process of social disciplining and the indoctrination of people with religion, Christian norms and morality, primarily through the morals courts and presbyteries, its essential means.[12] The amalgam of paradigms thus formed – the combination of confessionalization and social disciplining – is of German origin, but claims European validity.[13] Through a 'criminalization of sin' – that is the message – confessionalization becomes an agent of absolutism at the expense of communal self-regulation.[14] The individuals and the village and city communes were 'virtually overrun by the "apparatus" of the early modern state and the confessional churches. In the cities and the villages the people increasingly got the clear impression of being exposed to an inescapable influence from "above"'.[15]

Besides this form of confessionalization, there was a niche-variant: the self-made, not state-enforced, church discipline of the autonomous communal churches of the Huguenots, of the Dutch and of some North German churches such as Emden, in which 'the church congregation was not only the object, but equally the subject, of church discipline'.[16] But

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10   For the reinterpretation of Oestreich's concept through research into confessionalization see Schilling, 'Die Kirchenzucht', p. 12.
11   Winfried Schulze, 'Gerhard Oestreichs Begriff "Sozialdisziplinierung in der frühen Neuzeit"', *Zeitschrift für Historische Forschung*, 14 (1987), 265–301.
12   Wolfgang Reinhard, 'Zwang zur Konfessionalisierung? Prolegomena zu einer Theorie des konfessionellen Zeitalters', *Zeitschrift für Historische Forschung*, 10 (1983), 257–77, here p. 268. Heinz Schilling, *Aufbruch und Krise. Deutschland 1517–1648* (Berlin, 1988), p. 274; see also p. 366.
13   Heinz Schilling, 'The Reformation and the rise of the Early Modern state', in James D. Tracy (ed.), *Luther and the Modern State in Germany* (Kirksville, 1986), pp. 21–30, here pp. 23, 24 f., 30. See Heinz Schilling, '"History of Crime" or "History of Sin"?', in E. I. Kouri and Tom Scott (eds), *Politics and Society in Reformation Europe* (London, 1987), pp. 289–310, esp. pp. 297–306.
14   Schilling, 'History of Sin', pp. 297, 304.
15   Heinz Schilling, 'Konfessionalisierung im Reich. Religiöser und gesellschaftlicher Wandel in Deutschland zwischen 1555 und 1620', *Historische Zeitschrift*, 246 (1988) 1–45, here p. 43: 'durch den neuzeitlichen "Apparat" des frühmodernen Staates und der Konfessionskirchen geradezu überfahren ... In den Städten und Dörfern gewannen die Menschen immer deutlicher den Eindruck, einer unentrinnbaren Einwirkung von "oben" ausgesetzt zu sein.'
16   Schilling, 'History of Sin', p. 297. See also his 'Reformierte Kirchenzucht als Sozialdisziplinierung? Die Tätigkeit des Emder Presbyteriums in den Jahren 1557–1562',

these phenomena were marginal to the mainstream drift towards absolutism. Through the amalgamation of the two concepts of social disciplining and confessionalization, the latter is given an 'etatist' touch. It becomes an action enforced by the State, strongly and effectively exercised to change popular culture along the lines defined by the élites.[17] One thing, concluded Heinz Schilling, 'must be said of all three confessionalizations – they were the actions of the princes'.[18] The theory of Oestreich is very close to the acculturation thesis of French historiogaphy, which postulates a struggle of élite culture against popular culture.[19]

However, Schilling recently expressed doubts, calling for a reconsideration of the role of the communes and their autochthonous efforts towards discipline even in a state–church system.[20] This is an important anti-etatist turn,[21] through which he withdraws from the standpoint of Wolfgang Reinhard, who repeated his position of 1983[22] in 1993 unchanged.[23]

One can summarize the research on Central European confessionalization by postulating two main emphases for the work of morals courts:

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in Heinz Schilling and Winfried Ehbrecht (eds), *Niederlande und Nordwestdeutschland. Studien zur Regional- und Stadtgeschichte Nordwestkontinentaleuropas im Mittelalter und in der Neuzeit* (Cologne, 1983), pp. 261–327, here pp. 273, 275 relating to Emden. He stresses, p. 275, that the commune supported church discipline.

[17]   Schilling, 'Konfessionalisierung', p. 6: 'Verzahnung mit der Herausbildung des frühmodernen Staates und mit der Formierung einer neuzeitlich disziplinierten Untertanenschaft.'

[18]   Ibid., pp. 11, 34: 'Das gilt von allen drei Konfessionalisierungen – sie waren Fürstenkonfessionalisierungen.'

[19]   Peter Burke, *Helden, Schurken und Narren. Europäische Volkskultur in der frühen Neuzeit* (Munich, 1985), pp. 221–5. English version as *Popular Culture in Early Modern Europe* (London, 1978). See Kaspar von Greyerz, 'Religion und Gesellschaft in der frühen Neuzeit (Einführung in Methoden und Ergebnisse der sozialgeschichtlichen Religionsforschung)', in *Religiosität – Frömmigkeit – Religion populaire* (Veröffentlichungen der Schweizerischen Gesellschaft für Wirtschafts- und Sozialgeschichte 3, 3, Lausanne, 1984), pp. 13–36, here p. 21. See also the survey of Günter Lottes, 'Popular culture in England (16.–19. Jahrhundert)', *Francia*, 11 (1984), 614–41. On popular culture studies see also Schmidt, 'Christianisierung', pp. 120–3.

[20]   Schilling, 'Die Kirchenzucht', pp. 30 f., 38–40; *idem*, 'History of Sin', pp. 296, 304. Geneva, with the membership of magistrates in the presbytery, looks like the etatist variant of discipline.

[21]   Schilling, 'Die Kirchenzucht', p. 30.

[22]   Reinhard, 'Zwang', p. 268.

[23]   Wolfgang Reinhard, 'Was ist Katholische Konfessionalisierung?', in Wolfgang Reinhard and Heinz Schilling (eds), *Die katholische Konfessionalisierung* (Gütersloh, 1995), pp. 419–52, esp. pp. 425–35. See also Wolfgang Reinhard, 'Gegenreformation als Modernisierung? Prolegomena zu einer Theorie des konfessionellen Zeitalters', *ARG*, 68 (1977), 226–52.

1.   They were means by which the state disciplined an unwilling people.
2.   They succeeded in discipling and civilizing the subjects, thereby creating new mentalities.[24]

Both assertions are of wide-ranging importance for the understanding of the whole epoch, even for our historical conscience. Must we understand ourselves as products of absolutism and its educational programme? Is history the effect of the élites? A study that focuses on morals courts, which have been called the 'apparatus' of social disciplining, will help to find answers and to re-examine the main paradigms of confessionalization.[25]

The object of the present study is the canton of Berne, and in it two villages near the capital, Vechigen and Stettlen.[26] Two clear differences are immediately apparent in this study: between the villages and between centuries. Vechigen is approximately 25 km² and Stettlen only 3.5 km² (see Figure 10.1). While Stettlen was mainly an enclosed village with few surrounding farmsteads, Vechigen was characterized by small villages with many individual farmsteads. Vechigen was approximately four times larger than Stettlen (in 1764, 1 569 inhabitants as against 415). Stettlen was not only smaller, but it was also clearly more densely populated and, as far as one can judge, a poorer settlement dominated by weavers. Those groups that were not in a position to live off the land formed a clear majority in Stettlen. The population there grew faster, and the productive capacity of the agricultural land was more quickly and clearly exceeded. Common lands in Stettlen were broken up earlier. Social distinctions between poor and rich were greater: 15 per cent of the population owned 70 per cent of the land, but in Vechigen, by comparison, this percentage was owned by 26–29 per cent of the population. In Stettlen the remaining population owned an average of 1.6 hectares, whereas in Vechigen the remainder owned nearly 2.7 hectares. Proto-industrialization was more intensive in Stettlen and achieved a higher proportion of the spectrum of occupations.

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[24]   For a new survey of Protestant church discipline all over Europe see Heinrich Richard Schmidt, 'Gemeinde und Sittenzucht im Europa der Frühen Neuzeit', in Peter Blickle and Elisabeth Müller-Luckner (eds), *Theorien kommunaler Ordnung in protestantischen Europa* (Munich, 1996), pp. 181–214.

[25]   Ibid.

[26]   See above, note 2: all the evidence is in Schmidt, *Dorf*. There is also a diskette accompanying the book, containing all relevant data in digital form (dBASE, Lotus-wks, SPSS) together with an English explanation. See also the English summary of the study: Schmidt, *Dorf*, pp. 377–400.
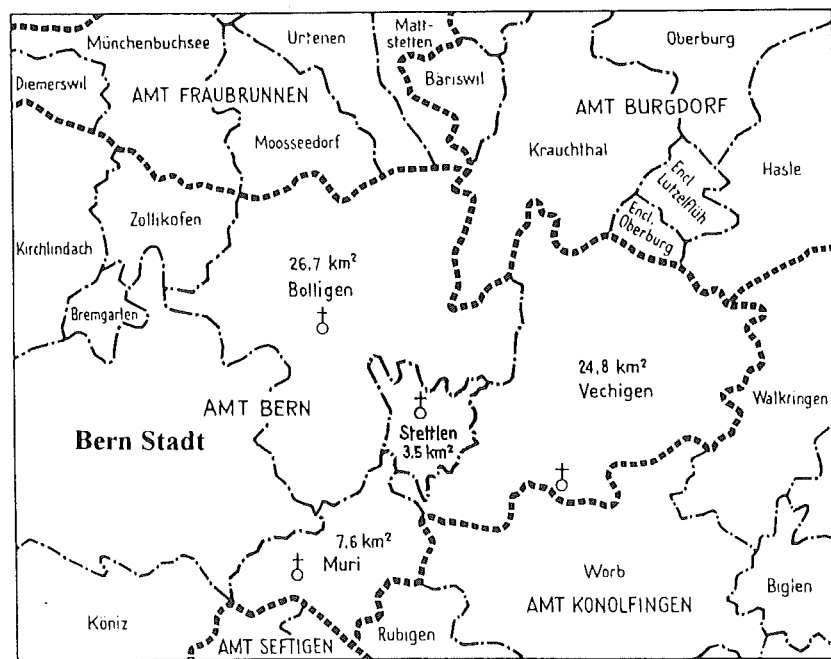
10.1   Map of the region of Berne

The difference between centuries lay in the sudden increase in the number and intensity of structural social stresses evident in both communities from the beginning of the eighteenth century. The population grew rapidly. Strangers and the poor within the community turned increasingly to proto-industrialization as a source of livelihood. Market connections became more and more prominent, whether from peasants' surplus production or from textile workers. The traditional orientation towards the village and its social controls disappeared.

In this investigation the small town of Biel, which is now part of the canton of Berne, is also included in order to take the sixteenth century into account, a period hardly touched by the rural records. Until the nineteenth century Biel belonged to the Prince-Bishopric of Basle, although it retained a largely autonomous position. Finally, data from an earlier study of the territory of Berne in Aargau is recalculated and incorporated into the discussion.[27] But the main conclusions rest on the two villages, Stettlen and Vechigen.

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[27]   Willy Pfister, *Das Chorgericht des bernischen Aargaus im 17. Jahrhundert* (Aarau, 1939).

In these villages Christian discipline was exercised through the local morals courts in Berne, called *Chorgerichte*, whose aims were the enforcement of the Ten Commandments. They were implemented in the great mandates on morality, which attempted to instruct the people of God, that is the authorities and subjects of the state of Berne, how they should pay homage to the holy majesty of God.[28] God was to be honoured through the reform of morals, through obedience and piety, and through a Christian life. Those who did not honour God would suffer His severe punishment both in this world and in the next. This also affected the innocent, who did not actively resist the sins of others. The instructional appeal of the authorities to the conscience demanded repentance, conversion and improvement.

The *Chorgericht*, the local consistory, put this increased aspiration to sanctification, typical of Reformed Protestantism, into practice. It brought with it the innovation that each parish had a court staffed by parishioners. The election of elders (the *Chorrichter*) and of the *Ammann*, the *de jure* representative of the city magistrates, by the community became common after the Reformation. In sociological terms, most judges were elected from among the more wealthy farmers (represented at double the level justified by their share of the population). The judges were the local notables, the 'fat peasants' (*dicke Bauern*), who represented the whole community but could also control it (see Figure 10.2). The apparatus of the modern state, as Heinz Schilling called the morals courts, were the subjects themselves.

The prerogative of punishments held by the *Chorgericht* ranged from minor warnings to fines such as five shillings or more, prison sentences of a maximum of three days and public humiliation. Bernese *Chorgerichte* never acquired the right to excommunicate. All men and women who were brought before the local *Chorgericht*, and all their offences, that is transgressions of Christian norms, have been analysed through a detailed description and through a quantitative evaluation: a total of 12 983 male and 6 375 female offences were calculated, in all 19 358 offences. Because a person could commit more than one offence at a time, the actual number of people brought before the courts was lower: approximately 12 113 people were tried. Women formed approximately one-third of this number. In this study, the activities of the morals courts are analysed in four sections: church discipline in its narrowest

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[28]   Sources with normative writings (mandates, statutes, letters) concerning state and church in Berne are published in *Sammlung Schweizerischer Rechtsquellen. Die Rechtsquellen des Kantons Bern*, part 1: Stadtrechte, vol. VI, 1 and 2: Staat und Kirche, revised by Hermann Rennefahrt (Aarau, 1960–61).
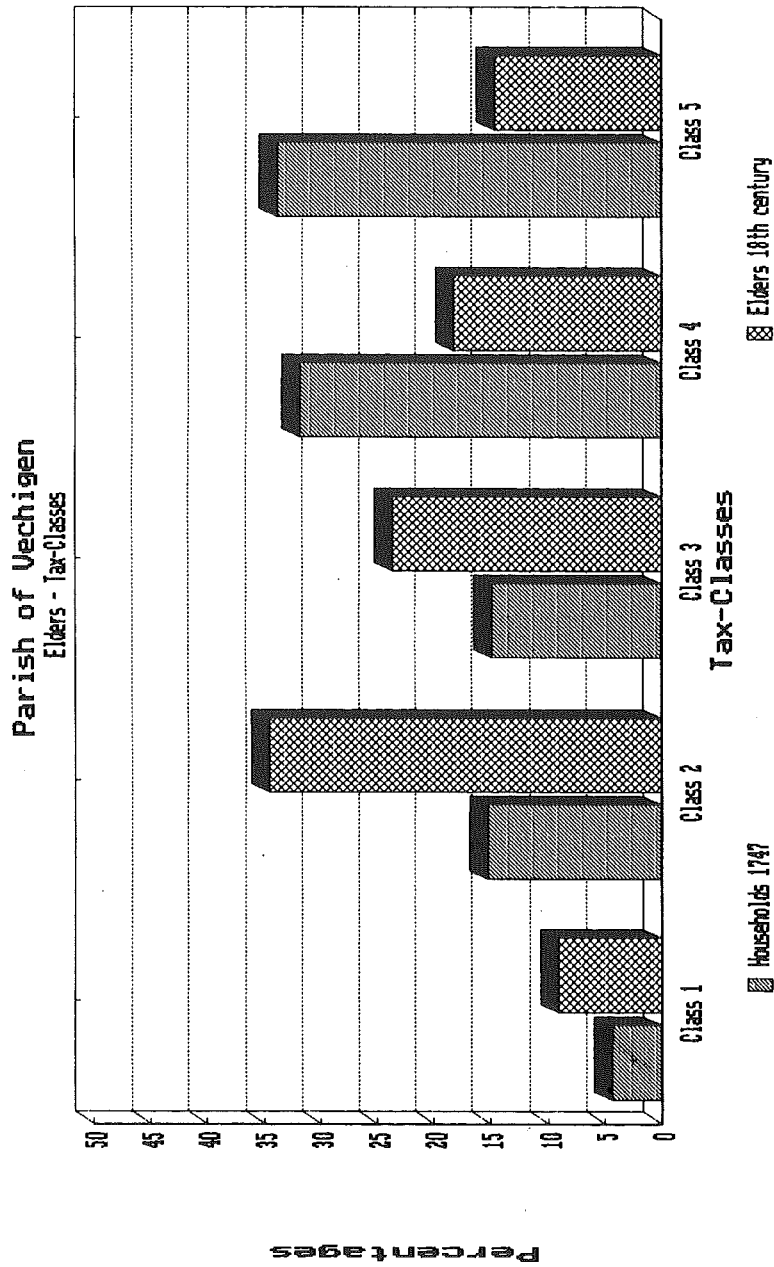
10.2 . Tax classes of elders

sense, sexual discipline, matrimonial order, and the social regulation of neighbourhood relations.

Church discipline in the narrowest sense confronted paganism and magic on the outside, and battles for piety on the inside. Magical action is grasped through an analysis of cursing, which is essentially word-based magic. Witchcraft and casting magic spells were not brought before the *Chorgericht* of Biel, Stettlen or Vechigen, in contrast to cursing.

Cursing means the malediction of another in order to cause harm, and is a verbal form of harmful magic.[29] Common scolding is close to this, but has little to do with magic. Everyday oaths can be distinguished from cursing, in the period of this study, by the severity of the punishment meted out. The high female proportion of 'heavy cursing' is particularly worthy of note: in Vechigen, which is of particular statistical significance, the relation of men to women severely punished is 1:2 and women, who were less often accused, were four times more likely to get harsh punishments than men (see Figure 10.3). If the degree of punishment is a measure of the magical, blasphemous quality of the cursing, then women were clearly more imputed to be inclined to magical cursing than men.

Figure 10.4 represents the proportion of severe punishments changing in time, again divided along the lines of gender. It describes the change as a 'decline of magic' – a conclusion that is very similar to the Weber thesis of rationalization or the demagification of the world.

The 'decline of magic' is, however, no smooth victory for religion and the church.[30] The demagification intended by confessionalization dragged religion down with it, because this was subject to the same secularization as magic: the 'decline of magic' is at the same time the 'decline of religion'.

As part of the results of the social-historical analysis, one can determine in the first place that women were clearly more religious and conformist than men. They were three times less likely than men to be summoned for transgressions. They demonstrated a greater affinity for the church service, catechism, and discipline.

A second result of the analysis was that judges themselves were also frequently among the defendants. Hence they were often accused of lax and uncooperative behaviour or even of being disobedient to magisterial authority. They did not carry out adequately the duties of their

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29   For blasphemy, cursing and swearing see Heinrich Richard Schmidt, 'Die Ächtung des Fluchens durch reformierte Sittengerichte', in Peter Blickle (ed.), *Der Fluch und der Eid* (Zeitschrift für Historische Forschung, Supplement 15, Berlin, 1993), pp. 65–120.

30   Keith Thomas, *Religion and the Decline of Magic. Studies in Popular Beliefs in Sixteenth and Seventeenth Century England* (London, 4th edn, 1980).

Cursing: Punishments
Vechigen and Stettlen
Average for the whole Period

Proportion of all Offences as %

Vechigen Men Stettlen Men Vechigen Women Stettlen Women

severe Punishments mild Punishments Censure/none
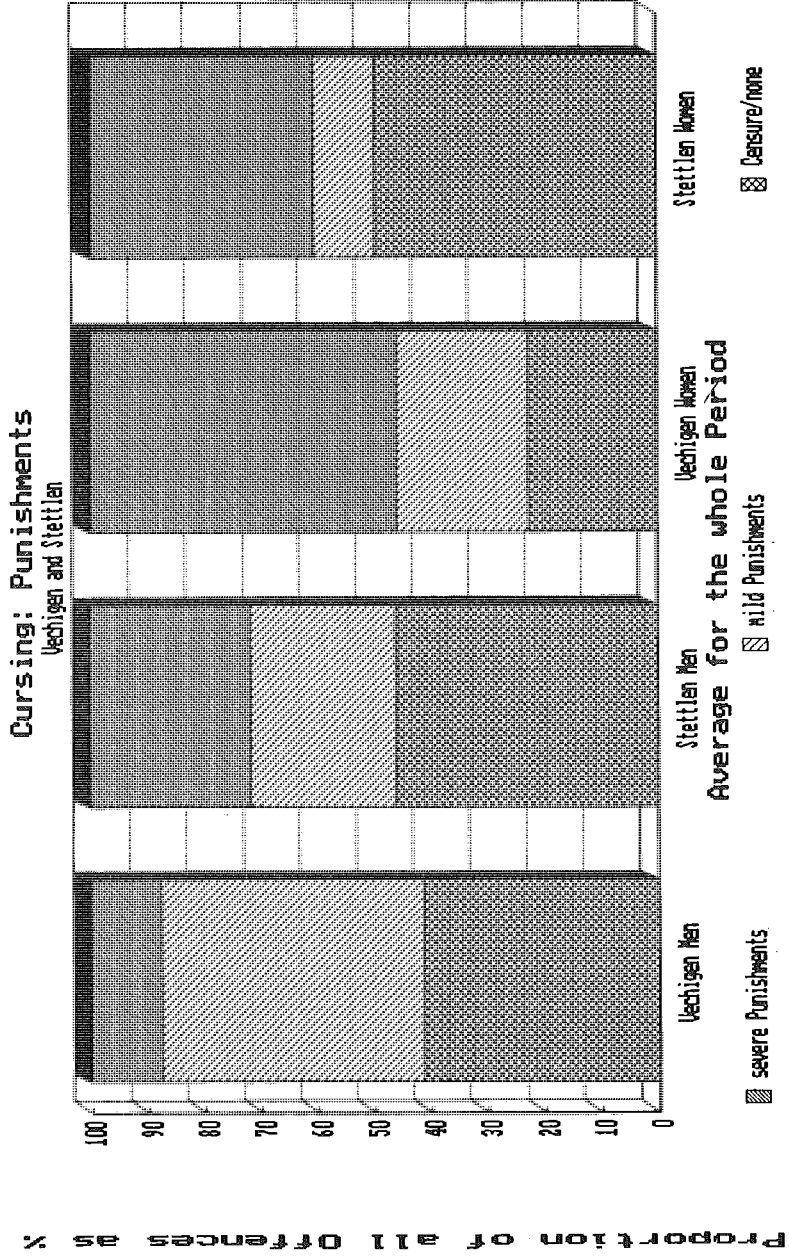
10.3 Gender differences in cursing penalties

Cursing: Severe Punishments
Biel / Vechigen / Stettlen

Proportion of all Offences as %

50-Year-Averages

1525 1550 1575 1600 1625 1650 1675 1700 1725 1750 1775 1800

Vechigen Men * Vechigen Women + Biel Men + Biel Women + Stettlen Men + Stettlen Women
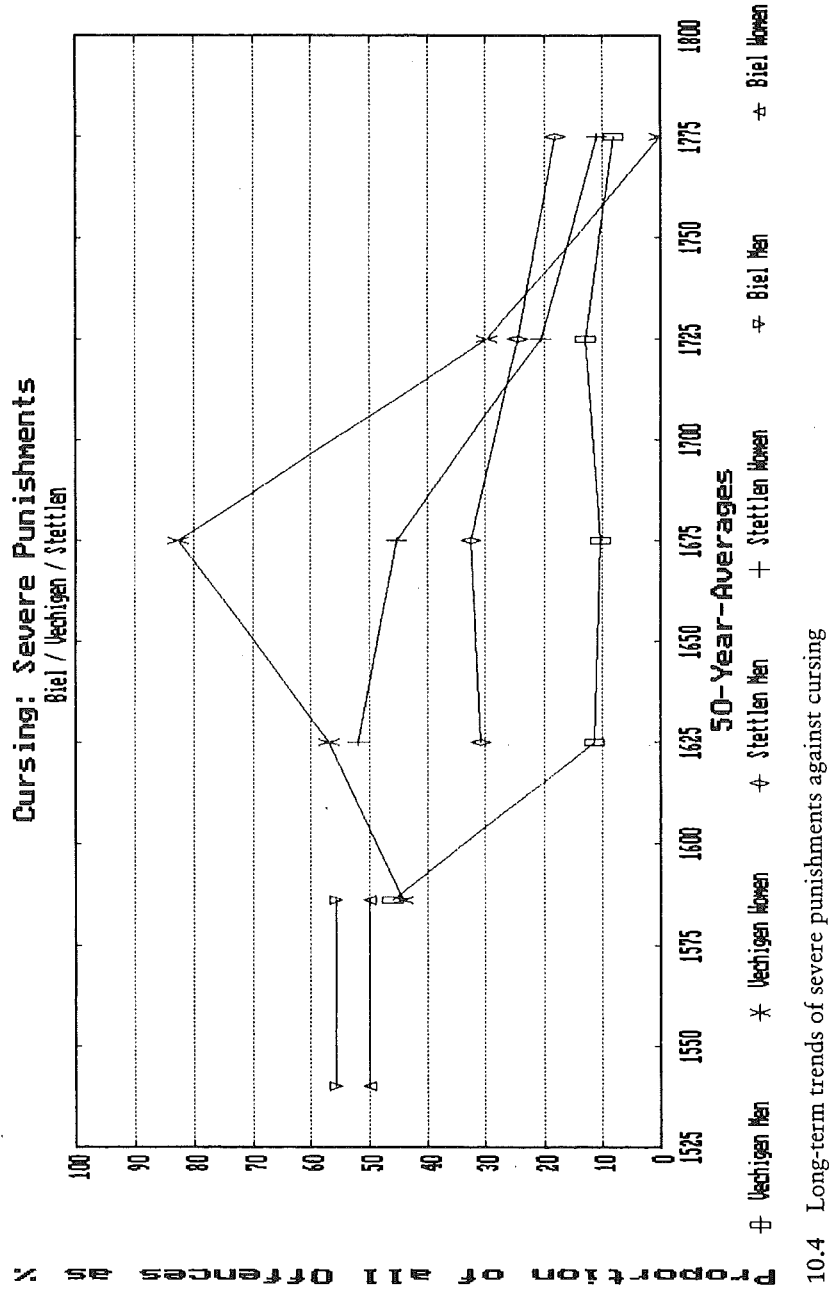
10.4 Long-term trends of severe punishments against cursing

office, as understood by Berne and by the pastor. It can therefore be concluded that the morals courts did not function as an apparatus of the early modern state; they did not follow the prerogatives of a continuous discipline or a concept of improvement.

Third, the offences of religious dissidence or resistance were not the preserve of any one social group, and were in any case not offences of the poor. This did not change over the long term. Surprisingly, but unequivocally, all levels of society retained a certain distance from the Church and therefore the citizenry was predominant.

The concern to put the village inhabitants under church rule only met with partial success. Sunday sermons and communion were already frequently attended in the early seventeenth century. Clearly more problematic were the weekday sermons and catechisms. Figure 10.5 summarizes all religious offences.

Three phases of increased delinquency in the area of religion become apparent: 1600–15, 1640–70/90, 1715–35. In particular around 1640–70/90 the avoidance of the obligations of religious duty increased enormously. After 1735 all indices subsided permanently, and a weak groundswell remained until 1800. While the first, in part minor, peak of 1600–15 can be attributed to the initial problems involved in beginning an intensive moral discipline after the *Chorgericht* Statute of 1587, the greatest peak of 1640–70/90 is possibly linked with consequences of the fall in grain prices and the Swiss Peasants' War of 1653, in which the church was no longer perceived as representing the wishes of the subjects but those of the authorities, with an alienation of church and people as the result.

The phase after 1735 poses the greatest interpretative problems. Are the numbers so small because so few transgressions were committed, or were so few offences investigated because they were regarded as little more than annoyances? The reports of the clergy from 1764 to 1794 clearly suggest an interpretation of the development as a 'decline of religion'. The sources reflect not a breakthrough but a collapse of religious discipline in the eighteenth century. This century is the century of secularization, and therefore, trends were not calculated beyond 1735. The courts changed back from morals or religious courts, to marital courts, which tried to enforce discipline in sexuality and marriage.

This important next aspect of the church's activity was concerned mainly with trials of premarital sexual relationships. These could take the form of paternity suits, in which pregnant women sued for recognition of paternity. Other forms of trials included sexuality that existed altogether outside marriage, even when no children resulted (that is the *Kilten* and *Fensterln*, the nocturnal visits of young men to women, to
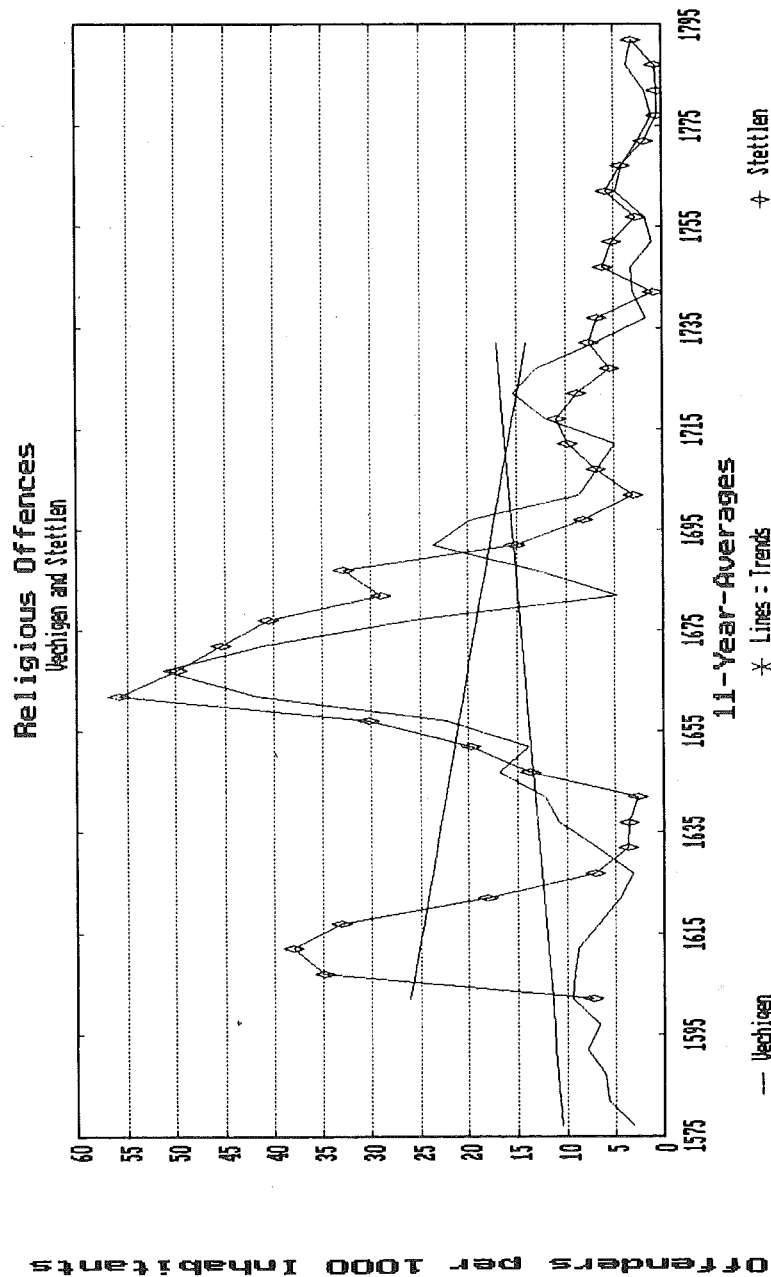
10.5 Developments and trends of religious offences
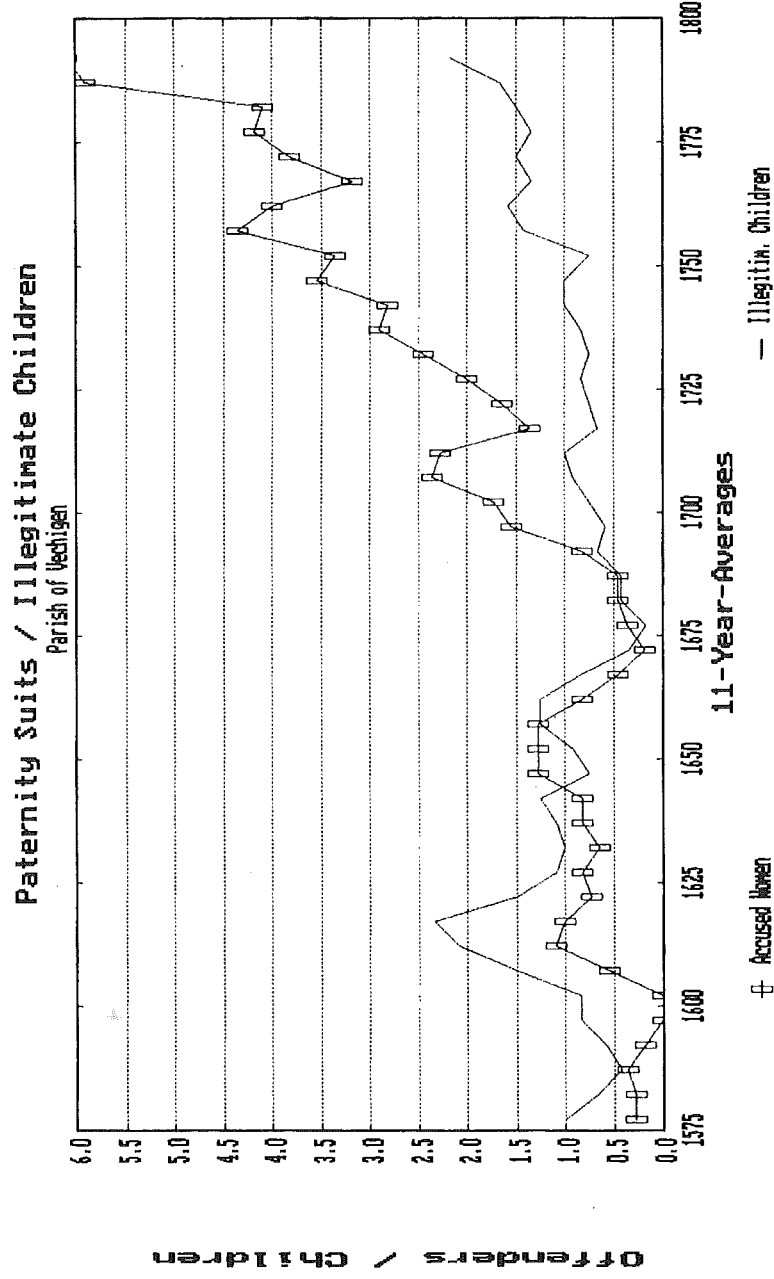
10.6 Number of paternity suits and illegitimate children: parish of Vechigen
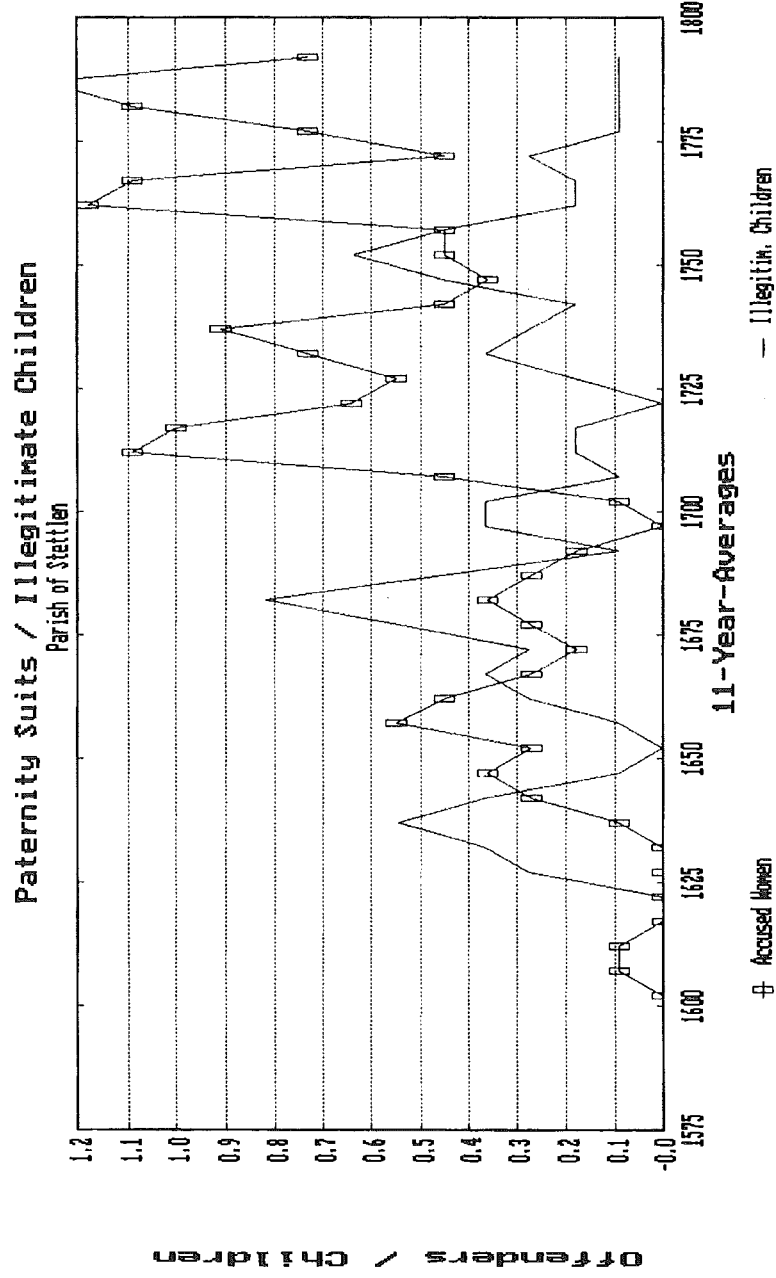
10.7 Number of paternity suits and illegitimate children: parish of Stettlen

which the church naturally objected) and, finally, broken promises of marriage. Pregnant brides, who gave birth eight months or less after marriage, were only prosecuted very late and for a very short period. They were only criminalized between 1690 and 1760 by the *Chorgericht*. This resulted from the fact that the Council of Berne itself regarded the promise of marriage, and the consummation of the relationship, as conclusive for a marriage, with a wedding by contrast being only a confirmation.

With paternity suits the principle of self-disclosure was the rule, mostly by the woman who declared her sin, namely premarital sexual intercourse, and submitted herself to the punishment of the *Chorgericht*. She did this in order to bring the accomplice to justice, who would in any case be sought after and cited, and who would usually receive an equal punishment. Surviving children born out of wedlock were awarded by the courts to the father, not simply paid alimony but placed into his care.

The number of accusations clearly show a decline of moral discipline in the field of sexuality (see Figures 10.6 and 10.7). The overwhelming majority (over three-quarters) of all sexual transgressions were brought to trial in the eighteenth century. Propriety in relationships between the sexes had relaxed. Against this, the total of sexual contacts brought to trial did not increase. Before 1700 approximately twice as many people were tried for *Huren* (fornication) or *Kilten* (illicit nocturnal meetings) as for paternity. After this the numbers of accusations for fornication and paternity came increasingly closer together until they nearly reached a relationship of 1:1. One can interpret this as indicating that until the beginning of the eighteenth century, the *Chorgericht* attempted to stop suspicious sexual contacts before they could lead to a child. The morals courts were practising prophylaxis. That changed later: practically only those cases of fornication that led to pregnancy were punished. From prophylaxis, practice changed to damage control.

The number of lawsuits for breach of betrothal did not increase in the same proportion as paternity suits. The promise of marriage lost its character as a rule. Numbers of engagements before the initiation of sexual contacts in cases of paternity suits fell rapidly in the eighteenth century in comparison to the previous century, from approximately 30 per cent to less than 10 per cent. A change can be inferred from this that can only be described as a 'sexual revolution'.[31] Understanding the process of this change can be aided by a social historical analysis. While the traditional value of roughly over 30 per cent of betrothals in trials

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[31]   Edward Shorter, *Die Geburt der modernen Familie* (Reinbek, 1977), esp. pp. 258–66, 289–303. English version as *The Making of the Modern Family* (New York, 1975).

for pregnancy remained constant for servants also in the eighteenth century, with craftsmen it lay at barely over 10 per cent. This clear difference determined the trend through the proportional increase in numbers of rural craftsmen. Consequently, it was the rural craftsmen who by their 'lax' sexual behaviour undermined the rule that sexuality leads to marriage. If one distinguishes between 'traditional' and 'proto-industrialized' occupations, it is clear that the 'new' craftsmen, with less than 5 per cent, reveal fewer numbers of betrothals than those practising the 'old' crafts, where the number lay between 20 and 25 per cent.

The apparently far too small number of illegitimate children in the parish baptismal register is just as noticeable (see Figures 10.6 and 10.7). There were many more pregnant women appearing before the *Chorgericht* than there were children of their pregnancies in the parish baptismal register. In particular, in the eighteenth century it is evident that many foetuses conceived outside wedlock and acknowledged by the authorities died in the period from the sixth month of pregnancy until the time of baptism. This was the result of physical or psychological strain, negligence and conscious abortion, or of infanticide. One must concur with contemporary observers and regard 'infanticide', in the widest sense of the word, as a mass phenomenon.

If the goal of moral discipline had been to undermine premarital sexuality and make marriage its refuge, then it failed. The processes of social change were not so much concerned with the history of social disciplining as with the history of the decline of peasant-communal norms.

This change can also be seen in marital disputes. There were very few complaints against women who did not help their husband, care for him, or removed goods and money from the house. Only in a few cases did the *Chorgericht* have to support the dignity of the husband against the wife. Much more common were complaints against men who did not live up to the model of the ideal husband. However, in only 28 per cent of the cases in Vechigen can the source of the complaint be identified without doubt. It is possible that some of the other cases were brought to court by neighbours, until the eighteenth century when the neighbourhood lost its role in regulating morality. Where the complainants can be identified, in approximately three-quarters of all cases, these were women.

The ideology of the well-ordered house (*Hausvater-Ideologie*) cut both ways.[32] On the one hand it supported the marital patriarch, but

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[32]   Especially important for this conclusion are newer studies on marital conflicts: Thomas M. Safley, *Let No Man Put Asunder. The Control of Marriage in the German Southwest: A Comparative Study, 1550–1600* (Kirksville, 1984); Lyndal Roper, *The*

on the other hand it gave the wife the foundation of arguments from which to domesticate her husband. She could draw upon expected standards of performance, above all the expectation to achieve a guaranteed means of support. In connection with this, wastefulness, sloth and alcohol came in for criticism. Severe cases could lead to a ban on public houses, with the accused husband being decried. Disorderly living (*schlechtes Hausen*) was an offence of men. In Vechigen and Stettlen approximately three-quarters of those accused were men (in Vechigen 81 per cent, in Stettlen 74 per cent). In Biel the number of men was hardly smaller at 68 per cent. It is also apparent that in Stettlen the problems of marriage and households were more frequent, relative to the size of the population, than in Vechigen. This is explained by the fact that the community of Stettlen was poorer and more prone to suffering social distress, so economic problems emerged more frequently and led sooner to conflicts. These factors were even more important in connection with alcohol consumption, in particular for men. Stettlen reached levels here which, when coupled with marital strife, were as high as those of Vechigen. Relatively many men were cited for bad household management without a conflict within the marriage being apparent. Thus, in the sense of the thesis of the increasing subjection of social conflict to legal forms (*Verrechtlichungs-These*), bad behaviour – mostly by the men – was corrected in the courts, without the opposing party to a suit having to pick a quarrel and break marital solidarity.[33]

The use of violence in an argument was defined by women as a fundamentally unjustified use of force. Men were accused of violence in 90 per cent of cases in Stettlen and, by comparison, in 74 per cent of cases in Vechigen. Women were, however, more represented in the area of verbal aggression. Every form of violence tended to become a problem and was outlawed through the demand that conflicts should be solved peacefully and with the involvement of the *Chorgericht*. The rights of the man to exercise chastisement were not permitted to exceed strict boundaries. Even when a woman had been 'lawfully' struck, the man was punished for his 'tyrannical' use of force. The relationship between a married couple should be marked by 'friendliness' and 'love'.

Holy Household. Women and Morals in Reformation Augsburg (Oxford, 1989); David W. Sabean, *Property, Production, and Family in Neckarhausen, 1700–1870* (New York, 1990), esp. pp. 88–146; Heinz Schilling, 'Frühneuzeitliche Formierung und Disziplinierung von Ehe, Familie und Erziehung im Spiegel calvinistischer Kirchenratsprotokolle', in Paolo Prodi (ed.), *Glaubensbekenntnisse, Treueformeln und Sozialdisziplinierung zwischen Mittelalter und Neuzeit* (Munich, 1993), pp. 199–235.
33   Winfried Schulze, *Einführung in die Neuere Geschichte* (Stuttgart, 1987), pp. 62–5.

The *Chorgericht* usually took the side of the woman. Marital discipline was a field in which women could domesticate their men. This alliance, between the values of the women complaining and the values that the *Chorgericht* had to defend, functioned until the end of the *ancien régime*. The idea of marriage revealed by the Reformed morals courts cannot be described as predominantly patriarchal, but originated from the idea of a Christian marriage based on equality, consensus and co-operation. The thesis (recently increasingly propounded) which proposes that Christian goals launched the end of the idea of partnership appears to be relevant given the evidence presented here.

However, the trends are not clear in this case. In addition to the numbers of marital disputes for Vechigen and Stettlen (see Figure 10.8) some comparison could be drawn from the Aargau, for which there exists an analysis of the surviving data from the seventeenth century. Over the longer term, figures for Vechigen reveal a slight drop in values, and against this, figures for Stettlen and rural Aargau in the seventeenth century clearly reveal a rise. A smooth improvement in behaviour cannot be affirmed before the end of the period for which trends have been calculated (1735).

A change is evident as regards the causes of marital conflict. Economic problems recede in favour of the question of marital sexual fidelity. This could refer to the stronger value placed upon marital fidelity towards the end of the eighteenth century. Parallel to this, the importance of love grew from the seventeenth to the eighteenth century. Lack of love was increasingly a more frequent cause for complaint with both sexes. The wish associated with this, for more love, increased, which strengthens the suspicion that the marital bond had gained a more emotional tone.

Edward Shorter must be treated critically for mystifying the present in an unreliable fashion, in so far as he regarded the period before 1800 as one of coldness and lovelessness, and contrasted it in a romantic manner with a concept of marriage consumed by love in the nineteenth and twentieth century.[34] But one must give him credit for identifying a change in which village, church, and marital power relationships were turned upside down. The approach of capitalism ('proto-industrialization') is potentially crucial here. It strengthened the economic and thus the matrimonial position of women. Nevertheless, the instructional work of the *Chorgericht* was an essential condition without which the emancipation of marriage and love could not have occurred. It helped introduce the idea, albeit clothed in patriarchal language, of the wife as partner.

34   Edward Shorter, *Familie*.

10.8 Trends of marital disputes in Vechigen and Stettlen
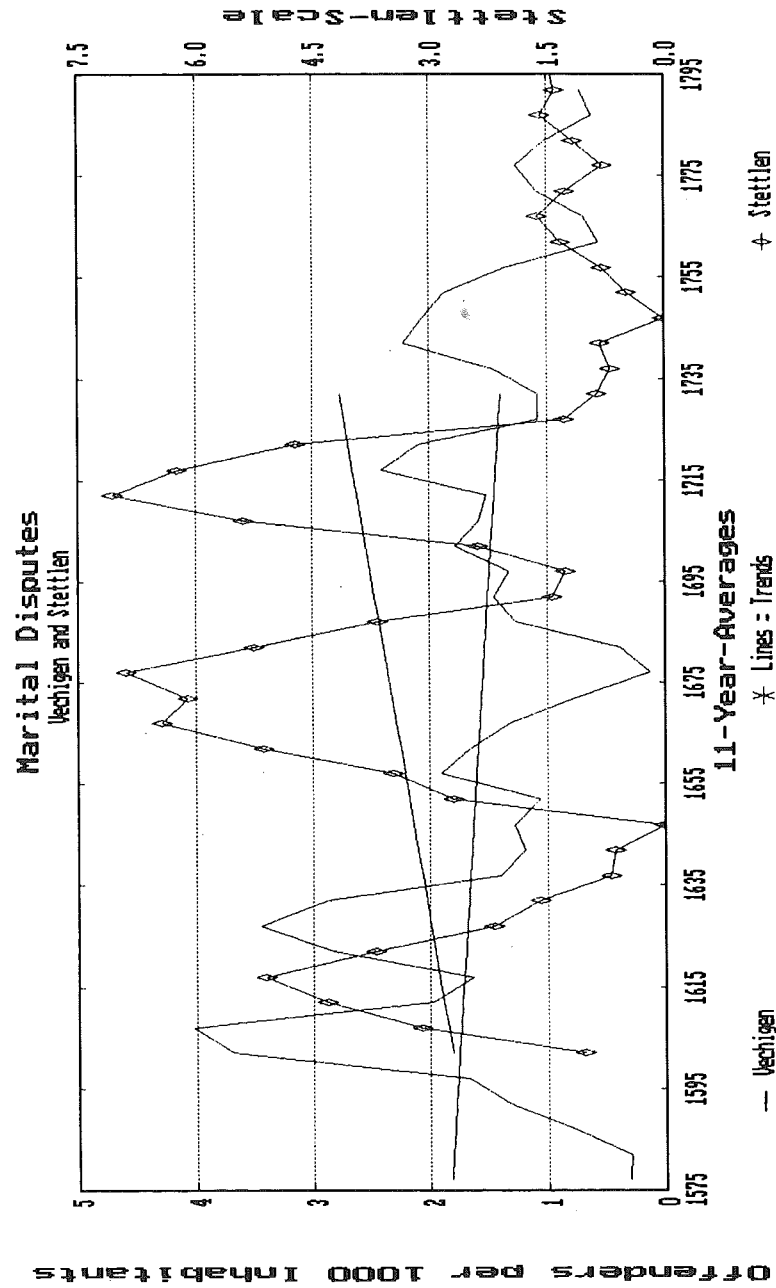
The role of the *Chorgericht* in the internal regulation of the community and its constituent parts, the individual houses, is especially clear in the case of marital disputes: there had to be one party that sought a partner in its dispute; the *Chorgericht* could be such a partner is so far as its goals met with those of that party. And, as an overall conclusion, the main goal of all participants was the maintenance of peace and unity. One could describe the basic function of the morals courts, for the whole community and its integral parts, as the regulation of their social stability, and the repair of broken relationships.

The relations within a family were meant to be marked by harmony. Courts also played the role of a mediator in neighbourhood disputes, and sought to re-establish harmony and reconcile neighbours in dispute with each other. Relatively little is known about the meaning of violence in interpersonal conflicts in the early modern period. For this reason we are obliged to extrapolate the role of violence in everyday life from cases of severe offences such as murder and manslaughter. However, we must remain aware of the distortions that have to be accepted in such an approach. This is demonstrated by the very different view offered by the commonplace conflicts between neighbours that were purged before the *Chorgericht*, and the picture presented, for example, by Muchembled's *La violence au village*.[35]

Some information about the social status of the people in dispute exists (with 50 per cent of the women it is possible to ascertain that they were married), and the few details of occupations. From these details, the following conclusions can be reached: violence in disputes among neighbours was more likely to be the offence of household patriarchs or matriarchs than of young men or women. The overwhelming number of married people among the perpetrators permits a further analysis when one compares the names in the marriage register. Some 79 per cent of the names of men involved in neighbourhood disputes are found in marriage rolls. The marriage rolls reveal information about the status of offenders: strangers to the village (non-citizens or *Nichtbürger*) – as far as one can ascertain, part of the lower local classes – were clearly underrepresented, until the situation changed in the second half of the eighteenth century. Above all, the burghers, not the lower levels of society, dominated village conflicts.

Very often the disputes erupted over the theft of provisions or other goods that belonged to the household, also over the children of the parties involved. The infringement of borders or rights of use of water

35   Robert Muchembled, *La violence au village. Sociabilité et comportements populaires en Artois du XVe au XVIIe siècle* (Turnhout, 1989).

or agricultural land weighed heavily on the disputants, as all of these were important for the disputants' existence. The moving of boundary posts, ploughing across field borders, and the diversion of water constituted theft of the most important means of production in agricultural society, the land. Self-defence, or defence of the family, also frequently led to accusations of maledictory magic, that in both communities, however, never broadened into witchcraft trials.

May, June, August and October, possibly also September, were months characterized by the increased frequency of disputes in Berne. The agricultural rhythm of work in the region must bear responsibility for this concentration. Neighbourhood disputes accumulated at the time of work such as harvest and fencing, which brought with it problems of demarcation.

Neighbourhood conflicts involved neighbours. This platitude is not quite as banal as it seems. It contradicts Muchembled's thesis that gangs of village youths dominated the scene, stirred up by alcohol and gambling. What happened in both of these parishes in Berne was quite different: a daily struggle for existence led to various kinds of border disputes.

The *Chorgericht* was not charged with the role of eliminating the causes of conflict. That was the responsibility of the secular courts. The purpose of the *Chorgericht* was the reconciliation of disputes. Neighbours were 'examined, unified, and exhorted to friendliness and neighbourly love'. The phrase 'neighbourly love', which had been disrupted and should be restored, recurred continuously. Neighbourhood and neighbourly love became synonymous. Similar to the concept of friendship (which also means 'relatives'), neighbourhood was a social entity and an ethical value.[36] It could not be compared to any damage, either

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[36] See also Heinrich Richard Schmidt, 'Pazifizierung des Dorfes – Struktur und Wandel von Nachbarschaftskonflikten vor Berner Sittengerichten 1570–1800', in Heinz Schilling (ed.), *Kirchenzucht*, pp. 91–128. The same conclusions can be drawn from studies on church discipline in Protestant Europe. See Schmidt, 'Gemeinde' for a European perspective. Also, for Germany, Switzerland: Heinz Schilling, 'Sündenzucht und frühneuzeitliche Sozialdisziplinierung. Die calvinistische presbyteriale Kirchenzucht in Emden vom 16. bis 19. Jahrhundert', in Georg Schmidt (ed.), *Stände und Gesellschaft im Alten Reich* (Veröffentlichungen des Instituts für Europäische Geschichte Mainz, Supplement 29, Wiesbaden, 1989), pp. 265–302; David W. Sabean, *Power in the Blood. Popular Culture and Village Discourse in Early Modern Germany* (Cambridge, 1984), esp. ch. 'Communion and community', pp. 37–60; also Bruce Gordon, 'Kirchenzucht in Zürich am Beginn der Reformation', in Heinz Schilling (ed.), *Kirchenzucht*, pp. 65–90, esp. pp. 79, 85. For France see Alfred Soman, 'Deviance and criminal justice in Western Europe, 1300–1800', *Criminal Justice History. An International Annual*, 1 (1980), 3–28, esp. 18–20; Raymond A. Mentzer, 'Le consistoire et la pacification du monde rural', *Bulletin de la Société de l'Histoire du Protestantisme français*, 135 (1989), 373–89 and his 'Disciplina

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material or imaginary, to one's fellow man. Love, peace, unity and friendship all possessed one meaning: the neighbourhood should be marked by Christian love. The love of fellow man was realized through 'neighbourly love'. The requirement to greet neighbours was frequently renewed as an expression of the duty of congeniality. Of constant concern in most cases was not simply the cleansing of conflict, but the elimination of hatred and even of antipathy. Parties in conflict were continuously warned to be good neighbours and not to pass each other silently in the street.

The reconciliation work of the *Chorgericht* aimed at the pure expression of the communion, before which all hatred and all animosity had to be exchanged for love. The love of one's neighbour was the prerequisite for communion. Communion attested to the love and peace that ruled the communicants, and was for this reason a celebration of love and peace.

The relationship between the numbers of citations in the communities where the most evidence survives, in Stettlen and Vechigen, is 1:2.7 – although the difference in the size of the communities is 1:3.8. This reveals that neighbourhood conflicts were more frequent in Stettlen than in Vechigen. The social and economic differences between the communities, described in the introduction, find their expression in the relative offence figures. Stettlen proved to have a clearly higher level of conflict over the whole period than Vechigen, and in addition these conflicts were intrinsically more violent in nature than with the traditional and more stable neighbouring community.

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nervus ecclesiae: the Calvinist reform of morals at Nîmes', *SCJ*, 18 (1987), 89–115; see also Bernard Vogler, Jean Estèbe, 'La genèse d'une société protestante: Étude comparée de quelques registres consistoriaux Languedociens et Palatins vers 1600', *Annales*, 31 (1976), 362–88, esp. 363. For Scotland see James Cameron, 'Godly nurture and the admonition in the Lord: ecclesiastical discipline in the Reformed tradition', in Leif Grane und Kai Hørby (eds), *Die dänische Reformation vor ihrem internationalen Hintergrund* (Göttingen, 1990), pp. 264–76. For England see John A. Sharpe, '"Such disagreement betwyx neighbours": litigation and human relations in Early Modern England', in John Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983), pp. 167–87; Ralph Houlbrooke, *Church Courts and the People during the English Reformation 1520–1570* (Oxford, 1979), esp. pp. 44–7. For the Netherlands see Herman Roodenburg, 'Reformierte Kirchenzucht und Ehrenhandel. Das Amsterdamer Nachbarschaftsleben im 17. Jahrhundert', in Heinz Schilling (ed.), *Kirchenzucht*, pp. 129–51. For Denmark see Troels Dahlerup, 'Sin, crime, punishment and absolution', in Leif Grane and Kai Hørby (eds), *Reformation*, pp. 277–88, here p. 285. For Sweden see Jan Sundin, 'Control, punishment and reconciliation. A case study of parish justice in Sweden before 1850', in Anders Brändström and Jan Sundin (eds), *Tradition and Transition. Studies in Microdemography and Social Change* (Umeå, 1981), pp. 9–65, esp. pp. 38–44, 56.

Trends in disputes (see Figure 10.9) do not reveal a social disciplining effect. The data from Biel in the sixteenth century reaches only half, or even only a quarter, of the defendants that 'should' have existed when one compares the total of inhabitants. Could the stricter moral discipline in Biel, with excommunication, and the greater temporal and material proximity to the Reformation together explain the stronger effect of discipline? Did success come at the beginning of the attempt to enforce discipline? In Biel, two-thirds of the defendants were women, in Vechigen 40 per cent and in Stettlen 44 per cent – essentially higher proportions to those we are accustomed to for serious offences. Thus women played a greater role in the neighbourhood, a form of public forum, than has usually been supposed.

The tendency towards aggression rose altogether as soon as social distress increased. This is clearly demonstrated when the collapse of grain prices in 1643 threatened the existence of market-oriented peasants who had speculated on the future and taken on credit following the earlier situation of war profiteering. As a result, the number of internal village trials for violence rose sharply on the one hand and, on the other, the potential for aggression was expressed in the great Swiss Peasants' War of 1653 against the state which had intensified the situation through its economic and tax policy. The same relation between aggression and economic problems can be seen in Catholic Lucerne.

The *Chorgericht* was not successful in installing a 'gyro-compass' (David Riesman) which would have made the believers independent of external influences. Indeed the number of trials for neighbourhood disputes declined enormously in the eighteenth century (see Figure 10.9). But this is in my view the result of the diminishing power of the *Chorgericht* and its basis, the religious orientation of social behaviour. Whether there was a social disciplining, understood as a long-term and enduring change in lifestyle, is questionable.

This study proposes that the implementation of Christian ethics depended upon two factors: on Christianity, and on the interests of the community as a whole and of particular groups. These factors operated in a scenario which was strongly influenced by economic pressure. The state could not implement Christianity or social discipline by itself. It was the communities that had to discipline themselves, through themselves.

The goals of the morals courts' activity can be described as friendship, peace and a community in harmony with itself and with God. Moral disciplining was strongly orientated towards the local Christian community. In certain domains, moral discipline broke through the borders set by behaviour through group egoisms. It was demonstrated,
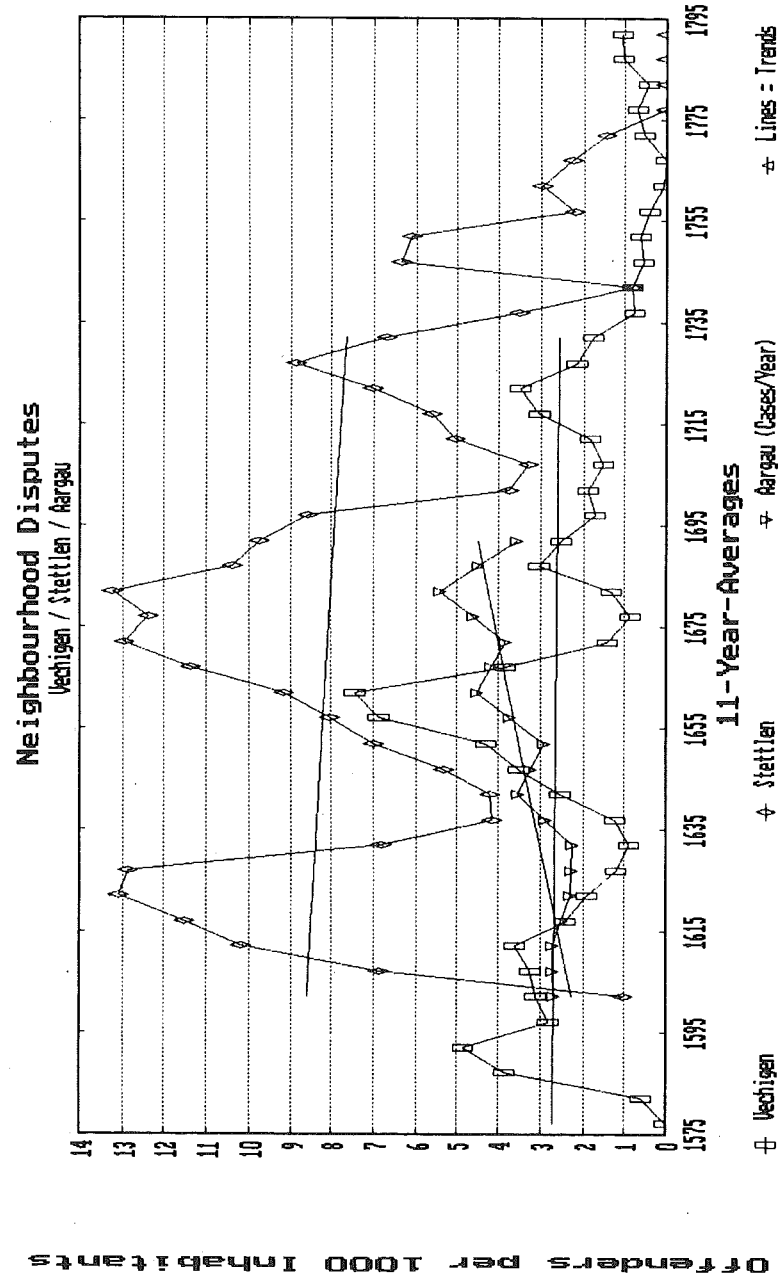
10.9   Levels and trends of neighbourhood disputes

for example, that the judges as men were able to convey an impulse towards Christianization in marital behaviour that showed the way from patriarchy to partnership. It is also plausible that interests were actively working against the implementation of Christian ethics, so – for example – youth culture tended to protect gambling, dancing, companionship and premarital sexuality against ascetic imperatives.

Except in the case of premarital pregnancies, across the whole period of the investigation of Stettlen and Vechigen, the community of Stettlen – smaller, poorer and more prone to social stress – demonstrated a clear preponderance of offences. Conflicts in marriage and with the neighbours, the readiness of men to be violent, to name some essential areas, were considerably more frequent than in the more traditional and socially more buoyant community of Vechigen. Here economy dominated over morality. Nevertheless the fundamental gradients of development in both communities match to an extraordinary degree, in particular with the culmination of the problems of moral discipline in the middle and second half of the seventeenth century, and then with the sensational reduction of cases in the eighteenth century. The minutes of the morals courts show that the eighteenth century was dominated by processes of secularization, that is, the loss of the religious focus of village society, and of decommunalization, the loss of the communal orientation of the village inhabitants. The *Chorgericht* lost its power to force marital partners or neighbours to be reconciled with each other. It could also no longer suppress illegitimacy. Thus it lost its role as a means of Christian-communal self-regulation.

One can summarize the role played by the *Chorgericht* before 1700, during the phase of confessionalization, as follows:

1. The morals courts were means by which the community regulated itself and re-established broken neighbourhood relations, by which women civilized their men or controlled their aggression, by which adults regulated the sexuality of their offspring, by which a Christian people gained the grace and favour of God, whom they thought of in terms of providence and covenant. The morals courts were not, in the first instance, the means by which the state disciplined its unwilling people.
2. The courts only partially succeeded in disciplining or civilizing villagers, but functioned especially as agents of social regulation.

The bias of all adherents of the Oestreich thesis of social disciplining towards the state prompts them to underestimate, to an extreme degree, all these aspects of the work of the morals courts, which lay within the

communities themselves – even in a state–church system like the Bernese one.

Looking back at the Reformation, we can learn something from the study of confessionalization. We should consider the interests and the religious preferences of the ordinary people, those without whom no Reformation could take place. The Reformation began as an appeal by the preachers. It could be heard. But in order to be listened to, there had to be a readiness and a desire to gain a new Christian orientation within the world as a whole in both its spheres, the secular and the sacred. We must try to understand better the parameters of this reception by ordinary people, in order to comprehend the social depth of the Reformation. These parameters could be found in the social needs for orientation and regulation. From this point of view there is no difference to be found between the Reformation era and the period of confessionalization. The Reformation, in the sense of the religious involvement of society, did not end in the sixteenth, but in the eighteenth century. And this long Reformation must be examined from the perspective of the lowest levels of society.