An Audience for the Amish: A Communication Based Approach to the Development of Law

MaryAnn Schlegel Ruegger
Indiana University School of Law
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MARY ANN SCHLEGEL RUEGGER*

INTRODUCTION

Popular media reinforce an image of the Old Order Amish as a plain people, opposed to change and wedded to a nineteenth-century way of life. Contrary to this perception, the *Ordnungen*, or ordinances, of the Old Order Amish reveal a people who have adapted to drastic changes within the outside world. Via this internal system of laws the Amish have maintained thriving rural communities at a time when rural communities as a whole have experienced marked decline.¹

With Reformation-era roots in the Anabaptist religious sect, the heritage of the Amish is that of a persecuted people, once despised as heretics both by Protestant reformers and by the Catholic church. At the same time, the Amish, like many minority groups, face a constant struggle against assimilation. Consequently, much of the Amish ethos derives from a struggle for peaceful co-existence with the outside world, a struggle to find the median between persecution on the one hand and assimilation on the other.

This Note explores the development of the *Ordnungen* as the internal legal system of a community that is concurrently subject to the legal system of a political state. Part I explores the historical influences on the *Ordnungen*. Part II analyzes the development of the written *Ordnungen*, focusing on changes in organization, phrasing and content. Part III relates the historical influences discussed in Part I to the changes observed in Part II through the use of three theories of legal development. Theories one and two attempt to explain the development of Amish law using traditional concepts of legal development. The first theory considers the effect of the identity of the drafters and the second theory considers the effect of external events. Because these theories, while helpful, fall short of a complete explanation, this Note borrows from the foundations of communications

* J.D. Candidate, 1991, Indiana University School of Law at Bloomington; B.S., 1981, Purdue University.

theory to develop a third theory that goes beyond traditional theories of legal development. This third theory suggests that the presence of a two-tier audience acts as an additional influence on the type of laws a community will develop. This emphasis on audience analysis assumes that when a community is aware of its vulnerability to persecution for the tenets of its beliefs, it will write its statements of those beliefs with two audiences in mind, one being the internal audience of the community and the other being the external audience of potential sources of persecution or assistance. By focusing on the relationship between a community and its audience, this theory of audience analysis completes the communication based model suggested first by the theory of speaker identity (the source), second by the theory of external events (the context) and third by the message contained in the laws (the message). Within this model, the theory of audience analysis (the receiver), is the final and necessary, fourth prong.

The use of Amish laws to test this hypothesis is particularly appropriate, due to the fundamental Amish belief in separation from the world. As a result of this belief, the Amish are perhaps the community least likely to respond to the perception of an external observer audience. If this theory is applicable to the Amish, it is even more likely to explain changes within other legal systems whose members are more interested in social and economic integration with the world.

SCOPE OF THE RESEARCH: THE ORDNUNGEN

The laws of the Old Order Amish encompass both written and unwritten laws. While the unwritten laws vary from congregation to congregation,²

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2. See Hostetler, supra note 1, at 36. Hostetler states:
Some of the Amish rules, those recorded at special ministers' conferences, have been published, but the functioning Ordnung of each local group remains unwritten. These [unwritten] rules represent the deliberations of the ordained leaders [of the local church] with the endorsement of the members at a special "preparatory" service held semiannually before the communion service.

Id. Hostetler calls the Amish system of church government a ""patriarchal democracy.'" D. Kraybill, THE RIDDLE OF AMISH CULTURE 78 (1989) (footnote omitted) (quoting J. Hostetler, AMISH SOCIETY 111 (3d ed. 1980)). Although each member has a vote, it is usually a vote to accept or reject the bishop's recommendation. Each congregation is a geographical district limited in membership to the adult Amish believers living within its boundaries. Self-contained and autonomous, districts ordain their own leaders from among the male members of the congregation.

The bishop, minister and deacon form the leadership team that guides the local district. As the spiritual leader, the bishop interprets and enforces the ordinances and recommends decisions to the members of the congregation. If the office of bishop is vacated by death or illness, plans to ordain another bishop must be approved by the local congregation as well as other bishops in the settlement. One of the eligible ministers is made bishop by the ""casting of lots."

Preaching sermons and assisting the bishop in providing spiritual leadership to the congre-
this Note focuses upon those written laws that have been endorsed at special ministers' conferences and have been preserved and translated into English.\(^3\)

The self-imposed laws of the Amish community can be divided into two categories. The first category of laws addresses the institutional functions of the church. This category includes such items as the method of selecting ministers and the method of instruction prior to baptism. The second category addresses the behavior of the individual members of the church community. These laws govern the relationships within the Amish community as well as the degree to which the members of the community may interact with the outside world. The Amish refer to this second set of laws as *Ordnungen*, a German word which translates roughly as "disciplines" or "ordinances." Most authorities agree that this second set of laws embodies a concept which is difficult to define.\(^4\) Sociologist Donald Kraybill suggests that the best way to think of the *Ordnungen* is as an "ordering of

gation are the primary responsibilities of the ministers. Without professional training, the ministers are selected from within the congregation and serve unpaid for life, earning their living by another occupation.

The deacon plays a minor role in the worship service, reading scripture, leading prayers and assisting with baptism and communion. His primary responsibility is to supervise an alms fund for the families in the congregation who require mutual aid. In addition, it is the responsibility of the deacon to make investigative visits to the homes of members who are flouting or violating the ordinances of the church. He reports his findings to the bishop, who then takes appropriate action. See generally id. at 76-80 (discussing specifically the organization of the Old Order Amish of Lancaster County, Pennsylvania).


4. "It cannot really be defined by any word in any language because church *Ordnung* cannot be lived by the letter alone. In the last few centuries it has somewhat grown into a culture." Research Note, *Ordnung*, 56(4) Mennonite Q. Rev. 382, 382 (1982) (written
the whole way of life." While acknowledging that the concept of Ordnung encompasses far more than a system of law, this Note is limited in scope to an analysis of the written Ordnungen in relation to the process of legal development.

I. HISTORY OF THE AMISH RELIGIOUS SECT

A. Anabaptist Roots in the Reformation

The historical roots of the Amish religious sect lie in the sixteenth-century Reformation of the Christian church. To trace a familiar history, the Reformation began as an attempt to reform the Catholic church from within. Upon determining that reform from within was impossible, two priests, Martin Luther in Germany and Ulrich Zwingli in Switzerland, left the priesthood to found the Protestant arm of the Christian church. The Anabaptists originated as one of several factions within the Reform movement that desired additional changes to which neither Luther nor Zwingli would agree. A series of three disputations before the Zurich City Council revealed three major areas of disagreement between the dissenting factions anonymously by an Amish minister, using only his initials, JFB). The minister states:

[T]he German Hand-Konkordanz by Buchner gives it a meaning worth considering: (1) To arrange or draw up a rule of degree to induce equality. (2) It creates a vision of contentment. (3) God's example of the universe—nobody doubts the time of sunrise or sunset, nobody argues the timing of the moon, etc.

Id.

5. D. KRAYBILL, supra note 2, at 95.

6. The Protestant church in Germany followed Luther's theology and became known as the Lutheran church. The Protestant church in Switzerland which followed Zwingli was termed the Reformed church. R. BAINTON, THE REFORMATION OF THE SIXTEENTH CENTURY 77-78 (enlarged ed. 1985). In the United States today, the Lutheran church is still known by the same name. The Swiss Reformed church in the United States has undergone a series of mergers and its historical descendants are now a part of the United Church of Christ. See generally A. DUNNAVANT & H. SHORT, THIS IS OUR STORY: Glimpses From Church History (1989).

7. Some scholars have referred to these factions as the "radical reformers." If the Catholic church of the Reformation period were to be considered the "conservative right," the Lutheran church, in discarding many of the fundamental doctrines of the Catholic church while retaining many of its ceremonies and rituals in worship, could be termed the "right center." The Reformed church, which abandoned much of the Catholic tradition both in doctrine and in worship, but retained the union of church and state, filled the role of "left center." The Anabaptists are one of several groups on the "extreme left" of this spectrum. They went beyond the Reformed church by eliminating all religious hierarchy and by eliminating the union of church and state. E. LIECHTY, PLAIN PEOPLE LEFT WING OF THE REFORMATION 6 (1973).

[The Anabaptist] movement arose in Zwingli's own circle as the result of an effort to carry through more consistently the program of the restoration of primitive Christianity. The word "restored" would be the most appropriate to apply to those who by opponents were called Anabaptists. Their great word was "Restitution." Much more drastically than any of their contemporaries they searched the Scriptures in order to recover the pattern of the early church.

R. BAINTON, supra note 6, at 95.
and the mainline Reformers: baptism, nonresistance and the separation of church and state.\textsuperscript{8} While differing views toward nonresistance and the separation of church and state figured strongly in the conflict,\textsuperscript{9} it was the argument over baptism that outwardly caused the break. Zwingli retained the Catholic practice of baptizing all infants soon after birth. In contrast, the dissenting factions believed that New Testament scripture required individuals to profess a Confession of Faith before they could be baptized. As a result, they argued, baptism must be limited to adults.

The third disputation took place after the first recorded refusal to baptize an infant. When the third disputation failed to resolve these differences, the Anabaptists began to baptize adults.\textsuperscript{10} Within five months of the first rebaptism, the first Anabaptist was executed for sedition.\textsuperscript{11} Over the next

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\textsuperscript{8} The first disputation was a public debate in January of 1523. In this debate, Zwingli argued against a representative of the Bishop of Constance, see R. BANTON, supra note 6, at 85, for the abolition of the Mass, the rejection of celibacy for priests, the use of the local language rather than Latin in worship and the institution of simplified forms of worship. The second debate in October of the same year focused on disagreements between Zwingli and the dissenting factions. Here the issues of difference concerned infant baptism, the separation of church and state and the participation of Christians in war. The final debate on January 21, 1525 again focused on infant baptism. See C. HIEBERT, THE HOLDEMANN PEOPLE, THE CHURCH OF GOD IN CHRIST, MENNONITE, 1859-1969, at 14-15 (1973); E. LIECHTY, supra note 7, at 7-8.

\textsuperscript{9} Both nonresistance and the separation of church and state remained important differences in Anabaptism. D. KRAYBILL, supra note 2, at 3. Adult baptism became the public symbol of the new movement. but the implicit issue was one of authority. Did the civil authorities have the right to interpret and prescribe Christian practice, or was the Bible the sole and final authority for the Christian church? For [the Anabaptists], Scripture was the ultimate authority. Id., C. HIEBERT, supra note 8, at 15 ("The radicals saw Zwingli's primary goal as the unity of Zurich rather than faithfulness to Christ."). Zwingli refused to make changes without the support of public opinion and the consent of the public authorities. E. LIECHTY, supra note 7, at 7.

\textsuperscript{10} Anabaptist literally means "to baptize again." Since all adults had already been baptized as children, their baptism as adults was, in the eyes of other Protestants and Catholics, a rebaptizing. The term Anabaptist originally was a name of scorn. The dissenters themselves preferred to be called Brethren. O. GINOERICH, THE AMISH OF CANADA 17 (1972).

\textsuperscript{11} D. KRAYBILL, supra note 2, at 3-4. The Swiss government in 1526 imposed the death penalty and banishment as the punishments for Anabaptism and in 1527 put the punishments into practice. C. HIEBERT, supra note 8, at 15. Mandates issued by the Bernese Council instructed the local authorities to deal with the Anabaptists in the following general manner: "first, imprisonment with the opportunity to renounce [the Anabaptist] faith; second, banishment from Bernese territory with a forced oath never to return; third, if the Anabaptist returned, he was charged with breaking his oath and was to be punished by the death sentence without trial." E. LIECHTY, supra note 7, at 21. In order to justify the punishment of the Anabaptists, the government revived a law from the Code of Justinian which imposed the death penalty on those who repeated baptism or denied the Trinity. According to Banton, the law was originally enacted in response to the disturbance of the civil peace by the Donatists, a group which aspired to establish a church of the saints and baptized over again Catholics converted to Donatist beliefs. Banton draws a parallel between the disturbance of the civil peace by the Donatists and the disturbance of the structure of society by the ideas of the
two centuries, Anabaptists suffered severe physical persecution from both Protestants and Catholics. This persecution caused a pattern of repeated migrations and reinforced the Anabaptist belief in the separation of the church from the outside world.

**B. Anabaptist Founders and Early Doctrine**

Many of the early Anabaptist leaders were well-educated scholastics or priests from the Roman Catholic Church. Conrad Grebel, founder of the Anabaptist movement in Switzerland, was a son of the nobility and a university graduate trained in Latin, Greek and Hebrew. Originally a supporter of Zwingli's reforms, it was Grebel who debated against Zwingli in the third disputation before the Zurich City Council. Immediately thereafter, Grebel was ordered on threat of deportation to stop meeting with sympathizers and to baptize all unbaptized infants. In response, Grebel performed the first adult baptism and proceeded to proselytize throughout the other Swiss cantons. As with other leaders of this early period, little was written by Grebel. His role ended in 1526 with his death from the plague, and many of the other initial leaders were killed in persecutions by the Swiss government instituted in response to the spread of Anabaptist beliefs.

Michael Sattler of Stauffen, Germany is believed to be the primary author of the Schleitheim Confession of 1527, the earliest statement of Anabaptist beliefs. Originally an officer in a Roman Catholic monastery, Sattler was burned at the stake in May 1527.

Anabaptists, with the social threat being the real reason for the severity of the punishment. R. Bainton, *supra* note 6, at 97-102; see also Oyer, Anabaptists, the Law and the State: Some Reflections Apropos North American Mennonites in 1985, in *PROCEEDINGS OF THE MARPECK ACADEMY* 1, 3 (1985).

12. Harborring known Anabaptists, rebaptizing or allowing oneself to be rebaptized, proselytizing and other offenses resulted in punishments including death by beheading, burning and drowning. While reliable historical figures are not available, more than twenty thousand Anabaptists are thought to have been put to death during this period. See E. Lienz, *supra* note 7, at 19.

13. Early meetings were often held at night in caves to avoid persecution. As persecution increased, many Anabaptists moved to remote mountainous regions where they could hide more easily. Continued migration led groups of Anabaptists to locate in Moravia, the Alsace, the Palatinate, the Netherlands and eventually in North America. D. Kraybill, *supra* note 2, at 5. For an example of one leader's pattern of migration, see *infra* note 22.

14. E. Lienz, *supra* note 7, at 9-10. Grebel argued that scripture did not support the Catholic practice of infant baptism which had been accepted by Zwingli. "(I) should like to hear anyone who can show to me by clear and plain scripture that John, Christ, or the Apostles baptized children or taught that they should be baptized." O. Gingerich, *supra* note 10, at 16; see *supra* text accompanying note 10.

18. J. Wenger, *supra* note 3, at 69, 71. A copy of a pastoral letter written by Sattler is usually published along with the Schleitheim Confession.
Following the founding of the Swiss Brethren movement in Zurich, Anabaptist beliefs spread throughout central Europe. In Holland and northern Germany, some of the leaders proposed revolutionary actions which culminated in the Münsterite revolt in 1534. This intensified the persecution against the Anabaptists and threatened the disintegration of the movement. Menno Simons stabilized the movement and strengthened its doctrinal foundations. The son of Dutch peasants, Simons was ordained in 1524 and served for eleven years as a parish priest in and near his home village. In 1536 he left the Catholic church due to conflicts he perceived between New Testament scripture and the Catholic doctrines of transubstantiation and infant baptism. Near the end of a one-year period of study and reflection, the Dutch Anabaptists asked him to accept the office of elder or chief shepherd and bishop of the brotherhood. Simons accepted, and until his death in 1561, led the Anabaptists throughout Holland and northern Germany. The term “Mennonite” was first used by Dutch Anabaptist followers of Menno Simons to refer to themselves and was eventually adopted by Anabaptist groups in other locations.

Dirk Philips worked closely with Menno Simons in Holland and northern Germany. Formerly a Franciscan monk, Philips preceded Simons in his entry into the Anabaptist movement and was ordained an Anabaptist elder in 1536. Philips’ views are said to be more conservative than those of Simons. A collection of Philips’ treatises and letters, Enchiridion, remains

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19. See H. Bender, Menno Simons’ Life and Writings 11-13 (1936) [hereinafter H. Bender, Menno Simons]. In an uncharacteristic use of force, revolutionary Anabaptists took over the city of Münster in northwest Germany. The city fell to the forces of the Catholic bishop after a siege of more than a year. Id. According to the few inhabitants who survived starvation, the leaders of the group used Old Testament scripture to condone polygamy and other vices, while claiming to establish the “New Jerusalem” within the city walls. E. Liechty, supra note 7, at 49-50; R. Bainton, supra note 6, at 106. Other Anabaptists, including Dirk Philips, see infra notes 24-26 and accompanying text, disclaimed the beliefs and actions of the Münsterite Anabaptists.

20. C. Hiebert, supra note 8, at 11.
22. Simons lived in various places in Holland from 1536 to 1543, in northwest Germany from 1543 to 1546 and then in Holstein and the Baltic seacoast region in northeast Germany from 1546 until his death in 1561. Each of the movements was caused, at least in part, by governmental persecution of Anabaptists in the region he left and the greater tolerance in the region to which he moved. The tolerance lasted throughout the remainder of his lifetime in northeast Germany which was under the sovereignty of the King of Denmark and thus not under the anti-Anabaptist law of the Holy Roman Empire. Id. at 22.
23. D. Kraybill, supra note 2, at 265 n.7. It should be noted, however, that the term “Mennonite” had not been assumed by the Swiss Anabaptists at the time of the Amish division in 1693. Id.
24. See C. Hiebert, supra note 8, at 21; see also E. Liechty, supra note 7, at 39; H. Bender, Menno Simons, supra note 19, at 38-39, 43.
25. E. Liechty, supra note 7, at 39. Note the distinction between the description of the dissenting factions in general as “radical reformers,” see supra note 7, and the description of Philips in this discussion as “conservative.” The forerunners of the Anabaptists were considered
popular today among the Old Order Amish because of its strict teachings on church discipline, excommunication, avoidance and the ban.26

Following the death of Menno Simons, a number of schisms began to occur in 1567 within the Mennonites of northern Europe. While Dirk Philips affiliated himself and his followers with the Flemish Mennonites, another bishop affiliated himself with the Frisian Mennonites. Efforts toward reunification repeatedly failed until a series of efforts beginning in 1627 produced reunification in 1632. Fifty-one ministers from the Flemish and Frisian divisions gathered at a conference and signed the Dordrecht Confession of 1632, a document of union drafted by the bishop of the Flemish Mennonite church in Dordrecht. The Mennonites in Alsace adopted the Dordrecht Confession in 1660, followed by the Mennonites in Germany and the Palatinate. The Swiss Anabaptists, however, refused to adopt the Dordrecht Confession,27 a variation that eventually led to the division that produced the Amish.

C. The Amish Division from the Mennonites

While the Anabaptist congregations throughout Central Europe maintained communication with one another, the settlements in Holland and northern Germany developed along different lines from those in Switzerland and southern Germany. The differences centered around the application of the ban, or shunning, of excommunicated members. Northern Anabaptists enforced a strict application of the ban, extending its use to eliminate all social interaction between the excommunicated member and the other members of the church.28 The southern groups embraced a more lenient approach and refused to extend the ban to marriage partners.29

In 1693 the southern Anabaptists split along similar lines, with the Anabaptists in the Alsace region of France and parts of Switzerland and

“radical” because they demanded extreme changes in religious practice. In contrast, the word “conservative” as applied to Philips implies a strictness in doctrine. Were Philips to be viewed under the spectrum discussed supra note 7, he would be even more of a “radical reformer” than Simons.

26. E. Liechty, supra note 7, at 39; see also infra text accompanying note 28.
27. J. Wenger, supra note 3, at 75.
28. In 1558 Menno Simons wrote a tract, Of Excommunication, “which demanded that all human ties, including those of marriage and the family, must give way under the ban of the church.” H. Bender, Menno Simons, supra note 19, at 47, 50. Simons’ views had been supported by a conference of northern bishops meeting in Wismar in 1554. According to Bender, however, the preserved text of the nine resolutions passed by the Wismar conference is so corrupt that it is impossible to determine the original meaning of the resolutions. Id. at 43.
29. “About 50 preachers and elders” from the southern settlements meeting in Strassburg in 1557 passed a resolution disagreeing with the Wismar resolution and sent two delegates to ask Simons to adopt a more moderate position. Simons refused and the controversy over the application of the ban continued. Id. at 44; see also J. Wenger, supra note 3, at 84.
southern Germany following the teachings of the more conservative northern group, while the majority of Swiss and southern German Mennonites maintained their more lenient views. The split was precipitated when a young bishop, Jacob Ammann, argued for more literal interpretation of scripture and adoption of the more conservative practices of the northern Mennonites. In addition to the strict application of the ban, Ammann demanded the observance of communion twice yearly and the addition of footwashing as a rite in the communion service. The southern group observed communion once each year and did not observe the footwashing ritual embraced by the northern Mennonites. After confronting individual ministers and members in several Swiss congregations, Ammann demanded a meeting with his superior, Bishop Hans Reist. When the Swiss leaders refused to adopt his reforms, Ammann declared them excommunicated and separated his followers from the mainstream of the Swiss and southern German Mennonites. Although Ammann later apologized for the excommunication, a series of meetings intended to produce reconciliation ended in 1711 without success. Ammann's group of more conservative Mennonites soon became known as the Amish. It should be noted that Ammann viewed his actions not as a proposal for new practices among the southern Anabaptists, but rather as a return to the "true" Anabaptist beliefs as expressed by the Dordrecht Confession of Faith. Perhaps because of this strong

30. D. Krabill, supra note 2, at 6. Other issues involved in the division included the attendance of Mennonites at state church services, the belief of some Swiss Mennonites that those who sincerely believed in Christ but did not join the Mennonite church could receive salvation and Ammann's requirement of stricter dress. O. Gingerich, supra note 10, at 20. Ammann relied upon the Dordrecht Confession of Faith for this interpretation of the strict application of the ban. See Letter from Jacob Ammann to ministers and bishops in Switzerland and in the Upper and Lower Palatinate (Nov. 22, 1693), reprinted in The Letters of the Amish Division 40 (J. Mast trans. 1950).

31. Authorities suspect that the dispute was not a dispute over doctrine alone, but also a personality clash between Ammann and Hans Reist. O. Gingerich, supra note 10, at 19. Reist paid little attention to Ammann's requests and discouraged others from "consider [ing] seriously the teaching and ordinances of youths." Id. at 18. While little is known of Ammann's background, Hostetler suggests that Ammann might have been a relatively new convert to Anabaptism. This might have contributed to the conflict. J. Hostetler, Amish Society 50 (3d ed. 1980).

32. After 1693 the followers of Ammann began to meet separately, and Ammann moved to Alsace where his views received more support. O. Gingerich, supra note 10, at 20.

33. D. Krabill, supra note 2, at 6.

34. As one source noted:

The basic issue at stake was whether or not the congregations would continue to uphold and practice the Anabaptist faith as it had been defined by the foregoing disciplines and articles and the 1632 [Dordrecht] Confession of Faith. By 1690, the orthodox Anabaptist faith was becoming forgotten and neglected in many Mennonite churches. Drift, compromise, neglect, and indifference had led to the loss of the rigorous Anabaptist view of the church. W. McGrath, Christian Discipline, supra note 3, at 22.
reliance on the past, Ammann produced little written work, leaving only a few letters for his followers.35

D. Migration to North America

War, social unrest and intermittent persecution caused the Amish to continue the Anabaptist pattern of migration. Amish migrations to North America began in the early 1700s and peaked between 1727 and 1770.36 While early immigrants settled in Pennsylvania, Amish settlements appeared as far west as Ohio by 1810.37 Settling primarily in frontier regions, the Amish faced little persecution or governmental interference with the practice of their religious beliefs. As a result, Amish communities gained greater stability and self-sufficiency in North America than under the pressures of Europe, where continual migration had prevented the accumulation of possessions or wealth.

II. THE DEVELOPMENT OF AMISH LAW

This Part analyzes the development of Amish law amidst the recurring tensions of persecution, co-existence and assimilation. Comparison of the written ordinances over time reveals several general trends. First, the organization of the ordinances changes. The early documents organize the ordinances in a systematic manner, with each section covering a different tenet of Anabaptist theology. In contrast, the later documents take the form of a random list. Second, later ordinances expand upon early ordinances to respond to new inventions or greater prosperity. Finally, the phrasing of the ordinances changes with time. The initial ordinances paraphrase or quote scriptural passages and include citations to specific chapters or verses of the Bible. Later ordinances contain little or no explicit references to scripture, but instead seem to implicitly refer to the early ordinances as their source. As Part III of this Note explains, these differences reflect important changes within the Amish community and in their relationship with the outside world.

A. Organization Changes from Systematic to Non-Systematic

The earliest documents organize the written laws of the Old Order Amish in a systematic manner, with each section covering a different part of the

35. D. KRAYBILL, supra note 2, at 7 ("Ammann left no books and only a few letters for his followers. Today the Amish rely primarily on Anabaptist literature written before Ammann's time. Thus, the mainstream of Anabaptism that originated in Zurich in 1525 had a more conservative Amish branch after 1693.").  
36. D. KRAYBILL, supra note 2, at 7-8. For a discussion of the causes of earlier Amish migration, see supra notes 11-13 and accompanying text.  
37. O. GINGERICH, supra note 10, at 25.  
38. See supra note 3 (providing a complete list of the documents included in this analysis).
Anabaptist theology. In a roughly chronological progression, the later documents become less organized and eventually resemble lists. The earliest document, the Schleitheim Confession of 1527, contains seven articles, each of which discusses a specific category of Anabaptist beliefs. In contrast, the next document, the Strassburg Discipline of 1568, contains twenty-three articles forming a more random order. This change to a less organized structure appears in two ways. First, where the Schleitheim Confession contains explicit subject matter headings for each article, the individual articles of the Strassburg Discipline are not labelled by subject matter headings but merely form a list. Second, rather than concentrating all items pertaining to a single subject matter into one article as does the Schleitheim Confession, the Strassburg Discipline scatters them throughout several articles. For example, while the Schleitheim Confession contains but one article concerning pastors, the Strassburg Discipline discusses the role of pastors in six different articles appearing in three different parts of the document.

39. The subjects of the articles are: (1) baptism, (2) excommunication ("the ban"), (3) communion, (4) separation from the world, including nonresistance, (5) the selection, responsibility and discipline of pastors, (6) the relationship of the Anabaptist to the judicial and police powers of the state ("the sword") and (7) nonswearing of oaths. The Schleitheim Confession, reprinted in H. Löwén, supra note 3, at 79-84, and in J. Wenger, supra note 3, at 69-74.

40. Each article in the Schleitheim Confession begins with a statement of agreement concerning a specific subject. Article 7, for example, begins: "We are agreed as follows concerning the oath: " The Schleitheim Confession, art. 7, reprinted in J. Wenger, supra note 3, at 73.

41. Article 5 of the Schleitheim Confession discusses the selection, responsibility and discipline of pastors. See id., art. 5, at 71-72.

42. The complete text of these six articles follows:

2. The ministers shall visit the neighboring congregations, and supply their needs, and comfort the brethren with wholesome teaching; with these shall travel ordained bishops by whom the oncoming bishops may be instructed in pastoral care (Haushaltung).

3. The ministers and bishops shall visit, provide for, and comfort the wives and children of those ministers who travel in danger or are in prison, so that the ministers may be comforted and gladdened by the assurance of brotherly love and care, whether he be in prison or absent for other reason.

4. All those who are sent out for this purpose shall be provided and furnished with all necessities.

7. Such bishops as are ordained shall visit the congregations, fill all offices, and where there is a vacancy, they shall ordain ministers and bishops by laying on of hands.

17. If one or more brethren assert themselves to cause trouble by attacking or withstanding the ministers or bishops, such an one [sic] shall be warned and censured in a gospel manner, and such gossip and backbiting shall not be allowed to anyone, nor shall such slander be accepted by any brother or sister, whether from strangers or from home people, but such matters shall be dealt with
The Dordrecht Confession of 1632 returns to an organizational structure more closely resembling the Schleitheim Confession. Like the Schleitheim Confession, the Dordrecht Confession discusses a different subject matter category in each of its eighteen articles. Unlike the Schleitheim Confession, however, the Dordrecht Confession divides the subject matter into still smaller categories, which it then groups into sections with other articles of related categories. Articles 1-6 and article 18, for example, discuss the relation of man to God and Christ, while articles 7-12 discuss the church, its officers and its sacraments. Articles 13-15 discuss the interaction of the Anabaptist with the secular world, while articles 16 and 17 discuss the enforcement of the ordinances on the believer through the use of excommunication and shunning.\footnote{The category headings of the eighteen articles of the Dordrecht Confession are: (1) “Of God and the Creation of All Things”; (2) “Of the Fall of Man”; (3) “Of the Restoration of Man through the Promise of the Coming of Christ”; (4) “Of the Advent of Christ into This World, and the Reason of His Coming”; (5) “Of the Law of Christ, which is the Holy Gospel, or the New Testament”; (6) “Of Repentance and Amendment of Life”; (7) “Of Holy Baptism”; (8) “Of the Church of Christ”; (9) “Of the Election, and Offices of Teachers, Deacons, and Deaconesses, in the Church”; (10) “Of the Lord’s Supper”; (11) “Of the Washing of the Saints’ Feet”; (12) “Of Matrimony”; (13) “Of the Office of Civil Government”; (14) “Of Defense by Force”; (15) “Of the Swearing of Oaths”; (16) “Of the Ecclesiastical Ban or Excommunication from the Church”; (17) “Of the Shunning of Those Who Are Expelled”; (18) “Of the Resurrection of the Dead and the Last Judgment.” The Dordrecht Confession, reprinted in J. Wenger, supra note 3, at 76-83.}

The Essingen Discipline of 1779 is the first document reviewed in this Note belonging solely to the Amish branch of Anabaptism. While lacking the strict organization or explicit subject matter headings of either the Schleitheim or the Dordrecht Confessions, the sixteen articles of this discipline show more organization than the documents drafted in later time periods. For example, this document restricts the role of pastors to four consecutive articles, plus one additional article in a separate part of the document.\footnote{The Essingen Discipline of 1779, arts. 3-6, 15, reprinted in W McGrath, Christian Discipline, supra note 3, at 25-26, 28.} In addition, the articles that specifically relate to separation from the world in the form of physical appearance and habits are contained in three consecutively ordered articles.\footnote{Id., arts. 12-14, at 27-28 (these articles prohibit the use of tobacco, restrict the cutting of men’s hair or beards and forbid the wearing of certain “worldly” styles of clothing).}

The Pennsylvania Discipline of 1809 and the Pennsylvania Discipline of 1837 exhibit even more the qualities of a random list. The 1809 Discipline...
contains nine articles in an order less logical on its face than that of the earlier documents. The document begins, for example, with an article that excommunicates "members who leave us to join other churches," followed by an article that prohibits pastors from preaching at funerals of adult non-members, followed by an article prohibiting the exclusion of "any member from taking part in the council of the church." The last four articles treat related issues in a non-consecutive manner. Article 6 and article 8, which prohibit the swearing of oaths and jury service, respectively, are separated by article 7, which concerns the cutting of men's hair and beards. That subject, however, logically belongs with the prohibitions against worldly clothing which are discussed in article 9. The Pennsylvania Discipline of 1837 separates related articles to an even greater extent. Five of the eleven articles in this Discipline relate to separation from the world through the believer's physical appearance. These articles are not listed consecutively, however, but rather are scattered throughout the Discipline. Articles 2 and 10 discuss clothing; article 3 discusses houses and household items, including furniture; article 11 discusses the furniture in the Amish house; and article 5 discusses restrictions on "excessive driving" and fancy painting of Amish sleighs and other vehicles.

The Holmes County, Ohio Discipline of 1865 exhibits yet a third style of organization. Unlike the earlier documents, this Discipline is not divided into individual articles, but rather is composed of a series of single sentences, each of which contains decisions on several related issues. These sentences are then grouped into three major paragraphs. The first paragraph primarily concerns separation from the world, the second paragraph concerns the

46. The Pennsylvania Discipline of 1809, art. 1, reprinted in Bender, Early American Disciplines, supra note 3, at 92.
47. Id., art. 2.
48. Id., art. 3.
49. Id., arts. 6-9.
50. The Pennsylvania Discipline of 1837, arts. 2, 3, 5, 10, 11, reprinted in Bender, Early American Disciplines, supra note 3, at 90, 93-95.
51. The first paragraph reads:

Decided not to allow attendance at worldly conventions, or fairs, or yearly fairs, or to take part in them, or to enroll our material possessions in companies (insurance?), or to put up lightning rods on our buildings. Likewise, decided not to allow gayly-colored ("scheckich"), striped, or flowered clothing made according to the fashions of the world, or parting the hair of man or woman after the worldly styles, or cutting the beard according to worldly styles, or carrying hidden on one's person photographic pictures of human likenesses or hanging them on the wall to look at in our houses. Likewise it is not allowed to wear overcoats made of oilcloth or rubber or other overcoats made according to the worldly styles, likewise false shirt-bosoms, likewise merchandising after the worldly fashion, for the Saviour drove such out of the temple. Likewise, luxurious vehicles according to the world's pride and vanity.

The Holmes County, Ohio Discipline of 1865, reprinted in Bender, Early American Disciplines, supra note 3, at 97.
church and its worship practices and the third paragraph concerns the seemingly unrelated topics of animal breeding and political office, as well as the decoration of Amish houses, a topic which logically belongs in paragraph one.

B. Later Ordinances Extend Early Ordinances to Adapt to New Conditions

Later ordinances expand upon the early ordinances to respond to either new inventions or greater prosperity. The creation and growth of ordinances relating to the separation of the believer from the world through the means of regulating physical appearance and habits illustrate this effect. Ordinances which explicitly address clothing or other outward displays of "fanciness" appear in neither the Schleitheim Confession nor the Dordrecht Confession. The portion of the Schleitheim Confession which arguably legitimates the later ordinances is the proscription in article 4 that the believer separate himself from the world. The first ordinances specifically concerning physical appearance appear in the Strassburg Discipline of 1568 and address only the style of clothing worn by the believer. The addition of an ordinance prohibiting the use of tobacco and "strong drink" in the Strassburg Discipline of 1607 may be the first extension of this type of ordinance beyond the style of clothing. While the Dordrecht Confession of 1632 addresses neither separation from the world nor physical appearance, the Essingen Discipline of 1779 repeats the prohibition against tobacco and

52. The third paragraph reads:
   Also we consider it improper for a Christian to mix the creatures of God, such as horse and donkey, by which mules arise, because the Lord God did not create such in the beginning. Likewise we do not consider it edifying for members of the church to occupy worldly offices, especially those in which force is used, and military positions, or criminal offices. Also, it is considered improper to decorate the houses with all sorts of unnecessary and luxurious things such as gayly-colored ("scheckich") walls, window curtains and large mirrors, and pictures and such things.

Id.

53. The Schleitheim Confession, art. 4, reprinted in J. Wenger, supra note 3, at 71. See generally D. Kraybill, supra note 2, at 49, 56.

54. "Tailors and seamstresses shall hold to the plain and simple style and shall make nothing at all for pride's sake. Brethren and sisters shall stay by the present form of our regulations concerning apparel and make nothing for pride's sake." The Strassburg Discipline of 1568, art. 20, reprinted in Bender, The Discipline, supra note 3, at 65.

55. The ordinance reads:
   Concerning the use of tobacco and strong drink, it is decided that the public use of tobacco and strong drink is a scandalous offence and for that reason will not be permitted. If such were to be necessary for medical purposes, then it should be used in secret, and with discretion.

The Strassburg Discipline of 1607, art. 2, reprinted as paraphrased in W McGrath, Christian Discipline, supra note 3, at 17-18.
fancy clothing and then extends the "plarness" concept further by regulating the cutting of hair and beards. The Pennsylvania Discipline of 1837 extends the concept still further to include the appearance of the vehicles, houses and household goods of the Amish. The Holmes County, Ohio Discipline of 1865 responds to the invention of the photograph by prohibiting its display.

C. Explicit References to Scriptural Sources Change to Implicit References to Scripture Via Earlier Ordinances

The phrasing of the ordinances also changed with time. The initial ordinances extensively quote or paraphrase scriptural passages with some of the documents citing to specific chapters or verses of the Bible. Later ordinances contain few examples of explicit use of scripture, but instead seem to implicitly refer to the early ordinances as their source.

While the earliest handwritten version of the Schleitheim Confession contains but one explicit reference to scripture, the document is rich with


57. Id., art. 13, at 28 ("All the young men who take off the beard with the razor shall be warned and admonished that if they do not stop, they shall be punished with the ban, as likewise those who cut the hair of the head according to the worldly style."). According to McGrath, a similar regulation concerning the beard and the hair was contained in article 27 of the original copy of the Strassburg Discipline of 1568. See The Strassburg Discipline of 1568, reprinted as paraphrased in W. McGrath, Christian Discipline, supra note 3, at 15. This regulation does not appear, however, in the translation of the Strassburg Discipline of 1568 contained in Bender, The Discipline, supra note 3, at 64-66.

58. The discipline reads:

Third: Decided that there shall be no display in houses, namely when houses are built, or painted with various colors, or filled with showy furniture, namely with wooden, porcelain, or glass utensils (dishes), and having cupboards and mirrors hung on the wall, and such things. Fifth: Decided that excessive driving of sleighs or other vehicles is not to be, and also that vehicles are not to be painted with two colors, as has already occurred too much. Eleventh: Likewise, the cabinetmakers are not to make such proud kinds of furniture and not decorate them with such loud or gay ("scheckich") colors.

The Pennsylvania Discipline of 1837, arts. 3, 5, 11, reprinted in Bender, Early American Disciplines, supra note 3, at 94-95.

59. "Likewise, decided not to allow carrying hidden on one's person photographic pictures of human likenesses or hanging them on the wall to look at in our houses." Holmes County, Ohio Discipline of 1865, reprinted in Bender, Early American Disciplines, supra note 3, at 96. Although the scriptural prohibition against the worship of graven images or idols legitimates this ordinance, the position of the ordinance suggests that it is primarily an extension of the earlier ordinances. D. Kraybill, supra note 2, at 34. Not only is it placed within a paragraph devoted to issues of separation from the world, it is also sandwiched between other ordinances which specifically relate to regulations concerning the clothing of the Amish.

60. The Schleitheim Confession, reprinted in H. Loewen, supra note 3, at 83 n.20 ("This reference [in article 2] to Matthew 18 is the only Scripture reference in the earliest handwritten text.").
scriptural language. Sixteen statements within the text directly attribute their words to a Biblical figure.61 Other statements refer to specific scriptural events.62 In addition, partial phrases taken from scripture are interspersed throughout the text of this document without reference to the source.63 Nevertheless, anyone familiar with the scriptures would readily attribute these passages to that scriptural source.64

While the Strassburg Discipline of 1568 continues to express principles tied to scriptural ideals, it makes the connection to scripture much less explicitly than does the Schleitheim Confession. This document contains no explicit references to scripture and uses little of the scriptural phrasing observed in the Schleitheim Confession. While it uses the convention of attribution to Biblical figures, it does so in a more general way, referring less to the specific words of the figure and more to the general theological doctrine expressed by that figure.65

61. The Schleitheim Confession, reprinted in J. Wenoer, supra note 3, at 70-73 (article 2: “according to the command of Christ,” “according to the regulation of the Spirit”; article 3: “[f]or as Paul points out”; article 4: “the command of the Lord is clear,” “[h]e further admonishes us,” “by virtue of the word of Christ”; article 5: “as Paul has proscribed,” “as the Lord has ordained”; article 6: “Christ teaches and commands us,” “[f]or He [Christ] Himself says,” “[a]lso He Himself forbids,” “[f]urther, Paul says,” “[a]lso Peter says”; article 7: “Christ prohibits,” “the simple command of God,” “Christ also taught us along the same line when he said”).

62. See id., art. 6 (based on John 8:11 (King James)): Also Christ says to the heathenish woman who was taken in adultery, not that one should stone her according to the law of His Father but in mercy and forgiveness and warning, to sin no more. Such [an attitude] we also ought to take completely according to the rule of the ban. See also id. (based on Luke 12:13, 14 (King James)) (“Christ did not wish to decide or pass judgment between brother and brother in the case of the inheritance, but refused to do so. Therefore we should do likewise.”); id. (based on John 6:15 (King James)) (“They wished to make Christ king, but He fled and did not view it as the arrangement of His Father. Thus shall we do as he did”).

63. See, e.g., id., art. 6 (based on Matthew 12:24-26 (King James)) (“For every kingdom divided against itself will be destroyed.”).

64. See The Schleitheim Confession, reprinted in H. Leowen, supra note 3, at 83 n.20.

This abundant citation of scriptural language without being concerned to indicate the source of quotation is an indication of the fluency with which Anabaptists thought in biblical vocabulary; it is probably also an indication that they thought of those texts as expressing a meaningful truth rather than as “proof texts.”

Id.

65. See The Strassburg Discipline of 1568, arts. 10, 14, reprinted in Bender, The Discipline, supra note 3. “[T]herefore we desire that the brethren in all temperance and lowliness withdraw from those who have fallen away, according to the teaching of the apostles.” Id., art. 10 (emphasis added). “As regards the incarnation of Christ, one should abide by the Scriptures according as Paul testifies concerning Him, a Son of God after the Spirit, and a Son of David after the flesh, and according as Peter confesses Him, a Son of the living God; and as far as possible all disputing should be avoided and omitted.” Id., art. 14 (emphasis added). It should be noted that the intention of article 14 was somewhat different from the other disciplines reviewed. The Anabaptists had encountered problems due to a theory of the incarnation of Christ once espoused by Menno Simons. The purpose of this discipline was to publicly disclaim this belief of Simons and to discourage believers from adhering to the earlier theory. See H. Bender, Menno Simons, supra note 19, at 20-21, 31-32.
In contrast, the Dordrecht Confession of 1632 cites heavily to scriptural sources and is even more precise than the Schleitheim Confession in its citation to specific scriptural passages. In addition, the Dordrecht Confession is a longer document that often includes the corresponding scriptural quotation within the body of its text, as well as the citation to the scriptural source.

None of the remaining documents contain explicit references to scripture. The disciplines instead seem to incorporate scripture implicitly by referring to earlier documents. For example, of the nine articles contained in the Pennsylvania Discipline of 1809, five can be traced to articles of the Dordrecht Confession of 1632 and two can be traced to the Strassburg Discipline of 1568. In fact, only the two remaining articles address topics which were not discussed in the previous documents.

III. CAUSES OF DEVELOPMENTAL CHANGES

This Note suggests three explanations for the developments described in Part II. The first theory centers on the identity of the drafters in terms of their background, education and exposure to other systems of law. The second theory focuses on the effect of surrounding events. A third theory provides a particularly cohesive explanation for the changes in Amish written law. This theory postulates the presence of a two-tier audience, consisting of the believers within the community, as well as the observers outside the

66. See The Dordrecht Confession of 1632, reprinted in J. Wenger, supra note 3, at 75-84.
67. The Schleitheim Confession of 1527 cites to book and chapter in its one reference to scripture; see supra note 60 and accompanying text, while the Dordrecht Confession of 1632 cites to book, chapter and verse. See generally The Dordrecht Confession of 1632, reprinted in J. Wenger, supra note 3, at 75-84.
68. See generally id.
69. The Holmes County, Ohio Discipline of 1865 might be said to contain one weak reference: "The apostle says, 'Remember your teachers, who proclaimed to you the gospel.'" The Holmes County, Ohio Discipline of 1865, reprinted in Bender, Early American Disciplines, supra note 3, at 95-97.
70. Articles 1, 4, 5, 6 and 8 correlate with articles 16, 17, 17, 15 and 13-15, respectively, of the Dordrecht Confession. See The Pennsylvania Discipline of 1809, reprinted in Bender, Early American Disciplines, supra note 3, at 91-93; The Dordrecht Confession of 1632, reprinted in J. Wenger, supra note 3, at 75-84.
71. Articles 7 and 9 of the Pennsylvania Discipline of 1809 correlate with article 20 of the Strassburg Discipline of 1568. See The Pennsylvania Discipline of 1809, reprinted in Bender, Early American Disciplines, supra note 3, at 91-93; The Strassburg Discipline of 1568, reprinted in Bender, The Discipline, supra note 3, at 64-65.
72. Articles 2 and 3 of the Pennsylvania Discipline of 1809 address new topics. See The Pennsylvania Discipline of 1809, reprinted in Bender, Early American Disciplines, supra note 3, at 91-93 ("Second: Permission shall be given to 'admonish' [preach] at a funeral in our brotherhood, but not outside. Third: We have no basis in scripture for excluding any member from taking part in the council of the church.").
community. By considering how an audience of outsiders responding to the laws that the community develops can affect the way in which these laws are presented, this theory relates legal development to the Amish pattern of persecution, co-existence and assimilation.

A. Identity of the Drafters

Differences in the background and training of the persons drafting the ordinances explain many of the changes in organization and phrasing discussed in Part II. The early Anabaptist leaders were well-educated converts from the Roman Catholic Church. The earliest leader, Conrad Grebel, was a university graduate. Menno Simons, Michael Sattler and Dirk Philips were priests or monks prior to their conversion to Anabaptism. In contrast, later leaders were not only less educated but also more insulated from the external influences of other religions and legal systems. As a result, it is not surprising that the earlier documents display a more complex writing style and pattern of organization than the later documents.

The formality of the drafting procedure may also influence the appearance of the laws. While the earlier documents were drafted by one individual to reflect the agreements reached by the ministers' conference, the proceedings of many of the later conferences were not officially recorded. The documents that remain are often the notes of a participating minister, recorded solely for his own use and not intended for further distribution. This explains the lack of subject matter headings and the brevity in the later documents. It also explains the tendency to state each article as an entry in a list, rather than as a topical paragraph. It might even explain the increasingly random ordering of the later documents, since a minister recording notes for his own reference would be less likely to reorder the ordinances into topical sections.

74. See supra text accompanying notes 14-26.
75. According to Amish folklore, persecution of the well-educated early Anabaptist leaders led their followers to avoid education in an attempt to avoid persecution. J. Yoder, AMISH TRADITIONS 173 (1950). The Amish associate higher levels of education with an unwillingness to trust the wisdom of God. Two scriptural passages are commonly cited as support. "The wisdom of this world is foolishness with God." 1 Corinths 3:19 (King James). "If any man lack wisdom, let him ask of God, that giveth to all men liberally and upbraideth not, and it shall be given him." James 1:5 (King James). J. Yoder, supra, at 165, 170. Kraybill suggests a sociological basis for the unwritten ordinances that restrict Amish children to an eighth-grade education. Due to the location, social integration and teaching methods of modern high schools, the experience of a high school education would separate Amish children from the religious practices of the Amish community. See D. KRAYBILL, supra note 2, at 130-34. Amish opposition to mandatory high school education received first amendment protection in 1972. See Wisconsin v. Yoder, 406 U.S. 205 (1972).
76. Due to the clerical background of the early leaders, a close correlation would also be expected between the style and organization of the early Anabaptist documents and the Roman Catholic confessions. That is an inquiry, however, that is beyond the scope of this Note.
77. Bender, Early American Disciplines, supra note 3, at 90-91; see also supra note 2.
B. Pressure from External Events

The second theory that can be used to explain the development of Amish laws centers around the effect of surrounding events upon the content of the laws. The extension of old laws to adapt to new technology or unexpected events most dramatically exemplifies this effect. This theory explains why the early laws concerning the separation of the believer from the world have evolved into an extensive system of ordinances regulating the display of wealth or individuality through physical appearance, habits and personal possessions. Once the requirement of separation from the world was first extended to command simple dress, the occurrence of additional ordinances related closely to the discovery of new plants, products and prosperity. The addition of an ordinance banning the use of tobacco in the Strassburg Discipline of 1607, for example, closely followed the discovery of tobacco in the Americas and its introduction in Europe. In the same way, ordinances regulating the appearance of vehicles, houses and household goods did not appear until after the Amish migrated to North America, where they experienced increased prosperity. Prior to the North American migration, physical persecution and accompanying frequent migration would have prevented most Amish from retaining significant amounts of personal wealth or possessions.\(^7\)

The invention of new products and processes in the past century provides the greatest number of ordinances responding to external events. Many of these ordinances exist only in an unwritten form and differ widely from one congregation to the next.\(^8\) The best example of a written ordinance of this type is the prohibition against the display of photographs. This ordinance dates from the Holmes County, Ohio Discipline of 1865, soon after photography became available to the middle class.\(^9\)

This theory also suggests that migration would cause changes in Amish laws as believers encountered political systems or cultures that differed from those of their country of origin. As an example, the prohibition against jury service by members of the church appears only after the migration to North America.\(^10\) Since the majority of Amish emigrated from civil law countries, they were not forced to consider whether service as a juror would violate their mandates against involvement in the affairs of the state until their exposure to the American common law system.\(^11\) In the same way,

\(^{78}\) See supra text accompanying notes 36-38.

\(^{79}\) D. KRAYBILL, supra note 2, at 141-87 (concerning the variation in Amish ordinances regulating the use of electricity, automobiles, gasoline engines and other power machinery).

\(^{80}\) See supra note 59.

\(^{81}\) The Pennsylvania Discipline of 1809, reprinted in Bender, Early American Disciplines, supra note 3, at 90-93 ("Eighth: It is decided that jury service shall not be tolerated or permitted for brethren in the church.").

\(^{82}\) The civil law countries of Switzerland, Germany and France did not use public juries in criminal or civil cases in the eighteenth century, when the majority of the Amish emigration to North America occurred. See J. MERRYMAN, THE CIVIL LAW TRADITION 136-37 (1969).
ordinances against participating in public elections appear only after the North American migration.\textsuperscript{83}

C. Dual Identity of the Audience

A third theory postulates a two-tier audience consisting of both believers within the community and observers outside the community. This theory of audience analysis borrows from the foundations of communications theory to explain the differences over time in the structure of Amish laws.\textsuperscript{84} When the drafters perceive external observers as a segment of their audience, this theory would predict the drafting of documents that exhibit an especially high degree of structure and clarity. The purpose of this style of writing would be to make the documents understandable to the uninstructed outside audience. Conversely, when the drafters think they are communicating solely to an internal audience, an expectation on the part of the drafters of shared experiences will limit the degree of background information and scriptural sources included in the documents.\textsuperscript{85} In the language of communications and sociology, the internal audience of believers participates in \textit{high shared context} communications, while the external audience of observers is limited to \textit{low shared context} communication.\textsuperscript{86}

This theory does not replace, but rather complements the two theories described earlier. While external events explain the changes in the content of the \textit{Ordnung}, audience analysis provides an explanation for the changes in the organization, phrasing and modes of scriptural citation. By considering the effect of the recipient's identity on the structure of the message, this theory of the two-tier audience completes the communication based inquiry that began with the identity of the drafters.

The earliest Anabaptist documents were drafted in a period of great interest and persecution by the Reformed and Lutheran sectors of Protestant

\begin{footnotes}
\item[83.] The Pennsylvania Discipline of 1837, \textit{reprinted in} Bender, \textit{Early American Disciplines}, \textit{supra} note 3, at 93-95 (emphasis added) ("Fourth: Decided that worldly offices are not to be held namely, serving on juries, or holding elections to elect officials.").
\item[84.] \textit{See generally} Schramm, \textit{How Communication Works}, \textit{reprinted in} J. DeVito, \textit{Communication, Concepts and Processes} 3-9 (3d ed. 1981). Whether the presence of an external audience also changes the content of the Amish \textit{Ordnung} is beyond the scope of this Note. It should be noted, however, that it would be against the tenets of Amish beliefs to change their beliefs in order to gain greater acceptance by the world.
\item[85.] \textit{See Ross, General Purposes of Speaking}, \textit{reprinted in} J. DeVito, \textit{supra} note 84, at 217 (emphasis added) ("The primary goal in informative speaking is audience understanding. The key means to this goal are clarity, interest, and organization of material.").
\item[86.] E. Glenn, \textit{Man and Mankind: Conflict and Communication Between Cultures} 17 (1981) (emphasis in original) (quoting Erickson, \textit{F'get you Honky!}, in \textit{Language, Communication and Rhetoric in Black America} (1972)) ("We can think of \textit{shared context} as a continuum, with \textit{high shared context} at one end and \textit{low shared context} at the other. High context communication \textit{is} appropriate when there is considerable overlap of experience between communicators, and low context communication \textit{when} little experience is shared.").
\end{footnotes}
Christianity, as well as by the Roman Catholic Church.\(^7\) As a result, the earliest documents were in part a defense of Anabaptist beliefs.\(^8\) As tolerance increased and interest on the part of other Christians decreased, subsequent documents likely were intended less for outside consumption and more for internal unity and conformity. Within the community of believers, it may have been less important explicitly to identify the scriptural passage or doctrine underlying the individual ordinance. Drafters could assume instead that the background of the believers would enable them to understand the implicit scriptural basis of the ordinances. The migration to North America and an environment of greater religious tolerance solidified the primacy of the internal audience.\(^9\)

The need to communicate with an external audience resurfaced in the twentieth century with the threat of assimilation. Spurred by the New Deal of the 1930s, governmental regulations concerning health, safety, education and social security threatened the practice of fundamental Amish beliefs.\(^9\) Due to the small number of Amish and their aversion to litigation as a process for change, the increasing role of government in social programs has made the Amish a minority without a voice. In order to protect their way of life, the Amish have come to depend upon the advocacy of others who more willingly participate in the political process. As a result, it becomes important once more for the external audience to understand Amish views. In a strange paradox, the Amish are now more dependent upon the reactions of their audience than many other groups that express more concern with the views of the world.\(^9\)

Because the Amish constitute a community dedicated to separation from the world, the applicability of a theory that proposes that the style of their communication could be affected by the responses of the outside world might be questioned. This question can be answered, however, by exploring the motivation for communication at the two points when the Amish seem to have made the greatest efforts at external communication. First, at the

87. See supra notes 6-13 and accompanying text.
88. Zwingli translated and refuted the Schleitheim Confession within a few months after it was written. John Calvin used a French translation of the Schleitheim Confession to refute Anabaptism in 1544. J. WENGER, supra note 3, at 69. Menno Simons engaged in discussions with Reformed clergy in 1544 and 1554, resulting in publication of separate versions of the disputes by both Simons and the opponents. H. BENDER, MENNO SIMONS, supra note 19, at 31-32, 42-43.
89. See supra notes 36-38 and accompanying text.
90. For a review of these issues, see Hostetler, supra note 1, at 40-45.
91. This is a variation of the political process argument often used in constitutional adjudication. Cf. United States v. Carolene Prods. Co., 304 U.S. 144, 152-53 n.4 (1937) (suggesting that courts should exercise heightened scrutiny when reviewing legislation that affects the interests of a group that is under-represented in the political process). In this variation, the Amish minority must first gain the assistance of the sympathetic observer audience in order to access the protection provided by the judiciary.
time of the Reformation, the Anabaptists likely maintained hope that Protestant Christianity might be convinced to adopt their views. Their motivation at that point, then, was the salvation of lost souls. In more recent years, the motivation to acknowledge the observer audience ironically springs from the desire to maintain separation from the world in the face of governmental regulations that threaten the continuance of the Amish way of life.

The resurgence of the external audience, however, does not mean that the Amish ordinances should be expected to return to their initial style of formality and organization. This phenomenon would occur only if the ordinances remained the primary method of communicating with the external audience. An analysis of today's external audience reveals that the theological arguments of the early ordinances would not be the most effective means of communication. In contrast to the theologians engaged in dialogue with early Anabaptists, the external audience that is the source of potential protection today is not a religious, but a political, audience. As a result, assistance will depend not upon whether the audience accepts the validity of Amish beliefs on a theological basis, but rather on whether it accepts the contention that the Amish sincerely believe in their religion and that the Amish way of life is good. The most effective way for the Amish to communicate with this audience may be through tourism and the writings of Mennonite scholars and sociologists, with whom the Amish have been willing to discuss details of their way of life.

**CONCLUSION**

This Note suggests that the study of legal development must include an audience analysis component that considers the effect of both an internal audience and an external audience. The use of the laws of the Old Order Amish to develop this communication based theory may suggest an application limited to internal legal systems that are concurrently subject to the legal system of a surrounding political state. Due to the extreme differences in the international balance of power, however, it is conceivable that the

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92. See *supra* notes 8-10 and accompanying text; N. Bernbaum, *Social Structure and the German Reformation* 429 (1980) (Zwingli engaged in genuine dialogue with the Anabaptist leaders of Zurich).

93. The scope of this Note does not extend to a thorough analysis of the *Ordnungen* of the present century. A summary review of the more recent writings of the Amish does not indicate a change from the style of the nineteenth-century documents included in this research.

94. See *Yoder*, 406 U.S. 205 (where the Court based its decision in part upon the sincerity of the Amish in their beliefs and on the perception that the Amish display a good way of life; the Court exempted Amish parents from state compulsory high school education laws). For a discussion of Amish attitudes toward education, see *supra* note 75.

95. See, e.g., *Yoder*, 406 U.S. at 210 n.5, 212, 217, 225 n.13 (where the Court relied upon the testimony and writings of sociologist John Hostetler).
usefulness of the external audience inquiry goes far beyond this limited context. When more powerful nations are viewed as potential sources of development aid or military aggression, independent sovereign nations are still in effect indirectly subject to the laws of more powerful political states. As a result, weaker nations will be writing their laws both to meet the needs of their own internal audience and to placate the expectations of more powerful states. Under this rationale, this theory has broad application beyond a small separatist religious community with customs retained from an earlier century.

Furthermore, in an increasingly global society, the presence of an international observer audience may have a greater effect even on the more powerful countries. A current example is the international response to the juvenile death penalty statutes drafted in the United States. While such opposition will not effect an immediate change in the content of the laws, it may affect the language with which the laws are drafted, which over the long run, may affect the interpretation of the laws as well.