

# “So that Every Subject Knows How to Behave”: Social Disciplining in Early Modern Bohemia

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“Social disciplining” is the name that has been given to attempts by the authorities throughout early modern Europe to regulate people’s private lives.<sup>1</sup> In explicit contrast to “social control,” the informal mechanisms by which people have always sought to put pressure on one another in traditional societies, “social disciplining” was a set of formal, legislative strategies through which the emerging early modern state sought to “civilize” and “rationalize” its subjects’ behavior in order to facilitate well-ordered government and a capitalist modernization of the economy.<sup>2</sup> Whether viewed favorably as an essential stage in a beneficent “civilizing process” or more critically as an arbitrary coercion of popular culture in the interests of elites, social disciplining is increasingly regarded as central to most aspects of political, economic, religious, social, and cultural change in Europe between the medieval and the modern periods.<sup>3</sup>

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For ease of understanding by English-speaking readers, throughout this essay place-names are given in the German version used by the local inhabitants at that time, alongside the Czech place-names used nowadays.

<sup>1</sup> For the original formulation of the concept, see Oestreich (1969); on its subsequent evolution, see Schulze (1987); on different views of “disciplining” as a modernizing force by Max Weber, Gerhard Oestreich, and Michael Foucault, see Breuer (1986).

<sup>2</sup> On the distinction between social disciplining and social control, see Härter (1999, 39–40, 42); and Behrisch (1999), 325.

<sup>3</sup> As reflected in numerous recent publications dedicated exclusively to social disciplining: see, for example, Sachße and Tennstedt (1986); *Westfälische Forschungen* 42 (1992); Schilling (1994); Stolleis (1996); and Schilling and Behrisch (1999).

But we still know very little about social disciplining in those many parts of eastern-central and eastern Europe subject to the so-called “second serfdom” or “refeudalization.”<sup>4</sup> This part of the continent did not see a rationalizing and modernizing “transition to capitalism,” but rather an enormous growth in the powers of noble landlords over the rural population. Regulation of people’s private lives, where it occurred, was exercised not by the state, whose writ usually stopped at the gates of the manor, but by each overlord separately on his domains. Does this mean that in eastern-central and eastern Europe there was no such thing as social disciplining, with either its “civilizing” or its coercive implications? If social disciplining did occur under serfdom, then what shape did it take under these very different conditions? And if the regulation of private life could take place under the second serfdom as well as under early capitalism, then what implications do findings for eastern Europe have for how we think about social disciplining more widely?

This essay addresses these questions, using a unique data source that sheds light not just on regulatory attempts at social disciplining, but on their practical implementation in everyday life. It finds that a form of social disciplining did take place under serfdom, but it had little to do with the factors supposed to have caused social disciplining in western Europe—the growth of the absolutist state and the transition to a commercialized capitalistic economy. Instead, its success and failure were linked to factors shared by eastern and western Europe, particularly the institutional characteristics of local communities and the incentives of individual rural people. Social disciplining also took on special features in eastern-central and eastern Europe because of the specific social framework of serfdom under which it had to operate. Understanding how social disciplining worked under serfdom suggests that we may have to rethink both social disciplining in western Europe and serfdom in the east.

These are very general comparative questions with wide-ranging implications for our understanding of early modern European society. Yet paradoxically, they cannot be satisfactorily addressed using evidence generated at a similar level of generality. Until now, explorations of social disciplining have relied largely on macro-level, normative sources of evidence, particularly the political and religious literature of the time and the many regulatory ordinances issued by early modern governments. But literary works such as cameralist tracts or “house-father” treatises are not satisfactory sources of evidence, since they merely wrote of the *desirability* of social disciplining, not its practical implementation. This is illustrated by the important early

<sup>4</sup> In this essay the term “second serfdom” is used as a convenient shorthand to refer to the massive growth in landlord powers over the rural population during the early modern period, abstracting from wearisome and unresolved terminological debates about the relationship of this process to true “serfdom.” For further consideration of this issue, see Ogilvie (2005a, 69–70, n. 1).

modern Czech thinker, Comenius, in his apocalyptic characterization of the “labyrinth” of vices in early seventeenth-century Bohemia and the “Golden Age” that would dawn once the ruler regulated such vices through disciplinary ordinances.<sup>5</sup> Where such literary works described the behavior of the “disciplined” at all, they did so in ways that suited their rhetorical aims.<sup>6</sup>

A somewhat better source of evidence is provided by legislation, beginning with the regulations issued by town governments in the later fifteenth century, and accelerating rapidly with the *Polizeiordnungen* (regulatory ordinances) issued by territorial princes and the *Patente* issued by the Habsburg Emperors in the sixteenth and seventeenth centuries. Laws at least provide evidence of the *desires* of rulers, and for that reason this essay makes use of them to trace the evolving disciplinary concerns of the elite. But ultimately legislation only reflects what lawmakers *wanted* out of social disciplining, not how it actually worked. Indeed, contemporaries saw this clearly: sixteenth- and seventeenth-century Bohemians themselves criticized urban *Polizeiordnungen* as “contributing little in practice to security and morality.”<sup>7</sup>

Because social disciplining concerns the regulation of individuals’ private lives, the best way to investigate it is through documents generated as close as possible to the private lives of actual individuals, face-to-face with those who sought to regulate them. Only by adopting such a perspective can we go beyond the regulatory aspirations of elites and find out how—if at all—these were implemented in ordinary life. This essay therefore adopts the approach of the micro-study, focusing on a unique database of manorial ordinances for a particular region of eastern-central Europe, confronting it with a second database of the court records for that region, and then placing these findings in a wider European comparative context.<sup>8</sup>

The region for which this database has been compiled is the large Bohemian estate of Friedland/Frýdlant. Bohemia (now part of the Czech Republic) was one of those many eastern-central European societies that experienced the massive growth in landlord powers that is termed the second serfdom.<sup>9</sup>

<sup>5</sup> For this passage in Comenius’s writings, see Seehase (1985, esp. 132–33); for a discussion, see Pánek (1996, esp. 317–19).

<sup>6</sup> See the discussion in Rebel (1998, 219–20); and, specifically for Bohemia, Himl (2003, 17, 49, 63).

<sup>7</sup> Pánek (1996, 321–22).

<sup>8</sup> On the advantages of the micro-study for studying social interactions in rural societies, see Medick (1996, 13–38); Ogilvie (2003, 4–7, 22–36, 320–21); and Carus and Ogilvie (2005). Its advantages in studying societies under the “second serfdom” are vividly illustrated by the essays in Peters (1997), and by the excellent micro-study of the south Bohemian estate of Český Krumlov / Krumau in Himl (2003). On its importance for examining “confessionalization” and “social disciplining” see Deventer (2004, 410–11, 420); and Schmidt (1997). On the impossibility of assessing social disciplining in Bohemia for lack of micro-level evidence, see Plaggenborg (2003, 7, with n. 18).

<sup>9</sup> On the timing of the “second serfdom” in Bohemia, see Maur, (1985, 241–47); on the estate of Friedland/Frýdlant, see Cerman (1997, esp. 91–105, 109–11), and Ogilvie (2001).

From the sixteenth century on, Bohemian landlords in general—and the lords of this estate in particular—expanded demesne operations, increased money rents and labor dues and extended them to previously exempt social groups, levied new dues on non-agricultural activities such as proto-industry and forestry, set up profitable market monopolies, and expanded their legal rights to intervene in the economic, social, demographic, confessional, and cultural behavior of their rural subjects.<sup>10</sup> Bohemian serfs did not have the right to appeal to any jurisdiction beyond manorial courts in which the judges were employees of their overlords, and the Bohemian crown did not directly intervene between lord and serf until Emancipation in 1781.<sup>11</sup>

Friedland/Frýdlant was part of a larger estate-complex, governed first by the Lutheran noble family von Redern (1558–1621), then by the legendary military entrepreneur Albrecht von Wallenstein as part of his huge Duchy of Friedland (1622–1634), and finally by the Catholic Imperial general Matthias von Gallas and his successors (from 1635 on). The estate consisted of two small towns and about forty villages. In a census of 1651, a time when the population was at a minimum because of warfare and religious emigration, the estate had a total of some 5,600 rural inhabitants living in about 1,500 households; by 1722, the number of households had risen to about 1,700.<sup>12</sup> The entire population—urban and rural alike—was legally subject to *Erbuntertänigkeit* (hereditary servility or serfdom), with the exception of a handful of manorial officials and a few foreign craftsmen who made up less than 1 percent of the population.<sup>13</sup>

Each village on the estate had its own community court (*Gericht*), chaired by the village headman and manned by half-a-dozen or so village officers.<sup>14</sup>

<sup>10</sup> Cerman (1997); Hroch and Petrůň (1981); Klíma (1991); Maur (1985, 241–64); Ogilvie and Edwards (2000); Ogilvie (2001, 449–51); Ogilvie (2005a, 91–110); Winkelbauer (1999, 333–34).

<sup>11</sup> Maur (2005); Ogilvie (2005b). On the similar situation in Upper Lusatia, see Rudert (1995, 199). This contrasts with the “*Verrechtlichung*” (juridification) of disputes between overlords and subjects discussed for Prussia in Hagen (2002, esp. 423–25); and for East-Elbian Germany more widely in Melton (1988, 333–34).

<sup>12</sup> SÚA, SPPV, for the estate of Friedland/Frýdlant.

<sup>13</sup> For reasons of clarity, this essay translates *Untertan*, the contemporary German term for someone subject to “hereditary servility” (as were early modern Bohemians and many other East-Elbian inhabitants, e.g. Prussians), as “serf” rather than the anachronistic and confusing “subject.” The civil status of rural Bohemians was usually described in contemporary sources as *Erbuntertänigkeit* (hereditary servility) rather than *Leibeigenschaft* (serfdom). However, rural Bohemians did swear “*Leibeigenschaft*” to their manorial lords, e.g. on the estate of Friedland in SOAD HS, Kart. 81, Dekretbuch Friedland 1652–7, fol. 60v, 6.9.1659; SOAD HS, Kart. 81, Dekretbuch Friedland 1656–63, p. 106, 30.9.1660; SOAD HS, Kart. 81, Dekretbuch Friedland 1656–63, p. 143, 7.1.1662. On the frequent lack of any clear distinction between *Erbuntertänigkeit* and *Leibeigenschaft* in practice, see Melton (1988, esp. 332–33); Rudert (1995, esp. 202); and, for Bohemia, Himl (2003), 52–55.

<sup>14</sup> On numbers of village officers, see, for instance, SOAD HS, Kart. 78, Amtsprotokolle 1616–19, fol. 118r, 4.8.1618. For more detailed studies of how Bohemian village communities operated under the second serfdom, see Himl (2003) and Ogilvie (2005a).

Although the village court met regularly, its sole written record was a register of land transfers (*Schöppenbuch*).<sup>15</sup> Thus any “social disciplining” carried out on the village level fell into the category of “social control,” since it consisted largely of informal pressure that was seldom legally recorded.<sup>16</sup>

However, the next jurisdictional instance up—the manorial court (*Amt*)—did keep written records, and these form the core of the database used in this essay to confront disciplinary regulations and their practical implementation. Evidence on the regulatory aspect is provided by a series of manorial ordinances, the *Jahrdings-Artikeln*, read aloud each year at serf assemblies, of which eight editions survive for the seventeenth century.<sup>17</sup> Evidence on the practical side of social disciplining comes from the manorial court minutes (*Amtsprotokolle*), of which more than twenty volumes survive for the sixteenth and seventeenth centuries, recording nearly four thousand separate cases.<sup>18</sup> Together these two documentary series make it possible to confront the regulatory side of social disciplining with its practical implementation in everyday life.

Micro-level analysis of sources such as these is essential to find out how people’s lives were actually affected by social disciplining. But it is important to recognize that the findings for this Bohemian estate may not necessarily be characteristic of all societies under the second serfdom. Each feudal estate in eastern Europe was administered differently, according to the preferences, resources, and administrative traditions of its overlord and his officials.<sup>19</sup> We do not yet know to what extent differences between estates or societies within eastern, or, indeed, western Europe gave rise to variant patterns of social disciplining. This essay presents evidence on social disciplining under one manifestation of serfdom, and seeks to place it in the context of what is known—albeit largely from macro-level, regulatory or literary sources—about social disciplining elsewhere in early modern Europe, in the hope that future micro-analyses of other regions will ultimately enable a general assessment.

Examination of the few existing studies of social disciplining in serf societies reveals that they are very heavily based on regulation, with little information about implementation.<sup>20</sup> I do not mean to imply that we should

<sup>15</sup> Štefanová (1997); Horáková (1984). On other communal records that existed originally but do not survive, see Ogilvie (2005a, 81–84).

<sup>16</sup> On the distinction between social disciplining and social control, see Härter (1999, 39–40, 42); Behrisch (1999, 325); and page 56.

<sup>17</sup> SOAD HS, Kart. 315–17.

<sup>18</sup> The 22 surviving volumes cover a total of seventy-four years, in the following periods: 1583–1619, 1627, 1629–1631, 1645, 1649–1664, 1674–1692, 1781–1787.

<sup>19</sup> Deventer (2004, 420); Ogilvie and Edwards (2000, 975, 980–1).

<sup>20</sup> A research project on “Confessionalization in East-Central Europe 1550–1700” based at the Geisteswissenschaftliches Zentrum Geschichte und Kultur Ostmitteleuropas in Leipzig promises to generate important new evidence on implementation using micro-historical, comparative approaches; on this project, see Deventer (2004, 415–20).

ignore regulatory sources, but rather that we should analyze them rigorously, compare them with one another, and try to relate them to evidence about their practical implementation in everyday life. This essay examines the database of manorial ordinances just mentioned, identifies the regulatory patterns they reflect, and traces their evolution over time as the second serfdom progressed. But knowing what kind of social disciplining was being attempted is not enough; we must also investigate how it was implemented. The essay therefore moves on to analyze court records quantitatively, in order to measure the impact of social disciplining relative to other forms of regulation. Individual court cases are then explored qualitatively in order to illuminate what sorts of social disciplining flourished within the framework of serfdom. A final section explores the implications of these findings for our understanding of social disciplining in both eastern and western Europe.

#### I. APPROACHES TO SOCIAL DISCIPLINING IN EARLY MODERN EUROPE

Gerhard Oestreich invented the concept of “social disciplining” in the late 1960s to refer to the process by which the early modern state increasingly intervened in individuals’ private lives, bringing about the “rationalization” of people’s behavior necessary for the imposition of well-ordered government and capitalist modernization of the economy. Oestreich regarded social disciplining as a largely beneficent undertaking, an important stage in what Norbert Elias termed the “civilizing process,” whereby the disorderly, subsistence-oriented societies of medieval Europe were gradually transformed into orderly, market-oriented modern cultures.<sup>21</sup> Although some scholars have subsequently recognized that social disciplining was also framed by early modern elites to coerce deviants and the lower social strata, most of the historiography still portrays social disciplining as an essential component of a teleological “modernization” process by which enlightened states conducted their unruly subjects out of medieval darkness into the light of well-ordered, capitalistic welfare states in which citizens willingly submit to regulatory intervention into their private lives for their own well-being.<sup>22</sup> Following Oestreich, historians of western Europe began by defining social disciplining very broadly to include almost all the activities of the growing early modern state—fiscalization, bureaucratization, militarization, mercantilist economic regulation, confessionalization, and regulation of private life.

This approach has been criticized on three counts. First, it unjustifiably assumes that disciplinary *regulations* were actually *enforced*. This leads some critics to veer to the opposite extreme, arguing that social disciplining

<sup>21</sup> Elias (1939); Oestreich (1969); Schulze (1987); Breuer (1986).

<sup>22</sup> See the essays in Sachße and Tennstedt (1986); *Westfälische Forschungen* 42 (1992); Schilling (1994); Stolleis (1996); Schilling and Behrisch (1999). See also Lis and Soly (1979); Schilling (1981, 65–67); Weber (1995, 420); Härter (1999, 45–49).

regulations had no impact whatsoever on the lives of the ruled.<sup>23</sup> Second, the original view of social disciplining is criticized as too “*étatist*,” conflating the increased regulation of private life with all *other* aspects of the growth of the state. This, critics argue, has turned social disciplining into a concept that is “too all-encompassing and general for investigating the various forms of early modern discipline in a differentiated way.”<sup>24</sup> Third, the original view of social disciplining is viewed as excessively focused on the urban, capitalist economy—on the regulatory strategies of urban authorities pressed by proto-capitalist employers to shape the disciplined workers and deferential welfare recipients necessary for the modernization and market-orientation of the economy. As critics point out, most early modern Europeans lived in the countryside, far removed from towns and their markets. How relevant, we must ask, was social disciplining to this vast peasant world?<sup>25</sup> These debates about social disciplining remain unresolved, and one purpose of this essay is to show how analyzing serf societies can help to move them forward.

To start with, investigating social disciplining under serfdom can help resolve the debate between those who assume that regulatory initiatives were always implemented, and those who argue that they had no effect.<sup>26</sup> Even the few existing attempts to examine social disciplining in serf societies have highlighted this unresolved issue. Thus Thomas Winkelbauer examines manorial “instructions” (German *Instruktionen*, Czech *hospodářské instrukce*) and “peasant ordinances” (German *Bauernordnungen*, Czech *selské řady*) for several estates in south Bohemia and Moravia between the mid-sixteenth and mid-seventeenth centuries, and concludes that these serf societies experienced an effective, landlord-led strategy combining social disciplining of serfs’ private lives, confessionalization, and fiscal pressure.<sup>27</sup> Matthias Weber, by contrast, analyzes Silesian regulatory ordinances in the same period, discovering copious attempts to exercise social disciplining over serfs’ private lives, but concludes that they had almost no effect in practice, since they were ignored or actively resisted by the serfs, who enjoyed far-reaching autonomy of action behind the institutional facade of serfdom.<sup>28</sup> Lars Behrisch reaches a similar conclusion: he identifies ambitious attempts by early modern Russian rulers to apply social disciplining to their subjects in explicit imitation of German *Polizeiordnungen* (regulatory ordinances), but concludes that they had

<sup>23</sup> On this, see, e.g., Oestreich (1969); Schulze (1987); Weber (1995, 421–42); Dinges (1991, 10); Prak (1999, 150–51, 163).

<sup>24</sup> Friedeburg (1990, 418 [quote]); Schmidt (1997); Weber (1998, 421–43); Dinges (1991, 27).

<sup>25</sup> Weber (1995, 420–22, 429); Friedeburg (1990, 418).

<sup>26</sup> For a survey of this debate, with proposals on how to resolve the impasse, see Ogilvie (2005a, esp. 72–75, 116–19).

<sup>27</sup> See the summary in Winkelbauer (1992, 338–39); and Winkelbauer (1999, 307, 336–37). For criticisms, see Himl (2003, 17); Plaggenborg (2003, 9).

<sup>28</sup> See especially Weber (1995, esp. 429–37); Weber (1996, 350–63, 372–73).

little impact because of the autonomy of Russian rural communes.<sup>29</sup> Those who assume that regulation reflected reality and those who assume it had no effect have one thing in common: the evidence they present is inadequate to support their cases. Both sides rely almost exclusively on the content of legislation, with only the occasional impressionistic reference to sources such as court records.<sup>30</sup> The same problem afflicts the debate on *serfdom*—whereas the traditional historiography assumed that the legal rules of serfdom accurately reflected the reality of serfs’ lives, recent research has veered toward the other extreme, arguing that serfdom had no effect.<sup>31</sup> This essay will show that when we deploy evidence on both regulation and implementation, we find that neither effectiveness nor impotence accurately describes the facts, whether the issue is serfdom or social disciplining.

The second advantage of examining social disciplining under serfdom is that it allows a clearer evaluation of its relationship with the growth of the state. Ever since Gerhard Oestreich, there has been a widely held view that social disciplining, in the sense of “the regulation of ever wider spheres of the private lives of those affected,” both resulted from and assisted in *all* the aspects of early modern state growth—fiscalization, bureaucratization, militarization, economic regulation, and confessionnalization.<sup>32</sup> However, a growing opposition argues that this conflation of social disciplining with all aspects of early modern state growth is empirically unjustified and conceptually misleading.<sup>33</sup>

Some historians seek to subsume eastern European serf societies and their patterns of social disciplining to a western model of state growth. Thus Jaroslav Pánek’s recent survey of social disciplining in early modern Bohemia and Moravia, while it mentions the existence of regulations issued by towns and manorial overlords, places national law-codes and Imperial patents at center stage. It uses a quantitative analysis of Imperial patents to argue that a significant growth in “moral” regulation took place between the later sixteenth and the later seventeenth centuries.<sup>34</sup> In similar vein, Thomas

<sup>29</sup> Behrisch (1999, 343–51).

<sup>30</sup> Winkelbauer (1992) and Winkelbauer (1999) only refer to regulatory ordinances and noble correspondence. Weber (1995, 430, with n. 42), bases his conclusion that “offences against the provisions of the *Polizei*-ordinances play practically no role in legal court records” on “a look through legal court records in the patrimonial archive of Wrocław,” for which no figures are provided. This may account for the opposite conclusion apparently reached by the same author based on impressions of Silesian village court records in Weber (1996, 350–1, 357). Behrisch (1999) refers mainly to features of the Russian institutional framework that would have made it difficult to enforce social disciplining, and to a few studies of urban court records carried out with themes other than social disciplining in mind.

<sup>31</sup> On the weaknesses of both extremes to which this debate has veered, see Ogilvie (2005a, 72–75, 91–93, 110, 116–19).

<sup>32</sup> Winkelbauer (1992, 319, 323 [quote]).

<sup>33</sup> Friedeburg (1990, 418).

<sup>34</sup> Pánek (1996, 326).

Winkelbauer's exploration of regulatory ordinances issued by Bohemian and Moravian landlords in the sixteenth and seventeenth centuries regards "the landlords as 'agents' and operators" of a form of social disciplining defined in Oestreich's sense as a process inextricably connected with the absolutist state.<sup>35</sup> Other historians, by contrast, view social disciplining under serfdom as having hardly any connection with the state in any western European sense. Thus Matthias Weber sees Silesian social disciplining as emanating mainly from the noble landlords, and being at most confirmed by the territorial prince.<sup>36</sup> William Hagen points out that where the state did intervene in serf societies it was as likely to create disorder and violence as social disciplining.<sup>37</sup> Lars Behrisch views the relationship between state and society in early modern Russia as fundamentally different from that in western Europe, a factor that fatally undermined all attempts at social disciplining.<sup>38</sup> The present essay argues that if we observe a social disciplining of private life in serf societies where other aspects of early modern state are either decoupled from such moral regulation or totally absent, we must question any inevitable link between social disciplining and state growth.

Finally, examining social disciplining in serf societies can provide a comparative perspective on the claim that regulation of private life was undertaken to manage problems of pauperism, profligacy, and lack of work discipline that threatened a smooth transition from subsistence production to a commercialized and capitalistic modern economy.<sup>39</sup> This view, derived from the western European literature, has been adopted by part of the embryonic literature on social disciplining in serf societies. Thus Lars Behrisch finds the only example of effective social disciplining in early modern Russia in communities of "Old Believers," exceptional vectors of commercialization and entrepreneurship whose intervention into their members' private lives helped to power their proto-capitalist economic behavior.<sup>40</sup> In similar vein, Thomas Winkelbauer argues that manorial regulation of serfs' private lives—of gambling, poor householding, cursing, drinking, fornication, dancing, disobedience by young people, and baptismal and wedding celebrations—was a deliberate and effective strategy for "commercialization" of the manorial economy in Bohemia and Moravia.<sup>41</sup> By contrast, Matthias Weber regards social disciplining of serfs' private lives as enhancing landlords' desire to

<sup>35</sup> Winkelbauer (1992, here esp. 344–45 [quote]).

<sup>36</sup> Weber (1995).

<sup>37</sup> Hagen (2002, 466–69).

<sup>38</sup> Behrisch (1999, esp. 326–32).

<sup>39</sup> See, for example, Oestreich (1969); Schilling (1981, 65–67); Schulze (1987, 275–77, 295–97, 289); Foucault (1994, 642); Schuck (1995, 122, 147–50).

<sup>40</sup> Behrisch (1999, 351–56).

<sup>41</sup> Winkelbauer (1992, 335–39); and Winkelbauer (1999, 307, 334–37). On the problems of applying conclusions based on Austria to the differing situation in Bohemia, see Plaggenborg (2003, 9).

restrict and hinder the market activities of serfs; in diametric opposition to Winkelbauer, he interprets the “labyrinth of social disciplining” in Silesia and Bohemia not as serving rural commercialization, but rather as underpinning manorial attempts to choke off serfs’ economic autonomy.<sup>42</sup> The present essay will argue that if social disciplining occurred in eastern Europe during the resurgence of non-market institutions and manorial coercion known as the second serfdom, then its relationship with capitalism, commercialization, and economic modernization must differ from the one that is traditionally assumed.

This essay thus seeks to provide the missing comparative perspective needed to move forward the debate on these three basic questions about social disciplining. It puts aside uncritical assumptions that social disciplining was always effective, or always ineffective, provides evidence both on disciplinary regulations and on their implementation, and analyzes the circumstances in which regulations were and were not enforced. It further provides an alternative and comparative perspective on the role of the state in social disciplining, by analyzing how moral regulation worked in a society where state intervention stopped at the gates of the manor. Finally, it offers a comparative perspective on the link between social disciplining and capitalism by analyzing how regulation of people’s private lives worked in societies where markets were being systematically stifled rather than encouraged by the authorities. My overall aim is to demonstrate that only by moving beyond the straitjacket of an exclusively western European perspective can we disentangle the linkages between the state, capitalism, and the regulation of individuals’ private lives between medieval and modern times.

## II. THE REGULATORY SIDE TO SOCIAL DISCIPLINING IN RURAL BOHEMIA

To reject the exclusive reliance on regulatory sources to examine social disciplining is not, of course, to argue that we should neglect such sources altogether, only that we should use them differently. They must be interpreted critically as texts that reflected the concepts and interests of those who wrote them rather than as records of what was really happening. They should also be compared across time-periods within the same society and, where possible, with analogous regulatory documents from other societies at the same period. And finally, they should be compared, wherever possible, with sources recording enforcement.

The surviving regulatory ordinances for the Bohemian estate of Friedland/Frýdlant provide the basis for such analysis. Once a year, the manor summoned each rural community to a *Jahrding* (also called *Dreiding*). This was an assembly of all male householders in a village or group of villages: a

<sup>42</sup> Weber (1995, 423 [quote], 438).

large community might have its own *Jahrding*, while smaller ones shared theirs with several others, and by the 1640s all assemblies were shared.<sup>43</sup> The *Jahrding* is sometimes portrayed as a communal court sitting organized autonomously by the village itself. It may have so originated, but on this estate by the seventeenth century the *Jahrding* was summoned by the overlord and chaired by manorial officials.<sup>44</sup> The only remnant of its communal origins was a small jury of communal officers—usually a total of six—who ritually presided, although they functioned almost exclusively as witnesses to proceedings conducted and dominated by the manorial administrators. The main activities at the *Jahrding* were the payment of installments on debts, land purchases, and inheritance divisions; the manorial registration of new household heads; and the delivery of certain manorial rents, particularly the loom-dues paid by each proto-industrial linen-weaver. Villagers also sometimes reported grievances and conflicts that could not be resolved in village courts, although most were then referred onward to the manorial court rather than being decided at the *Jahrding*.<sup>45</sup>

For our purposes, the most important aspect of the *Jahrding* was that each assembly began with the oral reading of the so-called *Jahrdings-Artikeln*, a set of regulations issued by the overlord “so that every subject knows how to behave with just obligation toward God, his overlord, the manorial court, and his neighbor, thereby escaping temporal and eternal punishment.”<sup>46</sup> At intervals these articles were revised or completely rewritten, and eight separate handwritten versions have survived, dating from 1620, 1625, 1636, 1640, 1661, 1692, 1698, and 1699. They thus provide evidence of the disciplinary

<sup>43</sup> See e.g. SOAD HS, Kart. 78, Amtsprotokolle 1645, fol. 11v, 13.05.1645, where the *Jahrding* for the entire estate of twenty-three villages was summoned for the eight days of 26 May to 3 June 1645, with each assembly consisting of the householders from two to three villages; or SOAD HS, Kart. 61, Amtsprotokolle 1674–81, fol 15v, 28.02.1677, where the *Jahrding* for the entire estate of twenty-eight villages was summoned for the five days from 8 to 12 March 1677, with each assembly consisting of the householders from four to seven villages.

<sup>44</sup> The *Jahrdinge* were not, as is sometimes claimed, communal court sittings: the latter took place in the absence of manorial officials in the village court itself with no surviving written record apart from the *Schöppenbücher*. The former, by contrast, were assemblies of household heads, often for several villages at a time, presided over by one or two justices from each community but chaired by the manorial administrator. These assemblies were summoned and dominated by manorial officials, who also took recorded the proceedings, which means that the *Jahrdinge* cannot properly be interpreted as expressions of communal self-administration. On the *Dreiding* in Silesia as a “village court sitting,” see Weber (1995, 425). On its takeover by the manorial authorities in Austria and Bohemia from the seventeenth century on, see Winkelbauer (1999, 331).

<sup>45</sup> These *Jahrdingsregister* can be found in SOAD HS, Kart. 315–17.

<sup>46</sup> SOAD, HS, Kart. 317, *Jahrdings-Artikeln*, 1692, p. 1: “damit ein Jeder Vnterthaner sich gegen Gott, Seiner obrigkeit, dem Amte Vndt seinem nechsten, nach billiger schuldigkeit Zu verhalten Wießen, daß Er dardurch Zeitliche Vndt ewige straffe entfliehe.” On the practice of oral reading of *Policeyordnungen* at the annual assemblies of Bohemian towns, and of manorial regulatory ordinances at annual assemblies of Bohemian villages, see Pánek (1996, 321–23). On the *Dreidingsordnungen* issued at the same period by Silesian overlords, see Weber (1995, 426–49); Weber (1996, 336–38, 347–49).

priorities of five successive overlords: the 1620 ordinance was issued under the last member of the Lutheran Redern, that of 1625 under the Catholic military entrepreneur Wallenstein, those of 1636 and 1640 under the Imperial general Matthias von Gallas, that of 1661 under his sons Anthoni Pancraz Rudolf and Franz Ferdinand Ignaz (who had just reached their majority but had yet to divide their paternal estates), and those of 1692, 1698 and 1699 under Matthias’s grandson Johann Wenzel. Each *Jahrdings*-ordinance contains between 60 and 125 articles and is about fifty handwritten folios in length. These were the regulations that the overlords regarded as important for their subjects to hear every year. This database thus enables us to explore and analyze the regulatory side of social disciplining on this estate during the period in which the second serfdom saw its greatest intensification.

What kinds of activities did these regulations target, and to what extent did they include the social disciplining of serfs’ private lives—their sexual choices, marriages, leisure practices, and cultural activities? Table 1 shows how the 772 articles in the eight surviving ordinances are distributed among the different sorts of regulation, and Figure 1 plots changes over time in the major categories—manorial interests, the economy, religion, and the social disciplining of private life.

The most striking finding is the similarity in regulatory emphasis across the eight ordinances despite their having been issued under five very different overlords spanning a century of profound upheaval. The regulatory ordinances remained very stable in the teeth of thirty years of warfare (1618–1648), stern Catholicization of a formerly Lutheran population, consequent enormous emigration (between 1651 and 1654, 15 percent nationally, and 50 percent from this estate), a serf uprising in 1680 of which this estate was an epicenter, and the continual extension of manorial coercion under the second serfdom.

Throughout the century, over half of all *Jahrdings*-articles regulated matters directly affecting manorial interests—payment of dues in cash or kind, performance of labor services, the necessity to obtain manorial permits for certain demographic or economic activities, the protection of manorial hunting and fishing rights, the use of manorial forests, the observance of manorial milling and purchasing prerogatives, prohibitions against stealing from the overlord, and adjurations to respect the lord and his officials. The importance of this category of regulation fluctuated mildly over the century, between a low of 50 percent and a high of 60 percent, but showed no clear trend over time, with an increase between 1620 and 1636, a decline to 1640, another but milder increase up to 1692, and another mild decline to 1699. Activities directly affecting manorial interests comprised by far the most important sphere of regulation at both the beginning and the end of the period, with no apparent impact from the intensification of the Bohemian second serfdom after 1621.

The second most important sphere of regulation was the economy. At around 30 percent of all *Jahrdings*-articles throughout the century, economic

TABLE 1  
*Jahrdings-Articles According to Sphere of Regulation, Estate of Friedland/Frydlant, Seventeenth Century*

	1620		1625		1636		1640		1661		1692		1698		1699		Total	
	no.	%	no.	%														
<i>Manorial interests</i>																		
Paying dues (cash / kind)	11	12	4	6	7	11	7	10	14	12	14	12	19	15	19	15	95	12
Performing labour services	13	14	7	10	10	16	9	13	12	10	12	10	8	7	8	7	79	10
Obtaining permits	14	15	12	17	10	16	11	16	20	17	19	16	20	16	20	16	126	16
Hunting, fishing	16	17	11	16	9	14	10	15	17	14	17	15	13	11	13	11	106	14
Woods and forestry	10	11	7	10	9	14	8	12	16	13	14	12	12	10	12	10	88	11
Manorial prerogatives	2	2	3	4	7	11	8	12	5	4	5	4	6	5	6	5	42	5
Stealing from overlord	1	1	3	4	2	3	1	1	5	4	5	4	2	2	2	2	21	3
Obedience, loyalty	3	3	5	7	6	10	5	7	10	8	9	8	6	5	6	5	50	6
<i>Total manorial interests</i>	49	53	37	54	37	59	37	55	71	60	68	59	61	50	61	50	421	55
<i>Economic regulation</i>																		
Economic privileges	12	13	10	14	11	17	11	16	12	10	12	10	15	12	16	13	99	13
General economic regulation	12	13	11	16	10	16	10	15	21	18	19	16	18	15	18	15	119	15
<i>Total economic regulation</i>	24	26	21	30	21	33	21	31	33	28	31	27	33	27	34	28	218	28
<i>Religion</i>																		
Church attendance	2	2	1	1	2	3	3	4	3	3	3	3	1	1	1	1	16	2
Behaviour in church	0	0	0	0	0	0	1	1	1	1	1	1	2	2	2	2	7	1

Sabbath work	1	1	0	0	1	2	1	1	2	2	2	2	2	4	3	4	3	15	2
Sabbath leisure	1	1	0	0	0	0	2	3	2	2	2	2	2	2	2	2	2	11	1
Respect for clergy	0	0	0	0	1	2	1	1	1	1	1	1	1	1	1	1	1	6	1
Payments to clergy	1	1	0	0	1	2	1	1	1	1	1	1	1	1	1	1	1	7	1
Superstitious practices	1	1	0	0	0	0	1	1	1	1	1	1	1	0	0	0	4	1	
Cursing / blasphemy	1	1	0	0	1	2	1	1	0	0	0	0	0	0	0	0	3	0	
Be Catholic	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	2	0	
Have priestly wedding	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	2	0	
Virtuous living	0	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	4	1	
<i>Total religion</i>	4	4	1	1	4	6	8	12	8	7	8	7	8	11	9	11	9	55	7
<i>Social disciplining</i>																			
Sexuality	1	1	1	1	2	3	2	3	2	2	2	2	2	8	7	7	6	25	3
Marriage	6	7	4	6	3	5	3	4	5	4	5	4	7	6	7	6	40	5	
Culture and leisure	3	3	3	4	6	10	5	7	4	3	4	3	10	8	10	8	45	6	
<i>Total social disciplining</i>	9	10	7	10	10	16	9	13	10	8	10	9	20	16	20	16	95	12	
<i>Involvement of other institutions</i>																			
State	1	1	0	0	3	5	2	3	8	7	7	6	7	6	7	6	35	5	
Church	4	4	1	1	4	6	8	12	8	7	8	7	11	9	11	9	55	7	
Commune	24	26	17	25	19	30	22	33	26	22	27	23	29	24	29	24	193	25	
<i>Total Jahrdings-articles</i>	92	100	69	100	63	100	67	100	119	100	116	100	123	100	123	100	772	100	

*Notes:* Columns do not add up to 100% because many articles regulated more than one sphere of activity. Economic privileges = for private employers, urban markets, urban brewers, guilded craftsmen, millers. General economic regulation = land boundaries, debts, use of common lands, weights and measures, theft, wood-cutting, land sales, bad householding, tree planting, inheritance, usury, damage to neighbour's land. Social disciplining of private life = regulation of sexuality, marriage, games, dancing, drinking, music, magic, superstition, celebrations, gifts, consumption.

*SOURCE:* SOAD HS, Kart. 315-6 (Jahrdings-Artikeln 1620, 1625, 1636, 1640, 1661, 1692, 1698, 1699).

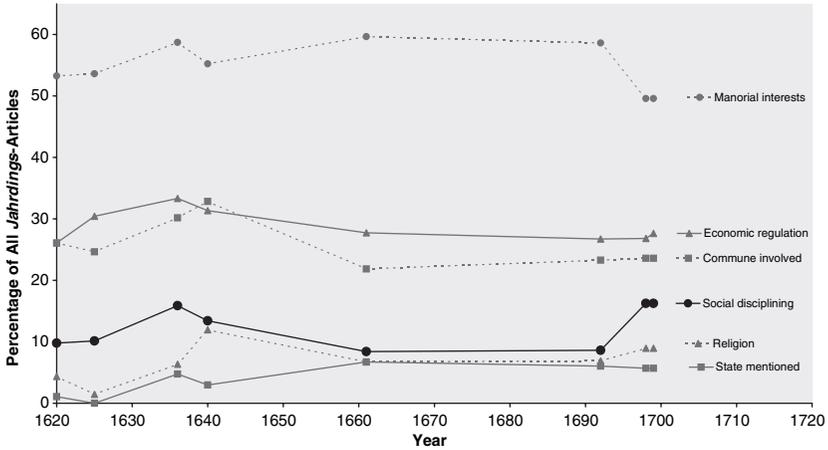


FIGURE 1 Changing Sphere of Regulation in *Jahrdings-Articles*, Estate of Friedland/Frýdlant, seventeenth century.

regulation was about half as important as regulations directly protecting manorial interests.<sup>47</sup> Economic regulation fell into two very different categories. The first consisted of general regulations directed at conflict resolution and contract enforcement in spheres such as debts, property sales, theft, land boundaries, use of common-lands, weights and measures, wood-cutting, bad householding, tree planting, inheritance, usury, damage to neighbors' land, and so on. The other category consisted of economic privileges granted to favored groups—for private employers over their servants and laborers, for urban markets over peasant producers, for urban brewers over rural tavern-keepers and beer-consumers, for millers over the villagers who were legally obliged to use their mills, and for guilded craftsmen over their employees, customers, and potential competitors. As Figure 1 shows, the share of *Jahrdings*-articles dedicated to economic regulation varied between 26 and 33 percent of the total, with no clear trend over the course of the seventeenth century: an initial rise between 1620 and 1636 was followed by a long but mild decline between then and the late 1690s. Nor did either subset of economic regulation show a clear time-trend: regulation of private contracts and conflicts rose mildly between 1620 and 1661, but then declined mildly until 1699, while regulation of economic privileges rose mildly from 1620 to 1640, fell mildly to 1692, then rose again slightly to the later 1690s.

By comparison with these two major spheres of regulation—direct manorial interests and economic activities—social disciplining played a very minor

<sup>47</sup> For a more detailed discussion of local economic regulation in Bohemia under the second serfdom, see Ogilvie (2001).

role, at only 12 percent of total *Jahrdings*-articles over the century. It varied more over time than did manorial or economic regulation, from a low of 8 percent (in 1661) to a high of 16 percent (in 1698–1699). But here again there was no unidirectional trend. Thus, as Figure 1 illustrates, social disciplining was relatively unimportant under the Lutheran Redern and the formally Catholic but pragmatic Wallenstein, became important under the early Gallas administration (at 16 percent of regulatory articles in 1636), but then underwent a long decline under later Gallas administrators until 1692, before seeing a near-doubling by 1698, at which point it regained the level it had last achieved in 1636. Thus, although the importance of social disciplining varied throughout the seventeenth century, there is no evidence that it was intensifying over time. The low priority assigned to the social disciplining of private life in these manorial ordinances is consistent with Jaroslav Pánek’s analysis of Imperial regulatory patents for Bohemia in 1675–1684, which shows only 9 percent focusing on “moral regulation,” compared to 22 percent on the economy, and 69 percent on the traditional concerns of the state (i.e., 30 percent on administration and justice, 39 percent on military matters).<sup>48</sup> Regulation sought to protect the direct interests of the ruler—whether Emperor or landlord—first and foremost, to direct economic activity next, and to discipline morality only a long way after that.

Religious regulation is often regarded as fuelling and being fuelled by social disciplining.<sup>49</sup> It did form part of manorial regulation on this Bohemian estate but accounted for only a very small share of it, at 7 percent of all *Jahrdings*-articles across the century. It covered a wide variety of activities—church attendance, behavior in sermons, Sabbath observance, respectful behavior toward clergy, payments to clergy, superstition, cursing, belonging to the right (i.e., Catholic) confession, marrying in church, and leading a virtuous life. There was no clear trend over time in these sub-categories, and relatively little trend in religious regulation in general, which varied between a low of 1 percent of all *Jahrdings*-articles in 1625 and a high of 9 percent in 1698–1699. Although religious regulation was distinctly more important by the end of the seventeenth century than at the beginning, this mainly reflected its rise from almost complete insignificance under the Lutheran Redern in 1620 and the pragmatic Wallenstein in 1625 to the importance assigned to it by the Gallas overlords from 1636 onward. But the high point of this regulation occurred in the 1640 ordinance, after which the religious emphasis declined to 1660 and then stagnated for the rest of the century. Perhaps most strikingly of all, the Habsburg state’s emphasis on Bohemian Catholicization after 1651 is not at all reflected in the *Jahrdings*-articles for this hitherto Lutheran estate. This suggests that even on

<sup>48</sup> Pánek (1996, 326).

<sup>49</sup> On the relationship between social and religious disciplining, see Deventer (2004, 406–7, 409); Hsia (1989); Reinhard (1983, 268, 277); Winkelbauer (1992, 320–22); Winkelbauer (1999, 309–11); and the essays in Schilling (1994); and Bahlcke and Strohmeyer (1999).

the level of regulation, let alone that of enforcement, state influence on governance over serfs largely ceased at the gates of the manor.<sup>50</sup>

This impression is reinforced by the role played by different *institutions* in the regulatory ordinances. As we have seen, social disciplining has conventionally been linked to the growth of the state and a concomitant strengthening of confessionalized state churches. Although this assumption is based on western European developments, we saw in the preceding section how uncritically it has been extended to eastern-central and eastern Europe. The sources for this Bohemian estate cast doubt on this view. As Table 1 and Figure 1 illustrate, the regulatory initiatives of noble landlords made hardly any reference to the state throughout the entire seventeenth century, with only 5 percent of *Jahrdings*-articles mentioning the state in any capacity.<sup>51</sup> Where they did, it was almost invariably in the context of taxes and military contributions which, although ultimately rendered to the crown, were administered and collected by each overlord inside his estate, largely through devolving responsibility to the local communes. Likewise, only 7 percent of *Jahrdings*-articles mentioned the church or religion in any capacity. As we have seen, social disciplining was attempted within Bohemian estates, but the state and the state church played little role in it, or in any other form of regulation.

It might be thought that this was simply because the manor permitted no other institution than itself any powers under the second serfdom. But this is far from true. The village commune and its institutional components—headman, village officers, and village court—were involved in fully 25 percent of all manorial *Jahrdings*-articles. Indeed, communal involvement in manorial regulation actually increased from 1620 to 1640, before mildly declining to 1661 and stabilizing for the rest of the century. This enduring importance of the village commune in overlords' regulatory initiatives is deeply intriguing, given the contention of much traditional historiography on east-Elbian Europe in general and Bohemia in particular that the second serfdom systematically diminished the powers of village communes.<sup>52</sup> Thomas Winkelbauer, for instance, has argued that a deliberate weakening of communal institutions by overlords was essential for social disciplining in Bohemia.<sup>53</sup> The sources for this Bohemian estate reflect nothing of the sort, and the reasons for this will shortly become clear: in this serf society at least, the village commune was crucial to regulation in general and social disciplining in particular. The most empirically well-founded studies for western Europe reveal analogous findings: communal institutions played a

<sup>50</sup> This is confirmed by the findings of Winkelbauer (1999, 311–12); Himl (2003), esp. 29, 79, 297–334; Maur (2005); and Ogilvie (2005b).

<sup>51</sup> For similar findings for Silesia, see Weber (1996, 363).

<sup>52</sup> Note that this argument is increasingly questioned, for example in Himl (2003, 17, 28–31, 192–99); in Ogilvie (2005a, 80–91); and in many of the essays in Peters (1997).

<sup>53</sup> Winkelbauer (1999, 311, 330–32).

central role in initiating, interpreting, and enforcing all forms of regulation, including social disciplining of private life.<sup>54</sup> What the results from eastern European serf societies show is that social disciplining could go ahead with little or no involvement of state or church, but not without the collaboration of local institutions, particularly communal ones.

Regulatory sources for this Bohemian estate thus reveal that all five generations of its overlords during the seventeenth century attempted some social disciplining of their serfs' private lives. But although social disciplining was more important than religious regulation, it was far less important than protecting manorial interests or regulating economic activity. Furthermore, attempts at social disciplining neither intensified nor declined as the second serfdom progressed. In a comparative European perspective, these sources suggest a relatively mild concentration on social disciplining by the Bohemian authorities during the second serfdom. Social disciplining may have been more intense and may have seen a greater increase here than in England or the Netherlands, which experienced a decline or near disappearance of attempts at “sin regulation” by the authorities in the course of the seventeenth century.<sup>55</sup> But it was distinctly less intense in Bohemia than in Scandinavia or the German lands, where social disciplining of sexuality, marriage, leisure, and cultural choices intensified strongly during this period.<sup>56</sup> Before we reach a definitive view, however, we need to move beyond *attempts* at regulation to actual *enforcement*.

### III. ENFORCEMENT OF SOCIAL DISCIPLINING IN EVERYDAY LIFE

The enforcement of social disciplining is extremely difficult to investigate, and it is no surprise that so few studies attempt it. Analyzing enforcement requires serial sources such as court minutes generated on the same institutional level as the regulations, preferably covering a similar time-period. Such data are both rare and time-consuming to collect and analyze. The present study has compiled such a database for this Bohemian estate, covering as closely as possible the same time-period as the regulatory sources. It consists of the minutes of the Friedland/Frýdlant manorial court, of which twenty-one volumes survive, covering sixty-seven of the ninety-nine years between 1583 and 1692, and recording a total of 3,792 separate cases.<sup>57</sup>

<sup>54</sup> On this, see Behrisch (1999, 346–47); Brewer and Hellmuth (1999, 13–14); Härter (1999, 49–52); Head (1999, 341); Holenstein (2003, esp. 836–52); Ogilvie (1999, 182–99); Schmidt (1995); Scholz (1996, 226); Tamm and Johansen (1999, 321–22); Weber (1995, 422); Weber (1996, 355–59); Winkelbauer (1999, 332–33).

<sup>55</sup> Ingram (1999, 95–102); Prak (1999, 163–66).

<sup>56</sup> Tamm and Johansen (1999, esp. 305, 312–13, 321–24); Hull (1996); Ogilvie (1997); Ogilvie (2003); Schulze (1987, 293).

<sup>57</sup> There is one additional surviving volume for the 6 years immediately following serf emancipation (1781–1787) but this is excluded as irrelevant to analyzing social disciplining under serfdom.

Understanding social disciplining and its enforcement, as already argued, means understanding the hierarchy of institutional intermediation in different societies. In Bohemia, the manorial court was not the legal setting of first recourse for rural people. Each village on this estate had its own village court (*Gericht*), chaired by the village headman (*Schultheiß*) and manned by a group of village officers variously termed justices (*Schöppen*), elders (*Ältesten*), or sworn-men (*Geschworenen*). Much contract enforcement, conflict resolution, and basic regulation took place in these village courts—even more informally in front of village headmen and officers outside court sittings altogether—and never reached the manorial court. But village courts were primarily oral settings. The village schoolmaster wrote documents on the headman’s orders when required, but the court’s only systematic record was the *Schöppenbuch* (literally “justices’ book”) that recorded only land transfers. Village-level regulation of private life thus amounted to “social control” in the sense of “the traditional set of rules of a society and the traditional practices to keep them up,” rather than “social discipline,” defined as “a conscious effort at changing a society’s norms, behaviors and mental culture from above, which presupposes the existence of a central institution such as the state” (and, it should be added, formal and literate legal proceedings).<sup>58</sup>

The interface between social *control* and social *disciplining* in Bohemia is vividly illustrated by a case of blasphemous speech in 1595—one of the few “cultural” offences ever prosecuted, as we shall see shortly. It reached the manorial court only because the offenders, “after committing great cursing and blaspheming of God, were put into the village stocks by the village headman in Bernsdorf [Horní Rašnice], and when they were already sitting in the stocks, they struck a village elder.”<sup>59</sup> It was the assault on the village officer that brought the case before the manorial court, not the blasphemous speech that, it is clear, was being dealt with informally through village-level “social control.” But, as Figure 2 shows strikingly, communal institutions did play an important role in formal regulation, acting as the major channel through which local matters were brought to the attention of the manorial court.

The church might have constituted another such channel, since unlike the state it did have an institutional presence inside Bohemian estates. But it was a small presence. As we have seen, just 7 percent of *Jahrdings*-articles mentioned religion or the church. For generations after the Counter-Reformation was supposedly concluded on this estate, many villages lacked local Catholic clergy and many villagers secretly patronized illegal Lutheran

<sup>58</sup> On this distinction, see Behrisch (1999, 325); Härter (1999, 39–42). On the association between social disciplining and the keeping of written records, see Weber (1996, 358–59).

<sup>59</sup> SOAD HS, Kart. 57, Burgschaftsbuch 1593–1610, fol. 35r, 13.9.1598: “demnach vnd Als sie Auff grosses fluchen vnd Gotteslestern vom Scholtzen Zue Bernsdorff in stock gesetzt vnd eingezo-gen worden, Vnd alß sie im stock albereit gesessen, Ainen Eltisten . . . geschlagen.”

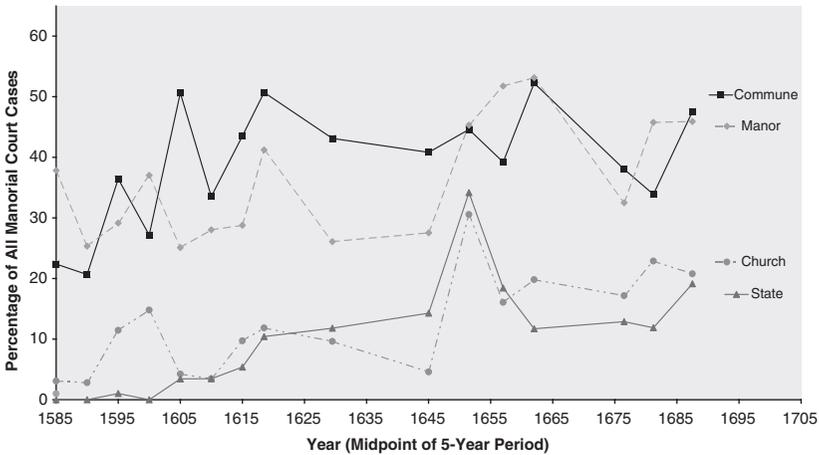


FIGURE 2 Institutions Involved in Manorial Court Cases, Estate of Friedland/Frýdlant, 1583–1692

pastors.<sup>60</sup> Unlike most western European societies, Bohemia lacked church courts on the local or even the estate level. The nearest consistory court was in Prague and dealt only with serious and unusual cases. Thus of the 3,792 surviving manorial court cases, only one—a Lutheran couple’s violation of Catholic definitions of marital consanguinity in 1645—was ever referred to the Prague consistory.<sup>61</sup> As Figure 2 illustrates, a very small percentage of manorial court cases involved the church: only 11 percent referred to it at all, and only 3 percent involved church jurisdiction over moral or religious offences.<sup>62</sup> Even where the church played a role in penalizing moral and religious offences, it was strictly circumscribed. This is strikingly illustrated by a case of 1650 in which the newly appointed senior Catholic cleric on the estate fined a village headman for letting a Lutheran preach at a family wedding, but was sternly reproved by the manorial administrator, who declared firmly that “it was not for him but rather for the temporal authorities [*weltliche Obrigkeit*] to fine the subjects when they deserved it.”<sup>63</sup>

<sup>60</sup> For further evidence on the relative lack of influence of the church and its personnel on the local level in other parts of early modern Bohemia, see Himl (2003, 297–99, 303–5); Winkelbauer (1999, 315–30). On Bohemian “confessionalization” in general, see Plaggenborg (2003).

<sup>61</sup> SOAD HS, Kart. 78, Amtsprotokolle 1645, fol. 2r, 6.5.1645.

<sup>62</sup> Other manorial court cases involving the church related to Catholicization (3 percent), church finances and appointments (3 percent), clergy as private individuals (2 percent), and passing allusions to the deity in non-religious cases (0.5 percent).

<sup>63</sup> SOAD HS, Kart. 79, Amtsprotokolle 1649–55, fol. 78v, 12.4.1650: “*bolches ihme aber Kheines Weeges, sond.n der weltlichen Obrigkeit Zustehet, die Underthanen, Wan sie es verdienet, Zubestrafen.*”

The manorial court thus constituted the first level of potential social disciplining in this society, and in almost all cases it was also the last. Its records must of course be read critically, since they represent the interests and conceptual framework of a literate elite rather than the largely illiterate serf population. The manorial court minutes are, however, written in the language and even the dialect of the serfs who appeared before it, and many utterances of peasant witnesses appear to have been literally transcribed. Furthermore, the manorial court constituted the main interface where ruled and rulers met, and that is precisely where social disciplining is supposed to have occurred. A critical analysis of the manorial court records should therefore illuminate the extent to which the social disciplining declared to be mandatory in the *Jahrdings*-articles was enforced in practice.

The share of social disciplining in manorial court business is shown in Table 2 and Figure 3. Alongside is shown the share of other major categories of court activity selected to coincide, as far as possible, with the regulatory categories of the *Jahrdings*-articles. Social disciplining was, as we have seen, not a high *regulatory* priority, at only 12 percent of all *Jahrdings*-articles. It was an even lower *enforcement* priority, at only 10 percent of manorial court cases (11 percent if we narrow our purview to the period 1618–1692 that approximately coincides with the surviving *Jahrdings*-articles). To set this in context, a recent analysis of Scandinavian local court records found that sexual offences *alone*—not to mention other components of social disciplining—made up a minimum of 10 percent of local court cases around 1600, rising significantly during the seventeenth century to become the most common offence in some regions.<sup>64</sup> In Bohemia, by contrast, social disciplining did not become *either* a more important regulatory priority *or* a more important enforcement priority as the seventeenth century progressed. The high point in enforcement of social disciplining on the estate of Friedland/Frýdlant was reached around 1600, and was never again attained throughout the seventeenth century.

In general, fluctuations in the regulations are not an accurate guide to fluctuations in enforcement. Social disciplining regulations reached their high point in the 1630s and 1640s (at 15 percent of *Jahrdings*-articles), but this coincided with the low point in enforcement (hardly 5 percent of manorial court cases). Conversely, social disciplining regulations saw a trough in 1661, precisely when enforcement reached its highest point since the 1590s, although this later peak was partly an artifact of new marriage permit procedures introduced in 1656. The chronological correlation between regulation and enforcement of social disciplining appears either non-existent or even negative, another reason not to interpret surges in disciplinary regulations uncritically as a mirror of reality. Enforcement depended on

<sup>64</sup> Tamm and Johansen (1999, 316–17).

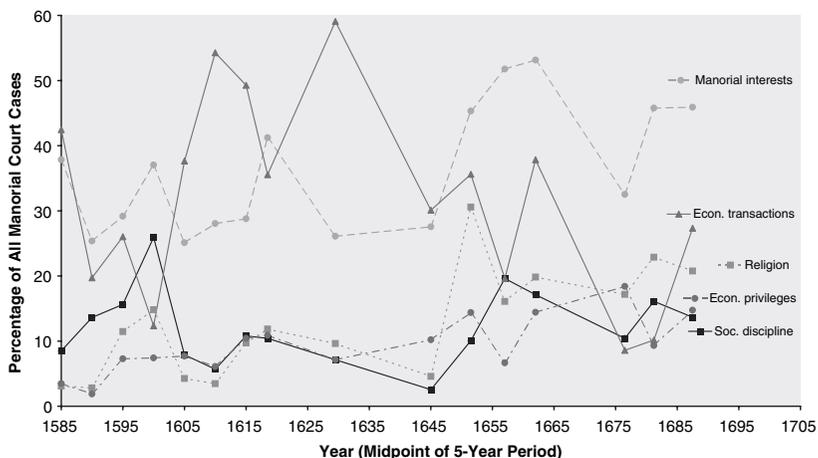


FIGURE 3 Social Disciplining Compared to Other Manorial Court Cases, Friedland/Frýdlant, 1583–1692

incentives facing institutions and individuals that, as we shall see in the next section, were often lacking when it came to intervening in private life.

In religion, by contrast, institutional incentives ensured greater enforcement. Regulatory emphasis on religion may have been low (at only 7 percent of *Jahrdings*-articles), but enforcement was significantly higher, with cases involving religion, the church, or the clergy accounting for 11 percent of manorial court cases over the whole period and 16 percent in the period 1618–1692 approximately coinciding with the surviving *Jahrdings*-articles.<sup>65</sup> Relatively powerless though the church may have been inside Bohemian estates, it was still an institution with the incentive and resources to bring religious issues before the manorial court. Social disciplining, by contrast, enjoyed no such dedicated institutional interest.<sup>66</sup> Nonetheless, the time-trend for religious enforcement largely resembled that for social disciplining, with a highpoint around 1600 (long before the first surviving *Jahrdings*-articles of 1620), a trough in the 1630s and 1640s (just when religious regulation reached its height in the *Jahrdings*-articles), and another peak in the 1650s (coinciding with the regulatory trough in the

<sup>65</sup> However, it must be recognized that in the latter period only 4 percent of manorial court cases involved church punishment of moral or religious offences; the rest related to church finances and appointments (5 percent), Catholicization (4 percent), the clergy as private individuals (2 percent), and passing allusions to the deity in non-religious cases (0.5 percent).

<sup>66</sup> For analogous findings on the relative lack of influence of religious institutions, personnel, and moral disciplining in the south Bohemian estate of Český Krumlov/Krumau, see Himl (2003, esp. 297–99, 329–33).

TABLE 2  
*Social Disciplining of Private Life Compared to Other Manorial Court Cases, Estate of Friedland/Frydlant, 1583–1692*

<i>Time period</i>	<i>Social disciplining of private life</i>		<i>Direct manorial interests</i>		<i>Religion or church</i>		<i>General economic transactions</i>		<i>Economic privileges for favoured groups</i>		<i>Total cases</i>	
	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>	<i>no.</i>	<i>%</i>
1583–1587	22	8	98	38	8	3	110	42	9	3	259	100
1588–1592	29	14	54	25	6	3	42	20	4	2	213	100
1593–1597	15	16	28	29	11	11	25	26	7	7	96	100
1598–1602	21	26	30	37	12	15	10	12	6	7	81	100
1603–1607	39	8	124	25	21	4	186	38	38	8	494	100
1608–1612	28	6	138	28	17	3	267	54	30	6	492	100
1613–1617	30	11	80	29	27	10	137	49	29	10	278	100
1618–1619	22	10	87	41	25	12	75	36	23	11	211	100
1627–1631	26	7	95	26	35	10	215	59	26	7	364	100

1645	5	3	54	28	9	5	59	30	20	10	196	100
1649–1654	28	10	126	45	85	31	99	36	40	14	278	100
1655–1659	50	20	132	52	41	16	50	20	17	7	255	100
1660–1664	19	17	59	53	22	20	42	38	16	14	111	100
1674–1679	17	10	53	33	28	17	14	9	30	18	163	100
1680–1684	19	16	54	46	27	23	12	10	11	9	118	100
1685–1692	25	14	84	46	38	21	50	27	27	15	183	100
Pre-war (1583–1617)	184	10	552	29	102	5	777	41	123	6	1913	100
Wartime (1618–45)	53	7	236	31	69	9	349	45	69	9	771	100
Early Post-War (1649–64)	97	15	317	49	148	23	191	30	73	11	644	100
Late Post-War (1674–92)	61	13	191	41	93	20	76	16	68	15	464	100
<i>Jahr</i> ding Period (1618–92)	211	11	744	40	310	16	616	33	210	11	1879	100
Whole Period	395	10	1296	34	412	11	1393	37	333	9	3792	100

SOURCE: SOAD, HS, Kart. 61, 77, 78, 79, 80, 709 (Amtsprotokolle, Herrschaft Friedland, 1583–1692).

*Jahrdings*-ordinance of 1661). This again suggests that surges in regulatory interest in a particular sphere cannot be interpreted as reflecting surges in enforcement.

The lack of any clear relationship between regulation and enforcement is further illuminated by the two dominant spheres of court business: direct manorial interests and the economy. As we saw, regulations directly affecting manorial interests made up the largest category of *Jahrdings*-articles (55 percent), and also the largest category of manorial court cases (34 percent for the whole period, and 40 percent for the period 1618–1692 approximately coinciding with the surviving *Jahrdings*-articles).<sup>67</sup> While direct manorial interests remained a very stable component of regulation throughout the century, apart from a slight dip in the 1690s, their representation in court business fluctuated greatly, with dips around 1590, 1610, 1630–1645, and 1680, and peaks around 1600, 1620, 1650–1670, and in the 1690s. The latter enforcement peak exactly coincided with the only regulatory trough. Once again, we find regulation is a poor guide to enforcement.

The same is true for regulations involving economic activity, the second-largest category both of *Jahrdings*-articles (28 percent) and of manorial court business (46 percent). Economic activity was the one sphere in which enforcement vastly outweighed regulation.<sup>68</sup> Economic *privileges*, admittedly, played a similar role in regulation (13 percent of *Jahrdings*-articles) and enforcement (9 percent of manorial court cases over the whole period, 11 percent for 1618–1692). But *general* economic matters played a role in only 15 percent of *Jahrdings*-articles, but in a striking 37 percent of all manorial court business (33 percent for 1618–1692). In its regulations, the manor gave little priority to everyday economic matters as compared to protecting economic privileges for itself and for favored groups. But in enforcement the manor was compelled to be active by its own subjects, who valued the manorial court precisely because it could provide the contract enforcement and conflict resolution essential for their daily economic lives.<sup>69</sup> These encompassed key economic spheres such as debt repayment (which played a role in 26 percent of cases), boundary disputes and damage to crops (15 percent), land sales (14 percent), commerce (14 percent), inheritance (11 percent), crafts (10 percent), theft (6 percent), and proto-industry (5 percent).

<sup>67</sup> Indeed, the categorization of manorial court cases was deliberately conservative in including only those cases involving direct payments by subjects to the manor and direct permits granted by the manor for marriage or migration decisions. Since there were many other ways in which manorial interests could be affected, this percentage of court cases directly affecting manorial interests is certainly an underestimate.

<sup>68</sup> For a micro-level examination of the institutional and socio-cultural framework for local economic activity in early modern Bohemia, see Ogilvie (2001).

<sup>69</sup> For a more detailed discussion of ordinary serfs' demands that the manor provide contract enforcement and contract resolution, and the manor's lack of interest in doing so, see Ogilvie (2005a, 108–12).

Serfs valued the manorial court because, however biased its judgments toward the overlord’s interests, it provided a welcome alternative to communal courts whose judgments often favored the village oligarchy and their cronies. Weaker villagers in particular—women, members of the lower social strata, individuals who were not kin of the village officers—found that communal courts treated them unfairly, and they frequently appealed to the manorial court against communal injustice.<sup>70</sup> Members of the lower social strata of land-poor smallholders, landless cottagers, and houseless lodgers repeatedly complained against the communal oligarchy. In 1607, for instance, the Weigsdorf/Višňová smallholders objected to the unfair allocation of manorial demesne services by “the headman and elders” (all of them members of the full-peasant stratum).<sup>71</sup> In 1610 the houseless lodger Jörg Schrötter claimed that the Bullendorf/Bulovka headman had threatened that “he would bring it about with Her Grace the Countess that he should be hunted out of the country.”<sup>72</sup> Outsiders to the village and those who were not relatives of the oligarchy also complained that communal autonomy was used against them, as in 1618 when Michell Petzelt protested that the Lusdorf/Ludvíkov village court had decided a boundary dispute against him because “he was an outsider, and the village headman and village justices were each other’s kin.”<sup>73</sup> Women, too, frequently reported ill treatment by the communal oligarchy.<sup>74</sup> In 1605, for instance, Jacob Wildner’s wife in Mildenau/Luh complained that the village headman had helped a male relative deprive her of her paternal inheritance.<sup>75</sup> In 1645, Hans Hübner’s widow described how the village council had decided that she “could not manage her farm” and had forcibly sold it away from under her for a peppercorn price.<sup>76</sup> In 1685 Jacob Schmied’s widow Anna only managed to retain her smallholding against attack by the Hermsdorf/Heřmanice village council by appealing to the manorial court.<sup>77</sup>

The manor increasingly objected to being “pestered” with such trivial matters, and in 1676 explicitly ordered, “with wrong dealings and conflicts which are of no importance, the village headman and sworn-men shall bring

<sup>70</sup> For a fuller exploration of this phenomenon, see Ogilvie (2005a), 109, 112–15, 118–19.

<sup>71</sup> SOAD HS, Kart. 77, Bürgerschaftsbuch 1593–1610, fol. 93v, 17.3.1607: “*Scholtz vnd Eltisten.*”

<sup>72</sup> SOAD HS, Kart. 77, Amtsprotokolle 1609–11, fol. 49r, 11.5.1610: “*ehr wolte souiel zuweg bring. bej der Gräfin Ihr. Gn: das ehr außm lande gejagt werd. solte.*” For Schrötter’s social status as a houseless lodger, see SOAD HS, Kart. 12a (Urbar, 1591–2).

<sup>73</sup> SOAD HS, Kart. 78, Amtsprotokolle 1616–9, fol. 122v, 8.10.1618: “*ehr wehre Frembde, Schultes Vnd Schoppen wehre Freünde.*”

<sup>74</sup> For a fuller quantitative and qualitative analysis of the treatment of women by Bohemian communes and manors under the “second serfdom,” see Ogilvie and Edwards (2000).

<sup>75</sup> SOAD HS, Kart. 77, Amtsprotokolle 1604–6, fol. 29v, 12.3.1605.

<sup>76</sup> SOAD HS, Kart. 78, Amtsprotokolle 1645, fol. 58r, 1.7.1645: “*daß die hinderlassene Wittib solchen guet nit vorstehen . . . könnte.*”

<sup>77</sup> SOAD HS, Kart. 709, Amtsprotokolle 1685–7, fol. 10v, 8.5.1685.

about a settlement out there [in the village], and the parties shall be satisfied with what is right and just, so that such a large number of folk do not sometimes have to wait upon a few unimportant persons, and so that in the mean time other things can be carried out in the manorial court.”<sup>78</sup>

The manor’s lack of incentive to provide basic economic regulation for its subjects is reflected in its allocation of only 15 percent of *Jahrdings*-articles to such matters. Its declining willingness even to respond to requests for contract enforcement and conflict resolution by serfs themselves is reflected in the declining proportion of court business allocated to such everyday economic matters after 1645, shown in Figure 3. By increasingly refusing to hear such cases, the manor was simply bringing its enforcement activities into line with its regulatory priorities.<sup>79</sup>

At least on this Bohemian estate, therefore, social disciplining was an even less important component of enforcement than of regulation. Far from intensifying with the growth of the state or with any “commercialization” of the manorial economy during the seventeenth century, social disciplining peaked around 1600 and never surpassed that level thereafter. Before the Thirty Years War, social disciplining played a greater role in court business than did religion or economic privileges; thereafter it was gradually surpassed by all major categories of court business. Its second peak in the 1650s was a temporary blip reflecting a change in administrative practice (the issuing of marriage permits in open court sittings), and was followed by decline and stagnation. Social disciplining was far less important in manorial court business than were cases involving direct manorial interests (brought to court by the manorial officials) or those involving ordinary economic transactions (brought there by village officers and individual serfs). Those matters were important to the overlord, the communes, and ordinary serfs in a way that social disciplining was not.

#### IV. THE SPECIFIC FEATURES OF SOCIAL DISCIPLINING IN A SERF SOCIETY

But if social disciplining was not fully enforced, as the traditional historiography assumed, neither was it completely un-enforced, as the revisionists have tended to claim. Some social disciplining offences *were* penalized, and examining their characteristics can help us understand what fuelled social disciplining in early modern Europe. As we have seen, historians of western

<sup>78</sup> SOAD HS, Kart. 61, Amtsprotokolle 1674–81, 19.3.1676, fol. 11v: “Vnnrichtige händeln Vnd strittigkeiten so Von Keiner wichtigkeit: sollen Scholze Vnd Geschworne daraußen Vergleichen, Vnnd sich die Partten waß Recht vndt billich, daran begnügen laßen, damit zu Zeiten nicht so Viel Volck auf etliche [inserted: Vnwichtige] Perßonen wartten, Vnnd man Vnter deßen [inserted: im Ambte] andere sachen Verrichten Kan.”

<sup>79</sup> For a strikingly similar example from the south Bohemian estate of Český Krumlov/Krumau in 1765, see Himl (2003, 158, 183).

Europe have observed a chronological coincidence between social disciplining, state growth, and economic “commercialization,” and have concluded that these were all connected. We have also seen that historians of eastern Europe have tended to adopt these same categories, casting noble landlords as “agents” of the state and the second serfdom as a form of “commercialization.” But as this study makes clear, local sources cast doubt on such assumptions. Neither regulations nor enforcement show any increase—or decrease—in intensity of social disciplining over the period during which the second serfdom intensified. Furthermore, where social disciplining did occur, it was because manor and serfs were using it for their own purposes, thereby weakening and transforming it.<sup>80</sup>

Analyzing the exact composition of social disciplining cases, as in Table 3, provides a vivid illustration of how the regulation of private life was manipulated to serve specific social interests. The Friedland/Frýdlant manorial court showed little interest in any aspect of people’s private lives other than sexuality and marriage, which accounted for 90 percent of all cases of social disciplining. All other aspects of private life—belief, speech, play, ritual, consumption, festivities, sociability, leisure—were, after a brief burst of concern around 1600 under the Lutheran Redern lords, almost totally ignored. Such “cultural” offences made up an almost invisible share (less than 1 percent) of total manorial court cases over the whole period, and a falling share of social disciplining cases, declining from 16 percent before the Thirty Years War, to 15 percent in wartime, 10 percent in the early post-war period, and only 8 percent in the late post-war period. This contrasts strikingly with their relative importance in regulatory sources, where an interest in shaping people’s cultural and leisure choices played a much more prominent role.

Even within the spheres of sexuality and marriage, the manorial court concentrated almost all its attention on a very few specific offences. Within sexual regulation, the almost exclusive targets were fornication and illegitimate pregnancy. These directly affected the interests of both the overlord himself and the respectable householders who dominated communal institutions, the main channel through which village matters were made known to the manorial court. Illegitimate children threatened manorial interests because they could not inherit landholdings or be apprenticed to crafts, and hence were unlikely to become productive subjects who could pay dues and render labor services to the overlord. They threatened the interests of respectable householders because they could not bear their share of manorial burdens within the community, and in addition were likely themselves to demand charity from richer villagers. But neither communes nor manor showed any

<sup>80</sup> For analogous findings for other parts of early modern Europe, see Weber (1995, 422); Scholz (1996, 226); Weber (1996, 355–59); Ogilvie (1999, 182–99).

TABLE 3

## Composition of Social Disciplining Cases, Friedland/Frydlant Manorial Court, 1583–1692

Category	Pre-war (1583–1617)		Wartime (1618–1645)		Early post-war (1649–1664)		Late post-war (1674–1692)		Entire period (1583–1692)	
	no.	%	no.	%	no.	%	no.	%	no.	%
<i>Sexuality</i>										
Fornication	123	67	25	47	24	25	29	48	201	51
Illegitimate pregnancy	80	43	19	36	15	15	24	39	138	35
Adultery	16	9	1	2	3	3	3	5	23	6
Birth too soon after wedding	1	1	0	0	2	2	1	2	4	1
Child support	0	0	2	4	2	2	4	7	8	2
Rape	0	0	0	0	2	2	2	3	4	1
Incest	0	0	0	0	0	0	5	8	5	1
Indecent speech or gesture	3	2	0	0	0	0	0	0	3	1
Infanticide	7	4	1	2	0	0	3	5	11	3
French disease	2	1	0	0	0	0	0	0	2	1
Suspect behaviour	3	2	1	2	0	0	0	0	4	1
Stalking	0	0	0	0	2	2	0	0	2	1
Licensing of midwives	0	0	0	0	1	1	0	0	1	0
<i>Sub-total sexual</i>	134	73	28	53	29	30	37	61	228	58
<i>Marriage</i>										
Betrothal	19	10	10	19	7	7	7	11	43	11
Grant of permit	3	2	3	6	46	47	7	11	59	15
Regulation	9	5	8	15	10	10	6	10	33	8
Consanguinity	0	0	3	6	2	2	2	3	7	2
Marital conflict	3	2	1	2	1	1	3	5	8	2

<i>Sub-total marriage</i>	32	17	23	43	63	65	24	39	142	36
Marriage excluding permits	29		20 <sup>a</sup>		18 <sup>b</sup>		17		84	
<i>Culture/leisure</i>										
Blasphemy, cursing	11	6	3	6	2	2	1	2	17	4
Superstition, magic	3	2	4	8	3	3	2	3	12	3
Gaming	13	7	0	0	1	1	0	0	14	4
Funeral practices, suicide	1	1	1	2	1	1	1	2	4	1
Tobacco use	0	0	0	0	2	2	1	2	3	1
Baptismal celebrations	1	1	0	0	1	1	0	0	2	1
Wedding celebrations	0	0	0	0	1	1	0	0	1	1
Spinning-bees	1	1	0	0	0	0	0	0	1	0
<i>Sub-total culture/leisure</i>	29	16	8	15	11	11	5	8	53	13
All social disciplining	184	100	53	100	97	100	61	100	395	100
Excluding marriage permits	181		51 <sup>a</sup>		52 <sup>b</sup>		54		338	
<i>Share of total cases that involve:</i>										
Sexuality	7		4		5		8		6	
Marriage	2		3		10		5		4	
Culture/leisure	2		1		2		1		1	
Social disciplining	10		7		15		13		10	
Marriage excluding permits	2		3		3		4		2	
Soc. disc. excluding marriage permits	9		7		8		12		9	
<i>Total cases</i>	1913		771		644		464		3792	

<sup>a</sup> Although 3 cases involved marriage permits, 1 of them also involved fornication, so excluding cases solely involving marriage permits reduces the total by only 1.

<sup>b</sup> Although 46 cases involved marriage permits, 1 of these also involved marital consanguinity, so excluding cases solely involving marriage permits reduces the total by only 45.

Notes: Columns do not all add up to 100 percent since some cases involve more than one category of offence.

SOURCE: SOAD, HS, Kart. 61, 77, 78, 79, 80, 709 (Amtsprotokolle, Herrschaft Friedland, 1583–1692).

of the interest which village-level social disciplining in western Europe normally evinced for *frühe Beischlaff* (legitimate children born too soon after their parents' wedding), infanticide, adultery, incest, sexually suspect behavior, or the licensing of midwives.<sup>81</sup>

Marital regulation in this serf society was equally narrowly focused on two specific offences: betrothal conflicts and marriage permits. Betrothal conflicts were important both to respectable peasants and to the manor because they affected the formation of new households that could help to shoulder the ever-increasing burden of dues, labor services, state taxes and military contributions. Furthermore, betrothal conflicts were often bound up with premarital pregnancies. Marriage permits directly affected manorial interests because serf offspring who married before they had performed their period of forced service on the demesne deprived the manor of free labor, serfs who failed to obtain permits thereby evaded paying manorial permit fees, and serfs who married outsiders to the estate had incentives to abscond and to beget offspring whose serf status could be questioned.<sup>82</sup> Thus the manor had an interest in intervening in betrothal conflicts and marriage permits so as to protect its own revenues and satisfy pressure from respectable villagers.<sup>83</sup> But there was none of the obsessive concern to prevent pauper marriages that increasingly characterized social disciplining in many parts of western Europe during this period.<sup>84</sup> Nor do we observe the systematic regulation of marital conflicts revealed in western European communal and church courts of the time.<sup>85</sup>

The overlords of this Bohemian estate, insofar as they were interested in their subjects' private lives at all, concentrated almost all of their attention on sexual and marital behavior directly affecting their own economic interests through the capacity of households and communities to pay manorial burdens, or indirectly affecting the interests of the stratum of established male householders who ensured that these burdens were collected and that the potential for serf rebellion was usually kept under wraps.<sup>86</sup> The strictly economic perspective of the manorial court toward extra-marital sexuality appears

<sup>81</sup> On the obsessive concern for such matters as part of the regime of social disciplining in south-west Germany, see, e.g., Rublack (1999); Ogilvie (1997, 63–72); Ogilvie (2003, 156–58, 235–36, 309–17); Labouvie (1996).

<sup>82</sup> For a fuller discussion of manorial marriage controls, see Ogilvie (2005a, 98–103).

<sup>83</sup> For a similar focus on marriage controls by Russian landlords, see Behrisch (1999, 346).

<sup>84</sup> Ehmer (1991); Mantl (1997); Ogilvie (1997, 60–63); Ogilvie (2003, 51–54).

<sup>85</sup> For instance, in just two Württemberg communities (consisting of a total of only 400–500 households), more than 300 marital conflicts were heard by community church courts between c. 1650 and c. 1800; see Ogilvie (2003, 179–94). On similarly intense regulation of marriage conflicts in rural Bavaria, see Beck (1992).

<sup>86</sup> For discussion of how this affected the position of women and weaker villagers, see Ogilvie and Edwards (2000); and Ogilvie (2005a), esp. 109, 112–15, 118–19. For similar findings for Brandenburg, see Hagen (2002, 489–91). For an even more severely economic perspective by Russian overlords on their serfs' private lives, see Behrisch (1999, esp. 344–46).

explicitly in its reluctance to force a marriage when the male party to a premarital pregnancy resisted. In 1658, for instance, when a widow's adult son in Liebwerda/Libverda impregnated their female lodger, the manorial court decided not to force him to marry her because “it was learned from Michel Riessler that he had absolutely no desire to marry this Anna Gallerin, also besides it is a matter for concern that if he were to be compelled to do this he would become vagrant and the farm might fall into abandonment.”<sup>87</sup> The birth of a bastard lacking in economic means was bad, but the abandonment of a farm by its adult male holder was infinitely worse. This contrasts strikingly with the treatment of illegitimate impregnation in western European villages where fornicating couples were often forced to marry on moral grounds.<sup>88</sup> Under the second serfdom, fornication was only punished when this was practical and useful for the overlord, not in pursuit of some sort of abstract social disciplining of private life.

Abstract social disciplining does seem to have occurred in a few cases—as in the sporadic prosecution of Sabbath work, tobacco-smoking, and excessive wedding celebrations. But closer examination often reveals a more complicated agenda that had little to do with any abstract “civilizing process” directed at political or economic modernization. Social disciplining regulations often merely provided an excuse to punish someone particularly severely for having offended in some other way against the direct interests of the manor, or against respectable members of a village commune. In many cases, social disciplining was brought into play by other institutions—particularly village communes—manipulating manorial regulations in their own interests.

In 1645, for instance, Michel Augsten's sister in Weißbach/Bílý Potok was one of only two serfs ever punished for Sabbath work, despite its repeated and usually vain prohibition by both church and state. She only came to the attention of the manorial court, however, because the village council reported her for causing violent conflicts within the household shared by her mother and married brother, thereby endangering its capacity to shoulder communal burdens.<sup>89</sup> In 1661, likewise, Jacob Hildebrand in Olbersdorf/Albrechtice was the only serf ever penalized for smoking tobacco, despite its frequent prohibition in princely and manorial ordinances, and then only because he was reported to the manorial court for defaming and assaulting his brother, the village headman.<sup>90</sup> In 1651, Nicholas Förster was the only person ever

<sup>87</sup> SOAD HS, Kart. 79, Amtsprotokolle 1656–60, 24.4.1658, fol. 89–91, here fol. 91: “Vnd [inserted: Von] Ihme Michel Rießlern Zu Vernehmen geweßen, daß er ganz Keinen Lust getrage, dieß Anna Gallerin zu heürathen, Auch dabej zu besorgen, daß, da er hier zue gezwungen wurde, einen landtlauffer abgeben, Vndt dz gutt zur wüsterey gerathen möchte.”

<sup>88</sup> Head-König (1993); Tamm and Johansen (1999, 316–18).

<sup>89</sup> SOAD, HS, Kart. 78, Amtsprotokolle 1645, fol. 39r, 17.6.1645.

<sup>90</sup> SOAD, HS, Kart. 80, Amtsprotokolle 1661–4, p. 8, 30.3.1661.

reported for inappropriate wedding festivities, and then only because he cheated the manor by persuading the village headman in Bernsdorf/Horní Rašnice to accept a cash payment, whereas he “ought, according to old custom, to have held a beer-drawing or bride’s-beer in the tavern after the wedding, through which our gracious overlord’s beer would be sold.”<sup>91</sup>

Social disciplining was implemented under the second serfdom primarily when it directly served the interests of two key institutions—the manor itself as the only entity legally entitled to enforce it, and the village commune as the primary channel through which local affairs reached the ear of the manor. The religiously and morally superior “better sort” or *Ehrbarkeit*, so often observed pursuing a wide-ranging agenda of moral reform in early modern western European villages, either failed to arise within the economic and political constraints of east-Elbian serf communes, or, more likely, arose but failed to obtain support from the authorities except in cases where its moral agenda served manorial interests. Social disciplining was implemented in this serf society, but not in pursuit of some sort of theoretical “process of civilization,” whether to form obedient subjects for the emerging absolutist state or to create well-behaved workers for a nascent capitalist economy.

#### V. CONCLUSION

The social disciplining of private life is assigned far-reaching importance in the modernization of European societies between c. 1500 and c. 1800. But hitherto almost all such studies have focused on western Europe, giving rise to a consensus that social disciplining was related to the growth of the state and the transition to capitalism. There is, however, another Europe—the east-Elbian territories of the so-called second serfdom—where social disciplining has until recently been obscured behind divergences in historiographical traditions. But we cannot reach reliable conclusions about Europe-wide developments without comparative perspectives on both parts of the continent. Nor can we simply impose on eastern Europe categories and conclusions drawn from the west. Rigorous analysis of social disciplining in an eastern European context is urgently needed to provide the missing comparative perspective.

This essay has sought to fill this gap by analyzing social disciplining in an east-Elbian society for which detailed quantitative and qualitative data are available on both regulatory and practical aspects of moral regulation. These data reveal striking similarities to early modern western European initiatives to regulate people’s private lives. But they occurred here within a socioeconomic framework—the second serfdom—that diverged from

<sup>91</sup> SOAD HS, Kart. 79, Amtsprotokolle 1650, fol. 40r, 23.5.1651: “Nun hete sich gebürt dz nach gehaltener hochzeit in dem Kretsch. Zue Bernßdorff, dem alten herkhommen nach, ein [inserted: bier Zueg oder] Brauthbier gehalten worden sein solte, wardurch Gene.: herrschafft bier abzuegehen Pflaget.”

western Europe precisely in this period. This raises fundamental questions about the relationship between social disciplining on the one hand and socio-economic transformation on the other.

Eastern-central and eastern European societies participated in a process of social disciplining recognizably similar to that in western Europe. From the mid- to late sixteenth century onward, the authorities issued regulations devoted to the disciplining of individuals' private lives, focusing specifically on their choices regarding sexuality, marriage, leisure, and cultural practices. Some of these regulations were enforced in everyday life, though the extent of implementation varied over time. In eastern as in western Europe, therefore, both regulatory and practical components of social disciplining are empirically observable from the sixteenth to the eighteenth century. But the socio-economic context for such regulation was fundamentally different in eastern Europe, casting doubt on traditional explanations of social disciplining.

The role of the state is the first basic difference. In western Europe, social disciplining is universally regarded as having been intimately connected with the growth of a “modernizing” state, concerned to create an orderly population of peaceful, hardworking, and disciplined taxpayers and conscripts to serve the fiscal, military and bureaucratic “revolutions.” But the detailed evidence from Bohemia shows that in many east-Elbian societies the state really did stop at the gates of the manor. Taxation and conscription grew, but it was manors and communes that were responsible for ensuring they were implemented. Social disciplining was likewise initiated and enforced almost exclusively by the manor and the commune. But there is no evidence that when manorial and communal officials enforced social disciplining they were acting as “agents” of the state, even in the most indirect way. That social disciplining took place in eastern Europe without state involvement casts serious doubt on the assumption, based on western European evidence alone, that social disciplining was both fuelled by, and itself helped to fuel, the modernization of the European state. The linking of social disciplining with the growth, rationalization, and modernization of government does not hold. Rather, we must seek the sources of social disciplining elsewhere.

The second basic difference illuminated by the eastern European evidence concerns the role of capitalism in encouraging regulation of people's private lives. In western Europe, social disciplining is widely portrayed as having served the purposes of a proto-capitalist urban elite, concerned to manage problems of pauperism, profligacy, and lack of work-discipline in order to facilitate the modernization of economic behavior and the smooth transition from subsistence production to a commercialized, market-oriented capitalist economy.<sup>92</sup> But the evidence from eastern Europe would tend to refute this

<sup>92</sup> See, for example, Oestreich (1969); Lis and Soly (1979); Schilling (1981, 65–67); Schulze (1987); Foucault (1994, 642); and Schuck (1995, 122, 147–50).

linking of social disciplining with markets and capitalism. Attempts to force eastern European developments into a straitjacket of western European historiographical categories by characterizing the second serfdom as “commercialization” do violence to the evidence. Overlords sought profits for themselves, but not by encouraging rural capitalism or well-functioning markets. Instead, they constrained the operation of markets in land, labor, capital, foodstuffs, and industrial products, using various forms of extra-economic coercion to sustain a privileged economic position for themselves and a few favored sub-groups who repaid the favor with pecuniary, institutional, or political support.<sup>93</sup> As the second serfdom progressed, moreover, as we have seen, Bohemian manors deliberately diminished the degree of contract enforcement and conflict resolution they provided to their subjects, manifesting a striking indifference to establishing the basic regulatory framework necessary for commercialization or rural capitalism.<sup>94</sup> Nor does social disciplining show any sign of having been undertaken by proto-capitalist groups, as so often argued for western Europe. Rather, it was initiated and enforced by two traditional institutions with powers reaching far back into the feudal era—the manor and the peasant commune. That social disciplining took place in eastern Europe without any functional relationship with the growth of markets or commerce, and instead within a framework of “re-feudalized” institutions that stifled such developments in their own interests, seriously weakens the view, based on western European evidence alone, that social disciplining was linked with the transition to capitalism. Instead, it suggests that we must seek the sources of social disciplining elsewhere—in factors *shared* by both eastern and western European societies.

What these factors were is illuminated by the third major finding to emerge from this analysis of social disciplining in an east-Elbian context. This is the relationship between regulation and enforcement. Traditionally, it was assumed that the existence of social disciplining *regulations* meant that they were actually *affecting society*. Recent revisionists, by contrast, claim that social disciplining regulations were *never* enforced in daily life. The data presented in this essay suggest that both views are wrong. Social disciplining regulations were enforced *selectively*, according to how they served particular interests. In Bohemia, these interests were two in number: the manor and the commune. The social disciplining regulations that were actually enforced were those whose violation threatened the interests of the overlord or the village elite that dominated the communal administration.

<sup>93</sup> Cerman (1997); Hroch and Petráň (1981); Klíma (1991); Maur (1985, 241–64); Winkelbauer (1999, 333–34); Ogilvie (2001).

<sup>94</sup> On the failure to provide a regulatory framework favorable for economic growth, see Ogilvie (2001, 448–51); on the manorial reluctance to provide serfs with basic contract enforcement and conflict resolution, see Ogilvie (2005a, 108–12).

The role played in social disciplining by one of these institutions—the manor—was specific to east-Elbian societies. Overlords were only interested in those violations of social disciplining that directly threatened their own revenues or offended the village elite whose cooperation was essential for the collection of those revenues and the suppression of the ever-present threat of peasant unrest.<sup>95</sup> This would explain the limited degree and narrow range of social disciplining observed in many eastern-central and eastern European societies under the second serfdom, and the particularly feeble version of social disciplining in serf societies such as Mecklenburg, Pomerania, or Russia where overlords were strongest.<sup>96</sup> The stronger the direct coercive powers of the overlord, the weaker his incentive to pursue indirect strategies, such as social disciplining, that might help to protect his revenues and placate peasant elites.

But the role played in social disciplining by the second of these two key institutions—the commune—was shared by both western and eastern European societies. Every micro-study anywhere in Europe reveals plainly that without the cooperation of communal institutions and local elites, social disciplining, or indeed any sort of regulation, was doomed to fail. Correspondingly, those regulatory initiatives that aligned themselves with the interests of strong local communes often enjoyed a surprising degree of enforcement over long periods.<sup>97</sup> This helps to explain the gradient of social disciplining across early modern Europe.<sup>98</sup> Moral regulation of private life was comparatively ineffective in societies such as England and the Netherlands, where villages and towns lacked strong institutional powers, urbanization was greater, and geographical mobility was substantial, reducing the ability of local communes to monitor and enforce compliance with disciplinary regulations.<sup>99</sup> Social disciplining was also weaker in those areas of eastern Europe, such as Russia or Pomerania, where manorial pressure was so harsh as to deter communal elites from reporting offences to outside authorities except in dire circumstances.<sup>100</sup> It was somewhat stronger in eastern-central European societies, such as Bohemia or Silesia, where landlords had fewer absolute powers and communes retained more; this may well explain the finding that social disciplining was most intense in the

<sup>95</sup> For a more detailed discussion of these issues for Bohemia, see Ogilvie and Edwards (2000).

<sup>96</sup> On the failure or absence of social disciplining under these strong versions of serfdom, see Behrisch (1999, 343–51); and Weber (1995, 438).

<sup>97</sup> On this, see Behrisch (1999, 346–47); Brewer and Hellmuth (1999, 13–14); Härter (1999, 49–52); Hagen (2002, 423–25, 466–69, 477, 489); Head (1999, 341); Hohenstein (2003, 836–52); Ogilvie (1999, 182–99); Schmidt (1995); Scholz (1996, 226); Tamm and Johansen (1999, 321–22); Weber (1995, 422); Weber (1996, 355–59); Winkelbauer (1999, 332–33).

<sup>98</sup> For a similar assessment of the gradient of communal power across Europe, see Weber (1995, 423, 438); Weber (1998, 435–38).

<sup>99</sup> Ingram (1999, esp. 97–102); Prak (1999, 163–66).

<sup>100</sup> Behrisch (1999, 343–51); Weber (1995, 438).

four decades before 1620, when manorial powers are thought to have been less strong in Bohemia.<sup>101</sup> Finally, social disciplining was most effective in Scandinavia and German-speaking central Europe, where villages and towns retained strong institutional powers, urbanization was low, and geographical mobility was restricted, thereby easing the ability of local communes to monitor and enforce compliance.<sup>102</sup>

The basic insight that emerges from this comparative analysis of that “other” Europe east of the Elbe is that social disciplining was not an expression of the modernizing forces of the state and the market, but rather of the traditional corporative organization of European local society. Social disciplining did not require the state or capitalism. What it did require were effective local institutions with the ability and incentive to cooperate with the authorities in regulating individuals’ private lives. The most universal such institution was the local community, and hence those societies with stronger communal institutions also had more effective social disciplining.

However, strong communes did not foster the well being of all their inhabitants. Rather, they served the interests of a village oligarchy of respectable, well-off male householders, who had strong incentives to control the behavior of the lower social strata, outsiders, women, migrants, deviants, and other marginal individuals.<sup>103</sup> Whatever the “civilizing” and “modernizing” intentions of those who wrote the regulations, social disciplining in practice exposed the vulnerable to coercion not so much by the state, capitalism, or even the manor, as by their own more powerful neighbors within the community.

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<sup>101</sup> Himl (2003, 203–5); Weber (1996); Weber (1998); Winkelbauer (1992); Winkelbauer (1999).

<sup>102</sup> On Scandinavia, see Tamm and Johansen (1999, esp. 305, 312–13, 321–24); on Germany’s “especially intensive form of social disciplining,” albeit ascribed to its state structure rather than to the relationship between state structure and strong communes, see, e.g., Schulze (1987, 293); for sophisticated explorations of the key role played by communal institutions in German and Swiss social disciplining, see Holenstein (2003, esp. 836–52); Head (1999, 341); and Schmidt (1995).

<sup>103</sup> Ogilvie (2005a, 112–15, 119).

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