“POLICING” AND MORALITY:
ON THE STATE REGULATION OF FAITH AND MORALITY
IN THE POLICY DECREES OF THE EARLY MODERN PERIOD

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At the beginning of the Early Modern period there emerged what constitutional history has called the “territorial state”. Amongst its key features are specific functions and the new type of institutions at its disposal. Both of these distinguish it from the older organizational forms of statehood. Above all, the new function of formulating and imposing laws is most striking: in its nascent phase in the sixteenth century the territorial state became increasingly active in the legislative field.¹ Secular rule took on a clearly different character: from now on it was no longer limited to jurisdiction and providing protection as was the case in the secular rule of the Medieval period.² Rather, it was the realm of laws and their enforcement that developed, also in the self-understanding of the princes, into the decisive function of rule in the territorial states.³

Logically enough, this new function demanded specific institutions, which ensured that laws were observed and their violation sanctioned. And indeed it was the case that from the end of the Middle Ages such institutions for setting norms and imposing sanctions gradually emerged: councils were formed at the courts which served as a counseling organ for the princes on laws and legal issues,⁴ while officials ensured that

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³ Ibid., 11ff; Härter, “Entwicklung und Funktion”, 118ff.
regulations were adhered to in their local districts and any violations punished in judicial-like proceedings.\textsuperscript{5}

At the same time, however, the new legislative function and the initial formation of “administration” meant that the state was extending its reach to a field hitherto very much in the hands of the Church: moral discipline and pastoral care. With the help of the new institutions, the state of the Early Modern period began to regulate and control the moral and religious behavior of its subjects. Unsurprisingly, this was particularly prevalent in the Protestant territories, but the basic pattern was also evident in Catholic territories: religious issues were partially placed in the hands of the state, while the Church was placed under state supervision. These two tendencies are the main theme of the following considerations.

In the language of the day, the new functions of setting laws and sanctioning their violation were labeled “police” [“Policey”]:\textsuperscript{6} unlike today, “police” and “policing” here did not refer to an armed law enforcement agency, but designated the domain under the control of the Early Modern state that was not covered by judiciary and defence. The term “policing”—a malapropism of the Latin \textit{politia}—thus addressed those functions usually associated today with “government and administration.” The pivotal instrument of action here was legislation—with its help the Early Modern state sought to impose specific organizational structures on society. Legislative acts were regulative instruments designed to counter social developments unacceptable to contemporary ideas of order.\textsuperscript{7} This has remained the general idea behind legislation down to the present day. According to this notion, anything can be deemed an object of regulation that threatens to fall into—or already has—a state of disorder, demanding that order be restored.\textsuperscript{8} Hence, the objects deemed to require regulation allow us to recognize the prevailing values and notions of order. They give legislation a goal and a direction, and, moreover, they are subject to continuous change, for they are dependent on the collective concepts of morals and order of a specific historical period. The focal

\textsuperscript{5} Carl August Agena, \textit{Der Amtmann im 17. und 18. Jahrhundert. Ein Beitrag zur Geschichte des Richter- und Beamtenums} (Göttingen, 1972); Willoweit, “Entwicklung”, 100ff.

\textsuperscript{6} On the term “Policey” see Simon, \textit{‘Gute Policey’}, 111ff. with numerous references.


\textsuperscript{8} For an instructive overview of the single fields, focusing on the example of policing legislation of a single territory, see Karl Härter, \textit{Policey und Strafjustiz in Kurmainz: Gesetzgebung, Normdurchsetzung und Sozialkontrolle im frühneuzeitlichen Territorialstaat} (Frankfurt am Main, 2005), 735ff.