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The Church Courts and the Enforcement of Morals

Public Order in England 1580–1640

It may be helpful to begin with a brief overview.[1] In the first half of the seventeenth century the enforcement of morals in England was in principle the responsibility of the ecclesiastical courts. They exercised jurisdiction over a variety of offenses, ranging from not attending church or sabbath breaking to all kinds of sexual immorality, profanity, and other kinds of disorderly conduct. In fact, though, as social historians have increasingly realized, this regulatory jurisdiction was shared with the secular courts, and at all levels. Those guilty of vagrancy, prostitution, running a brothel, disorderly drunkenness, alehouse offenses, sexual immorality, or practically any other kind of disorderly conduct could be brought before a Justice of the Peace, where they could be summarily punished. Some of these offenders were also brought to trial at the Quarter Sessions, which courts also had the primary responsibility for trying cases of bastardy. Finally, the relatively more exalted assize courts, responsible for trying felonies, heard cases of homosexuality, rape, and bestiality. The details of this overlapping jurisdiction will be explored below, but at this point it suffices to say that local secular officials (JP's and constables) cooperated with ecclesiastical courts in maintaining the prescribed moral order at the village level. Within this pattern of co-operation, however, illicit sexuality was predominantly, though not exclusively, the preferred domain of the church courts, with the exception of the prosecution of bastardy.[2]

[1] In what follows I rely heavily upon the work of those who have done so much to rectify the long neglected subject of the ways in which order was maintained (or not maintained) in early modern English communities. My debt to the works of *Sharpe, Houlbrooke, Marchant, Beattie, Cockburn*, and others will be all too clear in what follows. My purpose is not to attempt to bring new evidence to light, but rather to look at the body of existing evidence on the role of the church courts and reflect upon some of its theoretical implications for the study of normativity and social control at the community level. This paper was originally presented at the Conference *Reaktion der Normalen*, and I am grateful to Professor Dieter Simon for his helpful comments and criticisms.

[2] It is important to note that apart from bastardy, rape, sodomy, and running a brothel, secular courts, when they did act, acted to preserve public order and morals on the basis of a non-statutory authority. This authority is still claimed by the English Courts, as well known cases like Shaw vs. Director of Public Prosecutions show.

It must be underscored that during this period the activities of the church courts in prosecuting immorality, and particularly sexual immorality, did not remain static. Lawrence Stone claims that there was a revolutionary turn away from what he calls medieval amoralism during the English Reformation, which introduced an age of repression, but his view has been subjected to considerable criticism.[3] Regulation by the church courts had been well established for close to two centuries before our period, but there is nonetheless a marked quantitative increase in regulative activity from the late 16th century on. Once again, this increase in intensity in the desire to regulate popular disorder and immorality was not confined to the church courts, but was also present in the secular branch. Local magistrates often found themselves placed under tremendous pressure during these years to intensify their prosecution of public disorder – alehouse offenses, drunkenness, brawling, sexual immorality, vagrancy, and the like. Are we then to understand the activities of secular and ecclesiastical courts as the enforcement of morals imposed from above by national political authority through the instrument of the law? This question raises theoretical questions of considerable complexity.

Any answer to this question involves choosing between two models for understanding the role of these courts in the reproduction of a society's normative structures. For the sake of convenience I label them as the "Social Control Model" (with two variants, A and B), and the "Reflexive Model".

I. Two versions of a Social Control Model

A) Legal historians speak of the "function" of the church and secular courts as instruments for the preservation of social order. The traditional understanding of this role involves a model of social control based upon external coercion. Such a model rests upon four central assumptions:

1. The law is the central pillar of social order. Through its coercive force it can preserve the moral structure of society by imposing a set of norms that are embodied in its statutes.
2. Obedience to the law is based upon the rational, self-interested calculation of individuals in the face of the threat of punishment.

[3] L. Stone, The Family, Sex, and Marriage in England 1500–1800, London 1977.

3. Individuals (legislators, judges, etc.) can change or preserve the moral order of society through the law, and dangerous individuals can endanger it.
4. There is only one morality, and it consists of a system of ethical principles.

From a historical perspective, the poverty of this narrowly positivistic interpretation of social order is plain enough for anyone familiar with the recent research of British social historians on discipline, crime, and public order in the early modern period. The brief description of the church courts below will show how inadequate such a positivistic understanding of legal institutions is if one proposes to analyze phenomena as complex as the conceptualization and regulation of "deviant" and "normal" behavior.

B) Legendre has set out a more sophisticated model of social control in his study of the development of the ecclesiastical juridical state, *L'Amour du Censeur*. He sees the rise of juridical order as based upon external coercion *and* internalization. Legal and ecclesiastical institutions combine so as to bring about an internalization of norms that determines behavior. Such a theory has far more explanatory power than the one-dimensional positivism of the first model, but it has a major shortcoming.[4] At the level of social theory, Legendre's model is actually very close to that of Parsons, whereby norms are internalized as motives, thus ensuring the reproduction of the normative system. This undercuts the notion of voluntarism even though it is nominally a "voluntarist" model: the voluntary actions of knowledgeable agents play no role in the explanation of social order -- behavior is still determined. As the subsequent analysis will suggest, however, any model of social order which accords no place in its account of norms to the voluntary, strategic, and interpretative conduct of knowledgeable agents is fundamentally defective.[5]

[4] On "uni-dimensional" and "multi-dimensional" accounts of social order see J. ALEXANDER, Theoretical Logic in Sociology, 4 vols., Berkeley 1984.

[5] For theoretical arguments in support of this claim, see P. BOURDIEU, Outline of a Theory of Practice, Cambridge 1977, and In Other Words, Stanford 1990; A. GIDDENS, The Constitution of Society, Berkeley 1987; E. GOFFMAN, The Presentation of Self in Everday Life, New York 1963; and J. COMARROFF and S. ROBERTS, Rules and Processes, Chicago 1981.

II. Towards a Reflexive Model of Social Normativity

The second kind of model requires an account of social practices that encompasses both the internal and external aspects of order. One must look at normalization not merely as a process mechanically imposed from above: 17th century church court records show the way that individuals and communities used the official normative structures for their own purposes – prosecuting offenders through these official channels when it suited them, using unofficial sanctions when they were more appropriate, and ignoring or resisting official pressure at other times. And all of these not according to one normative pattern of morality, but rather according to differing patterns, and differing moralities embracing various segments of the community.

Indeed, one of the fundamental themes I want to emphasize is the enormous complexity and differentiation of the normative systems at work. To avoid reductionism any explanation must be able to account for the interplay of normative structures and strategies of resistance, avoidance, and manipulation: the task is not to describe the way in which the church courts "enforced" the norms of the church, state, and gentry, and thus preserved, or attempted to preserve the social order, but rather to describe the role of the church courts in the social life of English communities. As J.A. Sharpe puts it in his discussion of crime and the activities of the secular courts, "Ultimately, we must endeavor to understand what was happening in the villages and small towns in which 90 percent of Englishmen and women of this period lived, and try to connect the issues of crime and control with some of the wider problems of social history."[6] In short, the theoretical argument of this paper holds that social control is not to be understood solely as a univocal force imposed from above (i.e. by national judicial and political institutions). Rather, social control operates through a random dynamic of forces of varying origin, duration, and intensity.[7] The more one concentrates one's view on the local communities where "enforcement" takes

[6] J. SHARPE, Crime in Early Modern England 1550–1750, London 1984, p. 73.

[7] By "random", I refer to the fact that there is tremendous regional variation in patterns of enforcement, resistance, co-operation, etc. Individual regions also manifest great diversity among localities, and within localities over time. This is because "regulation" is not a monolithic abstraction, but rather a general description of the activities of many individuals who, through their actions and beliefs, alter and reproduce the social system. See COHEN, Law, Sexuality, and Society, Cambridge 1991, Chapters 2–3.

place rather than on the national institutions where policies and statutes arise, the more one needs to conceptualize the social system as a kind of patterned chaos rather than an ordered geometric form.

In examining this claim one might begin with the following description of an attempt by an English constable to regulate one of the main kinds of disorder with which his superiors were concerned: The night watch of a town in Lancashire noticed in the course of their patrol an alehouse open after hours. Entering, they found a group of men drinking and singing "in a most disorderly manner." The watchmen reminded them of the law about not drinking after 9PM and asked them to leave. The men replied, "We know there is such an act but we will not obey it, for we will drink as long as we please." They then threatened the watchmen about what might happen unless they would leave, telling them "they had nothing to do with them." The watchmen left, the incident was over.

On the basis of such evidence, (this is but one of many different kinds of examples) Wrightson suggests that, "The concept of order was ubiquitous, but this is not to say that it was monolithic. For the notions of order embodied in the stacks of regulative statutes passed by Tudor and early Stuart Parliaments should not be identified too readily with that implicit in the norms and attitudes which governed social behavior in the village community ... This simple fact has perhaps been obscured by the tendency among historians to conduct discussions of the problem of order primarily at the elevated level of official ideology."[8]

According to Wrightson, whereas the official concept of order was that embodied in the statutes that regulated economic and social life, and the moral regulations that punished "common country disorders" like drunkenness, profanity, sexual immorality, sabbath breaking, etc., at the village level order had to do with local custom that helped to avoid and contain conflict. It allowed a greater leeway and ambivalence in permitted behavior than did the definitions of legislators and Puritan moralists. "Order meant little more than conformity to a fairly malleable local custom which was considerably more flexible than statute law. The maintenance of order meant less the enforcement of impersonal regulations than restraint of conflict among known individuals in a specific local context."[9] Thus, inhabitants of the village might take formal or

[8] See K. WRIGHTSON, "Two Concepts of Order", in J. BREWER and J. STYLES, eds., An Ungovernable People, London 1980, p. 21–22.

[9] WRIGHTSON (note 8), p. 24.

informal action against a mischiefmaker, or draw up their own rules to avoid the expense of bastard children or squatters. "They were less likely to embrace the full panoply of penal laws. For a vigorous application of the laws could excite conflict within the local community."[10]

Indeed, a substantial body of evidence reflects local refusal to accept the law's definition of an offense, or to enforce it when it ran counter to local needs – that is, resistance could come both from the offenders and from the local officials whose task it was to apprehend them, as well as from the community at large. This is particularly the case with those offenses against common order, where the "order" in question was that of the gentry of Puritan reformers. In these cases the norms to be imposed from above were inconsistent with the values of many parts of the community, and groups and individuals employed a variety of strategies to minimize their impact. To the villagers, unlawful gaming and inordinate drinking in a "disorderly alehouse" were simply "good fellowship" and a way to improve neighborly relations. Premarital sexuality which did not produce bastards was "the way of youth", not a mortal sin, and so on for profanity, sabbath breaking, and the rest. "Above all, the tension between the order of the law and that of the neighborhood was a question of scale. For the very complexity of relationships within small communities make it exceedingly difficult to judge the behavior of an individual without bringing into play a host of personal considerations."[11] When a widow survived by the unlicensed selling of ale, it made little sense to many to trouble neighborhood and foment local resentment through a prosecution.

On Wrightson's view as articulated above, sporadic drunkenness, irregular attendance of church, and profanity were not perceived as serious threats to the village order. Village order was perceived as based upon the web of personal relationships not upon the coercive force of a national legal system. For this reason, among others, there was a widespread tendency to prosecute strangers more readily and to punish them more severely. A study of Wiltshire shows that local residents were much less likely to be prosecuted than strangers, and when prosecuted less likely to be convicted: of local residents 68% of those prosecuted were convicted, of strangers 93%.[12]

[10] WRIGHTSON (note 8), p. 24.

[11] WRIGHTSON (note 8), p. 25.

[12] M. INGRAM, "Communities and Courts", in J. COCKBURN, ed., Crime in England, London 1977, p. 132.

Individuals regarded as full members of the community might enjoy much greater leeway than those marginalized. Scholars have often noted the reluctance of village officials to initiate proceedings against offenders who had not already threatened, or offended the community. In other words, those who were not already outside the "moral community" of the village were given a substantial amount of leeway before the sanctions of the law might be applied. Thus, the category of those where this reluctance would not operate might include, for example, girls who had bastard children who were unfiliated and therefore chargeable to the parish, or alehouse owners who persistently harbored vagabonds (perceived as dangerous in a variety of ways). Moreover, when action was taken it was likely to take the form of informal sanctions rather than formal legal prosecution according to the statutes: the villagers of Myddle, for example, cudgeled a thief rather than prosecute him, or a man in Worcestershire refused to prosecute a thief and asked that she be bound to her good behavior.[13] Village officers who presented offenders against the wishes of local opinion often found themselves objects of ridicule, scorn, abuse, or violence. Others were wiser: a constable in Essex apprehended a man from the village who had stolen eight hens. When the man begged for mercy swearing that it was his first offense, the constable discussed the matter with the victim and released the thief. "The constables of Hatfield Peverel refused to execute orders to whip an unlicensed aleseller too poor to pay his fine, while those of Whetherfield would not serve process on illegal cottagers "because they are too poor."[14]

There might also be wide local variation in the patterns of enforcement, reflecting the varying degrees of control that the central government had managed to achieve over the local administrative machinery in particular areas. The trend from the late sixteenth century on is toward greater uniformity in the prosecution of regulative offenses, reflected in the intensity of activity in this area. On the other hand, examination of the offenses being prosecuted in the 1630's to 1650's reveals that while the willingness of constables to prosecute vagrants and disorderly alehouses increased under pressure from the magistrates, (or remained high in areas where already high), there was continued unwillingness to bring before the courts other classes of offenders found

[13] WRIGHTSON (note 8), p. 30. For further examples see SHARPE (note 6), p. 79.

[14] WRIGHTSON (note 8), p. 32, and see SHARPE (note 6), p. 76.

among one's neighbors. Indeed, only massive pressure on constables through prosecution, dismissal, and the like was able to increase the numbers of prosecutions for these regulative offenses. As will be seen below, similar patterns of resistance are often found among the churchwardens responsible for the presentment of offenders to the ecclesiastical courts. On the other hand, regulative activities of the courts did intensify – the number of prosecutions rose dramatically. In part this is due to pressure from the central government, but in part also to local changes.[15]

What were the local sources of such pressure? In some communities, but not all, there seems to have been a shift in the attitude of village notables towards the less well-off segments of the community. Wrightson speaks of the "assimilation of the village notables ... to the values of their social superiors and religious mentors. Where this was achieved they were encouraged to identify their interests with those of the magistracy and to express in action their dissociation from the vernacular tradition of their neighbors."[16] Pressure for regulation was thus exerted from below as well as from above, from the local level as well as from the national administration.[17] Wrightson concludes with the following example: "In January 1629 the ministers and seven leading inhabitants of two villages in Essex where regulative activity was particularly intense, "petitioned the justices for the suppression of six out of the eight local alehouses ... They condemned the 'slackness of inferior officers and other inhabitants of the parish to inform the magistrate of the delinquents...' In a crescendo of righteous indignation they denounced the drunkenness and idleness bred among poor men and servants and urged the justices to root out these 'styles for such swine and cages of these unclean birds.' Where such language could be used, a wedge had been inserted between the better sort of the parishes and their poorer neighbors far more subtle than their age old inequalities of wealth."[18] The result was that communities became split not only by economic stratification, but also by an increasing divergency in values. While this situation was by no means a wholly new development, it seems to have represented an ever increasing trend: "One outcome of the complex of demographic, economic, social, and cultural changes was that the vil-

15 See SHARPE (note 6) pp. 41–93, 168–183 and WRIGHTSON (note 8), pp. 32–38.
16 WRIGHTSON (note 8), p. 46.
17 See SHARPE, (note 6), pp. 85–86.
18 WRIGHTSON (note 8), p. 46.

lage notables ... lost their sense of solidarity with their poorer neighbors; instead their values and attitudes became much more closely identified with those of the gentry and, ultimately of the nation's rulers."[19]

But despite this increase in regulation, as we have seen there is also considerable evidence to suggest that in some communities those who offended against the official norms that were not supported by community norms might be relatively immune from legal prosecution so long as their transgressions were not such as to make them outcasts. More interestingly, perhaps, other evidence suggests that even behavior which did violate community standards might be tolerated as long as it did not exceed certain bounds. Communities were often reluctant to expel one of their members completely, no matter how harshly they were prepared to act against strangers. To some extent the "normal" was felt to be capable of encompassing the abnormal – an accepted aspect of order was disorder – but, again, within limits. Sharpe gives an example of the way in which offenders were treated as members of the community, unless they did something heinous enough to place themselves outside its bounds. For example, in the village of Myddle, a laborer, John Aston was known as a lightheaded type who habitually stole poultry and other small things. His petty thefts were tolerated for some years, but finally he was tried for theft at the Shropshire assizes. The jury condemned him to be whipped, saving his life by deliberately undervaluing the poultry. The experience did make an impression upon him, but not enough to make him entirely abandon his old habits – he was not prosecuted again, as far as we know.[20] This story shows the way in which a village might tolerate a minor offender (even though a felon), especially if there was some extenuating circumstance like poverty or, in this case, perceived lack of mental steadiness. As Sharpe concludes, the presence of the habitual offender was perceived "as part of the natural order of things."[21]

On the other hand, local records also show that a man with a solid economic place in the village could persist in behavior that consistently brought him in conflict with ecclesiastical and secular authorities. One innkeeper, for example, was prosecuted repeatedly over a twenty year period for not coming to church, keeping a disorderly house, selling drink on the sabbath, being drunk in sermon time, profanity,

19 SHARPE (note 6), p. 75.
20 SHARPE (note 6), p. 79.
21 SHARPE (note 6), p. 80.

living immorally with his maidservant, and committing adultery with a married woman. Another offender was prosecuted in a 12 year period for assaulting the constables, fighting and quarreling with one of his neighbors, fornication, refusing to pay church taxes, remaining excommunicate, and obstructing a public highway with a dunghill.[22] These prosecutions do not seem to have diminished either their social standing or their economic activities. Such examples could be multiplied.

The point here is that members of the village community of solid economic standing could persistently defy secular and ecclesiastical authorities (usually at the misdemeanor level) without becoming an outcast, a "criminal" or "delinquent", so long as they did not overstep the moral boundaries of community customs and values. Their ability to defy ecclesiastical authority is particularly striking, even when such open defiance led to excommunication (this point will be developed below). They could only do so, it seems, with the support of at least part of the community. In a sense, submission to ecclesiastical jurisdiction was in significant part voluntary, and the regulatory efforts of local secular officials could often be stymied. It bears emphasizing again that even local "law enforcement" officials are not to be viewed monolithically as cogs in a repressive institutional mechanism. Local authorities and village notables might block the regulatory efforts of higher secular and ecclesiastical authorities or zealously carry them out, depending on their personal beliefs and the dynamics of the individual case; they might intercede on behalf of villagers and save them from prosecution or conviction, or might urge their prosecution.

Likewise villagers were prepared to punish some wrongdoers directly without involving the public authorities at all, to prosecute or urge the prosecution of others, and to tolerate the persistent offenses of some. A small community embodies a complex network of social relationships, and, as Bourdieu has shown for Kabylia, it is the dynamics of these relationships and the interests and strategies that underlie them, which determine how the normative resources of the community are manipulated and used by its members.[23] Thus, the English communities studied by Wrightson, Sharpe, Quaife, Emmison, and others might punish one adulteress with a violent ducking in the pond and shield her from legal

[22] SHARPE (note 6), p. 80.
[23] BOURDIEU (note 5), Chapters 1–2.

prosecution, while urging that another woman guilty of the same offense be brought before the proper authorities, and so on. National authorities sought to impose order from above, but their efforts were but one vector in a complex matrix. Above all, order was created from within, according to no predetermined patterns or abstract ethical or normative system. Nowhere is this seen so clearly as in the efforts of the ecclesiastical courts and the secular authorities to regulate illicit sexual activity. To these efforts we now turn.

The archdeacon's court, the lowliest of the church courts, functioned by the presentment of offenders and thus required the cooperation of members of the community. Apart from matters of church attendance and so on, the church court aimed at enforcing morality, and discipline. Significantly, the bulk of these courts' regulatory efforts were taken up with cases involving sexual morality. Records show that most of the presentments were based upon the detection of offenses by the churchwardens, who were almost wholly drawn from village notables. Sharpe argues that the desire to suppress sexual immorality and disorderliness arises from differences in values between the well-to-do and the poor, "Again the impression is one of regulative laws being imposed upon the poorer members of village society by the richer."[24] This model, however, runs the danger of oversimplification, for these courts also depended a great deal upon the willingness of neighbors to watch one another and report offenses. They did spy upon and denounce one another, often in a very intrusive way, but why? Was it Puritan conviction that inspired one individual to summon the constable when he saw a young woman enter a barn with a man, or that prompted a neighbor to look through a crack in the door? Quaife argues that one of the most important motivations was an economic concern to prevent bastards, but this is rejected by Ingram who sees regulation of immorality as Puritan repression. Sharpe also argues that such conduct genuinely offended the moral values of the villagers. Examinations of some of the business of the courts may help to evaluate these divergent interpretations.

Articles issued by the bishop of Bath and Wells, and the Bishop of Lincoln reveal the wide range of sexual activities which they wanted to be brought before the ecclesiastical courts. Specifically, they wanted to know of any cases where someone married within the prohibited

[24] SHARPE (note 6), p. 86.

degrees of affinity, or during the prohibited season, or did not marry after contracting to do so, or of any divorced person cohabiting with someone of the opposite sex, or couples living together whose marital status was uncertain, or husbands and wives living apart. They were particularly interested in any hint of fornication, adultery, the existence of lewd women or pregnant girls, or any who sheltered them, etc.[25]

The church courts acted most often on the basis of rumor or reputation. They inferred illicit behavior from its signs or symbols – like a girl seen alone in a garden at night, who was punished for "disorderly" conduct. Thus a man seen in the company of a woman who had a bastard, or a woman in the company of a man who had the reputation for incontinence, or a woman riding behind a man on his horse, or a man seen in the vicinity of a woman's house at night when her husband was away, were all highly suspect. In one case a man was cited because he was alone with widow Wooford in her house when all the others were at bullbaiting. There was an unspoken conception of acceptable behavior judged by such signs, and those who deviated from the accepted patterns were assumed to have gone further and engaged in illicit sexual activities.[26]

In many cases of illicit sexuality where the offenders were discovered in the act, they were brought directly before the secular authorities. But the secular judges were just as capable of condemning by inference from suspicious behavior as their ecclesiastical brethren. Though adultery and fornication were not crimes in England at this time in a formal sense, they were prosecuted by secular officials according to the authority of the magistrates to preserve good order and keep the peace. Interpretations of what constituted "good order" might, of course, vary. For example, both a couple taken together in the act of fornication and a girl found in a garden alone after midnight were placed in the stocks as threats to good order. The girl was punished, "for being there at such an inconvenient time."[27]

Individuals were largely at the mercy of their neighbors, as one man learned when he was presented because he "liveth so ungodly with his

25 G. QUAIFE, Wanton Wenches and Wayward Wives, London 1979, p. 39.

26 QUAIFE (note 25), pp. 42–53.

27 QUAIFE (note 25), p. 42. Of course, as will appear below, there were often "two concepts of order" at work here as well. That is, what might seem "normal" courtship behavior to some villagers might appear as "deviant" promiscuity to their social betters and magistrates. This becomes particularly apparent when one examines common practices in regard to marriage.

wife that the neighbors are greatly offended." Unfortunately the specific nature of the offense is not mentioned. Most of the cases of adultery depended upon denunciation, for how else would the couples have been apprehended in the act in one of their houses as the following presentments indicate: A carpenter named Thomas was convicted for "keeping suspiciously with Dorothy wife of Thomas Danishe of Inworth, and have met divers times in private places, and the constables hath sought the house (i.e. searched) for him and hath been denied. And yet notwithstanding hath been found there." Or Richard Wybeard "taken in bed with widow Darbye by a private watch in the house of Thomas Thornton, whereby they are greatly suspected to have committed whoredom."[28] On the other hand, sometimes the churchwardens, like their secular counterparts, refused to respond to denunciation. Emmison notes the reluctance of some churchwardens to present their fellow townsmen and offers examples of their indictment for this negligence: "Suffering John Berd and widow Shoborowe to keep house together unmarried and would not present them."; "Mr Maxey's maid begotten with child by X; one Mr. Parker ... had a wench or maid with child suspected, who is sent away. The wardens to be cited for not presenting these things." Emmison goes on to argue that this reluctance to present did not extend to brothel keepers, who thus, on Wrightson's theory, were seen as outside the moral community.

On the other hand, some sexual deviance was viewed as so extreme that it bordered on madness, and for this reason, perhaps, it was tolerated. For example, there are a number of cases of extremely promiscuous, aggressive women who directly and physically proposition practically every man they see. One woman would lie down in the road and raise her skirts boasting of her sexual prowess and bidding all passers-by to join her, or at other times walk around the village naked and grab men's genitals, or push them down and jump on top of them. These women were usually not prosecuted, and in some cases the community interfered, even with violence, when officials did attempt prosecution. In these cases, after the community intervention the magistrates ignored the situation.[29]

It should be apparent by now that a simplistic model of social control imposed from above cannot do justice to the complexity of these circum-

[28] F. EMMISON, Elizabethan Life: Morals and the Church Courts, Chelmsford 1973, p. 9.

[29] QUAIFE (note 25), pp. 156–158.

stances. The system for the regulation of illicit sexuality, secular and ecclesiastical, depended in a variety of ways upon the voluntary participation of the community. The question again poses itself, "What were the motivations for this voluntary participation? What factors determined the contours of prosecution and toleration?"

First of all, the inquisitiveness of neighbors should not be judged according to modern notions concerning the freedom from intrusion. As Quaife puts it, "There was no privacy. This was an alien concept. Every aspect of family life was subject to public scrutiny and amelioration, either informally through popular pressure, or through the formal channels of the secular and ecclesiastical jurisdictions activated through local ... constables or churchwardens."[30] A number of examples may be used to illustrate this point: A young woman travels with her lover to a distant inn. They retire to separate rooms, but two spinsters staying there are suspicious. They wait up all night watching the two rooms. When the woman goes to the man's room they listen at the door and then denounce the girl, testifying as to what they heard her say.[31] In Durston a group of villagers were eating together. As they were drinking after dinner they noticed that one of the men took the hand of one of the women and put it into his pants. When the couple later made an excuse to go outside, the others sent one of their group to find a stick and beat them back in. He found them in the middle of intercourse in the garden of the inn and interrupted them. Or, in another case, when a group had been drinking until late in the night, one of the men rode off with one of the women. Two men from the group followed them for half a mile, spied on them, listened to their conversation as they lay in a ditch, and tried to surprise them in the act.[32] The Quarter Session Rolls of Somerset, examined by Quaife, seem to abound with such cases which involve neighbors, servants, acquaintances, or others from the same town or village spying on couples in their houses or outside when they suspect them of illicit intercourse, frequently attempting to catch them in the very act and pull them apart. Likewise, the cases of illicit sexual activity that fill the records of the ecclesiastical courts are overwhelmingly based upon the willingness of some members of the community to observe and condemn their fellow men. Why?

[30] QUAIFE (note 25), p. 16; and cf. pp. 38–58.

[31] QUAIFE (note 25), p. 68.

[32] QUAIFE (note 25), pp. 50 ff. See also the numerous other examples in Chapters 5–7.

The first point that should be stressed is that there was no one "Reaktion der Normalen", but rather a variety of responses, and a variety of conceptions of the "normal". Take for example the official reaction to what is officially regarded as deviant, disorderly behavior. Quaife makes the point that a great deal of what was considered illicit pre-marital sex according to official definitions, was viewed as legitimate marital activity by the community because it followed solemn promises of marriage. As far as the community was concerned it was the words "I Robert take thee Marjorie to be my wedded wife" and her similar response that made the marriage; the minister's pronouncement was merely a ritualistic public endorsement of it. Quaife concludes that, "to rural society pregnancy made a marriage."[33] In many of the cases where young couples were discovered in flagrante, for the community the matter was settled if they agreed to marry – frequently the result of such discovery.[34]

Some churchwardens, constables, and JP's shared such convictions and deliberately ignored or neglected such cases, others did not. The matter was, of course, more unpleasant when the man was married. This was a potential source of disorder and economic burden, so it is not surprising that villagers sometimes acted directly to prevent intercourse, or to make it impossible for the women to deny that she knew who the father was (an all too frequent occurrence). The direct action of the community could take a variety of forms: Some were official, like taking the couple to the constable, or denouncing them to the churchwarden. Other sanctions were summary and unofficial, like ducking the woman in the nearest pond, humiliating the couple in a variety of ways, or even beating them. In a typical case a girl was ducked in the mill pond when her employer saw her go into a barn with a soldier, followed them and found them in the act. She was not prosecuted, however, as this chastening was thought sufficient.[35]

The wrath of the community was particularly great in cases of relations of unmarried girls with soldiers. Because the soldier would inevitably leave there were only two possibilities, both unacceptable, if the woman got pregnant: either the community supported her and the child if she denied knowledge of the father, or she named an innocent man as the father. The great concern about the economic consequences of bas-

[33] QUAIFE (note 25), p. 45.
[34] See SHARPE (note 6), p. 86 and QUAIFE (note 25), pp. 43 ff.
[35] QUAIFE (note 25), p. 50.

tardy is seen in the tremendous pressure exerted by officials and the community on unmarried pregnant women to name the father of the child. For example, midwives took oaths to force the name out of the mother. When their interrogation during labor had no effect, they sometimes refused assistance until they were told the name, using the great pain and fear of death to coerce their client.[36] Certainly, concern for protecting the community from the economic burden of bastards was one of the most common motivations of members of the community for interceding.[37] In Norwich one third of all cases came before the church court because the woman was pregnant.[38]

Clearly, order was not merely imposed from above, for villagers were often willing to spy and act when officials were not. Examination of the cases collected by Quaife, Emmison, and Shaw suggests a wide range of motives: jealousy, revenge, rivalry for social status, feuds, religious or moral conviction, economic competition, greed, voyeurism, and simple *Schadenfreude*. Only these kinds of motivations can explain the way that couples illicitly or adulterously cohabit for years with no difficulties and then suddenly find themselves presented to the church court. If it was simply a matter of repression why do we find so many cases where the couple in question had lived together for 3, 5, or even 10 years, and had had children together, without incurring the disapproval of the authorities?

In many ways the reports of cases where private individuals directly intervene make this activity seem like a sort of serious game, a form of sport, the point of which was to catch the illicit couple and not to bring about any legal consequences, unless there were special motivations for doing so. In a society whose amusements (and punishments) were as violent, cruel, and inhumane as this one, such a possibility is perhaps not surprising. While to contemporary sensibilities breaking in on a couple engaged in sexual intercourse seems like one of the coarsest possible intrusions on privacy, such sentiments were probably far from widespread in this world where physical privacy was virtually unknown to most of the population. For example, a woman in Walton repeatedly received her lover while her husband was away – she foolishly left the window of her bedroom open and a crowd of neighbors regularly

36 QUAIFE (note 25), pp. 104 ff.

37 QUAIFE (note 25), Chapters 8–9.

38 See R. HOULBROOKE, The Church Courts and the People during the English Reformation 1520–1570, Oxford 1979, p. 76.

gathered whenever the lover paid his visits, listening to all their conversations with great amusement.[39] Or, many cases report that the initial sexual solicitation of a woman began with a man approaching her with his penis in his hand asking her if she liked what she saw (or some more vulgar variation on this theme) – this is hardly a gentle or subtle form of courtship or seduction.[40] Such behavior was, of course, not the rule among the more well-to-do, but this simply underlines Wrightson's point about different moral orders in the society. This divergence is wonderfully captured by the case of the peasant caught in the very act of fornication outside in his farmyard by the rector and several respectable members of the parish. When he and the woman were told they must be punished for what they had done, the incredulous peasant replied, "Did you never see a cow bulled before?"[41]

The point about different moral orders is perhaps made most forcefully by studies of the effectiveness of the church courts. A point which scholars have not sufficiently appreciated is that not only did these courts depend upon the willingness of members of the community to assist them in their activities, but also upon the voluntary submission of those who were accused. The simple fact is that those who chose to ignore the ecclesiastical courts could do so with impunity if they were determined enough, and statistics reveal that about as many chose this path as did not. The pattern, in fact, is of massive resistance, of refusal to accept ecclesiastical regulation of sexual behavior on the part of something like half the population. Such statistical evidence provides confirmation for the theory of the moral stratification of society advanced above.

This generalization rests upon the figures advanced in Marchant's classic study of the diocese of York, and they are confirmed by Houlbrooke's investigation of Norwich, and other local studies.[42] In the diocese of York from 1560–1640 more than 50% of the presentments were for sexual immorality.[43] Marchant calculates the national average of the number of offenders who actually appeared before the court when presented as about 42–43%. Some localities were somewhat higher, and

[39] QUAIFE (note 25), pp. 125 ff. cites numerous examples of such conduct.

[40] QUAIFE (note 25), pp. 42, 165–85.

[41] QUAIFE (note 25), p. 183.

[42] R. A. MARCHANT, The Church under the Law. Justice, Administration and Discipline in the Diocese of York 1560–1640, Cambridge 1969; HOULBROOKE (note 38).

[43] The following statistics for York are taken from MARCHANT (note 42), Chapter 6.

many were far lower – five deaneries in York ranged from 20% to 39% in 1623. To take sexual offenders specifically, in 1633 in Norfolk 262 were presented. Of them 133 never attended, or attended and then disobeyed, 19 absconded, and 92 were dismissed, purged themselves or performed penance. In Doncaster of 90 presented, 48 never attended or disobeyed after attendance, 33 were dismissed, purged themselves, or performed penance, etc. Marchant concluded that only 40–50% of the population were thus amenable to being subjected to church discipline. As indicated above, this does not mean that the community did not employ normalizing strategies of its own. Rather, the point is that significant numbers of individuals rejected the official ecclesiastical standards and mechanisms for the regulation of sexual activity.

The number of those excommunicated is striking. But, the effect of excommunication was mixed. Of course, some individuals responded to this sanction, even if after quite considerable periods of time, but many did not and simply remained excommunicate for the rest of their lives. There were simply too many for the existing administrative resources to cope with adequately. Marchant estimates that at this period about 15% of the population would have been living in excommunicate families for defiance of the ecclesiastical courts. During the visitations in the diocese of York in 1636–7, for example, out of 5094 offenders presented, 2055 were excommunicated, about 40%. This hardly testifies to tremendous success on the part of church authorities in enforcing their standards of proper sexual behavior. It rather testifies to the extent to which compliance with church standards for some groups of the population was to some extent a matter of choice. Again, Wrightson's "two concepts of order" come to mind.

What I hope has emerged from the forgoing account is that the traditional models of social control advanced to explain the regulative function of legal institutions in regard to the enforcement of morals are clearly inadequate. Prevailing interpretations, as has been seen, fail to account for the complexity of the social process of normalization at different institutional levels and in different geographic regions. Further, they do not do justice to the variety of normalizing forces at work in communities or to the diversity of strategies and motives which lead individuals to interpret, manipulate, avoid, defy, or comply with the dictates of the criminal or ecclesiastical law. I have presented no concrete theoretical alternative, for a great deal more detailed historical investigation and theoretical reflection is necessary if simplistic explanations are to be avoided. An adequate multidimensional analysis of historical

change is a massive undertaking, as the best exemplar of such an enterprise, E.P. Thompson's *The Making of the English Working Class* makes clear. I hope, however, that this preliminary study has at least helped to illuminate the complexity of the questions such an undertaking involves.