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Crime, gender and social control in early modern Frankfurt am Main

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Crime, Gender and Social Control in Early Modern Frankfurt am Main

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I. Introduction

In 2015 the *Spiegel Online* – one of the most widely read German-language news websites – published a satirical article under the headline: ‘Stimulating women’s crime’.¹ According to the article, discrimination against women was nowhere more visible than in the national criminal statistics, where women were consistently underrepresented as offenders. The article also proposed the solution to this problem: a new course developed to stimulate and support women to become less law-abiding. In each of the three levels of the course (from beginners to advanced), the female participants were taught to break down the barriers preventing them from committing offences in a similar fashion and at a similar rate as men. The issues that were addressed were passivity, cowardliness, low self-esteem, lack of aggression compassion for others and law-abidingness.

For a long time it was considered that the criminality of women is a marginal phenomenon and that this was invariable over time and place.² In 2015, the year of publication of the article in the *Spiegel Online*, women represented 24.8% of all suspects in Germany, and thus were clearly underrepresented considering their share of the total population.³ The sex differences among prosecuted offenders has fascinated criminologists and historians alike, who have sought various causes to explain the different nature of male and female offending. Underrepresentation was seen as *the* epitome of women’s criminality, and it was this underrepresentation that had to be explained. Many scholars (especially criminologists) looked for universal explanations, some of which echoed the stereotypical portrayal of the female nature that was also displayed in the *Spiegel Online* article, while others considered biological factors or different attitudes towards women by law enforcement, judges, or the community as possible explanations for a consistent underrepresentation of female offenders.⁴

In 1991 historian Robert Jütte published the first German-language article providing an overview of available data about gender differences in recorded crime in late medieval and early modern Europe. Although Jütte pointed out local variations in the relative number of women

¹ Original: *Frauenkriminalität fördern*. Der Spiegel Online, ‘Satire bei Spiegel Online: Frauenkriminalität fördern’, 11.03.2015, <http://www.spiegel.de/spam/satire-bei-spiegel-online-frauenkriminalitaet-foerdern-a-1022763.html> (accessed 03-07-2017).

² M.R. Gottfredson and T. Hirschi, *A general theory of crime* (Stanford, CA 1990) 145; F. Heidensohn and M. Silvestri, ‘Gender and crime’ in: M. Maguire, R. Morgan and R. Reiner eds., *The Oxford handbook of criminology* (5th edition: Oxford 2012) 336-369, 344.

³ Bundeskriminalamt (BKA), *Polizeiliche Kriminalstatistik. Bundesrepublik Deutschland Jahrbuch 2015* (Wiesbaden 2015) 71. https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2015/pks2015_node.html (accessed 17-07-2017).

⁴ K. Uhl, *Das “verbrecherische Weib”*. *Geschlecht, Verbrechen und Strafen im kriminologischen Diskurs 1800-1945* (Münster 2003); G. Schwerhoff, *Aktenkundig und gerichtsnotorisch. Einführung in die historische Kriminalitätsforschung* (Tübingen 1999) 149-167; T. Köhler, *Straffällige Frauen. Eine Untersuchung der Strafzumessung und Rückfälligkeit* (Göttingen 2012) 45-80.

prosecuted, he stressed that there was a historical continuity of female underrepresentation in the area of criminal justice.⁵ Since then, however, historians have moved away from a perspective of viewing female criminality in terms of continuity, and have rather adopted the perspective of change. In reaction to Jütte's article, renowned German crime historian Gerd Schwerhoff argued that considering the evidence presented in the study, with the share of women out of the total number of offenders varying between 10% and 40%, female 'underrepresentation' seems to be a very crude common denominator.⁶

The publication of an article by Malcom Feeley and Deborah Little in 1994, discussing historical trends in female crime, prompted a lively academic debate around the causes for variation in sex differences in recorded offences across time. Based on observations for London (later expanded with other European evidence, in particular for the Netherlands), they found that women played a much more prominent role in recorded crime in the early modern period than in the nineteenth and twentieth centuries. Feeley and Little dubbed this observation 'The Vanishing Female', which they believed resulted from changing gender roles, and the withdrawal of women from the public sphere in the course of the nineteenth century.⁷ The debate that followed focused primarily on the question of how, where, when, and why long-term changes in recorded female criminality occurred.⁸

The academic debate about 'The Vanishing Female' has yielded important insights into the nature of women's offending and changes over time. However, the discussions have tended to oversimplify the early modern period as a time of high female involvement in crime, and paid little attention to regional differences within the period itself. While cities like Amsterdam and London indeed showed high levels of female offending (with percentages up to 50%), data for German cities displayed much lower figures. In sixteenth-century Cologne, women accounted for 16% of registered offenders, and in seventeenth- and eighteenth-century Frankfurt this was

⁵ R. Jütte, 'Geschlechtsspezifische Kriminalität im Späten Mittelalter und in der Frühen Neuzeit', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 108 (1991) 86-116, 93.

⁶ G. Schwerhoff, *Aktenkundig und gerichtsnotorisch. Einführung in die Historische Kriminalitätsforschung* (Tübingen 1999) 152.

⁷ M.M. Feeley and D.L. Little, 'The Vanishing Female. The decline of women in the criminal process, 1687-1912', *Law and Society Review* 25:4 (1991) 719-757; M. Feeley, 'The decline of women in the criminal process. A comparative history', *Criminal Justice History. An International Annual* 15 (1994) 235-274.

⁸ See: P. King, *Crime and law in England, 1750-1840. Remaking justice from the margins* (Cambridge 2006) 196-223; S. D'Cruze and L.A. Jackson, *Women, crime and justice in England since 1660* (Basingstoke 2009) 16-19; B. Godfrey and P. Lawrence, *Crime and justice 1750-1950* (Cullompton 2005) 130-134; G.T. Smith, 'Long-term trends in female and male involvement in crime' in: G. Gartner and B. McCarthy eds., *The Oxford handbook of gender, sex, and crime* (Oxford 2014) 139-157; M. Van der Heijden and V. Koningsberger, 'Continuity or change? Female crime in the 19th-century Netherlands', *Crime, History & Societies* 17:1 (2013) 101-127; M. van der Heijden, 'Women and crime, 1750-2000' in: P. Knepper and A. Johansen eds., *The Oxford handbook of the history of crime and criminal justice* (Oxford 2016) 250-267; G. Geltner, 'No-woman's land? On female crime and incarceration, past, present, and future', *Justice Policy Journal* 7:2 (2010); P. Knepper, *Writing the history of crime* (London 2016) 173-201.

around 22%.⁹ In order to properly understand what factors contributed to gender differences among recorded offences in the period, it is therefore necessary to study not only regions with high figures, but also those with low rates.

Most recently Manon van der Heijden and Marion Pluskota stated that we still know very little about ‘the structural impact of the local and regional contexts of female crime’.¹⁰ They argue that thorough analysis is needed in order to understand whether or not one can really speak of ‘a general pattern of women’s crime in the early modern period’.¹¹ More input is needed in order to understand variations in early modern female offending, as well as to gain a better understanding of different factors that shaped the representation of women in recorded crime. This thesis aims to do exactly that. It investigates the development of female crime in seventeenth- and eighteenth-century Frankfurt and places it in the context of other studies on early modern female crime in Europe.¹² It examines why women were underrepresented in recorded crime in early modern Frankfurt, and how this pattern was shaped by the distinct interplay of local factors, most notably social and legal norms, patterns of deviance and mechanisms of social control? It will argue that regional variations can be explained by different regimes of social control, which in their interplay with other factors shaped patterns of crime, gender and prosecution. The following section engages with the historiography on crime and gender in the early modern period. It will focus on the various factors that scholars have put forward to explain the level of women’s participation in crime and will explain why more local case studies are needed for a better understanding of these factors, and why the case study of Frankfurt is particularly important. I will then explain why social control mechanisms are a crucial factor in the study of gender differences in crime.

Forgotten women: putting gender in histories of crime

Under the influence of the ‘new social history’ and the ‘history from below’, in the 1970s and 1980s the study of crime developed as an important sub-discipline of social history.¹³ Apart from a few exceptions, scholars paid little or no attention to crime patterns of women in the early days

⁹ G. Schwerhoff, ‘Geschlechtsspezifische Kriminalität im frühneuzeitlichen Köln’ in: O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 83-116, 91; Kamp, ‘Female crime and household control in early modern Frankfurt am Main’, *The History of the Family* 21:4 (2016) 531-550, 536-537.

¹⁰ M. van der Heijden and M. Pluskota, ‘Introduction crime and gender’, *Journal of Social History* 51:4 (2018).

¹¹ Van der Heijden and Pluskota, ‘Introduction’.

¹² This PhD project has been conducted as part of the *Crime and gender 1600-1900: a comparative perspective* research project, which was financed with a VICI grant by the Dutch Science Foundation (NWO). The aim of the VICI project is to develop ‘an explanatory model of gendered crime patterns by providing a comparative analysis of crime and gender between 1600 and 1900’. For more information, see: www.crimeandgender.nl (accessed 17-07-2017).

¹³ B.S. Godfrey, C.A. Williams and P. Lawrence, *History & Crime* (London 2008) 16-21; P. Lawrence, ‘The historiography of crime and criminal justice’ in: P. Knepper and A. Johansen eds., *The Oxford handbook of the history of crime and criminal justice* (Oxford 2016) 17-37.

of the discipline.¹⁴ Notable exceptions were the study by Barbara Hanawalt on the female felon in fourteenth-century England, John Beattie's analysis of female offending in eighteenth-century Surrey, and the work of French historians Nicole Castan and Arlette Farge.¹⁵ Part of the reason why women were paid little attention by historians of crime was the focus on quantitative methods, long-term trends, and serious offences. As women tended to form a minority of offenders prosecuted for such crimes as murder and manslaughter, gender was not considered a factor of importance in the historical analysis of long-term trends of violent offences.¹⁶ Whenever women were considered, this was usually in their role as victims, both of male perpetrators and a discriminatory patriarchal criminal justice system, or as perpetrators of typically 'female' offences such as witchcraft, prostitution and infanticide. The statistical absence of women was seen as an indicator for their weak and passive nature, and the limited extent of their public lives. Women were usually not considered as agents on their own account – their criminal activities were limited to that of acting as accomplices for male offenders.¹⁷

This attitude began to change by the early 90s, as the dominant focus on the use of criminal statistics to study early modern criminality received considerable criticism, particularly from historians studying the aspect of gender. In their introduction to the first edited volume on female criminality in the early modern period, Garthine Walker and Jenny Kermode stated that as

¹⁴ For a recent overview of the historiography on female crime, see: A. Schmidt and M. Pluskota, 'Gevaarlijke vrouwen, gewelddadige mannen? Een review van het historisch onderzoek naar criminaliteit en gender in Europese steden, 1600-1900', *Stadsgeschiedenis* 8:1 (2013) 60-77. For German-speaking territories see: G. Schwerhoff, *Historische Kriminalitätsforschung* (Frankfurt 2011), 'Zusatztext 1. Zur Sozialgeschichte der Kriminalität. Geschlecht – Alter – sozialer Status'.

¹⁵ B. Hanawalt, 'The female felon in fourteenth-century England', *Viator. Medieval and Renaissance Studies* 5 (1974) 253-268; J.M. Beattie, 'The criminality of women in eighteenth-century England', *Journal of Social History* 8:4 (1975) 80-116; N. Castan, *Les criminels de Languedoc. Es exigences d'ordre et les voies du ressentiment dans un société pré-révolutionnaire (1750-1790)* (Toulouse 1980) 24-36; A. Farge, *Delinquance et criminalité. Le vol d'aliments à Paris au XVIIIe siècle* (Paris 1974).

¹⁶ T.R. Gurr, 'Historical trends in violent crimes. A critical review of the evidence', *Crime and Justice. An Annual Review of Research* 3 (1981) 295-350; P. Spierenburg, 'Long-term trends in homicide. Theoretical reflections and Dutch evidence, fifteenth to twentieth centuries', in: E.A. Johnson and E.H. Monkkenen eds., *The civilization of crime. Violence in town and country since the Middle ages* (Urbana 1996); M. Eisner, 'Modernization, self-control and lethal violence. The long-term dynamics of European homicide rates in a theoretical perspective', *The British Journal of Criminology* 41:4 (2001) 618-638. For a discussion on the interpretation of long-term trends in violent offences: P. Spierenburg, 'Violence and the civilizing process: does it work?', *Crime, History & Societies* 5:2 (2001) 87-105; G. Schwerhoff, 'Criminalized violence and the process of civilization: a reappraisal', *Crime, History & Societies* 6:2 (2002) 103-126; P. Spierenburg, 'Theorizing in Jurassic Park: a reply to Gerd Schwerhoff', *Crime, History & Societies* 6:2 (2002) 127-128. More recently, historians have incorporated a gender aspect in the study of violence by focusing on the importance of honour and masculinity: P. Spierenburg ed., *Men and violence. Gender, honor, and rituals in modern Europe and America* (Columbus 1998); G. Schwerhoff, 'Early modern violence and the honour code. From social integration to social distinction?', *Crime, History & Societies* 17:2 (2013) 27-46; J. Eibach, 'Violence and Masculinity' in: P. Knepper and A. Johansen eds., *The Oxford handbook of the history of crime and criminal justice* (Oxford 2016) 229-249.

¹⁷ For references to the older historiography, see: O. Ulbricht, 'Einleitung. Für eine Geschichte der weiblichen Kriminalität in der Frühen Neuzeit oder: Geschlechtergeschichte, historische Kriminalitätsforschung und weibliche Kriminalität' in: O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 1-35; G. Walker and J. Kermode, 'Introduction' in: J. Kermode and G. Walker eds., *Women, crime and the courts in early modern England* (London 1994) 1-24.

a result of the emphasis on quantification women had been ‘duly counted and then discounted’.¹⁸ Rather than facilitating our understanding of the nature of women’s offending, Walker and Kermode argued, the prevalent (statistical) methodologies were having a hampering effect. Critical voices were also raised among the early advocates for studying crime and gender among German-speaking scholars.¹⁹ After a self-proclaimed slow start in the history of crime in the early 90s, German crime historians almost immediately incorporated the aspect of gender.²⁰ Susanne Burghartz argued that gender should always be an important factor in the study of crime, regardless of women’s statistical weight among prosecuted offenders. She stated that even if criminal statistics demonstrated a relatively constant underrepresentation of women over time, this does not necessarily imply a universal explanation for this given that the crimes committed resulted from different historical societal causes and attitudes towards deviance.²¹

The shift towards a more inclusive approach towards female offending put into perspective what should be studied and considered as female crimes in the first place. For a long time, the label ‘female crime’ seemed to refer only to offences in which women constituted the majority of offenders, such as witchcraft, infanticide, scolding and prostitution.²² However, careful examinations of the actual crime patterns of women in several late medieval and early modern cities revealed that the majority were not prosecuted for so-called ‘female crimes’, but rather for more mundane offences such as theft. In many ways, women’s criminality was similar to that of men, or at least more similar than was previously acknowledged.²³ Moreover, historians were able to show that the criminal sources of the highest courts that were traditionally used, and on which many of the quantifications were based, reflected only a limited part of the criminal justice system.

¹⁸ Walker and Kermode, ‘Introduction’, 4.

¹⁹ A. Griesebner and M. Mommertz, ‘Fragile Liebschaften? Methodologische Anmerkungen zum Verhältnis zwischen historischer Kriminalitätsforschung und Geschlechtergeschichte’ in: A. Blauert and G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 205-232.

²⁰ G. Schwerhoff, ‘Kriminalitätsgeschichte im deutschen Sprachraum. Zum Profil eines “verspäteten” Forschungszweiges’ in: A. Blauert and G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 21-67; Jütte, ‘Geschlechtsspezifische Kriminalität’; C. Ulbrich, “‘Kriminalität’ und “Weiblichkeit” in der Frühen Neuzeit. Kritische bemerkungen zum Forschungsstand’, *Kriminologisches Journal* 27:5 (1995) 208-220; S. Burghartz, “‘Geschlecht’ und “Kriminalität” – ein “fruchtbares” Verhältnis?” in: R. Jaun and B. Studer eds., *Weiblich – Männlich. Geschlechterverhältnisse in der Schweiz. Rechtsprechung, Diskurs, Praktiken* (Zürich 1995) 23-31; O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995); U. Gerhard ed., *Frauen in der Geschichte des Rechts* (München 1997); U. Rublack, *The Crimes of Women in early Modern Germany* (Oxford 1999).

²¹ Burghartz, “‘Geschlecht’ und “Kriminalität””, 25-26.

²² Walker and Kermode, ‘Introduction’, 5; Ulbricht, ‘Einleitung’, 6; L. Warner, ‘Before the law’, in: A. Poska, J. Couchman and K.A. McIver eds., *The Ashgate research companion to women and gender in early modern Europe* (Farnham 2013) 233-256, 247.

²³ G. Walker, *Crime, gender and social order in early modern England* (Cambridge 2003) 4; T. Dean, ‘Theft and gender in late medieval Bologna’, *Gender & History* 20:2 (2008) 399-415, 412; Jütte, ‘Geschlechtsspezifische Kriminalität’, 98.

Evidence from across Europe established that lower courts usually showed much higher levels of female involvement.²⁴

These new insights put older explanatory models under pressure. Scholars argued that it is no longer sufficient to explain early modern female crime patterns and gender differences in recorded offences simply as a result of patriarchal power relationships.²⁵ First, it leaves little room to study the agency of female offenders, and continues to portray women's delinquency as a deviation from the norm (i.e. male delinquency). More and more, historians turned their focus on women as active historical agents within the realm of criminal justice and focused on women as users of justice rather than passive players or victims of their subordinate position in early modern society. They demonstrated how women instrumentally employed expected gender norms in court as a defence strategy.²⁶ Scholars working on early modern church courts, for example, established that women actively made use of these institutions to discipline their husbands for misconduct. Heinrich Richard Schmidt referred to patriarchy as a 'double-edged' sword which bound men just as women to expected gender norms.²⁷ Ulinka Rublack's study on female crime in seventeenth-century Germany highlighted the experiences of ordinary women and showed how they actively and consciously shaped the way conflicts were handled, for example through the use of gossip.²⁸ Second, explaining women's offending only a result of patriarchal power relations neglects the impact of both the local context and changes over time. Gender ideologies, legal norms, demographic and economic realities all shaped the everyday lives of men and women, and were highly determined by the local context.

²⁴ K. Jones, *Gender and petty crime in late medieval England. The local courts in Kent, 1460-1560* (Woodbridge 2006); King, *Crime and law in England*, 219; M. van der Heijden, 'Women, violence and urban justice in Holland c. 1600-1838', *Crime, history & societies* 17:2 (2013) 71-100, 83-85.

²⁵ E.g. Schwerhoff, *Aktenkundig*, 151.

²⁶ J. Eibach, 'Böse Weiber und grobe Kerle. Delinquenz, Geschlecht und soziokulturelle Räume in der frühneuzeitlichen Stadt' in: A. Blauert and G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 669-688, 672; Schwerhoff, 'Geschlechtsspezifische Kriminalität', 105-107; L. Gowing, 'Language, power and the law. Women's slander litigation in early modern London' in: J. Kermode and G. Walker, *Women, crime and the courts in early modern England* (London 1994) 26-47; J. Hurl-Eamon, *Gender and petty violence in London, 1680-1720* (Columbus 2005); J. Hardwick, *Practice of patriarchy. Gender and the politics of household authority in early modern France* (University Park, PA 1998).

²⁷ H.R. Schmidt, 'Hausväter vor Gericht. Der Patriarchalismus als zweischneidiges Schwert' in: M. Dinges ed., *Hausväter, Priester, Kastrate. Zur Konstruktion von Männlichkeit in Spätmittelalter und Früher Neuzeit* (Göttingen 1998) 213-236; J. Eibach, 'Der Kampf um die Hosen und die Justiz. Ehekonflikte in Frankfurt im 18. Jahrhundert' in: S. Kesper-Biermann and D. Klippel eds., *Kriminalität im Mittelalter und Früher Neuzeit. Soziale, rechtliche, philosophische und literarische Aspekte* (Wiesbaden 2007) 167-188; U. GLeixner, 'Das Mensch' und 'Der Kerl'. *Die Konstruktion von Geschlecht in Unzuchtverfahren in der frühen Neuzeit (1700-1760)* (Frankfurt 1994); S. Burghartz, *Zeiten der Reinheit, Orte der Unzucht. Ehe und Sexualität in Basel während der frühen Neuzeit* (Paderborn 1999).

²⁸ Rublack, *Crimes of Women*. For an earlier period see: S. Malamud, *Die Ächtung des "Bösen". Frauen vor dem Zürcher Ratsgericht im späten Mittelalter (1400-1500)* (Zürich 2003).

Crime, gender and social control

Thus, by now historians generally agree that criminal statistics are not only a reflection of actual behaviour, but the result of societal and institutional selection processes that determine what actually ends up in criminal courts. That is not to say that quantitative data holds no value for the study of gender and crime, but that they should offer a starting point of analysis, instead of the answer.²⁹ According to Arnot and Osborne, this means that ‘the deconstruction and critical interrogation of the “terms of the judicial record” is a crucial part of understanding the historical relationship between gender norms and institutional processes.’³⁰ Joachim Eibach called this an ‘enlightened’ approach to (constructed) criminal statistics – one where historians do not simply see statistics as facts, but analyse the social, cultural and institutional selection processes behind the statistics.³¹

Older studies on crime and deviance in early modern Germany were strongly influenced by Gerhard Oestreich’s concept of social disciplining.³² He argued that the rise of the early modern absolutist state enabled authorities to impose coercive discipline on their subjects through the implementation of new norms in the form of ordinances and other formal mechanisms. Since the 90s, the study of crime has witnessed a paradigm shift. This changed the perspective from criminal courts as a repressive force of early modern ‘weak’ states attempting to gain control, linking it to processes of state formation, to a perspective in which criminal prosecution is seen as (partially) driven by local demand. The population made active use of the courts in order to settle conflicts, which shaped the way these institutions (and the norms they aimed to impose) functioned.³³ In this perspective, courts were not simply a place of top-down control but a locus for interaction and conflict settlement.

²⁹ Schwerhoff, *Aktenkundig*, 153-154.

³⁰ Arnot and Osborne, ‘Why gender and crime’ 3. Also: Wunder, ‘Weibliche Kriminalität’, 56.

³¹ Eibach, *Frankfurter Verböte*, 27.

³² G. Oestreich, ‘Strukturprobleme des europäischen Absolutismus’, *Vierteljahrschrift für Sozial und Wirtschaftsgeschichte* 55 (1969) 329-347. For a discussion of the historiographical impact of the context see: H. Schilling, ‘Profil und Perspektiven einer interdisziplinären und komparatistischen Disziplinierungsforschung jenseits einer Dichtotomie von Gesellschafts- und Kulturgeschichte’ in: H. Schilling eds., *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitlichen Europa* (Frankfurt am Main 1999) 3-36; P. Spierenburg, ‘Social control and history. An introduction’ in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 1-22, 16.

³³ See: P. Spierenburg, *The Spectacle of suffering. Executions and the evolution of repression. From a preindustrial metropolis to the European experience* (Cambridge 1984); R. van Dülmen, *Theater des Schreckens. Gerichtspraxis und Strafrituale in der frühen Neuzeit* (5th edition: München 2010); G.P. Sreenivasan, ‘Prosecuting Injuries in Early Modern Germany (ca. 1550-1650)’, *Central European History* 47 (2014) 544-584, 545-546; M. Dinges, ‘The uses of justice as a form of social control in early modern Europe’ in: in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 159-175, 159; For critique on the concept of social disciplining form above see: M. Dinges, ‘Frühneuzeitliche Armenfürsorge als Sozialdisziplinierung? Problem mit einem Konzept’, *Geschichte und Gesellschaft* (1991) 5-29; H.R. Schmidt, ‘Sozialdisziplinierung? Ein Plädoyer für das Ende des Etatismus in der Konfessionalisierungsforschung’, *Historische Zeitschrift* 265 (1997) 639-682.

The top-down disciplining perspective was increasingly supplemented and replaced with the concept of social control that enabled bottom-up approaches to be studied as well. Historians of crime have widely accepted Martin Dinges' definition, according to whom social control referred to 'all forms by which historical agents define deviant behaviour and react to it'.³⁴ It thus represents a much wider concept than social disciplining, as it includes both formal and informal regulation of transgressive behaviour. The former refers to state institutions and instruments of control, in particular the criminal justice system, while the latter refers to regulations within the community itself. In this thesis I follow the approach of Gerd Schwerhoff, according to whom the history of crime is focused on the triangular relationship between (social and legal) norms, deviance (i.e. the transgression of these norms) and the different institutions and mechanisms of social control.³⁵

In early modern cities, criminal courts were not the only places where deviance was regulated. Social control was exercised by a whole range of formal and informal institutions, including ecclesiastical courts, guilds, and notaries, and through mechanisms like gossip, insults and violence.³⁶ Bernard Capp, for example, demonstrated that female networks in urban neighbourhoods played an important role in the policing of boundaries of acceptable behaviour through the use of gossip. The importance of honour in early modern societies meant that gossip could generate collective pressure and thereby force individuals to conform to the expected norms.³⁷

The gender gap among recorded offences can be partially related, historians argued, to differences in social control. First, it is assumed that authorities were less inclined to prosecute female offenders, because they considered the transgressions of women as less disrupting to social order than those of men.³⁸ Second, historians have argued that women's crimes were more likely to be handled by lower courts or more informal means of control, such as informal sanctioning within the household or the neighbourhood community.³⁹ Third, it is assumed that the restricted

³⁴ Dinges, 'Uses of justice', 161.

³⁵ Schwerhoff, *Aktenkundig*, 10-14.

³⁶ Contributions in: Schilling eds., *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitlichen Europa* (Frankfurt am Main 1999); H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004). Also: F. Loetz, 'L'infrajudiciaire. Facetten und Bedeutung eines Konzepts' in: A. Blauert und G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 545-562.

³⁷ B. Capp, *When gossips meet. Women, family, and neighbourhood in early Modern England* (Oxford 2003).

³⁸ E.g. L. Zedner, 'Women, crime, and penal responses. A historical account', *Crime and Justice* 14 (1991) 307-362, 320; King, *Crime and law*, chapter 5; Eibach, 'Männer vor Gericht – Frauen vor Gericht', 565-568.

³⁹ Ulbricht, 'Einleitung', 11; C.Z. Wiener, 'Sex roles and crime in late Elizabethan Hertfordshire', *Journal of Social History* 8 (1975) 38-60, 39; D.D. Gray, *Crime, prosecution and social relations. The summary courts of the city of London in the late eighteenth century* (New York 2009) 170.

socio-economic roles assigned to women influenced their opportunities to commit offences, because they were confined to the domestic sphere.⁴⁰

Crime and the city

Historians and criminologists alike commonly consider that the chances of women becoming involved with the law were (and still are) closely related to the extent to which they are able to assume public roles.⁴¹ Scholars found that female criminality in the early modern period was a typical urban phenomenon, and that this is an important factor in explaining the levels of male and female crime in relation to public roles. John Beattie was the first historian to mention the influence of the urban environment in relation to the criminality of women. He found that levels of female offending were higher in the city than in the countryside. According to Beattie, the relatively independent and public life in the city increased their risk of breaking the law. Moreover, the loss of social and economic support networks – often present in more traditional close-knit communities – made women more vulnerable in times of hardship.⁴²

Beattie's findings were later confirmed for other regions as well.⁴³ Peter King and Manon van der Heijden, amongst others, emphasised the importance of urban demographic characteristics in this context.⁴⁴ Early modern cities attracted migrants, many of whom were women whose move to the city was connected to life-cycle patterns of work and mobility typical for North-West Europe. But urban economies were precarious and, as Andrew Lees and Lynn Hollen Lees stated, 'created marginal people along with marginal jobs'.⁴⁵ Most female migrants were young and unattached. Some turned to petty theft and prostitution as part of a broader 'economy of makeshift', in particular if they had no access to formal or informal social support networks.⁴⁶

⁴⁰ Jütte, 'Geschlechtsspezifische', 99; M. Feeley and H. Aviram, 'Social historical studies of women, crime, and courts', *The Annual Review of Law and Social Science* 6 (2010) 151-171.

⁴¹ Van der Heijden, 'Women and crime', 250; R.B. Shoemaker, *Gender in English society 1650-1850. The emergence of separate spheres?* (Harlow 1998) 296-304; Wunder, 'Weibliche Kriminalität', 45; C.M. Renzetti, S.L. Miller and A.R. Gover, 'Understanding the relationship between gender and crime. An introduction to the Routledge International Handbook of Crime and Gender Studies' in: C.M. Renzetti, S.L. Miller and A.R. Gover eds., *Routledge international handbook of crime and gender studies* (London 2013) 1-6, 1; R.J. Simon and H. Ahn-Redding, *The crimes women commit. The punishments they receive* (3rd edition: Lanham 2005) 7.

⁴² Beattie, 'Criminality of women', 96-101; J.M. Beattie, *Policing and punishment in London, 1660-1750. Urban crime and the limits of terror* (Oxford 2001) 65.

⁴³ Castan, *Les criminels*; Shoemaker, *Gender*, 301.

⁴⁴ P. King, 'Female offenders, work and life-cycle change in late eighteenth-century London', *Continuity and Change* 11:1 (1996) 61-90; A. Schmidt and M. van der Heijden, 'Women alone in early modern Dutch towns. Opportunities and strategies to survive', *Journal of Urban History* 42:1 (2016) 21-38, 25-26; M. van der Heijden, *Women and crime in early modern Holland* (Leiden 2016) 160.

⁴⁵ A. Lees and L. Hollen Lees, *Cities and the making of modern Europe, 1750-1914* (Cambridge 2007) 35.

⁴⁶ O. Hufton, *The poor of eighteenth-century France* (Oxford 1974).

Influenced by the theories of Emile Durkheim and Ferdinand Tönnies, historians argued that in contrast to rural societies people who lived in cities were less likely to form close-knit paternalistic networks. As a result, informal social control was less tight in cities where anonymity ruled and face-to-face communities only existed in smaller entities, such as the neighbourhood.⁴⁷ However, the city was not only a place of relative freedom, but also of discipline and control.⁴⁸ Authorities often perceived young and independent women as a particular threat to social order. The public anxiety towards the many independent migrant women in the city heightened the prosecution efforts of the authorities.⁴⁹ Robert Shoemaker stated that ‘women’s crime was dealt with differently in urban areas: whereas suspected female criminals in rural areas were often dealt with informally, in towns they faced greater distrust’.⁵⁰ The stronger formal control in cities was facilitated by the presence of, and easy access to, the criminal justice system and other disciplinary institutions. In rural regions, the nearest court could be far away, and even if there was one nearby, in many instances courts convened only occasionally.⁵¹

Thus, the city offered a distinct environment which increased both the opportunities for women to commit offences, as well as the chance of their coming into contact with formal control through the criminal justice system. Hitherto this has been used as a very general explanation for crime patterns in a large variety of urban locations. Although it offers a valuable explanation for the different extent and patterns of female crime between cities and rural areas, it is too broad a hypothesis to understand the variation between cities and over time. Indeed, the level of independence that women could achieve in early modern cities varied considerably.

Sheilagh Ogilvie argued that patriarchal values were universal in early modern Europe, but that they varied according to the context in which they were put in effect.⁵² According to her, they could be enforced most effectively where there were social institutions manifesting ‘closure’ and ‘multiplex relations’, such as strong and closely knit communities and guilds.⁵³ She argued that as

⁴⁷ Knepper, *Writing*, 115-144; M. Deflem, ‘Ferdinand Tönnies on crime and society. An unexplored contribution to criminological sociology’, *History of the Human Sciences* 12:3 (1999) 87-116; M. Dinges and F. Sack, ‘Unsichere Großstädte?’ in: M. Dinges and F. Sack eds., *Unsichere Großstädte. Vom Mittelalter bis zur Postmoderne* (Konstanz 2000) 9-65; E.A. Johnson, *Urbanization and crime. Germany, 1871-1914* (Cambridge 1995).

⁴⁸ Lees and Hollen Lees, *Cities*, 36; Casanova, C., *Nachtleben. Orte, Akteure und obrigkeitliche Disziplinierung in Zürich, 1523-1833* (Zürich 2007).

⁴⁹ R.B. Shoemaker, *Prosecution and punishment. Petty crime and the law in London and rural Middlesex, c. 1660-1725* (Cambridge 1991) 184-186; L.P. Moch, *Moving europeans. Migration in western Europe since 1650* (2nd edition 2003) 145.

⁵⁰ Shoemaker, *Gender*, 301-302.

⁵¹ H. Schnabel-Schüle, *Überwachen und strafen im Territorialstaat. Bedingungen und Auswirkungen des Systems strafrechtlicher Sanktionen im frühneuzeitlichem Württemberg* (Weimar 1997) 175; Frank, M., *Dörfliche Gesellschaft und Kriminalität. Der Fallbeispiel Lippe 1650-1800* (Paderborn 1995).

⁵² S. Ogilvie, ‘How does social capital affect women? Guilds and communities in early modern Germany’, *The American Historical Review* 109:2 (2004) 325-359, 356.

⁵³ Ogilvie, ‘How does social capital affect women?’, 332. Also: K.A. Lynch, *Individuals, families, and communities in Europe, 1200-1800. The urban foundations of western society* (Cambridge 2003) 25 and 56-57; M.C. Howell, ‘Citizenship and gender. Women’s political status in northern medieval cities’ in: M. Erler and M. Kowalesky eds., *Women and power in the middle*

a result of the decentralized nature of the Holy Roman Empire, there was a high level of communal autonomy left in the hands of male heads of households, who had a keen interest in cooperating with the state to implement intensified legislation concerning economic, social and demographic behaviour that particularly affected women.⁵⁴ Guilds in early modern Germany appear to have been able to manifest ‘closure’ more effectively than elsewhere. Comparing requirements for access to citizenship and guilds, Jan Lucassen and Piet Lourens found that the regulations were more inclusive in the Dutch Republic than in Germany.⁵⁵ Indeed, studies indicate that there were strong legal and ideological sanctions in place for single women living alone in early modern German cities.⁵⁶

Across North-West Europe, most town dwellers lived in households that Katherine Lynch termed ‘plebeian’, comprised by relatively few people centred around the nuclear family, but that could include living-in servants.⁵⁷ An important feature of legal thinking in the early modern period was that households played an important part in the control of deviant behaviour.⁵⁸ More than in other countries, however, the household (*Das Haus*⁵⁹) in early modern Germany embodied a legal entity and a unit of strongly regulated social control.⁶⁰ Notions of householding and citizenship, for example, were strongly intertwined.⁶¹ More than elsewhere, German urban authorities controlled the entry and residence of people in their cities by making

ages (Athens, GA 1988) 37-60; M.E. Wiesner, ‘Guilds, male bonding and women’s work in early modern Germany’, *Gender & History* 1:2 (1989) 125-137.

⁵⁴ Ogilvie, *Bitter living*, 19-20. For a similar argument, but contrasting it less with other countries: I.V. Hull, ‘Sexualstrafrecht und geschlechtsspezifische Normen in deutschen Staaten des 17. und 18. Jahrhunderts’ in: U. Gerhard ed., *Frauen in der Geschichte des Rechts. Von der Frühen Neuzeit bis zur Gegenwart* (München 1997) 221-234; U. Strasser, *State of virginity. Gender, religion, and politics in early modern Catholic state* (Ann Arbor 2004).

⁵⁵ P. Lourens and J. Lucassen, “‘Zunftlandschaften’ in den Niederlanden und im benachbarten Deutschland’ in: W. Reininghaus ed., *Zunftlandschaften in Deutschland und den Niederlanden im Vergleich* (Münster 2000) 11-44, 31-32

⁵⁶ M.E. Wiesner, ‘Having her own smoke. Employment and independence for singlewomen in Germany, 1400-1750’ in: J.M. Bennett and A.M. Froide eds., *Single women in the European past, 1250-1800* (Philadelphia 1999) 192-216; Ogilvie, *Bitter living*; R. Dürr, ‘Die Migration von Mägden in der Frühen Neuzeit’ in: M. Krauss and H. Sonnabend eds., *Frauen und Migration* (Stuttgart 2001) 117-132; Rublack, *Crimes of women*, 152-154.

⁵⁷ Lynch, *Individuals, families, and communities*, 25.

⁵⁸ Wunder, ‘Weibliche Kriminalität’, 55;

⁵⁹ On the concept of das ganze Haus see: C. Opitz, ‘Neue Wege der Sozialgeschichte? Ein kritischer Blick auf Otto Brunners Konzept des ‘ganzen Hauses’’, *Geschichte und Gesellschaft* 20:1 (1994) 88-98; P. Hahn, ‘Trends der deutschsprachigen historischen Forschung nach 1945. Vom ‘ganzen Haus’ zum ‘offenen Haus’ in: J. Eibach and I. Schmidt-Voges eds., *Das Haus in der Geschichte Europas. Ein Handbuch* (Berlin 2015) 47-64.

⁶⁰ H. Wunder, ‘Gender norms and their enforcement in early modern Germany’ in: L. Abrams and E. Harvey eds., *Gender Relations in German History. Power, agency and experience from the sixteenth to the twentieth century* (London 1996) 39-56, 45-46; Rublack, *Crimes of Women*, 35; M. Wiesner, ‘Paternalism in practice: the control of servants and prostitutes in early modern German cities’ in: P.N. Bebb and S. Marshall eds., *The process of change in early modern Europe* (Athens OH, 1988) 179-200; I. Schmidt-Voges, ‘The ambivalence of order. Gender and peace in domestic litigation in eighteenth century Germany’ in: K. Gottschalk ed., *Gender difference in European legal cultures. Historical perspectives* (Stuttgart 2013) 71-83.

⁶¹ B. Ann Tlusty, *The martial ethic in early modern Germany. Civic duty and the right of arms* (New York 2011) 1-4; C.R. Friedrichs, ‘How German was the German home town?’, *Central European History* 47:3 (2014) 488-495, 494; Rublack, *Crimes of women*, 8; I.V. Hull, *Sexuality, State, and civil society in Germany, 1700-1815* (Ithaca 1996) 41-44; K. Simon-Muscheid, ‘Frauenarbeit und Männerehre. Der Geschlechterdiskurs im Handwerk’ in: K. Simon-Muscheid ed., *“Was nützt die Schusterin dem Schmied?” Frauen und Handwerk vor der Industrialisierung* (Frankfurt am Main 1998) 13-33.

incorporation into a household a prerequisite for settlement.⁶² The authority of the house father (*Hausvater*) stretched beyond the nuclear family and incorporated other household members, also including live-in apprentices and domestic servants. In order to be able to exercise his disciplinary duties, the head of the household possessed a far-reaching, semi-judicial authority to discipline and control household members.

The dominance of the household as a place for social order in the early modern period must not be confused with the ideal of separate spheres, which developed in the nineteenth century. According to this ideal, women occupied the household and the domestic sphere, which was considered a private space, while men occupied the public sphere.⁶³ Such a characterisation of the home as a private space is problematic for the early modern period. Garthine Walker and Jenny Kermode have argued that the public/private paradigm was too rigid to discuss women's criminal activities in the early modern period as they moved around between the two spheres. Domestic and economic areas which had traditionally been categorised as private, had in fact much broader functions within the community, thus transcending our modern notions of a private sphere.⁶⁴ Similarly, studying the differences between male and female violence, Manon van der Heijden has argued that the paradigm of separate private and public spheres is not adequate to explain differences in male and female behaviour, as normative household ideologies did not reflect daily practices.⁶⁵ To highlight the public functions and interactions of the early modern household within the urban community during this period, Joachim Eibach has introduced the concept of the 'open house' (*Das offene Haus*) which will be explored further in chapter 4.

In order to get a better understanding of the local impact on women's registered crime patterns across early modern Europe, I argue that it is important to consider a more differentiated approach regarding the urban impact. I hypothesise that societies with strong authoritarian social control structures, like there were present Frankfurt, result in significantly different patterns of women in crime compared to the general urban pattern of female crime in North-West Europe. The relatively strong restrictions experienced by women in early modern Germany may have weakened both the positive and the negative effects of independence in the city. As women were more strongly incorporated into the household, they would be less likely to undertake criminal

⁶² Lees and Hollen Lees, *Cities*, 37.

⁶³ Lynch, *Individuals, families, and communities*, 154-155; U. Gleixner and M.W. Gray, 'Introduction. Gender in transition' in: U. Gleixner and M.W. Gray eds., *Gender in transition. Discourse and practice in German-Speaking Europe, 1750-1830* (Ann Arbor 2006) 1-22, 5-6.

⁶⁴ Walker and Kermode, 'Introduction', 7 and 12. Still relevant for discussions on a notion of separate spheres, see: A. Vickery, 'Golden age to separate spheres? A review of the categories and chronology of English women's history', *The Historical Journal* 36:2 (1993) 383-414.

⁶⁵ M. van der Heijden, 'Women, violence and urban justice in Holland c. 1600-1838', *Crime, History & Societies* 17:2 (2013) 71-100, 95-96.

activities. Strong household control might also increase the chance that their transgressions were being handled informally. In addition, authoritative social control structures may have reduced women's socio-economic vulnerability resulting from independence, as women were more likely to be incorporated in support networks. The case study of Frankfurt enables an in-depth analysis of the way that gendered prosecution patterns were shaped by various social control mechanisms. By comparing early modern Frankfurt to what is known in studies about other cities, it is possible to reveal which patterns are distinctive for these locations, and what are the general trends of early modern female criminality. This study will not only add to our understanding of why male and female crime patterns were different, but also why these patterns varied according to time and place.

History of crime in early modern Frankfurt

This study is not the first to deal with Frankfurt for investigating the history of crime. First and foremost, there is the work of Joachim Eibach. In his study on crime in Frankfurt in the eighteenth century, Eibach provided an overview of the quantitative development of criminality, showing that there was no linear development from violence to property offences in this period. Eibach characterised the criminal justice system in early modern Frankfurt as an institution with a dual function. On the one hand it served as a forum for conflict regulation and the preservation of urban stability and peace, which particularly integrated members of the urban community benefited from and made use of. On the other hand, it was an instrument of repression used by the authorities to channel their growing anxiety towards poor migrants and other marginal groups.⁶⁶ Although Eibach paid attention to the influence of gender norms – for example by looking at the role of taverns as a place of male sociability in relation to the prosecution of violence; and the role of women in property offences – it did not form a core analytical aspect of his monograph, though he reflected on the role of gender in several articles.⁶⁷ Eibach's work has demonstrated the importance of inclusionary and exclusionary mechanisms employed by the city authorities to understand the patterns of prosecuted crime. This study will add to his findings by investigating how these mechanisms worked and how they were gendered.

Maria R. Boes' study on criminality in Frankfurt is devoted to the second half of the sixteenth and the seventeenth century. She argued that the professionalisation of the criminal justice system and the growing influence of Roman law had a detrimental effect on the lives of

⁶⁶ Eibach, *Frankfurter Verböte*, 427-428; J. Eibach, 'Die Straßen von Frankfurt am Main: ein gefährliches Pflaster? Sicherheit und Unsicherheit in Großstädten des 18. Jahrhunderts', in: M. Dinges and F. Sack eds., *Unsichere Großstädte. Vom Mittelalter bis zur Postmoderne* (Konstanz 2000) 157-173.

⁶⁷ Eibach, 'Böse Weiber'; Eibach, 'Männer vor Gericht – Frauen vor Gericht'; Eibach, 'Violence and Masculinity'.

the 'less fortunate', including women, gypsies and Jews, as it strengthened the 'power of male rulers'.⁶⁸ Her work has, however, received considerable criticism from other historians. Boes' micro-history approach, they argued, does not support her statements about long-term developments and the influence of Roman law.⁶⁹ Although her conceptual framework and overarching conclusions are therefore less suitable as a starting point for this study, her work nonetheless offers some interesting observations that are relevant. Similar to what Eibach witnessed regarding the social profile of offenders in the eighteenth century, Boes showed that in the sixteenth and seventeenth centuries it was the lower classes in particular that were punished: between 1562-1696 not a single patrician woman was recorded in the *Strafenbuch* (book of punishments) for receiving a penal punishment (*peinliche Strafe*).⁷⁰

The changing moral and legal norms following the adoption of Roman Law and under the influence of the Reformation have been studied by several historians dealing with Frankfurt. Bettina Günther studied the implementation of new laws against sexual offences in early modern Frankfurt and Nuremberg from a legal history perspective.⁷¹ Anja Johann focused more broadly on the implications of the process of social disciplining in the sixteenth and early seventeenth centuries. She argued that the intensified regulations of the city council in the realm of religion, poor relief, education and public order were not a process enforced from the top down, but carried broad consensus among the urban community.⁷² A similar perspective of collaboration between authorities and subjects was provided by Rebekka Habermas. In her article on the prosecution of sexual offences and marital misconduct, Habermas witnessed a positive alliance between women and the courts.⁷³ Finally, Vera Kallenberg studied the position of Jewish women

⁶⁸ M.R. Boes, *Crime and punishment in early modern Germany. Courts and adjudicatory practices in Frankfurt am Main, 1562-1696* (Farnham 2013) 267. See also e.g.: M.R. Boes, "'Dishonourable" youth, guilds, and the changed world view on sex, illegitimacy, and women in late sixteenth-century Germany', *Continuity and Change* 18:3 (2003) 345-372.

⁶⁹ J. Jordan, 'Maria R. Boes, Crime and punishment in early modern Germany: Courts and adjudicatory practices in Frankfurt am Main, 1562-1696', *Continuity and Change* 29:2 (2014) 295-296; J. Harrington, 'Crime and Punishment in Early Modern Germany. By Maria R. Boes', *Central European History* 48:1 (2015) 115-116; J. Wiltenburg, 'Crime and Punishment in Early Modern Germany: Courts and Adjudicatory Practices in Frankfurt am Main, 1562-1696', *German History* 32:4 (2014) 633-634; J. Eibach, 'Rezension zu Maria R. Boes: *Crime and Punishment in Early Modern Germany. Courts and Adjudicatory Practices in Frankfurt am Main, 1562-1696*', *Sehepunkte. Rezensionenjournal für die Geschichtswissenschaften* 6 (2014); J. Kamp, 'Maria R. Boes, Crime and punishment in early modern Germany. Courts and adjudicatory practices in Frankfurt am Main, 1562-1696', *Tijdschrift voor Sociale en Economische Geschiedenis* 11:3 (2014) 202-204.

⁷⁰ Boes, *Crime and punishment*, 135-136.

⁷¹ B. Günther, *Die Behandlung der Sittlichkeitsdelikte in den Policeordnungen und der Spruchpraxis der Reichsstädte Frankfurt am Main und Nürnberg im 15. bis 17. Jahrhundert* (Frankfurt am Main 2004).

⁷² A. Johann, *Kontrolle mit Konsens. Sozialdisziplinierung in der Reichsstadt Frankfurt am Main im 16. Jahrhundert* (Frankfurt am Main 2001).

⁷³ R. Habermas, 'Frauen und Männer im Kampf um Leib, Ökonomie und Recht. Zur Beziehung der Geschlechter im Frankfurt der Frühen Neuzeit' in: R. van Dülmen ed., *Dynamik der Tradition* (Frankfurt am Main 1992) 109-136.

before the criminal justice system in Frankfurt around the turn of the eighteenth and nineteenth century.⁷⁴

All of these studies have provided important insights into single aspects of female criminality in early modern Frankfurt. However, they have rarely considered Frankfurt in a broader European context, and so far, a comprehensive study of the nature of female offending is lacking. Moreover, the majority of these studies focused on top-down institutions of control. More information is needed, therefore, about the way informal control structures interacted with the criminal justice system regarding the prosecution of crime.

Composition of the book

In order to understand the prosecution patterns of women's crime in early modern Frankfurt, it is necessary to look at both bottom-up informal social control mechanisms as well as at top-down control exercised by the authorities. The second chapter of this book provides a detailed study of the criminal justice system and its development throughout the seventeenth and eighteenth centuries. This is necessary in order to have a clear view of the organisation and various stages of the criminal justice system as well as the legal competences of each institution involved. These factors shaped the encounters of women with the criminal justice system and co-determined what ended up in the criminal records, and what did not. A study of the relationship between gender and law-breaking depends on a discussion of various selection mechanisms at play within the criminal justice system, as well as the nature of male and female crime patterns displayed within the criminal records.

The third chapter then moves on to an investigation of the gendered patterns of prosecuted crime in early modern Frankfurt and places these findings in a broader context. How did the nature and extent of female offending in early modern Frankfurt compare to that in other European regions and cities? Is there a distinctive Frankfurt pattern or not?

The book next considers three selected spheres of criminal activity, in order to gain a better understanding of the tensions between gender, social control and agency: property offending, sexual offences and mobility crimes. This thematic breakdown allows for a more in-depth analysis of the relationship between recorded offences and social control. Each of the three chapters

⁷⁴ V. Kallenberg, "und würde auch sonst gesehen haben, wie sie sich durchbrächte." Migration und 'Intersektionalität' in Frankfurter Kriminalakten über jüdische Dienstmägde um 1800' in: E. Aubele and G. Pieri eds., *Femina Migrans. Frauen in Migrationsprozessen (18.-20. Jahrhundert)* (Sulzbach/Taunus 2011) 39-67. The author wrote a doctoral thesis on the position of Jews before the criminal court in Frankfurt from 1780-1814 which has yet to be published and unfortunately could not be consulted for the purpose of this study.

discusses a different sphere of control, ranging from the household to church courts and finally settlement regulations.

Chapter 4 discusses women's participation in property offences. It addresses the type of goods stolen by men and women as well as the locations of theft. This makes it possible to investigate the relationship between public roles and female criminality. As women are considered to have been primarily restricted to the sphere of the household, this should be reflected in their patterns of unlawful appropriation: the places they stole from, the types of goods they targeted, and the way victims took action in response to their transgression. With regard to the latter, the role and possible extent of household control is of key importance. The nature of urban life has often been discussed by historians as a factor to increase both the independence of women as well as their precariousness. How the focus of early modern German authorities of the household as the central place for social order functioned within the distinctly urban context of Frankfurt will therefore contribute to our understanding of women's scope of activity in early modern cities.

From property offending, the book moves on in chapter 5 to sexual offences. The beginning of the early modern period was characterised by increasing restrictions on extra-marital sexual activities, which were ultimately prohibited completely. Following the Reformation, the authorities took control over the regulation of morals, and separate courts were established to regulate marriage and investigate offences impacting upon the holy state of matrimony, such as illegitimacy, fornication and adultery. The chapter studies the relationship between the criminal investigation office and the moral courts. It investigates whether or not these functioned in competition with each other while pursuing different aims, or whether the relationship was of a more complementary nature. It is widely acknowledged that authorities employed a double-standard in the prosecution of sexual offences and that the gender gap was at its narrowest among this type of offending. More recently, historians began to unravel the various roles of women before the different institutions of moral control. This chapter contributes to these discussions, by studying the way women were able to use the courts in cases of illegitimacy, and how their social and legal status determined their opportunities to do so.

Finally, chapter 6 deals with offences that can best be described as mobility crimes: vagrancy, infraction of banishment etc. In early modern Germany, the authorities envisioned a model of social order centred around the household, which put increasing pressure on people living beyond its controlling structures. As a result of changing attitudes towards poverty, the authorities in Frankfurt strengthened the importance of settledness and increasingly criminalised vagrancy, begging, and marginal groups like gypsies. Moreover, historians argued that in early modern Germany in particular, the social and institutional restrictions (in relation to access to guilds,

citizenship, marriage, etc.) affecting women restricted the position of independent single women.⁷⁵ The chapter studies how these perceptions influenced the prosecution and position of mobile women.

Thus, in order to gain a better understanding of the variations in early modern female offending, it is important to study the impact of different social control mechanisms. A German case study, such as Frankfurt am Main, offers the opportunity to dig deeper into the relationship between social control and female involvement in recorded offences. Despite providing valuable insights on the nature of female crime and the position of early modern women within the criminal justice system, studies on early modern Germany have only marginally contributed to international academic debates about female offending. This is not due to a lack of quality, but partially results from the fact that in general German scholarship on early modern crime is characterised more by a cultural approach and a reservation about study long-term macro developments.⁷⁶ To this day, Ulinka Rublack's study remains the only monograph that deals with female offending in its entirety, rather than focusing on a single offence.⁷⁷ This thesis therefore aims to bridge the gap between English and German scholarship on early modern crime.

Setting the scene: Frankfurt am Main as a case study for female crime

The case study of Frankfurt is extremely relevant, as it combines some of the characteristics of urban life (anonymity, high levels of migration), with efforts to strictly control matters like settlement, citizenship, mobility, diligence and consumption, and social stratification. It was a traditional corporative society (*altständische Gesellschaft*) which relied on clear distinctions of social and legal positions of inhabitants within the urban society, and can be characterised as an exclusive regime. Furthermore, the development of new institutions of control and the evolving criminal

⁷⁵ Ogilvie, *Bitter living*, 312-314.

⁷⁶ Schwerhoff, 'Kriminalitätsgeschichte im deutschen Sprachraum', 29. For a bibliographical overview on more recent studies, see: K. Härter, *Strafrechts- und Kriminalitätsgeschichte der Frühen Neuzeit* (Berlin 2018).

⁷⁷ For other studies that deal with female offenders, see: I. Ahrendt-Schulte, *Zauberinnen in der Stadt Horn (1554-1603). Magische Kultur und Hexenverfolgung in der Frühen Neuzeit* (Frankfurt am Main 1997); D. Nolde, *Gattenmord. Macht und Gewalt in der frühneuzeitlichen Ehe* (Köln 2003); S. Allweier, *Canailen, Weiber, Amazonen. Frauemwicklichkeiten in Aufständen Südwestdeutschlands 1688 bis 1777* (Münster 2001); P. Klammer, *In Unehren beschlafen. Unzucht vor kirchlicher und weltlicher Gerichtsbarkeit im frühneuzeitlichen Salzburger Lungau* (Frankfurt am Main 2004); F. Loetz, *A new approach to the history of violence. "Sexual assault" and "Sexual abuse" in Europe, 1500-1850* (Leiden 2015); C. Jarzebowski, *Inzest. Verwandtschaft und Sexualität im 18. Jahrhundert* (Köln 2006); D.M.H. Hemmie, *Ungeordnete Unzucht. Prostitution im Hanseraum (12. - 16. Jahrhundert. Lübeck, Bergen, Helsingør)* (Köln 2007); S. Hehenberger, 'Sexualstrafrecht und Geschlechterordnung im frühneuzeitlichen Österreich' in: G. Temme and C. Künzel eds., *Hat Strafrecht ein Geschlecht? Zur Deutung und Bedeutung der Kategorie Geschlecht in Strafrechtlichen Diskursen vom 18. Jahrhundert bis heute* (Bielefeld 2014) 101-118. More recently legal scholars have started to unravel the position of women appearing before civil courts, thereby extending our knowledge of women's legal position in practice: S. Westphal ed., *In eigener Sache. Frauen vor den höchsten Gerichten des Alten Reiches* (Köln 2005); N. Grochowina, *Das Eigentum der Frauen. Konflikte vor dem Jenaer Schöppenstuhl im ausgehenden 18. Jahrhundert* (Köln 2009); H. Carius, *Recht durch Eigentum. Frauen vor dem Jenaer Hofgericht (1648-1806)* (München 2012).

justice system in the late medieval and early modern period primarily occurred in cities.⁷⁸ As a free imperial city, Frankfurt was autonomous and almost entirely independent in its regulation of criminal justice and implementation of legal norms.⁷⁹ The city's criminal justice system had much stronger presence of the legal system in the everyday life of the population than people living in towns and villages incorporated in larger territorial states.⁸⁰

By German standards, early modern Frankfurt was a large city, and it was perceived as such by its inhabitants. Johann Bernhard Müller, a local burgher and jurist, wrote in the middle of the eighteenth century that life in Frankfurt was characterised by the possibility of anonymity. People could go about their business without necessarily being monitored by others. According to Müller, many took advantage of this to pursue their 'evil dispositions', for which the anonymity of the big city offered them better opportunities.⁸¹ By the time Müller wrote his observations, Frankfurt had approximately 32,000 inhabitants. For most of Germany, the early modern period was characterised by urban decline, rather than growth. Most of the major medieval urban centres, such as Cologne, Augsburg and Nurnberg, stagnated or decreased in population.⁸² Frankfurt, however, managed to maintain its position thanks to the importance of its function as a hub for European commerce and trade, and as the political centre within the Holy Roman Empire as the city of election and coronation of the Emperor.⁸³ The city grew from around 12,000 inhabitants in the middle of the sixteenth century to 20,000 by 1620, with a short decrease in population during and shortly after the Thirty Years' War. By 1675 the number of inhabitants had reached pre-war levels again and grew to approximately 25,000 in around 1700 and 40,000 by the end of the eighteenth century, a level of growth the city could not have reached without high levels of immigration.⁸⁴

⁷⁸ P. Clark, *European cities and towns, 400-2000* (Oxford 2009) 168.

⁷⁹ On the nature of free imperial cities: P. Johanek, 'Imperial and free towns of the Holy Roman Empire. City-states in pre-modern Germany?' in: M. Hansen ed., *A comparative study of thirty citystate cultures* (Copenhagen 2000) 295-319.

⁸⁰ J. Eibach, 'Stadt und Reichsstadt. Rahmenbedingungen der Frankfurter Straßjustiz im 17. und 18. Jahrhundert' in: H. Rudolph and H. Schnabel-Schüle eds., *Justiz = Justice = Justitia? Rahmenbedingungen von Straßjustiz im frühneuzeitlichen Europa* (Trier 2003) 353-368, 362-363.

⁸¹ J.B. Müller, *Beschreibung des gegenwärtigen Zustandes der Freien Reichs-, Wahl- und Handels-Stadt Franckfurt am Mayn* (Frankfurt am Main 1747) 209. Original: 'Im übrigen können die Leute hier nach ihrem Sinn leben, ohne daß man sonderlich darauf achtung hat; den die Aufmerksamkeit, welche sich in einer so Volkreichen Stadt auf viele Dinge vertheilet, kann nicht wohl anderst, als gegen einen jeden insbesondere geringer seyn. Verständige bedienen sich dieser Freyheit nach ihrem eigenen Gefallen bequem zu leben, ohne die ihnen beschwerliche Eitelkeiten mit zu machen. Viele mißbrauchen sie ihren üblen Neigungen zu folgen, ohne daß man es sonderlich beobachtet, als wozu ohnehin die Gelegenheit weit mehr in grossen Städten als anderer Orten ist'.

⁸² H. Schilling, *Die Stadt in der Frühen Neuzeit* (2nd edition: München 2004) 13-14; T., McIntosh, *Urban decline in early modern Germany. Schwäbisch Hall and its region, 1650-1750* (Chapel Hill 1997).

⁸³ Schilling, *Die Stadt*, 21. A. Schindling, 'Wachstum und Wandel vom Konfessionellen Zeitalter bis zum Zeitalter Ludwigs XIV. Frankfurt am Main 1555-1685' in: Frankfurter Historische Kommission ed., *Frankfurt am Main. Die Geschichte der Stadt in neun Beiträgen* (Sigmaringen 1994) 205-260, 212; H. Duchhardt, 'Frankfurt am Main im 18. Jahrhundert' in: Frankfurter Historische Kommission ed., *Frankfurt am Main. Die Geschichte der Stadt in neun Beiträgen* (Sigmaringen 1994) 216-302.

⁸⁴ For estimates on the number of inhabitants see: H. Mauersberg, *Wirtschafts- und Sozialgeschichte zentraleuropäischer Städte in neuerer Zeit. Dargestellt an den Beispielen von Basel, Frankfurt a.M., Hamburg, Hannover und München* (Göttingen 1960) 54; R. Roth, *Stadt und Bürgertum in Frankfurt am Main. Ein besonderer Weg von der ständischen zur modernen Bürgergesellschaft 1760-1914* (München 1996) 47; G.L. Soliday, *A Community in Conflict. Frankfurt Society in the Seventeenth and Early Eighteenth*

Like other early modern cities, Frankfurt's population was distinguished according to legal status, which influenced their opportunities and scope of action. The most privileged inhabitants were the citizens, the *Bürger*: they had the right to own property, hold political office, and attain guild membership. Furthermore, their access to poor relief was unlimited and they could trade without restrictions.⁸⁵ Reliable estimates about the size of the burgher population are only available for the second half of the eighteenth century. In 1785, the entire citizenry, including female citizens, burgher sons and daughters accounted for approximately 50% of the inhabitants. Full citizens (i.e. those that could claim political rights based on their status because they were male) only accounted for close to 12%.⁸⁶ For the most part, burghers did not originate from the city itself: 56.3% of the admissions between 1600-1735 were immigrants.⁸⁷

The resident aliens (*Beisassen*) formed the second important group in the city. They were still granted social and legal protection (*Schutz*), but they were heavily restricted in their economic and political opportunities.⁸⁸ The *Beisassen* formed only a minority in the city: about 4.9% of the population in 1785.⁸⁹ The third group that was legally incorporated in the city's community were the Jews with formal rights of residency (*Stättigkeit*) ca. 8.2% of the population.⁹⁰ Their movement in the city was restricted as they were only allowed to settle in the *Judengasse*, but they possessed a certain degree of autonomy and self-rule. Outside the walls of the Jewish Ghetto, however, they faced heavy political, economic, and social restrictions and discrimination.

Besides these three groups that were in one way or another incorporated into the city's legal community, there were considerable numbers of people who were characterised as foreigners (*Fremde*). Among them were the many labour migrants that came to the city to look for work as apprentices, journeymen, day labourers, domestic servants and so on. Settlement in the city was denied to foreigners, and they were only allowed to stay under the condition of having employment, because this meant that they would be incorporated into the patriarchal control structures of the

Centuries (Hanover 1974) 35. On migration: A. Sharlin, 'Natural decrease in early modern cities. A reconsideration', *Past & Present* 79 (1978) 126-138.

⁸⁵ Roth, *Stadt und Bürgertum*, 71.

⁸⁶ R. Roth, "... der blühende Handel macht uns alle glücklich..." Frankfurt am Main in der Umbruchszeit 1780-1825', in: Lothar Gall (ed.), *Vom alten zum neuen Bürgertum: die mitteleuropäische Stadt im Umbruch, 1780-1820* (München: Oldenbourg 1991) 357-408, 362.

⁸⁷ Soliday, *Community in Conflict*, 45.

⁸⁸ Roth, *Stadt und Bürgertum* 81; R. Koch, *Grundlagen bürgerlicher Herrschaft. Verfassungs- und sozialgeschichtliche Studien zur bürgerlichen Gesellschaft in Frankfurt am Main (1612-1866)* (Wiesbaden 1983) 86-87.

⁸⁹ Roth, 'Blühende Handel', 362.

⁹⁰ On the Jewish community of Frankfurt see amongst others: F. Backhaus et al. eds., *Die Frankfurter Judengasse. Jüdisches Leben in der frühen Neuzeit* (Frankfurt am Main 2006); C. Kasper-Holtkotte, *Die Jüdische Gemeinde von Frankfurt/Main in der Frühen Neuzeit. Familien, Netzwerke und Konflikte eines Jüdischen Zentrums* (Berlin 2010).

household. Foreigners were required to register and ask formal permission from the authorities, otherwise their stay was restricted to three to eight days.⁹¹

Although European cities shared many similar characteristics which stimulated women's independence, there were also considerable differences. Scholars have distinguished between various patterns of female legal dependence throughout early modern Europe which – at least normatively – influenced their position before the criminal court as well as their scope of action in many other spheres of public life. Early modern Germany is often presented as a region in which there was strong patriarchal control over women as a result of their subordinate legal status, compared to men.⁹² In early modern Württemberg, as the study of Ulinka Rublack revealed, neither single nor married women could take complaints to the junior bailiff on their own account but needed a guardian to represent them.⁹³ Widows also had to be represented by a so-called *Kriegsvogt* (male representative) if they wanted to make economic transactions or file civil lawsuits.⁹⁴ However, practices of *Geschlechtsvormundschaft* (gender tutelage) varied greatly across the Holy Roman Empire, and the case of Württemberg should not be considered as representative for the position of women in early modern Germany. Ernst Holthöfer provided an overview of the various levels of legal restrictions faced by women in early modern Germany, as a result of different legal traditions and influence of local customs.⁹⁵

The legal position of women in early modern Frankfurt appears to have been relatively favourable compared to other regions in Germany. According to Barbara Dölemeyer, there was no universal *Geschlechtsvormundschaft*, which meant that in theory widows and single women who had reached majority were able to engage in legal matters on their own account, while married women had to be represented by their husbands.⁹⁶ These restrictions only applied to economic transactions and civil legal matters (private lawsuits, notary agreements, contracts, etc.). Moreover, married female traders were exempted from this rule: they could conclude contracts, and even issue letters of exchange providing that they could prove an annual income of more than 2000 guilders and traded in their own name for the family business.⁹⁷ Another evidence of the relatively

⁹¹ On the regulation of foreigners in early modern Frankfurt: J. Kamp, 'Controlling strangers - identifying migrants in early modern Frankfurt am Main' in: H. Greefs and A. Winter eds., *Materiality of migration* (Forthcoming 2018).

⁹² Warner, 'Before the law', 239; S. Ogilvie, *A bitter living. Women, markets, and social capital in early modern Germany* (Oxford 2003) 344-345; J. Hurl-Eamon, *Women's roles in eighteenth-century Europe* (Santa Barbara CA, 2010) 66.

⁹³ Rublack, *Crimes of women*, 47.

⁹⁴ Ogilvie, *Bitter living*, 249-252.

⁹⁵ E. Holthöfer, 'Die Geschlechtsvormundschaft. Ein Überblick von der Antike bis ins 19. Jahrhundert' in: Ute Gerhard ed., *Frauen in der Geschichte des Rechts. Von der Frühen Neuzeit bis zur Gegenwart* (München 1997) 390-451; S. Ogilvie, 'Married women, work and the law. Evidence from early modern Germany' in: C. Beattie and M.F. Stevens eds., *Married women and the law in premodern Northwest Europe* (Cambridge 2013) 213-240.

⁹⁶ B. Dölemeyer, 'Privatrechtliche Handlungsspielräume von Frauen. Die Frankfurter Gesetzgebung' in: G. Engel, U. Kern, and H. Wunder eds., *Frauen in der Stadt: Frankfurt im 18. Jahrhundert* (Königstein/Taunus 2002) 87-102, 92.

⁹⁷ C. Klausmann, 'Handelsfrau, Marktfrau, Handelsgehilfin. Aspekte weiblicher Handelstätigkeit in Frankfurt am Main zwischen 1700 und 1900', in: Hessische Landeszentral für politische Bildung und Weibh ed., *Frauen.Stadt.Geschichte. Zum*

favourable legal status of women in Frankfurt was found by Annette Baumann. She revealed a legal practice unique to Frankfurt based on the civil court cases before the *Reichskammergericht*: former widows who had entered a second marriage were granted full legal capacity. Their status before the court was thus not based on their current marital state – which in theory would have restricted their position to act without a legal guardian – but on that of her former status as a widow.⁹⁸ With regard to criminal cases, however, women faced no formal restrictions; they could report crimes and act as witnesses without the consent of their husband or guardian. They were also fully accountable for their own conduct, or misconduct.

The examples of women filing civil suits and negotiating their status before the *Reichskammergericht* shows that the implementation of the norms regarding coverture were at least implemented more flexibly than one might expect based on the law. However, they refer only to a small and privileged group of women in early modern Frankfurt. Heide Wunder reminds us that a binary construction of gender did not exist but that ‘man’ and ‘woman’ were defined in relation to one another moving alongside an asymmetrical social and political hierarchy in which gender was just one of the various factors defining social inequality. Gender norms were different for an unmarried domestic servant than for a married woman of a citizen household.⁹⁹

Apart from legal norms, women’s scope of action in early modern societies was related to family systems and their position on the labour market. North-Western Europe, including Frankfurt and other parts of early modern Germany, was characterised by nuclear family patterns and relatively late age at marriage for both men and women. A conspicuous feature of this pattern was the relatively long period of freedom before marriage, resulting in widespread migration patterns, particularly related to life-cycle service. As a result of this, households often had more members than the nuclear family, consisting of living-in servants, lodgers, etc. Such family patterns are believed to have increased the role of women in society, as they enabled them to work outside the household economy, contributing to the labour market as maidservants or even independent employees.¹⁰⁰ The latter, however, depended on the nature of the urban economy and the attitudes of urban authorities towards men and women working independently.

Beispiel Frankfurt am Main (1995 Königstein/Taunus) 83-102; R. Beachy, ‘Business was a family affair. Women of commerce in central Europe, 1650-1880’, *Social History* 34:68 (2001) 307-330; Kaltwasser, ‘Handelsfrauen in Frankfurt’. On the position of female traders in early modern Leipzig see: S. Schötz, *Handelsfrauen in Leipzig. Zur Geschichte von Arbeit und Geschlecht in der Neuzeit* (Köln 2004).

⁹⁸ A. Baumann, ‘Frauen aus Köln und Frankfurt vor dem Reichskammergericht’, *Geschichte in Köln* 54:1 (2007) 95-112, 108-109.

⁹⁹ H. Wunder, ‘Gender norms’, 43 and 45-46.

¹⁰⁰ C. Pfister, *Bevölkerungsgeschichte und historische Demographie 1500-1800* (München 2007) 24-32; Lynch, *Individuals, Families, and communities*, 8-12, 61-67; J. Kok, ‘The Family Factor in Migration Decisions’ in: L. Lucassen, J. Lucassen and P. Manning eds., *Migration History in World History. Multidisciplinary approaches* (Leiden 2010) 213-248, 227-229; Ogilvie, *Bitter living*, 10, 339.

Early modern Frankfurt was famous for its biannual fairs and functioned as a hub in European long-distance trading networks. The presence of European traders and religious minorities, and the accessibility of exotic spices, precious cloths, etc., gave Frankfurt a cosmopolitan flair.¹⁰¹ Despite this cosmopolitan atmosphere, however, the socio-economic make-up of the city was dominated by craftsmen and their families, who formed the largest group among citizens. Even though the guilds had lost considerable political power, their protectionist and exclusionary policies were largely supported by the city council.¹⁰² Since guilds dominated the urban economy in Frankfurt and managed to protect their status with the help of the city council by hindering the settlement of non-guild industries and manufactories, we may assume that the economic opportunities for single women were heavily restricted.¹⁰³ In general, it is found that the range of occupations held by women in Germany was much more narrow than that of women in the Netherlands or England. One of the few acceptable forms of employment for single women was domestic service, as this placed them under household control.¹⁰⁴ Working as domestic servants – at least in Germany – therefore did not lead to greater independence of patriarchal control, but simply replaced the paternal authority with that of the employer.

Studies on women's economic status and labour participation in early modern Frankfurt are largely missing. For the sixteenth century, Merry Wiesner traced increasing restrictions imposed on women from guild labour.¹⁰⁵ A first impression based on an analysis of guild records in the eighteenth century by Robert Brandt showed that widows and married women were still part of the family workshop. He considered that a total exclusion of women probably did not happen. The exclusionary politics of guilds were not necessarily directed towards women, but to *everyone* working outside the corporate structures, and as such mostly related to men.¹⁰⁶ Thus the findings of Robert Brandt seem to indicate that women's position in guilds resembled that of other cities in the eighteenth century, such as Augsburg and Cologne, on which we are better informed.¹⁰⁷ However,

¹⁰¹ Schindling, 'Wachstum und Wandel', 209. For the perceptions of Frankfurt in contemporary travel literature, see: M. Stalljohann-Schemme, *Stadt und Stadtbild in der Frühen Neuzeit. Frankfurt am Main als kulturelles Zentrum im publizistischen Diskurs* (Berlin 2017); R. Diehl eds., *Frankfurt am Main im Spiegel alter Reisebeschreibungen vom 15. Bis zum 19. Jahrhundert* (Würzburg 1984).

¹⁰² R. Brandt, 'Frankfurt sei doch eine "Freie=Reiche=Stadt, dahin jedermann zu arbeiten frey stünde". Das Innungshandwerk in Frankfurt am Main im 18. Jahrhundert - zwischen Nahrungssemantik und handwerklicher Marktwirtschaft' in: R. Brandt and T. Buchner eds., *Nahrung, Markt oder Gemeinnutz. Werner Sombart und das vorindustrielle Handwerk* (Bielefeld 2004) 155-199.

¹⁰³ Roth, *Stadt und Bürgertum*, 279; Eibach, *Frankfurter Verböde*, 46.

¹⁰⁴ Ogilvie, *Bitter living*, 347.

¹⁰⁵ Wiesner, *Working women*.

¹⁰⁶ R. Brandt, 'Frauen und Handwerk in Frankfurt im 18. Jahrhundert', Working Paper as part of "Colloquium Reichsstadt Frankfurt" published on: <http://www.corf.de/texte/Brandt-Frauen&%20Handwerk.pdf> (accessed 15-10-2015) 12.

¹⁰⁷ C. Werkstetter, *Frauen im Augsburger Zunftbandwerk. Arbeit, Arbeitsbeziehungen und Geschlechterverhältnisse im 18. Jahrhundert* (Berlin 2001); M. González Athenas, *Kölner Zunftbandwerkerinnen 1650-1750. Arbeit und Geschlecht* (Kassel 2014).

it is important to note that even in the best case scenario, access to guilds was only reserved for women with the right legal and marital status (i.e. as daughters, wives or widows of guild members, and therefore by definition of citizenship status).

In sum, early modern Frankfurt was characterised by social institutions which strengthened patterns of distinction between insiders and outsiders, and paternalistic structures which increased the importance of informal control mechanisms.

Figure 1 Women in eighteenth-century Frankfurt



Source: Bernard Picart, *Diverses modes dessinées d'après Nature*, 1728. Collection Rijksmuseum Amsterdam.

Sources

Early modern criminal courts and judicial institutions produced a whole range of different types of criminal sources, ranging from wanted lists, to interrogation records and sentencing books, each with its own characteristics and challenges for historians.¹⁰⁸ The *Criminalia* form the cornerstone of this study on female offending. These are the investigation records of Frankfurt's criminal investigation office: the *peinliche Verhöramt*. This office was in charge of investigating all felonies, and also exercised jurisdiction on petty offences. The investigation records are a reflection of the full scope of their activities. Thus, this study is based on *prosecuted* offences, and not on *convictions*. More than 13,000 individual investigation records have been preserved for the years 1508-1856, of which close to 11,000 cover the research period. Apart from the *Criminalia*, a range of other criminal sources has also been consulted. These include the register of criminal punishments (*Peinliche Strafen*) for 1562-1696, the so-called *Strafenbuch*. This source only provides a limited view of the criminal justice system in Frankfurt, as it does not include cases that were acquitted or in which suspects received monetary fines, short imprisonment or simple expulsion. Considering that they only contain offenders that received capital or corporal punishments, they primarily provide information on more serious offences. Moreover, the surviving records of the consistory and the poorhouse are also included in this study, alongside police ordinances.

So what type of crimes do the *Criminalia* contain? The investigation records reflect the process of expansion and professionalization of the criminal justice system in the course of the early modern period. Criminal investigation records for the beginning of the seventeenth century are more fragmentary, often containing only a summary of the interrogation and other parts of the investigation process instead of full transcripts of the questions and answers (*Interrogatoria – Responsorialia*) and only limited information about the social background of the suspects. By the end of the seventeenth century, the records become richer and more systematic in the information they provide and the type of documentation they hold.

The *Criminalia* are investigation records and as such contain a variety of documents that are a reflection of this process. First and foremost, the dossiers contain the interrogations of the suspects and of the witnesses that were heard as part of the inquiries. From the late 17th century onwards, the scribes provided a verbatim testimony of the questions and answers given in the interrogation. They sometimes provided additional data about the state of the suspects, for example by stating that the suspect was weeping or that he/she exclaimed the answer. Most of the scribes

¹⁰⁸ Schwerhoff, *Historische Kriminalitätsforschung* 40-49; M. Scheutz, 'Scheiternde Mütter oder reulose Kindsmörderinnen? Gerichtsakten in der Frühen Neuzeit als Quelle' in: M. Scheutz and T. Winkelbauer eds., *Diebe, Sodomieten und Wilderer? Waldviertler Gerichtsakten aus dem 18. Jahrhundert als Beitrag zur Sozialgeschichte* (St. Pölten 2005) 13-46, 35-43.

were trained lawyers, and they were instructed to write down the testimonies *ipsisima verba*¹⁰⁹ and to do so without contempt or benevolence.¹¹⁰ Although the scribes did not record the literal answers, which is shown by the fact that the answers only contain full sentences and are recorded in indirect speech, they come as close to the voices of ordinary people as is perhaps possible for the early modern period. There are no indications that the scribes consciously and purposely altered or stereotyped answers.¹¹¹ At the beginning of each proceeding, defendants were asked about their origin, family status, employment, and recent whereabouts in order to establish their social standing and reputation. They thus provide a rich source for the social context of early modern offenders. It is known for other regions that investigators employed a fixed set of questions during investigations (at least for some crimes), where they had only relatively little freedom to deviate from the preassigned queries. This, of course, greatly shaped the answers of suspects, who were given only limited room to give an account of the circumstances in the way they chose.¹¹²

Besides containing interrogation records, the *Criminalia* often hold references to the outcome of the case and the sentences imposed. The investigation office only had the competence to punish offenders in minor cases, the rest was sent for judgement to the city council. They made their decision based on the legal opinions of the city's syndics, who in turn based their recommendations for a fit punishment on the investigation records.¹¹³ The detailed transcripts of the interrogations were the only way in which the voices of the suspects were heard by the both the syndics as well as the city council who gave the final judgement: they never saw the accused in person. The legal opinions of the syndics (if available) were also kept in the dossier, as well as well as records of defence councils (which were consulted if the suspect faced the death penalty).

A third type of document that the *Criminalia* can contain were petitions of the accused and his/her family, and other members of their social network for release from imprisonment or mitigation of punishment. The decisions of the city council were not systematically recorded in the *Criminalia*, although there are often references to be found in the sources. Analysing the process of petitioning would be a very fruitful approach to study the importance of social networks and incorporation into the community with regard to the decision-making process of the authorities.¹¹⁴

¹⁰⁹ J.P. Orth, *Nötig und nützlich erachteter Anmerkungen über die sogenannte erneuerte Reformation der Stadt Frankfurt am Main. Dritte Fortsetzung* (S.L. 1751) 827.

¹¹⁰ PO 4346 *Verordnung und Unterricht für das peinliche Verhör*=*Amt der Reichs Stadt Frankfurt* 04.12.1788, §34.

¹¹¹ Eibach, *Frankfurter Verböre*, 32. Also: Scheutz, 'Gerichtsakten', 32-35.

¹¹² See for example the *Ferdinandeia* – a criminal law code from 1656 named after the Austrian Archduke and applied in Austrian regions about the river Enns – which listed questions to be asked in the case of infanticide. Most of the courts followed these questions meticulously. See: Scheutz, 'Gerichtsakten', 22.

¹¹³ For a more detailed account of the criminal justice system in Frankfurt, see chapter 2.

¹¹⁴ See for example: Rublack, *Crimes of women*, 66-69.

However, this would require cross-referencing individual investigation records with the archives of the city council, which is extremely time-consuming.¹¹⁵

Reports by medical experts in cases of physical injuries or (suspected) infanticide form a fourth type of record found in the *Criminalia*. The investigatory nature of the dossiers is further highlighted by the fact that some records also contain pieces of evidence such as murder weapons, forged coins and documents, and even items as curious as an early modern dildo, which unfortunately has been lost.¹¹⁶ Finally, an important part of the proceedings involved communication with outside authorities, who either sent information about suspects to Frankfurt or who inquired after suspects of their own.

Since the 1970s, historians have discovered court records as a gateway to study the mentalities and daily lives of everyday people. They were one of the few types of records in which the voices of people that are normally silenced in historical records could be heard. Of course, these voices do not come to the reader unfiltered. Court records are shaped by the formal judicial framework in which they were created. There was an unequal power balance between prosecutors and suspects.¹¹⁷ Martin Scheutz defined court records as a testimony of a praxis shaped by the authorities (*'obrigkeitlich geprägten Herrschaftspraxis'*) and as such they are not an 'authentic' reflection of the mentalities of early modern 'common' people. Rather they are coloured by the roles people played in court. Defence strategies employed by suspects were often based on norms and expectations regarding their gender, age, social and marital status.¹¹⁸ At least since Nathalie Zemon Davis' *Fiction in the archives*, historians can no longer ignore the fact that every person in the court room constructs his/her story to their advantage, potentially resorting to lies or altering the truth in the process. Victims do so to make sure their assaulter is convicted, and suspects try to prove their innocence or at least to minimise the gravity of their actions.

Nevertheless, a careful analysis of the sources offers the historian the opportunity to reconstruct gender roles, social conventions and practices of everyday life. Even lies have to have a certain level of plausibility to be convincing and therefore reflect everyday norms and mentalities. This study will combine both quantitative and qualitative examination of the criminal court records.

¹¹⁵ For petitions to mitigate sentences of offenders sanctioned with penal punishments see: Boes, *Crime and punishment*, 142-144.

¹¹⁶ IfSG Frankfurt am Main, Criminalia 8908 (1776). The dildo was put forward as a piece of evidence in the case of spousal abuse indicted by Maria Clare Häderin, aged 56, against her husband Johann Georg, 59, a local burgher and cooper master (*Bendermeister*). The investigation records detail that a wooden 'device' was handed over to the investigation office 'samt bij gehenden holzenren an einem Riemen bevestigten Instument anhero gegeben worden'. References in other sources demonstrate that it remained in the city archive until the 20th century, after which no traces of this remarkable artefact exist. See also: K. Schneider, *Mörder, Diebe und Betrüger. Kriminalität im Frankfurt im 18. Jahrhundert* (Frankfurt am Main 2017) 140.

¹¹⁷ A. Farge, *La vie fragile. Violence, pouvoirs et solidarités à Paris au XVIII^e siècle* (Paris 1986) 8; T. Cohen and E. Cohen, *Words and deeds in Renaissance Rome. Trials before the papal magistrates* (Toronto 1993) 3-7.

¹¹⁸ Scheutz, 'Gerichtsakten', 32.

The interrogation records are especially valuable for the purpose of this study because they allow us to analyse the various perspectives and selection processes that shaped prosecution patterns. In chapter three I elaborate on the various choices that were made regarding the selection and categorization of crimes for the quantitative study of the criminal records. The qualitative examinations focus on the interactions of the criminal offenders with the various layers of social control in the city, both formal and informal.

This approach makes it possible to include the agency of offenders as part of the analysis. In recent decades, agency has become an integral part of historical scholarship, particularly of ‘marginal’ groups (including women and the urban poor). It has been defined in many different ways and was initially applied to study how individuals resisted existing norms and oppressive power relationships. Many historians, however, considered this definition to be too narrow as it focuses on exceptional occasions of resistance and ignores the daily manoeuvring and interactions with power structures. In a recent discussion on female agency in the context of early modern economy, Deborah Simonton and Anne Montenach provided a definition that enables a broader application of the concept. According to them, agency is not ‘conceptualised strictly in terms of resistance to male authority or patriarchal patterns but arose from the variety of everyday interactions in which women accommodated, negotiated, or manipulated social rules.’¹¹⁹ Thus interactions between ‘ruled’ and ‘subordinates’ were much broader, and the influence of one on the other much more complex. Here, the concept of pauper agency as defined by Robert Shoemaker and Tim Hitchcock is especially helpful. They introduce the concept to refer to the way historical actors shaped social policies (or in this case: institutions of social control) – even when negotiating from a position of weakness – by the tactics and strategies with which they approached such institutions.¹²⁰

¹¹⁹ A. Montenach and D. Simonton, ‘Introduction. Gender, agency, and economy. Shaping the eighteenth-century European Town’ in: D. Simonton and A. Montenach eds., *Female agency in the urban economy. Gender in European towns, 1640-1830* (Abingdon 2013) 1-14, 5.

¹²⁰ T. Hitchcock, and R. Shoemaker, *London Lives. Poverty, crime and the making of a modern city, 1690-1800* (Cambridge 2015) 4, 17-23.

II. A multi-layered legal system

Criminal justice in early modern Frankfurt

The main aim of this book is to contribute to our understanding of the various factors that influenced gender differences in recorded crime throughout the early modern period. In order to properly interpret the different crime patterns of men and women based on (reconstructed) criminal statistics, it is vital to have a proper understanding of the criminal justice system from which such figures are produced. Without an understanding of the various societal and institutional selection mechanisms that determined the prosecution of crime and law enforcement, it is impossible to interpret any statistical data about criminality.

The criminal justice system is just one of the various measures which were used by historical agents to react to transgressive behaviour. It has since been firmly established that early modern courts were not only an instrument of top-down control employed by the authorities to discipline their subjects. Rather, historians have emphasised how much the enforcement of criminal justice depended on the willingness of contemporaries to take recourse to justice and to involve formal institutions in mutual conflicts.¹²¹ What is reflected in the criminal investigation records that form the basis of this study thus depends at least in part on the intensity with which the criminal justice system was involved in the regulation of deviant behaviour. The availability of alternative and possibly competing formal and informal institutions of control, as well as potentially complicated and/or expensive legal procedures, all influenced the recourse to justice. Moreover, the scope of the criminal justice system to control deviant behaviour also depended on more 'technical' factors such as the number and qualities of the people involved, i.e. legal personnel, 'policing officials', number of sessions held, and boundaries of jurisdiction.

The early modern period forms a crucial period in the development of the public criminal justice system. It was a period that witnessed a process of juridification, professionalisation, and differentiation.¹²² The principle of '*gute Policy*' (good policing) gained increasing importance during

¹²¹ P. Spierenburg, 'Social control and history. An introduction' in: P. Spierenburg and H. Roodenburg eds., *Social control in Europe. 1500-1800* (Columbus OH, 2004) 1-22; M. Dinges, 'Justiznutzung als soziale Kontrolle in der Frühen Neuzeit' in: A. Blauert and G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 503-544; C.A. Hoffmann, 'Außergerichtliche Einigungen bei Straftaten als vertikale und horizontale soziale Kontrolle im 16. Jahrhundert' in: A. Blauert and G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 563-579; K. Härter, 'Konfliktregulierung im Umfeld frühneuzeitlicher Strafgerichte. Das Konzept der Infrajustiz in der historischen Kriminalitätsforschung', *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft* 95:2 (2012) 130-144.

¹²² For general developments, see: G. Schwerhoff, *Aktenkundig und gerichtsnotorisch. Einführung in die Historische Kriminalitätsforschung* (Tübingen 1999) 84-112; D. Willoweit ed., *Die Entstehung des öffentlichen Strafrechts. Bestandaufnahme eines europäischen Forschungsproblems* (Köln 1999); H. Rudolph and H. Schnabel-Schüle eds., *Justiz = Justice = Justicia? Rahmenbedingungen von Strafjustiz im frühneuzeitlichen Europa* (Trier 2003). For specific territories and cities, e.g.: G. Schwerhoff, *Köln im Kreuzverhör. Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt* (Bonn 1991); P.

this period. It referred to the ‘general concept and the overall purpose of the ‘good order’ of a community, society or state’.¹²³ Connected to this was a development of increasing regulation through the publication of police ordinances and the expansion of executive instruments and institutions.¹²⁴ Despite the increasing distinction and boundaries between civil and criminal jurisdiction, the boundaries between simple transgressions, misdemeanours, and serious offences often remained ill defined. Moreover, different legal traditions, ranging from Roman law, Germanic Law, customary law, canon law etc., influenced everyday legal practice.¹²⁵

These general characteristics also apply to the legal landscape of Frankfurt, which at the same time was shaped by its position as a Free Imperial City.¹²⁶ The city’s authorities were not subjected to the rule of a territorial overlord and were almost entirely independent in their regulation of criminal justice. This also meant that in contrast to territorial rulers, Frankfurt’s city council did not face competing judicial authorities within its territory and had a much stronger position in the enforcement of criminal justice.¹²⁷ Frankfurt’s inhabitants, therefore, experienced a much stronger presence of the legal system in their everyday life than people living in towns and villages incorporated in larger territorial states.

This chapter provides an overview of the institutions involved with the criminal prosecution in early modern Frankfurt, and its development through time, in order to properly interpret the ‘criminal statistics’ which will be discussed in the next chapters. The criminal investigation records (*Criminalia*) form the backbone of this book. The institutional framework in which the *Criminalia* were created transformed considerably during the seventeenth and eighteenth centuries. Moreover, the criminal investigation office (*Verhöramt*) and its predecessors only handled

Schuster, *Eine Stadt vor Gericht. Recht und Alltag im spätmittelalterlichen Konstanz* (Paderborn 1997); H. Schnabel-Schüle, *Überwachen und Strafen im Territorialstaat. Bedingungen und Auswirkungen des Systems strafrechtlicher Sanktionen im frühneuzeitlichen Württemberg* (Köln 1997); H. Rudolph, “Eine gelinde Regierungsart”. *Peinliche Straffjustiz im geistlichen Territorium. Das Hochstift Osnabrück (1716-1803)* (Konstanz 2000); J. Eibach, *Frankfurter Verböte. Städtische Lebenswelten und Kriminalität im 18. Jahrhundert* (Paderborn 2003); K. Härter, *Policey und Straffjustiz in Kurmainz. Gesetzgebung, Normdurchsetzung und Sozialkontrolle im frühneuzeitlichen Territorialstaat* (Frankfurt am Main 2005); L. Behrisch, *Städtische Obrigkeit und soziale Kontrolle. Görlitz 1450-1600* (Efpendorf 2005); U. Ludwig, *Das Herz Justitia. Gestaltungspotential territorialer Herrschaft in der Strafrechts- und Gnadenpraxis am Beispiel Kursachsens 1548-1648* (Konstanz 2008).

¹²³ K. Härter, ‘Security and “Gute Policey” in early modern Europe. Concepts, laws, and instruments’, *Historical Social Research* 35:4 (2010) 41-65, 42; K. Härter, ‘Social control and the enforcement of police-ordinances in early modern criminal procedure’ in: H. Schilling ed., *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitlichen Europa* (Frankfurt am Main 1999) 39-63.

¹²⁴ Härter, ‘Security and “Gute Policey”’, 42-43.

¹²⁵ H. Rudolph and H. Schnabel-Schüle, ‘Rahmenbedingungen von Straffjustiz in der Frühen Neuzeit’ in: H. Rudolph and H. Schnabel-Schüle eds., *Justiz = Justice = Justitia? Rahmenbedingungen von Straffjustiz im frühneuzeitlichen Europa* (Trier 2003) 7-37, 33.

¹²⁶ A. Amend et al. eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München 2008); J. Eibach, ‘Stadt und Reichsstadt. Rahmenbedingungen der Frankfurter Straffjustiz im 17. und 18. Jahrhundert’ in: H. Rudolph and H. Schnabel-Schüle eds., *Justiz = Justice = Justitia? Rahmenbedingungen von Straffjustiz im frühneuzeitlichen Europa* (Trier 2003) 353-368; J. Eibach, ‘Städtische Straffjustiz als konsensuale Praxis. Frankfurt am Main im 17. und 18. Jahrhundert’ in: R. Schlögl ed., *Interaktion und Herrschaft. Die Politik der frühneuzeitlichen Stadt* (Konstanz 2004) 181-214.

¹²⁷ Eibach, ‘Stadt und Reichsstadt’, 362-363.

more serious offences. Thus, the sources only represent a portion of the criminality sanctioned in Frankfurt. Finally, the chapter discusses the various actors involved with policing in the city. Urban officials were not the only actors involved with reporting crime to the authorities, rather the population itself also played an influential role. All of these characteristics contributed (amongst others) to the prosecution patterns in early modern Frankfurt, which will be discussed in the subsequent chapter. For now, it is important to sketch the judicial framework from which these patterns emerged.

The administration of justice in a multifaceted legal landscape

In early modern Frankfurt, a whole range of legal and semi-legal institutions existed that had the jurisdiction to impose punishments and regulate conflicts among individuals. In the period from the sixteenth to the eighteenth century, Frankfurt experienced a process of juridification and the resulting differentiation created a complex legal system: new institutions were established for specific legal matters without the old ones necessarily being abolished. This created a situation where formally - and practically - multiple institutions with competing jurisdictions existed, particularly in the realm of civil conflict regulation. Until the middle of the sixteenth century, the city council and the court of aldermen (*Schöffengericht* - first bench of the city council) were the main institutions holding jurisdiction in the city. By the end of the eighteenth century there were no fewer than twenty legal and semi-legal institutions in Frankfurt. In the intervening period, new institutions had developed, while others were dissolved or merged with existing institutions.¹²⁸ Johann Georg Rössing, a contemporary jurist who wrote about Frankfurt's constitution of the courts (*Gerichtsverfassung*), stated that, due to the diversity of offices and institutions, this topic was 'undoubtedly one of the most complex and difficult matters in the history of our state'.¹²⁹

The majority of Frankfurt's legal institutions dealt with a variety of civil and administrative matters. Many of these institutions combined administrative tasks with judicial functions, like the *Ackergericht* which was responsible for the oversight and administration of the city's agricultural fields, vegetable gardens, and vineyards. At the same time, the office also administered justice in

¹²⁸ J.H. Faber, *Topographische, politische und hisotrische Beschreibung der Reichs- Wahl- und Handelsstadt Frankfurt am Mayn* 2 vols. (Frankfurt am Main 1788/1789); J.A. Moritz, *Versuch einer Einleitung in die Staatsverfassung derer Oberrheinischen Reichsstädte, Erster Theil: Reichsstadt Frankfurt* 2 vols. (Frankfurt am Main 1785/1786); J.G. Rössing, *Versuch einer kurzen historischen Darstellung der allmählichen Entwicklung und Ausbildung der heutigen Gerichtsverfassung Frankfurts* (Frankfurt am Main 1806).

¹²⁹ Rössing, *Versuch*, 1. The original reads: 'Die Geschichte der Gerichtsverfassung Frankfurts ist vermöge der Mannigfaltigkeit der verschiedenen Behörden und Instanzen, welche unsere heutige Gerichtsverfassung bilden, ohnstreitig eine der complicirtesten und verwickelsten Materien in unserer vaterländischen Staatsgeschichte'.

conflicts between private individuals and sentenced transgressions including minor thefts of field products, illegal wood gathering and poaching.¹³⁰

Inhabitants in search of civil adjudication could appeal to a large variety of institutions. The city's aldermen (first bench of the city council) were heavily involved in the administration of civil justice. They formed the court of aldermen (*Schöffengericht*) and the council of aldermen (*Schöfferrat*). Moreover, aldermen were represented in the *Schöffengericht* (which comprised the sheriff (*Schultheiß*), a selection of aldermen, and a syndic) which was increasingly used to settle disputes between private parties.¹³¹ Although formally these bodies were assigned different legal matters, the fact that they were composed of the same group of people created overlap in practice.

Additionally, the senior and junior burgomaster sessions also offered the opportunity to settle conflicts up to five guilders until 1732 and twenty-five guilders from 1732 onwards.¹³² Less serious disputes could also be handled by the *Oberster Richter* (highest judge), who – despite his name – was a lower urban official.¹³³ Plaintiffs had the opportunity to appeal against cases settled by the *Oberster Richter* at one of the burgomaster sessions, whose decision in turn could be appealed to the city's aldermen. Finally, civil cases could be appealed to the Imperial Chamber court, which was particularly used for disputes concerning trade, inheritance, and other financial matters.¹³⁴ This multifaceted legal landscape offered contemporaries various legal procedures to choose from in order to settle their disputes.

Compared to the large variety of civil judicial bodies, Frankfurt's penal jurisdiction was less complex as only a couple of institutions were involved. Generally, there was clear distinction between cases that had to be judged through a civil procedure (*civiliter*) and those that demanded a criminal procedure (*criminaliter*). However, many of the urban officials involved with civil justice matters were also involved in the prosecution of crimes. Moreover, ambiguities remain in terms of

¹³⁰ Rössing, *Versuch*, 134-140. On the relation between women's role in the peasant economy, food gathering and theft of natural resources, see: U. Rublack, *The crimes of women in early modern Germany* (Oxford 1999) 94-98.

¹³¹ C.O. Schmitt, *Säuberlich banquerott gemacht. Konkursverfahren aus Frankfurt am Main vor dem Reichskammergericht* (Köln 2016) 81-82.

¹³² On the burgomaster sessions as a place for conflict settlement, see: G. Schlick-Bamberger, 'Die Audienzen des Jüngern Bürgermeisters in der Reichsstadt Frankfurt am Main. Ein Untergericht als Spiegel des reichsstädtischen Alltagslebens im 18. Jahrhundert' in: A. Amend et al. eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reiche* (Oldenbourg 2008) 15-38.

¹³³ Rössing, *Versuch*, 117-120.

¹³⁴ Research on the legal history of the Imperial Chamber Court has grown tremendously during the past decade. For Frankfurt and the Imperial Chamber Court, see for example: I. Kaltwasser, *Inventar der Akten des Reichskammergerichts 1495-1806. Frankfurter Bestand* (Frankfurt am Main 2000); A. Amend-Traut, *Wechselverbindlichkeiten vor dem Reichskammergericht. Praktiziertes Zivilrecht in der Frühen Neuzeit* (Köln 2009); A. Baumann, 'Frauen vor dem Reichskammergericht. Frankfurt und Köln im Vergleich' in: F. Battenberg and B. Schildt eds., *Das Reichskammergericht im Spiegel seiner Prozessakten. Bilanz und Perspektiven der Forschung* (Köln 2010) 93-116; R. Riemer, *Frankfurt und Hamburg vor dem Reichskammergericht. Zwei Handels- und Handwerkszentren im Vergleich* (Köln 2012); Schmitt, *Säuberlich banquerott gemacht*.

how the criminal justice system functioned, as legal norms were often only vaguely defined or not codified at all.¹³⁵

There are few contemporary legal sources that inform us about the practice of the administration of justice in Frankfurt. The city of Frankfurt did not have an extensive penal code of its own. The city's legal constitution (*Stadtrechtsreformation*) of 1578, which was extended in 1611, primarily regulated civil matters. With regard to the treatment of serious offences ('*Malefiz und Peinlichen Sachen, so an Leib und Leben straffbar seyndt*'), the legal constitution simply referred to the imperial penal code, the *Carolina*, and Frankfurt's own customary legal tradition ('*bey uns bißheroüblichen herkommenem Gebrauch nach*') without further specification, with some minor exceptions.¹³⁶ However, how criminal investigations and procedures were conducted, and which urban officials were involved was not specified in the *Stadtrechtsreformation* which remained in force throughout the entire early modern period. Additional police ordinances, statutes and edicts extended, specified or altered existing legal procedures and introduced new offences.¹³⁷

Jurist and alderman Johann Philipp Orth wrote an extensive commentary on the city's legal constitution in the second half of the eighteenth century, which is a rich source of information on legal practices during that period. Furthermore, we are informed about the way criminal investigations were conducted by the so-called *Bürgermeisterunterricht*. These instructions for the city's burgomasters were issued amidst the political struggle of the *Verfassungsstreit* in 1726. Despite the existence of these contemporary legal sources, many ambiguities still remain. The way that criminal justice was administered in early modern Frankfurt in practice has to be deduced from the criminal investigation records themselves. The analysis of the criminal legal system in Frankfurt in this chapter primarily builds on previous studies by Karl-Ernst Meinhardt on the seventeenth century and Joachim Eibach on the eighteenth century.¹³⁸

¹³⁵ Eibach, *Frankfurter Verböre*, 61. In the case of *Frevel* (insults, petty violence and libels) the city's legal constitution of 1611 defines a criminal procedure as one where fines were to be paid to the authorities, compared to a civil procedure where fines were paid to the offenders as compensation. *Der Statt Franckfurt am Mayn erneuerte Reformation* (1611) §10.2.1. Original: 'Es werden auch die dieselben Injurien/ altem herkommen nach/ bey Uns/ auff zweyerley Weiß Gerichtlich gegen den Mißthäter geklagt: Nemlich/ Criminaliter, da die Straff der Verwürrkung/ Uns/ als der Oberkeit: Und dann Civiliter, da die Straff/ der beschädigten, oder beleidigten Partheyen/ allein zuerkennt wirdt.'

¹³⁶ Only the treatment of cases of manslaughter in which it was disputed whether or not the act had occurred in self-defence, cases in which a suspect of manslaughter had fled the territory, and cases of '*Ebrenschänder*' that falsely claimed to have slept with someone's wife, widow or maiden was specified. *Der Statt Franckfurt am Mayn erneuerte Reformation* (1611) §10.5-10.

¹³⁷ Eibach, *Frankfurter Verböre*, 72.

¹³⁸ K. Meinhardt, *Das peinliche Strafrecht der freien Reichsstadt Frankfurt am Main. Im Spiegel der Strafpraxis des 16. und 17. Jahrhunderts* (Frankfurt am Main 1957) 20-107; Eibach, *Frankfurter Verböre*, 58-88. Eibach, 'Städtische Strafjustiz'; Eibach, 'Stadt und Reichsstadt'.

Investigation of criminal offences: about the formation of the *Verhöramt*

From the late fourteenth century onwards, the city council possessed full autonomy in legal matters and had the right to administer justice and impose penal punishments. From that point in time onwards, the city council functioned as a high criminal court, as this was the only legal body with the authority to execute corporal and capital punishments. They exercised their right to administer criminal justice as part of their responsibility to maintain the city's peace (*Stadtfrieden*). As such, administering criminal justice was seen as an essential part of *Gute Policey* – good policing.¹³⁹ Although the city council was responsible for sentencing serious offenders, they did not conduct the criminal investigations themselves. In fact, they did not even face offenders they sentenced in person, but issued their verdicts based on written records (about which later).¹⁴⁰

In the late medieval period and beginning of the early modern period, the responsibility for carrying out criminal investigations lay with the city's senior and junior burgomasters. Initially both burgomasters carried out criminal investigations. Later on, this became in practice the main responsibility of the junior burgomaster, who was responsible for domestic affairs, while the senior burgomaster became primarily responsible for foreign affairs.¹⁴¹ Still, the sources reveal that well into the eighteenth century, when the position of the junior burgomaster as the head of criminal investigations was firmly established, the senior burgomaster could still conduct all or parts of the criminal investigation process.¹⁴² The junior burgomaster ordered arrests, carried out investigations, supervised the application of torture and was in charge of ordering the execution of sentences.

The appointments for public functions (*Ratsämterbestellungen*) of 1616 include the first mention of an office for the interrogation of witnesses.¹⁴³ This office comprised the junior burgomaster and two deputies from the second bench of the city council. It is very likely that the decision to appoint two council members to assist the burgomaster with the criminal investigations arose from the political reforms implemented after the Fettmilch uprising, a revolt resulting from tensions between the city council and the guilds who demanded greater political influence in urban policies.¹⁴⁴ In the complaints (*Gravimina*) issued by the burghers to the city council in one of the stages of the conflict, they accused the burgomasters of arbitrariness in their investigations and sentencing. The burghers demanded that interrogations should no longer be carried out solely in

¹³⁹ A. Johann, *Kontrolle mit Konsens. Sozialdisziplinierung in der Reichsstadt Frankfurt am Main im 16. Jahrhundert* (Frankfurt am Main 2001) 73; Meinhardt, *Das peinliche Strafrecht*, 22.

¹⁴⁰ For similar practices in other imperial cities in the Holy Roman Empire, see: Rublack, *Crimes of women*, 50.

¹⁴¹ Meinhardt, *Das peinliche Strafrecht*, 29.

¹⁴² E.g. IfSG Frankfurt am Main, Criminalia 943 (1610); Criminalia 1049 (1641); Criminalia 1188 (1660); Criminalia 1218 (1661); Criminalia 1425 (1674); Criminalia 1483 (1679); Criminalia 3062 (1720); Criminalia 3100 (1721).

¹⁴³ Eibach, *Frankfurter Verböre*, 62.

¹⁴⁴ During the revolt aggressions turned towards the Jewish minority in the city. The *Judengasse* was plundered and the Jews were expelled from the city. The ringleader, Vincenz Fettmilch, after whom the revolt is named, was executed.

the presence of the burgomaster, but always in the presence of several council members and a jurist as well.¹⁴⁵ Unlike most of the other popular demands during the conflict, this one was at least partially implemented: from 1616 onwards one or two council member were appointed on a yearly basis as deputies for the interrogation of prisoners (*zur Verhör der Gefangenen*).¹⁴⁶ In the course of the period, the council members who were initially only appointed to *assist* the burgomaster increasingly *carried out* the investigations themselves. Gradually this construction developed into what would later be known as the *Verhöramt* – the office of criminal investigation. Still, the city council continued to have the final vote with regard to all important judicial decisions regarding the criminal investigation. The appointment of designated investigators did not, therefore, mean a separation of legislative and executive powers.

The criminal records refer to the deputies of the city council as *‘deputirten herren examinatore’*;¹⁴⁷ *‘Herren Deputirten zur Examination der Gefangenen’*¹⁴⁸; *‘deputirte ad examen carceratorium’*;¹⁴⁹ *‘Herren deputirten zum Verhör der Gefangene’*;¹⁵⁰ *‘Herren Deputirten zu Criminalsachen’*.¹⁵¹ Their duty was to assist the junior burgomaster with the interrogations. They were further assisted by the council clerk (*Ratschreiber*) who was in charge of maintaining the criminal records and recording the interrogations. The latter also had to carry out interrogations of offenders or witnesses who were unable to be present in person in the *Römer* for such reasons as sickness, for example.¹⁵²

The process regarding criminal investigations in Frankfurt was written down for the first time in the instructions for the burgomasters, the *Bürgermeisterunterricht* of 1726. These instructions – which were implemented during the constitutional conflict between burghers and city council – were not a result of reform but confirmed the practice as it had developed in the course of the seventeenth century.¹⁵³ The instructions stated that the junior burgomaster was responsible for investigating reported crimes. First, he had to determine whether or not there were sufficient indications to initiate criminal investigations. If this was indeed the case, he had to arrest the suspect and start the investigations, in which he was assisted by a representative of the city council, referred to as the *examinatore ordinario*, who held this post for three consecutive years. The

¹⁴⁵ The *Gravamina* are partially printed in: F. Bothe, *Frankfurts wirtschaftlich-soziale Entwicklung vor dem Dreißigjährigen Kriege und der Fettmilchaufstand (1612-1616)* (Frankfurt 1920). Also see: Eibach, ‘Stadt und Reichsstadt’, 365.

¹⁴⁶ For the list of council members appointed, see: IfSG Frankfurt am Main, Ratswahlen und Ämterbestellungen, nr. 4 and 5 (1590-1675).

¹⁴⁷ Criminalia 1053 (1641).

¹⁴⁸ Criminalia 1188 (1660).

¹⁴⁹ Criminalia 1216 (1661).

¹⁵⁰ Criminalia 1339 (1668).

¹⁵¹ Criminalia 1505 (1680).

¹⁵² See e.g. Criminalia 643 (1610).

¹⁵³ Meinhardt, *Das peinliche Strafrecht*, 19.

Bürgermeisterunterricht referred to this office as *officium examinatorium*, *Examinationsamt* and *Verhöramt*.¹⁵⁴

Formally the *examinatore* was only an assistant, but in practice he carried out much of the investigations individually because the burgomaster was usually engaged in other business.¹⁵⁵ The *examinatore* was therefore the person who interrogated the suspects and witnesses. However, in the case of the application of torture, the burgomaster had to be present. Before the implementation of the *Bürgermeisterunterricht*, it had not been a requirement for the *examinatore* to have undergone legal training. The instructions stated that it was now determined that the *examinatore* could no longer be elected by chance but had to be voted by the majority of the council instead.¹⁵⁶ Although the requirement of a legal training was now formally regulated, the process of juridification (*Verrechtlichung*) of the criminal justice system had already begun much earlier. Many of the council members from the first and second benches were actually trained jurists.¹⁵⁷

The city's syndics could be consulted during each phase of the interrogation. These were legally trained officials who advised on procedural questions, such as whether the application of torture would be legal in certain cases (i.e. in accordance with the regulations of the Carolina and other legal codes). Most importantly they drew up legal opinions advising about the punishment that should be applied. After the termination of the investigation, the *Verhöramt* handed over all the investigation records to the syndics, who based their legal opinions solely on the written records. They took as their basis various legal texts (mostly the *Carolina* and later in the seventeenth century the work of the famous Saxon criminal law scholar Carpzov). In the seventeenth century these legal opinions were usually drawn up by two or the three syndics, but later in the eighteenth century their number was extended to four and later five.¹⁵⁸ The most junior syndic was the first to evaluate the case, after which the others commented on his opinion either by simply confirming it (which rarely happened), or by extending it with different points, or simply giving a whole new account of the legal matters themselves. Thus, the legal opinions were not used as a uniform and definite verdict to be simply applied by the city council, but were rather used as a guideline on which it could base its punishment. It was on the grounds of these legal opinions that the city council determined the punishment. Although they would usually follow the suggested punishments, they also regularly deviated from them. In serious legal matters the city council could

¹⁵⁴ J.P. Orth, *Nötig und nützlich erachteter Anmerkungen über die sogenannte erneuerte Reformation der Stadt Frankfurt am Main. Dritte Fortsetzung* (S.L. 1751) 828 and 839.

¹⁵⁵ Orth, *Dritte Fortsetzung*, 826.

¹⁵⁶ *Extract Protocoll Commissionis de 26 Mart. 1727. Die Wahl des herrn Deputirten ad officium examinatorium ohne Kugelung betreffend*, printed in: C.S. Müller, *Vollständige Sammlung der kaiserlichen in Sachen Frankfurt contra Frankfurt ergangenen Resolutionen und anderer dahin einschlagender Stadt-Verwaltungs-Grund-Gesetzen* (Frankfurt am Main 1776) 40.

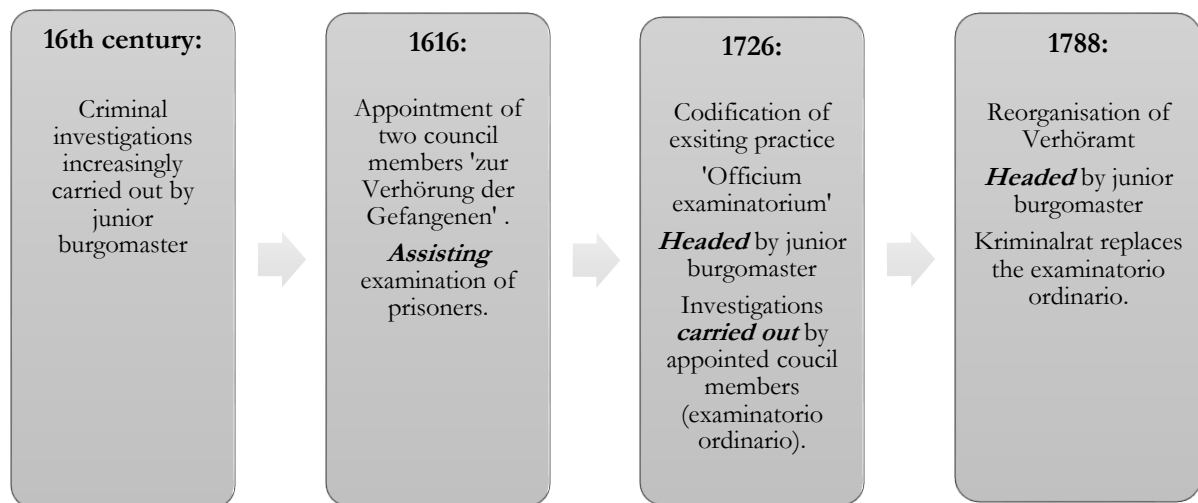
¹⁵⁷ Eibach, Reich, 'Stadt und Reichsstadt', 359-361.

¹⁵⁸ Meinhardt, *Das peinliche Strafrecht*, 31; Eibach, *Frankfurter Verböte*, 62.

also decide to draw upon the expert opinion of an external law faculty.¹⁵⁹ In the eighteenth century it became common to do this in capital cases.¹⁶⁰

It was not until 1788, when the *Verhöramt* re-organised, that it received its first official regulation. This was a further step in the professionalisation process of criminal prosecution in Frankfurt. The junior burgomaster remained the chair of the investigation office, but his presence was no longer required during interrogations. The day-to-day business of the investigation office was the responsibility of a newly appointed, legally trained *Kriminalrat*, who replaced the *examinatore ordinario*. The latter remained part of the *Verhöramt* as a replacement for the *Kriminalrat* when he could not conduct the investigations due to sickness or other obligations, and had a vote in summary cases that were handled directly by the *Verhöramt*. Furthermore, the activities that were previously fulfilled by the council scribe – recording interrogations and maintaining the criminal records, conducting interrogations outside the *Römer* – were now conducted by a clerk, called an *Aktuar*. As such, the *Verhöramt* remained in existence well into the nineteenth century.¹⁶¹

Figure 2 Development of the Peinliche Verhöramt in Frankfurt am Main



Prosecuted crimes and boundaries of jurisdiction

The *Verhöramt* functioned as a court of enquiry for all penal offences (*peinliche Sachen*), in other words crimes that were sanctioned with corporal and/or capital punishment that only the city council could impose. At the same time, the office also held jurisdiction to sanction petty offences

¹⁵⁹ About the consultation of legal faculties with regard to civil cases, see: A. Amend, 'Die Inanspruchnahme von Juristenfakultäten in der Frankfurter Rechtsprechung. Zur Rolle der Spruchkollegien auf territorialer Ebene und ihre Bedeutung für das Reich' in: A. Amend et al. eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München 2008) 77-96.

¹⁶⁰ Meinhardt, *Das peinliche Strafrecht*, 88; Eibach, *Frankfurter Verböte*, 63.

¹⁶¹ See appendix for a schematic overview of Frankfurt's criminal justice system in the early modern period.

above a certain level in their function as a lower court. Apart from the *Verhöramt*, there were other lower courts and urban offices that also held some form of criminal jurisdiction and/or followed quasi-criminal procedures, for example with regard to the regulation of morals, and vagrancy and begging. Martin Dinges formulated a rather broad concept of early modern 'criminal justice' to avoid the difficulties of handling the early modern fluid boundaries between civil and criminal jurisdictions. He defined 'criminal justice' as referring to 'those legal institutions that at least also had a kind of criminal jurisdiction'. This definition therefore also includes, amongst others early modern semi-ecclesiastical moral courts (*Sittengerichte*).¹⁶² In Frankfurt (like in most of early modern Europe) there was no extensive legal code that defined what kind of transgressions were to be prosecuted as a criminal offence or where the boundaries between specific lower courts should be drawn. Some offences were defined clearly by a variety of laws and ordinances, while others were not. Distinctions between felonies and misdemeanours (for example between grand or petty theft) were often fluid. This created considerable room for discretion by law enforcers, but also offered opportunities for bargaining and mediation by offenders or their family members.¹⁶³

So what types of offences were investigated by the *Verhöramt*? The city's legal constitution (1578/1611) stated that with regard to the penal offences (*'Malefiz und Peinliche Sachen, so an Leib und Leben straffbar seynd'*) Frankfurt followed the imperial penal code, the *Carolina*, and their own customary law.¹⁶⁴ The *Carolina* was a reflection of attitudes towards crime at the beginning of the sixteenth century, which was reflected in the offences the code listed. Sorcery, for example, hardly played a role in criminal prosecutions during the seventeenth and the eighteenth centuries. Moreover, the code only listed violent offences with a fatal ending (murder, manslaughter and infanticide) or in relation to robberies, but assaults were not regulated in the *Carolina*.¹⁶⁵ The *Bürgermeisterunterricht* of 1726 confirmed the *Carolina* as the principle legal code, while differentiating further, even if only slightly, regarding the type of offences that were investigated by the *Verhöramt*. The instructions stated that they had to investigate all occurring criminal offences, including those fights and assaults that resulted in serious bodily harm or disrupted public order.¹⁶⁶ What else specifically was considered a criminal offence was not specified. It wasn't until the reorganisation of the *Verhöramt* in 1788 that it was codified which crimes belonged to their jurisdiction.

¹⁶² M. Dinges, 'The uses of justice as a form of social control in early modern Europe' in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 159-175, 163.

¹⁶³ On the difficulty of distinguishing between felonies and misdemeanours, and higher and lower jurisdictions in early modern Germany: Härter, *Policey und Straffjustiz*, 173-188; G. Schwerhoff, *Historische Kriminalitätsforschung* (Frankfurt am Main 2011) 72-81.

¹⁶⁴ *Der Statt Franckfurt am Mayn erneuerte Reformation* (1611) § 10.8.1.

¹⁶⁵ Eibach, *Franckfurter Verböre*, 71-72.

¹⁶⁶ Orth, *Dritte Fortsetzung*, 827. Original: 'Der zu gefangenen verbör bestellte Ratsdeputirte der 2ten bank hat mit aßistenz und unter dem präsidio des jüngern Bürgermeisters die vorkommenden criminalsachen (worunter auch diejenige real injurien und schlägereien, wo üble verwundet und beschädigungen vorkommen mitbegrieffen) fodersamst zu untersuchen [...]'.

According to the fifth paragraph of the *Verhöramt's* regulations, the following offences belonged to the jurisdiction of the office (the categories below reflect the contemporary classifications of 1788):

- Political offences and other crimes that endanger public security and order. Including: upheavals; tumults; assaulting urban officials on duty; insulting the city's authorities; damaging public buildings; aiding prisoners to escape etc.
- Coining offences
- Violence. Including: killing through arson (*Mordbrand*); murder; manslaughter and other assaults.
- Infractions of freedom (*Beleidigung der Freyheit*) such as kidnapping; human trafficking, illegal recruitment.
- Malicious damage to private property (*Boshafte Beschädigungen des Vermögens anderer*). Including: Fraud; usury; wanton bankruptcy; thefts etc.
- All crimes against the flesh (i.e. sexual offences) that do not belong to the jurisdiction of the *Konsistorium*, such as rape and brothel keeping.
- All physical injuries (*Real-Injurien*) providing they required an official investigation (*von Amtswegen*) to secure public safety or set an example (as opposed to a civil settlement).
- Insults (*Verbal-Injurien*) if they occurred in aggravating circumstances, for example if they concerned oral insults from children against their parents.
- Moreover, all crimes that according to their quality (*ihrer Wichtigkeit oder Beschaffenheit wegen*) are transferred to the *Verhöramt* by the city council, court of aldermen or others, including cases from external authorities that require investigation in Frankfurt).

Figure 3 Regulation of Verhöramt 1788

§. 5.

IV. Sachen die vor das peinliche Verhör-Amt gehörig.

V. So viel die Sachen selbst belangt, welche vor das peinliche Verhör-Amt gehören sollen; so sind darunter begriffen und dahin zu verweisen: Staats- und andere Verbrechen, wodurch die innere Sicherheit, Ruhe und Ordnung hiesiger Reichsstadt gestöhret wird, als Aufruhr, thätlicher Widerstand gegen die Obrigkeit, Beleidigungen obrigkeitlicher Personen in und bey Ausrichtung ihres Amtes, Verletzung öffentlicher Anschläge, oder öffentlicher Gebäude, Befreyung der Gefangenen 1c. 2c. Münzverbrechen wenn sie sich einmal zur Criminal-Inquisition eignen; Mordbrand, Mord, Totschlag, und andere gefährliche körperliche Verletzungen; Beleidigungen der Freyheit, als Menschenraub, gewaltsame Entführungen, Schleichwerbung 1c. 2c. boshafte Beschädigungen des Vermögens anderer, wohin alle Arten von Falsis, fälschliche Contracte, muthwillige Banquerouts, und Diebstähle insonderheit gehören: alle fleischliche nicht vor Köbl. Consistorium gehörige Verbrechen, und Nothzucht insonderheit, auch die mit dieser Gattung von Verbrechen verwandte Hutenwirthschaft; alle Real-Injurien, soferne solche der allgemeinen Sicherheit, und des Exempels wegen eine Untersuchung von Amtswegen erheischen; Verbal-Injurien, welche mit besonders gravirenden Umständen verknüpft, z. B. von Kindern gegen Eltern ausgeübet worden sind, und überhaupt alle und jede Verbrechen oder Vergehungen, welche entweder ihrer Wichtigkeit oder Beschaffenheit wegen einem von demjenigen, welche hier nahmhafft gemacht sind, gleich zu halten, oder aber von Aus, dem Rath, oder von dem Schöffenrath, nach diesen Grundsätzen, vor das peinliche Verhör-Amt besonders verwiesen werden: gleichwie dann auch insbesondere die in dergleichen auswärts anhängigen Sachen, auf Requisition der Obrigkeiten dahier vorzunehmenden Verhöre, Untersuchungen, Communicationen, Correspondenz u. s. w. oftgedachtem Unserm peinlichen Verhör-Amt und dessen Examinatori zur pflichtmäßigen Besorgung obliegen sollen.

The regulations of 1788 provide the most comprehensive overview of crimes that fell within the jurisdiction of the *Verhöramt*, either in their function as a court of enquiry or because of the jurisdiction they held as a lower court. Nonetheless it still provides only a fragmentary image. For example: in relation to property offences, the regulations specifically mention theft, but not robbery; with regard to *real injurien*, the regulation does not specify those cases where a criminal investigation is legitimated and those where it is not. Moreover, ambiguities remain about the delineation between penal offences and petty crimes, which considerably affected the role of the criminal investigation office. According to the regulations of 1788, the *Verhöramt* held jurisdiction over crimes that could be sanctioned with up to three months imprisonment or forced labour and/or expulsion in the case of vagrants (*‘ohne Wohnort herumirrenden Vagabunden’*), and fines or private imprisonment (*‘Bürgerliche Gefängniß Strafe’*) in case of citizens.¹⁶⁷ In such cases, the *Verhöramt* functioned as a lower court. Any crimes exceeding that level and demanding corporal or capital punishment were investigated by the *Verhöramt* but tried by the city council. Before the reorganisation of the office in 1788 the city council also tried levels below the threshold of corporal and capital offences. The exact boundaries of what the investigation office could sanction itself were less clearly defined, which sometimes even led to confusion and conflict between the city council and the officials at the *Verhöramt*.¹⁶⁸ For the purpose of this study, however, this distinction is less relevant as both types of offences are reflected in the *Criminalia*, the records collected by the *Verhöramt* in the course of the criminal investigations.

A more important issue for this study (especially for the subsequent chapter that deals with the different crime patterns of men and women) is the question of which crimes and transgressions were *not* investigated by the *Verhöramt* and therefore are *not* reflected in the *Criminalia*. As an example, the *Verhöramt* did not investigate every fight, brawl or assault, but only handled cases that involved a certain level of physical injury or involved a risk to public safety. According to the burgomasters’ instructions of 1726, minor quarrels and insults (*‘schlechte Zänkereien und Scheltworte’*) among the lower classes could be transferred to the so-called *Oberster Richter*, who always required confirmation of the sentences he imposed from the junior burgomaster.¹⁶⁹ Verbal abuse (despite being specifically mentioned in the regulations of 1788) was generally investigated only if it was aimed at public officials or people of high standing. In other cases, victims of insults or verbal abuse could file a suit before one of the various civil courts of the city.¹⁷⁰

¹⁶⁷ PO 4346 *Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt* 04.12.1788, §34.

¹⁶⁸ Eibach, *Frankfurter Verböre*, 67-68.

¹⁶⁹ Orth, *Dritte Fortsetzung*, 794; *Criminalia* 9804 (1788) folio 77.

¹⁷⁰ Eibach, *Frankfurter Verböre*, 69. For compensation and retaliation for violent offences in the criminal justice system and differences between private and public punishments, see: K. Härter, ‘Violent crimes and retaliation in the European criminal justice system between the seventeenth and the nineteenth century’ in: B. Turner and G. Schlee eds., *On retaliation. Towards an interdisciplinary understanding of a basic human condition* (New York 2017) 101-121.

In the late sixteenth century, a special court was established to accommodate the need of Frankfurt's inhabitants to settle petty conflicts (*Frevel*) such as conflicts of honour, insults, quarrels etc.¹⁷¹ This so-called *Frevelgericht* was established to reduce the workload of the court of aldermen, and could handle the *Frevel* both through a civil as well as a criminal procedure (*criminaliter* and *civiliter*). The former was defined as one where compensation was to be paid to private parties, and the latter included cases which were sanctioned with a fine paid to the authorities.¹⁷² The court personnel was made up by two (later six) aldermen (*Schöffen*) and the *Schultheiss*, which means that the offences were still handled by the same people as before, but in a different constellation and in fewer numbers. Somewhere in the middle of the seventeenth century the court fell into disuse, and only fragmented sources have survived shedding light on the conflicts settled before the *Frevelgericht*. Most cases were settled with monetary fines, and offenders could be held in custody awaiting their punishment or imprisoned if they could not (or did not want to) pay the fines.¹⁷³

Other offences that were not investigated by the *Verhöramt* included administrative and regulatory offences, and minor public order infringements. Some fragmentary records that have been preserved in the archives of the *Rechneiamt* list people being fined for minor offences, like Georg Brenner who was fined 1 guilder because he had sung lewd songs in 1614, or Hans Georg Schwelt and Paul Gottel, two skippers from *Aschaffenburg* who were fined 1.30 guilders because they had passed through one of the side arches of the bridge before it had opened in 1689.¹⁷⁴ Just as in other cities and territories in the Holy Roman Empire, the prosecution of vagrants and ethnic and religious minorities such as gypsies increasingly occupied the regulatory efforts of authorities. The police ordinances issued in early modern Frankfurt concerning such matters as begging and vagrancy, clearly demonstrate a process of increasing criminalisation. Vagrants and beggars were usually not prosecuted but expelled directly by the city's beadles (*Armenknechte*) or constables (*Gemeine Weltliche Richter*). Begging and vagrancy as such, were therefore not crimes prosecuted by the *Verhöramt*. However, as we will see in chapter 6, there are repeated cases involving offenders labelled as vagrants or unwanted foreigners who end up being expelled from the city simply because of their label. Most moral offences, including transgressions of the city's sumptuary laws, also did not belong to the jurisdiction of the *Verhöramt* but came under that of the *Sendamt* (until 1728) and

¹⁷¹ For the court's regulation, see: *Der Statt Franckfurt am Mayn erneuerte Reformation* (1611) §10.2; PO 1807 *Der heren Schöffen Decret wie es mit relation der Frevelsachen zu halten* 18.05.1613.

¹⁷² *Der Statt Franckfurt am Mayn erneuerte Reformation* (1611) §10.2.1. 'Es werden auch dieselbe Injurien/ altem herkommen nach/ bey Uns/ auff zweyerley Weiß Gerichtlich gegen den Mißthätern geklagt: Nemlich/ Criminaliter, da die Straff der Verwürckung/ Uns/ als der Oberkeit: Und dann Civiliter, da die Straff/ der beschädigten/ oder beleidigten Parteyen/ allein zuerkennt wirdt'.

¹⁷³ Johann, *Kontrolle mit Konsens*, 79; Criminalia 541 (1606); Criminalia 542 (1606); IfSG Frankfurt am Main, *Rechnei* vor 1816 658, *Straßbüchle vom 1. Maj 1614 bis 1. Maj 1625*.

¹⁷⁴ *Rechnei* vor 1816 14 *Einnam Bürger-Wehrschaften und Straßgelter vom 1 Maj 1689 ad 1 maj 1690*; *Rechnei* vor 1816 356, *Frevel Sachen, busen und Strafen*; *Rechnei* Vor 1816 658.

the *Konsistorium* (from 1728 onwards). Prostitution, fornication, bigamy, adultery, and marital disputes were often only referred to the *Verhöramt* in cases of repeat offenders, serious domestic violence or large-scale brothel-keeping (see chapter 5).

In addition to this, certain minorities or professions were excluded from the jurisdiction of the *Verhöramt* in minor offences. The Jewish community of Frankfurt (i.e. those that had Jewish citizenship) possessed the authority to impose control in minor offences in the *Ghetto*. The so-called *Baumeister* could impose monetary fines or strip offenders of their Jewish citizenship, which was basically the same as expelling them as it annulled their rights to reside in the city.¹⁷⁵ The soldiers of Frankfurt's army were subjected to military jurisdiction in case of minor fights and transgression. Serious violence and property offences, however, were investigated by the *Verhöramt* and judged by the city council. The city's handicraft associations had lost the authority to prosecute their members in criminal cases in the wake of the Fettmilch Uprising of 1616.¹⁷⁶ After this they could only impose disciplinary sanctions on their members, for example in the case of sexual offences. They could only do so after notifying the authorities, and their sanctions were not considered as independent criminal punishments, but were imposed in *addition* to the criminal sanctions imposed by the urban authorities.¹⁷⁷ Finally, minor offences committed outside the city walls or in one of the villages belonging to Frankfurt's territory were primarily handled by the *Landgericht* or *Ackergericht*.

Frankfurt's legal system had a large presence in the daily life of the city's inhabitants and was not a distant institution. The records of the *Verhöramt* therefore offer an excellent source to study the way in which the sex ratio among recorded offences was shaped by gendered social control mechanisms. Although they primarily reflect the most serious urban criminality, they offer the reader a glimpse of the many selection processes that were in place before such a case actually ended up before the *Verhöramt*. This is especially so since all cases that belonged to the lower courts could still be transferred to the *Verhöramt* as a court of enquiry for the city council (if the crime required a punishment that exceeded the jurisdiction of the lower courts as we will see, for example, in chapter 5).

¹⁷⁵ On the position of Jews, see: G. Schlick, 'Zur Rolle der reichsstädtischen Gerichtsbarkeiten in den Alltagsbeziehungen der Frankfurter Juden in 18. Jahrhundert' in: F. Backhaus et al. eds, *Die Frankfurter Judengasse. Jüdisches Leben in der frühen Neuzeit* (Frankfurt am Main 2006) 171-188; V. Kallenberg, *Jüdinnen und Juden in der Frankfurter Strafgerichtsbarkeit 1780-1814. Die Nicht-Einheit der jüdischen Geschichte* (Göttingen 2018).

¹⁷⁶ R. Brandt, 'Die Grenzen des Sagbaren und des Machbaren. Anmerkungen zur Rechtsgeschichte des Frankfurter "Zunfthandwerks" während der Frühen Neuzeit' in: A. Amend et al. eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München 2008) 247-264.

¹⁷⁷ For examples, see chapter 6.

Criminal Procedures

The main purpose of this study is to understand sex differences among recorded offences. Which crimes actually ended up being recorded (i.e. prosecuted) and which did not, depended not only on the effectiveness and reach of the institutional infrastructure of the different judicial bodies, but also on the legal procedures followed. In many parts of early modern Europe, the transition between the medieval and early modern period marked a significant transformation of criminal procedures.¹⁷⁸ In the Middle Ages, trials were essentially a matter between private individuals, where the authorities only took on the role of mediator. Crimes were only prosecuted if the victim filed a complaint and both parties remained equal in the process (accusatorial procedure - *Akkusationsprozess*). Trial outcomes had the character of a civil agreement, where compensation for the victim or their family was the prime objective. The early modern period marked the adoption of the inquisitorial system in which the responsibility for prosecution no longer lay with a private party. The initiative for the procedure now lay with the authorities and the offender no longer stood before the court as an equal party, but was subjected to investigation and had to defend him-/herself.

With a few exceptions, Frankfurt adopted the inquisitorial procedures for criminal cases. In the late sixteenth century, accusatorial procedures were still in practice in some cases in which foreigners or Jews filed a complaint. By the seventeenth century, however, this practice had faded.¹⁷⁹ According to the city's legal constitution (1611), accusatorial procedures still applied in certain cases of manslaughter and belonged to the jurisdiction of the court of aldermen.¹⁸⁰ A third option was the so-called *Fiskalischer Prozess*, which was essentially a mix of the accusatorial and the inquisitorial practice. Instead of the victim or the victim's family, the case would be initiated by the *Oberster Richter*, who would take up the role of public prosecutor *Fiskal*.¹⁸¹ During the seventeenth century, such cases were still judged by the court of aldermen independently, but by the eighteenth century the city council as a whole issued the verdicts.¹⁸²

The overwhelming majority of criminal cases in early modern Frankfurt followed the inquisitorial procedure. According to the *Bürgermeisterunterricht* of 1726, Frankfurt's criminal procedure was a 'summary inquisitorial procedure according to the customary practice'.¹⁸³ Joachim

¹⁷⁸ G. Jerouschek, 'Die Herausbildung des peinlichen Inquisitionsprozesses im Spätmittelalter und in der frühen Neuzeit', *Zeitschrift für die gesamte Strafrechtswissenschaft* 104:2 (1992) 328-360; A. Vogt, 'Die Anfänge des Inquisitionsprozesses in Frankfurt am Main', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 68:1 (1951) 234-307.

¹⁷⁹ Meinhardt, *Das peinliche Strafrecht*, 60-61.

¹⁸⁰ *Der Stadt Frankfurt am Main erneuerte Reformation* (1611) §10.6-7.

¹⁸¹ Orth, *Dritte Fortsetzung*, 830.

¹⁸² Eibach, *Frankfurter Verböte*, 64-65.

¹⁸³ Orth, *Dritte Fortsetzung*, 828. Original: 'nach hiesigem Herkommen, summariter gefürter processus inquisitorius'.

Eibach explains that this formulation of the criminal procedure is likely to be misunderstood because it might suggest that crimes were tried based on a quick summary procedure, instead of an extensive trial and investigation. The phrase simply refers to the fact that there was no distinction made between the *Generalinquisition* (preliminary investigation, aimed at establishing the *corpus delicti* and determining the grounds for arrest) and the *Spezialinquisition* (the actual interrogation procedure on the basis of which the verdict was imposed): there was no clear line between the investigation of the crime and the trial.¹⁸⁴ Nor was there a public prosecutor, but rather crimes were investigated by the junior burgomaster or the *Oberster Richter* through the powers of their position.¹⁸⁵

The impact of the offender's social status and incorporation in the community were key aspects of the early modern criminal justice system, which is reflected in the various legal codes of the time. The imperial criminal code, the *Carolina*, had been instrumental in the regulation of criminal procedures in the Holy Roman Empire.¹⁸⁶ It set the grounds on which suspects could be arrested and prosecuted, torture could be applied, and verdicts could be imposed.¹⁸⁷ The *Carolina* prescribed several circumstances that provided clear evidence and firm grounds for arrest: being caught red-handed at the scene of the crime, carrying stolen goods, rumours and a bad reputation, and carrying tools that could be used to break into houses (e.g. possessing picklock keys). For unknown foreigners, on the other hand, simply acting suspiciously could be considered sufficient reason for arrest. Additionally, other authorities could issue warrants for arrest.¹⁸⁸ It was not uncommon in Frankfurt for suspects to be arrested at the request of foreign rulers.

The grounds for arrest were relatively broad and suspects, especially foreigners and burghers from the lower classes, could be imprisoned relatively easily. The application of torture and issuing a verdict of guilty, however, were more complicated and bound to strict rules. Suspects could only be found guilty and the full punishment imposed if they confessed to the crime, or if there were enough witnesses to the crime who could identify the offender.¹⁸⁹ In the latter case, however, the authorities still aimed for a confession by the offender, as this was considered the purest form of evidence of having committed a crime. Extracting a confession from the suspect was thus central to the interrogations. The authorities could apply a number of different methods to achieve their aim. First and foremost, investigators interrogated the suspect and witnesses

¹⁸⁴ Eibach, *Frankfurter Verböte*, 63.

¹⁸⁵ Rössing, *Versuch*, 185. Original: 'Dem Inquisitorischen Criminal Proceß verfuhr von Amtswegen nur der Jüngere Bürgermeister oder der Oberster Richter ohne daß ein besondere Ankläger dazu Anzutreten nöthig hatte'.

¹⁸⁶ J.H. Langbein, *Prosecuting crime in the Renaissance. England, Germany, France* (Cambridge MA, 1974) 177-178.

¹⁸⁷ Rublack, *Crimes of women*, 41; R. van Dülmen, *Theater des Schreckens. Gerichtspraxis und Strafrituale in der frühen Neuzeit* (5th edition: München 2010) 14-37.

¹⁸⁸ Meinhardt, *Das peinliche Strafrecht*, 60-67.

¹⁸⁹ Meinhardt, *Das peinliche Strafrecht*, 74.

individually. If his statement conflicted with that of the witness accounts, the suspect had to defend himself in a face-to-face confrontation with the witness.

The importance of a confession in convicting offenders is particularly evident in cases of infanticide. For a woman to be convicted of this crime, authorities had to prove that the death of the infant resulted from intentional harm, which was extremely difficult to prove without a confession. Infanticide was a capital crime, but in order for a woman to be executed for this crime, it had to be proven without doubt that it was intentional. The execution rate for this offence, therefore, rarely exceeded 50% in the early modern period.¹⁹⁰ Instead, women were usually banished from the city on the grounds of minor offences like fornication and concealment of pregnancy.

In order to extract a confession from suspects, authorities could resort to the use of torture.¹⁹¹ In early modern Frankfurt, suspects could only be subjected to torture in cases that required a serious corporal or capital punishment.¹⁹² Moreover, investigators could not impose torture on their own account, but required the consent of the city council, who based their decision on the consultation of the investigation records, and the legal opinion of the city's syndics.¹⁹³ The latter also drew up the questions the suspect had to answer during the painful (*peinliche*) interrogation. These interrogations took place in the torture chamber in the *Bornheimer Turm* in the presence of the junior burgomaster, one syndic, the *Oberster Richter*, and the clerk, and the torture was applied by the executioner (*Scharfrichter*). The interrogation would always start with the display of the instruments of torture only, to give the suspects a chance to confess without the need to actually put them to use. With regard to the use of torture, women were not treated differently. Only the physical conditions of offenders were treated as grounds for exemption from torture. That does not mean that pregnant women were automatically spared torture. There are several examples in which women, while being pregnant, were threatened with torture and interrogated with the display of instruments of torture.¹⁹⁴ Still, it was specifically stated that pregnant women could not be interrogated or punished in such a way that this could endanger the unborn child.¹⁹⁵

¹⁹⁰ M. Brannan Lewis, *Infanticide and abortion in early Modern Germany* (New York 2016) 53. For Frankfurt: R. van Dülmen, *Frauen vor Gericht. Kindsmord in der Frühen Neuzeit* (Frankfurt am Main 1991) 59.

¹⁹¹ J. H. Langbein, *Torture and the law of proof. Europe and England in the Ancien Régime* (Chicago 2006).

¹⁹² Orth, *Dritte Fortsetzung*, 840. Original: 'Weshalb auch dieses mittel allein, in solchen harten verbrechen, die eine lebens oder schwere leibesstrafe, als ruten ausbauen, verstümmelung der glieder u. dergl. Nach sich ziehen, zu zulassen ist'. 'Weshalb auch dieses mittel allein, in solchen harten verbrechen, die eine lebens oder schwere leibesstrafe, als ruten ausbauen, verstümmelung der glieder u. dergl. Nach sich ziehen, zu zulassen ist'.

¹⁹³ Meinhardt, *Das peinliche Strafrecht*, 74-79; Orth, *Dritte Fortsetzung*, 838-843; PO 4346 *Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt* 04.12.1788, §28.

¹⁹⁴ M.R. Boes, *Crime and punishment in the city of Frankfurt am Main from 1562 to 1696* (Unpublished PhD Thesis, The City University of New York, New York 1989) 132.

¹⁹⁵ See, for example, the legal opinion in the case of Eulalia Denhard who was prosecuted for adultery and prostitution. Eulalia was heavily pregnant and was interrogated with the display of the torture instruments (*with Güte*) and confessed to the crime. According to the syndics, the law demanded that her offences should be punished with a corporal

According to Maria Boes, in little less than half of the cases (47%) that were recorded in the book of punishments (1562-1696), torture was applied during the interrogations. The application of torture had declined considerably during this period. During most of the seventeenth century, in more than 75% of the cases recorded in the book of punishments offenders had not been subjected to the use of torture.¹⁹⁶ Although there are no precise numbers for the eighteenth century, the application of torture appears to have declined even further in this period and was only applied incidentally beyond the simple display of instruments of torture.¹⁹⁷

In the case of minor offences, the *Verhöramt* could impose lesser punishments without a confession or significant evidence. In such a case, offenders were not necessarily convicted for a specific crime, but for being a notorious person in general. Such so-called *Verdachtsstrafen* were particularly imposed on migrants, who were usually expelled. In other cases, the *Verhöramt* offered offenders the opportunity to swear an oath of purgation (*Reinigungseid*) with which the suspects could swear their innocence. This opportunity was hardly ever granted to outsiders.¹⁹⁸ In the rare event that foreigners were given this opportunity, it did not necessarily save them from being expelled from the city; the authorities could still decide to deny them the right to stay in the city.¹⁹⁹ Regardless of their legal status, offenders were always allowed to consult a defence lawyer. However, except for cases that involved serious corporal or capital punishments – in which case the city council appointed a lawyer at the city's expense – suspects had to finance any legal counsel themselves. This probably contributed to the fact that offenders hardly ever consulted lawyers, as did the fact that offenders never actually consulted with their lawyer in person. The latter drew up his defence solely based on the investigation records.²⁰⁰

Thus, social standing and legal belonging largely determined the treatment of suspects.²⁰¹ It could mean the difference between a fine or admonishment and expulsion; between being granted the opportunity to swear a *Reinigungseid* and receiving a *Verdachtsstrafe*. These factors cut

punishment (*peinliche Bestrafung*). However, because she was pregnant, they could not impose such a punishment until at least 40 days after she had given birth. To avoid having to keep her in custody for such an extended period of time, it was decided that she was to be banished from the city indefinitely. Original: '[...] *dahero nach anleitung der Rechten mit Peinlicher bestraffung desto schärffer angesehen werden könnte [...] bevorauß ohne das in Rechten Verbotten ist, einige Schwangere Weibsperson in Zeit der tracht auch nach der geburt innerhalb 40 tagen peinlich anzugreifen, oder dieselbige dermassen zu schrecken, das daraus gefar der leibfrucht zustehen mögte, alß lassen wir eß, wegen ihrer abstraffung, doch unvergreifflich, dahin gestellet sein, daß umb verhütung mehrer Costens, und Weitläuffigkeit sie Ayla der Statt auf 12 meil wegs in perpetuum fördersambst verwiesen werden solle*'. Criminalia 1091 (1646).

¹⁹⁶ Boes, *Crime and punishment*, 125 and 133.

¹⁹⁷ Eibach, *Frankfurter Verböre*, 66; Criminalia 5706 (1744-45); Criminalia 5715 (1744-45); Criminalia 5986 (1747-48); Criminalia 6877 (1753-54); Criminalia 8332 (1767-1781); Criminalia 10541 (1796-98).

¹⁹⁸ J. Eibach, 'Versprochene Gleichheit - verhandelte Ungleichheit. Zum sozialen Aspekt der Strafjustiz der Frühen Neuzeit', *Geschichte und Gesellschaft* 35 (2009) 488-533, 521-522.

¹⁹⁹ E.g. Criminalia 3100 (1721); Criminalia 3292 (1723).

²⁰⁰ Eibach, *Frankfurter Verböre*, 67.

²⁰¹ Rublack, *Crimes of women*, 66-69; M. van der Heijden, *Women and crime in early modern Holland* (Leiden 2016) 38; Eibach, 'Versprochene-Gleichheit – verhandelte Ungleichheit', 533.

across gender lines, reminding us that gender never was and never is a homogenous category and should not be treated as such.²⁰² Such a two-track judicial system (*zweigleisige Straffjustiz*) was typical in early modern Germany and was intended to enforce distinctions between insiders and outsiders.

The legal norms did not discriminate according to gender in terms of criminal justice. In contrast to civil law suits, women, regardless of their marital status, were held fully responsible for their criminal actions. The formulations in the *Carolina*, were gender neutral when referring to offenders. Similarly, in the articles on the proof of witnesses, there are no regulations that exempted women as witnesses or that consider their testimonies of lesser value than those of men.²⁰³ With regard to the substantive law of the *Carolina*, there were only three gender-specific crimes: rape (*die Notzucht* Art. 119) was considered to be a male offence only, while infanticide and child abandonment (Art. 131 and 132) were considered as female offences. Although there were specific gendered regulations when it came to the execution of punishment (the death penalty for women was to be imposed through drowning, while men could be hanged, quartered, or decapitated) these were not always observed in practice. Moreover, there were no regulations for the mitigation of punishment for women, based on the notion of women being a weaker and less accountable sex.²⁰⁴ In contrast to civil law, where married women in particular were restricted in their scope of action through the institution of gender tutelage, women could indict criminal cases on their own account and act as witnesses in the trial.²⁰⁵ In contrast to early modern England, where normatively the principle of *feme covert* restricted the accountability of crimes committed by a woman in the presence of her husband, there was no distinction between women according to marital status in early modern Frankfurt, according to the legal norms.²⁰⁶

Policing and social control

In line with other European cities, Frankfurt witnessed a fundamental shift in the maintenance of urban stability during the early modern period.²⁰⁷ In the sixteenth century, burghers organised in

²⁰² H. Wunder, 'Weibliche Kriminalität' in der Frühen Neuzeit. Überlegungen aus der Sicht der Geschlechtergeschichte' in: O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 39-61, 45-46.

²⁰³ H. Schnabel-Schüle, 'Frauen im Strafrecht vom 16. bis zum 18. Jahrhundert' in: U. Gerhard ed., *Frauen in der Geschichte des Rechts. Von der Frühen Neuzeit bis zur Gegenwart* (München 1997) 185-198, 191.

²⁰⁴ Schnabel-Schüle, 'Frauen im Strafrecht', 192-194.

²⁰⁵ J.P. Orth, *Nöthig und nützlich erachteter Anmerkungen über die so genante erneuerte Reformation der Stadt Frankfurt am Main. Vierte und letzte Fortsetzung* (Frankfurt am Main 1757) 714; Eibach, *Frankfurter Verböre*, 66. On the principle of gender tutelage (*Geschlechtsvormundschaft*) in early modern, Germany, see: E. Holthöfer, 'Die Geschlechtsvormundschaft. Ein Überblick von der Antike bis ins 19. Jahrhundert' in: Ute Gerhard ed., *Frauen in der Geschichte des Rechts. Von der Frühen Neuzeit bis zur Gegenwart* (München 1997) 390-451.

²⁰⁶ On the principle of *feme covert* in practice, see: G. Walker, *Crime, gender and social order in early modern England* (Cambridge 2003) 201-205, 277.

²⁰⁷ For the following, see: J. Eibach, 'Burghers or town council. Who was responsible for urban stability in early modern German towns?' *Urban History* 34:1 (2007) 14-26; Eibach, *Frankfurter Verböre*, 79-89.

burgher guards were still responsible for most of the policing tasks in the city, together with a handful of urban officials, such as the city's beadles and the previously mentioned *Gemeine Weltliche Richter*. The town council increasingly took over responsibility for securing public security and maintaining the city's peace (*Stadtfrieden*), and in order to achieve this gradually restricted the burghers' traditional liberty to bear arms in public. From the beginning of the seventeenth century onwards, the city council increasingly relied on the city's soldiers for policing and maintaining public order, at the cost of the old burgher guards, who continued to hold administrative functions in the neighbourhoods.²⁰⁸ At the beginning of the seventeenth century, Frankfurt employed 60 soldiers in their service, but by the eighteenth century this number had grown to 800-1,000, half of whom originated from the city or one of its surrounding villages.²⁰⁹ Of these soldiers, approximately 200 were deployed for policing the city and maintaining public order. They patrolled the streets, guarded the city gates, and carried out searches of houses and taverns.²¹⁰ Their guardhouses, the *Hauptwache* and the *Konstablerwache*, functioned as 'police stations': suspects were held in custody there and crimes could be reported there in the event that guards were needed to arrest a suspect. As a result of this 'militarisation of urban stability', the number of urban officials tasked with law enforcement per inhabitant had increased. Joachim Eibach calculated that in 1587 there was one guard for every 188 inhabitants (including the burgher night patrols). By the middle of the eighteenth century, the ratio was one guard for every 144 to 162 inhabitants (excluding the burgher night patrols).²¹¹

Besides soldiers, the authorities relied on constables (*Gemeine Weltliche Richter*) and beadles (*Bettelhögte/Armenknechte*) for law enforcement throughout the entire period. The beadles were tasked with policing, arresting and expelling beggars and vagrants. At the beginning of the seventeenth century the city employed two to three beadles. By the end of the seventeenth century their number had increased to five, and by the middle of the eighteenth century there were ten beadles.²¹² The *Gemeine Weltliche Richter* were tasked with carrying out orders for arrest, delivering subpoenas, collecting fines and guarding prisoners.²¹³ Moreover they were instructed to inform the authorities about any suspicious persons present in the city, or possible offences they may have

²⁰⁸ J. Kamp, 'Controlling strangers - identifying migrants in early modern Frankfurt am Main' in: H. Greefs and A. Winter eds., *Materiality of migration* (Forthcoming 2018).

²⁰⁹ I. Kracauer, 'Das Militärwesen der Reichsstadt Frankfurt am Main im 18. Jahrhundert', *AfGK* 12 (1920) 1-180, 27-29.

²¹⁰ Eibach, 'Burghers or town councils', 23.

²¹¹ Eibach, *Frankfurter Verböte*, 85; Eibach, 'Burgher or town councils', 20.

²¹² R. Jütte, *Obrigkeitliche Armenfürsorge in Deutschen Reichsstädten der Frühen Neuzeit* (Köln 1984) 117-120; M. Hess, *Die Geschichte des Frankfurter Armen-, Waisen- und Arbeitshaus (1679-1810)* (1921). Unpublished PhD thesis, Universität Frankfurt am Main.

²¹³ On the *Gemeine Weltliche Richter*, see: Johann, *Kontrolle mit Konsens*, 241-249.

heard about. Their activities thus exceeded the scope of merely executing orders from the city's authorities.

The *Criminalia* reveal that both the *Gemeine Weltliche Richter* and the city's beadle often appeared before the *Verhöramt* to report suspects. Mostly these were offenders whom they had encountered before in their role as 'policing' officials. They often reported offenders who had broken their banishment or who were simply arrested on the charge of exhibiting suspicious behaviour, and thus fulfilled an important function in the maintenance of social order in the city.²¹⁴ Most of the *Gemeine Weltliche Richter* and city beadle belonged to the same socio-cultural stratum of society as the people they policed and they were not considered as 'honourable' individuals by most of their contemporaries.²¹⁵ The *Criminalia* reveal multiple cases in which those tasked with enforcing law and order became lawbreakers themselves. They were suspected of such nefarious activities as corruption, contacts with criminal gangs, or carelessness resulting in the escape of prisoners.²¹⁶

Despite the increasing control over the maintenance of public order and law enforcement by urban authorities, social control and crime reporting remained to a large extent in the hands of private individuals. Historians have emphasised the importance of the 'uses of justice' by individuals in early modern conflict resolutions and argued that by using the courts subjects accepted, formed and altered what was seen as deviance or criminality.²¹⁷ In eighteenth-century Frankfurt, slightly less than two-thirds of the property crimes and violent offences were reported to the authorities by the victims themselves. Less than 10% of these cases came before the *Verhöramt* as a result of the direct intervention of urban officials tasked with policing and keeping public order, such as constables (*gemeine Weltliche Richter*), overseers of the poor (*Bettelvögte*) or soldiers.²¹⁸ This was different, however, in cases such as begging, vagrancy and breach of banishment. There are hardly any examples found in the *Criminalia* in which Frankfurt's inhabitants considered it to be in their own interest to report such an offence to the authorities: they did not *use* the courts to assist the authorities in their efforts to control the 'vagrancy problem'. In fact, it

²¹⁴ See chapter 6.

²¹⁵ Eibach, *Frankfurter Verböre*, 82-83.

²¹⁶ See for example: Criminalia 4413 (1735); Criminalia 6129 (1748); Criminalia 4925 (1738); Criminalia 4904 (1739); Criminalia 6049 (1748); Criminalia 7142 (1754); Criminalia 7588 (1760); Criminalia 9216 (1781).

²¹⁷ Dinges, 'The uses of justice', 160. See for this argument for sixteenth-century Frankfurt: Johann, *Kontrolle mit Konsens*, 257. For eighteenth century Frankfurt: J. Eibach, 'The containment of violence in Central European cities (1500-1800). Repression or cooperation between courts and citizens?' in: R. McMahon ed., *Crime, law and popular culture in Europe since 1500* (Devon 2008) 52-73, 64-68.

²¹⁸ Eibach, *Frankfurter Verböre*, 74-75.

was rather the opposite as there are several examples in which bystanders entered into violent conflicts with the city's beadle to free beggars from arrest.²¹⁹

Naturally, individuals who could be categorised (or who ran the risk of being categorised) as vagrants or 'unwanted migrants' did not appear before the court as plaintiffs to report crimes, although they were often to be found among the accused. For the eighteenth century, Joachim Eibach has demonstrated that the majority of plaintiffs were citizens, particularly from the middle classes. Their share among plaintiffs was disproportionate compared to their share among the city's population or even among the victims, which suggests that locals were slightly more inclined to make use of the criminal justice system than others. Women accounted for 20% of the plaintiffs, which more or less corresponded with their share among the victims.²²⁰

Unfortunately, the seventeenth-century *Criminalia* are more restricted in their information. A review of eight sample years (1620-21; 1640-41; 1660-61; 1680-1681) shows that in slightly more than one-fifth of the cases there is information available about who reported the case to the authorities.²²¹ The gender ratio is rather similar to that of the eighteenth century, with five (21%) of the complainants being women. As the absolute numbers are very small for this period, however, drawing general conclusions based on these numbers would be problematic. Therefore, making statements about possible changes of the uses of justice by women throughout this period based on statistical information is not possible.

Apart from taking recourse to the law, other formal and informal platforms of social control were important throughout the entire early modern period. The way various mechanisms of formal and informal social control shaped gendered patterns of prosecuted offences will be developed further in subsequent chapters. Household authorities, poor relief and migration policies, and the control of sexual offences by ecclesiastical courts: all these shaped the public roles of men and women on a different level and also influenced the various ways they interacted with the court. One platform of social control that receives less attention in this dissertation, but needs to be mentioned here nonetheless, is the importance of neighbours and neighbourhoods. In 1614, in an attempt to gain control over the city during the *Fettmilch Uprising*, the city council organised Frankfurt into 14 districts, each with one neighbourhood captain to maintain public order.²²² Unlike what is known for cities in northern Germany or the Netherlands, Frankfurt's neighbourhood

²¹⁹ Criminalia 6935 (1754); Criminalia 7032 (1754); Criminalia 7057 (1754); Criminalia 7400 (1757); Criminalia 7998 (1763); Criminalia 10136 (1792).

²²⁰ Eibach, *Frankfurter Verböte*, 74-75.

²²¹ Out of 80 cases in these sample years, only 22 cases contain information about how the case came before the authorities, relating to 24 individuals (there were two cases in which offenders indicted each other).

²²² PO 1847 *Eines Erborn Raths der Statt Franckfurt am Mayn Quartir Ordnung* 25.10.1614.

captains had no formal judicial capacities.²²³ Their tasks mainly belonged to matters regarding fire safety, maintaining the administration of who lived in the quarter, and generally patrolling the streets to intervene in cases of public disturbance.

Of course, neighbourhood control was not only restricted to the neighbourhood watch but was exercised by everyone. There are several examples that show that even in a large city like Frankfurt, neighbours kept track of what fellow residents were doing and did not hesitate to regulate deviance among themselves or report it to the authorities.²²⁴ Unlike what is known for Dutch cities, where it was common for neighbours to report deviant behaviour to the magistrates together, such examples of collective neighbourhood action are rare in early modern Frankfurt.²²⁵ This may be due to the fact that the controlling functions of the neighbourhood were less institutionalised in Frankfurt where they had fewer judicial capacities than in Dutch cities.

Conclusion

The judicial system plays an important part in the prosecution of male and female crime. Historians have argued that the presence of criminal courts and other formal control mechanisms in the city shaped the urban nature of early modern female criminality.²²⁶ The criminal justice system in early modern Frankfurt was characterised by a process of differentiation and professionalisation. The *Verhöramt* developed into an independent office that was in charge of carrying out the criminal investigations in the city. It had jurisdiction to sanction offences with punishments up to three months in prison but functioned solely as a court of enquiry for serious crimes. These were tried by the city council as a whole in the absence of the offender. Council members based their judgements on the investigation records and legal opinions of the city's jurists, the *Syndics*.

The investigation records of the *Verhöramt* generally reflect serious offences that were committed within the city. Petty fights, scolding, disorderly conduct, and regulatory offences were usually not investigated by the *Verhöramt*, but by lower urban officials. The same applied to offences like begging and vagrancy, that belonged to the authority of the poorhouse, and moral offences, that were judged by the semi-ecclesiastical court. The criminal justice system in Frankfurt followed the principles of the inquisitorial procedure. The city had no criminal law code of its own, but

²²³ On the importance of neighbourhoods in conflict regulation, see: C. Schedensack, *Nachbarn im Konflikt. Zur Entstehung und Beilegung von Rechtsstreitigkeiten um Haus und Hof im frühneuzeitlichen Münster* (Münster 2007); C.A. Hoffmann, 'Neighborhood in European cities' in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 309-327; A. van Meeteren, *Op hoop van akkoord. Instrumenteel forumgebruik bij geschilbeslechting in Leiden in de zeventeniende eeuw* (Hilversum 2006) 27-61; B. Capp, *When gossips meet. Women, family, and neighbourhood in early Modern England* (Oxford 2003).

²²⁴ Eibach, *Frankfurter Verböre*, 266-279.

²²⁵ For examples, see: Criminalia 644 (1609); Criminalia 1209 (1661); Criminalia 2139 (1698); Criminalia 3448 (1725).

²²⁶ Shoemaker, *Gender*, 301-302.

followed the imperial law code, the *Carolina* (1532). There were no legal principles according to which women could be held less accountable for offences they committed or were hindered in indicting crimes.

The criminal justice system was not just an institution of top-down control but depended heavily on the acceptance of the local population and the way they made use of it as a forum for conflict resolution. The majority of the crimes that were investigated by the *Verhöramt* were reported by victims or other individuals other than policing officials. Women accounted for approximately 20% of the indictments that were investigated by the city council. Overall, early modern Frankfurt can be characterised as a city in which the legal system was a strong presence in the everyday life of the population.

III. Gender and recorded crime

Long-term patterns and developments

Now that we have established a clear picture of the judicial framework, it is time to turn to the main objective of this study: gender differences in recorded criminality in early modern Frankfurt. It is generally accepted by historians that women's contribution to registered offences varied through time and place. Several historians have characterised the early modern period as a time of a relatively high level of female offending, compared to the twentieth and twenty-first centuries.²²⁷ While there is a lively academic debate discussing changes in the transition from the early modern to the modern period, much less is known about fluctuations and developments in the early modern period itself. Data show that in the seventeenth- and eighteenth-century women accounted for anything between 10% and 50% of all registered offenders across Europe.²²⁸

For Frankfurt, figures indicate that the percentage of women in the city was comparable with the European average. Richard von Dülmen and Maria Boes found that women represented 23-24% of all penal sanctions (*peinliche Strafen*) imposed by the city council between 1562-1696.²²⁹ Joachim Eibach's study for selected sample years of the eighteenth century revealed a female share of 7% among suspects of violent offences, compared to 28% for property offences.²³⁰ My own statistical analysis of the city's criminal investigation records showed that women constituted 22% of all suspects in the period from 1600-1806.²³¹

Historians argue that one of the most defining factors contributing to high levels of female involvement in the early modern period was the urban context. Due to socio-economic and demographic characteristics, women in cities often lived mobile and relatively independent lives. At the same time, their situation was also precarious, as they often lacked economic and social

²²⁷ R. Jütte, 'Geschlechtsspezifische Kriminalität im Späten Mittelalter und in der Frühen Neuzeit', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 108 (1991) 86-116, 93; M. Feeley and H. Aviram, 'Social historical studies of women, crime, and courts', *Annual Review of Law and Social Science* 6 (2010) 151-171, 153; M. van der Heijden and V. Koningsberger, 'Continuity or change? Female crime in the 19th-century Netherlands', *Crime, History & Societies* 17:1 (2013) 101-127; M.L. Arnot and C. Osborne, 'Why gender and crime? Aspects of an international debate' in: M.L. Arnot and C. Osborne eds., *Gender and crime in modern Europe* (London 2003) 10-38, 14.

²²⁸ Jütte, 'Geschlechtsspezifische Kriminalität', 93; M. Feeley, 'The decline of women in the criminal process. A comparative history', *Criminal Justice History. An International Annual* 15 (1994) 235-274; Kamp, 'Female crime', 10; M. van der Heijden, 'Women and crime, 1750-2000' in: P. Knepper and A. Johansen eds., *The Oxford handbook of the history of crime and criminal justice* (Oxford 2016) 250-267, 252.

²²⁹ R. van Dülmen, *Theater des Schreckens. Gerichtspraxis und Strafroutine in der frühen Neuzeit* (5th edition: München 2010) 187; M.R. Boes, *Crime and punishment in the city of Frankfurt am Main from 1562 to 1696* (Unpublished PhD Thesis, The City University of New York, New York 1989) 255. Von Dülmen counted criminal punishments, whereas Boes counted offenders. In the first case women had a share of 22.6% and in the latter 23.5%.

²³⁰ J. Eibach, *Frankfurter Verböte. Städtische Lebenswelten und Kriminalität im 18. Jahrhundert* (Paderborn 2003) 209 and 293. Based on the sample years 1741-43; 1771-75; 1801-1805.

²³¹ Part of the statistical analysis in this chapter has been presented earlier in: J. Kamp, 'Female crime and household control in early modern Frankfurt am Main', *The History of the Family* 21:4 (2016) 531-550, 536-537.

support networks which were present in smaller communities.²³² While European cities shared many similar characteristics which stimulated women's independence, there were also considerable differences. Studies show that there were strong legal and ideological sanctions in place on single women living alone in early modern German cities.²³³ This means that they would have experienced less relaxation of patriarchal control but did not face the same socio-economic difficulties as a result of their independence either. In this chapter, I will argue that these differences are a crucial factor in explaining regional differences in the level of female recorded criminality.

Apart from structural factors that impacted the gender gap among recorded offences, there are also temporal factors that could cause short-term fluctuations in the number and type of prosecuted offences. Most scholarship regarding long-term trends and fluctuations in crime have focused primarily on broad theories such as the civilisation of violence, violence-au-vol, modernisation etc. to explain changes over time, and mostly excluded women from their analysis.²³⁴ Although these theories offer important insights into broader patterns of criminality, they offer little to account for fluctuations in women's rate of prosecution, particularly in the local context. We are already well-informed about the general developments of criminality in eighteenth-century Frankfurt through the work of Joachim Eibach.²³⁵ More information, however, is needed about the gendered nature of these general developments to gain better insight into both local fluctuations, and regional differences throughout early modern Europe.

The first part of this chapter discusses the variations in female participation among recorded offences across early modern Europe, linking these variations to the different urban demographic contexts. The second part moves on to a closer examination of the gendered crime patterns in early modern Frankfurt. It focuses on the way that prosecution patterns, and consequently female crime levels, were shaped by socio-economic fluctuations.

Women in Recorded Crime

Scholarship on female offending has long focused on 'underrepresentation' as a common denominator. In 1991 Robert Jütte published an article based on available data about female

²³² A. Schmidt and M. van der Heijden, 'Women alone in early modern Dutch towns. Opportunities and strategies to survive', *Journal of Urban History* 42:1 (2016) 21-38, 25-26; J.M. Beattie, *Policing and punishment in London, 1660-1750. Urban crime and the limits of terror* (Oxford 2001) 71.

²³³ M.E. Wiesner, 'Having her own smoke. Employment and independence for singlewomen in Germany, 1400-1750' in: J.M. Bennett and A.M. Froide eds., *Singlewomen in the European past, 1250-1800* (Philadelphia 1999) 192-216; S. Ogilvie, *A bitter living. Women, markets, and social capital in early modern Germany* (Oxford 2003) 310-312; C. Werkstetter, *Frauen im Augsburger Zunft Handwerk. Arbeit, Arbeitsbeziehungen und Geschlechterverhältnisse im 18. Jahrhundert* (Berlin 2001) 43-44; R. Dürr, 'Die Migration von Mägden in der Frühen Neuzeit' in: M. Krauss and H. Sonnabend eds., *Frauen und Migration* (Stuttgart 2001) 117-132.

²³⁴ For a historiographical discussion, see: M.F. Aebi and A. Linde, 'Long-term trends in crime. Continuity and change' in: P. Knepper and A. Johansen eds., *The Oxford handbook of the history of crime and criminal justice* (Oxford 2016) 57-87.

²³⁵ Eibach, *Frankfurter Verböte*, 89-108.

criminality in late medieval and early modern England, France, Netherlands and Germany. The data revealed that women's involvement in crime varied considerably across time and space, from between 10% in eighteenth-century Neuchâtel to 43% for Leiden in the same period.²³⁶ Despite this broad range, Jütte concluded that 'the female crime rate was significantly lower than that of men'. Moreover, he stated that even though the figures were slightly higher in the past than they were in 'modern industrial societies', female crime in general was related to the limitations in women's lives which were centred on the home and family.

Whereas Jütte emphasised women's underrepresentation, others instead argued that it was a period in which women 'were present in courts as criminal defendants in larger numbers [...] than common criminological wisdom suggests'.²³⁷ Malcolm Feeley and Deborah Little found that in early modern London, women made up a substantial proportion (over 45 per cent at times) of all those indicted for felony offences. Later on, Feeley extended his research and included data on early modern Dutch cities, which showed similar patterns of high female involvement in crime, with women accounting for ca. 30 to 50% of all offenders.²³⁸ In their discussion, Feeley and his co-authors primarily focused on long-term developments and argued that 'research strongly suggests that female crime rates were rather high in seventeenth and early-eighteenth-century Europe [...]'.²³⁹

Both characterisations of female offending in the early modern period, however, ignore the large regional variations within early modern Europe. Data for early modern Germany indicate that fluctuations in the early modern period itself refute a simple juxtaposition of high levels of female offenders in the early modern period versus low levels in the nineteenth century. For early modern Kurbayern, Wolfgang Behringer observed a decline from 29% female offenders at the beginning of the seventeenth century to 23% by the end of the century.²⁴⁰ Scholarship on the socio-economic position of women in early modern Germany has often characterised this as a period of strengthening male patriarchal control and increasing exclusion of women from the labour market regulated by guilds.²⁴¹ Behringer questioned whether women's decline among prosecuted offenders

²³⁶ Jütte, 'Geschlechtsspezifische Kriminalität', 93.

²³⁷ Feeley and Aviram, 'Social historical studies', 153.

²³⁸ M. Feeley, 'The decline of women in the criminal process. A comparative history', *Criminal Justice History. An International Annual* 15 (1994) 235-274; M.M. Feeley and D.L. Little, 'The vanishing female. The decline of women in the criminal process, 1687-1912', *Law and Society Review* 25:4 (1991) 719-757. For an overview of available data on Dutch cities see: M. van der Heijden, *Women and crime in early modern Holland* (Leiden 2016) 2-9.

²³⁹ Feeley and Aviram, 'Social historical studies', 153.

²⁴⁰ W. Behringer, 'Weibliche Kriminalität in Kurbayern in der Frühen Neuzeit' in: O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 63-82, 65-66.

²⁴¹ M. Wiesner, *Working women in early Modern Germany* (New Brunswick NJ, 1986); C. Crowston, 'Women, gender, and guilds in early modern Europe. An overview of recent research', *International Review of Social History* 53 (2008) 19-44.

was related to this change in their societal roles, but ultimately found that judicial changes offered a better explanation.

Other scholars highlighted the importance of women's socio-economic position and the attitude of authorities towards single women. Based on a qualitative analysis, Ulinka Rublack found that following the disruptions and disorder of the 'Thirty Years' War, the position of authorities in south-west Germany was characterised by a 'more rigid defence of resources and hierarchies of rank as well as reinforced defences of marriage and family'. This had severe consequences for the position of women. Independence was seen as a sign of disorder and immorality, and unmarried migrant women in particular were subjected to intensified controls and regulation by the authorities.²⁴² Gerd Schwerhoff found that the precarious socio-economic position of independent women could increase their involvement in crime. In late sixteenth century Cologne, women accounted for 16.1% of offenders. By the beginning of the eighteenth century, a period characterised by poverty and economic decline, (1568-1612) accounted for 44.6% of all offenders. They primarily committed 'poverty crimes' ('*Armut- und Notdelinquenz*') like theft, prostitution and infraction of their banishment.²⁴³

Table 1 provides an overview of available percentages of female offenders in early modern Germany, Holland and England. Of course, one has to exercise some caution when comparing such figures for the early modern period, as they are each derived from a specific legal context and have been reconstructed based on very different sources. The data in this table represent the higher court levels, and allow us to draw comparisons of some general trends between the different cities. Moreover, in order to account for some of these differences, the table not only lists women's overall contribution to crime, but also lists their share among property offences separately as it can be considered as one of the most 'stable' categories of crime across jurisdictions. As one can see, the share of women was highest in London and Newcastle and in cities in the highly urbanised province of Holland. Cities and territories in early modern Germany displayed lower patterns, similar to the data available for rural regions in England. Still, there was a relatively high proportion of female property offenders in early modern Frankfurt compared to other cities and territories in the Holy Roman Empire. Higher shares are available only for Cologne and Freiburg, but these refer to relatively short periods in the eighteenth century, when the shares were high in Frankfurt as well.

²⁴² U. Rublack, *The Crimes of women in early modern Germany* (Oxford 1999) 257.

²⁴³ G. Schwerhoff, 'Geschlechtsspezifische Kriminalität im frühneuzeitlichen Köln' in: O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 83-116, 91; G. Schwerhoff, 'Kriminalität in der Reichsstadt Köln um 1700. Ein neuer Blick vom Turm', *Geschichte in Köln* 55:1 (2008) 63-85, 71-72.

Table 1 Female share of property offences in Germany, Holland and England

City/Region	% Female property offenders	% Female offenders overall
Germany		
Frankfurt (1600-1806)	27	22
Cologne (1568-1612)	23	16
Cologne (1698-1712)	36	45
Nurnberg (1578-1617)	16	27
Kurmainz (1560-1802)	24	34
Bavaria (1600-1650)	12	29
Bavaria (1685-1689)	15	23
Heiden (1680-1795)	19	11
Freiburg (1763-1772)	34	-
Thorn (1704-1792)	-	16
Netherlands		
Leiden (1678-1794)	47	41
Rotterdam (1700-1750)	33	35
Amsterdam (1680-1810)	30	35
England		
London (1670-1750)	39	36
Newcastle (1725-1800)	50	-
Surrey (1663-1802)	24	21
Cheshire (1590s; 1620s; 1650s; 1660s)	22	-
Oxfordshire (1750-1800)	22	-

Sources: **Germany:** Frankfurt: IfSG, Criminalia 1600-1806; Cologne: Schwerhoff, *Köln im Kreuzverhör*, 350; Schwerhoff, 'Kriminalität in Köln', 71-72; Nürnberg: Jütte, *Geschlechtsspezifische Kriminalität*, 97; Kurmainz: Härter, *Policey und Strafrecht*, 541; Bavaria: Behringer, 'Weibliche Kriminalität in Kurbayern', 65-66.; Heiden: Frank, *Dörfliche Kriminalität*, 232, 235; Freiburg: Wettmann-Jungblut, *Nächste weg zum Galgen*, 83-84; Thorn: Thomsen, *Zwischen Hauptwache und Stockhaus*, 89-91. **Netherlands:** Leiden: Klock, 'Criminaliteit en sekse', 136; Rotterdam: Van der Heijden, 'Criminaliteit en sekse', 16; Amsterdam: Faber, *Strafrechtspleging*, 253-259. **England and Scotland:** London: The data for property offences are found in Beattie, *Policing and Punishment*, 65. For women's share among the overall offenders, the Old Bailey Online database has been consulted: Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0, 17 April 2011), 'Tabulating defendant gender, between 1674 and 1750. Counting by defendant; Newcastle: Morgan and Rushton, *Rogues*, 67; Surrey: Beattie, 'Crimes of women', 81; Cheshire: Walker, *Crime, gender and social order*, 159; Oxfordshire: Kilday, 'Criminally Poor', 512.

Urban factor

In order to explain these differences, I argue that it is necessary to take the different demographic and socio-economic contexts into account. As mentioned, scholars working on crime and gender agree that there is a close link between the urban context and female offending. John Beattie was one of the first to argue that high levels of female crime were a particular urban phenomenon. This pattern, he found, was a result of the different nature of the lives of urban women: they lived a more independent and public life, which increased their risk of breaking the law. The loss of social and economic support networks – often present in more traditional close-knit communities – was an especially important factor in making women more vulnerable in times of hardship.²⁴⁴

The link between city life and high levels of female crime has been confirmed by other historians as well and is generally explained as a combination of their independent and – at the same time – precarious position. Prostitution or theft could become important survival strategies for women who had no access to formal or informal urban social support networks.²⁴⁵ According to Robert Shoemaker, female servants in London who were in between positions were more likely to get caught because they were watched closely by lay and church authorities.²⁴⁶ Manon van der Heijden stated recently that '[T]he close relationship between the degree of urbanization and the percentage of female offenders is particularly relevant to the highly urbanized region of Holland'.²⁴⁷ For non-urban settings, on the other hand, it is argued that informal sentencing, for example a master dismissing his maid, occurred more often than formal recourse to the law, thereby creating a possibly larger dark number than in cities.²⁴⁸ The paternalistic structures associated with rural societies are believed to have saved women from having to resort to crime.

However, as table 1 demonstrates, the urban effect on female crime levels was not universal. The highest shares were found in the cities in the province of Holland (the most urbanised area of Europe in the early modern period) ranging between 30% and 47%, in London (39.4%), and Newcastle (50%). Can the factor of scale account for these differences? In other words, did the most populated cities and urbanised regions have the highest share of female offenders? After all, urbanisation levels were much lower in early modern Germany than they were, for example, in the

²⁴⁴ J.M. Beattie, 'The criminality of women in eighteenth-century England', *Journal of Social History* 8:4 (1975) 80-116, 98; Beattie, *Policing and punishment*, 71.

²⁴⁵ Feeley and Aviram, 'Social historical studies', 154; O. Hufton, *The poor of eighteenth-century France* (Oxford 1974) 278–280; L.P. Moch, *Moving europeans. Migration in western Europe since 1650* (2nd edition: Bloomington 2003) 146.

²⁴⁶ R.B. Shoemaker, *Prosecution and punishment. Petty crime and the law in London and rural Middlesex, c. 1660–1725* (Cambridge 1991) 184–186.

²⁴⁷ M. van der Heijden, 'Women, violence and urban justice in Holland, c. 1600-1838', *Crime, History & Societies* 17:2 (2013) 71-100, 93.

²⁴⁸ A. Kilday, 'Criminally poor? Investigating the link between crime and poverty in eighteenth century England', *Cultural and social history society* 11:4 (2014) 507-526, 511; G. Schwerhoff, *Aktenkundig und gerichtsnotorisch. Einführung in die Historische Kriminalitätsforschung* (Tübingen 1999) 149–155.

Netherlands.²⁴⁹ With a population of 23,000 by the beginning of the eighteenth century and 39,000 by the end of the Ancien Régime, Frankfurt was certainly smaller than London (676,000) or Amsterdam (219,000).²⁵⁰ However, size in urban population alone cannot explain the differences. In Rotterdam (39,000) and Newcastle (25,000) population sizes in the middle of the eighteenth century resembled that of Frankfurt, but they had considerably higher shares of female crime. Leiden's population size had reached 67,000 inhabitants in around 1650, but by 1750 it had declined to 38,000.²⁵¹ Rather than declining, the percentage of women among sanctioned offenders actually increased.²⁵²

Thus, these examples demonstrate that there was not a one-on-one relationship between the size of the city and the percentage of women involved in recorded criminality. As underscored by scholars, it was in particular the relative independence and relaxation of patriarchal control, which was closely connected to urban migration patterns, that explain the high levels of female criminality in cities like London and Amsterdam. The cities with the highest share of women – Leiden, Rotterdam, Amsterdam, Newcastle and London – were all characterised by specific demographic patterns due to labour markets which ensured high female migration to the city and a considerable level of male outward migration either through service as sailors or soldiers.²⁵³ In most early modern cities, there was a surplus of women, but the numbers of women were particularly high in some of the cities experiencing high levels of female crime listed in the table above. In eighteenth-century Leiden, for example, 26% of the households were headed by women, and their share among households classified as poor was even larger: 48%. And across Holland, the share of households headed by widows varied between 14 and 27%.²⁵⁴

In early modern Germany, on the other hand, the position of never-married females was more restricted. In early modern Württemberg they were not allowed to head households and were instructed either to enter service or to take in a male authority figure who could keep their conduct

²⁴⁹ J. de Vries, *European Urbanization 1500-1800* (London 1984) 45; C. Pfister, *Bevölkerungsgeschichte und historische Demographie 1500-1800* (2nd edition: München 2007) 14-24; H. Schilling, *Die Stadt in der Frühen Neuzeit* (München 1993) 2-17.

²⁵⁰ P. M. Hohenberg and L. Hollen Lees, *The making of Urban Europe, 1000-1994* (2nd edition: Cambridge 1995) 226.

²⁵¹ Leiden and Rotterdam: J. Lucassen, 'Immigranten in Holland 1600-1800. Een kwantitatieve benadering', *Centrum voor de Geschiedenis van Migranten Working Paper* 3 (2002) 26, 28; Newcastle: G. Morgan and P. Rushton, *Rogues, thieves and the rule of law. The problem of law enforcement in north-east England 1718-1800* (London 1998).

²⁵² E. Kloek, *Wie hij zij, man of wijf. Vrouwengeschiedenis en de vroegmoderne tijd. Drie Leidse studies* (Hilversum 1990) 133; A. Schmidt, 'Profiling the female criminal in early modern Holland. Women before the criminal courts in Amsterdam, Leiden, Rotterdam and Gouda, 1600-1810'. Paper for the European Social Science History Conference, April 23-26 2014, Vienna.

²⁵³ E. Kuijpers, *Migrantenstad. Immigratie en sociale verhoudingen in 17e-eeuws Amsterdam* (Hilversum 2005) 192 and 194; Schmidt and Van der Heijden, 'Women alone', 24; L. van de Pol and E. Kuijpers, 'Poor women's migration to Amsterdam', *Journal of Urban History* 32:1 (2005) 44-60; P. Earle, 'The female labour market in London in the late seventeenth and early eighteenth centuries', *The Economic History Review* 42:3 (1989) 328-353; Morgan and Rushton, *Rogues*, 102.

²⁵⁴ Schmidt and Heijden, 'Women alone', 24.

under surveillance.²⁵⁵ There are no signs that such formal restrictions also existed in Frankfurt, but the majority of female household heads in the city were widows. According to tax records from the end of the sixteenth and early seventeenth centuries, around 20% of the households were headed by women, 90% of whom were widows.²⁵⁶ Similar numbers are available for the eighteenth century as well: in 1761, 18% of Frankfurt's real estate was owned by women, and again 90% were widows. Finally, in 1811, only 7% of the women heading households among the citizenry were single.²⁵⁷ Households headed by women were often among the city's poorest: more than 40% of them were registered in the lowest tax categories.²⁵⁸ These figures make clear that the majority of women in Frankfurt were incorporated into male-governed households, and few women lived independently.

Self-employment by women, especially unmarried migrant women, as washers or seamstresses, was objected to by the authorities and prohibited as much as possible in early modern Germany, including Frankfurt.²⁵⁹ The conditions for women to live independently in early modern Frankfurt appear to have been more restricted than in cities like London or Amsterdam where women may have found more employment opportunities and possibilities for independence. The share of domestic servants among the population may be informative in this respect. According to Frankfurt's first census of 1811, 17% of the city's inhabitants belonged to the *Gesinde* – servants who lived as subordinates in their master's household.²⁶⁰ The share of women among the servants listed in the 1811 census was 76%.²⁶¹ These figures correspond with what is known for other cities during this period and reflect the typical gender structure and feminisation of domestic service as it developed throughout the eighteenth century.²⁶² In eighteenth century Amsterdam, on the other hand, domestic servants are estimated to be 9% of the total population and for London, Tim Meldrum considered a share of around 7.7% to be plausible.²⁶³ The figures suggest that the labour

²⁵⁵ Ogilvie, *Bitter living*, 54-63; M.E. Wiesner, 'Having her own smoke. Employment and independence for singlewomen in Germany, 1400-1750' in: J.M. Bennett and A.M. Froide eds., *Singlewomen in the European past, 1250-1800* (Philadelphia 1999) 192-216.

²⁵⁶ Wiesner, *Working women*, 5.

²⁵⁷ Roth, *Stadt und Bürgertum*, 72, 132.

²⁵⁸ Wiesner, *Working women*, 5.

²⁵⁹ Rublack, *Crimes of Women*, 152-154; Eibach, *Frankfurter Verböte*, 342.

²⁶⁰ Roth, *Stadt und Bürgertum*, 86; I. Kaltwasser, *Häusliches Gesinde in der Freien Stadt Frankfurt am Main. Rechtsstellung, soziale Lage und Aspekte des sozialen Wandels, 1815-1866* (Frankfurt am Main 1989) 75.

²⁶¹ Kaltwasser, *Häusliches Gesinde*, 78.

²⁶² S. Hahn, *Migration-Arbeit-Geschlecht. Arbeitsmigration in Mitteleuropa vom 17. bis zum Beginn des 20. Jahrhunderts* (Göttingen 2008) 208; S. Hochstadt, 'Migration in preindustrial Germany', *Central European History* 16:3 (1983) 195-224, 202; R. Dürr, *Mägde in der Stadt. Das Beispiel Schwäbisch Hall in der Frühen Neuzeit* (Frankfurt am Main 1995).

²⁶³ Amsterdam: J. Lucassen, 'Female Migration to Amsterdam' in: E. Kloek, N. Teeuwen and M. Huisman eds., *Women of the golden age. An international debate on women in seventeenth-century Holland, England and Italy* (Hilversum 1994) 83-87, 85; Lucassen, 'Immigranten in Holland 1600-1800', 18; London: T. Meldrum, *Domestic service and gender 1660-1750* (Edinburgh 2000) 14.

markets in these cities were more diverse, and that fewer women were incorporated in alien households as dependents than in Frankfurt.

More in general, Frankfurt's authorities employed a rather restricted migration regime, which prevented foreigners from settling in the city independently. Migration patterns in Frankfurt and most of early modern Germany resembled those in other Western European countries, infused by the European Marriage Pattern. During the relatively long period of freedom before marriage, many men and women were very mobile mostly connected to life-cycle service. Although migration is usually associated with increasing independence for women, there were urban regulations in place which prevented this, even for migrant women. The stay of transients was restricted and varied between three and eight days throughout the period. To be able to stay in the city for longer, one had to request formal permission from the authorities. In order to control the mobility of migrants to Frankfurt, the city had set up an extensive system of migration control based on investigations at the city gates, taverns and inns as well as demanding that foreigners should register and acquire formal permission to stay in the city.²⁶⁴ Journeymen and domestic servants looking for service were also subjected to these regulations, and had to leave the city within eight days if they were unable to find service, because this meant that they were not incorporated in an orderly household. Consequently, there was no possibility of settling in the city independently.

It is clear that Frankfurt provided a different urban context from those cities associated with high levels of female criminality: fewer women were able to settle and live independently in the city. This resulted in a lower number of women who had to make ends meet on their own, without social and economic support networks to fall back upon. Still, a closer look at the criminal patterns of women in Frankfurt in the following paragraphs will demonstrate that, at the same time, they displayed many of the characteristics known for other cities as well.

Early modern criminal records and quantification: problems and opportunities

Before we can turn to a closer examination of the development of female criminality in early modern Frankfurt, it is important to discuss the sources used and confront the difficulties that arise with quantifications based on early modern criminal records. Moreover, it is necessary to account for the differences between my own quantifications in comparison to the earlier analysis based on the same sources by Joachim Eibach.

One of the main issues that need to be confronted is the reliability of the documentation and the question of record survival. The archives hold more than 12,000 individual *Criminalia* for the period between 1508 and 1856, the majority of which (close to 11,000) belong to the period

²⁶⁴ Kamp 'Identifying Migrants'; Chapter 6.

under research here (1600 and 1806). Of course, this sheer amount alone does not guarantee completeness, but there are enough indications to assume not only that the majority of records for this period survived, but also that they were preserved systematically by contemporaries. The need for safe record keeping was already felt in the early modern period. According to instructions for the investigation office from 1726, the *examinator ordinarius* was responsible for properly storing the proceedings during the investigations. After a case was closed, the scribe or *Actuarius* had to make sure that a note was made of the final decision/verdict, after which the release or punishment of prisoners had to be recorded in so-called *Urphed- und Malefizbücher*. In addition, the investigation records had to be transmitted to the municipal registration office.²⁶⁵

The regulations of the *Verhöramt* contain several references that are important regarding the matter of completeness of the sources. For one, the instructions of 1726 reveal that while the previous scribe had kept the records accurately, record-keeping had become irregular after his death and different types of registrations had been mixed up. The new scribe was ordered to bring the old and incomplete records up to date and keep a complete registry from then on. He was ordered to clearly distinguish criminal offenders from individuals who were sanctioned as part of a civil process.²⁶⁶ Moreover, the regulations of 1788 introduced even more compulsory administration by the *Kriminalrat* (head of the investigation office). He was ordered to provide the authorities with a quarterly report of all the ongoing investigations and a list of all the current inmates.²⁶⁷

There are several things that can be deduced from these contemporary instructions. First, it was considered important to keep a proper administration of all criminal investigations and to retain all the records and documents that had been collected as part of the investigation process. This was required both for investigation and administrative purposes. Communication with external authorities about arrested or fugitive criminals was a common part of the criminal procedure in early modern Germany. To be able to provide information – and possibly even send copies of criminal records to other authorities – proper record keeping was absolutely vital. Indeed,

²⁶⁵ J.P. Orth, *Nötig und nützlich erachteter Anmerkungen über die sogenannte erneuerte Reformation der Stadt Frankfurt am Main. Dritte Fortsetzung* (S.L. 1751) 828. Original: 'Weiter hat der *examinator ordinarius* auf genaue verwarnung der protocollorum, in seinem zu dem ende in der canzlei befindlichen schank, gute vorsorge zu tragen, und wann eine sache abgetan, muß der ratschreiber oder actuaries sich angelegen sein lassen, daß der ausgang derselben richtig nebst dießfalls abgefaßten decretis ad acta notiret, auch die respective loslassung oder bestraffung der gefangenen in die urfried oder urphed- und malefizbücher eingetragen, so fort aber die protocolla auf die registratur zur verwarnung geben werden'. Also see: PO 4346 *Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt* 04.12.1788, §8: 'Soll sich unser peinlich Verhör-Amt und Criminal-Rath insbesondere die ordentliche Registrirung und Vervahrung der Acten, Protocolle und Malefiz-Bücher solange bis jene geschlossen und auf das Stadt-Archiv der Ordnung gemäs abgegeben worden, als welches auch inskünftige genau befolgt werden soll, zur angelegene Sorge machen, und über den Actuarius vicarium des Amts desfalls die nöthige Aufsicht führen'.

²⁶⁶ Orth, *Dritte Fortsetzung*, 829. Original: 'und dabei die malefizpersonen vor andern, so nur wegen civilsachen die gemeine urphede geschonren, wohl unterscheide'.

²⁶⁷ : PO 4346 *Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt* 04.12.1788, §10.

a considerable part of the investigation records of early modern Frankfurt involved communication with outward authorities.

Second, the instructions show that not only was it considered necessary to preserve the records of the criminal investigations, but also that irregularities in the record-keeping were noticed and that efforts were made to correct these. From the beginning of the eighteenth century onwards, the individual dossiers were numbered, listing the name of either (some of) the suspects and/or the victims involved and recorded in a register. These inventories were (partially) intended to facilitate the process of finding past offenders and their corresponding criminal records. Moreover, all cases from 1680 until the point in time when the contemporary register was introduced were included retro-actively. No contemporary registers existed for the period before 1680.²⁶⁸

Occasionally one can find references in the sources that authorities were not able to trace suspects in the registry, even though they knew they had been investigated. However, these instances are rare and could also relate to misspelling of names, such as was the case of Margaretha Dorothea Hanshelmin. Margaretha Dorothea was a frequent recidivist whose criminal career spanned the period from 1735 until 1756. In her final encounter with Frankfurt's authorities in 1756, it was written in her files that her previous documents were not found in first instance because she had previously been registered as Helmin and Anshelmin.²⁶⁹ Similarly, there are instances in which the corresponding investigation files of offenders recorded in the registry were lost or simply could not be found by the *examinatores*.²⁷⁰ The scribes carefully noted such instances in the registry, which heightens the reliability of the documentation.

Joachim Eibach previously cross-referenced the preserved *Criminalia* with the quarterly reports of the *Kriminalrat* and the *Strafenbuch* (register of penal punishment) for the period from 1680 onwards. This showed that one can assume that the extant records are fairly complete, and that there is no substantial loss in the *Criminalia*.²⁷¹ My own investigation gave no reason to think differently. For the period before 1680, however, there are more issues. A contemporary register that allows for cross-referencing is not available. However, there is the possibility to compare the *Criminalia* with the entries of the book of punishment (*Strafenbuch*) which recorded all corporal and capital punishments and has survived for the years 1562-1696, thus covering the period before the contemporary indexation of the criminal investigation records. This comparison shows that for

²⁶⁸ IfSG Frankfurt am Main, Repertorium 249 Index über die Criminalia 1680-1732, 1.

²⁶⁹ Criminalia 7256 (1756), folio 248; IfSG Frankfurt am Main, Repertorium 251 Index über die Criminalia 1750-1800, 153.

²⁷⁰ Criminalia 2254 (1700).

²⁷¹ Eibach, *Frankfurter Verböte*, 30, 91.

approximately one-third of the cases in the *Strafenbuch*, there is no corresponding criminal investigation record.²⁷²

This does not necessarily mean that one-third of the *Criminalia* for this period have been lost. After all, the criminal justice system in Frankfurt was multi-layered. Only the city council had the authority to impose penal punishments recorded in the *Strafenbuch*. The *Verhöramt* functioned as a court of inquiry for the city council. Thus, ideally there should be a record in the criminal investigation office (i.e. the *Criminalia*) of all penal sanctions recorded in the *Strafenbuch*. But this was not the case. It is not unlikely that particularly in the early stages of development of Frankfurt's criminal justice system, penal sentences recorded in the *Strafenbuch* had been investigated by other judicial institutions than the *Verhöramt* and thus left no traces in the *Criminalia*.

Although surviving records before the 1680s are scattered, it is still valuable to apply a quantitative analysis for this period as well. While the comparison between the *Strafenbuch* and the *Criminalia* has shown that it is very likely that there is a loss ratio that needs to be taken into account for this period, they also show that this loss did not lead to a distortion of the patterns observed in the *Criminalia*. Both with regard to the development of the types of crimes committed, as well as the percentage of male and female offenders there are no considerable differences between the two sources. Thus, although it is not possible, for example, to provide a crime rate per 100,000 inhabitants for the period before 1680, it is possible to make statements about the *nature* of criminality and the contribution of women to crime.

Thus, it can be established that the *Criminalia* offer a fairly complete and reliable source to reconstruct the level of female involvement in prosecuted crime for early modern Frankfurt. The calculations are not based on the 11,000 individual records but depend on the early modern registers and the modern index provided by the archive (figure 1).²⁷³ Based on these sources it was possible to collect information on the types of crimes as well as the number and gender of suspects for each investigation record. This made it possible to reconstruct basic crime statistics for the entire period (1600-1806). More detailed information about individual offenders, such as their age, profession, marital status and origin, can only be collected from the individual *Criminalia*.

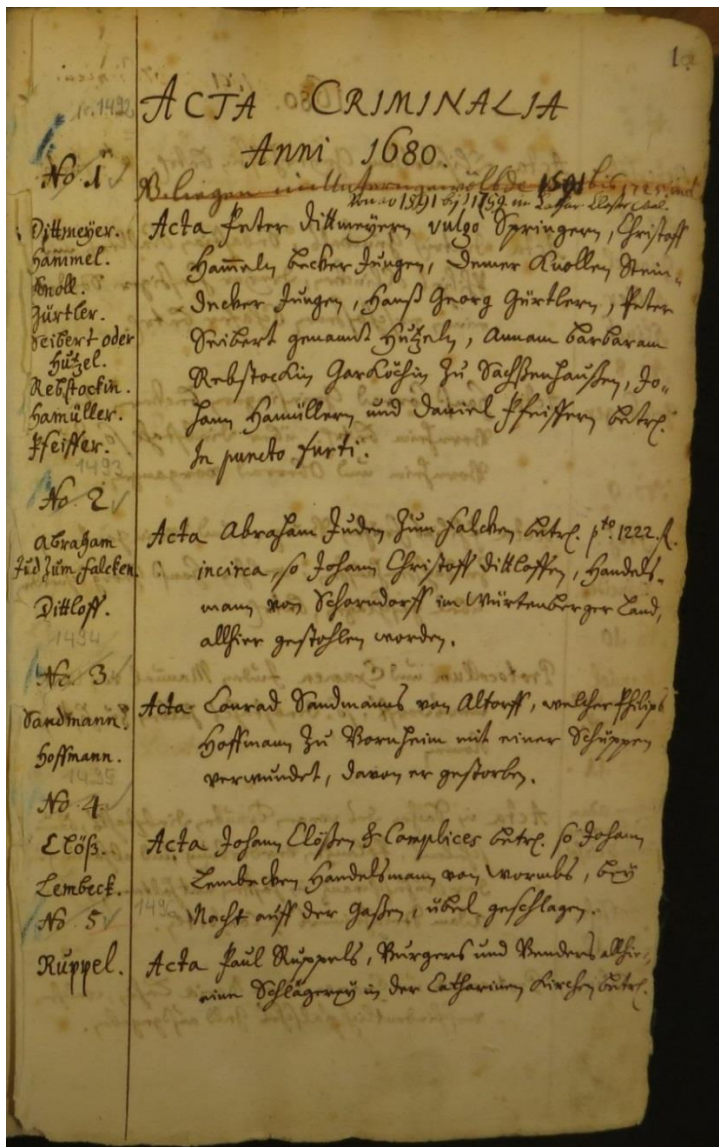
The contemporary early modern registers were not intended for statistical purposes but were more or less used as an archive register, composed to find the records when needed. In the majority of cases they list the names of the main persons involved and a short description of the case. However, it would not have been possible to reconstruct the share of men and women among

²⁷² Based on a cross reference of the *Criminalia* and the crimes recorded in the *Strafenbuch* for the first six years of every decade. IFSG Frankfurt am Main, *Strafenbuch* 1562-1696.

²⁷³ The early modern Registers: Repertorium 249-254; The modern catalogue is accessible through the website of the city archive <http://www.stadtgeschichte-ffm.de/de/archivbesuch/datenbanken> (27.02.2017). Also see: K. Schneider, 'Criminalia im Institut für Stadtgeschichte Frankfurt a. M.' *Archivnachrichten aus Hessen* 11:2 (2011) 8-11.

recorded offenders based on the contemporary registers alone because they do not systematically differentiate between victims, offenders and/or witnesses. Thus, it often remains unclear who should be counted as an offender and who should not, especially in assault cases and fights.²⁷⁴ Quantifications based on the early modern register therefore only allow for calculations relating to the number of *cases* rather than the number of *offenders*, which makes it impossible to calculate the gender ratio.

Figure 4 Index Criminalia



Source: IfSG, Repertorium Acta Criminalia 249.

²⁷⁴ Eibach, *Frankfurter Verböte*, 92.

The modern index provided by the archive, on the other hand, does systematically distinguish the victims from the offenders and therefore allows for quantifications based on the number of offenders as well. At the time Joachim Eibach conducted his research on criminality in eighteenth-century Frankfurt, the modern index was not yet complete. He therefore had to rely for the long-term analysis on the contemporary registers, which are based on the number of *cases* instead of *offenders*.²⁷⁵ In addition to this he also provided statistics about *offenders* who committed violent and property crimes, which he collected based on the consultation of the individual criminal records for selected sample years.²⁷⁶ Thus, some limited statistics about the involvement of women in selected crime categories for a shorter period were already available for Frankfurt.

At the same time, there are several issues with the modern index that also need to be considered. First, the modern index is based on the criminal investigation files as they are preserved in the archive. In the case of recidivists, the investigators of the *Verhöramt* had the habit of collecting all previous records into one dossier, which is usually how they survived in the archive. This means that in the modern index such a file is only registered as one dossier, while in the contemporary registers each individual entry relating to that offender can be traced. This could obviously cause minor distortions, considering that an offender that appeared before the court in four separate years has to be counted four times, instead of just once. In such cases, the modern index has been ‘corrected’ with the help of the contemporary registers. A second issue is that the modern index of course translated contemporary terms into modern German. Already in the early modern period, the scribes were not consistent in their terminology and used a variety of terms to describe a single offence, rather than using the legal definitions. For accuracy the modern translation has always been checked with the *corpus delicti* mentioned in the contemporary registers.

Finally, the principles on which calculations were made have to be accounted for. After all, since the *Criminalia* represent investigation records, they could refer to multiple offenders and/or multiple offences. This means that the following options are possible: *Criminalia* with a single offender and single offence; *Criminalia* with multiple offenders and single offence (for example robbery; fights); *Criminalia* with a single offender and multiple offences (for example prostitution and theft); *Criminalia* with multiple offenders and multiple offences; *Criminalia* with unknown offender(s) and multiple/single offences. This makes it possible to provide calculations based on the number of *cases* as well as on the number of *offenders*, and both methods are applied in this thesis. When looking at the gender gap in overall registered crime in Frankfurt, men and women who

²⁷⁵ Eibach, *Frankfurter Verböte*, 92.

²⁷⁶ The selected sample years are: 1741-43; 1771-75; 1801-1805. Eibach, *Frankfurter Verböte*, 28, 211, 293; J. Eibach, ‘Böse Weiber und grobe Kerle. Delinquenz, Geschlecht und soziokulturelle Räume in der frühneuzeitlichen Stadt’ in: A. Blauert and G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 669-688, 677, 683.

were prosecuted for multiple offences simultaneously were only counted as a single offender. When looking at the relative weight of each crime category to the overall criminal pattern, each category of crime per offender has been counted separately.

The *Verhöramt* primarily dealt with serious offences, and only prosecuted property offences and violence from a certain level upwards.²⁷⁷ All the offences investigated by the criminal investigation office have been categorised in five main categories of crime: property offences; violent offences; offences against the authorities and public order; moral and religious offences; other records that could not be subjected to any of the previous categories. Table 1 provides an overview of the different types of crimes that were investigated by the *Verhöramt* according to each category.

Table 2 Types of offences by category of crime

Category	Offences
Property offending	Theft; burglary; robbery; being suspected of belonging to a band of robbers/thieves; receiving stolen goods; fraud; bankruptcy; damage to private property; extortion and blackmail; poaching
Violence	Murder; manslaughter; infanticide; abortion; assault; fighting; verbal violence; suicide; child abandonment; kidnapping; accidents resulting in injury
Against authorities and public order	Seditious words/insults against the city council/urban officials; assaulting ‘police officers’ in the execution of their duties; perverting justice (including prison escapes and perjury, breaking banishment, etc.); rioting; disruption of public order; begging and vagrancy (including prosecutions of those labelled as gypsies); war-related offences (espionage; desertion; illegal recruitment); tax offences; malfeasance in office; illegal lodging; gambling; counterfeiting; falsification of documents, etc.
Moral and religious offences	Moral/sexual offences including: adultery; fornication; bigamy; extra-marital pregnancies; lewdness; brothel-keeping/procuring; sodomy; rape. Religious offences including: heresy; blasphemy; performing ‘magic’; conversions, etc.
Rest	Administrative records; uncertain cases, etc.

²⁷⁷ See previous chapter.

The calculations are based on the types of offences committed, rather than single cases. The reason for this is that in cases of property offences, for example, suspects could be investigated for multiple thefts without the registers specifying the total number but simply referring to ‘*mehrere Diebstähle*’ – multiple thefts. At the same time, distinguishing between various subcategories could be problematic. For example: within the category of moral and religious offences the description of a single case could state that an offender was investigated for ‘*Unzucht, Ehebruch und Schwängerung*’ – fornication, adultery and illegitimate pregnancy. Although distinguishing between these various categories is relevant when investigating moral offences, for the general analysis they should be counted as one case, as the authorities considered this as one case and not three.

Development of crime in early modern Frankfurt

The quantifications in this chapter are based on the *Criminalia*, the records compiled in the course of investigations by the *Verhöramt*. This means that what follows is not a reflection of conviction rates, but of prosecution patterns. Some remarks about the general character of crime in Frankfurt during the early modern period are necessary to be able to contextualise women’s offending. Based on a quantification of the number and types of cases listed in the contemporary registers, Joachim Eibach established the characteristics of the crime pattern in eighteenth-century Frankfurt. After a period of increasing prosecutions towards the middle of the century, a period of both absolute and relative decline set in (see figure 2). The population of the city grew within this period from around 24,800 inhabitants in 1705 to 40,485 in 1810.²⁷⁸ The number of cases handled by the investigation office, however, followed a contrasting development. In the first half of the 1740s (when the number of cases was at its highest), the *Verhöramt* investigated 114 cases on average per year, but by the beginning of the nineteenth century this had declined to only 59 cases. Moreover, specific events, such as the fire in the *Judengasse* in 1721 or the election and coronation of the Holy Roman Emperor could cause periodic spikes or lows.²⁷⁹

The increased prosecution efforts of the authorities towards the middle of the eighteenth century were fostered by the social developments in this period. It was a time during which many people became uprooted, which the authorities perceived as a threat to the existing social order. Ordinances against begging, vagrancy and all kinds of ‘masterless’ people characterised the period, not only in Frankfurt, but in the neighbouring territories as well.²⁸⁰ These anxieties about social

²⁷⁸ Roth, *Stadt und Bürgertum*, 47.

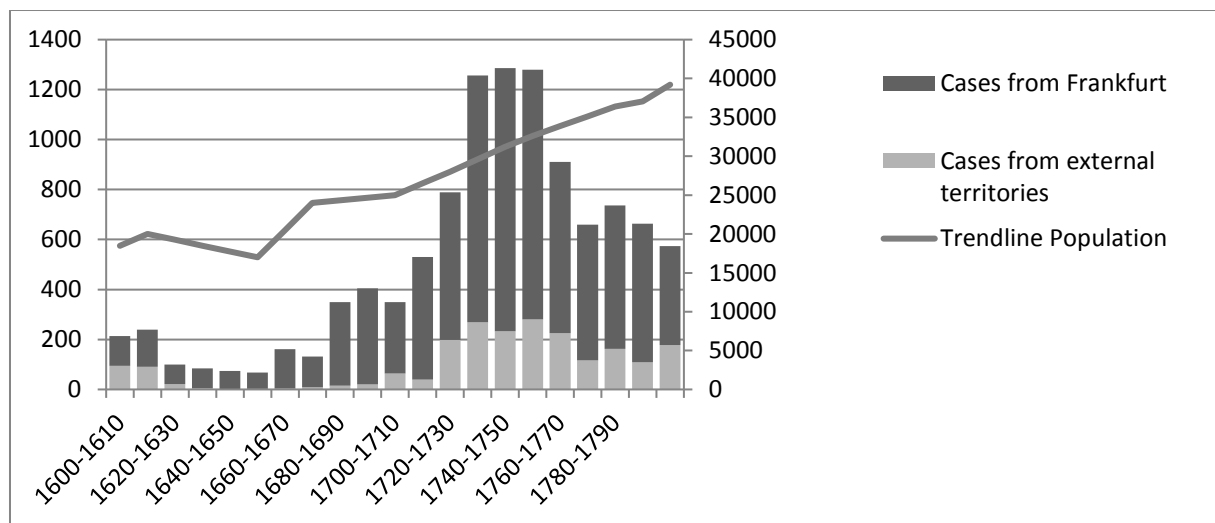
²⁷⁹ Eibach, *Frankfurter Verböte*, 93-95.

²⁸⁰ Eibach, *Frankfurter Verböte*, 105-108; K. Härter, *Policey und Strafrecht in Kurmainz: Gesetzgebung, Normdurchsetzung und Sozialkontrolle im Frühneuzeitlichen Territorialstaat* (Frankfurt am Main 2005) 536, 1080; H. Schnabel-Schüle, *Überwachen und Strafen im Territorialstaat. Bedingungen und Auswirkungen des Systems strafrechtlicher Sanktionen im frühneuzeitlichen Württemberg* (Köln 1997) 272.

disorder and crime went hand in hand with efforts to improve policing and exclude outsiders from the community.

The eighteenth century not only witnessed a change in the number of prosecuted crimes, but also in the types of prosecuted offences. Although the seventeenth and eighteenth centuries are usually characterised by historians as a period of continuous decline in violence, in particular of murder and homicide, Joachim Eibach found that there was no linear pattern in Frankfurt. Rather, the number of violent cases (murder/manslaughter, and fights/assaults) actually increased towards the middle of the eighteenth century (compared to the early eighteenth century) but then dropped considerably (and more intensely than other offences). In the long run, Eibach witnesses a decline of the ritualised use of violence as a way of defending (male) honour.²⁸¹ Overall, however, criminality in this period was dominated by property offences, and the criminalisation of the lower classes, in particular the mobile poor. The upper class, and increasingly the middle class as well, retreated from the sources as suspects.²⁸²

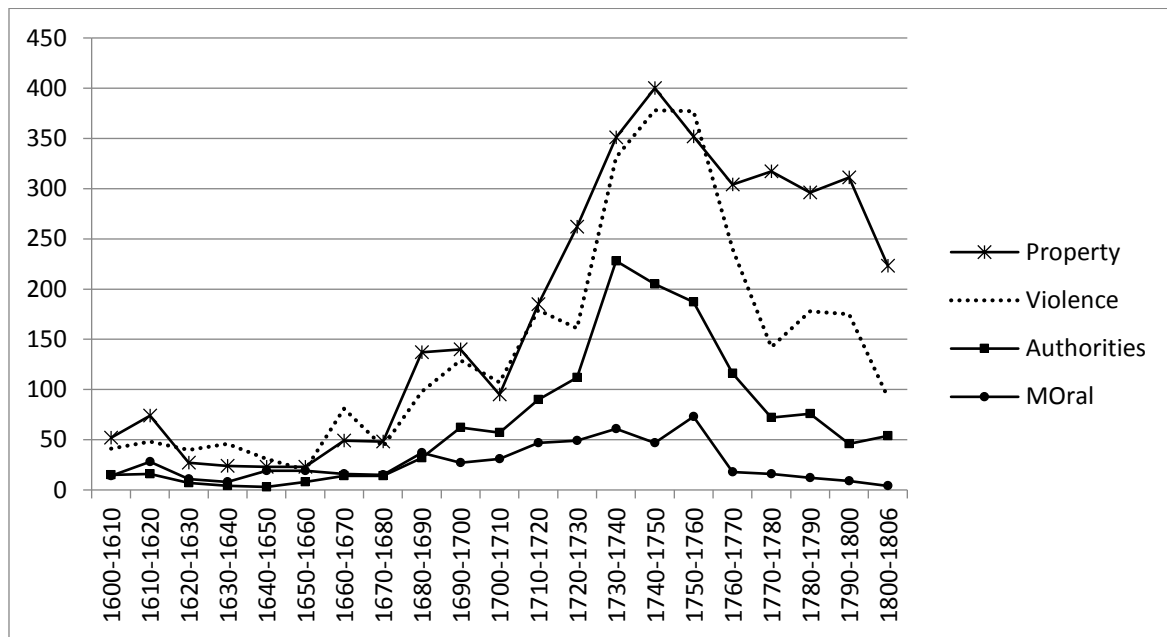
Figure 5 Number of cases investigated by the Verhörant per decade 1600-1806



Source: IfSG, Criminalia 1600-1806.

²⁸¹ Eibach, *Frankfurter Verböre*, 102-104, 430.

²⁸² Eibach, *Frankfurter Verböre*, 431.

Figure 6 Type of criminal offences investigated per decade, 1600-1806

Source: IfSG, Criminalia 1600-1806.

The dominance of property crimes among recorded criminality in Frankfurt was not a novelty of the eighteenth century. Analysis of the *Criminalia* shows that already in the seventeenth century, thefts, burglaries and occasional robberies ranked highest among the offences investigated by the *Verhöramt*: they made up between ca. 30 and 44% of all prosecuted offences.²⁸³ This pattern is confirmed by the penal punishments imposed by the city council in this period.²⁸⁴ One of the main differences between the seventeenth and eighteenth centuries was that in the former the relative share of moral offences among recorded criminality was more significant: whereas in the eighteenth century it never reached above 10%, in the seventeenth century it fluctuated between ca. 10 and 27%. This decline cannot be attributed to changing behavioural patterns (as rising illegitimacy rates in the course of the eighteenth century indicate) but was due to changing prosecution interests of the authorities. Similar developments are visible in other regions in Germany during this period and show that the prosecution of sexual offences was particularly connected to the confessionalisation period.²⁸⁵ Overall, criminality in the seventeenth century was more evenly distributed among all different types of offences as compared to the eighteenth century.

In the seventeenth century as well, the city was characterised by fluctuating prosecution patterns. Whereas in the first twenty years at least more than 200 criminal investigations were

²⁸³ IfSG, Criminalia 1600-1806.

²⁸⁴ Van Dülmen, *Theater des Schreckens*, 187,

²⁸⁵ S. Burghartz, 'Competing logics of public order. Matrimony and the fight against illicit sexuality in Germany and Switzerland from the sixteenth to the eighteenth century' in: S. Seidel Menchi ed., *Marriage in Europe, 1400-1800* (Toronto 2016) 176-200.

conducted each decade (a number which – which taking a 1/3 loss ratio into account for this period may have been even higher) the number declined considerably towards the middle of the century. In the 1640s and 1650s less than half of the number cases were investigated.²⁸⁶ A similar pattern emerges from the book of punishments: between 1600-1605 and 1610-1615 the city council imposed punishments on 85 and 73 offenders respectively. Between 1640-1645 and 1650-1655, however, the number declined to 10 and 12.²⁸⁷ The obvious explanation for this decline was the impact of the Thirty Year's War and its aftermath on the prosecution capacities of the authorities – a general pattern which is witnessed throughout the Holy Roman Empire.²⁸⁸ This decline, however, differed according to the types of offences: investigations based on requests from other rulers almost came to a halt completely and property offences declined more intensely, while the number of prosecutions for violence remained relatively the same. Thus, the city's authorities were selective when it came to which types of offences could be ignored due their declining prosecution capacities and which could not. It was not until the 1680s that the number of investigations exceeded pre-war levels again.

More specific explanations for certain developments will be discussed in more detail below, but for now it suffices to say that prosecution patterns fluctuated throughout the period, both in terms of numbers and types of crimes (see figures 2 and 3). The majority of individuals that had to defend themselves before the authorities had to do so for 'everyday' offences, notably theft, burglary, fighting. How does the female crime pattern compare to these general developments?

Gendered Patterns of Crime

In the seventeenth and eighteenth centuries, women accounted for 22% of all the suspects investigated by the criminal investigation office in Frankfurt. This share was not constant but fluctuated over time (which will be discussed in more detail below) and differed for each category of crime (see table 3). An overview of the share of women for each crime category shows that while women made up more than half of defendants for moral offences (53%) and represented over a quarter of property offences (27%), their share among violent crimes and crimes against public order was below their overall average among recorded crime, at 13% and 17% respectively.²⁸⁹

²⁸⁶ IfSG, Criminalia 1600-1806.

²⁸⁷ IfSG Frankfurt am Main, Strafenbuch 1562-1696.

²⁸⁸ For references, see: U. Ludwig, 'Strafverfolgung und Gnadenpraxis in Kursachsen unter dem Eindruck des Dreißigjährigen Krieges', *Militär und Gesellschaft in der Frühen Neuzeit* 10 (2006) 200-219.

²⁸⁹ For a more detailed table with developments through time, see appendix Figure 1.

Table 3 Share of men and women among prosecuted offences, Frankfurt 1600-1806²⁹⁰

Category	Men		Women		
Total offenders	8,427	78%	2,382	22%	
Moral	401	47%	445	53%	
Property	3,457	73%	1,285	27%	
Against authorities and public order	1,755	83%	355	17%	
Violence	2,945	87%	433	13%	
Misc.	165	84%	32	16%	

Source: IfSG, Criminalia 1600-1806.

In earlier studies that mentioned female criminality these differences often led to a stereotypical portrayal of women's offending in the early modern period. It was often reduced to distinctively female offences such as infanticide, fornication, prostitution, etc.²⁹¹ This reaffirmed older notions about gender and crime in which women's transgressions were related to their sexuality and body, a sign of the weak character of the female nature which was driven by desire rather than reason.²⁹² Women's behaviour was characterised as more law-abiding, passive and peaceful, and contrasted to 'male' assertiveness and aggressiveness.²⁹³ Looking only at the relative weight of women among each category of crime leads to a distorted image about what female criminality actually characterised in the early modern period. It was not the offences in which women featured disproportionately that made up the bulk of the crimes they were prosecuted for, but rather more 'mundane' offences like theft (table 4).

Table 4 Types of prosecuted crimes by gender, Frankfurt 1600-1806²⁹⁴

Category	Men		Women		
Property	3,457	40%	1,285	50%	
Moral	401	5%	445	17%	
Violence	2,945	34%	433	17%	
Against authorities and public order	1,755	20%	355	14%	
Misc.	165	2%	32	1%	

Source: IfSG, Criminalia 1600-1806.

²⁹⁰ As some offenders were prosecuted for more than one offence at the same time, the total number of offenders is lower than the sum of offenders of the single crime categories.

²⁹¹ G. Walker, *Crime, gender and social order in early modern England* (Cambridge 2003) 4.

²⁹² For an overview of nineteenth century discourses on the nature of female offenders, see: K. Uhl, *Das "verbrecherische Weib". Geschlecht, Verbrechen und Strafen im kriminologischen Diskurs 1800-1945* (Münster 2003).

²⁹³ Arnot and Osborne, 'Why gender and crime?', 14.

²⁹⁴ For more detailed figures of the development through time, see figures 5 and 6 below.

A closer look at the types of crimes men and women were prosecuted for reveals that there were both striking similarities as well as differences. For both sexes, the majority of the *Criminalia* dealt with property offences, although this was more significant for women than for men (50% vs 40% respectively). The relative weight of violent and public order offences was considerably less for women than for men, whereas sexual offences were relatively more prevalent among female defendants than among males. It was not uncommon for offenders to be prosecuted for several offences at the same time, and sometimes it is hard to distinguish the primary reason why they were investigated in the first place. Men and women who had to defend themselves for infraction of banishment, for example, often had to defend themselves with regard to other crimes. And in cases where people were arrested as vagrants, or for acting 'suspiciously', there was often the assumption (or at least insinuation) that they had committed theft, or were members of a gang of thieves. They could be investigated for suspected theft, even if there were hardly any indications of such an offence having taken place. Ultimately, lacking evidence to convict them of a crime, the authorities often banished them as vagabonds or unwanted foreigners.²⁹⁵

Women were investigated slightly more often for more than one category of offence than men: this was the case for 6.5% of the women compared to 3.5% for men at that time.²⁹⁶ This is related to the fact that women were prosecuted relatively more often for offences related to survival strategies, for example the combination of theft and prostitution or infraction of banishment and theft. Prosecutions for violence, on the other hand, were hardly ever accompanied by other types of crimes. Considering that these crimes made up such a significant part of prosecuted male criminality, explains the difference in prosecutions for single or multiple offences. Overall, however, the majority of offenders were prosecuted for a single type of offence at the same time.

The *Criminalia* shows that women's offending in Frankfurt fits the common gendered pattern of registered crimes in early modern Europe.²⁹⁷ It is difficult to establish exactly to what extent these gendered patterns reflected behavioural differences between men and women (connected to for example biological, economic, and socio-cultural differences), and how far they can be attributed to gendered prosecution efforts by the authorities. It is, therefore, necessary to take the character of the criminal justice system in Frankfurt into account.

The previous chapter demonstrated that the *Verhöramt* only investigated offences from a certain level upwards: violence, for example, was only handled by the criminal investigation office

²⁹⁵ See chapter 6.

²⁹⁶ IfSG, *Criminalia* 1600-1806.

²⁹⁷ Jütte, 'Geschlechtsspezifische Kriminalität', 96-97; O. Ulbricht, 'Einleitung. Für eine Geschichte der weiblichen Kriminalität in der Frühen Neuzeit oder: Geschlechtergeschichte, historische Kriminalitätsforschung und weibliche Kriminalität' in: O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 1-37, 18-21; Van der Heijden, *Women and crime*, 5-7; Rublack, *Crimes of women*; Beattie, 'Criminality of women', 81.

if it involved serious physical injuries or was considered a danger to public order. Women only accounted for approximately 13% of all suspects of violence, and a high proportion of these (47%) were related to 'typical' female crimes like infanticide, child abandonment and abortion. If such cases were excluded from the calculations, the share of women would drop considerably, to 7%. Women also made up a minority of violent offences, ranging between 6% and 16%, in other regions in early modern Europe as well.²⁹⁸

These and other examples have often led scholars to conclude that women were more subordinate, law-abiding and peaceful than men, thereby reinforcing both contemporary as well as historical notions of gendered behaviour. Female violence, it was often assumed, only manifested itself as verbal violence. When Pieter Spierenburg asked the question 'How violent were women' in a 1997 article, he concluded that they were not fighters, and that the few women that did defy cultural stereotypes were imitating male aggression.²⁹⁹ More recent research has offered nuances to this picture and argued that our image of female violence was largely distorted by the sources we study. Studies on petty violence before lower courts in London and Rotterdam, for example, show that the share of women was much higher there.³⁰⁰ In a recent article on violence and masculinity, Joachim Eibach argued that male violence was more likely to be perceived as dangerous and a breach of public order than similar behaviour by women. He stated that it was 'the interplay of social perceptions, crime reporting, and prosecution that produced male delinquency'.³⁰¹ Thus, gendered notions on what is perceived as troublesome behaviour played a role in the prosecution of violence.

In Frankfurt, petty violence was usually transferred to the *Oberster Richter*, which did not leave any written records, or settled through civil adjudication. This means that much of the everyday fighting and scolding is not incorporated in the criminal statistics that have been reconstructed based on the *Criminalia*. Cases in which women *were* prosecuted for violence often resulted from conflicts in an economic setting (fights among market women, etc.) and within the neighbourhood and the family.³⁰² Disciplining domestics is usually associated with the master of

²⁹⁸ P. Spierenburg, 'How violent were women? Court cases in Amsterdam, 1650-1810', *Crime, History & Societies* 1:1 (1997) 9-28, 17; Van der Heijden, 'Women, violence and urban justice', 77; Schwerhoff, 'Geschlechtsspezifische Kriminalität', 91; Behringer, 'Weibliche Kriminalität', 65-66; Jütte, 'Geschlechtsspezifische Kriminalität', 96-97.

²⁹⁹ Spierenburg, 'How violent were women', 26.

³⁰⁰ J. Hurl-Eamon, *Gender and petty violence in London, 1680-1720* (Columbus 2005); Van der Heijden, 'Women, violence and urban justice', 84. See also: A.M. Kilday, *Women and violent crime in Enlightenment Scotland* (London 2015) 207; S. Muurling and M. Pluskota, 'The gendered geography of violence in Bologna, seventeenth to nineteenth centuries' in: D. Simonton ed., *The Routledge history handbook of gender and the urban experience* (New York 2017) 153-164.

³⁰¹ J. Eibach, 'Violence and masculinity' in: P. Knepper and A. Johansen eds., *The Oxford handbook of the history of crime and criminal justice* (Oxford 2016) 229-249, 234-235. For a similar conclusion for Kurmainz, see: Härter, *Policey und Strafjustiz*, 570-571.

³⁰² *Criminalia* 3945 (1731); *Criminalia* 7262 (1756); *Criminalia* 7723 (1761); *Criminalia* 7861 (1762); *Criminalia* 6080 (1748).

the household, but the sources show that mistresses also played a crucial part in the disciplining of household members.³⁰³ Moreover, Joachim Eibach showed that in Frankfurt social control in the neighbourhood was to a large extent dominated by women, and could in addition include the use of violence in various forms.³⁰⁴ In many of the neighbourhood conflicts husband and wife acted as a team against their opponents. There was no gender division in these fights, in the sense that a woman would only act as accomplice to their husband's fights. On the contrary: not only did men and women act as equal parties in violent neighbourhood conflicts, women were often the instigators of such quarrels. Moreover, a quantitative assessment of the *Criminalia* reveals that in 58% of violent offences (excl. infanticide, abortion, child abandonment and suicide) women were either investigated alone or together with another woman.³⁰⁵

Similar gendered selection mechanisms in the prosecution practices of the authorities are also visible in the category of crimes against authority and public order. This category contains the most heterogeneous offences among all the different categories, ranging from anything between insulting the city council or other governmental and public officials, resisting arrest, coining offences and arson, to begging, vagabondage and infraction of banishment, to riots and public disturbance, violations of police ordinances, and military offences such as desertion and illegal recruitment. Overall, women made up 17% of offenders, but their share varied considerably between the different offences within this category. Women were rarely prosecuted for insulting authorities, hindering arrest or disrupting public order. That does not mean, however, that women were not part of such offences, rather, their behaviour was judged differently by the authorities and considered as less of a threat or insult. An example of this double standard is revealed in an altercation at the Eschenheimer Gate. Control at the city gates often gave rise to conflict between travellers or burghers and the gate guards.³⁰⁶ Johann Kling, one of the gatekeepers, came to the *Verhöramt* in order to report Herr Echzeller, member of the third bench of the city council, and his son-in-law, beer brewer Jäger. They insulted gate clerk (*Einlassschreiber*) Trapp and assaulted the gatekeeper's daughter when they were told to wait at the gates until another carriage had exited the city.³⁰⁷ Echzeller and Jäger were accompanied by their daughter and wife, who was not indicted by the gate keeper. It was not until the gate-keeper's daughter was heard as a witness that it became clear that Jäger's wife also insulted the guards. Neither the gate keeper, nor the guards considered

³⁰³ Criminalia 4823 (1738); Criminalia 6048 (1748); Criminalia 9804 (1788).

³⁰⁴ Eibach, *Frankfurter Verböre*, 271-274. For the importance of women in neighbourhood conflicts, also see: Van der Heijden, *Women and crime*, chapter 5; J. Melish, 'Women and the courts in the control of violence between men. Evidence from a Parisian neighborhood under Louis XIV', *French Historical Studies* 33:1 (2010) 1-31.

³⁰⁵ IfSG, Criminalia 1600-1806.

³⁰⁶ Criminalia 4030 (1732); Criminalia 5155 (1740); Criminalia 7951 (1763); Criminalia 8888 (1776).

³⁰⁷ Criminalia 9184 (1780).

this worth reporting. Apparently for them, it was not as serious an infraction of their authority and honour as the insults by the two men.

Although women were rarely investigated for offences that were seen as an insult or threat to political stability and authority, they were prosecuted much more often for offences such as infraction of banishment (51% of defendants), begging and vagrancy (24% of defendants), or 'acting suspiciously' (34% of defendants). The majority of such 'mobility offences' were dealt with by the city beadies, *Weltliche Richter* and the poor house without the intervention of - and thus registration - by the *Verhöramt*. The language employed by the authorities in ordinances against begging etc. labelled male mobility specifically as a threat to public order. This framing influenced the policing patterns considerably, as we will see in chapter 6.

Double standards also played a role in the prosecution of sexual offences, where women formed the majority of suspects. The *Verhöramt* was not the primary institution to investigate crimes like fornication, prostitution and adultery as they belonged to the jurisdiction of the city's moral courts (see chapter 5). The sexual offences prosecuted by the *Verhöramt* therefore only represent the tip of the iceberg. Even though women represented the majority of suspects, the weight of moral offences hardly impacted the total share of women among recorded offences. Excluding all sexual offences actually increased the percentage of female offenders by 1%.

More importantly, qualitative analysis of the sources shows that a large part of women's interactions with the judicial apparatus are excluded from the sources of the *Verhöramt*. For many women, their first encounter with the law was through the moral court. A good example is the case of Maria Elisabetha Heßlerin from Mainz. Her first encounters with the law in Frankfurt date back to 1730, when she was arrested on several occasions for prostitution and sanctioned by the *Konsistorium* with dragging the scavenger's cart (a typical sentence for loose women – see figure 4) and expulsion. It was not until she was arrested for breaking her banishment for the third time that she was investigated by the *Verhöramt*.³⁰⁸ Maria Elisabetha's case is not unique: there are repeated references made in the sources to female offenders, especially young, independent and mobile women, who had previously been punished by the consistory on multiple occasions before they were finally investigated by the *Verhöramt*.³⁰⁹ For men, on the other hand, the moral courts appeared to be much less of a 'gateway' to future encounters with the law and investigation by the *Verhöramt*.

Finally, an important characteristic of female offending in Frankfurt was that the majority of prosecutions were aimed at a single offender. In 51.2% of the cases women were investigated alone without other suspects. For men, this figure was slightly lower, at 49.9%. When women were

³⁰⁸ Criminalia 3850 (1730).

³⁰⁹ Criminalia 5004 (1739); Criminalia 5471 (1743) Criminalia 5745 (1744); Criminalia 5882 (1746); 8645 (1772). Also chapter 6.

prosecuted together with others, they were more likely to have operated in mixed gender groups, than together with other women (31.2% vs 17.6% respectively). For men, this was the exact opposite: they were more often investigated with other men (40.4%) than with other women (10.1%).³¹⁰ The majority of women, therefore, committed their crimes independently, and not (as has long been suggested) only as accomplices of men.³¹¹ That women were less likely than men to commit offences with partners of their own gender is primarily related to the different crimes they were prosecuted for. Fights often involved multiple offenders, and thus men were likely to be prosecuted with other men.

Figure 7 Prostitutes punished to clean the streets (Bern)



Source: George Alexander Cooke, *Modern and Authentic system of universal geography* (London 1802).

Fluctuations over time

Women's involvement among recorded offences not only differed per type of crime, but also fluctuated over time. There are no significant judicial changes in the period that could account for the differences: no specific offences were removed or added to the jurisdiction of the *Verhöramt* that could alter the gender composition of the defendants. As mentioned earlier, the number of

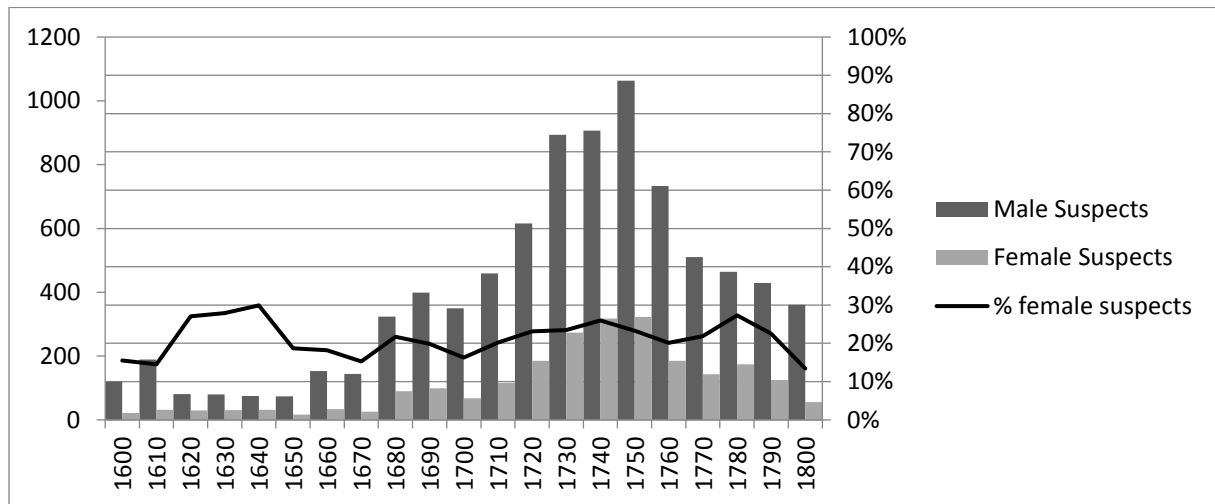
³¹⁰ IfSG, Criminalia 1600-1806.

³¹¹ Ulbricht, 'Einleitung', 19

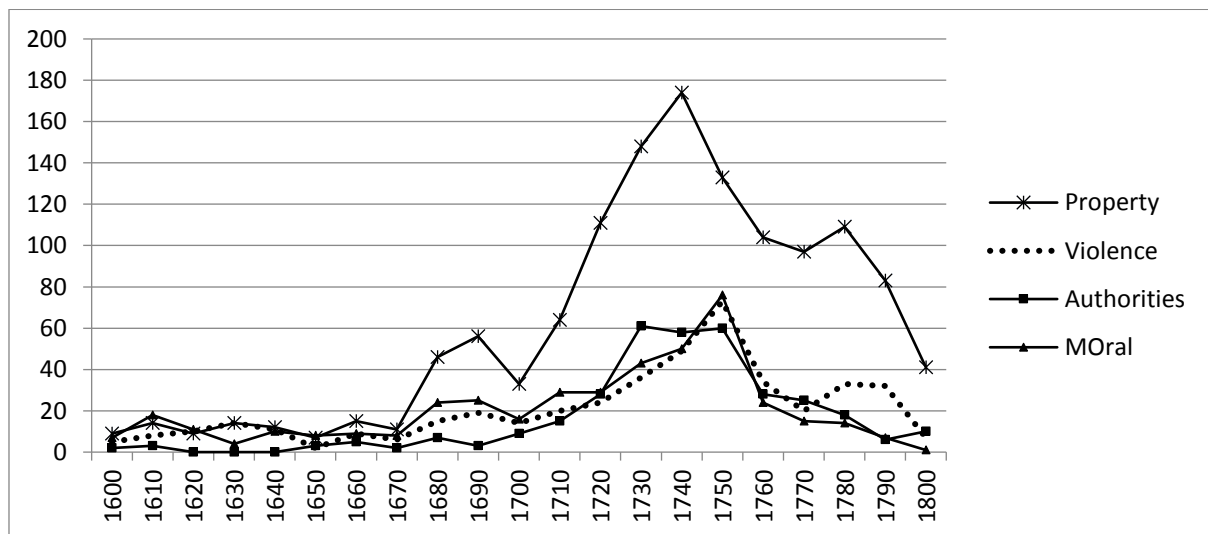
prosecutions in Frankfurt increased towards the middle of the eighteenth century, a process fostered by anxieties about wandering vagrants and other (perceived) threats to the social order in the city. Periods of war, social unrest and economic decline have often been linked to growing percentages of female offenders. It is considered that such factors often led to a weakening of paternalistic structures, making the position of women more precarious and making them more likely to turn to crime as a – complementary - strategy for survival.³¹² The following paragraph investigates the relationship between these factors and the level of female crime in early modern Frankfurt. Was there indeed a relationship between social unrest and economic decline and a high level of female crime?

Figure 4 demonstrates that women's involvement in recorded criminality fluctuated between ca. 14% at the lowest and 30% at the highest per decade. Women made up a considerable share of the offenders during the first half of the seventeenth century, and their share grew again as prosecution intensified during the middle of the eighteenth century, only to decrease slightly again after the 1750s, with a short-term increase in the 1780s. The trends in absolute numbers for male and female suspects show that for most of the period they followed the same pattern. Overall fluctuations in the number of investigated offences affected men and women to the same degree in the sense that (at first glance) there do not appear to be clear, intensified prosecution peaks aimed at one sex in particular (figures 5 and 6). Thus, both genders were affected equally by the intensified prosecution efforts of the authorities towards the middle of the eighteenth century. For women the growth in the number of prosecutions was first and foremost related to property offences, whereas for men this was more evenly distributed across all different types of crime (figures 5 and 6).

³¹² G.T. Smith, 'Long-term trends in female and male involvement in crime' in: G. Gartner and B. McCarthy eds., *The Oxford handbook of gender, sex, and crime* (Oxford 2014) 139-157, 148; Schwerhoff, 'Kriminalität in der Reichsstadt Köln', 71-72; Feeley and Aviram, 'Social historical studies', 154.

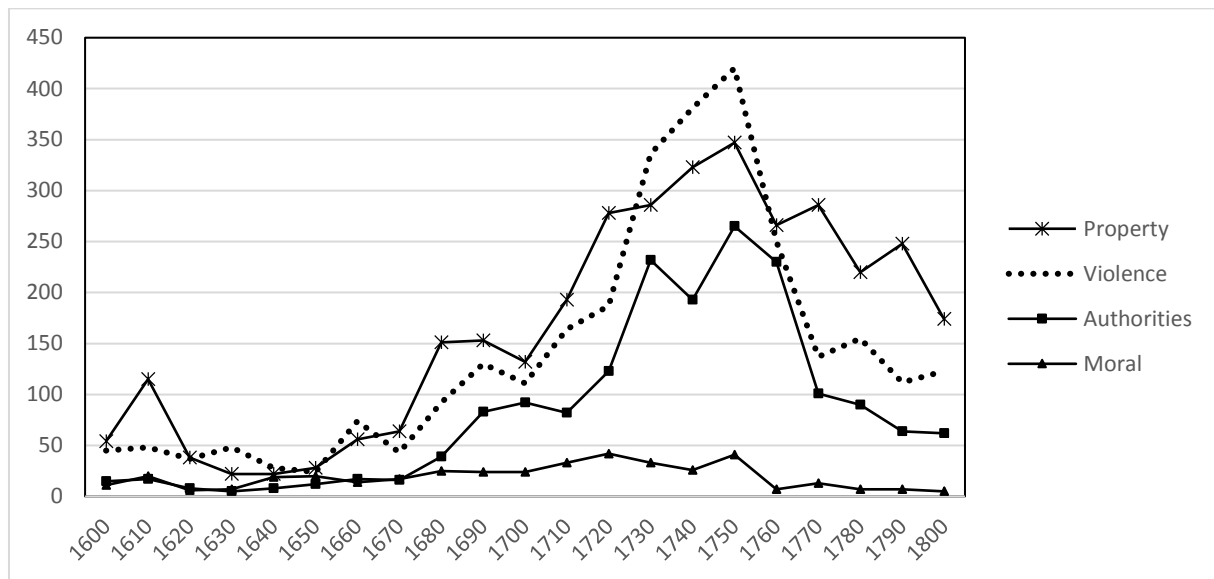
Figure 8 Male and female suspects in early modern Frankfurt by decade, 1600-1806

Source: Source: IfSG, Criminalia 1600-1806.³¹³

Figure 9 Types of prosecuted offences by women by decade, 1600-1806

Source: IfSG, Criminalia 1600-1806.

³¹³ This figure only includes cases from Frankfurt and excludes any cases about which we are informed in the Criminalia through correspondence with foreign rulers.

Figure 10 Types of prosecuted offences by men by decade, 1600-1806

Source: IfSG, Criminalia 1600-1806.

Changes in the number of prosecutions of women thus seem to be primarily related to their property offending, at least in the eighteenth century. Historians generally assume that there is a link between periods of economic decline or impoverishment and a growing share of female delinquency, in particular in relation to property offences. Otto Ulbricht considered it to be very possible that the link between difficult socio-economic conditions and criminality was stronger for women than it was for men.³¹⁴ According to Peter Wettmann-Jungblut, the growing share of women prosecuted in eighteenth-century Freiburg was a sign that theft became an increasingly common crime during this period.³¹⁵ Like others, he pointed out that women had a more precarious economic position than men: their share among recipients of poor relief was disproportionately high and they had fewer employment opportunities than men, which often left them depending on poorly paid, low- or unskilled, and often seasonal, labour. Economic fluctuations were, therefore, more severe for women than men.³¹⁶ Others suggested that the increased share of female offenders also resulted from weakening patriarchal control as a result of economic difficulties. According to Joachim Eibach, the relatively high share of women among property offenders as well as among vagrants in the second half of the eighteenth century was a sign of the fact that the traditional

³¹⁴ Ulbricht, 'Einleitung', 14.

³¹⁵ P. Wettmann-Jungblut, *Der nächste Weg zum Galgen? Eigentumsriminalität in Südwestdeutschland 1550-1850* (Saarbrücken 1997) 93.

³¹⁶ Jütte, 'Geschlechtsspezifische Kriminalität', 108; Eibach, *Frankfurter Verhöre*, 292; Kilday, 'Criminally Poor?', 512; W. von Hippel, *Armut, Unterschichten, Randgruppen in der Frühen Neuzeit* (2nd edition: München 2013) 14.

economy centred around the house (*‘die traditionelle, auf das Haus zentrierte Ökonomie’*) no longer provided sufficient support for women, neither financially nor socially.³¹⁷

The eighteenth century is generally considered as period of increasing impoverishment of the lower classes and a decline in real wages. Historians witnessed a growth in the ‘army’ of unsettled mobile poor during this period, to which unskilled labourers and impoverished journeymen contributed increasingly. Estimates about the share of mobile people among the population during this period varied from 2-10% or even 10-20%, although the latter is often dismissed as too high.³¹⁸ Apart from this mobile ‘underclass’, a large part of the settled population – some 60-80% – lived just at subsistence level, meaning that they were able to support themselves during normal times, but did not have any surplus income which they could save for times of need. This made them particularly vulnerable to short-term economic fluctuations.³¹⁹

Unfortunately for early modern Frankfurt, there are hardly any sources that enable an assessment of the development of the economic position and possible pauperisation of the city’s inhabitants since the tax registers (*Schatzungslisten*) and other serial data that would allow for an analysis of income or wealth have been burnt. Based on an evaluation of the city’s trading fairs, wholesale trading companies, and developing banking industry, Frankfurt’s economy was characterised by increasing growth after the period of the ‘Thirty Years’ War’.³²⁰ However, the city’s wealthy mercantile elite made up only a minority of the burgher community, and there are indications that suggest that the situation for the city’s artisans, who formed the largest group among the population, was different.

In 1761, during the French occupation of the city, street lightning was introduced, which was financed through taxation on real estate. Based on the documentation resulting from this measure, Ralf Roth has been able to provide information about the social-economic composition the city’s burgher population (2,295 home owners and their families) in the second half of the eighteenth century, who comprised about half of the city’s total population. Two-thirds of the city’s burghers worked as craftsmen and only 15% belong to the mercantile class (*kaufmännische Bürgertum*).³²¹ These domestic property tax registers showed that merchants (mostly wholesale traders) were disproportionally represented in the highest and wealthiest tax classes, while artisans

³¹⁷ Eibach, *Frankfurter Verböte*, 294. Also: Beattie, *Policing and Punishment*, 65 and 70-71.

³¹⁸ C. Küther, *Menschen auf der Straße. Vagierende Unterschichten in Bayern, Franken, und Schwaben in der zweiten Hälfte des 18. Jahrhunderts* (Göttingen 1983) 20-28; M. Rheinheimer, *Arme, Bettler und Vaganten. Überleben in der Not 1450-1850* (Frankfurt am Main 2000) 16; G. Ammerer, *Heimat Straße. Vaganten im Österreich des Ancien Régime* (Vienna and Munich 2003) 15-21; Härter, *Policey und Strafrecht*, 988-989.

³¹⁹ Rheinheimer, *Arme, Bettler und Vaganten*, 15; Hippel, *Armut, Unterschichten, Randgruppen*, 15.

³²⁰ A. Schindling, ‘Wachstum und Wandel vom Konfessionellen Zeitalter bis zum Zeitalter Ludwigs XIV. Frankfurt am Main 1555-1685’, Frankfurt Historische Kommission ed., *Frankfurt am Main. Die Geschichte der Stadt in neun Beiträgen* (Sigmaringen 1994) 205-260, 224.

³²¹ Roth, *Stadt und Bürgertum*, 131.

were disproportionally represented in the lower classes. During the eighteenth century, the artisan class experienced economic impoverishment, which mostly affected the dependent journeymen whose opportunities to make a career and gain an independent livelihood declined.³²² The tax registers also show that 18% of the houses were owned by women, 90% of whom were widows, mostly of artisans. More than two-thirds of them (67%) belonged to the lowest tax categories, inhabiting the most humble dwellings.³²³ Information about the socio-economic status of resident aliens is even scarcer. An overview of the occupational groups of resident aliens for the year 1714 is provided by Gerald Soliday. It shows that the majority worked in lower occupational groups in the clothing and transport industries, and many were simply listed as day labourers.³²⁴ Occupational data on the city's migrants is completely absent.

Available data indicate that throughout the second half of the seventeenth century, and towards the early eighteenth century poor relief expenditures from the communal poor chest per thousand inhabitants rose in early modern Frankfurt.³²⁵ Unfortunately, only scattered references about the number of recipients are available for the later period. In 1784 the communal poor chest distributed assistance in the form of bread or money to 697 burghers, and an additional 921 received assistance in the form of clothing.³²⁶ In 1787 the number of recipients of bread or alms was 739 and 830 were assisted with clothing.³²⁷ The city's population during these years was approximately 36,000, of which half belonged to the burgher community. This means that between 8-9% of the burghers received some form of assistance, on which probably a much larger part depended (if we consider that their families are not included in these calculations). Daniela Heinisch estimated that between 1770 and 1809 about half of all requests for long-term relief to the city council were made by women.³²⁸ Unfortunately there are no figures available about the gender of recipients of the communal poor chest during the eighteenth century. Figures for other cities in the Holy Roman Empire have shown that women figured disproportionately among recipients of relief, which was also the case elsewhere in Western Europe.³²⁹

³²² G.L. Soliday, *A Community in conflict. Frankfurt society in the seventeenth and early eighteenth centuries* (Hanover 1974) 158; Eibach, *Frankfurter Verböte*, 255.

³²³ Roth, *Stadt und Bürgertum*, 127-133 and 686-687.

³²⁴ Soliday, *Community in Conflict*, 58.

³²⁵ R. Jütte, 'Poverty and poor relief' in: B. Scribner and S. Ogilvie eds. *Germany. A new social and economic history*, vol. 2 (London 1996) 399.

³²⁶ J.A. Moritz, *Versuch einer Einleitung in die Staatsverfassung derer Oberrheinischen Reichsstaedte, Zweyter Theil: Reichsstadt Frankfurt* (Frankfurt am Main 1786) 209.

³²⁷ J.H. Faber, *Topographische, politische und hisotrische Beschreibung der Reichs- Wahl- und Handelsstadt Frankfurt am Mayn. Erster Band* (Frankfurt am Main 1788) 141-142.

³²⁸ D. Heinisch, 'Unterstützungsgesuche und Bittschreiben von Frauen an den Frankfurter Rat, 1770-1809' in: A. Sczesny, R. Kießling and J. Burkhardt eds., *Prekariat im 19. Jahrhundert. Armenfürsorge und Alltagsbewältigung in Stadt und Land* (Augsburg 2014) 118.

³²⁹ C. Ulbrich, 'Frauenarmut in der Frühen Neuzeit', *Zeitschrift für die Geschichte der Saargegend* XL (1992) 108-120; Von Hippel, *Armut, Unterschichten, Randgruppen*, 21.

The city's poorhouse was primarily meant to provide relief to those who could not apply for relief from the communal poor chest (the *Almosenkasten*) or the *Hospital zum Heiligen Geist*, and therefore was intended particularly for the city's *Beisassen* or transient aliens. In practice, however, it also catered for burghers. The number of people that were provided with assistance in the form of bread or a small sum of money by the poorhouse increased during the eighteenth century. As we can see in the table below, there is a certain correspondence with the years of a growing number of recipients of relief, and the high levels of prosecuted property offences. François Dreyfus estimated that in total about 21.5% of Frankfurt's population depended on poor relief in the late eighteenth century.³³⁰

Table 5 Recipients of bread and alms from the poorhouse, 1700-1800

Year	Recipients of bread and/or alms	Year	Recipients of bread and/or alms
1700	447	1760	1,452
1705	756	1770	1,309
1710	865	1780	1,007
1715	612	1784	940
1720	795	1785	935
1730	1,545	1786	332
1735	1,425	1787	310
1740	1,877	1790	319
1750	1,355	1800	431

Sources: Hess, *Frankfurter Armen-, Waisen- und Arbeitshaus*, appendix 4; Moritz, *Versuch*, vol. 2, 217; Faber, Faber, *Beschreibung*, vol. 1, 146-147.

A traditional methodology that is used by historians to study the relationship between offending and economic fluctuations to see how the number of offences related to grain and/or bread prices. These studies have shown contradictory results. John Beattie found a general relationship between indictments for property offences and price indexes, both over the long term and in year-to-year changes.³³¹ Gerd Schwerhoff, on the other hand, found no relationship at all between the price for

³³⁰ F. Dreyfus, *Sociétés et mentalités à Mayence dans la seconde moitié du XVIIIe siècle* (Paris 1968) 353. For comparisons with other cities, see: E. François, 'Unterschichten und Armut in rheinischen Residenzstädten des 18. Jahrhunderts' *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte* 62:4 (1975) 433-464, 456.

³³¹ J.M. Beattie, 'The pattern of crime in England 1660-1800', *Past & Present* 62 (1974) 47-95, 95.

rye and property offences in 16th-century Cologne.³³² Most recently, Anne-Marie Kilday, in a study on eighteenth-century Oxfordshire, concluded that ‘attempts at establishing a link between poverty and crime are extremely problematic’. Rather, she argued, ‘[i]ndictment levels can be more indicative of attitudes towards criminal behaviour [...], than the ‘true incidence of illegality itself’.³³³

Joachim Eibach has demonstrated that in eighteenth-century Frankfurt the number of property offences was only marginally related to changing bread prices, albeit much stronger than violent offences. There were years in which fluctuations in the number of property offences corresponded with changing bread prices, whereas in other years there was only a delayed effect or no effect at all.³³⁴ One of the most severe subsistence crises was in the years 1770-1774 and, indeed, there appears to be a relationship between the crises and the prosecuted offences in this case: during this period, the share of impoverished journeymen and day labourers among offenders was relatively high.³³⁵ At the same time, as Joachim Eibach demonstrated, there was no significant increase in the number of prosecutions for domestic theft, suggesting that incorporation in a household provided at least some form of social support during times of need.³³⁶

The link between economic fluctuations and the proportion of women offenders proves to be difficult to establish as well. Between 1725 and 1755, more than 30% of the suspects in property offences were women. This largely coincides with the period in which the number of recipients of poor relief was high (table 5). At other times, however, the link is less straightforward. During the subsistence crisis in 1770-1774, for example, the share of women fluctuated considerably as they made up between 19% and 45% of the suspects. Other periods of short-term crises also reveal that periods of economic distress did not necessarily correspond with a steady increase in female involvement. Between 1691 and 1693, another period of famine due to bad harvests, the share of women among property offences varied between 22 and 29%, while in the years before the famine (1687-1689) it had reached above 40%.³³⁷

Apart from looking at poverty in general, historians have also pointed out that changes in women’s economic situation as a result of war could impact their prosecution levels. Peter King and John Beattie both found that periods of war in early modern England coincided with a rising percentage of female offenders. Usually this rise was not absolute but resulted from a declining

³³² G. Schwerhoff, *Köln im Kreuzverhör. Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt* (Bonn 1991) 358-361.

³³³ Kilday, ‘Criminally Poor?’, 521. See also: P. King, *Crime, Justice and Discretion in England. 1740-1820* (Oxford 2000) 145-153. In a forthcoming study on female crime in early modern Holland, Ariadne Schmidt similarly demonstrates that there was no correlation between female crime levels and rising bread/grain prices: A. Schmidt, *Prosecuting women. A comparative perspective on crime and gender before the Dutch criminal courts, c.1600-1810* (Forthcoming Leiden 2018).

³³⁴ Eibach, *Frankfurter Verböte*, 93-99.

³³⁵ Eibach, *Frankfurter Verböte*, 305.

³³⁶ Eibach, *Frankfurter Verböte*, 350.

³³⁷ IfSG, Criminalia 1600-1806.

number of prosecuted men, many of whom were employed in the military during such periods. The absence of men during war had a double effect. On the one hand, there were fewer men present to be prosecuted. On the other hand, women faced more difficulties in providing for their families, which increased their vulnerability, but also their independence.³³⁸

The patterns for early modern Frankfurt show that the effect of war on criminality was not unilateral. In Frankfurt, the percentage of female offenders was at its highest during the tumultuous years of the 'Thirty Years' War and the subsequent decade. Here as well, this was not caused by an increase in female offenders, but by a declining number of prosecuted men. The absolute number of women remained rather stable. The declining number of men was not distributed evenly across all crimes, but particularly affected property offences, while the number of violent offences remained relatively stable.³³⁹ It is very likely that such patterns resulted from the withdrawal of many young men from the urban population, taking up service in one of the many armies recruiting during this period. After all, (mercenary) armies were often comprised of men most vulnerable to prosecution for property offences.³⁴⁰

The link is less clear during other periods of conflict experienced by the city. At the time of the French occupation (1759-1763) as part of the Seven Years' War the share of women was on average 29%, but it fluctuated substantially within these years varying between 13% and 39%. This variation was the result of fluctuations in the absolute number of both male and female suspects. Later, during the political upheavals following the French Revolution, including several short-term occupations by the French, the number of men and women prosecuted also varied considerably, not showing a clear trend of a decreasing absolute number of male offenders and an increasing share of women as a result of this.

More importantly, it has to be remembered that war and the vicinity of war also created anxieties that influenced prosecution policies, which may have been different on the continent than they were in England which was confronted far less with fighting on their own ground. In 1689, when the nearby city of Mainz was besieged by the French, several men were arrested on suspicion of spying for the French army.³⁴¹ As a recruiting city for several large armies (most dominantly the Prussian and the Imperial army), prosecutions for desertion and illegal recruitment peaked during

³³⁸ King, *Crime and law*, 212-214; Beattie, *Policing and punishment*, 65.

³³⁹ Similar patterns are found elsewhere in early modern Germany: B. Rüdiger, 'Kriminalität während des Dreißigjährigen Krieges in Leipzig. Ein Sonderfall innerstädtischer Kommunikation' in: H. Bräuer und E. Schlenkerich eds., *Die Stadt als Kommunikationsraum. Beiträge zur Stadtgeschichte vom Mittelalter bis ins 20. Jahrhundert* (Leipzig 2001) 609-632.

³⁴⁰ King, *Crime and law*, 212.

³⁴¹ See f.e. Criminalia 1788-1791 (1689). Similar cases: Criminalia 1911 (1692) Criminalia 2492-2493 (1707).

times of war.³⁴² Moreover, fears about roaming soldiers and former soldiers intensified security policies and discrimination against wandering groups.³⁴³ Thus, war could also increase the prosecution of typical male offences, such as desertion, which evened out their decline in other spheres of offending.

Short-term events like war and subsistence crises evidently influenced prosecution patterns, although they did not always have the same effect. Rather than being related to short-term crises, crime patterns in Frankfurt were the result of the endemic poverty of large sections of the population. The majority of offenders belonged to the lower classes of society and lived a mobile lifestyle, either temporarily or permanently. In particular those individuals who were poorly incorporated into the settled community, and thus did not have access to formal and informal relief networks, were vulnerable to prosecution for such offences as theft, vagrancy, etc. Being excluded from the controlling structures of belonging to a sedentary household (whether voluntarily or not) heightened the chances of attracting suspicion by the authorities, and entering the city and trying to settle independently became increasingly difficult.³⁴⁴

A typical example of how social anxieties could influence the prosecution patterns of the authorities can be found in the reactions to illegitimacy and lewdness. Investigations into these offences peaked in the 1750s. This trend was not the result of a real increase in extra-marital pregnancies, which were in fact at a low point during this decade.³⁴⁵ By that time, the prosecution of sexual offences was driven more by financial than moral concerns. Foreign women who were pregnant out of wedlock, and whose illegitimate children were seen as a potential burden on the city's poor relief system, became the primary target of the authority's moral policies in this period. In the 1750s the city council issued or re-issued an ordinance, demanding all foreign *lapsae* (i.e. fallen women) to be expelled from the city.³⁴⁶

More than half of the cases investigated by the *Verhöramt* during this period were related to women who had given birth out of wedlock at least twice. In 1752 Christina Ludwig from Frankfurt was investigated for her third illegitimate child. This time, she stated, the father of the child was a local soldier who had since deserted.³⁴⁷ Anna Margaretha Maurer, another local woman, was investigated a year later in a similar case. She too denounced a local soldier, Johann Michael Vogt,

³⁴² J. Kamp, 'Between agency and force. The dynamics of desertion in a military labour market, Frankfurt am Main 1650-1800' in: M. van Rossum and J. Kamp eds., *Desertion in the early modern world. A comparative history* (London 2016) 49-72, 59.

³⁴³ Kamp, 'Controlling strangers - identifying migrants'.

³⁴⁴ Kamp, 'Female crime', 11-13.

³⁴⁵ W. Hanauer, 'Historische-statistische Untersuchungen über uneheliche Geburten', *Zeitschrift für Hygiene und Infektionskrankheiten* 108 (1928) 656-684, 660-661.

³⁴⁶ The ordinances are printed in the regulations of the consistory from 1774: PO 3946 *Erneuerte Consistorial=Ordnung* 04.01.1774

³⁴⁷ Criminalia 6632 (1752).

as the father of her third illegitimate child.³⁴⁸ Both women were expelled from the city for their transgressions.³⁴⁹ Women were sanctioned with expulsion for having multiple children out of wedlock in earlier and later periods as well, but these cases were usually handled by the lower moral court, and not the criminal investigation office. The fact that in the 1750s these cases *were* transferred to the *Verhöramt*, suggests that there was decreasing tolerance towards such recidivism. During the same period of increased focus on illegitimacy by the *Verhöramt*, there was a broader concern about the city's finances and pressure on the poor relief system from people who should not be eligible to receive relief.³⁵⁰ This anxiety seemed to have encouraged authorities to intensify the prosecution of illegitimacy and for the consistory to transfer more cases to the *Verhöramt*.

Towards the end of the eighteenth century, the share of women offenders declined. It is impossible to determine to what extent this was a long-term trend or simply a short-term decline. Due to a reorganisation of the archives, all criminal cases after 1806 except for the political offences have been destroyed. The number of women declined more drastically than the number of men. With regard to female property offenders, Joachim Eibach found that this decline was primarily caused by the disappearance of local burgher women from the sample (1801-1805). He considered this to be connected to changing gender roles, and the emergence of an ideology of domesticity in which burgher women could participate but other women could not.³⁵¹

Explanations for this pattern have to remain tentative, as the sources are lacking. Evidence for other regions suggests that there was a period of long-term stability with regard to the share of female offenders in the nineteenth century rather than a sharp decline. Rebekka Habermas' work on theft in the nineteenth century shows that in Marburg women still made up a considerable share of property offenders (26.7%), the majority of whom were actually married.³⁵² Marriage, therefore, was not a guarantor for the withdrawal of women from the public sphere, nor from criminality. Gerd Schwerhoff pointed out that available figures for nineteenth-century Prussia showed that the share of women among offenders remained relatively stable at around 20% throughout the period, while female employment rates increased sharply towards the end of the period.³⁵³

³⁴⁸ Criminalia 6760 (1753).

³⁴⁹ For similar cases, see: 6398 (1750) Philippina Dorothea Koch is investigated and expelled for her fifth illegitimate child; Criminalia 6605 (1752) Katharina Hesselbach is interrogated for her three illegitimate children; Criminalia 6763 (1753) Anna Sophia Ilsnerin is interrogated for her third illegitimate child; Criminalia 6914 (1754) Susanna Elisabetha Schmidtin: three illegitimate children; Criminalia 6916 (1754) Anna Catharina Sattlerin: three illegitimate children; Criminalia 6959 (1754) Anna Sara Stollin: two illegitimate children; Criminalia 6986 (1754) Susanna Elisabetha Geiderin : two illegitimate children.

³⁵⁰ See the extensive city council records and administrative notes of senator Senckenberg in: Criminalia 12880 (1756).

³⁵¹ Eibach, *Frankfurter Verböre*, 295.

³⁵² R. Habermas, *Diebe vor Gericht. Die Entstehung der modernen Rechtsordnung im 19. Jh.* (Frankfurt 2008) 34-35, 395-396.

³⁵³ Schwerhoff, *Aktenkundig*, 152-153; E.A. Johnson, *Urbanization and crime. Germany, 1871-1914* (Cambridge 1995) 188-189.

It is not unlikely that the changing gender patterns in Frankfurt during the two final decades of the period under research resulted from the political upheavals from the Revolutionary Wars, which ended with the occupation by the French and loss of the city's independence in 1806. The period between 1789 and 1803 was characterised by social unrest, with riots, social protests and hunger revolts. Local - frequently poor - burgher women played active roles in these massive public gatherings and were not at all relegated to the domestic sphere. With their legitimacy at risk, the authorities were hesitant to quash disturbances with full force in this period, and rather opted for a strategy of conflict control, which explains why so few people received criminal sentences for riots in this period.³⁵⁴

In sum, the fluctuations in female crime patterns in early modern Frankfurt cannot be explained by mono-causal factors. Overall, they were shaped by social crises and poverty, as well as by the prosecution practices of the authorities fostered by their anxieties towards unsettled and 'masterless' people.

Conclusion

The level of women among recorded offences varied considerably throughout early modern Europe. This chapter argued that the different socio-economic and demographic characteristics of the various cities contributed at least in part to this variation. Crime historians argue that the urban context had a considerable influence on the involvement of women in crime, and their chances of being prosecuted. In cities, women (especially those from migratory backgrounds) led relatively independent and public lives and were less incorporated in traditional networks of social control. Scholars found that this combination of independence and vulnerability is of key importance in explaining the extraordinarily high levels of recorded female criminality in cities like Leiden, Amsterdam, London and Glasgow (where women accounted for 30 to 50% of all prosecuted offenders). In Frankfurt, however, the share of women among prosecuted offenders was much lower: they accounted for ca. 22% of all defendants before the *Verhöramt* in the seventeenth and eighteenth centuries.

The chapter has shown that the prosecution practices of the authorities were partially fostered by the socio-economic developments of the period. It was a time in which many people became uprooted, which the authorities perceived as a threat to the existing social order. The level of female involvement in registered crime was characterised both by long-term stability and short-term changes. There was no linear development of decline or increase, as has been suggested for

³⁵⁴ Eibach, *Frankfurter Verböte*, 158, 178.; J. Eibach, 'Arme Frauen – Rebellierende Frauen. Der Aufruhr gegen die Sachsenhäuser Bäcker im Jahr 1801' in: Ursula Kern ed., *Blickwechsel. Frankfurter Frauenzimmer um 1800* (Frankfurt am Main 2007) 78-87.

other places. Rising percentages of female defendants among the recorded offences of the *Verhöramt* were mostly related to property offences, at least in the eighteenth century. The chapter has shown that short-term events like war and subsistence crises evidently influenced prosecution patterns. But their effect was not always the same. Rather than related to short-term crises, crime patterns in Frankfurt were the result of the endemic poverty of large sections of the population. The female crime patterns in early modern Frankfurt were therefore shaped by social crises, poverty and anxieties on the part of the authorities towards unsettled and ‘masterless’ people.

This chapter argued that the dynamics of the precariousness and anonymity of urban life and its effects on female crime varied greatly throughout Europe. The connection between the ‘urban factor’ and high levels of female offending was particularly prevalent in cities where the proportion of single women living independently was high. In Frankfurt, on the other hand, the opportunities for women to settle independently were more restricted. This created a distinct urban crime pattern with relatively low levels of female offending. At the same time, women’s crime patterns in Frankfurt fit the common characteristics found across early modern Europe. For both sexes, the majority of the *Criminalia* dealt with property offences, although for women this was more significant than for men (50% vs 40% respectively). The gender gap was smallest in the category of moral offences and most significant among violent offences. The chapter has argued that the different level at which men and women appeared as defendants before the *Verhöramt* was partially related to the organisational structures of the criminal justice system and gendered notions of what was perceived as troublesome behaviour. Women did not refrain from fighting or assaulting urban officials but were less likely seen as a threat to public order and were therefore not prosecuted by the *Verhöramt*. The following chapters will investigate how the pattern in Frankfurt was shaped by both formal and informal social control.

IV. Transcending dichotomies

Gender, property offending and the 'open house'

The previous chapter has analysed the development of criminality in seventeenth- and eighteenth-century Frankfurt am Main. It has shown that there were both differences and similarities in female crime patterns in the city compared to general trends in early modern Europe: most women were prosecuted for property offences and their share among this category of crime was higher than their overall contribution to registered criminality. This chapter will take a closer look at the socio-spatial contexts in which men and women committed theft and other related offences. Traditionally, historians argued that women's stealing was different from men's with regard to the methods they applied, the type of goods they stole, and their motivation. In short, women's thieving was supposedly connected to their dependent role in a family-based economy and confinement to the domestic space. Due to their restricted public roles, it was argued, women were less likely to commit offences. More recently, such explanations are no longer considered to be sufficient since they deny the complex meaning of private and public for this period.

The previous chapter has shown that in Frankfurt the majority of women were incorporated into male-governed households, and few women lived independently. The emphasis on the household as the central location for social order meant that authorities strongly relied on social control *within* the domestic sphere. The question is how the informal control within the household (which is usually associated more with rural areas) affected women's criminal patterns in an urban context. On the one hand, the restrictions on women's independence might have protected them from the precariousness of urban life they could otherwise have experienced. On the other hand, it could also mean that it increased the likeliness of women being subjected to informal control, rather than formal prosecution by the criminal justice system.

The first part of this chapter is devoted to a discussion of the historiography and the legal context within which property offences were prosecuted in early modern Frankfurt. It then moves on by investigating the different types of property crimes committed by men and women, and the social profile of the offenders. Subsequently, the locations of theft and patterns of distribution are analysed to investigate if and how the gendered socio-economic spheres contributed to differences in criminality. Finally, the last part of this chapter discusses the importance of informal control within the household in the context of servants' thefts. The chapter is based on the study of the registers of the Criminalia between 1600 and 1806. As these contain only limited information on factors such as the social profile of the offender (age, origin, profession, marital state) or the context of the crime (location, stolen goods etc.), this information is extracted from additional sample years,

which have been studied in depth both quantitatively as well as qualitatively. As the criminal records of the seventeenth century are often limited in the information they contain, this part of the study is restricted to the eighteenth century only. In order to have a similar amount of data for men and women, the sample of women contains an additional year. The sample covers the following years³⁵⁵: 1700(01); 1720(21); 1740(41); 1760(61); 1780(81). The sample of 1721 contains many cases which are related to thefts and plundering after the great fire in the Jewish Ghetto. These cases have been excluded from the calculations because they derived from an exceptional context: these were mostly a crime committed by local (married) citizens and men and women participated roughly in equal numbers. While this is worth studying on its own, the cases have been excluded as it would skew any comparison, in particular because the men were not consulted for this additional sample year. In total, the sample contains 183 cases (some of which contained several thefts prosecuted at the same time), 132 male offenders and 137 female offenders.

Female property offending and the public/private dichotomy

For a long time, historians argued that women's unlawful appropriation was considerably different from that of men because of their contrasting economic and public roles. Barbara Hannawalt was one of the first historians to deal with gender differences in the rate of theft in the past. Studying thefts in late medieval England, she argued that women's thefts were directly related to household concerns.³⁵⁶ John Beattie argued in his study on female offending in eighteenth-century Surrey and Sussex that 'for women even more than for men, it was theft and related offences that most often brought them into trouble with the law'.³⁵⁷ However, the patterns of women's property offending, he stated, were distinctly different from men's in the sense that they were not likely to use violence or force and that 'women's crimes were on the whole much less serious'.³⁵⁸

The conclusions drawn by Beatty and Hannawalt in the '70s influenced the image of women's property offending for a long time. Pieter Spierenburg argued along similar lines to Hannawalt, stating that women's theft in early modern Amsterdam was connected to their household roles and providing food for the family.³⁵⁹ Otto Ulbricht and Robert Jütte, who were among the first German historians to study early modern female crime in Europe in the '90s, stated that women's offences were more common, mundane and conformist than those of men. When

³⁵⁵ The years behind brackets refer to the extra sample for women.

³⁵⁶ B. Hannawalt, 'The female felon in fourteenth-century England', *Viator. Medieval and Renaissance Studies* 5 (1974) 253-268.

³⁵⁷ J.M. Beattie, 'The criminality of women in eighteenth-century England', *Journal of Social History* 8:4 (1975) 80-116, 89.

³⁵⁸ Beattie, 'Criminality of women', 96.

³⁵⁹ P. Spierenburg, 'How violent were women? Court cases in Amsterdam, 1650-1810', *Crime, History & Societies* 1:1 (1997) 9-28, 13.

women committed crimes, they did so differently: with less violence and usually together with someone else. They took on the role of helpers and accomplices, rather than being pro-active criminals in their own right. Apart from refraining from the use of violence, women supposedly also committed more simple thefts, stealing items of low monetary value but of immediate utility value.³⁶⁰ For sixteenth century Cologne Gerd Schwerhoff, argued that such differences were related to the restricted scope of action of women. Offences such as purse cutting, burglary or church theft required certain specialised skills, which women possessed to a much lesser degree, in correspondence with a gender division of labour in the formal economy.³⁶¹

More recently, research has demonstrated that it is problematic to relate women's property offending to their restricted public roles. First, historians like Garthine Walker and Trevor Dean argue that portraying male and female patterns of appropriation as a dichotomy is too restricted. As Walker has shown for seventeenth-century Cheshire and Dean has argued for medieval Bologna, property offences by men and women shared more similarities than difference, both in the ways they were carried out, as well as the context within these crimes were committed. Violent robberies are often seen as the epitome of male property crime, while they only constituted a minority of their offences. Moreover, both sexes particularly committed offences that were related to their own social and economic networks and activities.³⁶² For early modern Holland, Manon van der Heijden argued along similar lines, stating that women used their labour networks in order to steal or distribute stolen goods. Women usually committed thefts in places they knew through their work, and they usually committed thefts in other people's homes.³⁶³

Second, scholars have questioned the usefulness of the concept of public and private spheres for the early modern period. According to modern notions, the household clearly represents a private space, but this was not the case for the early modern period. In fact, boundaries between the private and the public were much more fluid.³⁶⁴ Due to the importance attached to early modern households as the central location for social order, urban authorities and neighbours

³⁶⁰ O. Ulbricht, 'Einleitung. Für eine Geschichte der weiblichen Kriminalität in der Frühen Neuzeit oder: Geschlechtergeschichte, historische Kriminalitätsforschung und weibliche Kriminalität' in: O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 1-37, 19; R. Jütte, 'Geschlechtsspezifische Kriminalität im Späten Mittelalter und in der Frühen Neuzeit', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 108 (1991) 86-116, 107-108.

³⁶¹ G. Schwerhoff, 'Geschlechtsspezifische Kriminalität im frühneuzeitlichen Köln' in: O. Ulbricht ed. *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 83-115, 94.

³⁶² G. Walker, *Crime, gender and social order in early modern England* (Cambridge 2003) 160, 208-209; T. Dean, 'Theft and gender in late medieval Bologna', *Gender & History* 20:2 (2008) 399-415.

³⁶³ M. van der Heijden, *Misdadige vrouwen. Criminaliteit en rechtspraak in Holland 1600-1800* (Amsterdam 2014) 96.

³⁶⁴ G. Walker and J. Kermode, 'Introduction' in: G. Walker and J. Kermode eds., *Women, crime and the courts in early modern England* (London 1994) 1-24, 7, 12; M. van der Heijden, 'Women, violence and urban justice in Holland, c. 1600-1838', *Crime, History & Societies* 17:2 (2013) 71-100, 95-96; A. Vickery, 'Golden age to separate spheres? A review of the categories and chronology of English women's history', *The Historical Journal* 36:2 (1993) 383-414; H. Wunder, 'Herrschaft und öffentliches Handeln von Frauen in der Gesellschaft der Frühen Neuzeit' in: U. Gerhard ed. *Frauen in der Geschichte des Rechts* (München 1997) 27-54.

were much more invested in meddling with household affairs if they were considered to endanger this social order.³⁶⁵ Simultaneously, it also implied that household authorities, in particular the male head of the household, were expected to govern their households properly. This ‘governing’, therefore, was not a private matter, but served an important public function in the maintenance of social order.³⁶⁶

In order to underscore both the material and social openness of early modern households, Joachim Eibach introduced the concept of ‘Open House’ (*das ‘offene Haus’*).³⁶⁷ Due to the public importance of households, the domestic was to a large degree a permeable space. This openness was crucial to ensure the household as a central location of social order, and the role of the head of the household in maintaining this. With his concept, Eibach replaced the older model of ‘*das Ganze Haus*’ – the total household. The concept was introduced by Otto Brunner in the late 1950s, who used it to refer to the household not just as a social, but as an economic unit as well.³⁶⁸ Since then, the model has evolved considerably, and was criticised by later historians for portraying a too rigid ideal of early modern households as self-sufficient economic units.³⁶⁹ Older notions of *das Ganze Haus* portrayed the household as an (almost) autonomous closed legal space in which the housefather ruled over his subjects. This does not correspond with the public functions of household control, in which the housefather himself also had to uphold norms of respectability and was bound by public responsibilities.³⁷⁰ Thus, even informal control by household authorities had a public connotation, at least in the eyes of early modern authorities.

In order to gain a better understanding of gendered patterns of property offending, the concept of the ‘open house’ is extremely relevant, particularly in the case of early modern Germany.

³⁶⁵ C.A. Hoffmann, ‘Neighborhood in European cities’ in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe*. Vol. 1: 1500-1800 (Columbus OH, 2004) 309-327; H.R. Schmidt, ‘Hausväter vor Gericht. Der Patriarchalismus als zweischneidiges Schwert’ in: M. Dinges ed., *Hansväter, Priester, Kastrate. Zur Konstruktion von Männlichkeit in Spätmittelalter und Früher Neuzeit* (Göttingen 1998) 213-236; J. Eibach, ‘Das Offene Haus. Kommunikative Praxis im sozialen Nahraum der europäischen Frühen Neuzeit’ *Zeitschrift für Historische Forschung* 38:4 (2011) 621-664.

³⁶⁶ Walker, *Crime, Gender and social order*, 9-13; J. Hardwick, *The practice of patriarchy. Gender and the politics of household authority in early modern France* (University Park 1998); K. Hassan Jansson, ‘Haus und Haushalt im frühneuzeitlichen Schweden. Geschichtswissenschaftliche Trends und neue Zugänge’ in: J. Eibach, I. Schmidt-Voges eds., *Das Haus in der Geschichte Europas. Ein Handbuch* (Berlin 2015) 113-129, 123-128.

³⁶⁷ Eibach, ‘Das Offene Haus’; J. Eibach, ‘Das Haus: zwischen öffentlicher Zugänglichkeit und geschützter Privatheit (16. – 18. Jahrhundert)’ in: S. Rau and G. Schwerhoff eds., *Zwischen Gotteshaus und Taverne. Öffentliche Räume im Spätmittelalter und Früher Neuzeit* (Köln 2004) 183-205.

³⁶⁸ O. Brunner, ‘Das ‘ganze Haus’ und die alteuropäische ‘Ökonmik’ in: O. Brunner ed., *Neue Wege der Verfassungs- und Sozialgeschichte* (2nd edition: Göttingen 1968) 103-127.

³⁶⁹ I. Schmidt-Voges, ‘Das Haus in der Vormoderne’ in: J. Eibach, I. Schmidt-Voges eds., *Das Haus in der Geschichte Europas. Ein Handbuch* (Berlin 2015) 1-18; C. Opitz, ‘Neue Wege in der Sozialgeschichte? Ein kritischer Blick auf Otto Brunners Konzept des “Ganzen Hauses”’, *Geschichte und Gesellschaft* 19 (1994) 88-98; H.R. Schmidt, ‘“Nothurfft vnd Hußbruch”. Haus, Gemeinde und Sittenzucht im Reformiertentum’ in: A. Holzem and I. Weber eds., *Ehe – Familie – Verwandtschaft. Vergesellschaftung in Religion und sozialer Lebenswelt* (Paderborn 2008) 301-328; I. Schmidt-Voges, ‘Strategien und Inszenierungen häuslichen Lebens zwischen 1750 und 1820. Eine Einführung’ in: I. Schmidt-Voges eds., *Ehe – Haus – Familie. Soziale Institutionen im Wandel 1750-1850* (Köln 2010) 9-27.

³⁷⁰ Eibach, ‘Das Offene Haus’, 633.

Of course, the patriarchal household as a representation of social and public order was not unique to Germany, but rather existed across Europe.³⁷¹ However, more than in other countries, *das Haus* in Germany embodied a legal entity and a unit of strongly regulated social control. As a result, both the internal social control exercised by the head of the household over his/her dependents, as well as the external control of authorities in neighbours in household affairs, was stronger than elsewhere.³⁷² As the previous chapter demonstrated, the majority of women in early modern Frankfurt were indeed incorporated into a male-governed household. This chapter, therefore, discusses how the centrality of the household impacted gendered differences among recorded property offences, both in the way that the crimes were committed as well as in the way they were controlled.

Until now most research on property offending in early modern Germany has focused largely on the study of robberies and thefts by gangs of bandits and vagrants, and questions to what extent these should be characterised as professional and well-organised gangs that are part of a criminal underworld.³⁷³ Within this context, the role of women has been relatively well studied, and has moved away from a perspective that depicts women solely as accomplices to male crimes. Quite the contrary: in some cases, women even functioned as heads of ‘gangs’.³⁷⁴ Similarly, Florike Egmond has demonstrated based on research for the early modern Netherlands that women functioned as the ‘social glue’ in criminal gangs.³⁷⁵

More ‘common’ and everyday property offences have received somewhat less attention, and their study (with the exception of the study of domestic theft) has remained largely gender neutral or has analysed women’s property offences only in comparison to those of men, in which

³⁷¹ Walker, *Crime, Gender and social order*, 9-13; J. Hardwick, *The practice of patriarchy. Gender and the politics of household authority in early modern France* (University Park 1998); T. Kuehn, *Family and gender in Renaissance Italy 1300-1600* (Cambridge 2017) 28-33; K.A. Lynch, *Individuals, families, and communities in Europe, 1200-1800. The urban foundations of western society* (Cambridge 2003) 153-155. Also see the contributions on various European countries in: J. Eibach, I. Schmidt-Voges eds., *Das Haus in der Geschichte Europas. Ein Handbuch* (Berlin 2015).

³⁷² Ogilvie, *Bitter living*, 63, 311-312; Rublack, *Crimes of women*, 8-9; M. Wiesner, *Gender, church, and state in early modern Germany* (Harlow 1998) 94-101.

³⁷³ E.g. U. Danker, *Räuberbanden im Alten Reich um 1700. Ein Beitrag zur Geschichte von Herrschaft und Kriminalität in der Frühen Neuzeit* (Frankfurt am Main 1988); C. Küther, *Räuber und Gauner in Deutschland. Das organisierte Bandenwesen im 18. und frühen Jahrhundert* (Göttingen 1976); G. Fritz, *Eine Rotte von allerhandt rauberischem Gesindt. Öffentliche Sicherheit in Südwestdeutschland vom Ende des Dreißigjährigen Krieges bis zum Ende des alten Reiches* (Osfildern 2004); K. Härter, *Policey und Strafjustiz in Kurmainz. Gesetzgebung, Normdurchsetzung und Sozialkontrolle im Frühen Neuzeitlichen Territorialstaat* (Frankfurt am Main 2005); G. Schwerhoff, ‘Karrieren im Schatten des Galgens. Räuber. Diebe und Betrüger um 1500’ in: S. Schmitt and M. Matheus eds., *Kriminalität und Gesellschaft in Spätmittelalter und Neuzeit* (Stuttgart 2005) 11-46.

³⁷⁴ E. Wiebel, ‘Die “Schleiferbärbel” und die “Schwarze Lise”. Leben und Lebensbeschreibungen zweier berühmter Gaunerinnen des 18. Jahrhunderts’, in: A. Blauer and G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 759-800; Fritz, *Öffentliche Sicherheit*, p. 227-229; A. Blauert, *Sackgreifer und Beutelschneider. Die Diebesbande der Alten Lise, ihre Streifzüge um den Bodensee und ihr Prozeß 1723* (Konstanz 1993).

³⁷⁵ On the role of women in organised crime in the early modern Netherlands also see: F. Egmond, ‘Between town and countryside. Organized crime in the Dutch Republic’ in: E.A. Johnson and E.H. Monkkonen eds., *The civilization of crime. Violence in town and country since the middle ages* (Chicago 1996) 138-152, 144.

the latter was considered as the norm.³⁷⁶ In her work on female crime in seventeenth-century Württemberg, Ulinka Rublack argued that women's property offences were characterised by various degrees of opportunities and constraints according to their social standing: thefts by servants differed from those by vagrant women, which in turn differed from local and married women.³⁷⁷ While her analysis offers many fruitful insights, her findings are not contrasted with the crime patterns of men, and therefore largely stand on their own.

For Frankfurt it is possible to build upon Joachim Eibach's earlier study of property crimes in eighteenth-century Frankfurt.³⁷⁸ His very rich chapter offers much contextualisation and shows that property offences during this period were *grosso modo* committed out of poverty ('*Armutskriminalität*'). The types of offences committed reflected the characteristics of the city as a place of trade and commerce, which was particularly true for cases of fraud. There was no large-scale organised gang activity in the city, nor were there any signs of an existing 'underworld', such as has been observed for other larger eighteenth-century metropolises or the nineteenth century.³⁷⁹ Eibach's analysis of property offending remained gender neutral at large, apart from a section devoted to domestic theft and a quantitative assessment of the share of women among different types of property offences. His characterisation of women's property offences followed the general traditional historiography, arguing that women committed more low-risk, ad-hoc, and 'unspectacular' offences than men.³⁸⁰

This chapter follows up on recent studies which highlight the similarities, rather than the differences of male and female offences, and reconsiders the thefts of women in early modern Frankfurt. Historians have frequently pointed out that the dichotomy between male/public and female/private spheres does not hold for the early modern period, but that boundaries between the two were fluid. Gender differences in relation to locations of theft and types of stolen goods did not result from women's dependent role in a family-based economy but were related to their

³⁷⁶ For the early modern period Peter Wettmann-Jungblut's study on property offending in South-West Germany largely stands on his own. In other cases, single chapters or articles are devoted to the study of property crimes, but no monographs. P. Wettmann-Jungblut, *Der nächste Weg zum Galgen? Eigentumskriminalität in Südwestdeutschland 1550-1850* (Saarbrücken 1997); O. Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung. Hausdiebstahl von Mägden in Schleswig-Holstein vom 16. bis zum 19. Jahrhundert' in: O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 139-170; A. Griesebner, 'Verbannung statt Todesstrafe? Diebstahlsprozesse aus dem Erzherzogtum Österreich unter der Enns im 18. Jahrhundert', *WerkstattGeschichte* 42 (2006) 5-24; G. Schwerhoff, *Köln im Kreuzverhör. Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt* (Bonn 1991) 344-361; J. Eibach, *Frankfurter Verböte. Städtische Lebenswelten und Kriminalität im 18. Jahrhundert* (Paderborn 2003) 287-374.

³⁷⁷ U. Rublack, *The Crimes of women in early modern Germany* (Oxford 1999) 92-93.

³⁷⁸ Eibach, *Frankfurter Verböte*, 287-374.

³⁷⁹ H. Shore, *London's criminal underworlds, c. 1720 – c. 1930. A social and cultural history* (Basingstoke 2015); R.J. Evans, *Tales from the German underworld. Crime and punishment in the 19th century* (New Haven 1998).

³⁸⁰ Eibach, *Frankfurter Verböte*, 324.

broad economic activities and contemporary perceptions of gender which provided easier access to certain spaces than others.

Legal norms and prosecution practices

Before we can comment on the various types of unlawful appropriation engaged in by men and women, it is necessary to take a look at the legal norms regarding the prosecution of property crimes. The *Verhöramt* only investigated property offences from a certain level. Moreover, there was the possibility of jurisdictional competition with regard to the prosecution of 'rural' property offences. However, there were no clear-cut regulations that enable the historian to reconstruct the jurisdictional boundaries of the *Verhöramt* in relation to property offences.³⁸¹ Uncertainties arise, for example, with regard to differentiating between different types of property offences. In early modern England there were numerous statutes that clearly defined various types of theft, differentiating between burglary, grand theft, petty theft, pickpocketing, shoplifting and so on.³⁸² In the early modern German context, however, the legal norms with regard to property offences (and other offences in general) were defined less strictly, and were therefore more open to interpretation and debate by jurists and law enforcement.³⁸³

Frankfurt's own legal statute, the *Erneuerte Reformation*, stated that all criminal cases should be handled according to the *Carolina* (the criminal law code of Emperor Charles V from 1532), and Frankfurt's own legal traditions.³⁸⁴ In articles 157-175, the *Carolina* listed various types of theft and their prescribed punishment. The *Carolina* differentiated between simple theft (*einfachen Diebstahl*) and qualified theft (*qualifizierten Diebstahl*). Simple theft was further distinguished between secret and public theft, and between grand (five guilders and more) and petty thefts (below five guilders). A qualified theft was considered any case of repeat offending or appropriation with the use of weapons, or through breaking or entering a building (*durch einsteigen oder erbrechen*). The prescribed punishments ranged from the pillory and banishment to the death penalty. Offenders younger than 14 were spared the death penalty, as were offenders who stole out of starvation (article 166 '*Stelen in rechter hungersnot*').³⁸⁵ In addition to this, the *Carolina* separately listed theft from fields, theft of wood, theft of fish, church theft, theft from the poor chest, and misappropriation (articles 167-

³⁸¹ The following is primarily based on Eibach, *Frankfurter Verböte*, 67-71.

³⁸² C. Emsley, T. Hitchcock and R. Shoemaker, 'Crime and Justice - Crimes Tried at the Old Bailey', Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 16 April 2017).

³⁸³ H. Janßen, *Der Diebstahl in seiner Entwicklung von der Carolina bis zum Ausgang des 18. Jahrhunderts* (Göttingen 1969).

³⁸⁴ *Der Statt Franckfurt am Mayn erneuerte Reformation. Wie die Anno 1578 außgegangen und publicirt/Jetzt abermals von neuem ersehen/an vielen unterschiedlichen Orten geendert/ verbessert und vermehrt* (Frankfurt am Main 1611) §10.8.

³⁸⁵ F. Dorn, "'Not kennt kein Gebot'. Der Notdiebstahl ('Stehlen in rechter Hungersnot') in der frühneuzeitlichen Strafrechtsdogmatik' in: S. Schmidt ed., *Arme und ihre Lebensperspektiven in der Frühen Neuzeit* (Frankfurt am Main 2008) 207-236.

175). Depending on the time of day and the method of appropriation, these should either be treated as theft, or punished with fines or other civil punishments (*bürgerliche Strafen*).

In addition to the *Carolina*, Frankfurt's legal constitution (1578/1611) listed several types of fraud, which were, however, not considered criminal but civil offences.³⁸⁶ During the early modern period, additional police ordinances were issued by Frankfurt's city council regarding the theft from vineyards, *Feldgüter*, theft from the gardens surrounding the city, and receiving stolen goods.³⁸⁷ According to the regulations of the *Verhöramt* from 1788, the investigation office was in charge of investigating 'all malicious damage to other people's property, including all types of fraud, usurious contracts, wanton bankruptcies, and thefts in particular'.³⁸⁸ Joachim Eibach noted that it is remarkable that the instruction specifically mentioned offences like usury, forgery and bankruptcy. While such offences reflect the importance of Frankfurt as a centre for trade and finance, they only constituted a minority of the crimes prosecuted by the *Verhöramt*.³⁸⁹ Many trade disputes, including complaints concerning usury or bankruptcy were handled by the aldermen in the civil court, rather than being investigated by the *Verhöramt*.³⁹⁰ More 'everyday' crimes such as burglary, housebreaking, domestic theft, shoplifting, pickpocketing or even robbery were not mentioned separately in the office's regulations of 1788, even though the investigation records of the *Verhöramt* show that these were much more numerous than other property crimes. In the registries of the investigation offices, too, there was often no differentiation made between the different types of theft. Burglary, domestic theft, robbery etc. were mostly only registered as *furtum* without further specification.

³⁸⁶ *Der Statt Franckfurt am Mayn erneuerte Reformation* (1611) §10.1.

³⁸⁷ E.g. PO 1822 *Articul und Ordnung der Goltschmidt Gesellschaft* 18.11.1613; PO 1828 *Der Juden Stettigkeit* 00.00.1614; PO 1888 *Männiglich soll sich anderer Leuten Weinbergen, Gärten und anderer Feldgüter enthalten* 19.08.1617; PO 1964 *Daß niemandt die gestohlenen unnd geraubte Sachen von den Soldaten kauffen solle* 17.01.1622; PO 3394 *Straffe der Feld=Dieben; und Belohnung der Denuncianten derselben* 22.04.1751.

³⁸⁸ PO 4346 *Verordnung und Unterricht für das peinliche Verbör=Amt der Reichs Stadt Frankfurt* 04.12.1788, §5. Original: 'boshaftige Beschädigungen des Vermögens anderer, wohin alle Arten von Falsis, wucherliche Contracte, muthwillige Banquerots, und Diebstähle insonderheit gehören'.

³⁸⁹ Eibach, *Frankfurter Verböre*, 67-71.

³⁹⁰ Frankfurt's civil law proceedings have recently gained attention through the lens of the Reichskammergerichtsforschung. C.O. Schmitt, *Säuberlich banquerott gemacht. Konkursverfahren aus Frankfurt am Main vor dem Reichskammergericht* (Köln 2016); A. Amend-Traut, *Wechselverbindlichkeiten vor dem Reichskammergericht. Praktiziertes Zivilrecht in der Frühen Neuzeit* (Köln 2009). On Frankfurter women and their uses of justice in disputes concerning debts (amongst others): A. Baumann, 'Frauen vor dem Reichskammergericht' in: F. Battenberg and B. Schildt eds., *Das Reichskammergericht im Spiegel seiner Prozessakten. Bilanz und Perspektiven der Forschung* (Köln 2010) 93-115. Also see: A. Baumann, 'Spielschulden und ihre Folgen – oder: die Funktion des Frankfurter Pfandhauses im 18. Jahrhundert' in: A. Amend-Traut, A. Cordes and W. Sellert eds., *Geld, Handel, Wirtschaft. Höchste Gerichte im Alten Reich als Spruchkörper und Institutionen* (Berlin 2013) 3-22; M. Rothmann, 'Schulden vor Gericht. Die Frankfurter Messegerichtsbarkeit und der Messeprozess in Mittelalter und beginnender Früher Neuzeit' in: A. Amend-Traut et al. eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München 2008) 285-303; G. Schlick-Bamberger, 'Die Audienzen des Jüngeren Bürgermeisters in der Reichsstadt Frankfurt am Main. Ein Untergericht als Spiegel des reichsstädtischen Alltagslebens im 18. Jahrhundert' in: A. Amend-Traut et al. eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München 2008) 9-38.

The *Verhöramt* did not investigate all types of property offences in Frankfurt's territory. Thefts of natural resources from communal grounds, illegal wood gathering, poaching, stealing grain from agricultural fields etc. were more likely to be investigated by the city's *Ackergericht* or the *Landgericht*, which were in charge of minor offences in the city's territory.³⁹¹ Even though the theft of agricultural products or other natural resources received considerable attention from the authorities during the early modern period, which is evident from the numerous police ordinances issued related to this topic, the actual prosecution policies appear rather lenient. Or to put it differently: the authorities were rarely inclined to prosecute such offences with a formal criminal procedure by the *Verhöramt* and/or to impose penal punishments.³⁹² The *Criminalia* therefore primarily reflect property offences committed in an urban context.³⁹³

In addition to a selection based on the type of property offence, there was also a selection based on the gravity of the crime. The *Verhöramt* only investigated offences that required a formal criminal procedure. Thus, petty property offences did not fall within the office's jurisdiction and were handled by other institutions. The legal statutes do not make clear, however, what would be considered a minor property offence and what would not. According to the *Carolina*, the limit between a grand and petty theft was five guilders. Legal commentators often debated on this limit in the following decade and centuries, and it is not clear whether the authorities in Frankfurt maintained the limit set by the *Carolina* either. Joachim Eibach suggested the possibility that the *Verhöramt* followed the same guidelines as were set for the civil law procedures before the burgomaster sessions, and considered that the criminal investigators adhered to a benchmark of thefts above the value of five guilders.³⁹⁴ We know for the early nineteenth century that larcenies below the value of twenty guilders were not investigated by the *Verhöramt*, but by a lower police office which was not established yet in the nineteenth century.

How the boundaries were drawn exactly remains unclear, and it seems that rather than following a fixed amount the authorities took the offender's social status into account. The sources show that it was not uncommon for the petty thefts to be investigated by the criminal investigation office, some of which were even sanctioned with penal punishments.³⁹⁵ In 1781, for example, Susanna Gerlingin, an unemployed maid from Eichenbühl, was condemned to the poorhouse for a little over a month, birched twenty-five times and expelled from the city, because she had

³⁹¹ J.H. Faber, *Topographische, politische und historische Beschreibung der Reichs- Wahl- und Handelsstadt Frankfurt am Mayn*. Vol. 2. (Frankfurt am Main 1789) 94-95, 121.

³⁹² Ulinka Rublack found similar practices in Southwest Germany: *Crimes of women*, 94.

³⁹³ Eibach, *Frankfurter Verböre*, 70.

³⁹⁴ Eibach, *Frankfurter Verböre*, 69-70.

³⁹⁵ K. Meinhardt, *Das peinliche Strafrecht der freien Reichsstadt Frankfurt am Main. Im Spiegel der Strafpraxis des 16. und 17. Jahrhunderts* (S.L. 1957) 229.

pickpocketed 14.5 *Batzen* (less than a guilder) from the Jewess Süßchen of Mainz.³⁹⁶ A year earlier, Wolff from Amsterdam was sentenced to forced labour in the trenches after which he was banished for the theft of a peasant's wallet which contained two guilders.³⁹⁷ There were many cases in which people labelled by the authorities as paupers, vagrants etc. were expelled after being investigated on suspicion of theft, but where the investigation office had failed to find sufficient proof to allow for a formal criminal procedure and conviction.³⁹⁸ In contrast to such cases, Joachim Eibach referred to a legal opinion in which the syndic Johann Simon Seyfried argued that two servants who were indicted by their master, baker Johann Georg Schluckbier, for the theft of some flour could not be taken into custody and subjected to a formal criminal procedure because the supposed theft was not worth more than some small change.³⁹⁹

Gerd Schwerhoff found a similar pattern for sixteenth-century Cologne. Authorities did not follow the normative distinction between grand and petty theft as regulated in the *Carolina*. Instead they took the social status of the offenders into account: unlike vagrants and foreigners, burghers and long-standing residents had much better chances of avoiding execution even if the law required it.⁴⁰⁰ In Frankfurt, too, the mobile poor were much more likely to become subject to criminal investigation for minor property offences, and therefore appear in the investigation records, than locals.

Furthermore, we must consider that there is a considerable *dark number* when it comes to property offences. Cases in which the offender was unknown were hardly ever reported to the authorities. Instead, victims would post an advertisement in the local newspaper promising a reward to anyone who would help them retrieve their items.⁴⁰¹ Victims that caught a thief red-handed were also inclined to handle the case without necessarily notifying the authorities because this could be time consuming and delay the retrieval of one's properties. In the eighteenth century, the authorities in Frankfurt issued several police ordinances urging victims not to act on their own

³⁹⁶ Criminalia 9264 (1781).

³⁹⁷ Criminalia 9174 (1780). Other examples of cases of minor theft that were investigated by the Verhöramt: Criminalia 5088 (1740) Anna Elisabeth Scheffner, a local denizens daughter was investigated for the theft of clothes with an approximate value of three guilders; Criminalia 5091 (1740) Susanna Clara Mack was investigated for the theft of three guilders worth of clothing.

³⁹⁸ On the increasing legal insecurity experienced by people labelled as vagrants or ethnic minorities and the increasing use of expulsion as a regulatory measure instead of a formal criminal conviction in the course of the early modern period, see: Härter, *Policey und Strafrecht*, 640-641; K. Härter, 'Die Sicherheit des Rechts und die Produktion von Sicherheit im frühneuzeitlichen Strafrecht' in: C. Kampmann and U. Niggemann eds., *Sicherheit in der Frühen Neuzeit. Norm – Praxis – Repräsentation* (Köln 2013) 661-672.

³⁹⁹ Criminalia 5622 (1743) as quoted in: Eibach, *Frankfurter Verböte*, 70.

⁴⁰⁰ Schwerhoff, *Köln im Kreuzverhör*, 350.

⁴⁰¹ See for example the advertisements in the Ordentliche wochentliche Franckfurter Frag- und Anzeigungs-Nachrichten (later referred to as Franckfurter Frag- und Anzeigungs-Nachrichten) listed under 'Sachen so gestohlen wurden' – 'Items that have been stolen'. Many of these papers have been digitised and can be consulted through Google Books or the Princeton digital library. See for an overview: <https://de.wikisource.org/wiki/Hessen/Zeitungen> (retrieved April 2017).

account and punish offenders informally, but to report thefts to the *Verhöramt*.⁴⁰² This points to a certain reluctance by victims to involve the authorities in property offences, at least in those cases where they felt it was more efficient to settle the case with the offender themselves. It has been suggested by historians that particularly thefts within the community by community members were more likely to be sanctioned informally.⁴⁰³ Ulinka Rublack also argued that because women did not carry weapons, confrontations with female thieves were less risky for victims than confrontations with male thieves, leading to a larger number of unreported thefts by women than by men.⁴⁰⁴ In a later part of this chapter I will deal in greater detail with the gendered means of informal control of domestic thefts by servants, which were especially likely to be handled informally.

In sum, the legal norms in early modern Frankfurt only broadly distinguished between various types of property offences. The regulation of the *Verhöramt*, for example, did not differentiate between burglary, shoplifting or larceny, and it appears that distinctions between grand and petty theft were not systematically applied.⁴⁰⁵ This is also reflected in the registration of crimes. Offences registered as *furtum* (theft) could refer to simple thefts, shoplifting, burglary, domestic theft etc. In some cases, an additional description enabled further specification, but this was not done systematically. Additionally, it must be remembered that due to the organisational structures, offences that could be distinguished as ‘rural’ were less likely to end up before the *Verhöramt* and therefore do not show up in the *Criminalia*. And last, but not least, although the prosecution of property offences rose considerably in the eighteenth century (as we will see below), many offences remained unreported – either because the offender was unknown, or because the case was settled informally without the intervention of the authorities.

Gendered patterns of property crimes

Now that we have established which type of property offences belonged to the jurisdiction of the *Verhöramt*, it is time to take a closer look at the gender patterns that can be discerned in the *Criminalia*. It is clear that, numerically speaking, women committed fewer property offences than men. But does this justify a distinction of women as petty criminals and men as hard-core organised robbers? The findings of the *Criminalia* for the seventeenth and eighteenth centuries confirm

⁴⁰² PO 3577 *Straffe der Feld=dieben* 04.08.1761; PO 3581 *Anzeigepflicht Bevölkerung Diebstahl* 27.08.1761; PO 3657 *Verbotene thätliche Selbsthilfe gegen Diebe* 09.02.1764; PO 3872 *Verbotene thätliche Selbsthilfe gegen Diebe* 10.09.1771; PO 4397 *Anzeigepflicht* 16.10.1789; PO 4830 *Anzeigepflicht* 05.04.1800.

⁴⁰³ H. Schnabel-Schüle, *Überwachen und Strafen im Territorialstaat. Bedingungen und Auswirkungen des Systems strafrechtlicher Sanktionen im frühneuzeitlichen Württemberg* (Köln 1997) 271.

⁴⁰⁴ Rublack, *Crimes of women*, 28.

⁴⁰⁵ This was not unique to Frankfurt. See e.g.: M. Thomsen, *Zwischen Hauptwache und Stockhaus. Kriminalität und Strafjustiz in Thorn im 18. Jahrhundert* (Marburg 2006) 187.

previous findings by historians: differences with regard to the type of thefts men and women engaged in were less distinct than is often assumed.⁴⁰⁶

Table 1 shows the types of property offences men and women were prosecuted for based on the contemporary registers of the *Criminalia*. These only allow for a broad categorisation since *furtum* or *Diebstahl* included many different types of theft (such as burglary, pickpocketing etc.) which cannot be distinguished based on the registries. A first broad categorisation based on the registers of the *Criminalia* shows that in proportion to their overall activity in property offences, both men and women predominantly committed offences registered as *furtum*. For women this accounted for 83% of all their property offences, and for men 72.9%. The table shows that although men were more likely to be prosecuted for offences like fraud or (accessory to) robbery, the differences are less marked than might be expected (8% vs 5.5% and 7.6% vs 3.3% respectively).⁴⁰⁷ Moreover, it also shows that these offences only constituted a relatively small percentage of male property offending. Violent robbery, often seen as a distinguishing feature of male thieving, was not the defining characteristic of male property offenders in early modern Frankfurt. Due to its relatively small territory, there were hardly any cases of stereotypical highway robbery or large gangs of thieves, who generally operated primarily in the countryside.⁴⁰⁸ Historians have shown how women played a crucial role in the organisation of ‘professional’ gangs, and that these were certainly not a male-dominated world.⁴⁰⁹ In the seventeenth century, the share of property crimes labelled as robberies was relatively higher among both male and female recorded offences, but this was mainly caused by a decline in other forms of theft. A third type of offence for which men were prosecuted proportionately more frequently than women, was poaching and other related offences. It is likely that this was a result of judicial organisation, rather than gendered behavioural patterns. The majority of these offences would have been investigated by the *Landamt* or the *Ackergericht*, which were lower courts and may have included more women. Evidence in criminal records demonstrates that women were often prosecuted for offences like collecting firewood illegally, which was related to their tasks within the household and the rural economy.⁴¹⁰ Overall, there appear to have been more similarities than differences between men and women. Relatively

⁴⁰⁶ Walker, *Crime, gender, and social order*, 160; Dean, ‘Theft and gender’, 405; Van der Heijden, *Women and crime*, 63–66.

⁴⁰⁷ This is confirmed by Joachim Eibach’s earlier findings of a relatively high share of women among offenders prosecuted for robbery or gang membership in the eighteenth century: *Frankfurter Verböre*, 323; J. Eibach, ‘Böse Weiber und grobe Kerle. Delinquenz, Geschlecht und soziokulturelle Räume in der frühneuzeitlichen Stadt’ in: A. Blauert and G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 669–688, 683.

⁴⁰⁸ Eibach, *Frankfurter Verböre*, 313. On the urban-rural connection of gangs of robbers: F. Egmond, *Underworlds. Organized crime in the Netherlands 1650–1800* (Cambridge 1993).

⁴⁰⁹ Egmond, ‘Between town and countryside’, 144; Wiebel, ‘Die “Schleiferbärbel” und die “Schwarze Lis”’, 762–763.

⁴¹⁰ B.D. Plaum, *Strafrecht, Kriminalpolitik und Kriminalität im Fürstentum Siegen 1750–1810* (St. Katharinen 1990) 207; Rublack, *Crimes of women*, 94–97.

speaking, both genders were equally prosecuted for offences such as receiving stolen goods, damage to property and extortion.

Table 6 Type of offences committed by men and women, 1600-1806⁴¹¹

Type of offence	Male		Female	
Theft (incl. housebreaking, burglary, etc.)	2,691	72.9%	1,142	83.0%
Fraud (incl. bankruptcy and debts)	295	8.0%	70	5.1%
Robbery, <i>Räuber- Diebesbande</i>	282	7.6%	46	3.3%
Receiving of stolen goods	245	6.6%	70	5.1%
Damage to property	47	1.3%	21	1.5%
Poaching	57	1.5%	4	0.3%
Extortion	16	0.4%	7	0.5%
Miscellaneous	60	1.6%	16	1.2%

Source: *Criminalia 1600-1806*

The broad range of offences that were covered by the term *furtum* may conceal more specific gendered behavioural patterns. Working on late eighteenth- and early nineteenth-century London, for example, Deirdre Palk demonstrated that women's involvement in shoplifting and pickpocketing outnumbered that of men, as a result of the legal definition of these crimes and the different spheres men and women operated in.⁴¹² Garthine Walker showed for seventeenth-century Cheshire that although women were *numerically* less often prosecuted for offences like housebreaking or burglary, they were *relatively* more likely to commit such offences than men.⁴¹³

A closer analysis of the *Criminalia* themselves allows for a further differentiation between the various types of offences defined as *furtum* in the contemporary register. In his analysis of property offences for the sample years 1741-43, 1771-75 and 1801-1805, Joachim Eibach studied the proportion of women among each category of property offending, rather than analysing the relative importance of each type of offence according to gender. Compared to their overall share among property offenders during his sample years (28%), their share was much higher among cases of simple theft and domestic theft (32.3% and 51.4%) and considerably lower among cases of fraud

⁴¹¹ For a more detailed graph of developments over time, see appendix Figures 2 and 3.

⁴¹² D. Palk, *Gender, Crime and Judicial Discretion 1780-1830* (Suffolk 2006) 39, 67.

⁴¹³ Walker, *Crime, gender, and social order*, 160-161.

and burglary (17.9% and 21.7%).⁴¹⁴ Although this exercise provides very valuable insights, as it proves that the share of women varied considerably among the different offences, it also runs the risk of masking similarities and exaggerate differences.

In my own sample I have also distinguished between the different types of property offending: domestic theft (theft by servants, journeymen and other dependents living in the household of their master); burglary (breaking into dwelling houses, inns, public buildings etc.) and theft.⁴¹⁵ But rather than looking at the percentage of women among each category, I have examined the relative importance of each category according to gender. Table 2 reveals that for both men and women, the majority of these offences were ‘normal’ thefts without breaking or entering, including everything from market thefts to pickpocketing, etc. (65.4% for men and 60% for women). Furthermore, the table also reveals that relatively speaking women were only slightly less likely to commit burglary or housebreaking than men. Still, based on these figures there is no reason to assume that women refrained from more ‘complicated’ property offences that involved some use of force and possible confrontation with the victim. The most significant difference is the importance of domestic theft. This figured more prominently among the property crimes committed by women than men: 22% vs 9% respectively. The ‘female’ nature of domestic theft will be discussed in more detail below. For now, it suffices to say that in terms of the gendered pattern of property offences investigated by the *Verhöramt*, the similarities between men and women are more salient than the differences. Both my own sample years as well as those of Joachim Eibach reveal that normal theft was the most important category of property offending by men and women, and that women were only slightly less inclined to commit offences that would normally be considered as ‘male’ offences such as burglary or fraud.

Table 7 Types of thefts committed by men and women in eighteenth-century Frankfurt

Types of property offence	M (N)	%	V (N)	%
Theft	70	65.4%	77	60%
Domestic Theft	10	9.4%	28	22%
Burglary (<i>Einbruch/Einsteigen</i>)	27	25.2%	23	18%

Source: Criminalia 1700(01); 1720(21); 1740(41); 1760(61); 1780(81).

⁴¹⁴ Eibach, *Frankfurter Verböte*, 323.

⁴¹⁵ Since there was no legal differentiation between larceny and an offence like pickpocketing (as was the case in early modern England) they have not been separated here.

Moreover, contrary to the previous stereotypical portrayal of women as accessories and subordinates to male offenders, the *Criminalia* show that in Frankfurt am Main the majority of women investigated before the *Verhöramt* in the seventeenth and eighteenth centuries committed offences on their own. Women were prosecuted on their own in 53% of the cases compared to 49% of the men. When committing offences together with others, women were more likely to operate in mixed groups (27% of the cases) rather than in single-sex groups (20%). For men this was the opposite (13% in mixed groups vs 38% in single-sex groups).⁴¹⁶ Women found partners in crime through all types of social connections. They committed property offences together with their spouses, with other family members, connections they made through work. But, they also formed short-term, opportunistic alliances together with complete strangers whom they had met in inns or taverns.⁴¹⁷ All of these different types of ‘partnerships’ emphasise that women’s agency in property offending was not confined to the domestic arena.

Social profile of property offenders

The socio-economic background of property offenders in eighteenth-century Frankfurt demonstrates that it was not just the type of theft where similarities between men and women outweighed the differences. Historian Peter Wettmann-Jungblut developed a typology of early modern property offenders based on his study of theft in south-west Germany which has been very influential in German historiography.⁴¹⁸ His typology distinguished three different types of property offenders. First, property offences committed by vagrants, unsettled and uprooted people, who formed the mass of all offenders. Second, thefts by servants, journeymen or others in a dependent wage relationship, who stole from their employer or master. Finally, theft by locals who stole within their community motivated by need, greed, envy or personal conflict. Ulinka Rublack has applied this typology in her study on female crime in seventeenth-century Württemberg as well, though slightly adapting the first category to ‘predominantly mobile, professional thieves’, which she defined as thieves for whom the main source of income for longer periods of time was theft.

⁴¹⁶ IfSG, *Criminalia* 1600-1806.

⁴¹⁷ E.g. *Criminalia* 2241 (1700) Anna Barbara Langing and Anna Margaretha Mündin shared a family connection through Anna Barbara’s stepmother; *Criminalia* 5065/5066 (1740) Christina Magdalena Weissnerin and Friedrich Hass travelled together posing as a married couple called Bernardi; *Criminalia* 7650 (1760) Anna Elisabetha Weigandin worked as a domestic servant for the gardener Winter. She committed domestic theft and escaped with the help of the gardener’s neighbours with whom she had forged an alliance. Also see: G. Ammerer, *Heimat StraÙe. Vaganten im Österreich des Ancien Régime* (Vienna and Munich 2003) 433-434.

⁴¹⁸ P. Wettmann-Jungblut, “Stelen inn rechter hungersnodt”. Diebstahl, Eigentumsschutz und strafrechtliche Kontrolle im vorindustriellen Baden 1600-1850’ in: R. van Dülmen ed., *Verbrechen, Strafen und soziale Kontrolle. Studien zur historischen Kulturforschung* (Frankfurt am Main 1990) 133-177, 154-155. Schwerhoff, *Köln im Kreuzverhör*, 351; Härter, *Police und StraÙjustiz*, 581, 1092; Schnabel-Schüle, *Überwachen und Strafen*, 271.

However, she did not consider them as belonging to a 'criminal' underworld because many of them went back to regular work from time to time and only rarely operated in large organised groups.⁴¹⁹

This differentiation tends to disguise the fluid boundaries that existed between short-term (labour) migration and permanent unsettledness. Not all men or women on the road who had to casually supplement their income with an opportunistic theft was necessarily characterised by the authorities as a vagrant, nor would they fit any of the other two typologies. Additionally, it masks the influence of life-cycle changes, which influenced labour and mobility patterns in the early modern period and were different for each gender. In a study of late-eighteenth-century London, Peter King demonstrated how theft was closely related to life-cycle experiences and a period of high mobility and economic vulnerability.⁴²⁰ In order to provide a more nuanced classification of early modern property offenders, a closer look is needed at the origin and legal status of offenders, their age, and employment status.

The first characteristic according to which we can differentiate property offenders was their origin/legal status, for which information is available in the majority of the cases. Frankfurt's inhabitants were divided according to legal status, with burghers being at the top and enjoying full citizenship rights, and transients at the bottom, whose stay in the city was conditional and who enjoyed no legal protection.

It was not always possible to determine the exact legal category of offenders. In some cases, it was simply stated that the suspect was born in Frankfurt (*'von hier gebürtig'*) or originated from there (*'sejje von hier'*) without specifying whether they enjoyed full citizenship or belonged to the community of resident aliens. Domestic servants and journeymen enjoyed a different status from other strangers because they were incorporated in their master's household and enjoyed his protection (*'Schutz'*). However, since this was not a formal legal category, they have not been listed separately here. Moreover, it was often not possible to establish from the sources which servants suspected of theft were still considered as household members and which had lost this status and were considered as strangers.

The data reveal (table 3) that 66% of the female suspects and 74% of the male suspects were foreigners (*Fremde*). This means that measured against the population as a whole, migrants were over-represented among property offenders in early modern Frankfurt.⁴²¹ Burghers (including their families) constituted about 46% to 50% of the city's inhabitants in the eighteenth century, resident aliens about 5% (approximately 20% including their families), and the local Jewish

⁴¹⁹ Rublack, *Crimes of Women*, 119.

⁴²⁰ P. King, 'Female offenders, work and life-cycle change in late-eighteenth-century London', *Continuity and Change* 11:1 (1996) 61-90.

⁴²¹ Joachim Eibach found comparable figures for his sample years: *Frankfurter Verböte*, 299.

community slightly less than 10%.⁴²² Among the criminal offences, however, all local groups together represented only 22% of the male suspects and 32% of the female suspects.

Table 8 Legal Status of property offenders according to gender, eighteenth-century Frankfurt

Category	Men		Women	
Frankfurt ⁴²³	25	22%	41	32%
Village	5	4%	3	2%
Stranger	86	74%	83	66%
Total	116		127	
Unknown	16		10	

Source: Criminalia 1700(01); 1720(21); 1740(41); 1760(61); 1780(81).

Both for men and for women, then, theft was primarily a crime of outsiders. Or at least outsiders were more likely to be subjected to criminal investigation on suspicion of theft. The majority of the prosecuted offenders in early modern Frankfurt were either transient or had lived in the city for just a short period of time. Most of them were only loosely incorporated within the social-economic networks of the city, which made them vulnerable to prosecution.

Although this observation accounts for both male and female suspects, some gender differences can nevertheless be discerned. ‘Foreignness’ was more marked among male offenders than female offenders. Moreover, the geographical radius of male offenders arrested in Frankfurt was larger than that of women. While for women 45% of the offenders originated from places within a 50km radius of Frankfurt, for men this was only the case 23% of the time (table 4). These differences can partially be explained by gendered migration patterns as female migration is generally characterised as more regional than that of men.⁴²⁴ Nevertheless, one should not underestimate the high level of mobility displayed by female property offenders in the sources: 10% of the female migrants originated from places further than 250km away, and some even came from places in Denmark, Bohemia and the Czech Republic. One reason women may have migrated

⁴²² S. Hochstadt, ‘Migration in preindustrial Germany’, *Central European History* 16:3 (1983) 195-224, 202; G.L. Soliday, *A Community in conflict. Frankfurt society in the seventeenth and early eighteenth centuries* (Hanover 1974) 45; R. Roth, “... der blühende Handel macht uns alle glücklich...”. Frankfurt am Main in der Umbruchszeit 1780-1825’, *Historische Zeitschrift. Beihefte* 14 (1991) 357-408, 326.

⁴²³ Of the 41 women who originated from Frankfurt, 11 were identified as burgher women/daughters; another 11 as resident aliens; 1 as a local Jew; and 18 did not specify their legal citizenship status. Of the 25 men who claimed to originate from Frankfurt, 7 were burghers or the sons of burghers; none identified as a resident alien; 6 were local Jews; and 12 did not specify their legal citizenship status.

⁴²⁴ L.P. Moch, *Moving europeans. Migration in western Europe since 1650* (2nd edition: Bloomington 2003) 14- 18.

to Frankfurt was the prospect of better wages. Anna Margaretha Blumin, who was born in Kassel, some 160km away from Frankfurt, stated that she had come to the city because of the higher salary for servants in Frankfurt than in Kassel.⁴²⁵ Frankfurt was located in one of the most densely populated regions of the Holy Roman Empire, with many people living in small to medium-sized towns.⁴²⁶ Many of the migration patterns of male and female offenders were similar to that of Blumin, in the sense that they were characterised by intra-urban mobility (see map 1).

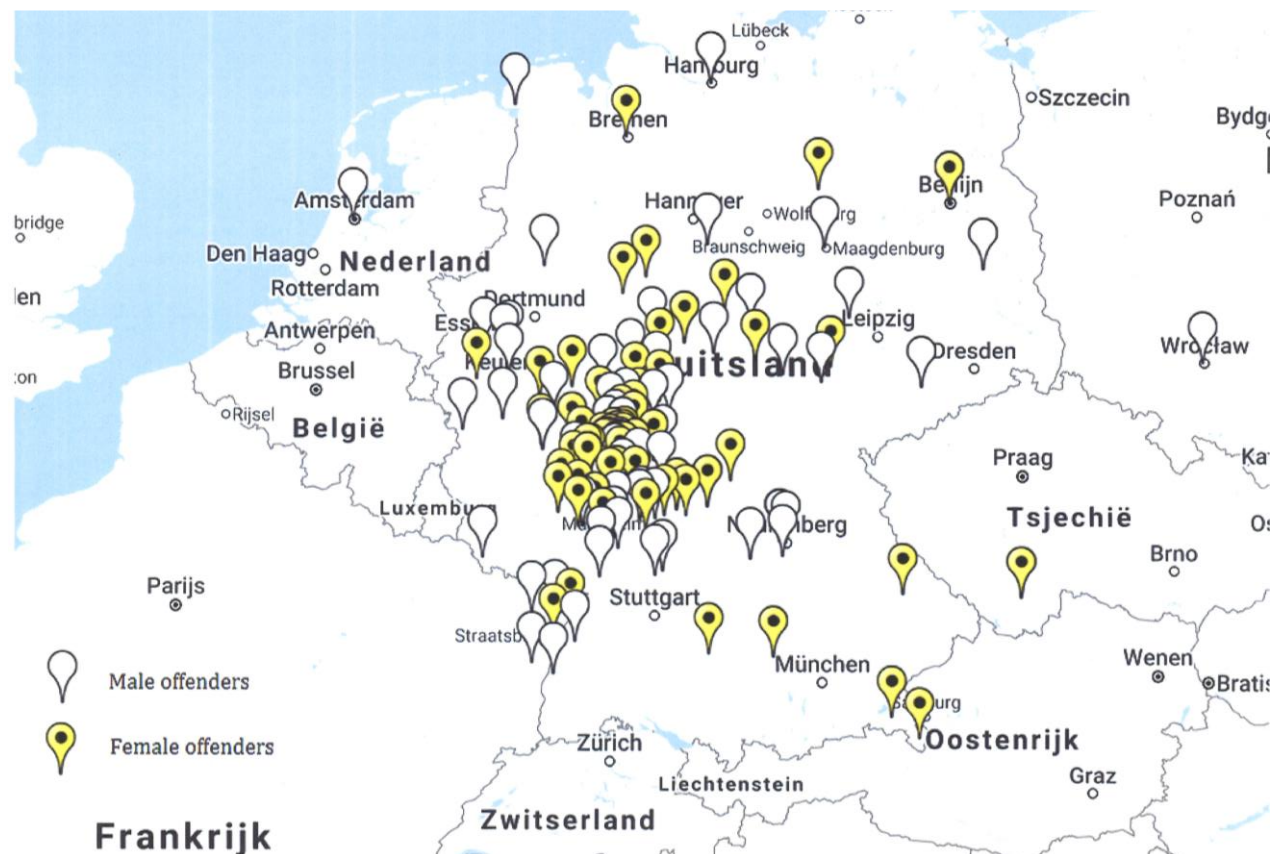
Table 9 Mobility radius of foreign male and female property offenders

Distance to Frankfurt (km)	M	%	V	%
>25	8	10%	15	21%
25>50	11	13%	17	24%
50>100	20	24%	18	25%
100>150	3	4%	9	13%
150>200	13	16%	2	3%
200>250	12	15%	3	4%
250>	15	18%	7	10%
Total	82		71	

Source: IfSG, *Criminalia*, 1700(01); 1720(21); 1740(41); 1760(61); 1780(81).

⁴²⁵ *Criminalia* 1215 (1660) Original: 'wegen des großen Lohns den die Mägde alhier bekommen, dann eine Magt zu Cassel vor alles mehr nit als 6Rthlr bekommen'.

⁴²⁶ See Pfister, *Bevölkerungsgeschichte*, 16-17 for a map of the population density across early modern Germany.

Map 1 Place of birth of male and female property offenders in early modern Frankfurt

Source: Criminalia 1700(01); 1720(21); 1740(41); 1760(61); 1780(81).

The second characteristic that can be discerned from the sources, the age of the offenders, shows that high level of migrants was closely connected to life-cycle mobility patterns typical of the early modern period. This was the period in their lives, between the age of 15 and 29, that men and women left their parental home in order to look for employment as apprentices, journeymen or domestic servants.⁴²⁷ In general, the age distribution of male and female property offenders was quite similar (table 5). More than half of the offenders (51% of male offenders and 53% of female offenders) were below the age of 25. At the same time, however, there are also slight differences in the age distribution by gender.

The first difference is that the percentage of offenders below the age of twenty is higher amongst women than amongst men. This can be explained by the fact that the percentage of domestic servants entering at a young age was higher among women than among men. This group often belonged to the most vulnerable. Renate Dürr has shown for seventeenth-century *Schwäbisch*

⁴²⁷ M. Mitterauer, 'Gesindedienst und Jugendphase im europäischen Vergleich', *Geschichte und Gesellschaft* 11 (1985) 177-204.

Hall that the most important factor contributing to entering domestic service at an early stage in life was the death of one (and more often) two parents.⁴²⁸

Second, there were fewer female than male property offenders between the age of thirty and forty. This may be related to the fact that cases of fraud were more significant amongst male offenders. Such offences were often connected to the world of trade, and the age of offenders in this group tended to be higher than that of a simple thief. At the same time, it is also the age in women's lives that was related to child-bearing and raising children, which may have restricted their opportunities to commit offences.

And finally, the number of offenders aged 50 and above was slightly more significant among women. It would be tempting to relate this to the precarious position of widows in the early modern period.⁴²⁹ However, of the eleven female offenders in this category, only three were identified as widowed and six were married.⁴³⁰ Women in this age category were prosecuted for all sorts of property offences including committing simple theft, being gang members, and receiving stolen goods. It may be more likely that the gender differences in this age group were related to the prosecution patterns of the authorities. In Frankfurt's neighbouring territory of Kurmainz, Karl Härter has discerned similar age differences among prosecuted vagrants and property offenders. Among life-long offenders, the chances for men to reach old age before being arrested by the authorities and sentenced to death were much slimmer than for women.⁴³¹

Table 10 Distribution of age of property offenders according to gender

Category	M	%	V	%
< 20 years	22	23%	35	30%
20 - < 30 years	39	42%	51	44%
30 - < 40 years	22	23%	18	15%
40 - < 50 years	7	7%	5	4%
Above 50	4	4%	8	7%
Total	94		117	

Source: IfSG, *Criminalia*, 1700(01); 1720(21); 1740(41); 1760(61); 1780(81).

⁴²⁸ R. Dürr, *Mägde in der Stadt. Das Beispiel Schwäbisch Hall in der Frühen Neuzeit* (Frankfurt am Main 1995) 157-162.

⁴²⁹ On widows in early modern Germany: G. Ingendahl, *Witwen in der Frühen Neuzeit. Eine kulturhistorische Studie* (Frankfurt am Main 2006). On widowhood as a distinct form of early modern 'singleness', see various contributions to a recent collection of essays: J. de Groot, Isabelle Devos and A. Schmidt eds., *Single life and the city 1200-1900* (New York 2015).

⁴³⁰ Of the remaining two women, one was identified as single (Ledig) and the marital status of the other is unknown.

⁴³¹ K. Härter, 'Prekäre lebenswelten vagierender Randgruppen im frühneuzeitlichen Alten Reich. Überlebenspraktiken, obrigkeitliche Sicherheitspolitik und strafrechtliche Verfolgung' in: G. Ammerer and G. Fritz eds., *Die Gesellschaft der Nichtsesshaften. Zur Lebenswelt vagierender Schichten vom 16. bis zum 19. Jahrhundert* (Affalterbach 2013) 21-38, 36.

Finally, the third characteristic that can be discerned from the sources is the employment status of offenders. Investigators at the *Verhöramt* regularly inquired after the ways in which offenders supported themselves – ‘*womit sie sich nähre?*’ in order to determine whether or not suspects were in fact honourable people (*ehrbahre menschen*) or not. The sample informs us about the way women supported themselves in 85 cases (out of 137) and an additional 18 women were identified through the work of their husbands. For men there are references to work for 89 out of 132 offenders (which is only slightly higher than for women!). The examples in the sources affirm that for most suspects, the property offences were committed in the context of specific life-cycle vulnerability and arose from precarious economic positions.

The references show how women coped with the restricted employment opportunities available to them and are demonstrative for the unstable and insecure economic circumstances most of the women engaged in. In the majority of cases (46), the female suspects answered that they made a living as domestic servants. However, more than half of these (25) were not in service at the moment of their crimes and/or arrest and they had to make a living by other means. Rosina Barbara Appoldtin, for example, was arrested because she had stolen a basket of beans from the garden of Matthias Fuchs. Rosina was twenty-five years old and originated from a small town near Würzburg. According to her statements, she had arrived in Frankfurt a year earlier and worked as a servant for a tailor for about six months after which she was only able to find short-term employments as a servant. At the time of her arrest, however, she was out of work again and had to support herself by carrying wood chips (*‘Spähne tragen’*).⁴³² She excused her theft by stating that she had not eaten for two days and had only stolen the beans driven by the greatest need and poverty.⁴³³ The story of eighteen-year-old Barbara Elssin from Mainz, who was arrested together with another girl for stealing cloth and clothes, is yet another tale showing the precariousness of domestic servants. Barbara had worked as a domestic servant in her home town until she became ill and was dismissed by her master two years earlier. No longer able to support herself as a servant, she now sold fruit and vegetables that she purchased in Frankfurt with which ‘she earned an honest but bitter living’.⁴³⁴

The activities that Rosina and Barbara undertook when they were out of employment are quite similar to those of female suspects who did not identify themselves as domestic servants. They earned a living as peddlars trading in all sorts of goods, by sowing, spinning and knitting, as washers on the city’s bleaching ground, and so on. The accounts of the women reveal that many

⁴³² Criminalia, 5229 (1741).

⁴³³ Criminalia, 5229 (1741). Original: ‘*sie die größte Noth und Armuth darzu angetrieben*’.

⁴³⁴ Criminalia, 5292 (1741). Original: ‘*und ihr stück brod ehrlich doch säuerlich damit verdienen*’.

had to make ends meet by combining several sources of income. Maria Elisabetha Erlin was arrested in 1760 and expelled from the city on the orders of the French military administration, because she was a known recidivist. She earned a living by sewing, but according to her own statements, she faced increasing difficulties to find enough work and therefore supplemented her income by trading lemon kummel (*Citronen Cümmel*) and working as a vivandière as well.⁴³⁵

Finally, eight women were referred to as prostitutes or 'loose' women. These women were not necessarily full-time professional prostitutes. Rather, many of the cases provide the impression that intercourse in exchange for money was occasional and part of a broader range of survival strategies. In half of the thefts involving prostitutes, their offences were directly related to their activities as prostitutes.⁴³⁶ In 1741, Friedrich Roth reported the theft of 'fifteen or sixteen Carolinen' (approximately 150 to 160 guilders) from his wallet to the authorities. In his testimony, Friedrich recalled how he – after drinking too much wine in the journeymen's inn of the tailor's guild – went out onto the street and was lured into a house by an unknown woman, where they were joined by two other women and continued drinking. According to Friedrich, the women had deliberately plied him with wine so that they could rob him after he had passed out. While Friedrich himself never described the women as prostitutes, the situation seemed clear for the investigators. Two of the three women involved had been arrested in prostitution-related cases on earlier occasions. Because neither of the women admitted the theft, the authorities could not formally convict them, and therefore expelled them on the charge of being vagrants and loose and idle people.⁴³⁷

The statements of the male suspects demonstrate a more diverse range of labour opportunities available to men. Little more than a quarter (24 offenders) named artisan professions, half of which as apprentice or journeyman. Another quarter (25 offenders) referred to themselves as traders, and in most cases they were peddler traders, trading with whatever they could find to make a living. The third largest groups were soldiers (18 offenders). The constant need for manpower of many early modern armies offered the opportunity for employment to many who could no longer make a living as journeymen or had no fixed abode. In Frankfurt, the presence of recruitment officers from the Prussian and Imperial armies made it easy to find employment.⁴³⁸

Although the male suspects display a wider range of professions, their testimonies are very similar to those of the women. They demonstrate the temporary and unstable nature of their employments and highlight how their lives were characterised by an economy of makeshift.

⁴³⁵ Criminalia, 7636 (1760).

⁴³⁶ For theft by prostitutes, see: King, 'Female offenders, work and life-cycle change', 75-80; M. Pluskota, *Prostitution and social control in eighteenth-century ports* (Abingdon and New York 2015) 97-103.

⁴³⁷ Criminalia 5275 (1741).

⁴³⁸ J. Kamp, 'Between agency and force. The dynamics of desertion in a military labour market, Frankfurt am Main 1650-1800' in: M. van Rossum and J. Kamp eds., *Desertion in the early modern world. A comparative history* (London 2016) 49-72.

Andreas Helfmann, aged twenty, was arrested on suspicion of theft from one of the market stalls during the Easter fair – he stated that he was a basket maker and worked as a day labourer.⁴³⁹ Johann Hermann Wiegand, aged twenty-three and born in Hessen Homburg, stated that at the time he made a living selling hair (*handle mit haaren*), but that he had previously worked as a servant for four-and-a-half years, but was a trained linen weaver.⁴⁴⁰ 40-year-old Jacob Wagner from Oppenroth, who was arrested on suspicion of stealing a copper kettle, stated that he sold flax and nuts as a peddler trader, and would work as a day labourer wherever he could earn something (*wo er etwas verdienen können*).⁴⁴¹ Due to his age, Wagner's mobility was no longer part of accepted life-cycle migration, and the authorities labelled him a suspicious 'thug and vagrant' (*verdächtiger jauner und vagabund*).

The social characteristics of property offenders in early modern Frankfurt demonstrate that the majority of them were migrants who were not incorporated (or only loosely incorporated) in the city's social control networks. Mostly they were not settled in the city but led very independent mobile lifestyles. The overall characteristics of urban female (property) offenders correspond to those identified for other early modern cities in Europe.⁴⁴² The majority of female offenders did not originate from the city in which they were prosecuted and they committed offences on their own account. They belonged to the age groups for which single status and life-cycle mobility were characteristic, and whose economic position was precarious. These characteristics show how problematic it can be to study women's property crimes from the perception that they must have been related to household concerns and taking care of the family.

Locations of theft: transcending the private and the public

Identifying the locations where property offences were committed may inform us about spaces in which men and women moved and participated. As mentioned earlier, historians previously suggested that women were more likely to commit offences in or around the household because they led less public lives and were more subjected to the private sphere than men.⁴⁴³ However, more recently, the supposed distinction between female/private and male/public crimes has been called into question.⁴⁴⁴ This means, that the locations of theft need to be considered from an early

⁴³⁹ Criminalia 5080 (1740).

⁴⁴⁰ Criminalia 2254 (1700).

⁴⁴¹ Criminalia 5076 (1740).

⁴⁴² On the characteristics of urban female offenders: P. King, *Crime, Justice and Discretion in England. 1740-1820* (Oxford 2000) 169-217; M. van der Heijden, *Misdadige vrouwen. Criminaliteit en rechtspraak in Holland 1600-1800* (Amsterdam 2014) 221-225.

⁴⁴³ Schwerhoff, *Köln im Kreuzverhöre*, 180; M. Feeley and H. Aviram, 'Where have all the women gone? The decline of women in the criminal justice process', *3rd Annual Conference of Empirical Legal Studies Papers* (2008); B.A. Hanawalt, *Crime and conflict in English Communities, 1300-1348* (Cambridge MA, 1979) 119-22.

⁴⁴⁴ Walker and Kermodé, 'Introduction', 7,12; Eibach, 'Das Haus'.

modern perspective in which boundaries between the private and public were blurred. The crime scene itself only gains meaning if we put the relationship of the offender to this location into context. Moreover, the socio-economic characteristics of thieves in early modern Frankfurt already indicate that the ‘public/male’ versus ‘private/female’ dichotomy is inadequate to properly interpret gendered patterns of illegal appropriation, as many of the female offenders led lives beyond the confinements of the domestic sphere.

The fluent boundaries between the private and the public have to be borne in mind when looking at the locations of theft in early modern Frankfurt, for several reasons. First, contrary to what we know for later periods, early modern houses were literally open in the sense that they were accessible to outsiders and that there was a high degree of visibility in relation to what happened inside the domestic space.⁴⁴⁵ Many houses in early modern Frankfurt had a so-called *Geräms* attached to the house. When the famous poet Goethe described his hometown in *Dichtung und Wahrheit*, he described the *Geräms* as a structure resembling a bird cage which offered the opportunity to communicate with the outside world from within the house, without the necessity of actually having to enter the street. Many of the domestic economic activities of women actually took place in this *Geräms*.⁴⁴⁶ These structures are a sign of the permeability of early modern homes, in which the boundaries between the public sphere of the street and the privacy of the household were fluid. In the course of the eighteenth-century the *Geräms* slowly but surely vanished from the urban houses, particularly in the building boom of the second half of the century (between 1741 and 1800 close to 730 new building were constructed).⁴⁴⁷

Second, this openness also served an important function within a society where notions of honour and ritualised sociability were crucial. This could only be achieved through a culture of visibility, where domestic practices were public or semi-public.⁴⁴⁸ The house was a locus of contact within the neighbourhood. This was not only necessary in social terms, but in economic terms as well, as households were much less stable units than they have often been presented: they depended on the support of - and interaction with - the neighbourhood.⁴⁴⁹ There were spaces which were less

⁴⁴⁵ J. Eibach, ‘Das Offene Haus. Kommunikative Praxis im sozialen Nahraum der europäischen Frühen Neuzeit’ *Zeitschrift für Historische Forschung* 38:4 (2011) 621-664, 648-651.

⁴⁴⁶ M. Rodenstein, ‘Vom “Gassesitzen”, “Spaziergucken” und der Geselligkeit. Modernisierung des städtischen Raums und Wandel des Geschlechterverhältnisses im Frankfurt des 18. Jahrhunderts’ in: G. Engel, U. Kern and H. Wunder eds., *Frauen in der Stadt. Frankfurt im 18. Jahrhundert* (Königstein Taunus 2002) 15-46, 23. On windows as a place of contact between the house and the neighbourhood, see: D. Jütte, ‘Das Fenster als Ort sozialer Interaktion’ in: J. Eibach, I. Schmidt-Voges eds., *Das Haus in der Geschichte Europas. Ein Handbuch* (Berlin 2015) 467-483

⁴⁴⁷ Roth, *Stadt und Bürgertum*, 35.

⁴⁴⁸ Eibach, ‘Das Offene Haus’, 650-651.

⁴⁴⁹ M. Ågren, ‘Introduction: Making a living, making a difference’ in: M. Ågren eds., *Making a living, making a difference. Gender and work in early modern European society* (Oxford 2017) 1-23.

visible or accessible by outsiders, but these should not be characterised as private in the modern sense of the word.

Moreover, when categorising locations of theft, there are several difficulties that have to be kept in mind. Most houses in the early modern period were multifunctional, encompassing workspaces, living quarters, storage rooms etc. all in one building.⁴⁵⁰ Distinguishing between different spaces in the house is not always possible. Although for some regions in early modern Europe there are signs of a functional distinction among spaces, examples for German cities have shown that well into the eighteenth century beds were found in multiple spaces in the house: in the corridor, living room and even in the kitchen – a sign that most spaces in the house continued to be multifunctional.⁴⁵¹ In most of Frankfurt's buildings the ground floors usually housed stores and workshops, featuring windows that could be converted into vending tables when lowered. These rooms were not necessarily used by the owner of the house itself, but could be rented out to others, particularly during fairs, during which they were also used as storage- and show room for merchandise.⁴⁵² Inventories for early modern Frankfurt also suggest that many rooms in the upper floors of houses were not used for living space, but were rather used as storage rooms for household items, raw materials, foodstuffs, tools, junk and so on.⁴⁵³

This multi-functionality can make it difficult to discern where people actually committed theft as shops and storage spaces were also referred to as houses in the sources, and distinctions were not always made between the various spaces. Rooms in taverns could function as guest rooms as well as living quarters for servants, particular spaces could be converted temporarily into illegal brothels and so on. In the categorisation of locations of theft, the context of what spaces in buildings were used for has been taken into account as much as possible, although it is inevitable that in some cases thefts from workshops or storage rooms have been categorised as theft from houses. Furthermore, in some cases of theft it was not possible to distinguish a location, for example, because offenders were prosecuted on suspicion of theft because they were carrying stolen goods.

⁴⁵⁰ Schmidt-Voges, 'Das Haus in der Vormoderne', 5. J. Schmidt-Funke, 'Städtische Wohnkulturen in der Frühen Neuzeit' in: J. Eibach, I. Schmidt-Voges eds., *Das Haus in der Geschichte Europas. Ein Handbuch* (Berlin 2015) 215-232, 219.

⁴⁵¹ Schmidt-Funke, 'Städtische Wohnkulturen', 222-223.

⁴⁵² J. Schmidt-Funke, 'Between change and persistence. Material culture and consumerism in XVIth-century Frankfurt on Main', Conference Paper 11th International Conference on Urban History of the European Association for Urban History: "Cities & Societies in Comparative Perspective", Prague, 29.08.-1.09.2012.

⁴⁵³ Schmidt-Funke, 'Städtische Wohnkulturen', 223.

Table 11 Locations of theft by gender of suspects, eighteenth century⁴⁵⁴

Location	M	%	F	%
House	29	29%	75	59%
Shop/Market stall	19	19%	17	13%
Inn/tavern	8	8%	14	11%
Street	16	16%	7	6%
Public Building	15	15%	8	6%
Garden/bleaching grounds	8	8%	4	3%
Workshop	6	6%	2	2%
Other	8	8%	2	2%
Total	Total	101		127

Source: IfSG, *Criminalia*, 1700(01); 1720(21); 1740(41); 1760(61); 1780(81).

Theft from dwelling houses

As table 6 demonstrates, the majority of thefts occurred from dwelling houses. This was the case for offences committed by both men and women. As one can see, however, the house as a location for theft was particularly dominant in the case of women. In almost 60% of the cases, female suspects were investigated for stealing items from other people's houses, whereas for men this was the case for only 29% of the cases investigated. It would be tempting to view such numbers simply as the result of women's confinement to the domestic sphere. However, a further analysis of the men and women stealing from houses shows that the picture was more complicated than that.

There are three different 'types' of offenders who stole from dwelling houses. The first are of course domestic servants and other household dependents, and, indeed, they constituted a large share of offenders for both sexes. Little more than a third of the women stealing property from houses were maidservants who stole from their employer or someone else in the household where they were working. In the case of men, the significance of their position as servants or living-in apprentices and journeymen was less profound than for women, but still made up one-fifth of the property offences that took place in the house. Clearly, for both sexes, working and living in a household provided opportunities and temptations that were hard to resist. An analysis of the gender differences in cases of domestic theft will be discussed in more detail later on in the chapter.

⁴⁵⁴ These calculations exclude the theft from houses after the great fire in the Ghetto in 1721 as this would distort the results too much.

The majority of thefts from houses, however, were committed by non-household members. The second type of offenders stealing from houses did so in the context of the neighbourhood and early modern living arrangements. In early modern Frankfurt, only citizens were allowed to own real estate. About two-thirds of the citizens owned their own house, while the remaining one-third lived together with relatives or rented living spaces.⁴⁵⁵ On average, there were about fifteen to sixteen inhabitants per house.⁴⁵⁶ Travelers often remarked on Frankfurt's narrow alleys and small streets as something extraordinary. Compared to other towns and cities in the region, which were characterised by wide streets and many open public spaces, the building style in Frankfurt had barely changed since the Middle Ages, providing ample opportunities for thieves to sneak into houses unseen.⁴⁵⁷ Most of the thefts in a neighbourhood setting were committed by women (ten women versus three men), which reflects the important roles women played in neighbourhood communities.⁴⁵⁸

The third, and most important, type of offender stealing from houses had no relationship to the occupants at all. This was the case for women as well as for men. Many cases of burglary, housebreaking or sneaking into people's houses were committed by transients or foreigners who did not reside in the city. The majority of these thefts, therefore, did not arise from a context in which women were confined to the domestic space or that was linked to their economic activities within the house. Entering other people's houses in the early modern period did not necessarily require planning or professional skills. At least during the day, houses were generally not locked and were easily accessible by outsiders. Most thefts seem to have been opportunistic and occurred by chance, rather than being the result of careful planning and preparation. Offenders slipped into houses through back doors when they appeared to be unguarded.

There was, however, a gendered aspect that enabled women - even if they were unknown in the neighbourhood - to enter people's homes more easily without arousing any suspicion than men. This was in part related to the fact that women in general were considered less suspicious than men. Historians have shown how the perception of women as being less dangerous, as well as the fact that women usually received more empathy, had also resulted in a gendered division of

⁴⁵⁵ Roth, *Stadt und Bürgertum*, 128.

⁴⁵⁶ H. Gerber, 'Die Stadt Frankfurt am Main und ihr Gebiet', in: H. Voelcker ed., *Die Stadt Goethes. Frankfurt am Main im XVIII. Jahrhundert* (Frankfurt am Main 1932) 17-50, 20.

⁴⁵⁷ R. Diehl eds., *Frankfurt am Main im Spiegel alter Reisebeschreibungen vom 15. Bis zum 19. Jahrhundert* (Würzburg 1984); M. Stalljohann-Schemme, *Stadt und Stadtbild in der Frühen Neuzeit. Frankfurt am Main als kulturelles Zentrum im publizistischen Diskurs* (Berlin 2017) 303.

⁴⁵⁸ Criminalia 5077 (1740); Criminalia 5208 (1740); Criminalia 5298; Criminalia 7631 (1760); Criminalia 7733 (1761); Criminalia 9295 (1781); Criminalia 9296 (1781). On the role of women in early modern neighbourhoods see: Eibach, 'Böse Weiber – Grobe Kerle'; Van der Heijden, 'Women, violence and urban justice'; B. Capp, *When gossips meet. Women, family, and neighbourhood in early Modern England* (Oxford 2003); Rublack, *Crimes of Women*, 197-230; S. Muurling and M. Pluskota, 'The gendered geography of violence in Bologna, 17th-19th centuries' in: D. Simonon ed., *The Routledge history handbook of gender and the urban experience* (Basingstoke 2017) 153-163.

labour among vagrants. In most cases it was women who maintained contacts with the settled population, went begging or asked for assistance through other means.⁴⁵⁹ Thus, women circulating in the neighbourhood begging would not necessarily raise suspicion, and some women used this as an excuse when they were caught stealing.

Several cases demonstrate how female strangers had no problem entering dwellings in Frankfurt. In 1781, Helena Kalbfussin was caught by the maid red-handed when stealing four plates from the kitchen of a house on the *Zeil*. According to Helena, she had entered the house in order to beg for alms but found that no one was present. And as she saw that the kitchen door was open she took her chances, picked up the plates and quickly left, only to be caught by the maid.⁴⁶⁰ Also appealing to sympathy for female ‘weakness’ instrumentally was Margaretha Veltin, a notary’s daughter from Mainz. She had entered the house of Nikolaus Gerlach, a mercer, through his shop where she had bought some cloth and asked him if she could warm herself in his *Stube*. There was apparently no reason for Gerlach or his wife to suspect Margareta and they invited her in. As soon as Gerlach’s wife had left the room, however, Margareta took her chance and stole some clothing from the wardrobe.⁴⁶¹ Another – very plausible – excuse used by women in order to justify the fact that they had entered people’s homes was that they were looking for domestic service or some other form of casual labour. Maria Müllerin, for example, was prosecuted for several thefts within the same neighbourhood, where she was going around legitimising her entrance by asking ‘if there was something for her to sew’ in one house and in another ‘if they could use a maid’.⁴⁶² Unlike other cities in the Holy Roman Empire where authorities had set up employment agencies for domestic servants in order to regulate the mobility of women seeking employment in the city, in Frankfurt women seeking employment depended on informal methods.⁴⁶³ For journeymen, however, this was much more regulated through the handicraft associations and did not require going from door to door in order to look for service.

Although it was relatively easy for women to enter the houses of strangers, this does not mean that they refrained from the use of violence. Due to the ‘openness’ of early modern houses, most household items and valuables were stored in locked chests or cupboards.⁴⁶⁴ Storing one’s

⁴⁵⁹ K. Härter, ‘Prekäre Lebenswelten’, 31; O. Ulbricht, ‘Bettelei von Frauen auf dem Land in den Herzogtümern Schleswig und Holstein (1770-1810)’ in: G. Ammerer et al. eds., *Armut auf dem Lande. Mitteleuropa vom Spätmittelalter bis zur Mitte des 19. Jahrhunderts* (Wien 2010) 63-90, 67.

⁴⁶⁰ Criminalia 9292 (1781). Also see: Criminalia 9239 (1781).

⁴⁶¹ Criminalia 3174 (1741).

⁴⁶² Criminalia 7670 (1761). Other examples of women using this excuse: Criminalia 7636 (1760); Criminalia 9239 (1781); Criminalia 9295 (1781).

⁴⁶³ See, for example: Criminalia 6848 (1753).

⁴⁶⁴ B. Krug-Richter, ‘Unter Verschluss! Familiäre Grenzziehungen in der ländlichen Gesellschaft der Frühen Neuzeit’ in: T. Hengartner and J. Moser eds., *Grenzen & Differenzen. Zur Macht sozialer und kultureller Grenzziehungen* (Leipzig 2006). For London: A. Vickery, ‘An Englishman’s home is his castle? Thresholds, boundaries and privacies in the eighteenth-century London house’, *Past & Present* 199:1 (2008) 147-173.

valuable items safely was considered the responsibility of the owners, and investigators usually spent some time to ask victims whether or not they had locked away their items safely. In newspaper advertisements where victims of theft appealed to the public for information about the whereabouts of their stolen items, it was common to remark that things had been stolen from a secured house ‘*ein sicheres Haus*’.⁴⁶⁵ This meant that even if one could sneak into a house without any problems, obtaining more valuable items meant the use of physical force or lock-picking.⁴⁶⁶ In their efforts to break open cabinets, wardrobes, chests, drawers etc., women behaved just as men did. Sophia Veronica, wife of a notary, reported that one of her closets was broken into with such a force by the 16 year-old Maria Catharina Mayerin that the closet frames had burst open (‘*die leisten davon aufgespengt worden*’).⁴⁶⁷ Anna Elisabetha Raabin used a knife to cut out the window glass from the lead frame to enter the house⁴⁶⁸ and Anna Elisabetha Weigandin had used an axe in order to open a chest and steal household linen and garments.⁴⁶⁹

While there were no clear gendered patterns in the techniques that were applied to break into dwelling houses, there was a gender divide in the timing of burglary. The night appears to have been the domain of men, at least in relation to property offences.⁴⁷⁰ This corresponds with what we know from other studies on early modern cities.⁴⁷¹ Committing burglary during the night was considered an aggravating circumstance. Night-time in general became a specific focus of discipline and policing for early modern authorities, and women’s presence on the streets during the night was prohibited.⁴⁷² Policing the night was highly gendered: women caught in the streets during the night were almost automatically associated with prostitution.⁴⁷³ Thus for women, it was more difficult to move around in the city during the night-time, which may help to explain their prerogative for daytime offences.

⁴⁶⁵ See advertisements in the *Franckfurter Frag- und Anzeigunsnachrichten* under the header ‘Sachen die Gestohlen worden’ – items that were stolen. *Franckfurter Frag- und Anzeiguns Nachrichten* Nr. XX 10.03.1750; Ibidem Nr. XCII 06.11.1750; Ibidem, Nro. XCVII 28.11.1750; *Franckfurter Frag- und Anzeiguns Nachrichten* Nr. XIV 16.02.1753.

⁴⁶⁶ On the use of violence in cases of theft by women, see: Dean, ‘Theft and gender’, 409; Walker, *Crime, Gender and social order*, 161.

⁴⁶⁷ Criminalia 5208.

⁴⁶⁸ Criminalia 5298.

⁴⁶⁹ Criminalia 7650.

⁴⁷⁰ Examples of men breaking in during night time: Criminalia 2240 (1700); Criminalia 2258 (1700); Criminalia 3091 (1720); Criminalia 5076 (1740); Criminalia 7637 (1760). Also see: Ammerer, *Heimat StraÙe*, 431.

⁴⁷¹ See, for example, G. Durston, *Victims and Viragos. Metropolitan women, crime and the eighteenth-century justice system* (Suffolk 2007) 122-123..

⁴⁷² See for the surveillance of the night in general and the gendered context in particular: Beattie, *Policing and Punishment*, 169-197; C. Casanova, *Nachtleben. Orte, Akteuer und obrigkeitliche Disziplinierung in Zürich, 1523-1833* (Zürich 2007); P. Griffiths, *Lost Londons. Change, Crime, and Control in the Capital City 1550-1660* (Cambridge 2008) 332-360.

⁴⁷³ E.g. Criminalia 3603 (1727); Criminalia 5940 (1747); Criminalia 6287 (1750).

Other Locations

Shops and market stalls were the second most frequent location of theft for men and women (19% and 13% respectively). These are usually offences that are typically associated with women, as they are linked to their economic activities.⁴⁷⁴ For early modern England, in particular London, historians have linked the high presence of women among those prosecuted for shoplifting to an emerging consumer society and the development of a ‘modern’ retail trade with shops, shop windows and shop displays that enticed consumers to come in and buy - or possibly - steal merchandise.⁴⁷⁵ John Beattie even considered that the underreporting of shoplifting might have had a more considerable effect on the apparent rate of women’s crimes than of men.⁴⁷⁶

Studies on early modern Germany have shown that there was a relatively late transition to a retail landscape with mostly closed shops, which only started to develop properly in the nineteenth century.⁴⁷⁷ Most of the trade for which Frankfurt was famous was wholesale trade, which did not cater primarily for shopping by the local public. Frankfurt depended on the reputation of the city as a safe space for merchants during fairs. During these times, they intensified the prosecution of suspected individuals, arresting them without a specific suspicion of committed offences, and not banishing them until after the fair was over.⁴⁷⁸ This also helps to explain why Frankfurt, despite being an important trading town, had relatively few thefts from shops and markets. Outside the fairs, the right to keep shop (*‘offene Läden’*) was reserved for citizens only. Such shops were mostly located within residential buildings without a clear boundary between the living quarters and the shop. Commodities were displayed outside the shop on benches or tables and shutters, in removable booths and stalls, or simply in hampers in front of the sellers (see figures 1 and 2). The local market served as the most important site for trading, both for daily groceries as well as luxuries.⁴⁷⁹ It was still heavily regulated by the authorities, and handicraft associations and

⁴⁷⁴ E. Wiebel, ‘Die “Schleiferbärbel” und die “Schwarze Lis”. Leben und Lebensbeschreibungen zweier berühmter Gaunerinnen des 18. Jahrhunderts’ in: A. Blauert and G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 759-800; p. 766-767; Ammerer, *Heimat Straße*, p. 431; M. Fenske, *Marktkultur in der Frühen Neuzeit. Wirtschaft, Macht und Unterhaltung auf einem städtischen Jahr- und Viehmarkt* (Köln 2006) 103; Rublack, *Crimes of Women*, p. 120.

⁴⁷⁵ Palk, *Gender, Crime and Judicial Discretion*, 38-66; Durstone, *Victims and Viragos*, 126-129; J. Beattie, ‘Crime and inequality in eighteenth-century London’ in: J. Hagan and R. Peterson eds., *Crime and inequality* (Stanford 1995) 116-139, 128.

⁴⁷⁶ Beattie, *Policing and Punishment*, 94.

⁴⁷⁷ U. Spiekermann, *Basis der Konsumgesellschaft. Entstehung und Entwicklung des modernen Kleinhandels in Deutschland 1850-1914* (München 1999); H. Homburg, ‘German landscapes of consumption, 1750-1850. Perspectives of German and Foreign Travellers’ in: J.H. Furnée and C. Lesger eds., *The Landscape of consumption. Shopping streets and cultures in Western-Europe, 1600-1900* (New York 2014) 125-156; S. Ogilvie, ‘Consumption, social capital, and the “Industrious Revolution” in early modern Germany’, *The Journal of Economic History* 70:2 (2010) 287-325.

⁴⁷⁸ Eibach, *Frankfurter Verböte*, 382.

⁴⁷⁹ Homburg, ‘German Landscapes of consumption’, 135; H. Voelcker, ‘Handel, Gewerbe und Verkehr in Frankfurt am Main’ in: H. Voelcker eds., *Die Stadt Goethes. Frankfurt am Main im XVIII. Jahrhundert* (Frankfurt am Main 1932) 105-133; *Stadt und Natur Frankfurt um 1780. Das Buch der gleichnamigen Ausstellung des Historischen Museum November 1982 – Juni 1983* (Frankfurt am Main 1982) 103-113.

corporative restrictions (*Zunftzwang*) dominated and controlled the access to markets. Shopping as an activity to pass time, especially for women, had not yet developed.

Figure 11 The Hühnermarkt in Frankfurt am Main



Source: Detail from Salomon Kleiner's engraving of Frankfurt's *Hühnermarkt* 1725.

Figure 12 Hucksters and market stalls at the Römer square in Frankfurt



Source: Detail from Salomon Kleiner's engraving of the *Römer* in Frankfurt 1725.

Overall, shops and market stalls in early modern Frankfurt were busy public spaces, rather than closed and confined. This means three things that have possibly influenced the prosecution of this type of offence and the gender composition of the suspects. First, there are repeated references in

the sources that make it reasonable to assume that informal control was common (and probably preferred) in early modern shops and markets. If offenders were caught, merchants and shopkeepers settled the case by retrieving their property on their own account, rather than going through the hassle of reporting the case to the authorities.⁴⁸⁰ Second, the crowded streets made it easy for offenders to escape. Although victims could still report thefts by an absent or unknown offender to the authorities, the *Verhöramt* hardly ever investigated cases for which there were no identified suspects. In early modern Württemberg, theft and petty fraud from markets and shops by local women was tolerated to a great extent by the authorities and often only admonished or sanctioned with fines.⁴⁸¹ Third, although grocery shopping was usually a chore for maids, the market place was not an exclusive female space: men and women moved around freely in the streets, having the opportunity to snatch products from unattended market stalls and shops. Offenders pretending to be customers could cause a distraction so that their accessories could steal items unnoticed.⁴⁸² These factors probably contributed to the fact that there is a less profound gender pattern among such thefts than one might expect.

There was one type of unlawful appropriation from shops, however, that was almost entirely committed by women. Obtaining goods from mercers or grocers under false pretences was a typical type of theft from stores which was almost only committed by women. Nineteen-year-old Anna Maria Waltherin, for example, had already left the service of Johann Adolph Stentzel some considerable time previously, but she continued to take out goods on his credit from several mercers in the neighbourhood. This way she obtained butter and sugar from spice trader (*'Specereyhändler'*) Johann Jacob Bettbier, meat from butcher Johann Georg Achs and again butter from a confectioner (*'Zuckerbäcker'*) called Schroder.⁴⁸³ Another case was that of nineteen-year-old Catharina Sibylla Meissnerin *modo* Schaffnerin, who was prosecuted for buying two dresses on her mother's credit from wigmaker Weberin under false pretences. She also obtained shoe buckles from a shoemaker in the Schnurgasse using a fake name, and from stocking weaver Geisler she had taken several pairs of stockings in the name of *Fräulein von Humbecht*.⁴⁸⁴ This type of offence was not only committed by young single women. In 1760 the wife of carter Wilhelm Petermanns was prosecuted because she tried to obtain coffee and sugar from the trading company *Franz Meermanns seel. Sohnen* in the name of Frau Dauthin from the Engel-Apotheck. However, she

⁴⁸⁰ Fenske, *Marktkultur in der Frühen Neuzeit*, 104.

⁴⁸¹ Rublack, *Crimes of women*, 119.

⁴⁸² E.g. Criminalia 5080 (1740); Criminalia 5122 (1740); Criminalia 7584 (1760); Criminalia 7629 (1760); Criminalia 7655 (1760); Criminalia 9177 (1780).

⁴⁸³ Criminalia 5162 (1741).

⁴⁸⁴ Criminalia 5278 (1741).

aroused suspicion because she was unable to pronounce the name of Frau Dauthin correctly and instead referred to her as Taufferin.⁴⁸⁵

Taking goods under false pretenses was closely linked to women's lawful economic activities. As daughters, domestic servants and wives, they were responsible for going to the market and shopping for groceries, and as such became acquainted with opportunities to procure goods under false pretenses. As households regularly changed servants, it was not suspicious for women unknown to merchants to take goods in their (fake) employer's name. Buying goods on credit was a widespread practice and women made instrumental use of the trust shown by grocers and other shopkeepers. Because it was such a central part of women's activities in the household economy, it was not likely that they were mistrusted and their chances of getting away with it were quite high. There are several newspaper advertisements in which victims warned the public about specific women taking goods under false pretenses. In the *Franckfurter Frag- und Anzeigenachrichten* from 06.03.1761, for example, an advertisement contained a report on a servant who pretended to buy ribbons for a person of good standing. Later inquiries, however, informed the victim that this person had not given anyone orders to buy ribbons in their name.⁴⁸⁶

After dwelling houses and shops, taverns and inns were at 13% the third most frequent location from which women stole goods (see table 6). For men, however, this location only ranked in fifth place with a share of 8%. This may come as a surprise as such places have been interpreted largely - or even exclusively - as the domain of male sociability. As Joachim Eibach has shown, most of the violent conflicts that took place in eighteenth-century Frankfurt arose from a context of journeyman sociability in the tavern, from which women were indeed excluded.⁴⁸⁷ Just like houses, however, taverns and inns were multifunctional places, and even though women did not participate in the honour rituals of journeymen, they were present in inns and taverns as guests, servants, etc.⁴⁸⁸ Since foreigners, regardless of their standing, were largely dependent on finding accommodation in inns or guesthouses, these were always crowded places with opportunities for thieves to find large spoils. In her travel writings, English author Ann Ward Radcliffe regarded Frankfurt as a pleasurable place and argued that it would probably be an attractive place of residence for foreigners 'if the magistrates, either dreading the increase of luxury, or the

⁴⁸⁵ Criminalia 7653 (1760). Other examples: Criminalia 7719 (1761); Criminalia 9178 (1780).

⁴⁸⁶ FFAN, Nr. XIX 06.03.1761. Also FFAN, Nr. XXXV 28.04.1767.

⁴⁸⁷ Eibach, *Franckfurter Verböre*, 241-265, Eibach, 'Böse Weiber', 678.

⁴⁸⁸ On early modern taverns, see: M. Scheutz, "'Hab ichs auch im würtshauß da und dort gehört [...]'. Gaststätten als multifunktionale öffentliche Orte im 18. Jahrhundert' in: M. Scheutz, W. Schmale and D. Stefanova eds., *Orte des Wissens. Jahrbuch der Österreichischen Gesellschaft zur Erforschung des achtzehnten Jahrhunderts* (Bochum 2004) 169-207; B.A. Tlusty, 'Privat' oder 'öffentlich'? Das Wirtshaus in der deutschen Stadt des 16. und 17. Jahrhunderts' in: S. Rau and G. Schwerhoff eds., *Zwischen Gotteshaus und Taverne. Öffentliche Räume in Spätmittelalter und Früher Neuzeit* (Köln 2004) 53-74.

interference of strangers in their commerce, did not prevent this by prohibiting them from being lodged otherwise than at inns. It was with difficulty, that an English officer, acting as Commissary to some of the German regiments, lately raised upon our pay, could obtain an exemption from this rule, at the request of the Hanoverian Minister'.⁴⁸⁹ It is within this context – the tavern as a place of lodging for strangers – that many of the thefts in these locations took place.⁴⁹⁰ Others resulted from the tavern as a place of sociability⁴⁹¹, a place of work⁴⁹², or as a place for prostitutes to find clients.⁴⁹³

Finally, the last location of theft that will be discussed here is the street. Men appear to have been more likely to commit property offences in public, pickpocketing on the streets, on market squares or in the crowds awaiting entry before the city gates. The street as a location of theft only had a share of 6% for women, while for men this was 16%. This discrepancy results from gender differences in pickpocketing practices. The women who were investigated for pickpocketing in this sample usually committed the offence on their own and in an opportunistic fashion. Besides men who operated in a similar fashion to women, there are also several examples of men working in groups, making use of the crowdedness of the streets and stealing in a more coordinated fashion. Friedrich Schramm, for example, was robbed of 400 guilders while waiting at the local weigh house (*Stadtwaage*) by a group of male Jewish pickpockets. Only four of them were arrested and expelled from the city, while the others managed to make their getaway in the crowds.⁴⁹⁴ The authorities were particularly apprehensive of groups of thieves and pickpockets during the Fall and Easter Fairs, when they would often arrest larger groups of suspected offenders, and keep them in custody during the time of the fair before expelling them.⁴⁹⁵

Overall, the results presented here show that there are certainly gender differences that can be identified in the locations of theft for men and women. However, these differences are not a result of differences in the private vs public scope of activities of men and women. Although women were more likely to steal from houses than men, they were often not connected to the household they stole from. Rather, they profited from the fact that gender stereotypes granted them easier access to the houses of strangers than men. Thus, even if committed in domestic spaces, crimes did not necessarily need to be committed in the private sphere as such a distinction disregards the permeable structures of early modern houses and households.

⁴⁸⁹ A. Radcliffe, *A journey made in the summer of 1794, through Holland and the western frontier of Germany with a return down the Rhine [...]* (2nd ed. London 1796) 410-411.

⁴⁹⁰ E.g. Criminalia 5065 and 5066 (1740); 5091; 7636; 9203 (1780); 9164 (1780).

⁴⁹¹ Criminalia 5094 (1740); Criminalia 5241 (1741).

⁴⁹² Criminalia 5208 (1740); Criminalia 5123 (1740).

⁴⁹³ Criminalia 5103 (1740).

⁴⁹⁴ Criminalia 7671 (1760). Also: Criminalia 9179 (1780); Criminalia 2800 (1715).

⁴⁹⁵ Criminalia 1635 (1684); Criminalia 9120 (1780).

Between necessity and fashion: stolen items in eighteenth-century Frankfurt

In addition to looking at the location of theft as a way to investigate if and how male and female patterns of unlawful appropriation were linked to different spheres of social and economic activity, another approach may be to look at the goods that were targeted by thieves. First, the different economic circles men and women operated in shaped their expertise about the value of certain types of goods, and this influenced which items they stole. It also provided them with knowledge about possible distribution channels, an issue this will be discussed in the next paragraph. Second, the early modern period is said to have been characterised by a ‘consumer revolution’, spearheaded (amongst other things) by women’s spending patterns and growing desire to acquire a certain level of ‘luxury’.⁴⁹⁶ The thefts in early modern Frankfurt thus possibly reflected gendered consumption patterns linked to new and growing consumption markets as is shown for other early modern European cities.⁴⁹⁷ Again, this paragraph mainly focuses on the types of goods themselves, rather than on the influence they had on distribution channels.

So what types of items did men and women steal in early modern Frankfurt? As table 7 demonstrates, there are some noticeable gender differences that can be discerned. While the top three were the same for both men and women – consisting in each case of clothing and shoes, money, and textiles – their relative importance was different. Women were significantly more likely to steal items of clothing, textiles, and other household goods than were men. Such items were probably even more important than the figures suggest, as it has not been possible to take the total volume of spoils into account (i.e. the exact number of stolen linens, clothes, etc.). A maid who stole the majority of her master’s clothing and textile inventory is counted the same as a market thief who snatched one piece of cloth from a market stall.

The locations of theft determined to a great extent what types of items men and women stole. As women mostly stole from houses, their spoils usually contained items of clothing, household items like cutlery, crockery, tableware, linens and other textiles, but also money which was available in households. In general, women tended to steal a larger variety of goods than men: where the latter stole items from the same category in 80% of the cases, for women this was the case 64% of the time. More than women, men tended to target single items, whereas women – in an opportunistic fashion – stole whatever they could find within the house. Whereas men tended to steal money through pick-pocketing in the business of the market during the fairs, women were more likely to steal money they found in houses.

⁴⁹⁶ J. de Vries, *The Industrious revolution. Consumer behavior and the household economy, 1650 to the present* (Cambridge 2008); Ogilvie, ‘Consumption, social capital’, 289.

⁴⁹⁷ Van der Heijden, *Women and crime*, 69-72.

Initially, historians have tended to characterise women's thefts as petty, arguing that women were more likely to steal items of little value and direct use. However, Garthine Walker was able to demonstrate for seventeenth-century Cheshire that although men and women stole *different* type of items, the total value of their spoils was very *similar*.⁴⁹⁸ For Frankfurt it is unfortunately not possible to investigate this, as the value of the stolen items was not registered systematically. The sample years reveal a number of cases in which men were accused of thefts or malversation of goods and assets of great value. Most of these occurrences were situated in Frankfurt's role as an important centre of trade. Carter Johannes Gottschalck, for example, was accused by the wealthy merchants Etienne Conte and Dionys Nothäi, two wholesale traders with a firm based in Frankfurt, of having (deliberately) lost part of their trade goods from Amsterdam with an estimated worth of 1000 guilders.⁴⁹⁹ Another example is that of Johann Georg Otto Werth, who was employed as a *Tapezierergesellen* in the *Dielische* workshop. He was prosecuted for the malversation of goods from his employer with an estimated worth of more than a 1000 guilders.⁵⁰⁰ Joachim Eibach also noted that large-scale trading frauds in eighteenth-century Frankfurt were the domain of men.⁵⁰¹ In contrast, the largest known value of theft by a woman in the sample years was by Maria Elisabetha Köpperin who had stolen a considerable number of different coins from her employer, which he valued at a total of 200 guilders.⁵⁰²

⁴⁹⁸ Walker, *Crime, gender and social order*, 161.

⁴⁹⁹ Criminalia 3073 (1720).

⁵⁰⁰ Criminalia 9165 (1780).

⁵⁰¹ Eibach, *Frankfurter Verböte*, 324.

⁵⁰² Criminalia 2238 (1700).

Table 12 Items stolen by women and men

Category	M	%	V	%
Clothing and shoes	21	15.6%	42	23.5%
Money	29	21.5%	34	19%
Textiles: cloth and household linen	21	15.6%	33	18.4%
Household goods and tools	14	10.4%	23	12.8%
Jewellery and watches	13	9.6%	15	8.4%
Precious metals	11	8.1%	8	4.5%
Food	6	4.4%	10	5.6%
Livestock + agricultural products	8	5.9%	1	0.6%
Miscellaneous	12	8.9%	13	7.3%
Total	135		178	

Source: IfSG, *Criminalia*, 1700(01); 1720(21); 1740(41); 1760(61); 1780(81).

Although it is not possible to systematically compare the value of the goods stolen by men and women in early modern Frankfurt, the perceived differences do not allow for a simple model of serious looting by men and petty pilfering by women. Clothing and household items (which featured more prominently among women's spoils) may seem of little value from a contemporary perspective, but this was not at all the case during the early modern period. They made up a large share of the expenditures from the household budget and were therefore often safely locked in cabinets or chests.⁵⁰³ For domestic servants and apprentices, clothes were often the only valuables they possessed. Whenever they were on the road between finding employment positions, clothes were the last items they would sell to support themselves since they were an important aspect to distinguish themselves from vagrants and beggars. Clothing, therefore, was not just valuable but also belonged to people's social capital.⁵⁰⁴ The importance of clothing during this period is reflected in their use as an "alternative currency" as well as a savings strategy.⁵⁰⁵ Women more than anyone knew the value of household items, as they came in contact with them through their household duties.⁵⁰⁶ Moreover, the *Criminalia* reveal that women did not steal household items randomly, but

⁵⁰³ K. Gottschalk, 'Schlüssel und "Beschlüss"'. Verfügungsgewalt über Verschlussenes', *Comparativ* 15:4 (2005) 21-32.

⁵⁰⁴ K. Simon-Muscheid, "'Und ob sie schon einen dienst finden, so sind sie nit bekleidet dennoch". Die Kleidung städtischer Unterschichten zwischen Projektionen und Realität im Spätmittelalter und in der frühen Neuzeit' *Saeculum* 44 (1993) 47-64, 54.

⁵⁰⁵ B. Lemire, 'Consumerism in perindustrial and early industrial England. The trade in secondhand clothes', *Journal of British Studies* 27:1 (1988) 1-24; R. Jütte, *Poverty and deviance in early modern Europe* (Cambridge 1994) 78-82; G. Stöger, 'Urban markets for used textiles. Examples from eighteenth century Central Europe' in: J. Stobart and B. Blondé eds., *Selling textiles in the long eighteenth century. Comparative perspectives from Western Europe* (Basingstoke 2014) 210-225.

⁵⁰⁶ Walker, *Crime, Gender, Social Order*, 165.

targeted items made from expensive materials like copper, tin, brass and silver which could be sold as raw material to artisans (see the paragraph below). The spoils of thieves in early modern Frankfurt are, therefore, in line with findings by other historians. Rather than assuming that women would steal items of lesser value because their criminality is inherently pettier than that of men, it becomes clear the different patterns were more related to the different economic spheres in which men and women operated.

A second point that needs to be addressed in this paragraph concerning the types of stolen goods is the importance of a 'consumer revolution'. Historians have argued that the growing demand for - and the availability of - market goods influence patterns of theft. Beverly Lemire related the frequency of theft of clothing in early modern England to a growing popular consumerism and sensitivity to fashionable products. Stealing items that were popular ensured thieves of a large market to easily distribute the stolen items. At the same time, it offered individuals an opportunity to take part in the culture of fashionability through illegal means if they lacked the means to do so legally.⁵⁰⁷ Contemporaries and historians alike have often linked the theft of clothing by domestic servants as a sign of their desire to own luxurious items, which would otherwise remain beyond their reach.⁵⁰⁸

It is difficult to assess to what extent thieves in early modern Frankfurt, too, were influenced by a growing desire of the lower and middle classes to participate in a growing consumer culture. The 'consumer revolution' was of course not limited to textiles and clothing, but to a growing market for consumer goods in general, including the expanding availability of colonial commodities. The extent of this revolution varied across Europe. Sheilagh Ogilvie has suggested that due to dominant non-market agents, and strong sumptuary regulations, the 'consumer revolution' in early modern Germany was less strong and occurred later than in countries like the Netherlands and England.⁵⁰⁹

As an important European trading centre, Frankfurt was acquainted with new colonial products from early on.⁵¹⁰ According to Julia Schmidt-Funke, there is no clear-cut evidence that suggests a change in consumption in early modern Frankfurt, despite the large range of goods that were available in the city.⁵¹¹ Frankfurt with its fairs was known as an important trading centre for luxury items. Both the raw materials, like diamonds, jewels and gold, as well as the jewellery itself

⁵⁰⁷ B. Lemire, 'Theft of clothes and popular consumerism in Early Modern England', *Journal of Social History* 24:2 (1990) 255-276.

⁵⁰⁸ Beattie, 'Crime and inequality', 128;

⁵⁰⁹ Ogilvie, 'Consumption, social capital', 297.

⁵¹⁰ For Frankfurt's trading history, see: A. Dietz, *Frankfurter Handelsgeschichte, vol. 1-4.2* (Frankfurt am Main 1910-1925).

⁵¹¹ J. Schmidt-Funke, 'Wandel des Konsums? Frankfurt am Main im 17. Jahrhundert' in: S. Richter and G. Garner eds., *'Eigennutz' und 'gute Ordnung'. Ökonomisierungen der Welt im 17. Jahrhundert* (Wiesbaden 2016) 133-148, 147-148.

were available in large quantities and from early on.⁵¹² Sugar and coffee from the Atlantic also found their way to Frankfurt from the sixteenth century onwards. Flemish refugees played an important role in establishing trading networks for these colonial goods. In 1689 Frankfurt was the second city in early modern Germany (after Hamburg in 1671) to establish a coffeehouse.⁵¹³ The majority of the trade during the fairs, roughly 80% to 90%, consisted of all types of textiles (especially precious cloth and expensive fabrics).⁵¹⁴

The city's Lutheran authorities and burgher community had an ambiguous relationship with consumption and the new consumer items. On the one hand they valued the riches of the fairs and importance of the market, while on the other hand it was also considered reprehensible to offer too much room for splendour and public display of wealth. The authorities sought to regulate conspicuous consumption patterns through the implementation of dress ordinances and other sumptuary laws. The dress ordinances regulated the type and amount of fabric that was allowed to be worn according to social status. Velvet, for example, was preserved for the first social order according to the ordinances of the seventeenth century, and in the last dress ordinance of 1731 it was still only allowed for the first and second order.⁵¹⁵

These dress ordinances were often difficult to enforce in practice. The *Sendherren* (the deputies of the *Sendamt*, who were responsible for policing sumptuary regulations) often struggled to distinguish the many various types of fabrics that were available, not to mention the fact that fabrics were produced in various qualities.⁵¹⁶ Johann Bernhard Müller, aldermen and syndic in Frankfurt in the second half of the eighteenth century, wrote about the social and cultural state of the city. He lamented the riches and 'abundance of needless things' that were available in the city, stating that 'what previously used to be preserved for the gentry only, was no longer considered good enough by a wealthy burgher'. Müller went on to complain that the common people (*Pöbel* [...] *geringeren und gemeinen Leuten*) did not know how to deal with the abundance of luxury goods available in the shops and markets and, particularly during the fairs, squandered their money. As a

⁵¹² G. Marcussen-Gwiazda, 'Die Frankfurter Juwelenhandlung de Briers in 1. Drittel des 17. Jahrhunderts' in: R. Koch ed., *Brücke zwischen den Völkern. Zur Geschichte der Frankfurter Messe. Vol. 2* (Frankfurt am Main 1991) 122-128; A. Dietz, *Frankfurter Handelsgeschichte. Vol. 2* (Frankfurt am Main 1921) 200-243.

⁵¹³ D.J. Harrell, 'Atlantic sugar and Antwerp's trade with Germany in the sixteenth century', *Journal of early modern History* 7:1 (2003) 148-163, 155-156; A. Thiel, 'Spezereien und andere Luxuswaren, Kaffee, Kakao und Tee' in: R. Koch ed., *Brücke zwischen den Völkern. Zur Geschichte der Frankfurter Messe. Vol. 2* (Frankfurt am Main 1991) 238-241; Roth, *Stadt und Bürgertum*, 173.

⁵¹⁴ A. Dietz, *Frankfurter Handelsgeschichte. Vol. 1* (Frankfurt am Main 1910) 88-94; Roth, *Stadt und Bürgertum*, 53.

⁵¹⁵ PO 3056 *Der Kayserl. Und des Heil. Röm. Reichs freyer Stadt Franckfurt am Mayn Kleider= Hochzeit= Kind= Tauf= und Leich= Begängnuß= Ordnung* 19.06.1731.

⁵¹⁶ I. Worgitzki, 'Samthauben und Sendherren. Kleiderordnungen im frühneuzeitlichen Frankfurt', *AFGK* 68 (2000) 167-199, 190. Also see: N. Bulst, 'Kleidung als sozialer Konfliktstoff. Probleme kleidergesetzlicher Normierung im sozialen Gefüge', *Saeculum* 44 (1993) 32-46.

result, they ended up destitute and penniless, and became a burden to the city's poor relief, which as burghers they were entitled to.⁵¹⁷

Although it proved difficult to enforce sumptuary laws and dress ordinances, various cases have been persevered in the mayor's records to demonstrate that the sumptuary laws were not entirely dead-letter laws. The cases analysed by Inke Worgitzki indicate that it were particularly women who were accused of transgressing the dress codes, and therefore of dressing above their standing.⁵¹⁸ There are many other contemporary sources that commented on servants dressing above their station either as a desire for luxury or to increase their attractiveness to prospective marriage partners. Frankfurt's criminal records, however, only reveal single cases in which women stole luxury items within this context.⁵¹⁹ Nevertheless, items were often found among the spoils of female thieves which they could not have worn themselves, according to the dress codes. These prohibited servants and other women in the lowest social order from wearing clothes in bright colours or any type of embellishment. Moreover, jewellery, and any type of headwear except for modest (night) caps were not allowed. The same applied to fashionable clothing like crinolines (*Reifrücke*), *Andriennes*, and *Manteaulettgen*.⁵²⁰

Overall, the cases of theft show that in early modern Frankfurt the link between theft, targeted spoils, and a growing consumer society is complex and ambiguous. Jewellery and clothing made from precious textiles with extensive embellishments were stolen alongside less expensive and non-fashion-sensitive household linens. At the same time, the expansion of available products throughout the early modern period is visible in Frankfurt. Suspects who were accused of stealing food usually did not steal food for their own consumption. These thefts were more often related to more 'luxury' products like coffee and sugar, and even champagne. Margaretha Emmerichin, for example, was prosecuted because she had obtained sugar on credit from several stores, which she had sold on to several mercers in order to be able to pay her rent as well as have some money in order to buy food for herself.⁵²¹ Overall, regardless of the products men and women stole, they were usually sold on and turned into cash immediately. The profits were mostly used to pay for daily necessities, travelling, and place to stay, rather than saved in order to acquire expensive luxuries.

⁵¹⁷ J.B. Müller, *Beschreibung des gegenwärtigen Zustandes der Freien Reichs-, Wahl- und Handels-Stadt Franckfurt am Mayn* (Frankfurt am Main 1747) 203-205. Original: ('so müsten sie endlich, der Casten und andere milde Stifungen erhalten, und dieses: weil sie in der Bürgerschaft stünden').

⁵¹⁸ Worgitzki, 'Samthauben und Sendherren', 192.

⁵¹⁹ Eibach, *Frankfurter Verböre*, 335.

⁵²⁰ PO 3056 *Der Kayserl. Und des Heil. Röm. Reichs freyer Stadt Franckfurt am Mayn Kleider= Hochzeit= Kind= Tauf= und Leich=Begängnuß=Ordnung* 19.06.1731.

⁵²¹ Criminalia 7719 (1761). Also: Criminalia 7713 (1761).

Distributing of stolen goods

Fencing and gender

Now that we have a clear picture of the different types of theft men and women committed, and consequently the different goods they targeted, it is necessary to take a closer look at the way that stolen goods were sold and circulated. 'Networks' of distribution can tell us a great deal about the economic circles that men and women were involved in: both from the perspective of the receivers as well as from the perspective of the offenders. Studies have shown that women featured prominently among receivers of stolen goods in early modern England, France and Holland.⁵²² In the city of Leiden, a staggering 63% of the offenders prosecuted for fencing, were women.⁵²³ In late eighteenth-century London, fencing made up only a minority of both male and female property crimes. However, it constituted a larger proportion of women's crimes, than of men's (4% vs 2%).⁵²⁴ While figures are lacking for other cities, historians have characterised receiving as a typical female offence.⁵²⁵

Scholars related the high level of female involvement in networks of distribution and selling of stolen goods to women's dependent position in the household.⁵²⁶ Gerd Schwerhoff, found that in late sixteenth-century Cologne, concealment and fencing were offences equally committed by men and women. He explained this by the fact that such crimes usually took place in or around the home, and therefore belonged to the female sphere.⁵²⁷ More recently scholars have argued that such patterns should not be explained by women's dependent position in the household. Garthine Walker stated that women's involvement in receiving stolen goods should be connected to 'women's own economic activities and interactions'.⁵²⁸ Many women were involved in lawful economic activities that involved pawning, recycling, selling and reselling second-hand goods. It was through these activities that women were involved in unlawful networks of receivers of stolen goods, as they often had a better understanding of second-hand markets than men. Among the women redistributing stolen goods there was often no clear-cut separation between their lawful and unlawful activities. Additionally, Kathy Callahan argued that receiving stolen goods fitted the

⁵²² G. Walker, 'Women, theft, and the world of stolen goods' in: J. Kermode and G. Walker eds., *Women, crime and the courts in early modern England* (1994) 81-105; K. Callahan, 'On the receiving end. Women and stolen goods in London 1783-1815', *The London Journal* 37:2 (2012) 106-121; Van der Heijden, *Women and crime*, 62-76. D. Roche, *La culture des apparences. Une histoire de vêtement, XVIIe-XVIIIe siècle* (Paris 1989) 313-345.

⁵²³ E. Kloek, *Wie hij zij, man of vrouw. Vrouwengeschiedenis en de vroegmoderne tijd. Drie Leidse studies* (Hilversum 1990) 136.

⁵²⁴ Callahan, 'Women and stolen goods', 110.

⁵²⁵ M. Neale, 'Making crime pay in late eighteenth-century Bristol. Stolen goods, the informal economy and negotiation of risk', *Continuity and Change* 26:3 (2011) 439-459, 449-450.

⁵²⁶ Walker, 'Women, theft and the world of stolen goods', 91.

⁵²⁷ Schwerhoff, 'Geschlechtsspezifische Kriminalität', 96. Also: P. Spierenburg, 'How violent were women? Court cases in Amsterdam, 1650-1810', *Crime, History & Societies* 1:1 (1997) 9-28, 13; Rublack, *Crimes of women*, 109-110.

⁵²⁸ G. Walker, *Crime, gender and social order*, 166.

expected stereotypes of female gender roles as it did not involve violence or require special skills, which made it easy for women to participate. Women in particular were familiar with reselling used items, through their regular use of pawnshops or other second-hand retail networks.⁵²⁹ Working on eighteenth-century Bristol, Matt Neale also emphasised that women were not only important as sellers of stolen goods because this was associated with their economic activities, but also because these activities meant that they were less likely to be *suspected* of selling stolen goods.⁵³⁰ Finally, Manon van der Heijden suggested that in the Netherlands as well women used job-related networks either to commit theft or to distribute their spoils.⁵³¹

The general picture that women played a central role in the distribution of stolen goods and that this is linked to their economic roles is not at first sight confirmed by the evidence on early modern Frankfurt. On the contrary, judging from the prosecution patterns of the authorities, women seemed to be much less involved in fencing compared to studies on British and Dutch cities. Receiving of stolen goods made up only a minority of the investigations for property offences before the *Verhöramt*: between 1600 and 1806 this made up just over 4% of the cases involved.⁵³² Maria Boes' calculations of the *Strafenbuch* (1562-1696) reveal that only 3.8% of the recorded penal punishments were related to the sale of stolen goods.⁵³³ Moreover, women's overall share among property offenders in Frankfurt between 1600 and 1806 was 27%. Their share among those prosecuted for receiving stolen goods, however, was 20%. Compared to their overall share among property offenders, this figure is rather low. Or at least it seems to suggest that in Frankfurt women were much less involved in networks of receivers than one may assume based on the evidence from elsewhere.⁵³⁴

How can we explain this difference? Several scholars have argued that women's legal position in the Netherlands and England provided favourable opportunities for them to become involved in commercial enterprises, and female traders could run businesses on their own account independently from their husbands.⁵³⁵ It were precisely these activities that provided opportunities for women to sell and resell stolen goods. Callahan has shown that a considerable proportion of the women prosecuted for receiving before the Old Bailey were shopkeepers.⁵³⁶ The question then

⁵²⁹ Callahan, 'Women and stolen goods', 111.

⁵³⁰ Neale, 'Making crime pay', 451-452.

⁵³¹ Van der Heijden, *Women and Crime*, 66-67.

⁵³² IfSG Criminalia 1600-1806.

⁵³³ Boes, *Crime and punishment*, 179.

⁵³⁴ IfSG Criminalia 1600-1806. In Joachim Eibach's eighteenth-century samples, the share of women among prosecuted receivers was 22.2%, which is only slightly higher than their overall share throughout the 17th and 18th centuries and still considerably below their average share among property offenders.

⁵³⁵ D. van den Heuvel, *Women and entrepreneurship. Female traders in the Netherlands, c. 1580-1815* (Amsterdam 2007) 84-85; Ogilvie, *A Bitter living*, 9; H. Barker, *The Business of Women. Female Enterprise and Urban Development in Northern England 1760-1830* (Oxford 2006).

⁵³⁶ Callahan, 'Women and stolen goods', 116.

arises of whether or not one could attribute the relatively low share of women among receivers of stolen goods in early modern Frankfurt to more restricted economic activities?

Although figures on women's economic activities in early modern Frankfurt are lacking to a great extent, both the interrogation records as well as other sources reveal that they were involved in many different economic activities, working as peddler traders, in craft workshops or as merchants alongside their husband or as widows on their own.⁵³⁷ According to the city's legal constitution, married women could trade in partnership with their husband, and sign contracts and bills of exchange etc. on their own account, without the use of guardianship. With the consent of their husband, married women could also trade independently.⁵³⁸ Robert Beachy emphasised the importance of women as independent traders in large-scale family businesses in early modern Frankfurt.⁵³⁹ Similarly, Robert Brandt suggested that the role of women among artisans may not have been as grim as previously perceived. In 1762, widows ran close to 12% of the workshops on their own accounts, mostly employing journeymen as well. This figure, of course, excludes the many women that worked alongside their husbands.⁵⁴⁰

Women featured prominently in small-scale trading activities, many of which were closely associated with the distribution of stolen goods. In the late medieval period and early sixteenth century, most of the so-called *Kleiderhocken* (second-hand traders in clothing) were almost exclusively female.⁵⁴¹ In the course of the early modern period, the trade of peddlers in Frankfurt was increasingly restricted, as a result of which they were only allowed to sell agricultural products

⁵³⁷ B. Dölemeyer, 'Privatrechtliche Handlungsspielräume von Frauen. Die Frankfurter Gesetzgebung' in: G. Engel, U. Kern and H. Wunder eds., *Frauen in der Stadt. Frankfurt im 18. Jahrhundert* (Königstein im Taunus 2002) 87-102, 98-99; I. Kaltwasser, 'Handelsfrauen in Frankfurt – Rechtsfälle aus dem Reichskammergericht', in: G. Engel, U. Kern and H. Wunder eds., *Frauen in der Stadt. Frankfurt im 18. Jahrhundert* (Königstein im Taunus 2002) 103-116; C. Klausmann, 'Handelsfrau, Marktfrau, Handelsgehilfin. Aspekte weiblicher Handelstätigkeit in Frankfurt am Main zwischen 1700-1900' in: *FrauenStadtGeschichte. Zum Beispiel Frankfurt am Main* (Königstein im Taunus 1995) 83-102; H. Halbleib and U. Kern, "'Amazonen' im Frankfurter Zunfthandwerk. Ein Werkstattbericht' in: *Blickwechsel. Frankfurter Frauenzimmer um 1800* (Frankfurt am Main 2007) pp. 68-77; R. Brandt, 'Frauen und Handwerk im Frankfurt im 18. Jahrhundert – Forschungsstand, Quellen und offene Fragen' <http://www.corf.de/texte/Brandt-Frauen&%20Handwerk.pdf> (Accessed 2017-09-29). For an earlier more pessimistic assessment of women's economic roles in early modern Germany, including Frankfurt, and later discussion, see: M. Wiesner, *Working women in early Modern Germany* (New Brunswick, N.J. 1986); M. Wiesner, 'A response to women and business in eighteenth- and nineteenth-century Northwestern Europe', *Histoire Sociale* 34:68 (2001) 371-375.

⁵³⁸ Dölemeyer, 'Privatrechtliche Handlungsspielräume', 97-99; Schmitt, *Säuberlich banquerott*, 110-116.

⁵³⁹ R. Beachy, 'Business was a family affair. Women of commerce in Central Europe, 1650-1880', *Histoire Sociale* 34:68 (2001) 307-330, 316-317.

⁵⁴⁰ For the statistics see: F. Lerner, 'Eine Statistik der Handwerksgesellen zu Frankfurt am M. vom Jahre 1762' *Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte* 22 (1929) 174-193; J.A. Moritz, *Versuch einer Einleitung in die Staatsverfassung der Oberreheinischen Reichsstädte. Zweyter Theil. Reichsstadt Frankfurt (Abschnitt 4)* (Frankfurt am Main 1786) 287-311. For an analysis of the role of women in Frankfurt's guilds in the eighteenth century: Brandt, 'Frauen und Handwerk'. For Augsburg and Köln see: C. Werkstetter, *Frauen im Augsburger Zunfthandwerk. Arbeit, Arbeitsbeziehungen und Geschlechterverhältnisse im 18. Jahrhundert* (Berlin 2001); M. González-Athenas, *Kölner Zunfthandwerkerinnen 1650-1750. Arbeit und Geschlecht* (Kassel 2010).

⁵⁴¹ K. Bücher, *Die Frauenfrage im Mittelalter. Zweite verbesserte Auflage* (Tübingen 1910) 79; G. Stöger, *Sekundäre Märkte? Zum Wiener und Salzburger Gebrauchwarenhandel im 17. und 18. Jahrhundert* (München 2011) 181.

on the market during special hours.⁵⁴² For early modern Leipzig, Susanne Schötz has shown how such economic limitations went hand in hand with the feminisation of the industry: by the beginning of the eighteenth century, most *Hockinnen* were women.⁵⁴³ A similar development appears to have occurred in early modern Frankfurt as well.⁵⁴⁴ At the same time, historians have shown how women, and particularly unmarried women, faced increasing restrictions on engaging in market and retail activities, including the market for second-hand goods, during the seventeenth and eighteenth centuries, pushing them into the informal economy.⁵⁴⁵

Thus, even though women's economic roles in early modern Germany were potentially less diverse compared to those of women in England or the Netherlands, they were certainly not excluded completely from the economic activities that were often related to networks of receiving. And indeed, as a closer look at the sources will show, women *did* play a role as receivers of stolen goods. But due to the prosecution efforts of the city's authorities, women were less frequently subjected to criminal investigations for fencing and other related activities.

The importance of the Judengasse

Who then was prosecuted for fencing in early modern Frankfurt? Jewish men featured prominently among those prosecuted for selling stolen goods. Joachim Eibach has shown that more than three-quarters of all suspects prosecuted for this offence in eighteenth-century Frankfurt were Jewish, the majority of them being male local Jews with citizenship (*Stättigkeitsjuden*).⁵⁴⁶ Other studies on early modern Germany as well have indicated that Jews were overrepresented among those prosecuted for receiving stolen goods.⁵⁴⁷ This overrepresentation of local Jewish men among those

⁵⁴² Moritz, *Versuch einer Einleitung*, 239.

⁵⁴³ S. Schötz, 'Female traders and practices of illicit exchange. Observations on Leipzig's retail trade between the sixteenth and nineteenth century' in: T. Buchner, P.R. Hofmann-Rehnitz eds., *Shadow economies and irregular work in urban Europe. 16th to early 20th centuries* (Vienna 2011) 127-140, 130.

⁵⁴⁴ R. Habermas, 'Die Ordnung der Stadt. Frauen und Männer im Frankfurt des 18. Jahrhunderts – oder: Chercher la femme' in: G. Engel, U. Kern and H. Wunder eds., *Frauen in der Stadt. Frankfurt im 18. Jahrhundert* (Königstein im Taunus 2002) 47-66, 52-53. See, for example, the copperplate engraving of the market in Frankfurt by Salomon Kleiner from 1725 which shows many market women sitting (*hocken* – hence the term *Hockinnen*) before their goods, Lübbecke, *Kleiners florirendes Frankfurt*, 30-31.

⁵⁴⁵ M. Wiesner, 'Paltry peddlers or essential merchants? Women in the distributive trades in early modern Nuremberg', *The Sixteenth Century Journal* 7:2 (1981) 3-13; A. Montenach, 'Formal and informal economy in an urban context. The case of food trade in seventeenth-century Lyons' in: T. Buchner, P.R. Hoffmann-Rehnitz eds., *Shadow economies and irregular work in urban Europe. 16th to early 20th centuries* (Berlin 2011) 91-106; Stöger, *Sekundäre Märkte*, 181-201.

⁵⁴⁶ J. Eibach, 'Stigma Betrug. Delinquenz und ökonomie im jüdischen Ghetto' in: H. Berding, D. Klippel and G. Lottes eds., *Kriminalität und abweichendes Verhalten. Deutschland im 18. und 19. Jahrhundert* (Göttingen) 22. On the general stigma of Jews as criminals, see; O. Ulbricht, 'Criminality and Punishment of the Jews in the early modern Period' in: R. Po-Chia Hsia and H. Lehmann eds., *In and out of the Ghetto. Jewish-Gentile relations in late medieval and early modern Germany* (Cambridge 1995) 49-70.

⁵⁴⁷ Rublack, *Crimes of women*, 116, 121-122; Ammerer, *Heimat Straße*, 437; C. Kühn, *Jüdische Delinquenten in der frühen Neuzeit. Lebensumstände delinquenten Juden in Aschkenas und die Reaktionen der jüdischen Gemeinden sowie der christlichen Obrigkeit* (Potsdam 2008) 82-83; Härter, *Policey und Strafrecht*, 579. For Netherlands: F. Egmond, *Underworlds. Organized crime in the Netherlands 1650-1800* (Cambridge 1993) chapter 6.

prosecuted for fencing was related both to their economic marginalisation, as well as to dominant stereotypes about Jews as swindlers and frauds. These associations made it more likely that they would be subjected to criminal investigation (as a result of biased policing practices). Moreover, the stereotypes had also penetrated into the legislation of the city and the empire, thus continuously reinforcing the image of Jews (in particular Jewish men) as dishonest criminals.⁵⁴⁸

There are several examples in Frankfurt's legislation that explicitly mention the (perceived) link between Jews and fencing. In the legal constitution for Frankfurt's Jewish citizens (*Stättigkeit* 1616), for example, they were explicitly prohibited from buying, selling or pawning items that were undoubtedly stolen.⁵⁴⁹ Moreover, the *Stättigkeit* stipulated that Jews were prohibited from selling or pawning items from young people who still lived with their parents or in their master's household. This regulation was often specifically referred to in cases of domestic theft where the servant had sold the items to a Jewish pawnbroker or seller.⁵⁵⁰ While fencing featured in the regulations of Jewish citizenship, there were no references to this offence in that of the Christian burgher community (*Bürgervertrag*). Later police ordinances also reinforced the existing stereotypes. In an ordinance against the receiving of stolen goods from 1760 the city council directed the ordinance to the city's gold and silver workers *and* the entire Jewish community (*'wie auch die gesamte Judenschaft'*).⁵⁵¹ It is clear that according to the legal codes there was a close association between Jewish commerce, theft and the sale of stolen goods.

A second factor that needs to be considered in order to understand the overrepresentation of Jews among receivers of stolen goods is their economic position. Jewish inhabitants of Frankfurt (like elsewhere) were heavily restricted in the kind of commercial activities they were allowed to employ. For one, they could not become guild members, as a result of which they were denied access to the majority of skilled professions. Additionally, Frankfurt's *Stättigkeit* limited the opportunities for Jewish merchants to trade to a large extent (they could not own trading firms, for example). The retail of second-hand clothes and textiles was one of the few branches in which Jews could trade without restrictions. Similarly, they were allowed to work as pawnbrokers. Many people never redeemed their pawned items, as a result of which a lively trade in second-hand goods existed in the *Judengasse*. Unsurprisingly, considering the restrictions, the majority of Frankfurt's Jewish

⁵⁴⁸ Eibach, 'Stigma Betrug', 23; S. Ullmann, 'Jüdische Minderheit vor dörflichen Niedergerichten in der Frühen Neuzeit', *Geschichte und Gesellschaft* 35 (2009) 534-560, 547-548; K. Härter, 'Cultural diversity, deviance, public law and criminal justice in the Holy Roman Empire of the German Nation' in: T. Ertl and G. Kruijtzter eds., *Law addressing diversity. Pre-modern Europe and India in comparison* (13th - 18th centuries) (2017 Berlin) 56-97, 73-78.

⁵⁴⁹ PO 1861 *Der Juden zue Franckfurth Stättigkeit und Ordnung, wie die im Nahmen der Kayserlichen Maytt. Geendert und verbeßert worden* 28.02.1616. Original: 'Item sie sollen nicht kauffen noch leihen, auf Naß oder blutig Gewandt, oder aber andere unzweiffentlich dergleichen gestoblene wahren [...].'

⁵⁵⁰ Criminalia 9199 (1780); Criminalia 5283 (1741); Criminalia 5111 (1740).

⁵⁵¹ PO 3561 *Vermuthlich gestoblene Sachen soll man nicht kaufen oder Geld darauf leihen* 19.09.1760.

population was involved in (second-hand) clothing and textile retail trade or worked as pawnbrokers and money lenders.⁵⁵²

These were all professions that were closely associated with most of the goods that were stolen in the early modern period. Most offenders - both men and women - stole in order to substitute their income through the sale of stolen items, rather than stealing food as an immediate relief for hunger and starvation. In order to turn stolen goods into money, one needed knowledge about possible buyers and markets where one could sell one's spoils with a minimum risk of getting caught. With the large variety of pawnbrokers, second-hand dealers and small 'shops' available, the *Judengasse* in Frankfurt offered a plethora of opportunities to do so. As a result, it functioned as a prominent go-to place for thieves to turn their spoils into money. Being asked where she planned to sell the two copper plates she had stolen from a silversmith, Elisabeth Vachingerin answered that she planned to sell them to the first Jew who would offer her a price for them.⁵⁵³ Helena Kalfbussin had stolen four soup plates from a house in her neighbourhood. She declared to the authorities that she had taken the plates home in order to set them aside until she had found a Jew she could sell them to.⁵⁵⁴ The reputation of Frankfurt's *Judengasse* as a place where one could easily distribute stolen goods exceeded the city walls and also attracted thieves from other cities who were looking to sell their goods. Johannes Albert, for example, came to Frankfurt with some garments, several pairs of shoes and a tin jug he had stolen from an inn in Mainflingen, some 30kms upstream the Main, in order to sell his goods in the *Judengasse*.⁵⁵⁵

The Jewish quarter was not only known to thieves as a place to distribute stolen goods. The investigation records reveal many examples of victims who had gone to the *Judengasse* in order to retrieve their property and find the thief before they went to the *Verhöramt* to report the theft.⁵⁵⁶ Additionally, the authorities had the power to proclaim a so-called *Schulbann*: the stolen items were announced in the synagogue. After the proclamation, the *Schulkopper* (a Jewish official in service of the synagogue) had to go around and take oaths from all the inhabitants of the *Judengasse* in which they declared they would return the stolen goods if they turned up in the quarter.⁵⁵⁷ Such a *Schulbann*

⁵⁵² I. Kracauer, *Geschichte der Juden in Frankfurt am Main (1150-1824) vol. 2* (Frankfurt am Main 1927) 109; C. Kasper-Holtkotte, *Die Jüdische Gemeinde von Frankfurt am Main in der frühen Neuzeit. Familie, Netzwerke und Konflikte eines Jüdischen Zentrums* (Berlin 2010) 92-94.

⁵⁵³ Criminalia 9239 (1781).

⁵⁵⁴ Criminalia 9292 (1781).

⁵⁵⁵ Criminalia 9203 (1780).

⁵⁵⁶ Criminalia 5283 (1741); Criminalia 3138 (1721); Criminalia 9203 (1780); Criminalia 7664 (1760); Eibach, 'Stigma Betrug', p. 23.

⁵⁵⁷ Eibach, 'Stigma Betrug', p. 23-24.

could also be approached by other authorities, who suspected that goods stolen in their territory might be sold in the ghetto in Frankfurt.⁵⁵⁸

For seventeenth-century Württemberg, Ulinka Rublack witnessed a 'perfect division of labour' among Jewish receivers. The women stayed at home to collect the spoils from thieves and, in turn, their men traded these as pedlars.⁵⁵⁹ It remains unclear from Rublack's account whether this gender division is also reflected statistically among the offenders prosecuted, and whether Jewish women were prosecuted for fencing in seventeenth-century Württemberg to the same extent as men. For eighteenth-century Frankfurt at least, this was not the case. Both in my own sample years, as well in Joachim Eibach's, the prosecution efforts of the authorities were mainly directed at male Jewish receivers.⁵⁶⁰ Moreover, the investigation records of Frankfurt do not point to a similar gendered division of labour concerning the distribution of stolen goods as Rublack detected in Württemberg. There are several examples in which thieves sold their spoils to Jewish women, but there is no evidence that they worked alongside their husbands in a coordinated fashion to distribute the stolen goods.⁵⁶¹ The spoils were usually sold to the Jewish women in the context of their everyday lawful economic activities, not as dependent housewives. They were usually not subjected to a criminal investigation because evidence was lacking that they had knowingly bought stolen goods.

Thus, the prosecution efforts of the authorities in relation to fencing discriminated according to gender and religion. However, despite the fact that the Jewish ghetto featured prominently in the world of stolen goods in early modern Frankfurt, it should not be characterised primarily as a black market for stolen items. Most of the trade in the *Judengasse* was legitimate and not dominated by fencing. Equally, there are no signs of large existing networks of professional receivers in the sources. In fact, most of the receivers prosecuted had come into contact with property offenders through their lawful economic networks and activities.⁵⁶² The boundaries between lawful and unlawful activities were often blurred.

Beyond the Judengasse

Even though the majority of the prosecutions for fencing involved Jewish suspects, a close reading of the sources reveals that men and women sold their spoils through a variety of channels and did

⁵⁵⁸ Criminalia 3523 (1726); Criminalia 7299 (1756); Criminalia 2024 (1694); Criminalia 4655 (1737); Criminalia 6188 (1749); Criminalia 6543 (1751); Criminalia 6866 (1753); Criminalia 7328 (1757); Criminalia 7350 (1757); Criminalia 8982 (1777).

⁵⁵⁹ Rublack, *Crimes of women*, 116.

⁵⁶⁰ Eibach, 'Stigma Betrug', 23.

⁵⁶¹ Cases in which items were sold to Jewish women: Criminalia 5296 (1741); Criminalia 5298 (1741); Criminalia 5088 (1740); Criminalia 5081 (1740); 7586 (1760).

⁵⁶² Eibach, 'Stigma Betrug', p. 24.

not restrict themselves to selling goods in the ghetto. Certainly, pawning, recycling materials, and selling second-hand items were not the prerogative of the Jewish community. Such activities were an integral part of the early modern urban economy.⁵⁶³ Even guilds did not solely focus on manufacturing new goods: repair work and recycling constituted a significant part of their day-to-day business, which meant that they a large part of their activities involved second-hand goods.⁵⁶⁴ The majority of thieves in early modern Frankfurt – be it local or non-local, men or women – sold their goods on this large-scale second-hand ‘market’, which was part of the everyday lawful economy. It is difficult to discern a very clear gendered strategy among offenders as to where they chose to distribute their goods. To a large extent, men and women used the same economic networks to make a profit from their crimes. Male thieves would go around the houses selling stolen goods as peddler traders directly to local women, or sell them on to female hucksters.⁵⁶⁵ Women, too, sold their goods where they would find a market. They often sold their spoils to other women, but also to male buyers. In little less than half of all the cases where it was possible to find information about how spoils were distributed, women were involved as buyers, pawners or receivers - although many of them claimed not to know anything about the theft.⁵⁶⁶ This shows that women were not necessarily excluded from economic activities connected to receiving in early modern Frankfurt, as a first look at the profile of formally *prosecuted* receivers would suggest.

As the low number of fencing cases already indicates, authorities often had difficulty in prosecuting receivers of stolen goods. This was in part related to the legal norms. The *Carolina* did not mention receiving as a separate crime, but stated that anyone who kept or sold items that were stolen, should be convicted as a thief. However, due to the strong emphasis on definite proof in the code (see chapter 2), this was only possible if there was conclusive evidence that the person buying the spoils had been aware that they were stolen.⁵⁶⁷ If the authorities managed to prove a receiver’s criminal intent and convict them of fencing, they usually imposed monetary fines and on top of that Jews could expect the loss of their *Stättigkeit* (which *de facto* was equal to expulsion).⁵⁶⁸ According to Gerhard Fritz, the fact that many receivers were locals also contributed to the relatively low and mild prosecution of authorities.⁵⁶⁹ The local *Trödelfrau* (second-hand seller) Maria

⁵⁶³ See f.e. B. Blondé, P. Stabel and J. Stobart eds., *Buyers and sellers. Retail circuits and practices in medieval and early modern Europe* (Turnhout 2006); J. Stobart and I. van Damme eds., *Modernity and the second-hand trade. European consumption cultures and practices, 1700-1900* (Basingstoke 2010).

⁵⁶⁴ G. Stöger, ‘Urban Markets for Used Textiles – Examples from Eighteenth-Century Central Europe’ in: J. Stobart and B. Blondé eds., *Selling Textiles in the Long Eighteenth Century: Comparative Perspectives from Western Europe* (Basingstoke 2014) 210.

⁵⁶⁵ Criminalia 7637 (1760); Criminalia 7628 (1760); Criminalia 7619 (1760).

⁵⁶⁶ It was possible to find information on receivers for 41 cases: these involved 26 female receivers and 33 male receivers.

⁵⁶⁷ Janßen, *Der Diebstahl*, 4.

⁵⁶⁸ Eibach, ‘Stigma Betrug’, 25.

⁵⁶⁹ Fritz, *Öffentliche Sicherheit*, 418-422.

Bettenhäuserin was one of the few Christians convicted of fencing. She was ordered to return the goods and share part of the investigation costs as well as pay a fine of ten Reichsthaler.⁵⁷⁰ More often than being investigated themselves, receivers were called as witnesses against the suspected thieves. Also, it was not uncommon that they were even compensated for the financial loss they suffered for having to return the goods to the owner, either by the thief or the owner itself.⁵⁷¹

The prosecution of receivers was further complicated by the fast turnover and circulation of goods in the second-hand market. Usually by the time authorities came to investigate the case and questioned the original buyer, he/she often already sold the items on to someone else. Maria Magdalena Kadnowein, a fourteen-year-old soldier's daughter from Mannheim, was investigated for several thefts, including a frock worth sixteen guilders from Johann Carl Müller, a local *Kannenmacher*. Maria Magdalena sold the frock to a local huckster for three guilders, who in turn had sold it on to a Jew from Friedberg. It was at this point that Johann Carl discovered the crime as he found the frock among the merchandise the Jew was selling on the street.⁵⁷²

In the majority of cases, offenders sold their goods to strangers in an opportunistic and ad-hoc fashion, rather than knowing beforehand to whom they would sell the goods or having an established network of receivers. Both small and large spoils were split up and distributed over several different pawnbrokers, peddler traders, or second-hand dealers, who would in turn sell the goods on themselves. This strategy was applied for several reasons. First, it would have been difficult to find a buyer that was able to buy up large spoils, since many of these petty traders did not have sufficient capital themselves. Second, selling only single items reduced the risk of being suspected as a thief and therefore made it easier to sell the goods without further inquiries. Third, it made it more difficult for investigators to trace all the stolen goods to one person, which consequently made it more likely that he/she could only be prosecuted for petty theft.

Another common strategy that was employed by both men and women to turn stolen goods into profit, was to sell them as raw material to artisans. Items made of silver, (less often) gold, tin, copper or brass were popular to steal. Elisabeth Vachingerin, for example, who was mentioned earlier, had stolen a tin water jug from master tailor Johann Leonard Foster and sold it to tin founder Baijerbach.⁵⁷³ Similarly, Catharina Schwendlerin stated that she had sold the tin she had stolen from her former mistress to a tin founder 'whose name she did not know'.⁵⁷⁴ Susanna Margaretha Wachtin had stolen two silver shoe buckles and a silver Hungarian water jar from her

⁵⁷⁰ Criminalia 9293 (1781).

⁵⁷¹ Criminalia 9202 (1781); Criminalia 7628 (1760); Criminalia 7619 (1760).

⁵⁷² Criminalia 5269 (1741). Also: Criminalia 9295 (1781); Criminalia 5283 (1741); Criminalia 5232 (1741); Criminalia 3138 (1721); Criminalia 7642 (1760); Criminalia 7664 (1760).

⁵⁷³ Criminalia 9321 (1781).

⁵⁷⁴ Criminalia 9199 (1780).

mistress. She had sold these to a silversmith, who testified in court that he had melted these items down immediately.⁵⁷⁵

Crafts and guilds are usually considered as primarily male spheres of economic activity. However, the investigation records also reveal several widows of master artisans who continued to run workshops independently after the death of their husband as buyers of stolen goods.⁵⁷⁶ Perhaps their weaker economic positions may have made them particularly susceptible to such risky illegal activities, but it is hard to find evidence in the sources that the offenders did this as a specific strategy as Ulinka Rublack previously suggested for seventeenth-century south-west Germany.⁵⁷⁷ Furthermore, the examples described above show that women knew their way around the workshops of the city. Selling raw materials directly to artisans was not necessarily something that would arouse suspicion, as it was common for households to trade or recycle old utensils or use them (partially) as currency. For many maids, running errands also involved pawning and trading second-hand items, which meant that they knew such places well, or at least were aware of how to locate them.⁵⁷⁸ Stolen food could be sold to victuallers in a similar fashion.⁵⁷⁹

The interrogations provide examples of servants and former servants who used knowledge about possible buyers that they had acquired during their service. An example of this is the case of bell founder Johann Georg Schneidewind against seventeen-year old Margaretha Eckhardtin. In 1780, Schneidewind reported to the authorities that Margaretha had come to him in order to buy brass tools on the account of her employer coppersmith Derscho.⁵⁸⁰ At first there was nothing that aroused Schneidewind's suspicion: he knew both Margaretha and Derscho. However, about half an hour after Margaretha had left his shop he was summoned by one of his colleagues, the bell founder Barthels. The latter showed him the very tools that Margaretha had just bought at Schneidewind's shop. According to Barthels, Margaretha had told him the tools belonged to her cousin and that he had requested her to sell them. Unlike Schneidewind, however, Barthels did not trust the situation and ordered Margaretha to go and get her cousin, while he held on to the tools. After Margaretha failed to return, Barthel called for Schneidewind, who recognised the tools as his. Schneidewind immediately went to Derscho, who knew nothing of the business. Indeed, Margaretha had left his service five months previously. Together with Derscho's wife, Schneidewind summoned Margaretha under the pretence that they had found her a service. After

⁵⁷⁵ Criminalia 5273 (1741).

⁵⁷⁶ Criminalia 5278 (1741); Criminalia 9201 (1780); Criminalia 5076 (1740); Criminalia 5095 (1740).

⁵⁷⁷ Rublack, *Crimes of women*, 117.

⁵⁷⁸ See, for example, Criminalia 5271 (1741) in which Katharina Charlotta Marpurgerin lists all the items she had to pawn or sell for her mistress and carpenter widow Maria ELisabetha Rückmännin. On the tasks of domestic servants, see: Dürr, *Mägde in der Stadt*, 148-152.

⁵⁷⁹ Criminalia 5162 (1741); Criminalia 7631 (1760).

⁵⁸⁰ Criminalia 9178 (1780). Also: Criminalia 5280 (1741); Criminalia 9172 (1780); Criminalia 5111 (1740).

she turned up they confronted her with her theft and had her arrested. During her interrogations at the *Verhöramt*, Margaretha revealed that she had planned to buy new clothes from the profit of the tools. She had specifically chosen to go to Schneidewind because she often ran errands at his workshop when she was still in the service of Derscho, and he would be more likely to trust her.

Although the investigation records show that it was a common strategy to sell items of valuable materials directly to manufacturers, the example presented above also shows that this was perhaps the most risky method of turning stolen items into profit. Other cases as well reveal that the intimate knowledge of craftsmen about hallmarks of goods either they or one of their colleagues had manufactured meant that they were more skilled at recognising stolen property than others. Guild members were often informed to look out for specific stolen items.⁵⁸¹ It was not uncommon for thieves to be apprehended through the help of craftsmen or guild masters who reported offenders that tried to sell them raw materials.⁵⁸²

Thus, studying the ways through which thieves in early modern Frankfurt distributed their spoils displays a very varied picture of all the people involved. Contrary to Heather Shore's observations for eighteenth-century London, there are no clear signs of 'organised' networks of receivers that functioned as a go-between the 'criminal underworld' and the lawful community in early modern Frankfurt.⁵⁸³ Moreover, although the prosecution efforts of Frankfurt's authorities mainly targeted Jews, the analysis shows that women were equally involved in buying and selling stolen goods through their economic activities. The examples confirm that women's role in these activities did not stem from their position as dependent household members. They were not associates in their men's criminal activities, but acted on their own account through independent economic activities. Furthermore, it was difficult to detect gendered patterns in the way that thieves disposed of their spoils. In general, all the examples illustrate that the majority - if not all - of the goods were easily sold on in an economy in which selling and reselling of second-hand items was common practice, and in which boundaries between formal and informal trade were fluid and difficult to determine.

Domestic theft

The previous paragraphs have already shown that the practice of unlawful appropriation in early modern Frankfurt am Main cannot simply be understood through the lens of a public/male and

⁵⁸¹ Criminalia 7719 (1761); 5076 (1740).

⁵⁸² Criminalia 5076 (1740); Criminalia 5289 (1740); Criminalia 9178 (1780).

⁵⁸³ H. Shore, 'Crime, criminal networks and the survival strategies of the poor in early eighteenth-century London' in: S. King and A. Tomkins eds., *The poor in England 1750-1850. An economy of makeshifts* (Manchester 2003) 137-165; H. Shore, *London's criminal underworlds, c. 1720 – c. 1930. A social and cultural history* (Basingstoke 2015).

private/female dichotomous model. Early modern households were not closed off private spheres. They were open and served public functions. More than in other countries, the household (*das Haus*) in early modern Germany embodied a legal entity and a unit of strongly regulated social control.⁵⁸⁴ This is visible, for example, in the public function of the ‘semi-judicial authority’ of the head of the household and the tendency of authorities not to impose criminal punishments if the head of the household regulated any in-house conflicts.⁵⁸⁵ Moreover, it is reflected in the importance of households in the regulation of migration. Incorporation in a household was a prerequisite for staying in the city: servants and journeymen unable to find work had to move on. This restricted the opportunities for men and women to live independently, and indeed, the number of domestic servants on the total population was higher in Frankfurt than in cities like London or Amsterdam.⁵⁸⁶

In the previous sections, theft by servants and other household dependents has only been mentioned in passing, when they were mentioned as one of the three groups of offenders that stole from houses. Unlike the other two groups (neighbours and strangers), their offences *were* committed from a position of dependent household members. Household dependency, however, was not a general *female* characteristic (as it was often made out to be in the early historiography on women and theft) but a social status. Both male and female servants were in a subordinate position in the household hierarchy. Therefore, in order to fully understand how gender differences, both in the methods and the prosecution of property crimes, played out, a closer look at domestic thefts is crucial. This section looks at the connection between the nature of the crime and the dependent position of servants. The following section then will deal with the relationship between household control and criminal prosecution of domestic theft.

In the course of the early modern period, domestic theft became an increasing concern for public officials. The sixteenth-century *Carolina* had not yet defined it as a separate offence. By the eighteenth century, domestic theft had become a popular subject among legal commentators. Moreover, in several cities and territories in early modern Germany authorities published police ordinances defining domestic theft as a separate offence and specifying harsher punishments.⁵⁸⁷ A similar development was visible in early modern England, where the increasing anxiety about servant thefts led to the implementation of an extraordinary statute in 1713 that made ‘theft from a house’ a capital offence.⁵⁸⁸

⁵⁸⁴ Ogilvie, ‘Bitter living’, 63, 311-312; Rublack, *Crimes of women*, 8-9.

⁵⁸⁵ Eibach, *Frankfurter Verböte*,

⁵⁸⁶ See chapter 3.

⁵⁸⁷ Härter, *Policey und Strafjustiz*, 580-581; Wettmann-Jungblut, *Eigentumskriminalität*, 278; Ulbricht, ‘Zwischen Vergeltung’, 140.

⁵⁸⁸ Beattie, *Policing and punishment*, 39.

The context from which the increased anxiety arose in the two countries, however, was rather different. In England authorities were particularly concerned with the potential danger posed by servants, as they might invite strangers into the house. Maids especially were often suspected of having connections with the ‘criminal underworld’, and enabling others to steal from their employers’ houses.⁵⁸⁹ In Germany, the discussions were much more framed as a crisis in hierarchical relations that endangered the existing social order. Domestic theft was considered a breach of loyalty towards the head of the household, which was considered as an aggravating circumstance.⁵⁹⁰

Contrary to other cities in Germany, no police ordinances were issued defining domestic theft as a separate offence in early modern Frankfurt. Nevertheless, several sources reveal that it was a topic of discussion among the city’s authorities and legal professionals as well. Syndic Johann Ludwig Burgk called for harsh punishments (*‘scharfe Strafen’*) against disloyal servants.⁵⁹¹ Illegal appropriation of household property took up a considerable part of the servant order that was drafted by the consistory on the initiative of the city council in 1756.⁵⁹² The ordinance stated, for example, that ‘servants should be loyal, and not only prove their loyalty by not stealing anything, but also by making sure that they prevent any harm to the fortune of their master, when they sell or buy anything on his account’.⁵⁹³ Moreover, servants were not allowed to keep their chests of personal belongings outside their master’s household, as this would enable them to hide stolen property.⁵⁹⁴

The attention domestic thefts received in the legal writings and moralistic literature of that time are in stark contrast with the actual number of cases prosecuted before the courts. Based on primarily German examples, Otto Ulbricht considered a percentage of domestic thefts of 3-8% as common for the early modern period.⁵⁹⁵ In Frankfurt’s neighbouring territory of Kurmainz, domestic theft constituted about 5% of all prosecuted property offences between 1560 and 1802.⁵⁹⁶ In eighteenth-century Frankfurt, suspects prosecuted for domestic theft had a share of 10.7% among all property offenders. This is comparatively high, but it has to be remembered that the data

⁵⁸⁹ Beattie, *Policing and punishment*, 38.

⁵⁹⁰ Eibach, *Frankfurter Verböre*, 346; Härter, *Policey und Straffjustiz*, 580-581.

⁵⁹¹ Criminalia 5610 (1743) quoted in: Eibach, *Frankfurter Verböre*, 352.

⁵⁹² Criminalia 12880 (1756). For more information on this servant order: Chapter 6.

⁵⁹³ Criminalia 12880 (1756) folio 52. Original: ‘Überhaupt sollen die dienstbotten getreu seyn, und ihre Treue nicht nur damit bezeigen das sie würcklich nichts entwenden, sondern auch darinnen, das sie allen Schaden nach Vermögen abwenden, dasjenige was sie für ihre herrschafft kauffen oder verkauffen auf das genaueste bedingen, ohne für sich oder andern einigen Vortheil dabey zu machen’.

⁵⁹⁴ Criminalia 21880 (1756).

⁵⁹⁵ Ulbricht, ‘Zwischen Vergeltung’, 144.

⁵⁹⁶ Härter, *Policey und Straffjustiz*, 578.

only cover the eighteenth-century, which was marked by increasing attention towards this type of theft.⁵⁹⁷

The majority of cases of domestic theft in early Frankfurt were committed by women. The share of women investigated for domestic during the thirteen sample years in the second half of the eighteenth century analysed by Joachim Eibach was 51.4%.⁵⁹⁸ In my own sample, 10 men were investigated for domestic theft and 28 women. However, as my sample included more years for women than they did for men, the extra years have to be excluded: this leaves us with 10 men and 13 women – or to put it in other words: 56.5% of the domestic thefts recorded in these sample years were committed by women. This corresponds with what is known for other cities and regions as well: in terms of numbers, domestic theft was predominantly a female offence.⁵⁹⁹ According to John Beattie, the common involvement of women in theft by servants may partially explain why theft of goods from a house or warehouse to the value of forty shilling or more was made a capital offence in England in 1713, as this act was particularly aimed servants who stole from their employer.⁶⁰⁰ In the German moral and legal writings dealing with domestic theft, the underlying assumption was also that it was idle and immoral young girls that masters had to fear most when it came to the need to protect their property.⁶⁰¹

This gender pattern stems from a variety of reasons. The first issue that needs to be considered is the unequal balance of the sexes among domestic servants. In Frankfurt, by the beginning of the nineteenth century, three-quarters of domestic servants were female. For the early modern period a proportion of men to women of 1:2 is generally accepted.⁶⁰² However, this number does not include journeymen and apprentices, who were also incorporated in their master's household. Looking at the group of dependent household members as a whole, the sex ratio was more balanced than among servants. The female nature of domestic service alone, therefore, cannot explain why women appear more frequently as suspects of domestic theft than men. Rather, I will argue, the differences must be understood from the different nature of labour relations experienced by men and women in service, and the different level of dependence within the household.

⁵⁹⁷ Eibach, *Frankfurter Verböte*, 323.

⁵⁹⁸ Eibach, *Frankfurter Verböte*, 323.

⁵⁹⁹ Ulbricht, 'Zwischen Vergeltung', 145; H. Diederiks, *In een land van justitie. Criminaliteit van vrouwen, soldaten en ambtenaren in de achttiende eeuwse Republiek* (Hilversum 1992) 77-80; Durston, *Victims and Viragos*, 133-136.

⁶⁰⁰ Beattie, *Policing and punishment*, 63-71.

⁶⁰¹ K. Simon-Muscheid, *Die Dinge im Schnittpunkt sozialer Beziehungsnetze. Reden und Objekte im Alltag (Oberrhein 14. bis 16. Jahrhundert)* (Göttingen 2004) 149-160; Dürr, *Mägde in der Stadt*, 91.

⁶⁰² S. Hahn, *Migration-Arbeit-Geschlecht. Arbeitsmigration in Mitteleuropa vom 17. bis zum Beginn des 20. Jahrhunderts* (Göttingen 2008) 207-212.

Let us first take a look at the gender division of labour among servants. Otto Ulbricht found that in the rural duchies of Schleswig-Holstein and Lauenburg the different tasks of male and female servants influenced the type of goods they had access to, which in turn led to different tactics of stealing.⁶⁰³ Women tended to have better access to places where valuables such as clothing, jewellery and money were stored (i.e. the house) than male servants, who had more access to livestock and provender. Because women were more likely to target 'unique' items in the sense that their absence was easily discovered, they usually stole many items simultaneously and fled immediately. Men, on the other hand, targeted smaller items connected to their tasks, such as animal fodder, which could be hidden more easily without anyone noticing. This made it easier for them to steal little by little over a longer period of time.⁶⁰⁴

Ulbricht's analysis was based on rural households, but the case of Frankfurt shows that a gendered division of labour among domestic servants also attributed to different patterns of appropriation in the city. Johann Philipp Friedrich Weyland, for example, worked as a servant in the *Zum Krachbrein* inn, from which he was accused of stealing several bottles of expensive wine and selling it to a servant at another inn. Moreover, he also served wine to the maids of the inn, who unlike Johann, did not have access to the wine cellar.⁶⁰⁵ Ludwig Rusch, a servant of beer brewer Peter Scholge, was responsible for taking care of the stables. When he left his service prematurely, he stole his master's horse.⁶⁰⁶ Anna Barbara Langin, who worked as a servant for Johann Baptist Eisen *des Rates* (council member) knew her way around in the pantry of her master. This allowed her to provide her accomplice with access to the pantry to steal butter, flour and other provisions.⁶⁰⁷ Unlike what Ulbricht found for the rural case, however, there are no signs that the division of labour also resulted in different methods of appropriation. Both men and women were accused of stealing a small number of items gradually, only to be noticed by the master or mistress after some amount of time.⁶⁰⁸

Easy access of servants to valuable items certainly goes some way to explaining why servants were motivated to steal from their masters. Maids came into contact on a daily basis with luxuries they were not able to afford themselves, and for some this may have been a temptation too hard to resist.⁶⁰⁹ But temptation alone does not offer a sufficient explanation. Besides the

⁶⁰³ Ulbricht, 'Zwischen Vergeltung', 148-149.

⁶⁰⁴ R. Dürr, "Der Dienstbote ist kein Tagelöhner..." *Zum Gesinderecht (16. bis 19. Jahrhundert)* in: U. Gerhard ed. *Frauen in der Geschichte des Rechts* (München 1997) 115-139, 118-119.

⁶⁰⁵ Criminalia, 5123 (1740).

⁶⁰⁶ Criminalia 2239 (1700).

⁶⁰⁷ Criminalia 2241 (1700).

⁶⁰⁸ Criminalia 3138 (1721); Criminalia 5111 (1740).

⁶⁰⁹ Durston, *Victims and viragos*, 133-136; D.D. Gray, *Crime, prosecution and social relations. The summary courts of the city of London in the late eighteenth century* (New York 2009) 89; Ammerer, *Heimat Straße*, 144.

gendered division of labour, the second aspect that needs to be considered is the subordinate position of domestic servants as a whole. Their marginal position in early modern society is an important factor in understanding domestic theft in general and that of women in particular. From the moment that servants accepted the hiring penny (*Mietpfennig* - a small sum given to a servant upon being hired), he or she was legally bound to the service, and therefore the authority of their master, for the agreed term.⁶¹⁰ Domestics could not dissolve their contracts and leave before the end of their service, without the consent of their master.⁶¹¹

One motive for theft that was connected to the 'bound' status of servants was what Otto Ulbricht referred to as the *Vergeltungsdiebstahl*: theft out of 'retaliation' for maltreatment, general social inequality or unpaid wages.⁶¹² There are a number of cases of domestic thefts in the *Criminalia* which are set in this context. The aforementioned Ludwig Rusch, for example, excused the theft of his master's horse by stating that he had not received his full wages and had broken his arm during his work, which left him lame.⁶¹³ Maria Margaretha Gerstin justified her theft with the fact that her mistress, duchess Wilhelmina Louisa Friedrica von Leiningen-Westerburg, only gave her one *Batzen* daily for beer and bread, and fed her nothing more than leftover soup.⁶¹⁴ And Johann Jakob Notwang stated that he had left because the work his master made him do was too hard, and he feared that he would not receive his full wages. He therefore stole some household linen and clothing which he hoped to sell in order to make some *Zehrgeld* (allowance) for on the road.⁶¹⁵ Anna Margaretha Burkhardin, who was accused of theft by her master Willhelm DeAhna, declared that she had entered into service for a yearly wage of eight guilders with the promise of an increase after the first year of service, which she claimed to have never received.⁶¹⁶ Moreover, Anna Margaretha stated that she had left her service prematurely, because her mistress had treated her violently. She herself denied that she took the items DeAhna reported as stolen with her.

Conflicts over salary are difficult to decipher for outsiders. Whereas servants could perceive a cut in pay as unjustly, employers could argue that they were simply part of disciplinary measures of servants acting lazily, not doing chores correctly, or spoiling and wasting household goods.⁶¹⁷ Moreover, 'thefts' could also be related to misunderstandings of customary rights and gratuities

⁶¹⁰ On the bound nature of early modern labour relations of servants see: A. Stanziani, *Bondage. Labor and rights in Eurasia from the sixteenth to the early twentieth centuries* (New York 2014) 48-52; 147-174.

⁶¹¹ The regulation of contracts formed an important part of Frankfurt's servant order from 1810 and in the draft of 1756. *Criminalia* 12660 (1756) folio 37-36; I. Kaltwasser, *Häusliches Gesinde in der Freien Stadt Frankfurt am Main. Rechtsstellung, soziale Lage und Aspekte des sozialen Wandels, 1815-1866* (Frankfurt am Main 1989) 38-41; Dürr, 'Gesinderecht'.

⁶¹² Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung', 155.

⁶¹³ *Criminalia* 2239 (1700).

⁶¹⁴ *Criminalia* 5282 (1741).

⁶¹⁵ *Criminalia* 7580 (1760).

⁶¹⁶ *Criminalia* 3078 (1720).

⁶¹⁷ *Criminalia* 5226 (1741); *Criminalia* 9257 (1781). Also: Rublack, *Crimes of women*, 192.

which were often part of a servant's salary.⁶¹⁸ Master baker Gernhard, for example, dismissed three of his apprentices for 'stealing' milk rolls without paying their salary. According to one of the journeymen, their master had told them that they could eat as many milk rolls as they wanted, while the other two reported that they were allowed three or four a day.⁶¹⁹ Withholding wages was only one of the many disciplinary methods employed by household authorities. And as we will see below, such methods of informal discipline played a crucial role in dealing with household theft in the early modern period.

The motive of retaliation inspired some scholars to define domestic thefts as a 'social crime', a way to claim or reclaim customary rights and a form of protest against social inequality.⁶²⁰ Joachim Eibach objected to this perception and found little evidence for this in Frankfurt's criminal records. Although he found many examples of domestics stealing out of retaliation, they did not match the concept for two reasons. First, although many of the victims of domestic thefts were burghers, they did not belong to the privileged and ruling classes of the city, but were part of the middle or lower-middle class. Second, unlike such crimes as poaching and wood theft, there was no shared sense of 'reclaiming old rights' within the community with regard to domestic thefts. Within all layers of society, it was perceived as a breach of loyalty.⁶²¹ Eibach is certainly right in stating that domestic thefts do not fit the traditional definition of social crimes. However, this does not mean that social inequality and the bound status of servants did not play a role. While they may not have been committed out of 'protest' against their social status, they *were* often committed within a context where it was difficult to get justice through other means.

Technically, servants, even though they were in a subordinate position, could indict their master for maltreatment or not upholding agreements about wages or other forms of remuneration. After all, the master-servant relationship was a contract based on mutual obligations and reciprocity.⁶²² Indeed, the criminal records reveal several examples of servants indicting their master before the *Verhöramt*. Charlotte Chatillon accused her master Johannes Maijer, who was a master

⁶¹⁸ P. Lane, 'Work on the margins. Poor women and the informal economy of eighteenth- and early nineteenth-century Leicestershire', *Midland History* 22:1 (1997) 85-99, 89; J. McEwan, Negotiating support. Crime and women's networks in London and Middlesex, c. 1730-1820, (2008). Unpublished PhD thesis, the University of Western Australia, 165-167.

⁶¹⁹ Criminalia 7581 (1760). Other cases in which conflicts about access to provision or other perquisites of their employment played a role: Criminalia 9804 (1788); Criminalia 5123 (1740).

⁶²⁰ For the concept of social crimes, see: D. Hay et al., *Albion's fatal tree. Crime and society in eighteenth-century England* (New York 1975). In connection with domestic thefts: M. Rheinheimer, *Arme, Bettler und Vaganten. Überleben in der Not 1450-1850* (Frankfurt am Main 2000) 44; Beattie, 'Crime and inequality', 137; Ulbricht, 'Zwischen Vergeltung', 154-155.

⁶²¹ Eibach, *Frankfurter Verböte*, 349.

⁶²² H. Wunder, 'Gender norms and their enforcement in early modern Germany' in: L. Abrams and E. Harvey eds., *Gender relations in German history. Power, agency and experience from the sixteenth to the twentieth century* (London 1996) 39-56, 43; H.R. Schmidt, 'Hausväter vor Gericht. Der Patriarchalismus als zweiseitiges Schwert' in: M. Dinges ed., *Hausväter, Priester, Kastraten. Zur Konstruktion von Männlichkeit in Spätmittelalter und Früher Neuzeit* (Göttingen 1998) 213-236.

shoemaker, of having beaten her excessively, lifting up her skirt and whipping her in front of one of his journeymen and his wife. According to Charlotte, the latter even encouraged her husband to beat harder with the words that she was happy to pay any possible fine for maltreatment.⁶²³ As several of the testimonies in this case highlighted, the conflict was set in the context of Charlotte's desire to leave her service before fulfilling her term, which Maijer denied her. In the end, he was ordered to pay a fine of six Reichsthaler (which was later reduced to only four Reichsthaler) and cover Charlotte's expenses in the hospital where she had stayed as a result of the assaults.⁶²⁴

The unequal power balance between servants and masters may have prevented many from bringing their case to the authorities. One reason may be that, if the authorities considered the complaints to be unjust, servants could potentially be ordered to pay the costs of investigation. This may have decreased the likelihood of domestics initiating a case against their masters, because they carried the burden of proving the case themselves.⁶²⁵ Moreover, even if servants managed to prove their case and their masters were sentenced (usually with a fine) for the use of excessive force, this did not automatically exclude them from being disciplined themselves. 32-year old Catharina Elisabetha Rachin, a local burgher's daughter, ended up in hospital after being maltreated by her master, master baker Johannes Schäffer. The hospital's doctor reported the assault to the junior burgomaster who ordered the *Verhöramt* to investigate the case. The interrogation of Schäffer himself, as well as the statements by Catharina Elisabetha, revealed that master and servant had come into conflict over the fact that Catharina had used some left-over coffee grounds and coals to make some coffee for herself. When Schäffer confronted her with this, Catharina Elisabetha reacted defiantly and insulted her master as well as his wife. The authorities punished Schäffer for his excessive disciplining, but acknowledged that he had the right to discipline his servants as part of the 'right to punish (*Strafrecht*) that parents, teachers, and masters were entitled to'.⁶²⁶ Schäffer was ordered to pay a fine and the costs of Catharina's stay in hospital.⁶²⁷ However, although the authorities considered the *force* with which Schäffer had disciplined his maid to be unjust, they did acknowledge his *reasons*. Initially, the authorities considered sending Catharina Elisabeth to the poorhouse for her disobedience and insubordinate behaviour, but finally decided against this because she was a burgher's daughter. Honourable citizens were commonly not confined to poorhouses, which were meant to discipline the loose and disorderly sections of the urban

⁶²³ Criminalia 9610 (1786). Original quote: 'das wenn sie auch die strafe von 5 und noch einmal so viel guden geben müsstn sie solche gern daran wenden wollt'.

⁶²⁴ Others: Criminalia 5452 (1742); Criminalia 8637 (1772); Criminalia 8673 (1772); Criminalia 8825 (1775); Eibach, *Frankfurter Verhöre*, 342-343.

⁶²⁵ This happened in the case of Schöngen, who indicted her master for slapping her and going through her trunk without permission. Criminalia 9207 (1780).

⁶²⁶ Criminalia 9804 (1788) Original: 'des den Eltern, LERN, Herrschaftens allerdings zustehenden Strafrechts'

⁶²⁷ Criminalia 9804 (1788).

population. Clearly, Catharina did not belong to these social layers. Catharina, however, was a minority as most domestic servants in early modern Frankfurt came from elsewhere and did not belong to the city's burgher community.⁶²⁸ Their social and legal position, therefore, was much weaker than Catharina's.

These examples make clear that there were serious disincentives to be considered for servants who wished to indict their master. Leaving service prematurely and taking away goods that could be turned into money to help them leave the city and survive a little while on the road offered an alternative in these cases.⁶²⁹ There was a gendered aspect to this as well. Women working as domestic servants could only turn to the urban authorities for help if they felt they were ill-treated by their master. Journeymen and apprentices, on the other hand, could also turn to the guild authorities and may have had more bargaining power to settle labour conflicts.⁶³⁰ At the same time, the way a master treated his journeymen was subject to more social control than the way he treated his maids, as the latter was primarily played out in the domestic arena. All in all, this may partially explain why domestic theft was mostly a female offence. The gender division of labour not only influenced the different spaces men and women had access to, it also meant that relatively speaking female servants were more bound to the household and their master than apprentices and journeymen.

Finally, it has to be mentioned that not *all* domestic thefts were disguised labour conflicts. There were other motives at play as well. For rural Schleswig-Holstein, Otto Ulbricht identified thefts committed in the context of gaining independence and matchmaking. He referred to these as illegal dowry collecting (*'illegales Brautschatzsammeln'*).⁶³¹ It concerned domestic servants, particularly women, who were enticed to steal jewellery and nice clothing in attempt to attract the attention of a possible marriage partner or who stole in order to save up for a future dowry. According to Ulbricht, such thefts could also be related to a quest for more independence and self-determination, which women were more likely to achieve being married, than as dependents in an

⁶²⁸ Eibach, *Frankfurter Verböre*, 338; R. Koch, 'Zum Gesindewesen in Frankfurt am Main (17.-19. Jahrhundert)', *Archiv für Frankfurts Geschichte und Kunst* 59 (1985) 231-250.

⁶²⁹ For similar considerations, see Alessandro Stanziani who stated that 'runaways as a form of exit cannot be understood without taking into account the fact that, between the seventeenth and the early twentieth centuries, working people – slaves or serfs, day labourers or servants, conscripts or convicts – had no voice or only a very weak one [...] They were runaways because they had no voice and thus no choice'. A. Stanziani, 'Runaways. A Global history' in: M. van Rossum and J. Kamp eds., *Desertion in the early modern world. A comparative history* (London 2016) 15-30, 15-16.

⁶³⁰ Criminalia 7581 (1760); Eibach, *Frankfurter Verböre*, 256. On conflicts between masters and apprentices/journeymen: A. Griebinger and R. Reith, 'Lehrlinge im deutschen Handwerk des ausgehenden 18. Jahrhunderts. Arbeitsorganisation, Sozialbeziehungen, und alltägliche Konflikte', *Zeitschrift für Historische Forschung* 13:2 (1986) 149-199; B. de Munck and H. Soly, 'Learning on the shop floor in historical perspective' in: B. de Munck, S.L. Kaplan and H. Soly eds., *Learning on the shop floor. Historical perspectives on Apprenticeship* (New York 2007) 3-32, 21-22.

⁶³¹ Ulbricht, 'Zwischen Vergeltung', 156-159. Also: Rublack, *Crimes of Women*, 103; Ammerer, *Heimat Straße*, 144; Eibach, *Frankfurter Verböre*, 342.

alien household.⁶³² Although securing a marriage partner may be less of a motive for male servants, Joachim Eibach pointed out that for men as well thefts could be motivated by the desire to take part in social culture with peers (*Geselligkeitskultur*). They stole in order to be able to go to inns to drink, smoke and gamble, for example.⁶³³ My own examples show that domestic theft was also seen a way of saving for insecure times and to cover the period between employments, or possibly even to be able to live independently.⁶³⁴ In these cases, the thefts by servants show many similarities to ‘normal’ thefts from dwelling houses committed by outsiders. Often, the maids did not carefully plan their thefts, but committed them ad hoc and opportunistically.

Criminal prosecution and household control

Now that we have a clear picture of how the dependent status of servants shaped the context within which domestic thefts were committed, it is necessary to take a closer look at the relationship between household control and criminal prosecution. The cases that have been cited thus far were visible in the investigation records because they were part of a formal criminal investigation. However, these cases most likely represent only a fraction of all the domestic thefts, because the majority probably never made it to the criminal investigation office. Instead, they were handled informally within the household. In the prescriptive literature of that time (*Hausväterliteratur*), masters and mistresses were instructed to govern their dependents to maintain peace and public order, and to discipline where necessary. The emphasis lay on regulating conflicts within the household, rather than before the court.⁶³⁵ As mentioned before, this should not be considered as a form of private control as the household was regarded as a ‘public’ foundation of state and society. Thus, the disciplinary actions by the head of the household – though informal – served a public function.⁶³⁶ In order to be able to exercise his disciplinary duties, the head of the household possessed a ‘semi-judicial authority’ over household members. Authorities generally chose not to intervene directly in cases of in-house conflicts, but rather favoured settlements out of court and disciplining by the housefather.⁶³⁷

⁶³² Ulbricht, ‘Zwischen Vergeltung’, 156-157. Such a case can be found in Criminalia 7587 (1760).

⁶³³ Eibach, *Frankfurter Verböte*, 350.

⁶³⁴ Criminalia 3138 (1721); Criminalia 9296 (1781); Ulbricht, ‘Zwischen Vergeltung’, 158-159.

⁶³⁵ M. van Haag, *Recht in der Hausväterliteratur. Der “Oeconomus Prudens et Legalis” von Franz Philipp Florin im Kontext seiner Zeit* (Münster 2014) 91; Dürr, *Mägde in der Stadt*, 108; Eibach, *Frankfurter Verböte*, 352. Also: T. Meldrum, *Domestic service and gender, 1660-1750. Life and work in the London household* (Harlow 2000), 34-67; M. Muravyeva, ‘A king in his own household.’ Domestic discipline and family violence in early modern Europe reconsidered’, *The History of the Family* 18:3 (2013) 227-237.

⁶³⁶ Eibach, *Frankfurter Verböte*, 291; Eibach, ‘Das Haus’, 184.

⁶³⁷ Criminalia 5320 (1741) quoted in Eibach, *Frankfurter Verböte*, 341. The Syndic Seyfried concluded in a case between a servant and his master that petty conflicts (*Streitigkeiten*) between masters and their servants, for example disagreement about a curfew, were not considered a ‘*Crimina Publica*’ and should therefore not be handled by the *Verhöramt* or the authorities.

There was a whole range of informal options available to household heads to punish servants whom they caught stealing. These included withholding their wages or part of their wages, dismissal before the end of the contract or simply reprimanding the offender. There are plenty of references in the sources of domestic thefts that were not prosecuted by the authorities, but sanctioned within the household. When Anna Katharina Keckin was arrested and investigated for the theft of a silver cup from silversmith Von Hilten, investigators called in several witnesses to testify about the character of Anna Katharina. One of the witnesses was her former employer, female shoemaker Lehrin. According to her testimony, Anna Katharina had stolen from her multiple times during her service. In the first instance, Lehrin retained the clothing of her servant, in order to make up for the financial loss. Even in the second instance, Lehrin did not go to the authorities to indict Anna Katharina, but simply dismissed her. This is a clear example of a domestic theft that was not reported to the criminal authorities for formal investigation. We only learn about the case because Lehrin was asked to testify as a witness about the character of Anna Katharina in another criminal investigation.⁶³⁸

The majority of indicted household thefts before the *Verhöramt* were cases in which informal control had failed or in which the servant had fled and the authorities were called in for assistance to retrieve the stolen items. Anna Margaretha Engelmännin, widow of a brewer, reported the theft of textiles by her maid Katharina Schwendlerin to the authorities. According to Anna Margaretha's account, she had initially promised her maid not to report the theft to the *Verhöramt*, as long as Katharina promised to return all of the stolen goods, or a sum of money equal to the worth of the textiles. Katharina agreed to this, but fled during the following night without reimbursing anything. It was only at this point, Anna declared, that she felt obliged to report the theft to the authorities (*'Sie sehe sich also jezo in die Nothwendigkeit versetzt, dieses gehorsamst anzuzeigen'*) and to ask for assistance to recover the possessions.⁶³⁹ Another example is the case of Philippina Kitzingerin. Her domestic theft was only mentioned in passing after her former mistress, *Gärtnersfrau* Maria Elisabetha Bockin went to the authorities to indict Philippina of harming her cows in retaliation for her dismissal, causing their udders to get infected.⁶⁴⁰ Again, the initial reaction was not to report the case to the authorities, but to handle the case informally.

The examples above demonstrate that disciplining household subjects was not a male prerogative. The mistresses were equally - or perhaps even more - involved in disciplining their maids. These examples show how much the position of women depended on their social and marital status. As mistresses of a household (*Hausmutter*), women were instrumental in maintaining

⁶³⁸ Criminalia 5240 (1741). Also: Criminalia 9804 (1788); Criminalia 9207 (1780).

⁶³⁹ Criminalia 9199 (1780).

⁶⁴⁰ Criminalia 7635 (1760).

social order, which after all was centred on the house. Since household discipline, in the perception of contemporaries, served a public function and was not restricted to the private sphere, married women fulfilled public roles. Even if this was ‘only’ in the space of their own home.⁶⁴¹ Joachim Eibach suggested that household authorities, in particular men, were reluctant to report domestic theft to the authorities for various reasons. Indeed, household authorities wished to maintain control over their own matters and to exercise discipline without the interference of authorities. But they might also have been afraid that their stealing servants might be perceived as a failure on their behalf, as a sign of weakness and lack of mastership. First, because they had failed to employ (and therefore judge) an honest person. Second, because it could be considered as a sign of failing discipline and possible incompetence as household authority.⁶⁴²

Informal household disciplining was thus an important tool for social control in early modern Frankfurt. But it did not affect male and female household members in a similar fashion. There are several reasons that suggest that maids were more intensely supervised within the household than male dependents. These differences partially explain the female nature of the domestic thefts. First, the tasks of maids were more likely to take place within the household itself, which increased their ‘exposure’ to the watchful eye of their mistresses and masters.⁶⁴³ Second, although apprentices and journeymen were also subjected to the household of their master, there is evidence for early modern Europe that suggests that social ties weakened and the relationship between apprentices and masters gradually began to resemble that between employer and labourer, particularly in industries that experienced ‘pre-capitalist’ growth.⁶⁴⁴ Apprentices increasingly boarded outside their master’s household, which must have had a considerable effect on the nature of control in cases of domestic theft. Moreover, Frankfurt’s guilds also exercised a high degree of informal social control.⁶⁴⁵ Not only did this broaden the circles of control that apprentices and journeymen were subjected to, it also offered them more opportunities to regulate possible

⁶⁴¹ H. Wunder, ‘Herrschaft und öffentliches Handeln von Frauen in der Gesellschaft der Frühen Neuzeit’ in: U. Gerhard ed., *Frauen in der Geschichte des Rechts. Von der frühen Neuzeit bis zur Gegenwart* (München 1997) 27-54; G. Dilcher, ‘Die Ordnung der Ungleichheit. Haus, Stand und Geschlecht’, in: U. Gerhard ed., *Frauen in der Geschichte des Rechts. Von der frühen Neuzeit bis zur Gegenwart* (München 1997) 55-72.

⁶⁴² Eibach, *Frankfurter Verböde*, 347-348.

⁶⁴³ Ulbricht, ‘Zwischen Vergeltung’, 148.

⁶⁴⁴ B. De Munck, ‘From brotherhood community to civil society? Apprentices between guild, household and the freedom of contract in early modern Antwerp’, *Social History* 35:1 (2010) 1-20, 9. Gießinger and Reith, ‘Lehrlinge im deutschen Handwerk’, 165; R. Sarti, ‘Criados, servi, domestiques, gesinde, servants: for a comparative history of domestic service in Europe (16th-19th centuries)’ *Obradorio de Historia Moderna* 16 (2007) 9-39, 33.

⁶⁴⁵ R. Brandt, ‘Die Grenzen des Sagbaren und des Machbaren. Anmerkungen zur Rechtsgeschichte des Frankfurter “Zunfthandwerks” während der Frühen Neuzeit’ in: A. Amend et al. eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch Deutschen Reich* (München 2008) 247-265. On social control of guilds: M. Prak, ‘Moral order in the world of work. Social control and the guilds in Europe’ in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 176-199.

conflicts over wages, maltreatment and other factors which could lead to thefts out of ‘retaliation’ via different means as mentioned above.⁶⁴⁶

Informal disciplining by the household clearly affected the way offenders were prosecuted. Due to the nature of patriarchal control and household relationships, the dark number of thefts committed within the domestic arena must be considerable, and probably higher than with other type of property offences.⁶⁴⁷ As result of the nature of domestic service and household authority, this underreporting may have concerned more women than men. It is impossible to make assumptions about the scope of unreported crimes as a result of this. Neither is it possible to calculate how the gendered nature of this underreporting affected the gender balance among recorded offences. What *can* be considered, however, is that the share of informally sanctioned offences was larger in urban societies with strong household authority, such as Germany, than in cities with weaker household structures like Amsterdam or London.

There are several reasons to allow for such a consideration. First, as the previous chapter demonstrated, the share of domestic servants among the urban population was relatively high in early modern Frankfurt. Thus, more people were incorporated in patriarchal households and therefore possibly subjected to informal control by household heads. Cities like Amsterdam and London maintained migration regimes that were more open than those in Frankfurt, where incorporation into an orderly household was one of the conditions to stay in the city. The importance of household control may likely be more important in cities and regions with a dominant artisanal economy, such as was the case in Frankfurt, as there were fewer labour opportunities for men and women which would enable a certain degree of independence from the more informal traditional household discipline. Tim Meldrum, for example, argued that in early modern London the scale of the market for domestic servants, the constant need for servants and the accompanying ‘abundance’ of opportunities for hire, lessened the effectiveness of disciplinary tools such as summary dismissal.⁶⁴⁸

Second, there are indications that the level of ‘semi-judicial authority’ of household heads in early modern Germany was relatively strong. In contrast to England, where masters and mistresses needed an official warrant to indict their servants and search their personal storage chests when they suspected them of stealing, the *Hausvater* or *Hausmutter* in Frankfurt could do this at their own discretion if they felt that there was reasonable suspicion of theft.⁶⁴⁹ There are

⁶⁴⁶ Criminalia 9172 (1780); IfSG, Handwerker Akten 352, 11.4.1772.

⁶⁴⁷ Eibach, *Frankfurter Verböte*, 347.

⁶⁴⁸ Meldrum, *Domestic service and gender*, 67. Also: B. Capp, *When gossips meet. Women, family, and neighbourhood in early Modern England* (Oxford 2003) 132-134.

⁶⁴⁹ Vickery, ‘Thresholds, boundaries and privacies’, 162-163. As a result, servants had a relative strong position in court when they indicted their masters and mistresses for unpaid wages, even if their employers claimed that they withheld them as a compensation for pilfering; Capp, *When gossips meet*, 137-138.

indications that employers were much more inclined to make use of urban ‘disciplinary facilities’ with regard to their servants in early modern London than they were in Frankfurt. In the early eighteenth century, a quarter of the depositions in the City of London session papers were concerned with an alleged theft by a servant.⁶⁵⁰ Moreover, correctional facilities like Bridewell in London were established as a house of correction for disobedient servants among others.⁶⁵¹

Despite these differences in the extent of household authority, it would be going too far to state that households in Germany were fully autonomous legal spaces (*rechtsfreier Raum*) in which authorities did not meddle. Neither did households elsewhere in Europe refrain from settling matters within the domestic space informally without the intervention of the authorities.⁶⁵² Rather it was the relative strength of households in early modern Germany as the central legal, political, and social unit to ensure public order that needs to be considered. Moreover, in Germany, too, authorities were increasingly inclined to regulate household matters publicly. This is evident from the numerous police ordinances defining household theft as a separate offence in the eighteenth century. In Frankfurt, the first attempt at a *Gesindeordnung* in 1756 prescribed formal punishments for servants’ thefts. It was not until the introduction of the servant act (*Gesindeordnung*) in 1810, however, that household relationships in Frankfurt were no longer regulated according to customary law. The authority of the *Hausvater* became subjected to more rules and greater conformity to the authorities. The latter increasingly took over the regulation of domestic servants through the alien’s police.⁶⁵³ Thus, throughout the early modern period, household disciplining played an important role in relation to domestic thefts. By the beginning of the nineteenth century relationships altered, as did the concepts of domesticity and privacy. This must have impacted the prosecution of thefts by servants in this period considerably, but that is beyond the scope of this investigation.

Conclusion

The majority of women that faced criminal prosecution in early modern Frankfurt were suspected of having committed some sort of property crime. The findings of this chapter contribute to the existing historiography. They have shown that in order to understand the gendered patterns of prosecuted thefts, it is not sufficient to consider female criminality as an extension of normative roles, where they only acted as associates of their husbands or other male family members. Overall,

⁶⁵⁰ Beattie, *Policing and punishment*, 37.

⁶⁵¹ Beattie, *Policing and punishment*, 25; Shoemaker, *Prosecution and punishment*, 174, 184-186.

⁶⁵² Capp, *When gossips meet*, 135-138; A. Flather, *Gender and space in early modern England* (Woodbridge 2007) 39-74.

⁶⁵³ Eibach, *Frankfurter Verböte*, 352-53; Kaltwasser, *Häusliches Gesinde*, 28. This practice continued across Europe well into the 20th century: Lucassen, ‘Administrative into social control. The aliens police and foreign female servants in the Netherlands (1918-1940)’, *Social History* 27:3 (2002) 327-342.

male and female thieves displayed more similarities than differences in the type of property offences they committed, although some gender differences could nevertheless be discerned. Another resemblance was that the majority of thieves committed their offences independently, women even slightly more so than men. The social profile of property offenders in Frankfurt corresponds with what we know for other cities: most of them were young, single and migrant. Many committed their crimes out of economic hardship that was associated with life-cycle mobility. All of these factors underline that women's thefts were not committed in a context of dependence, but of independence, with all the socio-economic precariousness that was associated with this.

Differences between male and female offending did exist, but they were more complex than earlier studies have suggested. Differences, for example, could be found in the locations men and women stole from: the range of locations of theft was more diverse for men than for women, who predominantly stole from houses. This, however, was not because women led less public lives than men. Due to the 'openness' of early modern houses, these buildings were relative accessible by outsiders. The majority of women stealing from houses were in fact strangers, who were unconnected to the household. The access to certain spaces was gendered in the sense that women were less likely to arouse suspicion when they entered houses, even if they were unknown in the neighbourhood, than men. The locations of theft also determined what types of items were stolen, with women being slightly more likely to steal items of clothing and shoes, linen or other textiles, and household stuffs in general. The distribution of stolen goods was facilitated by the importance of reselling used commodities for many early modern household economies and small-scale producers: copper, tin, and silver (materials) could be sold to artisans, and textiles could be sold to second-hand dealers or directly to housewives. Women played an important role in the economies of second-hand goods and in the distribution of stolen goods. However, the prosecution efforts of Frankfurt's authorities were primarily aimed at male Jews, and burghers were only rarely prosecuted for this offence.

Finally, this chapter investigated the importance of informal control exercised by the head of the household over domestic servants and other dependents. In early modern Germany, the head of the household possessed a high degree of (legal) autonomy to discipline his dependents, which was considered a public function. The social profile women being investigated by the *Verhöramt* in the eighteenth century reveals that women living outside the controlling structures of the household were the most vulnerable to be prosecuted for property offences. Domestics were more likely to be sanctioned through the disciplining authority of the head of the household. Crimes by servants were usually only reported to the authorities if household discipline had failed or the offender had fled. Moreover, the subjection to household control may have been

considerably different for women than for men. The eighteenth century witnessed an attenuation of incorporation in the household of apprentices and journeymen, who increasingly lodged outside their master's household. Additionally, they were also incorporated in more extended social support and control networks through the handicraft associations. Thus, household dependency *did* play a role in the crimes of women, but not as previously suggested. The differences in status between married women and maids have to be considered.

In sum, the chapter has demonstrated that female property offending in early modern Frankfurt was shaped by the urban context of the city. It has shown the importance of household control in the early modern period, which was particularly important for women. The public 'open' nature of household control was emphasised, and it should not be considered as a form of the public vs private dichotomy that has been argued as existing for the nineteenth century. In order to understand variations of female involvement in early modern crime, it may be fruitful to consider the different demographic, cultural, social and institutional contexts that existed in European cities. Historians agree that women are more likely to be over-represented among unreported crimes than men, and one may consider that this was higher in cities and regions with strongly institutionalised household control than was present in early Modern Frankfurt.

V. Between control and agency?

The prosecution of sexual offences

The previous chapter has demonstrated the way in which informal social control within the household functioned alongside formal criminal prosecution of property offences, and consequently shaped gendered patterns in registered crime. This chapter now turns the focus to the way that institutions of formal control impacted the position of women before the courts by the study of sexual offences. In the early modern period, sexual matters were not considered a private concern but were subject to public control. In the wake of religious changes arising from the Reformation, the early modern period witnessed a process of increasing criminalisation of extra-marital sexuality.⁶⁵⁴ In early modern Frankfurt, as elsewhere in Europe, the gender gap was narrowest among recorded sexual offences in comparison to other crimes, with authorities prosecuting men and women roughly at the same rate.⁶⁵⁵

The enforcement of moral politics and the prosecution of sexual offences were dealt with by a variety of institutions. In many protestant territories, authorities set up new courts in order to facilitate the enforcement of the new marriage regulation following the Reformation. Offences like prostitution, fornication and adultery were dealt with by secular courts as well as by the newly established ecclesiastical and semi-ecclesiastical courts.⁶⁵⁶ This chapter focuses on the institutional

⁶⁵⁴ For a recent overview of this process, see: S. Burghartz, 'Competing logics of public order. Matrimony and the fight against illicit sexuality in Germany and Switzerland from the sixteenth to the eighteenth century', in: Seidel Menchi ed., *Marriage in Europe, 1400-1800* (Toronto 2016) 176-200.

⁶⁵⁵ See chapter 3 for prosecution figures. For prosecution of sexual offences in other German cities and territories see: W. Behringer, 'Weibliche Kriminalität in Kurbayern in der Frühen Neuzeit' in: O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 63-82, 65-66; G. Schwerhoff, 'Geschlechtsspezifische Kriminalität im frühneuzeitlichen Köln' in: O. Ulbricht ed. *Von Huren und Rabenmüttern: weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 83-115, 91; K. Härter, *Policey und Strafrecht in Kurmainz: Gesetzgebung, Normdurchsetzung und Sozialkontrolle im Frühneuzeitlichen Territorialstaat* (Frankfurt am Main 2005) 892; R. Dürr, *Mäde in der Stadt. Das Beispiel Schwäbisch Hall in der Frühen Neuzeit* (Frankfurt am Main 1995) 220-258; U. Rublack, *The Crimes of women in early modern Germany* (Oxford 1999) 134-162; U. GLeixner, 'Das Mensch' und 'Der Kerl'. *Die Konstruktion von Geschlecht in Unzuchtsverfahren in der frühen Neuzeit (1700-1760)* (Frankfurt 1994); R. Beck, 'Illegitimität und voreheliche Sexualität auf dem Land. Unterfinning, 1671-1770' in: R. van Dülmen ed., *Kultur der einfachen Leute* (München 1983) 112-150; S. Breit, 'Leichtfertigkeit' und ländliche Gesellschaft. *Voreheliche Sexualität in der frühen Neuzeit* (München 1991); I.V. Hull, *Sexuality, state, and civil society in Germany, 1700-1815* (Ithaca NY, 1996); S. Burghartz, *Zeiten der Reinheit, Orte der Unzucht. Ehe und Sexualität in Basel während der frühen Neuzeit* (Paderborn 1999); H. R. Schmidt, *Dorf und Religion. Reformierter Sittenzucht in Berner Landgemeinden der Frühen Neuzeit* (Stuttgart 1995); P. Klammer, *In Unehren beschlafen. Unzucht vor kirchlicher und weltlicher Gerichtsbarkeit im frühneuzeitlichen Salzburger Lungau* (Frankfurt am Main 2004).

⁶⁵⁶ For an overview of these newly established institutions and accompanying references, see: S. Burghartz, 'Ordering discourse and society. Moral politics, marriage, and fornication during the Reformation and the confessionalisation process in Germany and Switzerland' in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 78-98. There was a large variety in the newly implemented courts in the Protestant and Reformed territories. In some cases there were separate marriage and moral courts and in others these were combined. The jurisdiction of the courts could differ considerably, as did the composition of the personnel, who could be composed of lay persons entirely or function as a joint venture of secular and religious authorities. This often leads to confusion about the terminology used in scholarly work as these institutions are interchangeably referred to as secular versus ecclesiastical, or ecclesiastical versus criminal.

setting in which control over sexual offences was exercised in early modern Frankfurt. The first part of this chapter focuses on the legal and institutional development following the Reformation, and the prosecution practices of the two main institutions that were involved: the *Sendamt* (for the seventeenth century) and *Konsistorium* (for the eighteenth century) on the one hand and the criminal court on the other hand. Historians assessed the relationship between these institutions rather differently: from perceiving them as complementary institutions each focusing on different aspects, to conflicting courts with overlapping jurisdictions creating leeway for people to use the courts to their own advantage.

Construing the way that control over sexuality was exercised by the various institutions is crucial for our understanding of gender and crime in this period. The legal tribunals were spaces in which gender norms were enforced and negotiated. Historians characterise the position of women before the courts in two different ways: from women being victims of a repressive policy on morals to being allies of the authorities. In the second part of the chapter, the focus is on the historical actors, in particular the women, that came before these courts. To what extent were they able to pursue their own objectives before these institutions? Did they have the leeway to use them instrumentally as well, or were they simply subjected to repressive control? Most historians focused on the uses of justice by women in marital conflicts. In order to gain a broader perspective of the nature of the regime of morals in the early modern period, and the relationship between authorities and individuals before the courts, this chapter focuses in particular on the treatment of illegitimacy. The position of illegitimate mothers during the early modern period was particularly precarious. Understanding whether and how they were able to use the courts increases our understanding of the nature of social control in this period.

Before we can turn to the regulation of sexual offences in practice, it is necessary to say a few words about the sources that are used in this chapter. Only a comparison of the different legal tribunals allows for a complete picture of the position of women prosecuted for such crimes. Unfortunately, the records of the *Sendamt* and the *Konsistorium* suffered severe losses during WWII. The unequal quality of the sources preserved for these two courts and the criminal investigation offices hampers a balanced comparison between the different courts, particularly on a quantitative level. The archives of the *Sendamt* were destroyed completely, as a result of which quantitative data is lacking for this institution. Fortunately, there is some qualitative material that allows us to get a sense of the legal practices before this tribunal. Anja Johann was able to reconstruct some of its activities with the help of the minutes of the city council (*Bürgermeisterbücher*) for the late sixteenth

and early seventeenth centuries.⁶⁵⁷ Additionally, some sources of the *Sendamt* have been preserved in the records of the criminal investigation office (*Criminalia*) as well, including interrogation records of witnesses and accused.

For the *Konsistorium*, some quantitative material is still available, as there are three completely preserved volumes of *Konsistorialprotokolle* for the years 1746, 1759 and 1780. In these books the scribe recorded for each session the cases that had been discussed, as well as the suspects and/or witnesses that had been interrogated. The information that is preserved in these records is very concise. The first time a case was discussed during a session, the scribe would record the type of case, and the name, profession, and often the origin, of the people involved. In later sessions the case was often only referred to by the name of the conflicting parties as ‘*in Sachen N contra N*’. Therefore, in some instances the actual dispute or case that was dealt with is not entirely clear from the records. Occasionally, the main statements of the suspects were summarised and the consistory’s final decision was recorded. In general, the more difficult, long-lasting and complicated a conflict was, the more information was written down in the records. Apart from the concise information preserved in the *Konsistorialprotokolle*, more detailed transcripts of the interrogations before the consistory are preserved in the *Criminalia* in cases that were eventually handed over to the investigation office. These allow for a further and more in-depth investigation of the cases that were heard by the consistory.

I have consulted the register of all *Criminalia* between 1600 and 1806 to analyse which types of sexual offences were investigated by the *Verhöramt*, what the gender ratio of suspects for these cases was, and how this developed over time. In order to be able to compare the activities of the *Sendamt* and the consistory on the one hand and the *Verhöramt* on the other hand, as well as gaining more information on the suspects involved, I have collected additional information for all cases of sexual offences as well as all cases of infanticide, abortion and child abandonment from the *Criminalia* for the following sample years: 1620-24; 1640-44; 1660-64; 1680-84; 1700-1704; 1720-24; 1740-44; 1760-64 and 1780-84. Some additional cases that appeared to be interesting have been collected for further qualitative information. Finally, for the seventeenth century additional quantitative data was available through the *Strafenbuch* (1562-1696) which listed all penal sanctions, and for which information about offenders, case, and punishment is collected for every first six years of each decade from 1600 onwards (thus 1600-1605; 1610-1615; 1620-1625, etc.).

⁶⁵⁷ A. Johann, *Kontrolle mit Konsens. Sozialdisziplinierung in der Reichsstadt. Frankfurt am Main im 16. Jahrhundert* (Frankfurt am Main 2001) 120-129.

Disciplining or assisting? Women and the regulation of morals

The early modern period saw a rise of new institutions designed to implement and control the new regulations concerning marriage and sexual behaviour. The nature of these institutions has been subject to extensive discussion, particularly in relation to the effect they had on the position of women.

Regarding the prosecution of morals, historians have judged church courts and criminal courts in contrasting ways, both as spaces of disciplining and control, as well as locations for conflict settlement. Accordingly, the position of women before these courts was perceived very differently, ranging from women as users of justice that found an ally in the authorities, to women that were the main victims of the policing of a repressive moral regime.

In her study on sixteenth-century Augsburg, Lyndal Roper argued that the introduction of marriage courts ultimately led to the consolidation of patriarchy, firmly establishing the rule of male household heads over their subjects.⁶⁵⁸ While Roper qualified this as a sign of the deteriorating position of women, others claimed that this ideal of the household as the primary location for social order also offered women opportunities. For seventeenth-century Basel Heinrich Richard Schmidt stated that women worked in ‘alliance’ with the authorities to discipline their men, upholding them to the duties and obligations associated with the patriarchal ideal.⁶⁵⁹ Joachim Eibach came to a similar conclusion for the regulation of marriage conflicts before Frankfurt’s *Konsistorium* in the eighteenth century. The court acted as a ‘guardian of Christian patriarchy’ that imposed rules on both sexes for a peaceful domestic co-existence, which opened up opportunities for individuals to use the court for their own agenda.⁶⁶⁰

Susanna Burghartz, on the other hand found that women’s recourse to justice was subject to change. In reaction to Schmidt, she argued that: ‘this thesis may possess a certain plausibility for the regulation of the marital disputes by the church court in the Bernese villages Schmidt has studied, but it cannot be generalized [...] given the growing repressiveness of the marriage and morals courts in the sixteenth century and even more so in the seventeenth century’.⁶⁶¹ According to her, the marriage courts moved from a place of conflict settlement and an ‘integrative position’ where pre-marital sex was legitimised through marriage, to institutions of growing repression

⁶⁵⁸ L. Roper, *The Holy household. Women and morals in reformation Augsburg* (Oxford 1991).

⁶⁵⁹ H.R. Schmidt, ‘Hausväter vor Gericht. Der Patriarchalismus als zweischneidiges Schwert’ in: M. Dinges ed., *Hausväter, Priester, Kastrate. Zur Konstruktion von Männlichkeit in Spätmittelalter und Früher Neuzeit* (Göttingen 1998) 213-236.

⁶⁶⁰ J. Eibach, ‘Der Kampf um die Hosen und die Justiz – Ehekonflikte in Frankfurt im 18. Jahrhundert’ in: S. Kesper-Biermann and D. Klippel eds., *Kriminalität im Mittelalter und Früher Neuzeit. Soziale, rechtliche, philosophische und literarische Aspekte* (Wiesbaden 2007) 167-188, 188.

⁶⁶¹ Burghartz, ‘Competing logics’, 191.

against extra-marital sexuality, where unmarried women of the lower classes were particularly affected.⁶⁶²

Thus, scholarly discussion regarding the control of sexuality and marriage in the early modern period is centred on the question of whether the courts were a location for conflict settlement or for punishment and exclusion. In this chapter, I will argue that such juxtaposition neglects the complexities of control over sexuality in the early modern period. First, most of the tribunals regulating morals combined both functions: fornication was prosecuted in the same tribunal that settled paternity charges.⁶⁶³ Therefore, in order to understand the nature of control regarding extra-marital sexuality, the dual function of the marriage courts cannot be neglected. Second, a better understanding of the relationship between the criminal court and the newly established tribunals regarding the differentiation of tasks is needed. As infractions of the state of marriage and social order, cases like adultery, fornication, bigamy and prostitution were prosecuted both by lower courts – including the newly established (semi-)ecclesiastical courts – as well as the higher criminal courts.⁶⁶⁴ Hitherto, most studies only focused on a single institution or a comparison of both institutions without studying the *interactions* between the two.

Heinz Schilling previously argued that there was a fundamental difference between church discipline and criminal jurisdiction. Whereas the first focused on the preservation of the unity and purity of the congregation, and was therefore aimed at reconciliation, the latter was of a repressive punitive top-down character and merely aimed at punishing the crime.⁶⁶⁵ Therefore, historians should make a factual and methodological distinction between the ‘history of sin’ and the ‘history of crime’: the discipline of sin and criminal punishment were two different and independent objectives. The extent to which the two were separated depended on the relationship between church and state. In areas where the church was subjected to the authority of the secular state there was less room for differentiation between penitential church discipline and secular criminal punitive discipline.⁶⁶⁶

⁶⁶² Burghartz, ‘Competing logics’, 189-193.

⁶⁶³ Hull, *Sexuality*, 26; Harrington, *Reordering marriage*, 250; Burghartz, *Zeiten der Reinheit*, 271; Breit, *Leichtfertigkeit*, 282; Gleixner, ‘Das Mensch’ und ‘Der Kerl’.

⁶⁶⁴ H. Wunder, ‘Gender norms and their enforcement in early modern Germany’ in: L. Abrams and E. Harvey eds., *Gender relations in German history. Power, agency and experience from the sixteenth to the twentieth century* (London 1996) 39-56, 48.

⁶⁶⁵ H. Schilling, ‘History of Crime’ or ‘History of Sin?’ – Some reflections on the social history of early modern church discipline’ in: E.I. Kouri and T. Scott eds., *Politics and Society in Reformation Europe. Essays for Sir Geoffrey Elton on his Sixty-Fifth Birthday* (London 1987) 289-310. This distinction, though not always referred to in the same way, is still present in scholarship. See, for example, Wunder, ‘Marriage’, 63. She distinguishes between ecclesiastical courts that were concerned with the preservation of the spiritual aspects of marriage, while municipal courts dealt with the issue from the perspective of order.

⁶⁶⁶ Schilling, ‘History of crime’, 301.

Various scholars opposed the distinction of a ‘history of crime’ and a ‘history of sin’. First, it is argued that separating secular and ecclesiastical perceptions of deviance is problematic for the early modern period, as crimes were always considered sins.⁶⁶⁷ Fears about the wrath of God coming down on the community played an important role in the prosecution of crime before secular courts, and the punishment of offenders was therefore seen as a tool to preserve the purity of the community.⁶⁶⁸ Moreover, the boundary between police and church ordinances was fluid, since in most Protestant areas church ordinances were decreed by the secular authorities.⁶⁶⁹ Second, early modern criminal courts are no longer viewed as top-down institutions where justice was simply imposed on the population. Instead, scholars emphasise that the courts were also used instrumentally as a place to settle conflicts and restore peace.⁶⁷⁰ Thus, criminal justice was not solely punitive, but reconciling as well. Third, as Martin Ingram previously stated, ‘it may well be misleading to infer the pattern of moral regulation from the records of only one jurisdiction: the *complementary* and *overlapping* activities of diverse institutions – sometimes reinforcing, sometimes obstructing each other – must be understood’.⁶⁷¹

A better understanding of the relationship between the various tribunals that were tasked with the control over sexual offences is needed because it impacted the position of women and their ability to have recourse to justice. According to Martin Dinges, the fact that both institutions had overlapping functions in the supply of regulation and sanctioning enabled contemporaries to use the courts to their own advantage. He argued that ‘[t]hey were quite aware of the functionally equivalent role of criminal justice and church discipline’, as a result of which ‘contemporaries knew perfectly well how to exploit the situation’.⁶⁷² Peter Gorski, on the other hand, argued that ‘the spiritual and worldly systems of justice tended to be tightly intertwined’, and saw cooperation rather

⁶⁶⁷ M. Ingram, ‘History of sin or history of crime? The regulation of personal morality in England, 1450-1750’ in: H. Schilling and L. Behrlich eds., *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitlichen Europa* (Frankfurt am Main 1999) 87-104, 89.

⁶⁶⁸ A. Kästner and G. Schwerhoff, ‘Religiöse Devianz in alteuropäischen Stadtgesellschaften. Eine Einführung in systematischer Absicht’ in: A. Kästner and G. Schwerhoff eds., *Göttlicher Zorn und menschliches Maß. Religiöse Abweichungen in frühneuzeitlichen Stadtgesellschaften* (Konstanz 2013) 9-17.

⁶⁶⁹ H.R. Schmidt, ‘Sozialdisziplinierung? Ein Plädoyer für das Ende des Etatismus in der Konfessionalisierungsforschung’ *Historische Zeitschrift* 265 (1997) 639-682, 661-662.

⁶⁷⁰ Ingram, ‘History of sin’, 94. In general: G. Schwerhoff, *Aktenkundig und gerichtsnotorisch. Einführung in die Historische Kriminalitätsforschung* (Tübingen 1999) 84-95. In relation to church discipline and confessionalisation: Schmidt, ‘Sozialdisziplinierung’; H. Roodenburg, ‘Social control viewed from below: New perspectives’ in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 145-158; P.S. Gorski, *The disciplinary revolution. Calvinism and the rise of the state in early modern Europe* (Chicago 2001).

⁶⁷¹ M. Ingram, ‘History of sin’, 95. Also: M. van der Heijden, ‘Punishment versus reconciliation. Marriage control in sixteenth- and seventeenth-century Holland’ in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 55-75.

⁶⁷² M. Dinges, ‘The uses of justice as a form of social control in early modern Europe’ in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 159-175, 163.

than competition.⁶⁷³ Hypothetically speaking, this would have decreased the opportunity of historical actors to display uses of justice by ‘exploiting’ the system.

Thus, in order to assess whether women were only subjected to discipline by the authorities, or could use the court to their own advantage as well, the interaction and relationship between the various judicial institutions plays a crucial role. The more overlap between the two, the more opportunities one would expect. By looking at the position of illegitimate mothers before the court and taking into account the institutional context they operated in, this chapter contributes to our understanding of the nature of social control with regard to sexuality in the early modern period. Who imposed control on extra-marital sexuality and with what aims? Were the women accomplices to the moral policy of the Frankfurt’s city government or were they its victims? Or was it something in between?

There are several reasons for looking at illegitimacy in particular. First, the position of women giving birth out of wedlock became particularly precarious as prosecution efforts increasingly focused on illegitimacy. The way they could or could not use the courts to their own advantage tells us something about the nature the legal institutions concerning their control over sexuality as well as the agency of women. Second, apart from sanctioning sexual offences, the *Sendamt* and *Konsistorium* also regulated paternity suits and the payment of child support. How this double function influenced the position of women will be extremely informative about the nature of early modern justice. Third, Rebekka Habermas and Joachim Eibach have previously studied the regulation of sexual and marital matters in early modern Frankfurt. Eibach has studied the way authorities controlled marital disputes and has systematically compared the treatment of such cases by the consistory and by the criminal investigation office for 1746. Habermas, on the other hand, focused on the treatment of sexual offences and the role of women from the perspective of the *Verhöramt*.⁶⁷⁴ This chapter contributes to their findings by broadening the comparison between the two institutions with the study of sexual offences.

Legal and institutional developments

Changing ideals about the nature of marriage in the wake of the Reformation formed the basis for the prosecution of illicit sexuality in the early modern period. This section will focus on the way marriage was regulated in Frankfurt, which laws were implemented to preserve the state of marriage (i.e. laws against adultery and fornication) and which institutions were involved in the supervision

⁶⁷³ P.S. Gorski, ‘Historicizing the secularization debate. Church, state, and society in late medieval and early modern Europe, ca. 1300 to 1700’, *American Sociological Review* 65:1 (2000) 138-167, 154.

⁶⁷⁴ R. Habermas, ‘Frauen und Männer im Kampf um Leib, Ökonomie und Recht. Zur Beziehung der Geschlechter im Frankfurt der Frühen Neuzeit’ in: R. van Dülmen ed., *Dynamik der Tradition* (Frankfurt am Main 1992) 109-136.

of moral conduct. The developments in Frankfurt show a process of increasing institutional differentiation and specialisation of tasks in which new institutions were developed and increasingly aligned to each other. The city's secular authorities took over full control. Both on the normative as well as on the institutional level 'secularization' of sexual disciplining emerged.⁶⁷⁵ The emergence of new moral laws and courts in the sixteenth- and seventeenth centuries was inextricably linked to the confessionalization process.⁶⁷⁶ This had long lasting consequences with regard to the institutional framework in which sexual offences were controlled and prosecuted. By the eighteenth century the process of confessionalisation was more or less complete, but the laws and church courts introduced to enforce moral discipline as part of the confessional competition were not abolished. Instead, they offered authorities a framework to control sexuality, which became increasingly linked with economic concerns.⁶⁷⁷ Throughout the period there was a process of increasing intertwining of moral and secular concerns regarding the nature of marriage, and the prosecution of extra-marital sexuality.

Already prior to the Reformation there had been a movement towards elevating 'wedlock to the morally normative centre of society'.⁶⁷⁸ Urban authorities began to take control over the regulation of sexual conduct from ecclesiastical authorities and developed their own laws and policies against immorality in a pursuit of establishing 'the sole validity of marriage within the urban society'.⁶⁷⁹ Moreover, criminalisation of extra-marital sexuality was also advocated by urban guilds, who implemented measures to exclude from their ranks anyone who had been born out of wedlock.⁶⁸⁰ Urban moral policies were specifically aimed at the regulation of prostitution, starting with the isolation of prostitutes in municipal brothels before it was completely abolished.⁶⁸¹ Although moral reform movements pre-dated the Reformation, there was a fundamental difference related to perceptions about what was considered a legitimate marriage and what was not.

⁶⁷⁵ For theoretical contemplations of differentiation in the legal processes, see: N. Luhmann, *Law as a social system* (Oxford 2004). Also: H. Rudolph and H. Schnabel-Schüle, 'Rahmenbedingungen von Strafjustiz in der Frühen Neuzeit' in: H. Rudolph and H. Schnabel-Schüle eds., *Justiz = Justice = Justitia? Rahmenbedingungen von Strafjustiz im frühneuzeitlichen Europa* (Trier 2003) 7-37, 13-14; Härter, *Policey und Strafjustiz*, 830.

⁶⁷⁶ Burghartz, 'Ordering discourse', 83; T. McIntosh, 'Confessionalization and the campaign against pre-nuptial coitus in Sixteenth-Century Germany', in J.M. Headly, H. J. Hillerbrand and A. J. Papalas eds. *Confessionalization in Europe, 1550-1700: Essays in Honor and Memory of Bobo Nischan* (Aldershot 2004) 155-174; U. Sibeth, *Eherecht und Staatsbildung. Ehegesetzgebung und Rechtsprechung in der Landgrafschaft Hessen-Kassel in der Frühen Neuzeit* (Darmstadt-Marburg 1994).

⁶⁷⁷ Burghartz, 'Ordering discourse', 92.

⁶⁷⁸ Wunder, 'Marriage', 68. Also: H. Wunder, 'Er ist die Sonn', sie ist der Mond'. *Frauen in der Frühen Neuzeit* (München 1992) 63; B. Schuster, *Die freien Frauen. Dirnen und Frauenhäuser im 15. und 16. Jahrhundert* (Frankfurt am Main 1995) 316-341.

⁶⁷⁹ Burghartz, 'Ordering discourse', 80.

⁶⁸⁰ E.g.: M.R. Boes, 'Dishonourable' youth, guilds, and the changed world view of sex, illegitimacy and women in late-sixteenth-century Germany' *Continuity and Change* 18:3 (2003) 345-372; M. Wiesner, 'Guilds male bonding and women's work in early modern Germany', *Gender & History* 1:2 (1989) 125-137.

⁶⁸¹ P. Schuster, *Das Frauenhaus. Städtische Bordelle in Deutschland (1350-1600)* (Paderborn 1992); Schuster, *Die freien Frauen*. On Frankfurt: M. Wiesner, *Working women in early Modern Germany* (New Brunswick NJ, 1986) 97-109; Johann, *Kontrolle mit Konsens*, 217-219, 231-233.

One of the major developments regarded the nature of marriage, as it was no longer considered a sacrament but a secular contract. This affected its legal status and the condition under which a marriage was considered to be concluded. Earlier, a legitimate marriage only required the mutual consent of a man and a woman, and intercourse following exchanged vows was considered a legitimate start of matrimony. No public confirmation or parental consent was required. This often led to practical and legal difficulties, since either of the parties could simply deny that vows were exchanged. The redefinition of marriage as a secular contract bound it to clear rules concerning its validity.⁶⁸²

For Frankfurt, this development can be clearly traced in the city's legal constitutions of 1509 and 1578⁶⁸³. According to the *Statt Franckenfurt erneuerte Reformation* from 1578 (re-issued in 1611), marriage was the single most important contract issued between a man and a woman.⁶⁸⁴ Moreover, the *Reformation* stipulated that for the marriage 'contract' to be legitimate it had to be preceded by a formal and public betrothal before the parents, relatives, guardians – or in the case of servants – before the head of the household. In addition, underage couples needed parental consent (under 25 for men, and under 22 for women).⁶⁸⁵ Contrary to pre-Reformation practices, secret betrothals and clandestine marriages (*Winckel Ehen*) were no longer considered as a legitimate start of matrimony. In comparison: the first *Frankfurter Reformation* of 1509 only dealt with marriage in relation to the transfer of property and inheritance. Betrothal, parental consent, and secret engagements were not perceived as matters that required regulation in a secular urban legal code.

Throughout the period, the political control over marriage extended and was increasingly bound to financial requirements and questions of citizenship. In the eighteenth century, parental consent became obligatory for all engaged couples regardless of their age.⁶⁸⁶ Couples were required to report their engagement to the consistory first in order to be given consent for the proclamation of the banns in church. After the successful proclamation in church, they could then request a

⁶⁸² I. Fleßenkämper, 'Die Ordnung der Ehe. Zum Verhältnis von weltlicher und geistlicher Strafgewalt in der reformierten Garfschaft Lippe im 17. Jahrhundert' in: M. Freudenberg and G. Plasger eds., *Kirche, Theologie und Politik im reformierten Protestantismus* (Neukirchen-Vluyn 2011) 79-94, 80.

⁶⁸³ On the Reformation in Frankfurt see: S. Jahns, 'Frankfurt im Zeitalter der Reformation (um 1500-1555)' in: Frankfurter Historischen Kommission eds., *Frankfurt am Main. Die Geschichte der Stadt in neun Beiträgen* (Sigmaringen 1994) 151-204.

⁶⁸⁴ *Der Statt Franckenfurt erneuerte Reformation* (1578) § 3.1.1.: 'Dienvijl under alle contracten der Menschen/ die Eheliche zusammen verpflichtunge zweyer ledigen Personen, Manns und Weybs/ der allerhöchst und fürnembste Contract ist'. On the question of whether marriages should be considered as a secular contract or an ecclesiastical manner in relation to Frankfurt's legal constitution, see: J.P. Orth, *Nöthig und nützlich erachtete Anmerkungen Über die so genannte Erneuerte Reformation der Stadt Franckfurt am Mayn. Zweyte Fortsetzung; in welcher der Dritte, Vierte und Fünfte Theil Vorerwebnten Stadt-Rechtes, Grund- und deutlich erkläret und erläutert (...)* (Frankfurt am Main 1744) 1-2.

⁶⁸⁵ *Der Statt Franckenfurt erneuerte Reformation* (1578) §3.8.9.

⁶⁸⁶ PO 3086 *Mandat gegen heimliche Eheverlöbniß* 15.09.1733; B. Dölemeyer, 'Privatrechtliche Handlungsspielräume von Frauen. Die Frankfurter Gesetzgebung' in: G. Engel, U. Kern und H. Wunder eds., *Frauen in der Stadt* (Königstein im Taunus 2002) 87-102, 90; J.H. Bender, *Handbuch des Frankfurter Privatrechts* (Frankfurt am Main 1848) 27-34.

Copulations-Schein from the consistory to get married.⁶⁸⁷ For couples to receive this consent and essentially start their own household, they had to prove financial stability and were requested to show their *Schatzungs-Buch* (registry of paid taxes).⁶⁸⁸

The Protestant theology of marriage had introduced clear boundaries between legitimate and illicit marriages, which had resulted in a discourse about sexuality in clear binary terms. Whereas previously intercourse that resulted in marriage was considered legitimate, now all extra-marital sexuality was prohibited. This led to the creation of new ‘crimes’ such as fornication (*Unzucht*) and lewdness (*liederlichkeit*) which were inextricably linked to a new understanding of what a legitimate marriage was, and how it had to be contracted.⁶⁸⁹

Again, this process is clearly visible in Frankfurt’s legislation. Before the Reformation, laws only prohibited adultery and *Kuppelei* (in this case: enabling adultery or keeping a private brothel). Now, laws were extended to include all forms of extra-marital sexuality. Through the second half of the sixteenth- and during the seventeenth century – that is, roughly the period of confessionalisation – at least nine laws against adultery and fornication were issued by the city council.⁶⁹⁰ The earliest ordinance which introduced fornication as a punishable offence was clearly aimed at condemning the concubinage of the Catholic clergy and defined it as a male offence.⁶⁹¹ Soon, however, it was applied to everyone – men and women. By the early seventeenth century, laws referred to fornication as an act committed by single people.⁶⁹²

The introduction of the new legislation concerning adultery and fornication was followed by discussions on the appropriate level of punishment. The penalty for adultery, for example, became the subject of intense debate.⁶⁹³ The police ordinance of 1530, which was reissued in 1579 and 1598, stipulated a fine of ten guilders for first-time offenders. Despite the fact that the ordinance was reissued, the *Herren der Rathschlagung* (a committee of the city council) considered the penalty to be too low and raised it to 50 guilders as can be deduced from the proceedings

⁶⁸⁷ PO 3176 *Eines Hoch=Edl. und Hoch=Weisen Rathes des Heil. Reichs Stadt Franckfurth am Mayn Consistorial-Ordnung* 1739,7.

⁶⁸⁸ For the separate ordinances see: PO 3946 *Erneuerte Consistorial=Ordnung* 04.01.1774. For this process in general see: Hull, *Sexuality*, 107.

⁶⁸⁹ Wunder, ‘Marriage’, 72; Burghartz, ‘Ordering discourse’, 81; J.F. Harrington, *Reordering marriage and society in reformation germany* (Cambridge 1995) 216.

⁶⁹⁰ B. Günther, *Die Behandlung der Sittlichkeitsdelikte in den Polizeyordnungen und der Spruchpraxis der Reichsstädte Frankfurt am Main und Nürnberg im 15. bis 17. Jahrhundert* (Frankfurt am Main 2004). Laws against adultery and fornication were issued in 1529, 1530, 1531, directly after the appointment of the first reformed clerics in the city, and in 1534, 1576, 1579, 1597, 1598, 1608, 1620, 1629 and 1673.

⁶⁹¹ Johann, *Kontrolle mit Konsens*, 222. The ordinance referred to: someone who publically associates himself with suspicious women, or lives in concubinage. ‘Welcher öffentlich mit verdächtigen Weibern zubielt, oder zur onehe sez’. PO 1063 *Mandat die Gotteslästerung, Ehebruch, Hurerey, Zutrinken etc. betr.* 08.03.1530.

⁶⁹² PO 2102 *Ordnung, wie binföhro die Hurerey, Unzucht und Ehebruch zu bestraffen* 14.11.1629. Referred to fornication as: ‘die gemeine unzucht, so ledige Personen mit einander treiben’.

⁶⁹³ Johann, *Kontrolle mit Konsens*, 223-224; I. Kaltwasser, ‘Ehen vor Gericht. Kriminalfälle und zivilrechtliche Ehesachen aus den Akten der Frankfurter “Criminalia” und des Reichskammergerichts’, *AfGK* 68 (2002) 235-273, 249; IfSG Frankfurt am Main, Criminalia 1063 (1643).

(*Rathschlagungsprotokolle*) from 1576 and 1597. The same police ordinances (1530, 1579 and 1598) also regulated the punishment for fornication. Here as well, the ordinances did not match the intentions of the authorities since they still defined fornication as a male offence, even though in practice the ordinances applied to everyone. References in the *Rathschlagungsprotokoll* of 1534 reveal that the punishment for fornication was set at five guilders. Again, the amount was raised later on in the period. At the beginning of the seventeenth century a standard was set which would remain the same for the rest of the Ancien Régime. Adulterers were ‘no longer punished with the usual 50 guilders, but in accordance with their wealth, social rank or other qualities, with a much higher punishment’.⁶⁹⁴ Fornication was sanctioned with a ten-guilder fine for couples who proceeded to get married. Those that did not could be sanctioned with a prison punishment, a fine, or flogging and banishment according to the circumstances of their crime. Here the law clearly left room for the discretion of the judges.

The process of increased criminalisation of sexual offences after the Reformation is further marked by the introduction of new shaming punishments.⁶⁹⁵ In addition to paying a fine, offenders could be sentenced with the so-called *Schmähgulden* or *Schmachgulden* (lit. translation scandal guilders), first mentioned in 1576. This was a public shaming ritual in which the offender had to walk from the entrance of the *Römer* to the fountain in the middle of the square while being escorted by the city’s executioner (the *Nachrichter*) where he/she had to pay the *Schmähgulden* while the executioner loudly beat the drum. It was considered to be very dishonouring – even more than undergoing penance in church.⁶⁹⁶ Somewhere between the 1630s and the 1640s this type of punishment disappeared as one of the city’s syndics noted in an adultery case in 1643.⁶⁹⁷ Another public shaming ritual mentioned in the ordinances was reserved specifically for adulterous women: the *Narrenhäußlein*. This was an open cage where offenders were displayed for all to see, and there are references that this type of punishment was indeed put into practice.⁶⁹⁸ In the eighteenth century, women prosecuted for lewdness and fornication could be sanctioned to pull the scavenger’s cart.⁶⁹⁹

⁶⁹⁴ PO 2102 *Ordnung, wie hinführo die Hurerey, Unzucht und Ehebruch zu bestraffen* 14.11.1629. Original: ‘nicht mit denen bißhero gewöhnlichen 50fl., sondern nach beschaffenheit seines vermögens, Stand oder anderer qualitäten, mit einer weit höheren geldstraff’.

⁶⁹⁵ On the practice of shaming rituals in criminal justice, see e.g.: G. Schwerhoff, ‘Verordnete Schande? Spätmittelalterliche und frühneuzeitliche Ehrenstrafen zwischen Rechtsakt und sozialer Sanktion’, in: A. Blauert and G. Schwerhoff eds., *Mit den Waffen der Justiz. Zur Kriminalitätsgeschichte des späten Mittelalters und der Frühen Neuzeit* (Frankfurt am Main 1993); S. Lidman, *Zum Spektakel und Abscheu. Schand- und Ehrenstrafen als Mittel öffentlicher Disziplinierung in München um 1660* (Frankfurt am Main 2008).

⁶⁹⁶ Johan, *Kontrolle mit Konsens*, 126.

⁶⁹⁷ Criminalia 1063 (1643). According to the syndic, the *Schmachgulden* had still been in use in 1630: ‘der *Schmachgulden* anno 1630 noch in Übung gewesen’.

⁶⁹⁸ PO 2102 *Ordnung, wie hinführo die Hurerey, Unzucht und Ehebruch zu bestraffen* 14.11.1629; Criminalia 1053 (1641).

⁶⁹⁹ Hanauer, ‘Geschichte der Prostitution’, 27; Criminalia 3290 (1723); Criminalia 5882 (1747); Criminalia 6389 (1750); Criminalia 7559 (1759).

In contrast to the earlier process of differentiation in the sixteenth and seventeenth centuries, no new laws regarding the level of punishment of sexual offences were introduced in the eighteenth century. Instead, laws during this period followed a similar pattern to the regulation of marriage. They were now primarily concerned with the practical and financial consequences: illegitimacy. The ordinances published during this period regulated legal disputes concerning illicit marriage promises, extra-judicial settlements in paternity suits, the placement of illegitimate children in foster care, and the banishment of foreign pregnant women.⁷⁰⁰

The legal changes with regard to marriage and fornication in the wake of the Reformation were also accompanied by institutional changes, with the secular authorities setting up new judicial bodies to oversee their enforcement. The way these institutional changes were organised varied greatly within the Reformed territories. In some cities, there were separate marriage and morals courts, while in others these functions were combined in a single institution. In the majority of these institutions, theologians only made up a minority of the personnel, or were not even incorporated at all.⁷⁰¹

In Frankfurt, the control over morals and marriage was dealt with separately during the sixteenth and seventeenth centuries, until they were combined in a single institution in the eighteenth century. In 1530, amidst the Reformation, Frankfurt's city council established a new legal tribunal to enforce the regulation of morals called the *Sendamt*, which was formed by six council men (two from each bench).⁷⁰² It was in charge of the *causae mixtae ecclesiasticae*: the *delicta carnis* (adultery and fornication), decisions about the enforcement of marriage vows in case of pregnancy and the regulation of alimony charges for illegitimate children.⁷⁰³ Additionally the *Sendamt* was in charge of investigating and disciplining all cases that 'violated the external morality (*die äussere Sittlichkeit verletzende Vergehungen*):' i.e. transgressions against the city's sumptuary laws.

⁷⁰⁰ PO 2600 *Rabts-Conclusum die Außsetz- und Hinlegung der kleinen Kinder betreffend* 29.08.1695; PO 2974 *Das Land=Pfarrer die Namen derer zu unehelichen Kindern angegebenen Väter eher nicht als nach entschiedener Sache in das Kirchenbuch tragen, sondern sie ad interim nur zu ihrer Privat = Notiz vor sich aufzeichnen sollen* 09.12.1728; PO 2978 *Weibspersonen soll vorzüglich mit Soldaten unzuchtiger Umgang verboten seyn* 01.02.1729; PO 3152 *Die in Unehren erzielte und denen Leuten heimlich in die Kost und Verpflegung gegebene Kinder betreffend* 24.09.1737; PO 3181 *In Schwängerungssachen sollen keine heimliche Vergleiche getroffen werden* 20.01.1739; PO 3445 *Daß man die lapsas, so nicht von hier, mit ihren kindern fortschaffen solle* 18.03.1755; PO 3449 *Obne obrigkeitliche Erlaubniss sollen keine Kostkinder von Privatis angenommen werden* 19.08.1755; PO 3911 *Dass niemand, wann auch schon eine Schwängerung vorhanden wäre, vor Erhaltung des Burgerrechts oder Schutzes mit der Proclamation oder Copulation zu willfahren, und, woferne beyde sich vergangen habende Theile frembd, selbige schlechterdings dahier abuzweisen; weniger nicht dissensum parentum bey erfolgter Schwängerung betreffend* 24.12.1772.

⁷⁰¹ See: Roper, *Holy Household*, 61-69 (Augsburg); Burghartz, *Zeiten der Reinheit* (Basel); Watt, *Modern Marriage* (Neuchâtel); Hull, *Sexuality*, 58-61.

⁷⁰² On the situation prior to the Reformation see: Johann, *Kontrolle mit Konsens*, 121. In 1411 the synodal court (*Sendgericht*) had been assigned to the city council by the archbishop of Mainz. With it, the city council had acquired the right to prosecute sexual matters on their own account and soon the *Sendgericht* lost its function and was dissolved. The newly established *Sendamt* had nothing to do with this former synodal court.

⁷⁰³ J.G. Rössing, *Versuch einer kurzen historischen Darstellung der anmählichen Entwickelung und Ausbildung der heutigen Gerichts-Verfassung Frankfurts* (Frankfurt am Main 1806) 153-154.

Thus, the *Sendamt* fulfilled a double function. On the one hand it was installed to discipline extra-marital sexuality. As such it could impose monetary fines and shaming punishments. For cases that were considered too complex, or in which the required punishment exceeded the competences of the *Sendamt*, the city council had to be consulted.⁷⁰⁴ At the same time it also functioned as a tribunal to settle conflicts that belonged to sphere of civil law like paternity suits. How this influenced the position of women will be discussed later on, for now it suffices to highlight the fact that two possibly conflicting functions were united in one court.

Apart from the *Sendamt*, the city council also established a new office for the supervision over religious matters (*causae merae ecclesiasticae*) called the *Scholarchat*, which was also formed by six council members. They were in charge of supervising Frankfurt's churches, and appointed new clerics together with the association of preachers (*Predigerministerium*). Moreover, they were in charge of the appointment of teachers and supervised education. Thus, in Frankfurt church discipline (*Kirchenzucht*) and moral discipline (*Sittenzucht*) were formally divided during this period. Nevertheless, both were subjected to the control of secular authorities.

Unlike other cities, Frankfurt did not establish a new judicial body for the regulation of matrimonial affairs: they were transferred from the jurisdiction of the archbishop of Mainz to the city's civil court: the *Schöffengericht*.⁷⁰⁵ Disputes between spouses, requests for separation or divorce, issues regarding abandonment, etc., were all dealt with by the aldermen, reflecting the perception of marriage as a civil legal contract. Excluded from a voice in marital matters, the city's clergymen repeatedly expressed their wish to the city council for the establishment of a proper marriage court in Frankfurt following the example of other reformed cities.⁷⁰⁶ However, the aldermen did not grant any power over these matters to the city's clerics, and maintained full control over marital politics until the establishment of the consistory.

At the beginning of the eighteenth century the situation changed. The *Sendamt* and the *Scholarchat* were abolished, and their tasks were incorporated into a newly created institution, the *Konsistorium*, together with the control over marriage which had formerly belonged to the court of aldermen. The consistory was established in 1726 as part of the political transformations during the constitutional conflict (1705-1732). According to the tribunal's regulations, it was charged with maintaining pure Protestant thought, Christian discipline and social order.⁷⁰⁷ The regulations of the new consistory stated that it held jurisdiction over all affairs concerning marriage: granting consent

⁷⁰⁴ Johann, *Kontrolle mit Konsens*, 124-126.

⁷⁰⁵ *Der Stadt Franckfurt erneuerte Reformation* (1578) §3.1; Rössing, *Versuch*, 151.

⁷⁰⁶ Johann, *Kontrolle mit Konsens*, 221.

⁷⁰⁷ PO 3176 *Konsistorial-Ordnung* 1739, §1.1. Original: 'Soll dieses Consistorium im Nahmen Unser des Raths, in denen Ihme aufgetragenen Sachen, das Richterliche Ambt führen: über Beybehaltung reiner Evangelischer Lehre, wie auch Christlicher Zucht und Ordnung, beständig ein wachendes Auge haben, und die heilsame Justiz treulich administriren'.

to engaged couples to proceed with the banns of marriage in church; dealing with marriage promises that were not kept or in which either party requested an annulment; evaluating requests for marriage between related couples; marital disputes, divorce from bed and board, and annulment of marriage after desertion of a spouse or adultery.

Besides marital matters, the consistory held jurisdiction over the *delicta carnis* and related matters. According to the regulations, this concerned offences like lewdness, fornication and adultery (*Leichtfertigkeit, hurerey und Ehebruch*) as well as the investigation of paternity suits, handling requests for child support for illegitimate children, and requests for the enforcement of marriage promises.⁷⁰⁸ Additionally, the consistory was in charge of policing sumptuary laws. In sum, the consistory combined the activities subjected to ecclesiastical as well as moral discipline, and functioned as both a disciplinary court and a forum for conflict settlement at the same time.⁷⁰⁹

In many cases the consistory was a continuation of the *Sendamt*. In fact, with regard to sexual offences the regulations specifically stated that the consistory was to continue the practices of the *Sendamt* and prosecute these offences as usual.⁷¹⁰ However, there was one major change. While the *Sendamt* was composed of secular members only, the consistory had a mix of secular and ecclesiastical personnel. It was presided over by a director, who had to be one of the aldermen, together with three other council members (one from the first bench and two from the second bench). They were accompanied by two burgher representatives chosen by the *51er Kolleg* (a burgher committee). The ecclesiastical personnel were formed by the city's two most senior clergymen and the director of the *Predigerministerium*.

Despite the fact that representatives of the church now had a direct voice in the prosecution of moral offences, the establishment of the consistory is generally perceived as a strengthening of the position of the city council and increased secularisation.⁷¹¹ The reason for this is that with the establishment of the consistory the church convent had lost its independence to implement ecclesiastical penance completely.⁷¹² Previously, in the sixteenth and seventeenth centuries, the *Sendamt* had already seized control over the implementation of the *Kirchenbuße* (a form of public

⁷⁰⁸ PO 2950 *Consistorial Ordnung*, 1728, §7.17.

⁷⁰⁹ Rössing, *Versuch*, 160. Original: 'welche aus der ihm übertragenen Ausübung des Kirchen: Gewalt und des Kirchen: Regiments fließen, und hauptsächlich in der kirchlichen Gerichtsbarkeit, kirchlichen Aufsicht und Sitten-Polizy bestehen'.

⁷¹⁰ PO 2950 *Consistorial Ordnung*, 1728, §11.1. Original: 'so lässet man es hierinnen bye denen von Unserem Centen=Amt vormal verordneten und üblich gewesenem Geld und andere Strafen bewenden'.

⁷¹¹ B. Dölemeyer, *Frankfurter Juristen im 17. und 18. Jahrhundert* (Frankfurt am Main 1993) xxxvi.

⁷¹² H. Völcker, 'Kirche und religiöses Leben in Frankfurt am Main', in: H. Völcker ed., *Die Stadt Goethes. Frankfurt am Main im XVIII. Jahrhundert* (Frankfurt am Main 1932) 133-148, 138. On church discipline meted out by the French-Reformed churches in Frankfurt: G. Petasch, "'Zur Ehre Gottes, zum ewigen Heil und zur Ordnung in unseren Kirchen...'. Alltag und Grenzen reformierter Selbstverwaltung in Frankfurt um 1650' in: A. Amend et al. *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München: R. Oldenbourg Verlag 2008) 217-246.

church penance).⁷¹³ Before the establishment of the *Konsistorium*, the *Predigerministerium* was still allowed to exercise church discipline independently to some extent. They could, for example, exclude offenders from the Lord's Supper. After 1726, such measures had to be consented to by the newly established *Konsistorium* and could no longer be imposed by the church convent independently.

This loss of control was contested repeatedly by the city's clergy. In 1759, for example, a Frankfurt preacher - Dr Fresenius - asked the consistory whether or not clergymen were allowed to interrogate 'fallen women' (*zu fall gekommene Weibspersonen*) on their own account – regardless of whether or not the cases had been reported to the authorities yet – and to exclude these women from confession and the Lord's Supper if they refused to name the father of the child. However, the consistory explicitly prohibited the church from investigating these matters themselves, and even ordered them to admit the women to the Lord's Supper regardless of their offence.⁷¹⁴ Thus, even though the consistory employed ecclesiastical members and the *Sendamt* had not, the general movement was towards a secularisation of moral discipline.⁷¹⁵

Apart from the *Sendamt* and *Konsistorium*, the prosecution of sexual offences in the early modern period continued to be subjected to the criminal court as well. It was precisely this co-existence of different legal tribunals disciplining sexuality which has sparked discussion among historians. Were their functions overlapping or complementary? Did the institutions reinforce each other or was there competition? As this chapter shows, in Frankfurt, the differentiation of tasks between the criminal investigation office (the *Verhöramt*) and the church courts were well defined. According to the regulations of the *Verhöramt*, they were in charge of all carnal offences that were not subjected to the jurisdiction of the *Konsistorium*, especially cases of sexual assault (*Nothzucht*), and brothel keeping.⁷¹⁶ Both the *Verhöramt* and the *Konsistorium* functioned as lower courts in the case of petty offences and could impose monetary fines and other minor punishments. Cases which demanded penal punishments could only be judged by the city council as Frankfurt's high court, for which the *Verhöramt* functioned as a court of enquiry (*Untersuchungsgericht*). Thus, according to the normative framework, one might expect that the *Verhöramt* and the *Sendamt/Konsistorium* were

⁷¹³ Johann, *Kontrolle mit Konsens*, 126. See e.g. Criminalia 1556 (1682) in which the daughter of Karl Holtzschuh (her name is not mentioned) was sanctioned by the *Sendamt* for her illegitimate child with a monetary fine as well as a church penance (*Kirchenbuße*). On the relationship between church penance and secular discipline for the prince bishoprics Münster and Osnabrück: C.D. Schmidt, *Sühne oder Sanktion? Die öffentliche Kirchenbuße in den Fürstbistümern Münster und Osnabrück während des 17. und 18. Jahrhunderts* (Münster 2009).

⁷¹⁴ IfSG Frankfurt am Main, Lutherisches Konsistorium, Protokolle 1759, folio 37-38.

⁷¹⁵ Also later developments: A. Roth, 'Die Sittlichkeitsdelikte zwischen Religion und Rationalität. Strafrechtspraxis und Kriminalpolitik im 18./19. Jahrhundert' in: R. Schulze et al. *Strafzweck und Strafform zwischen religiöser und weltlicher Wertevermittlung* (Münster 2008) 195-212.

⁷¹⁶ PO 4346 *Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt* 04.12.1788, § 5. Original: 'alle fleischliche nicht vor Löbl. Consistorium gehörige Verbrechen, und Nothzucht insonderheit, auch die mit dieser Gattung von Verbrechen verwandte bürenwirtschaft [...]'.

complementary to one another in their activities. The latter was the *primary* tribunal to regulate most of the sexual offences, while the *Verhöramt* handled such criminal acts in their function as a court of enquiry for the city council as a high criminal court. The following section demonstrates that this differentiation of tasks was largely followed in practice, regarding the prosecution of sexual offences in early modern Frankfurt. In order to understand the prosecution of sexual offences, therefore, both tribunals need to be taken into account.

Prosecution of morals in practice

The majority of sexual offences belonged to the jurisdiction of the *Sendamt/Konsistorium*. The loss of archival records of both institutions is particularly painful for the study of the way that sexual offences were prosecuted in practice. Scattered archival references still allow for a cautious reconstruction of their activities. The records show that the *Sendamt* and the *Konsistorium* dealt with a large variety of cases. Anja Johann managed to reconstruct some of the activities of the *Sendamt* based on the minutes of the city council for the late sixteenth and early seventeenth centuries.⁷¹⁷ These sources give the impression that adultery and fornication were prosecuted intensely by the *Sendamt*. In the late sixteenth- and early seventeenth centuries, prosecution efforts were aimed at all layers in society and even elite members of Frankfurt's citizenry were regularly interrogated as suspects. Transgressions were sanctioned with monetary fines and shaming rituals, such as the payment of a *Schmachgulden* for adulterers. According to Johann, the *Sendamt* and the city council hardly ever granted petitions filed for mitigation of punishments, and fines were usually collected. At the same time, elites increasingly managed to buy off dishonouring shaming punishments or to have them replaced with the *Kirchenbuße*, which was considered less dishonouring.⁷¹⁸

The punitive character of the regulation of morals by the *Sendamt* is also reflected in other sources. W. Hanauer's work on prostitution in Frankfurt published in 1903 contains several references to sources of the *Sendamt*. The tribunal sanctioned prostitutes with monetary fines, imprisonment or expulsion from the city. This image is also reflected in my sample of moral offences in the *Criminalia*. At least just over 20% (14 cases) of the sexual offences investigated by the *Verhöramt* in the sample years between 1600-1726 had also been investigated by the *Sendamt* and contain references to its activities. More than half of these were concerned with cases of adultery, and the rest were cases of fornication, brothel-keeping and illegitimate pregnancy.⁷¹⁹ Again, the punitive character of prosecution is dominant. Moreover, premarital intercourse was

⁷¹⁷ Johann, *Kontrolle mit Konsens*, 120-129.

⁷¹⁸ Johann, *Kontrolle mit Konsens*, 127, 223.

⁷¹⁹ E.g. *Criminalia* 1053 (1641); *Criminalia* 1149 (1755); *Criminalia* 1255 (1662); *Criminalia* 2324 (1702).

prosecuted as fornication, even if the couple married afterwards.⁷²⁰ Literature on other regions shows that sanctioning premature coitus was part of the intensified criminalisation of extra-marital sexuality which had gained a high-point in the seventeenth-century. In the late seventeenth-century Basel, for example, convictions for so-called premature carnal knowledge represented one-third of the cases handled by the city's marriage court.⁷²¹

Thus, references in sources about the activities of the *Sendamt* primarily highlight its function as a disciplinary institution. Still, Johann argues, compared to other cities, such as for example Konstanz, the prosecution of sexual offences in Frankfurt was carried out with much less rigour, organisational perfection and religious fanaticism.⁷²² It is difficult, however to assess the precise nature of the *Sendamt* without the possibility of measuring all of its activities. After all, the institution was also responsible for handling paternity suits and settling alimony cases, and thus fulfilled a double function. As such, individuals could experience the court from the perspective of an offender and that of a plaintiff, sometimes even at the same time.

For the seventeenth century then, it is difficult to assess the precise nature of the *Sendamt* since we do not know what types of cases predominantly occupied the court. Fortunately, this type of information – albeit limited – is available for the eighteenth century. Three complete volumes of the consistory's minutes (*Konsistorialprotokolle*) from 1746, 1759 and 1780 have been preserved, which allow for a quantification of the type of cases handled by the *Konsistorium*.⁷²³ In these, a total of 589 cases of moral offences were recorded (see table 1).⁷²⁴ As has been noted above, according to the regulations the consistory was in charge of all types of cases related to marriage and sexual conduct, as well as overseeing Frankfurt's schools and churches, including those in its territory. These have been left out of the table below. A broad estimate based on the alphabetical registries of the minutes shows that the court's activities concerning moral offences formed the core of its existence, as they comprised approximately two-thirds of all cases.

⁷²⁰ Hanauer, 'Geschichte der Prostitution', 22-26.

⁷²¹ Burghartz, *Zeiten der Reinheit*, 119. Also see: McIntosh, 'Confessionalization', 155-174.

⁷²² Johann, *Kontrolle mit Konsens*, 129.

⁷²³ Joachim Eibach has previously reconstructed the court's activities for the year 1746. I have used his categorisation as a format for my own calculations, but changed how the cases were counted. For 1746, Eibach counted 16 cases of *Festnahme verdächtiger Frauen auf Straße*. The difference between his recorded 16 cases and my 25 cases of *lewdness* is explained by the fact that I have counted each offender as an individual case, rather than counting each arrest, which often included multiple women. Repeat offenders have not been counted for each additional offence, just as repeated marital conflicts were not counted separately. See: Eibach, 'Männer vor Gericht – Frauen vor Gericht'.

⁷²⁴ References to the appointment of schoolteachers and clerics have not been counted for this purpose. Requests to proceed with the marriage banns in church are also excluded, as long as they were uncontested and therefore did not represent an offence.

Table 13 Moral offences handled by the Konsistorium 1746, 1759, 1780

Case	1746		1759		1780		Total	
	N	%	N	%	N	%	N	%
Marital and family conflicts	47	32%	34	20%	39	15%	120	20%
Disputed marriage promises	8	5%	13	8%	12	5%	33	6%
Extramarital sexuality ⁷²⁵	56	38%	92	53%	158	59%	306	52%
Lewdness	25	17%	9	5%	12	5%	46	8%
“Suspicious” households	2	1%	5	3%	6	2%	13	2%
Other transgressions	10	7%	21	12%	40	15%	71	12%
Total	148		174		267		589	

Sources: Institut für Stadtgeschichte, Lutherisches Konsistorium, 1746; 1759; 1780.

As might be expected from what we know in other cities and territories, by far the largest number of moral offences dealt with by the consistory concerned matters of extra-marital sexuality. In the three years under study, a total of 306 cases were recorded, accounting for 52% of all offences. The consistory records referred to the act of fornication as ‘*in unehren begangen*’, ‘*getriebener Unzucht*’, and ‘*fleischlich Vermischt*’. The majority of the cases that were dealt with by the consistory during these years were in fact cases that had resulted in illegitimate pregnancies. Only rarely were cases recorded in which it was not explicitly mentioned that the woman was pregnant: fewer than 7% of extra-marital sexuality cases in 1780, a single case in 1759 and none in 1746. Even in these cases one can assume that there was a pregnancy involved. In 1780, for example, Margaretha Abtin was interrogated for fornication with a foreign journeyman named Johann Adam. While the latter was not referred to as *impraegnator* in the first entry for this case in the consistory records, it can be deduced from later entries that in fact their relationship had resulted in a pregnancy. When Margaretha pleaded for the elimination of her fine, she was granted her request, but expelled from the city together *with* her illegitimate child.⁷²⁶

Adultery had been at the heart of moral reform following the Reformation, as is visible in the many ordinances issued against it during the sixteenth and seventeenth centuries, and the

⁷²⁵ This is a broad category which includes various types of offences that were judged differently by contemporaries. Adultery, for example, was considered a more serious offence than fornication. Consequently, penalties for the former were much higher than for the latter. However, as the records of the consistory in the eighteenth century were particularly focused on investigating illegitimate pregnancies (which in itself can be seen as a reflection of the changing interests of authorities), it is difficult to distinguish the offenders according to the judicial category of their offences, i.e. according to fornication or adultery. Therefore, although these two constituted two very different offences, they are included in the same category of pre- and extramarital sexuality here. A similar change in the language of record keeping has been observed elsewhere too: Watt, *Modern Marriage*, 107; S. Lesemann, *Arbeit, Ehre, Geschlechterbeziehungen. Zur sozialen und wirtschaftlichen Stellung von Frauen im frühneuzeitlichen Hildesheim* (Hildesheim 1994) 139.

⁷²⁶ IfSG Frankfurt am Main, Lutherisches Konsistorium, Protokolle (1780), folio 272 and 273.

prosecution efforts of the *Sendamt* and (as we will see) the criminal investigation office as well. By the second half of the eighteenth century, however, it hardly played a role anymore, at least not in the prosecution efforts of the *Konsistorium*. No cases of adultery were recorded in 1746, and only five in 1759, four of which had resulted in a pregnancy. The lower level of anxiety of the authorities in relation to adultery is further highlighted by the way the offence was labelled. By the 1780s it was no longer referred to as *adulterio* or *Ehebruch*, but as fornication with a married man (*‘mit einem Ehemann getriebenen Unzucht’*). In 1780 only five cases of such fornication with a married person could be identified, each of which had resulted in pregnancy.

A second type of extra-marital sexuality which had occupied the courts in the seventeenth century, but lost its significance in the eighteenth century, was that of prenuptial coitus. Historians argued that this process is an indication of the fact that during the course of the early modern period, the focus of authorities shifted. They became less concerned with children that, although conceived out of wedlock, were actually born within the (financially secure) confines of marriage.⁷²⁷ Financial considerations had become more important than moral objections. This does not appear to have been any different in Frankfurt. Only the records of 1746 mention cases of *praematurum concubitu* relating to couples whose child was conceived before the start of matrimony but born within wedlock. More common, and recorded in all three years, were cases of *anticipatum concubitum*. This referred to illegitimacy cases of *engaged* couples who applied to the consistory for the consent to get married and thereby retro-actively legitimise their fornication by marriage. In 1746 this related to at least 16% of the extra-marital cases, in 1759 11% and in 1780 even 22%. During this period, the *Konsistorium* usually considered this as an extenuating circumstance, gave the consent for marriage, and often reduced the fines.

The majority of the consistory's prosecution efforts, however, concerned sexual intercourse of unengaged and unmarried couples, and women were disproportionately targeted. Most entries in the minutes only report that the woman was interrogated and who she had denounced as the father of her illegitimate child. Only rarely do the minutes specifically mention that the man was interrogated as well. In 1780, this was only recorded in 13% of the illegitimacy cases, in 1759 11% and in 1746 21%. This divergence was not necessarily the result of biased prosecution policies. If men could be found guilty of fornication, they faced punishment. However, it was much more difficult to do so for men, than for women whose bodies carried the proof of their crime. Moreover, many men who were disclosed as the father by unwed mothers were no longer present in Frankfurt, and the consistory had no hold over them. Another reason why men would not appear in the sources of the consistory was because many of them were soldiers and were therefore

⁷²⁷ Hull, *Sexualtiy*, 74-75.

subjected to the military jurisdiction of the *Kriegszengamt*.⁷²⁸ Nevertheless, there was a clear gender difference in the language used by the consistory's clerks when referring to both parties. Unmarried pregnant women were always referred to as *lapsa* (fallen women) - a term with a clearly derogatory meaning. Men, on the other hand, were recorded as *impraegnator* - a far more neutral and less demeaning term. Moreover, the term was always used with reservation because it was mostly accompanied by the adjective 'alleged' (*angeblichen*). What this means for the relationship between the women and the court in terms of assistance versus repression will be discussed in the second part of this chapter.

The second biggest category of cases handled by the consistory were marital disputes and other conflicts within the family context. Based on the consistory records of 1746, Joachim Eibach has shown how the majority of these conflicts were concerned with physical violence, general misbehaviour (drinking, disobedience) and 'ill housekeeping', i.e. not providing basic necessities and/or not performing household chores properly.⁷²⁹ Marriage conflicts usually took up a considerable part of the consistory's time, as complaints were often met with counter-claims, and conflicts were often reignited. For the consistory marriage was not private matter, and neither were marital disputes. The sanctity of marriage and its convergence with perceptions about social order meant that maintaining peace within the domestic sphere was essential for maintaining public order as well. Therefore, the peaceful co-existence of husband and wife (or *Hausvater* and *Hausmutter*) was a public matter. The consistory did not meddle in marital disputes to protect the well-being of the parties involved but to fulfil its role as a 'guardian of an older Christian Patriarchy'. Nevertheless, as shown by Eibach, this still opened up options for battered wives to initiate cases against their husbands in court.⁷³⁰

The third main category of cases dealt with by the *Konsistorium* concerned cases in the context of prostitution. These included women who were arrested at night for 'acting suspiciously', and cases in which women were investigated for indecency (*Unzüchtiger Lebenswandel*) or living a loose lifestyle (*Liederliches Leben*). In the early modern period there was no legal distinction between extra-marital intercourse in exchange for payment and without. Prostitution was prosecuted as fornication, even if it was often treated as an aggravating circumstance and influenced the

⁷²⁸ See for Frankfurt's militia: I. Kracauer, 'Das Militärwesen der Reichsstadt Frankfurt am Main im 18. Jahrhundert', *A/GK* 12 (1920) 1-180. Criminalia 5208 (1740/1741) two soldiers that were arrested together with Anna Katharina Mayer, Anna Maria Stadlerin and Maria Magdalena Albertin on suspicion of prostitution were handed over to the *Kriegszengamt* to be sanctioned, while the three women were expelled from the city by the consistory; Criminalia 5217 (1741) tambour Matthäus Petermann and his wife Sybilla were prosecuted for bigamy. While Sybilla was sanctioned by the consistory, Matthäus was judged by the military court.

⁷²⁹ Eibach, 'Kampf um die Hosen' 177-178.

⁷³⁰ Eibach, 'Kampf um die Hosen', 188.

punishments that were imposed.⁷³¹ However it was often difficult for authorities to present definite proof that the women they suspected of being prostitutes had actually committed fornication (unless, of course, they were pregnant or had been caught red-handed). They were therefore arrested for lewdness instead. Most of the cases of *liederliche weibsleuthe* actually concerned suspected prostitutes who were arrested walking the streets during the night-time and worked on their own or with other women rather than waiting for clients in a brothel.⁷³² People providing couples with the opportunity to engage in fornication - for example, by opening up their houses to the occasion, or even operating professional brothels - were investigated as well. Their operations were referred to by the consistory as '*verdächtiges Haushalten*' – suspicious housekeeping, which could refer to a whole range of activities, including concubinage, housing single women, or anything which could be interpreted as immoral behaviour. Most of the cases of 'suspicious housekeeping', however, referred to brothel keeping, i.e. *lenocinium*.⁷³³

Fourthly, the consistory handled cases related to disputed marriage promises, but they only comprised a small proportion of its activities. Public marriage vows played a central role in the reordering of marriage after the Reformation. Overseeing whether these were properly conducted was important for authorities in order to legitimise the distinction between licit and illicit marriage vows. The consistory dealt with cases relating to broken marriage promises, disputes concerning parental consent and requests to annul existing marriage promises. In eighteenth-century Frankfurt, many cases were issued by engaged couples themselves in order to circumvent parents' unwillingness to grant consent. The consistory often granted the wishes of the couple because financial considerations were involved. At the same time, there are also examples where the consistory sanctioned couples who got married without the necessary parental consent and circumvented regulations by marrying elsewhere. Only a handful of disputes about marriage contracts were issued by women with the aim of enforcing unfulfilled promises of marriage.⁷³⁴

⁷³¹ Studies about prostitution in early modern Germany usually deal with the sixteenth century, when prostitution was criminalized, or with the late eighteenth and early nineteenth century. Schuster, *Das Frauenhaus*; D.M.H. Hemmie, *Ungeordnete Unzucht. Prostitution im Hanseraum (12.-16. Jahrhundert)* (Köln 2007); D. Hüchtker, "Elende Mütter" und "liederliche Weibspersonen". *Geschlechterverhältnisse und Armenpolitik in Berlin (1770-1850)* (Münster 1999); S. Kienitz, *Sexualität, Macht und Moral: Prostitution und Geschlechterbeziehungen Anfang des 19. Jahrhunderts in Württemberg: ein Beitrag zur Mentalitätsgeschichte* (1995). On prostitution in early modern Amsterdam: L. van de Pol, *The burgher and the whore. Prostitution in early modern Amsterdam* (Oxford 2011). For Bristol and Nantes: M. Pluskota, *Prostitution and social control in eighteenth-century ports* (Abingdon and New York 2015).

⁷³² See e.g. Konsistorium, Protokolle (1746), folio 14. Officials of the consistory discussed complaints from neighbourhood people about *liederliche weibsleuthe* who were walking the streets at night, openly accosted men on the street, inviting them to engage in fornication.

⁷³³ See e.g. Konsistorium, Protokolle (1759), folio 36 and 43.

⁷³⁴ See e.g. Konsistorium, Protokolle (1780): Dietz contra Egerische Eheleut; Hildebrandt contra Matrem; Liebmann contra Vogel; Konsistorium, Protokolle (1759): Rossel contra Patrem; Pfeiffer contra Leichumin; Konsistorium, Protokolle (1746): Fahlberg contra Müller; Neumann et Oppeltin. On men initiating complaints for broken marriage promises see: Lesemann, *Arbeit*, 110-114; Watt, *Modern Marriage*, 70-87; Burghartz, *Zeiten der Reinheit*, chapter 5. On

Finally, the consistory also dealt with cases that have been categorised here as ‘other deviance’. They included a whole range of transgressions, such as for example breach of banishment, child abuse, ill-housekeeping, and general disobedience against secular and ecclesiastical authorities. This also included cases that can be considered as church discipline, for example warnings issued to properly attend church. However, there are only a handful of such cases dealt with by the consistory. The relationship between the consistory and the individual churches with regard to the regulation of such offences remains unclear.

Thus, the cases dealt with by the consistory in the eighteenth century highlight the dual function of the court: it was both a place of conflict settlement as well as discipline and control. The records of cases dealt with by the criminal investigation office, on the other hand, portray a different picture (see table 2). Between 1600 and 1806 there were about 564 cases dealing with moral and/or religious offences handled by the secular *Verhöramt*.⁷³⁵ As we can see in table 2, the majority of these cases concerned offences such as illegitimacy (here cases referred to as *Schwängerung*, *Impraegantion* and *heimliche Niederkunfft*); fornication and lewdness (*Unzucht*, *Hurerei*, *Leichtfertigkeit*, *liederliche(s) Leben/Dirnen*); adultery; bigamy; brothel-keeping and procuring (*Lenocinium*, *Kuppelei*); and rape. Cases of incest (according to the broader early modern definition) are not listed separately here as this was dealt with as an aggravating circumstance of adultery or fornication. Moreover, the *Verhöramt* investigated cases of sodomy, elopements and transgressions concerning the contract of marriage.⁷³⁶ Similar to the cases prosecuted before the *Sendamt* and the consistory, there was a development through time. The nature of this change will be discussed in more detail below; for now, it suffices to say that attention shifted from cases of adultery – of which two-thirds of the cases were investigated in the seventeenth century alone – towards fornication and related offences such as illegitimacy and brothel-keeping in the eighteenth century.⁷³⁷

women: S. Burghartz, ‘Rechte Jungfrauen oder unverschämte Töchter? Zur weiblichen Ehre im 16. Jahrhundert’ in: K. Hausen and H. Wunder eds. *Frauengeschichte – Geschlechtergeschichte* (Frankfurt am Main 1992) 173–183.

⁷³⁵ Religious offences included cases of blasphemy and conversions of Jews. They consisted less than 10% of the cases in the category moral and religious offences and will not be discussed in this chapter.

⁷³⁶ Illegitimacy (unlike hiding pregnancy or childbirth) was not an offence in itself in the early modern period. Men and women were not convicted for having an illegitimate child but for fornication or adultery. I have nevertheless chosen to include this category in the table here, because it reflects the focus of the authorities of the time. The index of the *Verhöramt* referred to these cases as ‘in puncto impraegnation’, ‘in puncto Schwängerungssachen’, or ‘wegen unehelicher Niederkunfft’. Cases were it was not specifically mentioned in the index that the women was pregnant were categorised as fornication/lewdness. On the deliberate vagueness of the terminology used with regard to sexual offences see: Burghartz, who stated that increasing use of polarizing terminology (‘Un’ – words like Unzucht, Unehe etc.) ‘led to the establishment of a rhetoric characterized by sexual vagueness that could be used correspondingly in broad ways’. ‘Ordering discourse’, 81. For the broader definition of early modern incest see: C. Jarzebowski, *Inzest. Verwandtschaft und Sexualität im 18. Jahrhundert* (Köln 2006).

⁷³⁷ See Appendix Tabel 1.

At first sight the cases investigated by the *Verhöramt* are more or less the same type of cases that were investigated by the city's church courts. However, considering that the consistory dealt with 589 cases in three years alone, it is clear that only a relatively small number of moral offences were investigated by the *Verhöramt*. During the entire period, sexual offences made up just over 6% of the criminal investigation office's workload, but the proportion varied considerably throughout the period. Between 1640 and 1660 they had reached a high point of around a quarter of all cases, while they made up 3% or less from the 1760s onwards.⁷³⁸ The share of moral offences which were sanctioned with penal punishments corresponds with their share among prosecuted offences: they made up 18% of the cases in the *Strafenbuch* in the collected seventeenth-century sample years. These fluctuations were partially related to the increasing prosecution of other offences, and partially to a process of decriminalisation of sexual offences in the course of the eighteenth century.⁷³⁹

Table 14 Types of sexual offences, Verhöramt 1600-1806

Offence	N	%
Illegitimacy	133	24.7%
Fornication/Lewdness	130	24.2%
Adultery	97	18.0%
Bigamy	50	9.3%
Brothel keeping/Procuring	41	7.6%
Rape	34	6.3%
Rest	53	9.9%
Total	538	

Source: IfSG Criminalia 1600-1806.

The share of moral offences investigated by the secular *Verhöramt* is considerably smaller than that of criminal courts in centralised territorial estates in early modern Germany. In the territories of Baden, Kurbayern and Kurmainz, the share of sexual offences even constituted the majority of offences prosecuted: 38% of the cases prosecuted before the high court between 1560 and 1802 of Kurmainz were sexual offences; in Kurbayern in the first half of the seventeenth century they formed 30% of all offences.⁷⁴⁰ The numbers for Frankfurt are more comparable to those of the

⁷³⁸ See Appendix Figure 4.

⁷³⁹ For the decriminalization of sexual offences see: Behringer, 'Weibliche Kriminalität'; Härter, *Kriminalität und Strafrecht*, 837 and 884; Hull, *Sexuality*, 139-145.

⁷⁴⁰ Härter, *Policey und Strafrecht*, 546; Behringer, 'Weibliche Kriminalität', 65-66.

criminal courts in Cologne (11.7% between 1568 and 1612) or the Dutch cities of Leiden, Delft and Rotterdam which ranged from 13% (Delft) to 20% (Leiden) for the early modern period.⁷⁴¹ It is of course difficult to compare figures about the criminal prosecution of single cities with that of entire territories.⁷⁴² What is important to emphasise in this respect is that the prosecution of sexual offences in centralised estates was inextricably linked to processes of state formation and the legitimisation of central authorities over local rulers and churches.⁷⁴³ In a city state like Frankfurt, the process was different. Here the council directly supervised the church and a fight over legitimacy with local rulers was no issue. The prosecution of sexual offences in Frankfurt, therefore, was not an arena of power struggles between central and local secular authorities. This made it much easier to delegate the task of policing sexual offences to a lower judicial body like the consistory, which was in any event under direct control of the city council.

Consistory versus *Verhör*amt - sin versus crime or institutional differentiation?

A closer look at the relationship between the church court and the criminal investigation office in early modern Frankfurt shows that there was no conflict of interests between the two. Indeed, they functioned in relation to each other to preserve the 'social order of Christian patriarchy'.⁷⁴⁴ The sample of the *Criminalia* reveals that many sexual offences were not reported to the criminal investigation office directly. At least close to a third of the cases investigated by the *Verhör*amt had actually been transferred by the church court for further investigation (28 out of 92). The *Criminalia* contain written decisions either taken by the church court itself or by the city council along the lines of: 'these proceedings should be transferred to the *Officium Examinatorio* for further investigation.'⁷⁴⁵ It is very likely that this number was much higher since particularly for the seventeenth century information about how cases were reported to the *Verhör*amt is mostly lacking.

There was a variety of reasons for the *Sendamt* or the consistory to send the cases to the *Verhör*amt. First, the nature of the offence – and in relation to this the level of punishment – played an important role in their decision. This was particularly the case for offences which were listed in the *Carolina*, such as incest, rape, procuring, and sodomy, and which required capital or penal

⁷⁴¹ Cologne: Schwerhoff, 'Geschlechtsspezifische Kriminalität', 91; Rotterdam: M. van der Heijden, 'Criminaliteit en sexe in 18^e-eeuws Rotterdam. De Verschillen tussen vrouwen- en manncriminaliteit tussen 1700 en 1750', *Tijdschrift voor Sociale Geschiedenis* 21:1(1995) 1-36, 16; Leiden: E. Kloek, *Wie hij zij, man of wijf. Vrouwengeschiedenis en de vroegmoderne tijd. Drie Leidse studies* (Hilversum 1990) 132; Delft: D.J. Noordam, 'Strafrechtspleging en criminaliteit in Delft in de vroeg-moderne tijd', *Tijdschrift voor Sociale Geschiedenis* 15:3 (1989) 209-244, 228.

⁷⁴² On the influence of different governmental structures on penal justice see the contributions in: H. Rudolph and H. Schnabel-Schüle eds., *Justiz = Justice = Justitia? Rahmenbedingungen von Strafjustiz im frühneuzeitlichen Europa* (Trier 2003).

⁷⁴³ Härter, *Policey und Strafjustiz*, 830-832; Hull, *Sexuality*, 60, 98.

⁷⁴⁴ Eibach, 'Der Kampf', 188.

⁷⁴⁵ Original: 'solle dieses Protocollum zu weiteren untersuchung löb. Officio Examinatorio zugestellet werden', *Criminalia* 6848 (1753). Also: *Criminalia* 9484 (1781); *Criminalia* 7756 (1761); *Criminalia* 3082 (1720); *Criminalia* 2428 (1704).

(*peinliche*) punishments. Neither the *Sendamt* nor the *Konsistorium* had the jurisdiction to do this. The cases were transferred to the *Verhöramt* in their function as a court of enquiry for the high criminal court, i.e. the city council. This is evident, for example, in the case of Anna Katharina Kriegin. In 1740 her guardians Johann Jeremias and Johann Jakob Krieg issued a written complaint to the consistory about their pupil who – according to their account – had fallen into a life of godlessness and sin (*‘einem solchen liederlichen gottlosen burengeist ergeben’*). Seduced by another woman, Anna Katharina had prostituted herself in the tavern *Zum Schwabnen* in Oberrad and reportedly had intercourse with two Italian men (who during the interrogations turned out to be Flemish).⁷⁴⁶ Anna Katharina’s guardians requested that she would be disciplined so she could return to a proper Christian life and her soul would be redeemed.⁷⁴⁷ Following this request, the consistory themselves interrogated both Anna Katharina, as well as the woman who had reportedly seduced her. After hearing both suspects, the consistory issued them with an official admonition and transferred the case to the *Verhöramt* for further investigation, the reason being that the nature of the offences exceeded that of simple fornication. First, it involved *pto. criminis Lenocinii* – i.e. procuring. Second, based on the letter of her uncles, there was reason to suspect that the intercourse between Anna Katharina and the two men had occurred in a sodomitical fashion (i.e. involved oral and/or anal penetration).⁷⁴⁸ Both crimes were considered as felonies and thus exceeded the jurisdiction of the *Konsistorium*.

Similar considerations played a role in a case concerning the illegitimate child of Lorenz Winter, burgher and master of the tailors’ guild, and Maria Sibylla Küsterin. The case was initially reported to the consistory, but transferred to the investigation offices because Lorenz Winter had married Maria Sibylla’s grandmother. This meant that the case had become an important criminal matter (*‘ein wichtiger Criminal-vorfall’*) because it was now considered a *criminis incestus*, which according to the *Carolina* was a capital offence.⁷⁴⁹

All of the cases transferred to the *Verhöramt* either by the *Sendamt* or the *Konsistorium* concerned felonies in which capital punishments could be applied or that involved recidivists. In the first case, the *Verhöramt* was involved as a court of enquiry for the high criminal court (i.e. the city council). The *Carolina* is characterised by harsh penalties and prescribed the death penalty for many offences, including sexual crimes. The entries of the *Strafenbuch* (listing all *peinliche Strafen*

⁷⁴⁶ Criminalia 5146 (1740).

⁷⁴⁷ The original reads: *‘durch ihre gerechte Verordnung, dahin zubringen, daß sie zur Arbeit und Christenthum angeblaten werden möge, ihres sündhaften bösen Gottesvergeßene Leben entrißen, Gott aber die arme Seele erhalten werde’*.

⁷⁴⁸ Original: *‘weilen nicht nur des Lohnlaquaj Christoph bierbrauers Eheweib Anna Maria, dabeij pto criminis Lenocinii impliciret ist, sondern auch die vormündern der arrestirten Kriegin in ihren schriftlichen anzeige unter andern gemeldet, welcher gestalten, zweij Italianer (welches nach Prot. zweij Lübe Tuchhändler gewesen) zu Oberrad mit der Kriegin ihre sodomitischer und himmelschreijende Sünde begangen’*.

⁷⁴⁹ Criminalia 7756 (1761). Also: Criminalia 6064 (1748); Criminalia 6847 (1753).

imposed by the city council) for the seventeenth century reveal that in practice capital punishment was only rarely imposed for sexual offences. During the sample years, only 4 out of 89 (4.5%) offenders were sanctioned with capital punishment: three men and one woman. Each of them was punished for adultery or fornication in combination with incest.⁷⁵⁰ To make a comparison: offenders who had committed property offences were sanctioned with capital punishment in 20.9% of the cases during this period. Thus, the authorities were reluctant to impose the most severe and punitive sentences with regard to sexual offences.⁷⁵¹ The *Criminalia* also reveal a similar attitude by the authorities for the eighteenth century. The majority of the offenders that were investigated by the *Verhöramt* and sanctioned by the city council were sentenced with banishment.⁷⁵² Throughout the entire period there were only five suspects in the sample years that were acquitted completely, four of which were cases of men who had been indicted for rape or child molestation.⁷⁵³ This means that for most sexual offences the chances for acquittal were slim, once the case was investigated by the *Verhöramt*.

Moreover, men and women were often subjected to different types of punishment. For the latter, sanctions more often included shaming rituals. The *Strafenbuch* reveals that men and women were subjected to different type of punishments: 13% of the men in the sample years judged with banishment in combination with the *Halseisen*. For women however, this was the case 51% of the time, whereas men were more likely to receive additional corporal punishments (39% vs. 24%). This confirms previous research that shows that shaming punishments for sexual offences were imposed particularly on women, rather than men.⁷⁵⁴ Renate Dürr argued that, as a result, sexual offences were more dishonouring for women than they were for men.⁷⁵⁵

Besides the nature of the punishment, recidivism was the most important reason for a case to be handled by the criminal investigation office rather than the consistory. Most cases of women wandering the streets late at night and arrested for suspected prostitution by the city's soldiers, constables or beadles concerned known recidivists who had previously been sanctioned by the

⁷⁵⁰ IfSG Frankfurt am Main, Strafenbuch, 10.10.1602 Johann Heusser; Criminalia 440 (1602); Strafenbuch, 01.06.1610 Philipps Wormbser; Criminalia 628 (1610); Strafenbuch 24.05.1694 Michael Müller; Criminalia 2001 (1694); Strafenbuch 10.07.1694 Gertdraudta Müllerin; Criminalia 2001 (1694).

⁷⁵¹ Similar conclusions were found with regard to infanticide: R. van Dülmen, *Frauen vor Gericht. Kindsmord in der frühen Neuzeit* (Frankfurt am Main 1991) 59.

⁷⁵² E.g. Criminalia 2292 (1701); Criminalia 3082 (1720); Criminalia 3323 (1722); Criminalia 5072 (1740); Criminalia 9216 (1781).

⁷⁵³ Criminalia 3086 (1720); Criminalia 3278 (1722); Criminalia 5522 (1743); Criminalia 5636 (1744). On the prosecution of rape in early modern Germany: Rublack, *Crimes of women*, 236-243. On the unequal power balance between men and women in rape cases also see: S. Burghartz, 'Verführung oder Vergewaltigung? Reden über sexuelle Gewalt vor dem Basler Ehegericht in der Frühen Neuzeit' in: B. Dausien et al. eds., *Erkenntnisprojekt Geschlecht. Feministische Perspektiven verwandeln* (Opladen 1999) 325-344; G. Walker, 'Rereading rape and sexual violence in early modern England', *Gender & History* 10:1 (1998) 1-25.

⁷⁵⁴ Lidman, *Spektakel*, 371; Gleixner, 'Das Mensch' und der 'Kerl', 59.

⁷⁵⁵ Dürr, *Mäde in der Stadt*, 239.

church court.⁷⁵⁶ It was not necessarily the level of punishment alone that informed the decision of *Sendamt* or *Konsistorium* to transfer cases to the investigation office. In most of these cases, the *Verhöramt* simply expelled the women from the city, a punishment which would not have formally required their interference as the church court could have imposed this sanction itself.

Finally, a third reason was related to the different types of procedure followed by the courts. According to the regulations, the *Sendamt/Konsistorium* followed a civil law procedure in order to avoid lengthy and expensive procedures whereby they preferred to hear cases through oral summary proceedings and urge people to settle conflicts amicably.⁷⁵⁷ The principles of civil law, however, did not form the foundation of the activities of the *Verhöramt*. They followed the inquisitorial procedure, and conflict settlement in order to avoid lengthy investigations was not part of their job description.⁷⁵⁸ The procedure at the *Verhöramt* was better equipped to investigate suspects and to find a person guilty (for example because the use of torture could be applied).⁷⁵⁹

The differentiation of tasks between the *Sendamt/Konsistorium* and the criminal investigation office is further highlighted by the fact that the latter also transferred cases to the former. There are many examples of cases in which sexual offences occur as a 'secondary' offence, for instance if a prostitute was investigated for theft. While the *Verhöramt* took on the investigation for thefts, it called on the moral court to investigate the moral transgressions.⁷⁶⁰ A similar institutional division between the prosecution of 'moral' offences and 'criminal' offences becomes evident in cases of suspected infanticide reported to the investigation office by midwives, the *Sendamt/Konsistorium*, or women's family or household members. Single women who had hidden their pregnancy and/or delivered a still-born baby were always at risk of being suspected of infanticide.⁷⁶¹ As a capital offence, this crime was investigated by the *Verhöramt*. If the latter found no evidence that the child had not died of natural causes, the case was usually transferred (back) to the *Sendamt/Konsistorium*, where it would then be handled as a normal illegitimacy case.⁷⁶²

A remarkable example of this is a case from 1783 when a clergyman called Bechtold came to the junior burgomaster to report that the widow of notary Stöpler, had come to him the night

⁷⁵⁶ E.g. Criminalia 1483 (1679); Criminalia 2671 (1711); Criminalia 3090 (1720); Criminalia 3245 (1722); Criminalia 3290 (1723).

⁷⁵⁷ PO 3176 *Eines Hoch=Edl. und Hoch=Weisen Raths des Heil. Reichs Stadt Franckfurth am Mayn Consistorial-Ordnung* 1739, §8.1,2 and 4.

⁷⁵⁸ Eibach, *Frankfurter Verböre*, 62-64.

⁷⁵⁹ For a similar distinction see: K. Härter, 'Kriminalität und Praxis im geistlichen Territorialstaat des Alten Reiches. Sexuelle Delinquenz und Justiznutzung im frühneuzeitlichen Kurmainz' in: M. Bellabarba, G. Schwerhoff and A. Zorzi eds., *Criminalità e giustizia in Germania e in Italia. Pratiche giudiziarie e linguaggi giuridici tra tardo medioevo ed età moderna* (Bologna 2001) 101-134.

⁷⁶⁰ Criminalia 6934 (1754).

⁷⁶¹ Rublack, *Women and crime*, 163-164; Hull, *Sexuality*, 114-116.

⁷⁶² Criminalia 7956 (1763); Criminalia 5150 (1740); Criminalia 6934 (1754); Criminalia 9484 (1784); Criminalia 9422 (1783); Criminalia 5042.

before and revealed that a woman she did not know had abandoned her illegitimate fourteen-day-old child. As the child was very sick, Stöplerin had performed an emergency baptism, which she reported to the clergymen, who urged her to report the case to the authorities. By the time the junior burgomaster was involved, the child had passed away and the case was referred to the *Verhöramt* for further investigation. During these interrogations it turned out that the child was not left to Stöplerin by a foreign woman, but that it was in fact her own illegitimate child. This caused considerable concern that the child had not died through natural causes and an autopsy was ordered on the child. The investigations cleared Stöplerin of the suspicion that she had committed infanticide, but she was sanctioned with a fine for her efforts to conceal her pregnancy. At the same time, it was decided that she and her oldest daughter, a thirteen-year-old girl, were to be sent to the consistory to receive a formal admonition for their loose and dishonourable lifestyle.⁷⁶³

The findings presented above are in line with what Joachim Eibach has found with regard to the treatment of marriage conflicts. Here as well the criminal investigation office was only rarely involved, and the consistory was the primary legal tribunal to handle such cases. Only marriage conflicts that involved considerable physical harm or in which the conflict had exceeded the physical boundaries of a couple's house (thereby becoming a public matter) were dealt with by the *Verhöramt*.⁷⁶⁴ Both the consistory and the criminal investigation office aimed at the reconciliation of the couples in order to preserve the order of 'Christian patriarchy'. Moreover, the interrogation records reveal that both the *Verhöramt* and the *Sendamt/Konsistorium* emphasised the sinful character of moral offenders. In fact, one of the standard questions suspects of illegitimacy, adultery, prostitution, infanticide etc. had to answer was how they could account for their sinful behaviour to God?⁷⁶⁵

What these cases demonstrate is that there was no binary division between the disciplining of sin or the punishment of crime in early modern Frankfurt. The different nature of punishment imposed by the *Sendamt/Konsistorium* and the criminal court were not the result of reconciling versus punitive objectives, but of the different competences. Neither do the individual cases demonstrate that there was any overlap between the moral courts and the criminal investigation office. Minor sexual offences belonged primarily to the jurisdiction of the *Sendamt/Konsistorium* and sexual felonies belonged to the competence of the criminal investigation office. As we will see below, this

⁷⁶³ Criminalia 9422 (1783). Original: 'dabeij aber gedachte wittib mit ihrer ältesten tochter, weil letzter, ob sie gleich kaum 13. jähriges alters ist, allschon, wie ihre mutter in einem sehr üblen Ruff, der leichtfertigkeit und losen manls stebet, vor löbliches consistorium vorzuladen'.

⁷⁶⁴ Eibach, 'Kampf um die Hosen', 173-174.

⁷⁶⁵ E.g. Criminalia 6632 (1752) 'Ob sie nicht erkennen, das sie sich dadurch abermahls sehr an Gott dem Herren verschuldiget?'; Criminalia 6760 (1753) 'Ob sie nicht gennust das es verbothen hurereij zu treiben, und ob sie nicht erkenne, das sie sich durch diesen wiederholte, und an gott dem herren schwer versundiget?'

constellation had an important impact on the position of women prosecuted for sexual offences and the options available to them to use the law to their own advantage.

Changes in time: from adultery to illegitimacy

The prosecution of moral offences in the early modern period was not static over time but was subject to change. Since the *Criminalia* reflect cases that triggered the strongest responses they are informative for the social and moral anxieties of the *Sendamt/Konsistorium* and the urban authorities that fostered prosecution efforts, both with regard to the type of offences (and offenders) that were prosecuted as well as the level of prosecution in relation to other crimes. In the seventeenth century, the types of sexual offences investigated by the criminal investigation office were quite diverse. The dominant focus of the *Verhöramt* in this period concerned cases of adultery, mostly of higher middle-class citizens who had impregnated their maids or female relatives (usually not blood relatives of the men themselves, but women related to their wives).⁷⁶⁶ As burghers and head of the households, adulterous men not only endangered the union of husband and wife, but of the social and political order in general.

Nevertheless, early modern authorities usually did not prosecute adultery relentlessly, but aimed to restore the marriage in order to preserve the household economy. Examples for sixteenth century Ulm and seventeenth century Württemberg reveal a policy of punishment, repentance and reconciliation as authorities usually only fined adulterous men and minimised the dishonouring punishments.⁷⁶⁷ In Frankfurt, too, adultery was primarily sanctioned with monetary punishments.⁷⁶⁸ Certain cases, in particular those involving incest (according to the early modern definition), transgressed the level of deviance which could be handled with petty penalties and left no room for repentance. In such cases, only public punishments could restore the social order towards God and the urban community. Most illegitimacy cases investigated by the *Verhöramt* during this century were actually connected to adultery cases and usually both the men and the women were sanctioned with banishment, even if the women had most likely been the victim of rape.⁷⁶⁹ There were two investigation peaks concerning fornication and lewdness (in the 1610s and the 1680s) which mostly involved prostitution cases, some of which were linked to the rounding up of hidden brothels.⁷⁷⁰ Overall, the criminal prosecution of sexual offences during this period was linked to the efforts of

⁷⁶⁶ Johann, *Kontrolle mit Konsens*, 224-225.

⁷⁶⁷ Rublack, *Crimes of women*, 213-224; J.P. Coy, *Strangers and misfits. Banishment, social control, and authority in early modern Germany* (Leiden 2008) 68-69.

⁷⁶⁸ Johann, *Kontrolle mit Konsens*, 127-128.

⁷⁶⁹ E.g. Criminalia 897 (1623); Criminalia 1641 (1049); Criminalia 1225 (1662).

⁷⁷⁰ Johann, *Kontrolle mit Konsens*, 225, 227; Criminalia 1556 (1682); Criminalia 1567 (1682); Criminalia 1608 (1684); Criminalia 1635 (1684).

urban authorities to preserve matrimony and household relationships as the primary source of social and political order.

In the eighteenth century then, the focus of authorities altered and illegitimacy became the major focus in the authorities' prosecution efforts. Financial considerations and the political control over access to marriage were increasingly at the forefront during this period, both with regard to legislation as well as in practice. These changes were not characteristic for early modern Frankfurt, but were ubiquitous in the Holy Roman Empire.⁷⁷¹ This process was fostered by the eighteenth-century population growth and impoverishment of a significant part of the population. One of the measures authorities across early modern Germany implemented to regulate the collective welfare burden was to restrict the access to marriage. Since marriage and the establishment of a new household were closely linked to - and sometimes a prerequisite of - matters of citizenship, and, as an extension to this, entitlement to poor relief, authorities attempted to prevent destitute people from entering matrimony, and keeping community networks closed.⁷⁷² This altered longstanding courtship practices, where young couples engaged in sexual intercourse with the expectation that marriage would follow, particularly in rural territories.⁷⁷³ Inevitably, this increased the number of single people who might produce illegitimate offspring.

In early modern Frankfurt, the ratio of extra-marital births increased sharply towards the end of the eighteenth century, which follows the general trend in neighbouring territories and across central Europe.⁷⁷⁴ In Frankfurt, too, the city council implemented regulations to prevent impoverished foreigners from marrying and settling in Frankfurt.⁷⁷⁵ Options for legitimising through marriage children born out of wedlock decreased considerably as a result of such measures.⁷⁷⁶ The city had very limited labour opportunities outside of the regulated handicrafts and trade, and therefore did not provide enough options for young people to be financially independent and set up new households. In the second half of the eighteenth century, there were only a couple of small manufactories related to the tobacco industry and textile production with limited labour

⁷⁷¹ E.g. P. Becker, "Ich bin halt immer liederlich gewest und habe zuwenig gebetet." Illegitimität und Herrschaft im Ancien Régime. St. Lambrecht 1600-1850' in: R. Vierhaus ed., *Frühe Neuzeit - Frühe Moderne? Zur Vielschichtigkeit historischer Übergangsprozesse (17.-19. Jahrhundert)* (Göttingen 1992) 157-179; Härter, *Policey und Strafjustiz*, 833.

⁷⁷² Ogilvie, *Bitter Living*, 50-53, 177; J. Ehmer, *Heiratsverhalten, Sozialstruktur, ökonomischer Wandel. England und Mitteleuropa in der Formationsperiode des Kapitalismus* (Göttingen 1991); Schmidt, *Dorf und Religion*, 198.

⁷⁷³ Beck, 'Illegitimität und voreheliche Sexualität'; Mitterauer, *Ledige Mütter*; C. Pfister, *Bevölkerungsgeschichte und Historische Demographie 1500-1800* (2nd Edition: 2007) 86-89; Breit, *Leichtfertigkeit*.

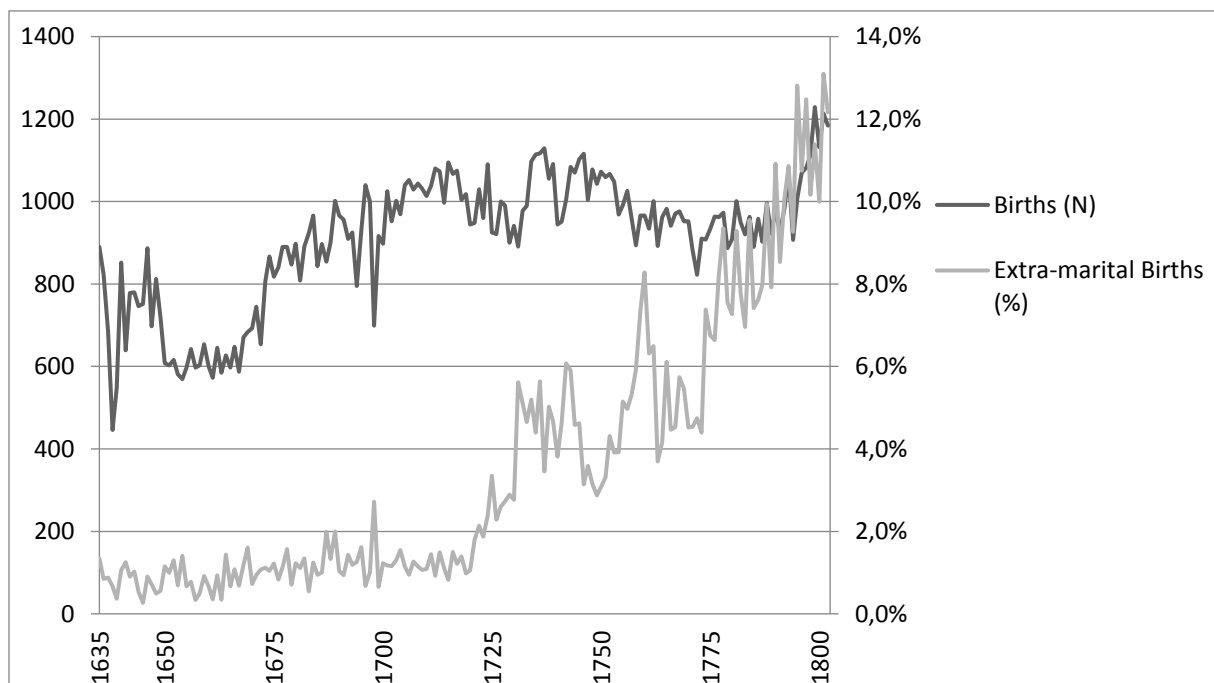
⁷⁷⁴ W.R. Lee, 'Bastardy and the socioeconomic structure of South Germany', *Journal of Interdisciplinary History* VII:3 (1977) 403-424; T.P.R. Laslett, K. Oosterveen, and R.M. Smith, *Bastardy and its comparative history. Studies in the history of illegitimacy and marital nonconformism in Britain, France, Germany, Sweden, North America, Jamaica and Japan* (London 1980); J. Knodel, *Demographic behavior in the past. A study of fourteen German village populations in the 18th and 19th centuries* (Cambridge 1988) 192-198; Breit, *Leichtfertigkeit*, 317-318; Schmidt, *Dorf und Religion*, 221-222; Härter, *Policey und Strafjustiz*, 925.

⁷⁷⁵ See regulations in: PO 3946 *Erneuerte Consistorial=Ordnung* 04.01.1774, 203.

⁷⁷⁶ Pfister, *Bevölkerungsgeschichte*, 31,

opportunities.⁷⁷⁷ Although the neighbouring town of Offenbach developed new industries in the eighteenth century, in general the region was characterised by rather limited proto-industrial development.⁷⁷⁸ Michael Mitterauer has linked the rising illegitimacy rates in eighteenth-century Austria to changing patterns of labour migration: domestic servants increasingly came from regions without previous connections and networks in the city.⁷⁷⁹ It is not known whether similar changes contributed to the rise of illegitimacy as well, but it is very likely that, as a result of demographic growth and pauperisation of the countryside, the increasing pressures on the socio-economic model of labour concentrated in corporatist institutions and the household as the locus for social order also played a role in Frankfurt.⁷⁸⁰

Figure 13 Extra-marital births, Frankfurt 1635-1800



Source: Source: Hanauer, 'Uneheliche Geburten, 660-662; Konsistorium, Protokolle 1746, 1759, 1780.

As a potential burden for the city's poor relief system, illegitimate mothers became the primary target of the court's prosecution efforts concerning sexual offences. This was a trend that can be witnessed across early modern Europe. In early modern England, illegitimate children had to be

⁷⁷⁷ Roth, *Stadt und Bürgertum*, 277-279.

⁷⁷⁸ H. Gräf, 'Small towns in early modern Germany. The case of Hesse 1500-1800' in: P. Clark ed., *Small towns in early modern Europe* (Cambridge 1995) 184-205, 203; Härter, *Policey und Strafjustiz*, 41.

⁷⁷⁹ Mitterauer, *Ledige Mütter*, 88-89.

⁷⁸⁰ Eibach, *Frankfurter Verböre*, 55-57, 294.

taken care of by their birth parish. For this reason, women who lacked local entitlement were particularly vulnerable to prosecution for vagrancy.⁷⁸¹ In early modern Holland, by the end of the seventeenth century similar financial motives played a role in the rise of prosecutions for fornication.⁷⁸² Overseers of the poor urged women to enforce the father's financial responsibility for the child's upbringing through legal action.⁷⁸³

This change of focus had an impact on the gender ratio of the suspects for sexual offences. Whereas in the seventeenth century men constituted the majority of suspects, in the eighteenth century women clearly outnumbered men.⁷⁸⁴ Unlike adultery, which often targeted men, fornication was a crime for which women were more likely to be prosecuted.⁷⁸⁵ In order to prevent foreign women and their illegitimate children becoming a burden on the city's social relief system, the city council had issued an ordinance to expel all unmarried foreigners together with their children.⁷⁸⁶ Preferably, they were expelled while still pregnant to avoid the city having to pay the costs of childbirth of women who were unable to afford it themselves. In 1755, for example, the *Gemeine Weltliche Richter* Rücker was ordered by the consistory to expel twenty-four-year-old Wilhelmina Schröderin from Marburg, after she had been summoned by the court because of her extra-marital pregnancy. Despite his orders, Rücker did not escort heavily pregnant Wilhelmina out of town, and she gave birth in Frankfurt soon after. For his failure to remove her from the city before she gave birth, Rücker was imprisoned for eight days in the *Hauptwache*.⁷⁸⁷

In the case of Maria Anna Sünderin from Oberusel in 1758, the financial considerations are even more explicit. Maria Anna was arrested for night walking and prostitution, and imprisoned in the poorhouse for the duration of the investigations. During her interrogations she denounced several of her clients, including a local burgher and clockmaker named Matthäus Christoph von Hilden. As his name had been associated with prostitution, adultery and all other sorts of immoral conduct, the authorities were particularly interested in investigating his case further. Von Hilden, however, did everything in his power to stall the case and filed for appeal. This posed a problem for the authorities, as Maria Anna was pregnant. Normally, the consistory was not allowed to report anything about the case to the city council on their own initiative during an appeal in order to prevent any conflict of interest. They had to wait before sending their documents until they were

⁷⁸¹ L. Hollen Lees, *The solidarity of strangers. The English poor laws and the people, 1700-1948* (Cambridge 1998) 58

⁷⁸² Van der Heijden, 'Punishment versus reconciliation', 66;

⁷⁸³ G. Vermeesch, 'The legal agency of single mothers. Lawsuits over illegitimate children and the uses of legal aid to the poor in the Dutch town of Leiden (1750-1810)', *Journal of Social History* (2015) 1-23

⁷⁸⁴ Appendix Figure 5.

⁷⁸⁵ This also applied to the late sixteenth and early seventeenth centuries: Johann, *Kontrolle mit Konsens*, 224-225.

⁷⁸⁶ PO 3445 *Daß man die Lapsas, so nicht von hier, mit ihren Kindern fortschaffen solle* 18.03.1755.

⁷⁸⁷ Criminalia 7142 (1755). Also: Criminalia 6131 (1748). Anna Maria Ambildin, pregnant with her fifth illegitimate child while imprisoned in the poorhouse, is released and banished because she would otherwise be a financial burden, ('*dem Armenhaus zu schweben lasten fallen dürfte*').

ordered to do so by the city council. In this case the consistory went against the normal procedures, and send their records concerning the case to the city council anyway. They did this to speed up the investigations as they feared that otherwise the case would result in a long and tedious process ('as was customary in cases of appeal') which would ultimately result in a large burden on the city's treasury. This was especially pressing because Maria Anna was pregnant and due to give birth within six to eight weeks. If she were to go in to labour in Frankfurt and have her child there, the expenses would be even greater.⁷⁸⁸ As Maria Anna Sünderin suffered a miscarriage, this never happened and the city council decided to continue the investigations as normal and keep Maria Anna incarcerated in the poorhouse during that time, as the main argument to release her (preventing her illegitimate child from becoming a burden to the city's finances - '*damit nemlich der Stadt das Kind nicht zur last bleiben möge*') was no longer valid.

The eighteenth century marked not only a transition in the type of offences that were investigated by the *Verhöramt*, it was also a period of change with regard to the extent to which sexual offences occupied the workload of the criminal investigation office. Sexual offences were decreasingly sanctioned with penal punishments, and therefore withdrew from the realm of the high criminal court. Debates on the nature of infanticide increasingly focused on prevention, instead of harsh punishment, which inspired reform movements and alternative treatment of extra-marital sexuality.⁷⁸⁹ As we will see, both processes – the increased focus on financial consequences of illegitimacy and the gradual decriminalisation of extra-marital sexuality – shaped the position of unwed mothers before the court as it influenced their opportunities to use the law to their advantage.

Unwed mothers before the court

Thus, illegitimacy became the hallmark of prosecution in the eighteenth century. Although it is difficult to determine with certainty, the sources indicate that the prosecution rate (or perhaps the term detection rate is more suitable in this respect) of illegitimacy during this period was rather high. In fact, the number of illegitimate births reported to/or discusses by the consistory according

⁷⁸⁸ Criminalia 7417 (1758) Original: '*Da nun unsers dafür haltens, eines Theils, die Untersuchung des von der Sünderin Denuncirten, zu mal mit dem Von Hilden verübt seyn sollende Schandlebens höchst nöthig, dazu aber die beibehaltung der Person arrestantin onentbehrlich ist, anderer theils hingegen, woferne wegen der ergriffene Revision und in casu fernere confirmatione nach dem bis herigen übler gebrauch darauf obnfehlbahr folgender Appellation die Sache in das weite Feld gespielt werden sollten, solches hiesigem Aerario grosse kosten, zumalen wann die Sünderin würl. in das Kindbett kommen sollte, zu ziehen wird*'.

⁷⁸⁹ O. Ulbricht, 'The debate about foundling hospitals in Enlightenment Germany. Infanticide, illegitimacy and infant mortality rates', *Central European History* 18:3/4 (1985) 211-256; Härter, *Policey und Strafjustiz*, 845-858; A. Freyh, 'Angeklagt "in puncto infanticidii". Frankfurter Kindsmordprozesse im 18. Jahrhundert' in: G. Engel, U. Kern and H. Wunder eds., *Frauen in der Stadt. Frankfurt im 18. Jahrhundert* (Königstein/Taunus 2002) 117-132, 117.

to the minutes, exceeded the number of baptised children born out of wedlock in the respective year (see table 3).

Table 15 Comparison of number of illegitimacy cases and baptisms of extra-marital children

	1746	1759	1780
Consistory	56	92	156
No. of baptisms	35 (3.1%)	71 (7.3%)	66 (7.3%)
No. of baptisms (5-year average)	41 (3.8%)	63 (6.6%)	78 (8.3%)

Source: Hanauer, 'Uneheliche Geburten, 660-662; Konsistorium, Protokolle 1746, 1759, 1780.

There are several reasons for this divergence. First, information about the number of baptised children is retrieved from the city's church records (*Kirchenbücher*). From 1635, there are printed lists of the number of baptisms, marriages and burials recorded in the church records for each year, which were published in an article by W. Hanauer in 1928. However, the data provided by the church records do not include information on Jewish births, and are incomplete for the Catholic and Reformed part of the population since their births were only recorded irregularly because they kept their own church records. However, the consistory did have jurisdiction over cases of extra-marital sexuality of the Jewish, Catholic and Reformed part of the population as well. The same goes for illegitimacy in Frankfurt's rural territory: while children born on the countryside are not recorded in the city's church records, those born illegitimately were to be investigated by the consistory. Also, the records only record children that were born alive and that were actually baptized, but the consistory investigated cases of illegitimate pregnancy regardless of whether the child lived or not.

Second, apart from the information gap of the church records, the consistory also investigated cases of fornication that had not resulted in pregnancy (although as we have seen, this was only rarely the case) or in which the fornication, and even childbirth, had taken place elsewhere. In the consistory records of 1759 several women had excused their deviance by stating that they could not be prosecuted for this by the consistory in Frankfurt, because the act had happened elsewhere. However, the consistory felt compelled to insist that 'all fallen women, should be punished with a ten-guilder fine, even if the act had taken place *extra territorium Francofurtense*'.⁷⁹⁰

⁷⁹⁰ Konsistorium, Protokolle (1759) folio 91-92. Original: 'jede zu fall gekommene weibspersonen wenn sie gleich vorgeben den bejschlaff *extra territorium Francofurtense* gepflogen zu haben, dennoch mit einer Straffe von 10fl. belegt zu werden'.

This explains cases like that of Katharina Wirth. In 1755 Katharina was arrested for theft for the third time. During her interrogations by the criminal investigation office it had become evident that she had conceived three different illegitimate children by three different men. None of the children had been born in Frankfurt or its territory, and they all had passed away already. Nevertheless, the *Verhöramt* notified the consistory and Katharina was investigated and received a punishment for fornication, after which the case was transferred back to the *Verhöramt* again.⁷⁹¹ Finally, in some cases the investigation stretched over a longer period of time which meant that they were recorded in the consistory records of multiple years. Unfortunately, the data does not allow for a correction of such cases, as the date of the actual birth was not recorded in the consistory records.

When it came to the control of illegitimate pregnancies, midwives, just as elsewhere in Europe, played an important role.⁷⁹² The city's regulation for midwives, first published in 1573 and renewed in 1703 and 1767, stipulated that whenever the midwife was called to an unmarried woman, she was obliged to ask the father's identity, and to subsequently report the birth to the authorities.⁷⁹³ As such, midwives functioned as agents of the state during a period in which women were particularly vulnerable and midwives could even refuse assistance in order to retrieve the identity of the child's father.⁷⁹⁴ In the course of the eighteenth century their role in the prosecution of illegitimacy was increasingly institutionalized, and midwives had to use standardised forms in order to report the illegitimate mothers (figure 2). Although one can assume that a large number of extra-marital births were indeed reported by midwives (as their importance in the detection of infanticide and secret births indicates as well), there are repeated references to cases in which the midwife had reported the birth too late or not at all.⁷⁹⁵ There were many reasons why a midwife might refrain from reporting the case to the authorities. Thus, the high prosecution level cannot solely be explained by the increasing incorporation of midwives as agents of the state. As we will see below, the double function of the *Konsistorium* as a place of conflict settlement *and* control influenced the prosecution patterns.

Although it is not possible to determine exactly what percentage of the illegitimate pregnancies were actually investigated by the consistory, the comparison between the number of baptised children that were born out of wedlock and the number of cases dealt with by the

⁷⁹¹ Criminalia 6934 (1755).

⁷⁹² U. Rublack, 'Pregnancy, childbirth and the female body in early modern Germany', *Past & Present* 150 (1996) 84-110; M.E. Wiesner, 'The midwives of south Germany and the public/private dichotomy' in: H. Marland ed., *The art of midwifery. Early modern Midwives in Europe* (London 1993) 77-94; Van der Heijden, *Huwelijk in Holland*, 122-123.

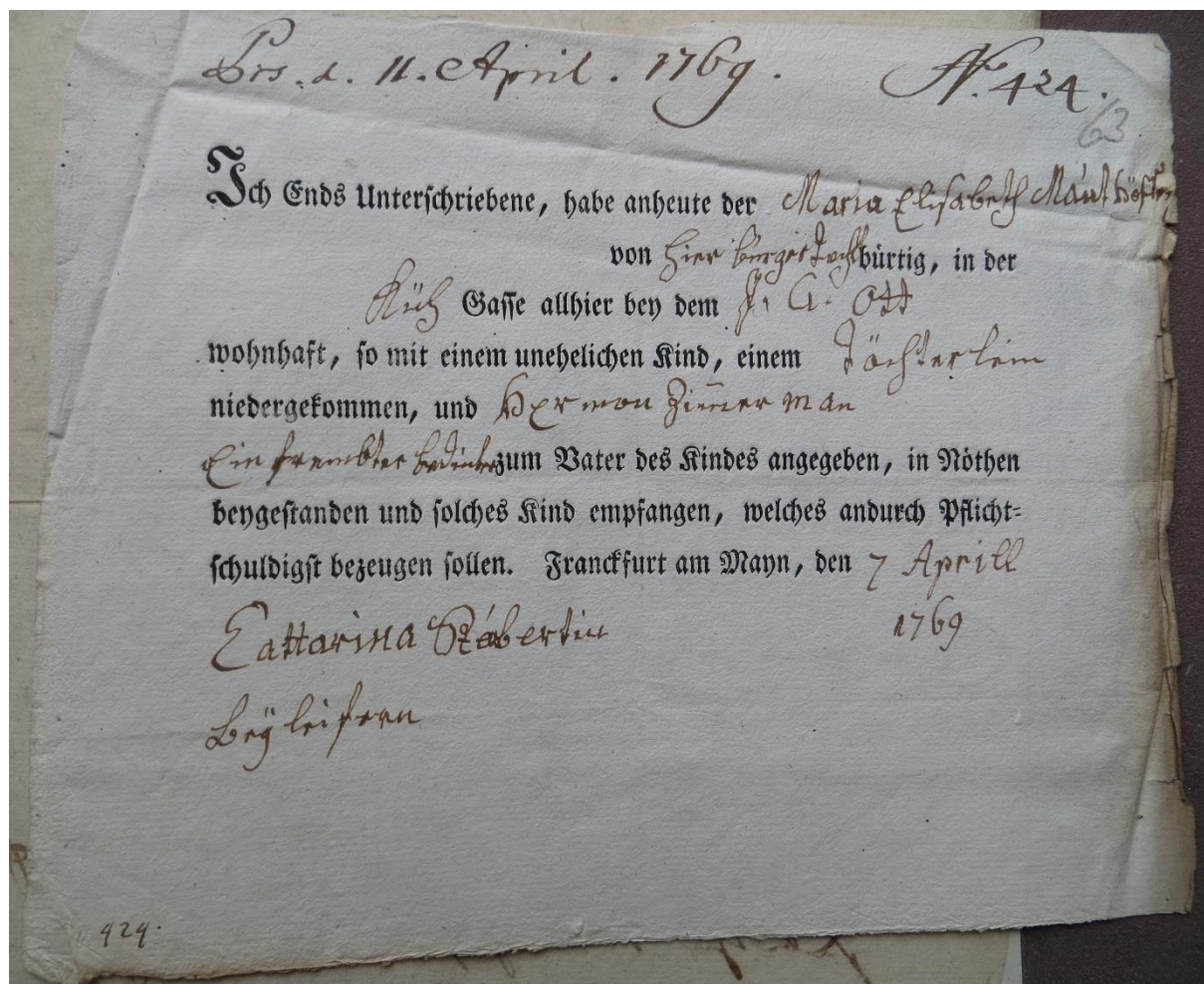
⁷⁹³ PO 2684 Erneuert- und verbesserte Hebammen-Ordnung [...] *allhiefiger löblichen Stadt Franckfurt am Mayn* 1703, § 2.7.

⁷⁹⁴ E.g. Criminalia 2163 (1698); Criminalia 2789 (1714).

⁷⁹⁵ E.g. Criminalia 6760 (1750); Konsistorium 1759, folio 90-91; folio 236; Rublack, *Crimes of Women*, 178-180; Härter, *Policy und Strafrecht*, 848-852, 857.

consistory indicates that there was a relatively high prosecution rate in Frankfurt. Although there were big territorial differences, numbers indicate that the prosecution rate of illegitimate pregnancies could be relatively high. In eighteenth century Lippe between 65.4% and 77.8% of the mothers of baptised extramarital children were sentenced.⁷⁹⁶

Figure 14 Form for midwives to report extra-marital children



Source: Criminalia 8605 (1771) Case against Maria Elisabetha Mauthöferin for the birth of her sixth illegitimate child, and the suspicion of attempted abortion.

Information on the social background of offenders is often limited, particularly for the cases that were only handled by the consistory. However, as we can see in table 4, the available data indicates that unlike what we know for property offences, migrants did not necessarily constitute the majority of offenders. In fact, in all three years the majority of the women originated from the city itself or from one of the villages that were part of Frankfurt's territory. For 1780 we are able to get more information about the social standing of the women, because the profession of the women's father

⁷⁹⁶ M. Frank, *Dörfliche Gesellschaft und Kriminalität. Der Fallbeispiel Lippe 1650-1800* (Paderborn 1995) 331.

was registered in more than half of the cases. About 1/3 belonged to the lower middle class and were daughters of artisans and craftsmen: shoemakers, bakers, linen weavers, brewers and butchers. Another 1/5 of the women were local soldiers' daughters, and about a 1/10 were daughters of vine growers (*Wein-gärtner*). An equal share of the women's fathers were recorded as day labourers. References to the profession of the men they denounced as the father of their child reveal that they usually had a similar social background. They usually worked as *Knechte* or *Geselle* or were employed as soldiers in the local army.⁷⁹⁷ Thus the criminalisation of sexuality particularly affected the lower classes – which is not to say that they were more prone to transgress the authority's sexual norms, but rather that they were subjected more strongly to its prosecution policies.⁷⁹⁸

Table 16 Origin of women prosecuted for illegitimacy before the consistory

	1746		1759		1780	
Frankfurt	16	29%	17	19%	58	37%
Villages	8	14%	6	7%	14	9%
Migrants	14	25%	15	16%	61	39%
Unknown	18	32%	54	59%	25	16%

Sources: Konsistorialprotokolle 1746, 1759, 1780

Between plaintiff and defendant: women and the prosecution of illegitimacy

The efforts of authorities to regulate extra-marital pregnancy had a significant impact on the position of women. A recent comparison between the treatment of illegitimacy in the Netherlands and early modern Germany, including Frankfurt, carried out by myself and Ariadne Schmidt, showed that the prosecution practices of urban authorities were remarkably different in both regions. In the Netherlands, for example, secular authorities were inclined not to proceed with criminal investigations if women had come to an agreement with the father either through a civil suit or an agreement through a notary, because it meant that the financial responsibility for their illegitimate children was taken care of.⁷⁹⁹ In early modern Frankfurt, as elsewhere in early modern Germany, this was different. In most territories, both paternity suits and cases for broken marriage vows were handled by the same court that prosecuted extra-marital sexuality. Moreover, Frankfurt's secular authorities actively implemented policies to hinder the possibility of extra-

⁷⁹⁷ Pfister, *Bevölkerungsgeschichte*, 86-89; Dürr, *Mägde in der Stadt*, 256.

⁷⁹⁸ Lesemann, *Arbeit*, 164-165.

⁷⁹⁹ Kamp and Schmidt, 'Getting Justice'.

judicial agreements. Such arrangements were only allowed if the *Konsistorium* was informed beforehand. In 1739, the city council issued an ordinance against paternity settlements before the notary without the interference of the *Konsistorium* as this was seen as an attempt to conceal the paternity of the true father and pervert justice.⁸⁰⁰ For similar reasons, women were not allowed to put their illegitimate children in (paid) foster care without notifying the authorities first.⁸⁰¹

Consequently, going to court to start a paternity suit almost always meant self-disclosure.⁸⁰² This resulted from the dual function of the consistory. On the one hand it functioned as a disciplinary court and sanctioned sexual transgressions with monetary fines, imprisonment or shaming punishments, while on the other hand, it also dealt with matters of a more civil law nature, such as the settlement of paternity suits and alimony cases.⁸⁰³ Usually, the criminal prosecution preceded the civil lawsuit, and was even mandatory for women to claim alimony or compensation for the costs of childbirth and the loss of honour.⁸⁰⁴ In many cases it is impossible to distinguish the criminal procedure from the civil one.

The dual function of the *Sendamt/Konsistorium* influenced the way in which women were able to use the court in order to pursue their objectives. Going to court to start a paternity case meant that authorities would be notified about the criminal offence of extramarital sex and prosecute this accordingly. This was considerably different in regions where secular authorities had not set up special courts in the wake of the reformation, as in the Netherlands, and church consistories had no jurisdiction to impose criminal sanctions.⁸⁰⁵ Thus, women often appeared before the court as plaintiffs and offenders at the same time. In the consistory records, the number of *Schwängerungs-* and *Satisfaktionsklagen* that can be distinguished ranged from 12.5% in 1746 to 13% in 1759 and 11% in 1780. It is very likely that the number of financial arrangements determined by the court was even higher, as usually only the more long-lasting and conflicting cases could be detected as such.

Despite these restrictions, women *could* and *did* take legal action. Depending on the situation, there were several possibilities a woman who found herself pregnant out of wedlock could pursue. First, there was the opportunity to start a marriage suit – i.e. to claim broken marriage promises. This of course only applied to women, who could actually prove that they had only engaged in intercourse with the prospect of marriage. Formally, only legitimate public vows could

⁸⁰⁰ PO 3181 *In Schwängerungssachen sollen keine heimliche Vergleiche getroffen werden* 20.01.1739.

⁸⁰¹ PO 3152 *Die in Unehren erzielte und denen Leuten heimlich in die Kost und Verpflegung gegebene Kinder betreffen* 24.09.1737; PO 3449 *Ohne obrigkeitliche Erlaubniß sollen keine Kostkinder von Privatis angenommen werden* 19.08.1755; Criminalia 7093 (1753).

⁸⁰² Schmidt, *Dorf und Religion*, 387; Breit, *Leichtfertigkeit*, 114; Burghartz, 'Ordering discourse', 85; Hull, *Sexuality*, 58-61.

⁸⁰³ Rössing, *Versuch*, 153-154.

⁸⁰⁴ Also in Basel: Burghartz, *Zeiten der Reinheit*, 277-283.

⁸⁰⁵ Kamp and Schmidt, 'Getting Justice'; Burghartz, 'Ordering discourse', 86.

be claimed before the court. However, if a woman was pregnant, the court offered her the opportunity to obtain the consent of her parents retroactively.⁸⁰⁶ In this case, theoretically women's legal agency was even greater than that of men, as they could not claim any compensation in cases of secret marriage promises.⁸⁰⁷ Usually the man was given the choice of either marrying the woman who appealed for marriage or to pay her a compensation for the dowry (*'eine Ausstattung'*). The sum of the latter was to be determined by the consistory according to the wealth and standing of both the man and the woman.⁸⁰⁸ There are only a couple of examples left that specify the compensation women received for broken marriage promises. Anna Catharina Kneibin from Gedern was awarded 10 Reichsthaler compensation to be paid by Jacob Bernhard from Ober-Ulm who was also sentenced to pay a weekly sum of 30xr for their illegitimate child until the age of seven, and 45xr till the child turned fourteen.⁸⁰⁹ For Catharina Dorothea Kochin, the compensation was even greater. She was awarded a *'Aussteuerung'* of 200 guilders.⁸¹⁰ In both cases, the sum of the indemnity shows that it was worth for the women to go to the consistory and report themselves: the sum they were awarded exceeded the fine that had to be pay for fornication.

In order to start a marriage suit successfully, women required parental consent. This may have posed a considerable obstacle particularly to migrant women, who lived far away from home. If a woman managed to get parental consent and start a suit, she had to cope with a second obstacle, namely proving the identity of the child's father. Frankfurt's regulations concerning fornication were not biased towards women, and both genders were held accountable and received a fine. Still, in practice women were more vulnerable to be prosecuted. While unmarried pregnant women carried the undeniable proof of their transgression, this was not the case for men, and their position in court was rather strong as they had multiple options to deny being the father of an illegitimate child and avoiding prosecution. One of the most common strategies of men who were faced with such a suit was to either deny that they had intercourse with the plaintiff completely, to claim infertility or to argue that there was no possibility to determine with certainty that they were the child's father because the plaintiff had multiple sexual partners.⁸¹¹ They could enforce their

⁸⁰⁶ PO 3806 *Mandat gegen heimliche Eheverlöbniß* 15.09.1733. Original *'Wofern aber diejenige Personen, so wider diese Verordnung handeln, und sich heimlich verkuppeln, überdieß in Unehren sich mit einander verkuppeln, es möge daraus eine Schwängerung erfolgen oder nicht, so bleibt der Geschwächten, wenn ihre Eltern solches vor gut befinden, auf die Vollziehung der Ehe zu klagen unbenommen.'*

⁸⁰⁷ J. von Adlerflycht, *Das Privatrecht der freien Stadt Frankfurt. Erster und zweiter Theil* (Frankfurt am Main 1824) 22.

⁸⁰⁸ Von Adlerflycht, *Privatrecht*, 22-23.

⁸⁰⁹ Konsistorium 1780, folio 65, 73, 87, 99, 115, 124, 138, 147.

⁸¹⁰ Konsistorium 1780, folio 245, 248, 249, 254, 255, 263, 266, 270, 280, 287, 289, 297, 298.

⁸¹¹ E.g. Criminalia 1904 (1692) Friedrich Blattenschläger admitted to having intercourse with Elisabetha Erlenbachin but argued that 'the interaction accured in such a manner that he was certain that she could not be pregnant of him and that she also had relationships with other men (*were er uff solchen manier mit ihr umgegangen, dass sie, wie er gewiss wüßte von ihm nicht schwanger, sie bette mit andern mehr zu gehalten*)' Criminalia 7093 (1753) Peter Weijdt denied to be the father of Anna Margaretha Lutterin's illegitimate child by stating that 'she was a lewd woman, who already had an illegitimate child before, and had relations with anyone (*seije ein liederliches mensch, die schon vorhero ein unehelich kind gehabt und mit jedermann zu gehalten*)'. Also: GLeixner, *'Das Mensch'* und *'Der Kerl'*, 59.

statement by an oath (a *Reinigungseid*) which was used as a proof of the validity of their statements. If the man had admitted to having sex with the plaintiff, but successfully denied that he was the father of the child, the *Reinigungseid* did not exempt him from being punished.⁸¹² Women not only depended on witnesses to support their claims, but could also use the testimonies of midwives and baptismal records instrumentally in court, because authorities usually considered this to be a valuable proof of the identity of the child's father.⁸¹³

A third obstacle was the fact the men were highly mobile. Cases like that of Anna Sibylla Schomburger, a 28-year-old local woman, who was interrogated for her first illegitimate child, are countless. She denounced a *Schlossergeselle* from Vienna, named Joseph Plezer, as the father. By the time she was interrogated for her illegitimacy, Joseph was no longer present in Frankfurt. The last time Anna had heard from him was when he had written to her from Mainz, without informing her about his future whereabouts.⁸¹⁴ Ulrike Gleixner argued that it is unlikely that this type of mobility of men was a deliberate ploy, and advocated that it should not be interpreted as a flight from justice. In order to find work, make a living and keep their mobility, journeymen were dependent on their masters to provide them with written attestations and they could not just run away when they needed to. Gleixner even hypothesised that if journeymen really tried to escape punishment for fornication (and, consequently, the possible payment of child support), they could only do so with the assistance of their masters, which would point to a considerable level of tolerance for pre-marital relations on their side.⁸¹⁵ Further research about guild control over their members with regard to pre- and extra-marital sexuality would be needed to investigate whether this could be the case. However, a quick glance at some of Frankfurt's *Handwerker Akten* reveal that the guilds aimed to exclude offenders from their ranks over and over again and indicate little tolerance from their side, although personal relations with their journeymen could always prompt single masters to act differently.⁸¹⁶

⁸¹² Criminalia 2395 (1703).

⁸¹³ E.g. Criminalia 5745 (1744); Criminalia 6847 (1753); Criminalia 6959 (1754). Also: Härter, *Policey und Straffjustiz*, 849.

⁸¹⁴ Criminalia 5745 (1744). For similar cases in which women claimed that their impregnators had moved elsewhere and could not be contacted: Criminalia 2163 (1698); Criminalia 6763 (1753). On the mobility of women and hotspots of illegitimacy: Moch, *Moving Europeans*, 143-147.

⁸¹⁵ Gleixner, 'Das Mensch' und 'Der Kerl', 103-107.

⁸¹⁶ See e.g. *Handwerker Akten* 686 (1617-1618) where Dietrich Faulhaber is sanctioned by the Schneiderhandwerk for pre-nuptial coitus; other cases from the Schneiderhandwerk in *Handwerker Akten* 671 (1657-1688); *Handwerker Akten* 761 (1625-1662). Similar complaints and sanctions from the shoemakers craft guild about individual members who committed pre-nuptial coitus and fornication; *Handwerker Akten* 626 (1673) from the Wollweber und Tuscherer; *Handwerker Akten* 408 (1695) 'Anfrage der Stadt Ulm vom 17.8.1695 wie man in Frankfurt mit Handwerkern verfährt, die „sich mit denen Weibs-bilder in unehren übersehen“ und diese danach heiraten'; *Handwerker Akten* 354 (1728-1729) 'Anfrage von Burggraf, Bürgermeister und Rat der Reichsstadt Friedberg vom 29.12.1728, wie man es in Frankfurt mit einem Handwerksmeister halte, der seiner späteren Frau vorzeitig beigeschlafen habe'

Particularly evident are cases in which guild members tried to avoid prosecution because this often resulted in sanctions by the guilds, and could even lead to exclusion entirely.⁸¹⁷ This gave women leverage to negotiate a beneficial agreement without the interference of the courts. In order to prevent Catharina Rau from disclosing him as the father of her illegitimate child to the authorities, Niclas Burg had promised to pay her half a guilder weekly for the care of the child and to provide 100 guilders to cover her other expenses. During the interrogations Niclas stated that he had done this because he feared the repercussions of the guild (*‘aus Furcht vor dem Handwerck’*).⁸¹⁸ The loss of honour accompanied with a conviction for fornication, and the resulting consequences for his economic position, had led to Niclas’ decision to compensate Catharina, even though he knew that he could not be the father of her child as the time of their intercourse did not correlate with that of the birth of her child. The agreement was discovered by the authorities because Catharina’s statements about the identity of the father before the consistory varied considerably, which eventually led her to disclose the agreement. Eventually Niclas was acquitted of the paternity charges, but still convicted for fornication and additionally sanctioned by the guild with a suspension of one year.⁸¹⁹

Some women, however, were denied the opportunity to start a marriage suit all together. According to an ordinance from 1729, women who had engaged in a sexual relationship with a soldier were explicitly forbidden to start a suit in response to broken marriage promises and, regardless whether or not they became pregnant, they could not count on any compensation (*‘ohne Unterscheid, ob hieraus Schwängerung erfolgt seyn möchte oder nicht, sich dieservwegen der geringsten Satisfaction nicht zugetrösten haben’*).⁸²⁰ The authorities justified the ordinance by stating that as a rule soldiers were denied marriage during their service and would be too poor in most cases to compensate the women anyway. In 1751, the authorities adapted the law, stating that soldiers were to be held accountable to pay child support if they had some property or income besides their wages.⁸²¹

Thus, filing a marriage suit was one option women could pursue, although it was a rather limited option. Even if this option was closed, however, women could still count on ‘support’ from the authorities to a certain extent. One of the consistory’s central aims in interrogating mothers of illegitimate children was to disclose the identity of the child’s father. These efforts were not only prompted by their desire to prosecute fornication and immorality on the part of men whose

⁸¹⁷ Stuart, *Defiled trades*, 15; P. Lourens and J. Lucssen, “‘Zunftlandschaften’ in den Niederlanden und im benachbarten Deutschland” in: W. Reininghaus ed., *Zunftlandschaften in Deutschland und den Niederlanden im Vergleich* (Münster 2000) 11-44; Hull, *Sexuality, State*, p. 41-44; M.R. Boes, ‘Dishonourable’ youth, guilds, and the changed world view of sex, illegitimacy and women in late-sixteenth-century Germany’, *Continuity and Change* 18:3 (2003) 345-372.

⁸¹⁸ Criminalia 2395 (1703).

⁸¹⁹ Also: Criminalia 2789 (1714); Criminalia 5150 (1740).

⁸²⁰ PO 2978 *Den Weibspersonen soll vorzüglich mit Soldaten Unzüchtiger Umgang verboten seyn* 01.02.1729.

⁸²¹ PO 3390 *Den Weibspersonen soll vorzüglich mit Soldaten Unzüchtiger Umgang verboten seyn* 15.01.1751.

transgressions would otherwise remain unknown; it also meant that they could force the father to take financial responsibility.⁸²² For this reason, women were also willing to report their case to the authorities. Of course, similar obstacles in determining the father's identity as mentioned above apply here as well.

Once the identity of the father was established in court, however, women could count on the consistory as their ally when the fathers continued to deny paternity and refused to pay child support. Christina Röderin, a *Mitlnachbarstochter* in one of Frankfurt's villages, reported to the authorities that the father of her illegitimate child - a man named Peter Müller - had refused to pay alimony and left town, but had returned and was employed by the master butcher Heij. The consistory summoned Peter, who replied that he neither had any money, nor that he owed anything to Christina, as he was not the father of her child. However, according to the consistory, his paternity was proven without a doubt and Peter was therefore ordered to pay the sum of 26 guilders and 30 kreuzer to Christina within eight days or would else he would be imprisoned. These were not empty threats: upon his continuous refusal to pay the outstanding amount, Peter was indeed imprisoned by the consistory.⁸²³ There are also examples in which the consistory seized the wages or property for women to be compensated when the men were unwilling to pay.⁸²⁴

For early modern Kurmainz, Karl Härter has shown how the opportunities for financial compensation prompted mothers to report their cases to the criminal authorities even though they had the opportunity to start a civil suit. Claiming broken marriage promises before a civil or ecclesiastical court often meant long, difficult and expensive procedures. In order to speed up the procedure, women reported to the criminal court themselves. The inquisitor trial there made it easier for them to establish the identity of the father of their illegitimate child. Women could then use their conviction as evidence in a civil suit in order to speed up trial there. The potential child support women could receive outweighed the criminal fine by a ratio of 200:1, and thus made the risk of being convicted worthwhile. Härter concludes that the increase in fornication offences in Kurmainz in the mid-eighteenth century was partially the result of the use of justice by the illegitimate mothers themselves due to the changes in judicial regulations between local and central state level.⁸²⁵

The extent to which the high 'prosecution' rates for illegitimacy by the consistory were fostered by the use of justice by women is not possible to determine for Frankfurt. However, it is

⁸²² J.H. Bender, *Handbuch des Frankfurter Privatrechts* (Frankfurt am Main 1848) 81. 'Wer sich als Vater eine unehelichen Kindes bekennt, muß in Folge dessen das Kind alimentieren.'

⁸²³ Konsistorium 1780 folio 197.

⁸²⁴ Konsistorium 1759 Von Carbin @ Gebhardt: folio 4, 26, 28, 42, 49, 57, 61, 67, 109, 113, 121, 124, 129, 135, 223, 249; Konsistorium 1759 Kuchin @ Kreul: folio 80, 82, 216, 223, 255; Konsistorium 1759 Pachhelbelin @ Böckler: folio 217, 276, 277, 280, 282, 289, 295, 298, 302.

⁸²⁵ Härter, *Policey und Strafrecht*, 898-901. Also: Schmidt, *Dorf und Religion*, 387.

clear that women in early modern Germany were not afraid to start a paternity suit in one of the lower criminal courts, even if this led to prosecution and possible punishment. This is underlined by the fact that women even reported the case themselves if it was not known yet by the authorities. In more than half of the alimony cases in Bavaria, authorities had not yet started a criminal investigation about the extramarital pregnancy when the woman reported the case to the court herself in order to receive financial compensation from the child's father.⁸²⁶ This could even happen several years after the child's birth if the couple had failed to settle the case outside the court.

Women not only reported their cases to the authorities to force the father of the child to compensate them financially; there were other reasons why unwed mothers took the risk of prosecution instead of hiding their case from the consistory. One of the reasons was that this demonstrated that they were remorseful and knew that what they had done was wrong in the eyes of god and the law. This way, they had a better chance of persuading the authorities to impose more lenient punishments. The standard ten-guilder fine for fornication was the equivalent of about a third of the yearly wages of a male servant and for women often even represented the full sum of their annual wages.⁸²⁷ It is no surprise that for many, and women in particular, these fines could put offenders in serious financial difficulties. Women therefore repeatedly requested 'submissively to impose a merciful punishment, because of inability and poverty [to pay]'.⁸²⁸ The consistory records show that women were often granted such consents or that they were allowed to pay the fine in instalments. Obviously, a woman's bargaining position with the authorities was much stronger in cases where they showed remorse, than if they had tried to hide their pregnancy.

Moreover, some women felt confident enough to request financial aid from the very institution that was prosecuting them. One example is the case of Maria Magdalena Beyer, a resident's daughter, who was already under investigation by the consistory for her extramarital pregnancy when she appealed to the authorities for financial aid so she could pay the costs of childbirth. She had no relatives or other people she could turn to for help, and due to her situation, she was not able to find employment to support herself. In short, her situation was quite hopeless.⁸²⁹ This may seem a risky move, particularly considering that one of the main motives of the authorities to make illegitimacy the main focus of their prosecution efforts was to reduce the burden on the city's poor relief. Indeed, the authorities were reluctant to provide assistance, as it

⁸²⁶ Breit, *«Leichtfertigkeit» und ländliche Gesellschaft*, 144.

⁸²⁷ Habermas, 'Frauen und Männer', p. 113.

⁸²⁸ Criminalia 5745 (1744). Original: 'als wollte sie unterthänigst gebethen haben mit gnädiger Strafe sie zu belegen wegen ohnvermögen und vorgeschütztem Armuth'.

⁸²⁹ Criminalia 6987 (1754). Also see: Crim 7415 (1758) where sixteen-year old Anna Gertraud Bockin arrested for prostitution and sleeping on the streets is put into the care ('in Kost und Verpflegung') of Gamasch, one of the city's beadles (*Bettehög*) to avoid the risk that she would kill her child ('zu vermeidung eines besorglichen kindermordt').

could set a bad example to other 'loose harlots' (*liederliche Dürnen*). However, they still agreed to pay her childbirth charges in fear of her possibly committing suicide, or – even worse – infanticide.

Here, the legal status of offenders was important as well. Although foreign women could plead for a reduction of their sentence, which they were often granted as well, this 'clemency' was usually followed with expulsion.⁸³⁰ Moreover, local women could not count on the endless leniency of the authorities. Susanne Elisabetha Blechschmidtin, a 30-year old local soldier's daughter, gave birth to her third illegitimate child in 1754. Unable to pay her fines for the first two children, she had served short sentences in the poorhouse. This time, however, Susanne Elisabetha was expelled from the city.⁸³¹ A year earlier, Anna Sophia Ilsterin, a local burgher's daughter, suffered a similar fate. For her first three illegitimate children the consistory sanctioned Anna Sophia with fines. After her fourth illegitimate child, however, she was banished.⁸³²

Besides financial reasons, women may have been motivated to disclose their pregnancy to the authorities because of honour motives. As self-disclosure to the authorities automatically meant conviction, it was a public display of showing remorse and taking responsibility for their sins. As such, their honour may not necessarily be restored completely, but it at least opened up the possibility of re-integration within the community.⁸³³ This may also explain why women who were punished with banishment by the consistory would still appeal to the very same institution that had expelled them as plaintiffs and start a paternity suit.⁸³⁴ For foreign women, expulsion for illegitimacy did not necessarily mean being cut off from family and social support networks. There are several examples in which women returned to their home town, where they could count on support to file a case against the child's father back in Frankfurt.⁸³⁵

⁸³⁰ Konsistorium 1746 folio 100-101 Magdalena Weberin from Würth. Her fine was reduced from 10 guilders to 3 because of her poverty, with the condition that she had to leave the city; Konsistorium 1780 folio 272-273 Margaretha Abtin from Niedernhausen im Amt Wiesbaden. 'Due to outmost poverty (*wegen äusserster bedürftigkeit*)' Margaretha's fine was cancelled but she was ordered to leave the city together with her child; Konsistorium 1780 folio 313, 315 Josepha Schmidin from Tondorff im Erfurtische. She requested the annulment of her fine and the permission to give birth in Frankfurt. The *Konsistorium* decided to repeal the fine, but denied her other request and expelled her from the city;

⁸³¹ Criminalia 6914 (1754).

⁸³² Criminalia 6763 (1753).

⁸³³ Kamp and Schmidt, 'Getting Justice'; Gleixner, '*Das Mensch*' und '*der Kerl*', 115-116.

⁸³⁴ Criminalia 9216 (1781).

⁸³⁵ E.g. Criminalia 9160 (1781); IfSG Bürger und beisassen wider Fremde, Ugb D. 60 L. Nr. 64. (1726). Anna Catharina Staffelin from Ortenburg had become pregnant in Frankfurt from a chimneysweeper called Johann Henrich Lauck, for whom she had worked as a domestic servant. She delivered the illegitimate child in Ortenburg and called upon the authorities in Frankfurt for a *privat satisfaction* from her former employer even though she was punishable with a prison sentence for adultery; Bürger und beisassen wider Fremde, Ugb. D. 69 W. Nr. 279. (1792). Anna Gertraud, daughter of a teacher from Schönbach requested the city council to have the *Konsistorium* interrogate the son of her former employer the innkeeper of zum Affen because he impregnated her and to make this known publicly. Also: Dürr, *Mägde in der Stadt*, 254.

Self-disclosure in case of pregnancy was not only a tool of legal agency of single mothers, but could be used by couples as well in order to circumvent marriage regulations.⁸³⁶ In 1780, Susanna Rebecca Eulerin, the daughter of a local burgher and day labourer, appealed to the consistory on the grounds that Wolfgang Rothenburger, a burgher and *Schubkärcher*, the father of her illegitimate child, had not married her yet, despite an earlier decree from the consistory that had ordered him to do so. Wolfgang defended himself by stating that had not been able to marry Susanna yet, because he had so far been unable to pay his taxes, which was a formal requirement for marriage.⁸³⁷ The consistory decided to loosen the requirements for marriage in the case of Susanna and Wolfgang because ‘it was desired for the good of public order and the well-being of the child that the couple would be married’.⁸³⁸ The consistory additionally ordered that until Susanna and Wolfgang were formally married he was to pay a weekly sum of 30xr as alimony for their illegitimate child. It is unlikely that Wolfgang was forced to marry Susanna against his will, as men were usually given the choice either to marry the woman or pay compensation instead.

Although the authorities were usually willing to consent to requests for marriage by couples who had intercourse before marriage, and even reduce their sentences, self-disclosure even in such cases was not without risk. The authorities constantly had to balance several considerations, which could work to the disadvantage of offenders as well. This becomes particularly evident in the case of Maria Magdalena Hartmann and Markus Schuh, son of a local soldier. Maria Magdalena went to the consistory to disclose that she and Markus had recently welcomed a third illegitimate child together. Maria Magdalena had a specific purpose: she requested a reduction of their punishment and wished to receive consent for their marriage. Markus himself filed a petition with the same request to the city council. Although in the first instance the authorities were inclined to accede to the requests made by Markus and Maria Magdalena, they decided not to do so after all. Their decision was motivated by the fact that the couple was so poor; they would not have been able to pay their punishment anyway. In order not to put a drain on the city’s finances, the city council decided not to imprison the couple, but to expel them instead.⁸³⁹ In this case, the city’s financial considerations outweighed any wishes to restore moral order and legitimise a child born out of wedlock through marriage.⁸⁴⁰

⁸³⁶ Härter, *Policey und Strafrecht*, 895-897; Breit, *Leichtfertigkeit*, 175.

⁸³⁷ PO 3566 *Strafen des Schatzungs Rückständigen* 11.12.1760; PO 3614 *Daß auch fremde sich anhero verburathende vor der Proclamation ihre übrige bürgerliche Praestanda denen kayserlichen Resolutionen zufolge praestiret und entrichtet haben müssen* 28.10.1762.

⁸³⁸ Konsistorium 1780 folio 30. Ratssupplikationen 1780, Bd 1. ‘zu wünschen wäre, das zu Abstellung alles öffentlichen Ärgernisses und zum besten des Kindes diese Leute mittelst priesterlichen copulation in ordnung gebracht würden’.

⁸³⁹ Criminalia 7744 (1761).

⁸⁴⁰ Also: Criminalia 6064 (1748). Johann Tobias Justus a *nachbarhs sohn* (subject of Frankfurt’s rural territory) requested to marry Anna Margretha with whom he had an illegitimate child. The consistory, however, denied his request because Anna Margretha was the widow of Johann Tobias’ brother, and their relationship was therefore considered incestuous.

Thus, we may assume that in Frankfurt the high number of cases of illegitimacy brought before the consistory were the result of both strict control by the authorities, who tried to prevent any type of extra-judicial settlements, and the uses of justice by offenders themselves.⁸⁴¹ The latter was ultimately incorporated by the authorities as a means of control in itself as they prohibited any other opportunity of settlement without their knowledge. As the cases presented above have shown discussing the position of women before such courts in opposing terms of *either* assistance or *repressive control* does not do justice to the complexity of the early modern situation. It was not a question of either/or, as both typologies could apply, and they could even apply at the same time. There were many motives that had to be considered and weighed by the authorities. Their desire to maintain Christian order, social and financial stability opened up options to women to enforce financial agreements with the child's father, which at the same time demanded that they were to be sanctioned themselves as well. Moreover, the experiences of women in relation to the consistory were diverse and differed according to the matter that was brought before the court. For a battered woman, who relied upon the court to discipline her husband, the consistory may have indeed served as an 'assistant in need', whereas for unmarried, foreign, pregnant women this may have been less the case.

Infanticide, abortion and child abandonment

The previous paragraph has dealt with women displaying legal agency, even when this meant that they were faced with prosecution. However, some women turned to more desperate measures when they were faced with the consequences of having a child out of wedlock. In a chapter about the prosecution of sexuality, it is not possible to omit mention of the topics of infanticide, abortion and child abandonment.⁸⁴² According to the law, infanticide was a crime of single mothers. The *Carolina*, which formed the legal basis for prosecuting infanticide well into the eighteenth century, defined it as a crime committed during or immediately after childbirth by women to cover up their lewd behaviour (*geübte leichtfertigkeit*). Concealment of pregnancy thus lay at the heart of defining what abortion was.⁸⁴³ Stillborn babies were common in the early modern period and child mortality

Both JohannTobias and Anna Margretha were sanctioned with banishment; Criminalia 6986 (1753). Local soldier's daughter Susanna Elisabetha Geiderin and Johannes Lein, a local musketeer, had two illegitimate children together, but were repeatedly denied permission to get married by the *Kriegszeugamt*.

⁸⁴¹ Kamp and Schmidt, 'Getting justice'.

⁸⁴² For infanticide in early modern Frankfurt, see: A. Freyh, 'Angeklagt "in puncto infanticidii". Frankfurter Kindsmordprozesse im 18. Jahrhundert' in: G. Engel, U. Kern, and H. Wunder eds., *Frauen in der Stadt: Frankfurt im 18. Jahrhundert* (Königstein/Taunus 2002) 117-131; A. Freyh, 'Verdacht auf Kindsmord. Frauen aus der Frankfurter Judengasse vor Gericht' in: U. Kern ed., *Blickwechsel. Frankfurter Frauenzimmer um 1800* (Frankfurt am Main 2007) 88-97; R. Habermas and T. Hommen, *Das Frankfurter Gretchen. Der Prozess gegen die Kindsmörderin Susanna Margaretha Brandt* (München 1999); M.R. Boes, *Crime and punishment in early modern Germany. Courts and adjudicatory practices in Frankfurt am Main, 1562-1696* (London 2013) 145- 180.

⁸⁴³ M. Brannan Lewis, *Infanticide and abortion in early modern Germany* (New York 2016) 24-25.

was common. However, for married women this frequent occurrence did not pose an additional risk of being investigated. For single women, however, infant deaths were always treated with suspicion.

The two subsequent articles of the Carolina dealt with child abandonment and abortion. Just like infanticide, the Carolina considered child abandonment as a crime that could only be committed by women. It distinguished between cases of child abandonment where the child was found alive and where it was deceased. In the latter case the women were to be punished with the death penalty. Abortion on the other hand could also be committed by men. The Carolina even included purposely making a man or a woman infertile as a result of abortion (*‘wer auch mann oder weib vnfruchtbar macht’*) and thus employed a rather broad definition.⁸⁴⁴

Already in its definition infanticide was linked to single mothers attempting to hide their pregnancy in order to evade punishment for fornication. In the second half of the eighteenth century, infanticide became the subject of intensified enlightened debates in Germany. Commentators discussed the state’s policy concerning sexuality and the harsh punishments imposed on single mothers as one of the main causes behind infanticide.⁸⁴⁵ However, historians have pointed out that even though motives of shame and escaping prosecution lay at the core of most infanticide cases (as we will see below), there was no simple causal relationship between the prosecution of fornication and infanticide cases.⁸⁴⁶ Rainer Beck even argued that the fear of punishment for fornication could not be a cause for infanticide. According to him, the shame that accompanied public punishments was only temporary and he therefore concluded that the criminal system gave little cause for infanticide.⁸⁴⁷

In early modern Frankfurt, infanticide was not a ‘mass crime’. Between 1562 and 1696 the *Strafenbuch* registered 23 women who were convicted of infanticide or suspected infanticide. For the eighteenth century, the figure has to be reconstructed from the index of the *Criminalia*, as conviction records do not exist for this period.⁸⁴⁸ There were 47 cases of women being prosecuted for suspected infanticide, and another 8 cases of women where the register itself did not mention the offenders as suspects for infanticide, but provided more vague descriptions such as a women being prosecuted for ‘burying an illegitimate child in a house’, or ‘about the post-mortem examination of a dead baby discovered in the Main, of which Anna Maria Friesin was suspected’.⁸⁴⁹ In total, during the entire seventeenth and eighteenth centuries there were 83 *Criminalia* with

⁸⁴⁴ Brannan Lewis, *Infanticide and abortion*, 22-27.

⁸⁴⁵ O. Ulbricht, *Kindsmord und Aufklärung in Deutschland* (München 1990).

⁸⁴⁶ Härter, *Policey und Strafrecht*, 845; Hull, *Sexuality*, 70; Lesemann, *Arbeit, Ehre, Geschlechterbeziehungen*, 163.

⁸⁴⁷ Beck, ‘Illegitimität und voreheliche Sexualität’, 128-130.

⁸⁴⁸ Freyh, ‘Frankfurter Kindsmordprozesse’, 129.

⁸⁴⁹ IfSG Frankfurt am Main, Repertorium 249 Index über die Criminalia 1680-1732, 158.

investigations for suspected infanticide and 18 cases of abortion, which was much harder to prove or investigate.⁸⁵⁰

Table 5 and figure 3 show that in Frankfurt, too, there was no relation between intensified prosecution of sexuality and infanticide. The *Strafenbuch* recorded the highest number of infanticide cases between 1641 and 1660, whereas fornication peaked between 1601 and 1620, and was even at its lowest during 1641 and 1660. For the eighteenth century, one can depict a similar pattern. While the prosecution of illegitimacy intensified during the 1750s, the number of infanticide cases during this period was rather low compared to the previous and the following decade.⁸⁵¹ Overall, the number of infanticide cases remained quite stable throughout the entire early modern period. Considering that the overall number of prosecuted offences rose until the 1760s, the relative weight even decreased considerably.

Infanticide-related cases such as child abandonment or abortion also do not show a clear correlation with the prosecution of sexual offences. Child abandonment was only very rarely prosecuted by the criminal court before the eighteenth century.⁸⁵² In the eighteenth century, however, the number of women prosecuted for child abandonment (*exposi. infantis*) rose, as did the number of foundlings that were registered by the criminal investigation office, and for whom the authorities issued notices to find the mother. The rise in the number of these cases coincided with the increase in illegitimate births, and increasing restrictions on women to put their illegitimate children in foster care. In the eighteenth century, the authorities issued several ordinances to prohibit women from doing so without the knowledge of the authorities.⁸⁵³ This may have limited the opportunities available to unwed mothers in their search for work, as they were less mobile when they had to carry their child and employers would have been less willing to employ them.

⁸⁵⁰ On abortion see: R. Jütte, *Die Geschichte der Abtreibung. Von der Antike bis zur Gegenwart* (1993); Brannan Lewis, *Infanticide and abortion*; U. Rublack, 'The public body. Policing abortion in early modern Germany' in: L. Abrams and E. Harvey eds., *Gender relations in German history. Power, agency and experience from the sixteenth to the twentieth century* (London 1997) 57-79.

⁸⁵¹ Hanauer, 'Uneheliche Geburten', 660-662.

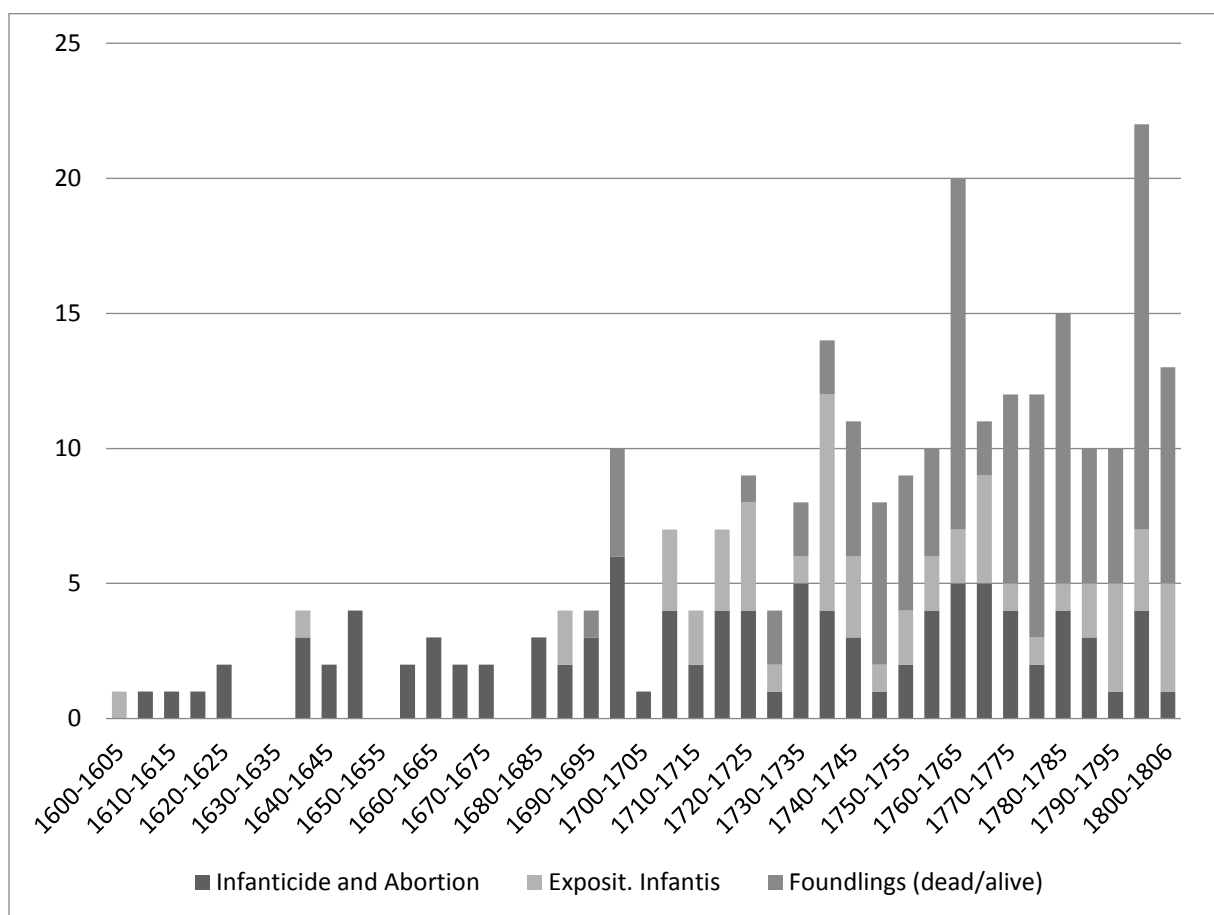
⁸⁵² On foundlings and orphans, see: M. Meumann, *Findelkinder, Waisenhäuser, Kindsmord. Unversorgte Kinder in der frühneuzeitlichen Gesellschaft* (München 1995); J.F. Harrington, *The Unwanted Child. The Fate of Foundlings, Orphans, and Juvenile Criminals in Early Modern Germany* (Chicago 2009). Harrington used the concept of "child circulation" in order to study the myriad ways in which early modern society dealt with unwanted children, instead of simply viewing it from the state's perspective. He prefers this to formulations such as child abandonment, because in his view this term is too restricted and inflexible to encompass all the variety of ways in which children were separated from their parents.

⁸⁵³ PO 3152 *Die in Unehren erzielte und denen Leuten heimlich in die Kost und Verpflegung gegebene Kinder betreffend* 24.09.1737; PO 3449 *Ohne obrigkeitliche Erlaubniss sollen keine Kostkinder von Privatis angenommen werden* 19.08.1755; Criminalia 7093 (1753).

Table 17 Infanticide, fornication and adultery in Frankfurt 1562-1696

	Infanticide	Fornication	Adultery
1562-1580	2	15	0
1581-1600	3	29	8
1601-1620	4	47	15
1621-1640	4	19	6
1641-1660	7	10	3
1661-1680	2	17	3
1681-1696	1	20	10
Total	23	157	45

Source: Van Dülmen, *Theater des Schreckens*, 187.

Figure 15 Infanticide, abortion and child abandonment in Frankfurt 1600-1806

Source: IfSG, *Criminalia 1600-1806*.

Illegitimate mothers usually found employment as wet-nurses, which meant that they had to move in with their employer, who was usually unwilling to take in the illegitimate child as well.⁸⁵⁴ This assumption is supported by the fact that the number of women prosecuted for child abandonment was particularly high during the period when the city council first issued a decree that criminalised the placement of illegitimate children in foster care. Most of the foundlings were not abandoned immediately after their birth, but were usually already several months or even years old. This indicates that women who abandoned their children were probably driven by very different motives than women who had committed infanticide.

In other regions of early modern Germany, the enlightened infanticide debate had fostered the establishment of foundling homes or other institutions to aid unmarried single mothers, specifically with the purpose of preventing infanticide. In Frankfurt, such initiatives did not exist, even though the infanticide debate was also very much alive in legal and public debates in the city.⁸⁵⁵ This pattern suggests that the increasing restrictions placed on illegitimate mothers during this period led women to seek other solutions to cope with the hardship they faced, but that this solution was not infanticide.

The motives for infanticide during this period were undoubtedly complex, but nevertheless it cannot be ignored that women prosecuted for infanticide all shared similar characteristics. One of the main characteristics that stand out was the fact that the majority of them were foreign servants. Based on the index of the *Verhörprotokolle*, it was possible to establish the origin of 64 of the women accused of infanticide: 51 (80%) were migrants.⁸⁵⁶ This number is especially high considering, as we have seen, that the share of migrants and locals among women being prosecuted for illegitimacy was divided equally. This is not just a Frankfurt pattern, but is characteristic of most infanticide cases in early modern Europe.⁸⁵⁷ Equally similar was the age of offenders. In the sample years I collected for this chapter, 23 women were investigated for infanticide and for 18 of them the age was recorded: 2 women were younger than 20; 9 were aged 20 to 25; 5 were aged 25 to 30 and the last 2 were older than 30. Thus, the majority of women that committed infanticide had reached an age that coincided with or was very close to the average age of marriage, and which they might have been able to achieve had circumstances been different.

The precarious social position of unmarried pregnant migrant women has to be taken into account as an explanatory factor when it comes to child infanticide. Unlike local women, they were

⁸⁵⁴ For unwed mothers working as wet nurses, e.g.: Criminalia 3138 (1721); Criminalia 7142 (1754); Criminalia 7756 (1761); Criminalia 7806 (1762); Criminalia 9606 (1786); Konsistorium, Protokolle 1780, folio 77.

⁸⁵⁵ Freyh, 'Frankfurter Kindsmordprozesse', 117.

⁸⁵⁶ Also: Freyh, 'Frankfurter Kindsmordprozesse', 121-122.

⁸⁵⁷ Van Dülmen, *Frauen*, 82-83; A.M. Kilday, *A history of infanticide in Britain, c. 1600 to the present* (New York 2013) 24-25; Van der Heijden, *Women and Crime*, 55.

less able to find enough informal support or start a paternity suit.⁸⁵⁸ Of course, not every migrant woman who became pregnant out of wedlock resorted to infanticide, but it is clear that their situation was more precarious than that of women who could rely on a social support network. The women usually denounced men of a similar social standing as the child's father; in many cases they had worked together for the same employer. Anna Maria Kochin from St. Goar (the last woman to be sentenced to death for infanticide in Frankfurt) stated that the father was a *Gürtlersgesell* from Berlin, whom she met when she was employed by his master as a maid. When their employer discovered the relationship, Anna Maria was dismissed.⁸⁵⁹ Katharina Beuscherin also met the father of her illegitimate child while working for her master, a local pig slaughter. She too, was dismissed upon the discovery of her pregnancy.⁸⁶⁰

Although it is clear from these two and other examples that the discovery of pregnancy could lead to unemployment, both Anna Maria and Katharina managed to find employment after their dismissal while still pregnant. In fact, the majority of the women prosecuted for infanticide were employed when they gave birth, which also led to the discovery of the crime in most cases. Cases were either denounced to the authorities by household members, or by midwives or sworn women who were called to the scene by the household members.⁸⁶¹

Moreover, the infanticide cases reveal how single women were monitored closely by employers and the neighbourhood.⁸⁶² The women themselves often denied that they knew of their pregnancy and claimed to be surprised and overwhelmed by their labour. The interrogation of witnesses reveals, however, that they were often confronted by employers and neighbours prior to the birth because they suspected a pregnancy. In 1680, Anna Katharina Stättin had given birth under suspicious circumstances early in the morning in the privy of her employer's home.⁸⁶³ Anna Katharina claimed that the child was stillborn, but the authorities suspected otherwise and pointed out several aggravating circumstances, most particularly Anna Katharina's attempts to hide the pregnancy. Her mistress, Anna Sophia Cratzin, testified that she had asked Anna Katharina point blank whether or not she was pregnant, to which the latter took her hand and pressed it on her belly, asking: 'Where do you feel a child?' Anna Sophia investigated the belly of her maid, but stated she felt nothing, and that the belly felt normal and soft. Still suspicious, she warned her maid and told her that 'if she was pregnant she shouldn't hurt the child in any case'.⁸⁶⁴ During her

⁸⁵⁸ Freyh, 'Frankfurter Kindsmordprozesse', 130; Kamp and Schmidt, 'Getting Justice'; Vermeesch, 'Legal agency'.

⁸⁵⁹ Criminalia 9444 (1783).

⁸⁶⁰ Criminalia 7675 (1760).

⁸⁶¹ E.g. Criminalia 1241 (1662); Criminalia 3349 (1724); Criminalia 7734 (1761); Criminalia 8109 (1764); Criminalia 9167 (1780); Criminalia 9192 (1780).

⁸⁶² E.g. Criminalia 1610 (1684); Criminalia 2281 and 2296 (1701); Criminalia 7675 (1760); Criminalia 8109 (1764).

⁸⁶³ Criminalia 1505 (1680); Strafenbuch, 16.04.1681..

⁸⁶⁴ Criminalia 1505 (1680) folio 15.

interrogations, Anna Katharina admitted that her mistress suspected that she was pregnant, but that she had denied this because another maid in the household had told her that if their mistress were to find out that she was pregnant, she would send her away. When she found herself in labour, she did not call anyone to assist her because she felt 'ashamed [...] and was afraid that people would kill her'.

Especially women who left town for a short period only to return much slimmer than when they left were suspected. Just how much the mobility of women was watched by neighbours and townspeople and could be associated with trying to cover up an illegitimate pregnancy is revealed by the case of Juliana Adolphin from the small village of Hausen, which was part of Frankfurt's territory.⁸⁶⁵ Juliana had worked as a domestic servant for the baker Glöcker in Frankfurt for over three years when she returned to her native village in the spring because she was sick. Despite the fact that Juliana, according to the various testimonies of her neighbours in Hausen, had a good reputation and was not known to have 'loose contacts' (*liederlichen umgang*) with men, her return to the village caused some serious gossip. As Juliana had gained considerable weight and stayed indoors due to her sickness, people started saying that she might be pregnant. These circumstances had even led Juliana's mother to believe that her daughter was pregnant, as a result of which she arranged a midwife and baby clothing in preparation for the birth, which, of course, fostered the gossip. As a result of the gossip, the village *Schultheiss* reported the case to the *Landamt*, who in turn referred it to the examination office. Juliana was examined by two midwives as part of the investigation. The two women concluded that Juliana was not, and had not been, pregnant. Due to the medical examination and the positive testimonies about her character by various villagers, it was concluded by the examination office that there was no reason to sentence Juliana, and she was released from prison and cleared of all suspicion.

The actual number of prosecuted infanticide cases throughout early modern Germany in the early modern period was rather low.⁸⁶⁶ Richard van Dülmen has argued that, compared to other cities in early modern Germany, Frankfurt's treatment with regard to infanticide was rather lenient. The *Carolina* imposed high standards for possible conviction of infanticide. It had to be proven that the child had actually died at the hand of the mother and a confession was always needed in order for her to be convicted. More than half of the women, therefore, were eventually not sentenced to death. But even though the women could not be convicted of infanticide, they were convicted of fornication (or adultery) and banished from the territory.⁸⁶⁷ There are only a couple of examples where the woman was acquitted of any suspicion entirely and allowed to stay in the

⁸⁶⁵ Criminalia 7781 (1762).

⁸⁶⁶ Ulbricht, *Kindsmord*, 176-188.

⁸⁶⁷⁸⁶⁷ Van Dülmen, *Frauen*, 63.

town. Usually these women were locals and were able to find trustworthy character witnesses who could vouch for them.⁸⁶⁸

The fact that for some women, even if they formed a minority, infanticide felt like the only option (or at least this is what the authorities suspected) when faced with the loss of honour and the resulting financial insecurity and shame option shows that the early modern moral's regime cannot be understood simply in opposing terms of either oppression or leniency.

Conclusion

This chapter set out to investigate the nature of Frankfurt's moral policy. After the Reformation, the secular authorities increasingly took over control of the regulation of marriage and sexuality. The sixteenth and seventeenth centuries were characterised by the implementation of new laws that criminalised all extra-marital sexual relationships. Fornication and adultery became punishable by law. Moreover, in the eighteenth century the city council widened the control over marriage by linking it to economic and demographic policies. In order to marry, and set up a new household, couples now needed to prove that they were financially able to do so. Thus, the early modern period witnessed an increasing effort by the secular authorities to take control over matters that had hitherto been submitted to ecclesiastical authorities. Moreover, economic and moral considerations regarding the control over marriage and sexuality became increasingly intertwined.

The prosecution of sexual offences in early modern Frankfurt was dealt with by the ecclesiastical and semi-ecclesiastical moral courts (the *Sendamt* and the *Konsistorium*) as well as the secular criminal court. Historians have previously perceived such institutions as contradicting or overlapping, each pursuing different aims. This chapter has shown that in Frankfurt this was not the case. Rather, the tasks of both institutions were clearly differentiated but both contributed to maintaining the '*Christliche Zucht- und Ordnung*'. The *Sendamt/Konsistorium* were the primary institution in charge of prosecuting carnal offences. As such, it functioned as a lower court and had the capacity to impose monetary fines, imprisonment or expulsion. The *Verhöramt* on, the other hand, mostly dealt with offences that exceeded the competences of the moral court, and dealt with sexual offences in their role as a court of enquiry for the high criminal court. Both institutions prosecuted the offences with the same aim, but differed in their capacity to do so. The institutions functioned complementary to each other, and worked together in order to prosecute immorality and maintain social order and financial stability.

However, the prosecution of sexual offences was not only characterised by authorities imposing punitive discipline, either through the consistory or through the criminal court. The

⁸⁶⁸ E.g.: Criminalia 3327 (1723); Criminalia 5598 (1743).

consistory was a place in which sexual transgressions were punished, but where at the same time, disputes resulting from the same transgressions could be settled as well. Although a large variety of sexual acts were considered as crimes, in the eighteenth century Frankfurt's authorities increasingly focused on the prosecution of illegitimacy. Even so, women who had become pregnant out of wedlock were not necessarily left defenceless. The opportunities available to women were determined by the aim of the urban authorities to impose strict control. Unlike what is known for other countries, the city council of Frankfurt imposed restrictions on the freedom to settle moral issues through extra-judicial arrangements without notifying the *Konsistorium*. Thus, settling paternity suits always meant self-disclosure. Consequently, the double function of the consistory meant that women therefore often appeared before these courts as plaintiff and defendant at the same time.

A woman had the opportunity to claim financial compensation for the expenses of childbirth, demand damages for her defloration (if she was a virgin, of course), enforce alimony payments from the child's father or even file a suit to force him to fulfil broken marriage promises. However, this does not mean that the authorities can be regarded as 'helpers' for women in need, or women as 'accomplices' to the moral policies of the authority. This would deny the fact that authorities implemented the uses of justice in order to control sexuality. Settling paternity cases did not exempt women from receiving punishment by the *Konsistorium*. Moreover, the opportunity to start paternity suits was not open to all women. For many women who became pregnant out of wedlock, the consequences were high – especially if they were expelled. To some women the threat of prosecution could lead to desperate measures, including infanticide. Still, women *did* make use of the courts and accommodated them to their own needs. By doing so, even if it was from a subordinate position, women shaped the institutions as well.

VI. Transgressing social order

Mobile men and women

Historians working on female crime in early modern Europe have shown how the relatively independent position of women in cities contributed to their likeliness of breaking the law. At the same time, as Andrew Lees and Lynn Hollen Lees reminded us, cities were not only places of relative independence, but of discipline and control as well.⁸⁶⁹ It is precisely this tension between the city as a place of social mobility and relative freedom versus a place of regulation and surveillance that shaped the experiences of female offenders. There were considerable differences, however, in the level of control urban authorities imposed on their inhabitants. The highest levels of female offenders in the early modern period were found in large urban centres with relatively open migration regimes like London and Amsterdam. The urban authorities of these cities were reluctant to impose restrictions on the settlement of migrants because it might have prevented many from moving there, while the cities' economies depended on a continuous influx of labour.⁸⁷⁰ A considerable proportion of the incoming migrants were female, many of whom were single, who were attracted to the possibilities of the diverse labour market and relatively generous relief provisions.⁸⁷¹ Historians like Peter King and Manon van der Heijden have argued that these migration patterns greatly contributed to the high level of female involvement in crime in these cities.⁸⁷²

Germany, on the other hand, was a region with strong institutional control of mobility. More than elsewhere, the right of permanent settlement in cities was strongly connected to the institution of citizenship (*Bürgerschaft*). For others the right to stay and/or entitlement to community

⁸⁶⁹ A. Lees and L. Hollen Lees, *Cities and the making of modern Europe, 1750-1914* (Cambridge 2007) 36-39.

⁸⁷⁰ M. van Leeuwen, 'Overrun by hungry hordes? Migration and poor relief in the Netherlands, sixteenth to twentieth centuries' in: S. King and A. Winter eds., *Migration, settlement and belonging in Europe, 1500-1930s. Comparative perspectives* (New York 2013) 173-203, 190; J. Innes, S. King and A. Winter, 'Settlement and belonging in Europe, 1500-1930s. Structures, negotiations and experiences' in: S. King and A. Winter eds., *Migration, settlement and belonging in Europe, 1500-1930s. Comparative perspectives* (New York 2013) 1-28, 14; E. Kuijpers, *Migrantenstad. Immigratie en sociale verhoudingen in 17e-eeuws Amsterdam* (Hilversum 2005) 332-333; L.P. Moch, *Moving europeans. Migration in western Europe since 1650* (2nd edition: Bloomington 2003) 54-55; M.J. Kitch, 'Capital and kingdom. Migration to later Stuart London' in A.L. Beier and R.A.P. Finlay eds., *London 1500-1700. The Making of the Metropolis* (London 1986) 224-251; L.B. Luu, *Immigrants and the industries of London, 1500-1700* (Abingdon 2016) 166; L. Hollen Lees, *The solidarities of strangers. The English poor laws and the people, 1700-1948* (Cambridge 1998) 47-51.

⁸⁷¹ P. Earle, 'The female labour market in London in the late seventeenth and early eighteenth centuries', *Economic History Review* 43:3 (1989) 328-353; E. Hubbard, *City women. Money, sex, and the social order in London 1570-1640* (Oxford 2012) 17-23; A. Schmidt, I. Devos and B. Blondé, 'Introduction. Single and the city. Men and women alone in North-Western European towns since the late middle ages' in: J. de Groot, I. Devos and A. Schmidt eds., *Single life and the city 1200-1900* (New York 2015) 1-24, 4; L. van de Pol and E. Kuijpers, 'Poor women's migration to the city. The Attraction of Amsterdam health care and social assistance in early modern times', *Journal of Urban History* 32:1 (2005) 44-60; Moch, *Moving Europeans*, 50.

⁸⁷² P. King, 'Female offenders, work and life-cycle change in late-eighteenth century London', *Continuity and Change* 11:1 (1996) 61-90; M. van der Heijden, *Women and crime in early modern Holland* (Leiden 2016) 160-163.

rights were limited or denied completely depending on their legal status.⁸⁷³ At the same time, authorities often imposed moral and religious restrictions on access to citizenship, which was strongly associated with the establishment of a new household. The latter had become increasingly important from the sixteenth century onwards and was perceived by the authorities as the key institution to preserve the urban social order.⁸⁷⁴ Jan Lucassen and Piet Lourens found that the dues and additional requirements (i.e. proof of legitimate birth) were much higher in German cities than in the Dutch provinces, particularly in Holland, for obtaining citizenship.⁸⁷⁵

Across early modern Europe, concepts of a well-ordered society led to the stigmatisation of people without a fixed abode. Vagrancy, begging and other related offences were increasingly criminalised throughout the period.⁸⁷⁶ The strong institutional restrictions in early modern Germany did not necessarily lead to less mobility (as has been suggested in the past), but it did create a framework with a clearer legal and semi-legal differentiation between insiders and outsiders.⁸⁷⁷ Due to the territorial fragmentation of the Holy Roman Empire and the restrictive settlement laws of urban and territorial authorities, it took very little for people to become 'unsettled' legally, compared with more centralised states like France or England. According to Leo Lucassen, itinerant groups were much more likely to be excluded as a result of these settlement regimes and much more vulnerable to criminalisation than elsewhere.⁸⁷⁸

Thus, to gain a better understanding of differences in women's involvement in recorded crime throughout early modern Europe, it is crucial to take a closer look at the way mobility was

⁸⁷³ S. Hochstadt, 'Migration in preindustrial Germany', *Central European History* 16:3 (1983) 195-224, 221-222; A. Gestrich, 'Trajectories of German settlement regulations. The Prussian Rhine Province, 1815-1914' in: S. King and A. Winter eds., *Migration, settlement and belonging in Europe, 1500-1930s. Comparative perspectives* (New York 2013) 250-268, 252; K. Härter, 'Recht und Migration in der frühneuzeitlichen Ständegesellschaft. Reglementierung – Diskriminierung – Verrechtlichung' in: R. Beier-de Haan ed., *Zuwanderungsland Deutschland. Migrationen 1500-2005* (2005) 50-71; Lees and Hollen Lees, *Cities*, 37.

⁸⁷⁴ H. Wunder, 'Gender norms and their enforcement in early modern Germany' in: L. Abrams and E. Harvey eds., *Gender Relations in German History. Power, agency and experience from the sixteenth to the twentieth century* (London 1996) 39-56, 45-46; K.A. Lynch, *Individuals, families, and communities in Europe, 1200-1800. The urban foundations of western society* (Cambridge 2003) 154-155.

⁸⁷⁵ P. Lourens and J. Lucassen, "'Zunftlandschaften" in den Niederlanden und im benachbarten Deutschland' in: W. Reininghaus ed., *Zunftlandschaften in Deutschland und den Niederlanden im Vergleich* (Münster 2000) 11-43. Also: M. Prak et al., 'Access to trade. Citizens, craft guilds and social and geographical mobility in early modern Europe – a survey of the literature, with additional new data', BEUCITIZEN Working Paper 1 (2014); K. Stuart, *Defiled trades and social outcasts. Honour and ritual pollution in early modern Germany* (Cambridge 2006) 2-3; C.R. Friedrichs, 'How German was the German home town?', *Central European History* 47:3 (2014) 488-495; B. Roeck, *Civic culture and everyday life in early modern Germany* (Leiden 2006).

⁸⁷⁶ M. De Koster and H. Reinke, 'Policing minorities' in: P. Knepper and A. Johanse eds., *The Oxford handbook of the history of crime and criminal justice* (Oxford 2016) 268-284.

⁸⁷⁷ Härter, 'Migration und Recht', 66; J. Eibach, 'Versprochene Gleichheit - verhandelte Ungleichheit. Zum sozialen Aspekt der Strafjustiz der Frühen Neuzeit', *Geschichte und Gesellschaft* 35 (2009) 488-533, 526. On migration in early modern Germany in general: D. Hoerder, *Geschichte der deutschen Migration vom Mittelalter bis heute* (München 2010).

⁸⁷⁸ L. Lucassen, 'Between Hobbes and Locke. Gypsies and the limits of the modernization paradigm', *Social History* 33:4 (2008) 423-441, 439. Also: L. Hollen Lees, *The solidarities of strangers. The English poor laws and the people, 1700-1948* (Cambridge 1998) 47-48.; K. Härter, 'Security and cross-border political crime. The formation of transnational security regimes in 18th- and 19th-century Europe', *Historical Social Research* 38:1 (2013) 96 – 106.

regulated. Sheilagh Ogilvie found that, because of the stronger social and institutional restrictions, female mobility in early modern Germany was penalised more harshly than elsewhere in Europe. This was closely linked to attempts to regulate independent, unmarried women. Ogilvie stated that while such regulations were also found elsewhere in Europe in the sixteenth century, they were progressively abandoned in the following centuries in contrast to Germany where instead they intensified.⁸⁷⁹ Despite these restrictions, mobility was part of everyday life for large sections of the population, who moved either temporarily or permanently in search of work or security.⁸⁸⁰

But how did perceptions about gender influence the norms, regulations and control mechanisms that were implemented by the authorities to regulate migration over the course of the early modern period? And how did these influence the patterns of prosecuted crime of men and women in Frankfurt? In order to answer these questions, this chapter investigates the way that people who transgressed the mobility norms implemented by Frankfurt's authorities were prosecuted. The first part of this chapter focuses on the various police ordinances that were issued by the authorities against vagrancy and begging in Frankfurt, as well as on the regulation of migration to and mobility in the city in general. This allows us to investigate the norms the city's authorities imposed on mobility and how they developed through time. The chapter then investigates how these attitudes influenced the policing efforts of the authorities, and how this affected the position of migrant men and women. Finally, the last section of this chapter is devoted to understanding how exclusion from communities was gendered by examining the breach of banishment as a case study. Studying this typical early modern crime is particularly suitable to investigate the position of mobile women. Were they more affected by this punishment than men because of the norms that discriminated against independent women?

Despite the strong institutional control to which they were subjected, men and women were in fact mobile. Data on the geographical background of citizens in early modern German cities demonstrate that the majority were usually born elsewhere.⁸⁸¹ Moreover, studies have shown that women made up a considerable part of the migration to cities in early modern Germany, and

⁸⁷⁹ S. Ogilvie, *A bitter living. Women, markets, and social capital in early modern Germany* (Oxford 2003) 114-115; 312. Also : R. Dürr, 'Der Dienstbote ist kein Tagelöhner...' Zum Gesinderecht (16. bis 19. Jahrhundert)' in: U. Gerhard ed. *Frauen in der Geschichte des Rechts* (München 1997) 115-139, 116; M. Wiesner, 'Paternalism in practice: the control of servants and prostitutes in early modern German cities' in: P.N. Bebb and S. Marshall eds., *The process of change in early modern Europe* (Athens OH, 1988) 179-200; U. Rublack, *The Crimes of women in early modern Germany* (Oxford 1999) 152-154; B. Studer, 'Frauen im Bürgerrecht. Die soziale und rechtliche Stellung von Frauen in spätmittelalterlichen Städten' in: R.C. Schwinges ed., *Neubürger im späten Mittelalter. Migration und Austausch in der Städtelandschaft des Alten Reiches (1250-1550)* (Berlin 2002) 169-201.

⁸⁸⁰ Hochstadt, 'Migration in Preindustrial Germany'; Hoerder, *Geschichte der deutschen Migration*, 20; Moch, *Moving Europeans*, 42-43; J. Lucassen and L. Lucassen, 'The Mobility transition revisited, 1500-1900. What the case of Europe can offer to Global History', *Journal of Global History* 4 (2009) 347-377; K.J. Bade et al. eds., *The encyclopedia of migration and minorities in Europe. From the 17th century to the present* (Cambridge 2011).

⁸⁸¹ Moch, *Moving Europeans*, 44; T., McIntosh, *Urban Decline in Early Modern Germany. Schwäbisch Hall and Its Region, 1650-1750* (Chapel Hill 1997) 165-175; Prak et al. 'Access to trade'.

could even exceed male migration.⁸⁸² The lion's share of migration directed towards Frankfurt during this period was life-cycle dependent labour migration: journeymen, day labourers and domestic servants.⁸⁸³ According to Rainer Koch, the number of migrant women (excluding those that had acquired citizenship or become resident aliens) in eighteenth-century Frankfurt was about 9,000. This is equal to a quarter of the total population, and more than half of all the foreigners (*Fremde*) in the city. However, the reasoning on which he based this estimate is unclear.⁸⁸⁴ More reliable data are available about the percentage of migrant women among new citizens. In Frankfurt, about 8.7% of the men born locally who acquired citizenship between 1600 and 1735 were married to a woman who had been born elsewhere, and consequently migrated to the city. The number of migrant men acquiring citizenship who married a non-native woman was slightly higher at 10.4%.⁸⁸⁵ In total, 31.5% of the non-natives that became burghers within this period were women, most of them through marriage but some on their own account.⁸⁸⁶

Thus, early modern Germany was characterised both by strong regulation *and* high levels of mobility. How then did the increasing restrictive control of mobility by the authorities affect the position of migrants in the city? And was unwanted mobility perceived differently for men and women? If so, how did this shape the prosecution efforts of the authorities?

Reforming poor relief: the importance of settledness

In order to answer these questions, it is necessary to study the framework within which the regulation of migration developed, and how this shaped distinctions between insiders and outsiders of the urban community. From the sixteenth century onwards, mobile poor and travelling groups were increasingly subjected to regulation and criminalisation as a result of growing public and official concern. The animosity towards impoverished outsiders was closely linked to major

⁸⁸² C. Pfister, *Bevölkerungsgeschichte und Historische Demographie 1500-1800* (2nd Edition: 2007) 116-119; McIntosh, *Urban decline*, 166. Studies of women and migration for the early modern period are still scarce, especially in contrast to studies on the nineteenth and twentieth century: S. Hahn, *Historische Migrationsforschung* (Frankfurt 2012) 57-59, 65; S. Hahn, *Migration-Arbeit-Geschlecht. Arbeitsmigration in Mitteleuropa vom 17. Bis zum Beginn des 20. Jahrhunderts* (Göttingen 2008); P. Sharp ed., *Women, Gender and Labour Migration. Historical Perspectives* (New York 2001); M. Kraus and H. Sonnabend eds., *Frauen und Migration* (Stuttgart 2001); E. Aubele and G. Pieri eds., *Femina Migrans. Frauen in Migrationsprozessen* (18.-20. Jahrhundert) (Sulzbach/Taunus 2011).

⁸⁸³ E. Karpf, *Eine Stadt und ihre Einwanderer. 700 Jahre Migrationsgeschichte in Frankfurt am Main* (Frankfurt 2013) 67-77; H. Duchhardt, 'Frankfurt am Main im 18. Jahrhundert' in: Frankfurter Historische Kommission ed., *Frankfurt am Main. Die Geschichte der Stadt in neun Beiträgen* (Sigmaringen 1994) 216-302, 273-277.

⁸⁸⁴ R. Koch, 'Frankfurt am Main im 18. Jahrhundert. Topographie, Demographie, Verfassung, Lebens- und Rechtsgemeinschaften' in: G. Engel, U. Kern and H. Wunder eds., *Frauen in der Stadt. Frankfurt im 18. Jahrhundert* (Königstein/Taunus 2002) 67-86, 71.

⁸⁸⁵ G.L. Soliday, *A Community in Conflict. Frankfurt Society in the Seventeenth and Early Eighteenth Centuries* (Hanover 1974) 47.

⁸⁸⁶ Soliday, *Community in Conflict*, 49. Other relevant tables on pages 44-52. For similar figures in other cities: McIntosh, *Urban Decline*, 165-175.

changes in the organisation of poor relief throughout early modern Europe.⁸⁸⁷ These changes were stimulated by the ideals of poverty and poor relief of the Protestant reformers, most importantly Martin Luther, and humanists like Juan Luis Vives. The key aspects of the changes were the distinction between the deserving and undeserving poor, and a call for reforming and centralising relief practices.⁸⁸⁸ In *An den christlichen Adel deutscher Nation* (1520), Luther called for the abolition of all begging among Christians and in order to achieve this he stated that ‘each town should support its own poor and should not allow strange beggars to come in [...]’. He proposed introducing a system of overseers who would know the local poor and be able to distinguish them from strangers.⁸⁸⁹ Between 1522 and 1530 more than 25 poor relief regulations were implemented in German cities in line with Luther’s principles, including Frankfurt.⁸⁹⁰ His principles were also at the foundation of the 1530 Reich Police Ordinance. There it was stipulated that every parish was obliged to take care of the deserving poor within their own community and to allow only their own disabled and feeble members to beg for assistance.⁸⁹¹

Thus, reforms in poor relief during this period rested on two principles: first, (centralised) care for the city’s own deserving poor, and, second, the exclusion of (foreign) beggars. How these principles were implemented varied considerably, both within the Holy Roman Empire and elsewhere in early modern Europe and changed over time. One of the logical consequences of organising poor relief based on these principles was the necessity to define ‘belonging’ to the community. In other words: who had the right to relief and who did not? Joanna Innes, Steven King and Anne Winter differentiated between three different types of leading principles that authorities employed to define belonging in early modern Europe: work-based systems, where settlement was granted based on employment status (e.g. completed apprenticeships, guild membership and so on); residence-based systems, where settlement was granted after a period of

⁸⁸⁷ R. Jütte, *Poverty and deviance in early modern Europe* (Cambridge 1994); A. Gestrich and L. Raphael eds., *Strangers and poor people. Changing patterns of inclusion and exclusion in Europe and the Mediterranean world from classical antiquity to the present day* (Frankfurt am Main 2009); H. Bräuer, ‘Armut in Mitteleuropa 1600 bis 1800’ in: S. Hahn, N.M. Lobner and C. Sedmak eds., *Armut in Europa, 1500-2000* (Innsbruck 2010) 13-34.

⁸⁸⁸ Bräuer, ‘Armut in Mitteleuropa’, 17; R. Jütte, *Arme, Bettler, Beutelschneider. Eine Sozialgeschichte der Armut* (Weimar 2000) 131-190; S. Schmidt, “Pleasing to God and beneficial to man”. On the confessional similarities and differences of early modern poor relief in: A. Gestrich, L. Raphael and H. Uerlings eds., *Strangers and poor people. Changing patterns of inclusion and exclusion in Europe and the Mediterranean world from classical antiquity to the present day* (Frankfurt am Main 2009) 315-342.

⁸⁸⁹ M. Luther, *Adress to the Christian Nobility of the German Nation Respecting the Reformation of the Christian Estate* (1520), translated by C.A. Buchheim in: Internet Modern History Sourcebook, <https://sourcebooks.fordham.edu/Halsall/mod/modsbook.asp> (accessed 07-06-2017) part 2, §21.

⁸⁹⁰ Jütte, *Arme, Bettler, Beutelschneider*, 141. On the reorganisation of poor relief in Frankfurt and the establishment of a communal poor chest, see: R. Jütte, *Obrigkeitliche Armenfürsorge in Deutschen Reichsstädten der Frühen Neuzeit* (Köln 1984); H. Schembs ed., *Der Allgemeine Almosenkasten in Frankfurt am Main 1531-1981. 450 Jahre Geschichte und Wirken einer öffentlichen milden Stiftung* (Frankfurt am Main 1981).

⁸⁹¹ M. Weber ed., *Die Reichspolizeiordnungen von 1530, 1548 und 1577. Historische Einführung und Edition* (Frankfurt am Main 2002) 161; Gestrich, ‘Trajectories of German settlement regulations’, 252.

continuous and uninterrupted residence; and finally, birth-based systems. In most places, hybrid systems evolved with multiple criteria for settlement and subsequently multiple levels of access to urban provisions, including poor relief.⁸⁹²

One of the characteristics of early modern Germany was that citizenship (*Bürgerschaft*) was more defining in regulating belonging than elsewhere, and that it was more strongly associated with notions of the well-ordered household.⁸⁹³ German authorities placed increasing importance on belonging and settledness (*Sesshaftigkeit*). Settledness can be defined as having a fixed place of residency accompanied with legal incorporation into a community, either as a burgher or resident alien. German authorities envisioned a model of social order in which everyone was incorporated within a household, preferably governed by a male head of the household, or at least subjected to a legal community in some shape or form.⁸⁹⁴ This ideal of social order was based on a principle of reciprocity. Settledness not only meant obligations (paying taxes, etc.), but also meant that one could put a claim on the authority's responsibility to provide protection (*Schutz*) to their members. According to Heinz Schilling, this was one of the basic principles of the *Stadtrepublikanismus*, or urban republicanism, that existed in the Free Imperial Cities of the Holy Roman Empire.⁸⁹⁵ Under this system, foreign suspects were always asked if they were under 'protection' (*Schutz*) somewhere. This was the same as asking if someone was formally settled anywhere and thus legitimised their mobility.⁸⁹⁶

In Frankfurt, only citizens and resident aliens (*Beisassen*) were entitled to communal relief.⁸⁹⁷ The total burgher community of Frankfurt (including male household heads with full citizenship, their families, widows and other independent women with citizenship rights) accounted for approximately 50% of the population in the second half of the eighteenth century.⁸⁹⁸ In order to prevent destitute people from being able to have access to the city's poor relief funds, the city council linked the admission of foreigners to citizenship and the obtaining of settlement as a resident alien to wealth. For new citizens (thus not locally born burgher sons), the required minimum asset varied between 100 Guilders and 50 Guilders in the early modern period. For resident aliens, the requirements were even stricter: they were obliged to have a minimum of 500

⁸⁹² Innes, King and Winter, 'Settlement and belonging', 10-11.

⁸⁹³ Gestrich, 'Trajectories of German Settlement Regulations', 252; Härter, 'Recht und Migration', 51-52; C.R. Friedrichs, *The early modern city 1450-1750* (2nd edition: New York 2013) 143.

⁸⁹⁴ Härter, 'Recht und Migration'; Rublack, *Crimes of women*, 9.

⁸⁹⁵ H. Schilling, *Die Stadt in der Frühen Neuzeit* (2nd edition: München 2004) 89-90.

⁸⁹⁶ Lucassen, 'Police professionalisation', 35. This principle shaped settlement regulations well into the nineteenth-century: A. Fahrmeir, 'Nineteenth-century German citizenship. A reconsideration', *The Historical Journal* 40:3 (1997) 721-752.

⁸⁹⁷ Jütte, *Obrigkeitliche Armenfürsorge*, 214-217; J.H. Faber, *Topographische, politische und historische Beschreibung der Reichs- Wahl- und Handelsstadt Frankfurt am Main*. Vol. 1. (Frankfurt am Main 1788) § 21 and § 22.

⁸⁹⁸ R. Roth, *Stadt und Bürgertum in Frankfurt am Main. Ein besonderer Weg von der ständischen zur modernen Bürgergesellschaft 1760-1914* (München 1996) 86.

Guilders in assets.⁸⁹⁹ In addition to this, foreigners that had acquired citizenship had to guarantee that they would not claim relief for four years.

The same applied for resident aliens, who only formed a minority of the city's inhabitants (see table 1). According to the *Beisassenrecht* (law relating to resident aliens) of the late sixteenth century, they were not entitled to poor relief for the first couple of years.⁹⁰⁰ Foreigners (*Fremde*) were not eligible to claim structural relief at all. Moreover, for them, having employment was a necessary condition to be able to stay in the city, as it guaranteed that they would be subjected to the authority of the head of the household or the guilds instead of wandering around begging. Foreigners that did not work as domestic servants or journeymen – and were therefore incorporated in a household – were required to register and ask formal permission from the authorities, otherwise their stay was restricted to a period ranging from three to eight days.⁹⁰¹

Table 18 Composition of the population according to legal status, 1785-1810

Year	Inhabitants	Full Citizens ⁹⁰²		Resident Aliens		Jews	
1785	36,400	4,200	11.5%	1,800	4.9%	3,000	8.2%
1795	37,000	4,360	11.8%	1,500	4.1%	2,969	8%
1805	37,000	4,520	12.2%	1,200	3.2%	2,939	7.9%
1810	40,485	4,680	11.6%	994	2.5%	2,214	5.5%

Source: Roth, 'Blühende Handel', 362.

Such distinctions were not only important because they determined the level of access to community rights, and the right to stay, but also because they defined the relationship between individuals and the urban authorities. It meant a differentiation between those that were granted the formal protection (*Schutz*) of the city council, who committed to protect and defend their rights

⁸⁹⁹ Jütte, *Obrigkeitliche Armenfürsorge*, 214-217; R. Koch, *Grundlagen bürgerlicher Herrschaft. Verfassungs- und sozialgeschichtliche Studien zur bürgerlichen Gesellschaft in Frankfurt am Main (1612-1866)* (Wiesbaden 1983) 76-90; Roth, *Stadt und Bürgertum*, 65-88.

⁹⁰⁰ Jütte, *Obrigkeitliche Armenfürsorge*, 216-217. The number of years resident aliens were barred from relief is not specified. Jütte simply states 'several years – *einige Jahre*'.

⁹⁰¹ As part of the extensive criminal investigations against city council member Johann Erasmus von Senckenberg, against whom (amongst other things) investigations were carried out for the rape of his cook Maria Katharina Agricola, many administrative records from his personal records ended up in the *Criminalia*. These included city council records dealing with the regulation of settlement and illegal foreigners. IfSG Frankfurt am Main, Criminalia 12880 (1756) e.g. folio 153, Ratsedikt, 22.08.1709 'Fremde sollen binnen acht tagen sich aus der Stadt und deren dorfschafften begeben'; PO 3356 *Fremde Handwerksleute, die keinen Meister haben, sollen sich daher nicht über die gehörige Zeit aufhalten* 25.03.1749.

⁹⁰² Unfortunately, there are only reliable data are only available for *Vollbürger*, i.e. male household heads. If their sons, daughters and wives, and widows heading a household independently are included the citizenry accounted for close to 50 percent in the eighteenth century.

and personal security.⁹⁰³ Various police ordinances either explicitly or implicitly defined who the authorities of Frankfurt considered as deserving the protection of the city. These included all burghers and their families, resident aliens and their families, Jews with citizenship and their families, the city's soldiers and their families, and, finally, foreigners who had received permission to stay in the city. As one can see in table 2, domestic servants and journeymen were not listed, because they were considered to belong to the protection of either the household or the guild. Unless they belonged to one of the categories described above they had no formal *Schutzverhältnis* to Frankfurt.⁹⁰⁴

Table 19 People falling under the protection (Schutz) of the urban authorities

Burghers , their sons and daughters, and widows (provided they did not marry a foreigner).
Resident aliens , their children and widows (provided they did not marry a foreigner.)
Jews with citizenship (<i>Schutzjuden</i>) and their widows and children.
Soldiers of the city's army, including their wives, widows and children as long as they had been married with the consent of the <i>Kriegszeugamt</i> .
Foreigners with formal permission to stay.

Source: PO 3632 *alle und jede in hiesigem Schutz und Pflichten nicht stehende Personen binnen 14 Tagen aus der Stadt zu schaffen* 24.05.1763.

Differentiating between various levels of belonging, particularly in a society in which mobility was omnipresent, required an administrative framework to monitor the movement of people from and to the city, their (possible) settlement and a registration system to examine their legal status. In 1593, the city council established the *Inquisitionssamt*, presided by three council members, to oversee the admission of citizenship and residency for registered aliens, as well as reviewing requests of foreigners to stay in the city for a limited period of time. In the eighteenth century, the *Inquisitionssamt* was incorporated with the *Schatzungsamt*, the tax office.⁹⁰⁵ Apart from this office, which was after all only meant to monitor those that settled in the city, the city council implemented a whole set of regulations aimed at controlling migration. These included efforts to control places of arrival (city gates, inns and taverns), requiring the neighbourhood burgher captains to monitor and register

⁹⁰³ For the legal meaning of the *Schutz*-principle, see the discription in: *Deutsches Rechtswörterbuch Online*, <http://drw-www.adw.uni-heidelberg.de/drw/info/index.html> (accessed 01-09-2017).

⁹⁰⁴ Koch, *Grundlagen bürgerlicher Herrschaft*, 112, 116; Roth, *Stadt und Bürgertum*, 84-85.

⁹⁰⁵ A. Johann, *Kontrolle mit Konsens. Sozialdisziplinierung in der Reichsstadt. Frankfurt am Main im 16. Jahrhundert* (Frankfurt am Main 2001) 48-50; Soliday, *Community in Conflict*, 54.

local population movements, and the increasing demanded for documentation (registration at the city gates and inns; issuing gate passes; requesting the possession of identification documents).⁹⁰⁶

These regulations were implemented from the middle of the sixteenth century onwards, but intensified from the late seventeenth century. To compare: cities in the province of Holland only started to experiment with the implementation of law to restrict settlement from the second half of the seventeenth century onwards, during a period of economic decline. However, the urban authorities quickly abandoned the restrictions because they were unable to implement them. And in Amsterdam authorities refrained from implementing exclusionary settlement regulations because they feared this would put off migrant labourers from coming to the city.⁹⁰⁷ Lynn Hollen Lees found that compared to early modern England, German towns employed more developed mechanisms to control and regulate the entry- and residence of strangers.⁹⁰⁸

Despite the desire to control and restrict the movement of newcomers, demographic necessity meant that early modern cities depended on incoming migration, as they could generally not reproduce themselves naturally before the nineteenth century.⁹⁰⁹ Unfortunately, there is little information about the geographical, economic, and socio-cultural background of migrants coming to Frankfurt. In the late sixteenth century, religious refugees from the Low Countries found their way to the city, and boosted the local economy. At the peak of the refugee migration, the Flemish-Walloon community counted approximately 3000 to 3500 people that settled in the city permanently on a total population of 20,000. Although they were initially granted to establish their own church within the city borders, this was later prohibited and they moved their church to Bockenheim, in the vicinity of the city.⁹¹⁰ In the seventeenth century, after the revocation of the Edict of Nantes, Frankfurt faced new crowds of religious refugees as approximately 70,000 Huguenots passed through the city on to other destinations. Due to the restrictions on the freedom of worship, Frankfurt was not attractive for permanent settlement, but it offered support and protection for the time being.⁹¹¹ We know even less about the background of labour migrants coming through the city, but only Lutherans could become citizens.⁹¹² It is known for other cities in Europe, that (migrant) churches were important for migrants as support networks and enabled their integration into the city by providing assistance in times of need.⁹¹³ Johannes Müller found

⁹⁰⁶ J. Kamp, 'Controlling Strangers - Identifying Migrants in Early Modern Frankfurt am Main' in: H. Greefs and A. Winter eds., *Materiality of Migration* (Forthcoming 2018).

⁹⁰⁷ Van Leeuwen, 'Overrun by Hungry Hordes?', 186-187, 190.

⁹⁰⁸ Hollen Lees, *Solidarities of strangers*, 47-48.

⁹⁰⁹ Lucassen and Lucassen, 'Mobility transition', 359-363.

⁹¹⁰ Karpf, *Eine Stadt und ihre Einwanderer*, 41-66; Schindling, 'Wachstum und Wandel', 211, 224-228.

⁹¹¹ Duchhardt, 'Frankfurt am Main', 263.

⁹¹² Soliday, *Community in conflict*, 4-5.

⁹¹³ Van de Pol and Kuijpers, 'Poor women's migration'.

that in Frankfurt too, religious networks played an important role in the integration of refugees from the Low Countries in the urban community.⁹¹⁴ Again, however, we know much more of distinct groups of migrants in Frankfurt, and an in-depth study on the migration patterns and networks, or of the composition of the urban population in general, is much needed.

We do know, however, that Frankfurt's city council was regularly caught between conflicting interests with regard to the regulation of migration. They needed to consider the majority of the burgher community, who demanded that the city council implement protectionist regulations to preserve the economic position of the guild. Throughout the early modern period, burghers demanded increasing economic restrictions for resident aliens, whereas the authorities at times opted for a more open migration policy to draw in wealthy migrants. This led to tensions between the burgher community and the city council on several occasions.⁹¹⁵ At the same time, implementing too many restrictions on entry to the city would also hinder its economy as Frankfurt depended on free access to the city in order to maintain its function as a centre for trade. In general, however, it appears that the city council was keen on implementing and enforcing regulations, although they often lacked the resources and institutional back up to do so.⁹¹⁶ For example, formally everyone entering the city gate would have to undergo investigation and be checked. In practice, this was not always feasible, and many were able to enter the city gates without any such investigation.⁹¹⁷ Similarly, innkeepers were required to register all their guests each night and hand the registry to the burgomasters of the *Inquisitionssamt* each night. In addition, they were not allowed to house guests who could not demonstrate identity papers and a proof of entry from the city gates. But here as well, enforcement proved difficult and 'illegal' migrants managed to find lodgings in the city.⁹¹⁸

Maintaining economic stability and social order were the main principles influencing early modern migration policies.⁹¹⁹ The patriarchal household formed the ideal unit in the minds of early

⁹¹⁴ J. Müller, *Exile memories and the Dutch Revolt. The narrated diaspora, 1550-1750* (Leiden 2016).

⁹¹⁵ Karpf, *Eine Stadt und ihre Einwanderer*, 42-78; C. Reves, *Vom Pomeranzengänger zum Großhändler. Netzwerke und Migrationsverhalten der Brenntano-Familien im 17. Und 18. Jahrhundert* (Paderborn 2012) 231-292; J. Müller, 'Transmigrant literatur. Translating, publishing, and printing in seventeenth-century Frankfurt's migrant circles', *German Studies Review* 40:1 (2017) 1-21, 4; M. Magdelaine, 'Frankfurt am Main. Drehscheibe des Refuge' in: R. Thassen and M. Magdelaine eds., *Die Hugenotten* (München 1985) 26-37.

⁹¹⁶ Kamp, 'Controlling strangers'.

⁹¹⁷ For examples, see: Criminalia 2630 (1711); Criminalia 3245 (1722); Criminalia 5250 (1741). At the same time, there are plenty examples of people who were arrested at the gate as well: Criminalia 1425 (1675); Criminalia 3383 (1724); Criminalia 4158 (1733); Criminalia 7559 (1759); Criminalia 7838 (1763). On the practice of entering gates in early modern cities: D. Jütte, 'Entering a city. On a Lost Early Modern Practice', *Urban History* 41 (2014) 204-227.

⁹¹⁸ IfSG Frankfurt am Main, Schatzungsamt, Ugb-Akten 928 (1779-1790); Schatzungsamt, Ugb-Akten 1003 (1777); Schatzungsamt, Ugb-Akten 1167 (1759-1760); Schatzungsamt, Ugb-Akten 1226 (1755); Schatzungsamt, Ugb-Akten 1255 (1756); Criminalia 3698 (1728); Criminalia 6763 (1753); Criminalia 7848 (1762); Criminalia 12880 (1770); Criminalia 10470 (1797); Criminalia 10681 (1801); Johann, *Kontrolle mit Konsens*, 49.

⁹¹⁹ K. Sennfelt, 'Ordering identification: Migrants and material culture in Stockholm, 1650-1720' in: H. Greefs and A. Winter eds., *Materiality of Migration* (Forthcoming 2018); Härter, 'Recht und Migration', 51.

modern rulers to guarantee social order. And, as Ulinka Rublack, phrased it: ‘mobility in itself was the great enemy of a society based on household control’.⁹²⁰ Nevertheless, mobility was ubiquitous: urban communities depended on the arrival of newcomers to maintain population numbers. Domestic servants, journeymen, day labourers and merchants were indispensable for the urban community. The everyday reality of mobility made it difficult to formulate a clear-cut definition of belonging or even of settledness. Pierre Boussar Philippon – arrested for theft and vagrancy – stated, for example, that he was ‘not yet settled (*Sesshaft*) because he was still young and unmarried. Besides, he constantly travelled around with his merchandise between Saxony and along the Bohemian border’.⁹²¹ Others excused their unsettledness as a result of economic need. *Geschirrhändler* Philip Hahl who was arrested for vagrancy together with his family, stated that he could not afford to pay taxes that were required in case of settlement.⁹²² Historians working on vagrancy in early modern central Europe have argued that territorial fragmentation, restrictive settlement laws and tight guild control were some of the major reasons for people to become ‘unsettled’ and subsequently prosecuted as vagrants.⁹²³ The emphasis on settledness, legal incorporation and household belonging restricted the opportunities for young women *and* men to settle in the city independently.

Vagrancy laws and the labelling of unwanted mobility

The study of vagrants, travelling groups and other ‘unsettled’ people has been important to the study of the history of crime in early modern Germany since the 1970s and ‘80s with important contributions by Carsten Küther, Uwe Danker, Ernst Schubert and others, who mainly focused South-West Germany.⁹²⁴ Since then, historians have moved away from the image of vagrants and

⁹²⁰ U. Rublack, *The Crimes of Women in Early Modern Germany* (Oxford 1999) 9.

⁹²¹ Criminalia 5119 (1740) folio 1. Original: ‘Er seije noch an keinem ort sesshaft, weilen er noch jung und unverheurathet seije, auch mit seinen Galanterie waaren in Sachsen und an der Böhmischen Grantzne herum beständig hin und wieder reise.’

⁹²² Criminalia 8361 (1768) folio 2. Original: ‘Warum er sich denn nicht mit denen seinigen an dem Ort wo er geböhren und hingehöre ordentlich wohnbahr aufhalte, ob ihm denn nicht bekannt, dass das herumziehen und vagabunde leben dessen er eingestehe sehr verboten seije? Er seije ein blutarmer Mann der weiter nichts habe, als wie er da stehe und sein leben kümmerlich durch bringen müsse und deßwegen seije er nicht in Standt an einen Ort beständig zu wohnen weilen er das Schutz und herren geld nicht auf bringen können.’ Also see: Criminalia 8576 (1771) folio 2. Original: ‘Sein vatter habe zu Steinbiebersdorff den Schutz gehabt er aber stehe als ein armer Judt nirgends in Schutz und müste suchen wie der Allmosen sich zu erhalten.’

⁹²³ B. Althammer, ‘Roaming men, sedentary women? The gendering of vagrancy offences in nineteenth century Europe’, *Journal of Social History* (Forthcoming 2018); K. Härter, ‘Cultural diversity, deviance, public law and criminal justice in the Holy Roman Empire’ in: T. Ertl and G. Kruijtzers eds., *Law adressing diversity. Premodern Europe and India in comparison (13th – 18th centuries)* (Berlin 2017) 56-94.

⁹²⁴ G. Schwerhoff, ‘Kriminalitätsgeschichte im deutschen Sprachraum. Zum Profil eines “verspäteten” Forschungszweiges’ in: A. Blauert and G. Schwerhoff eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz 2000) 21-67, 39-42; C. Küther, *Menschen auf der Straße. Vagierende Unterschichten in Bayern, Franken, und Schwaben in der zweiten Hälfte des 18. Jahrhunderts* (Göttingen 1983); U. Danker, *Räuberbanden im Alten Reich um 1700. Ein Beitrag zur Geschichte von Herrschaft und Kriminalität in der frühen Neuzeit* (Frankfurt am Main 1988); E. Schubert, ‘Mobilität ohne Chance. Die Ausgrenzung des fahrenden Volkes’ in: W. Schulze ed., *Ständische Gesellschaft und soziale Mobilität* (München 1988) 113-163; N. Finzsch, *Obrigkeit und Unterschicht, en. Zur Geschichte der rehinischen Unterschichten gegen Ende des 18. und zu Beginn des 19. Jahrhunderts* (Stuttgart 1990); L. Lucassen, *Zigeuner. Die Geschichte eines*

other unsettled mobile people as a counter-society (*Gegengesellschaft*) and social bandits.⁹²⁵ Rather, scholars like Gerhard Ammerer have stressed the heterogeneity of the many types of mobile groups and individuals that were labelled by the authorities as beggars, vagabonds or more general as undesirable and unsettled. Instead of forming a 'counter-society', many remained partially integrated or connected to the 'settled' communities.⁹²⁶ Over the past two decades, historians have increasingly employed bottom-up perspectives and socio-cultural approaches to study the everyday experiences (*Alltagswelt*) of those who lived unsettled lives during the early modern period.⁹²⁷

At the same time, historiography has dealt quite extensively with the way top-down labelling processes shaped the image of mobility as potentially harmful, and how this became increasingly associated with criminality. Historians have shown how these processes were linked to changing perceptions of poverty and definitions of social order. These changes shaped policies against vagrancy, but also, more in general, affected policies concerned with settlement, migration, poor relief and so on.⁹²⁸ The establishment of vagrancy regulations and anti-begging laws played an essential role in the attempts of urban (and territorial) authorities to exclude unwanted foreigners from their territory. The following paragraph will analyse the begging and vagrancy legislation of early modern Frankfurt and show that the importance placed on settledness led to increasing discriminatory legislation towards vagrants and other wandering groups.

The first laws that discriminated between local and foreign beggars in Frankfurt were implemented by the city council in the late fifteenth century.⁹²⁹ These regulations were not intended to eradicate mendicancy entirely: they were implemented to ban the begging of foreigners only. Local ill and disabled people continued to be allowed to beg for alms on the streets. In order to be able to differentiate between local and non-local beggars, the city council implemented the use of

polizeilichen Ordnungsbegriffes in Deutschland 1700-1945 (Köln 1996); M. Rheinheimer, *Arme, Bettler und Vaganten. Überleben in der Not 1450-1850* (Frankfurt am Main 2000); G. Ammerer, *Heimat Straße. Vaganten im Österreich des Ancien Régime* (Vienna and Munich 2003); G. Fritz, *Eine Rotte von allerhandt rauberischem Gesindt. Öffentliche Sicherheit in Südwestdeutschland vom Ende des Dreißigjährigen Krieges bis zum Ende des Alten Reiches* (Ostfildern 2004); W. von Hippel, *Armut, Unterschichten, Randgruppen in der Frühen Neuzeit* (2nd edition: München 2013).

⁹²⁵ For a recent overview of the historiography: G. Ammerer and G. Fritz, 'Die Gesellschaft der Nichtsesshaften. Daseinsbewältigung, Lebens- und Umgangsformen' in: G. Ammerer and G. Fritz eds., *Die Gesellschaft der Nichtsesshaften. Zur Lebenswelt der vagierenden Schichten vom 16. bis zum 19. Jahrhundert* (Affalterbach 2013) 7-20.

⁹²⁶ L. Lucassen, 'A blind spot. Migratory and travelling groups in Western European historiography', *International Review of Social History* 38:2 (1993) 209-235; Ammerer, *Heimat Straße*, 307-308.

⁹²⁷ See f.e.: Ammerer, *Heimat Straße*; P. Fumerton, *Unsettled. The Culture of Mobility and the Working Poor in Early Modern England* (London 2006); T. Hitchcock and R. Shoemaker, *London Lives. Poverty, Crime and the Making of a Modern City, 1690-1800* (Cambridge 2015).

⁹²⁸ K. Härter, 'Grenzen, Streifen, Pässe und Gesetze. Die Steuerung von Migration im frühneuzeitlichen Territorialstaat des Alten Reiches (1648-1806)' in: J. Oltmer ed., *Handbuch Staat und Migration in Deutschland seit dem 17. Jahrhundert* (Berlin 2016) 45-86; S. King and A. Winter eds., *Migration, Settlement and Belonging in Europe, 1500-1930s. Comparative Perspectives*. (New York and Oxford 2013); De Koster and Reinke, 'Policing Minorities' 270-272.

⁹²⁹ J. Menzler, *Die Bettelgesetzgebung des 17. Und 18. Jahrhundert im Gebiet des heutigen Landes Hessen* (Marburg 1967) 48-56; Jütte, *Armenfürsorge*, 27-31; 203-208; T. Bauer, "'Es solt yhe niemand unter den Christen betteln gahn". Zur Geschichte der Bettler in Frankfurt am Main', *Archiv für Frankfurts Geschichte und Kunst* 62 (1993) 91-100.

special identification badges.⁹³⁰ In the early seventeenth century, local recipients of poor relief had to make themselves known by carrying a badge shaped like an eagle on their clothes.⁹³¹ The city's beadles (*Bettelhögte* – in eighteenth century referred to as *Armenknechte*) were charged with policing the streets looking for foreigners begging and to expel them from the city. These regulations formed the legal framework for the exclusion of foreigners considered to be undesirable to the urban community by the city council.⁹³²

In the seventeenth century, begging regulations became stricter and also banned begging by locals. According to an ordinance of 1625, the city council found that the increasing number of 'many local' and 'even more foreign beggars', caused considerable nuisance in the city. They considered that begging on the streets should be abolished completely. The true sick and needy had to be taken care of in the city's hospital and/or by the *Armenkassen*. All other individuals found begging were to be sanctioned, and foreign beggars would be punished and subsequently expelled.⁹³³ Until the establishment of the poorhouse in 1679, begging and collecting alms continued to be tolerated in specific cases, most particularly for journeymen. Tramping was a central part of the city's economy, in which craft guilds dominated. Journeymen that arrived in the city and failed to find work were supposed to go to the *Stadtkanzlei* together with the *Stubenvatter* of their journeyman inn, or in the event that there was no designated inn for their handicraft, with the senior master of the guild. If the journeyman decided not to stay in the city and wait for work, he was granted a document that allowed him to beg in the city for two or three days in order to gather enough money to travel further. If a journeyman decided to stay instead, he was not allowed to beg, but received a document which allowed him to earn a living as a day labourer or carrying out non-regulated craft activities.⁹³⁴

In 1679 the city council established the *Armen-Waisen- und Arbeitshaus* (from now on referred to as the poorhouse) with the specific aim of eradicating begging from the city completely. The wish for such an institution had been voiced before, but was not fulfilled earlier due to funding

⁹³⁰ M.R. Boes, 'Unwanted Travellers. The Tightening of City Borders in Early Modern Germany' in: T. Betteridge ed., *Borders and Travellers in Early Modern Europe* (Aldershot 2007) 87-112, 107-108.

⁹³¹ M. Hess, *Die Geschichte des Frankfurter Armen-, Waisen- und Arbeitshaus (1679-1810)* (1921). Unpublished PhD thesis, Universität Frankfurt am Main, 22.

⁹³² For similar developments, see: J.P. Coy, *Strangers and Misfits. Banishment, social control and authority in early modern Germany* (Leiden 2008) 31-56; A. Küntzel, *Fremde in Köln. Integration und Ausgrenzung zwischen 1750 und 1814* (Köln 2008) 70-76. For discussions of 'foreign' poverty as an instrument for exclusion (and inversely inclusion): L. Raphael, 'Grenzen von Inklusion und Exclusion. Sozialräumliche Regulierung von Armut und Fremdheit im Europa der Neuzeit', *Journal of Modern European History* 11:2 (2013) 147-167.

⁹³³ PO 2032 *Betr. die abschaffung der Bettler und Colligirung einer Almosen Steuer* 25.08.1625. Original: 'Demnach ein Ehrenvestor wolweijser Rath dieser Staat nun eine Zeit hero befunden, dass mit den jenigen personen, welche sich des Bettlen gebrauchen eine merckliche gross Unordnung in dieser Statt eingerissen, in deme nit allein viele inländische des Bettlens sich befleissen, sondern auch noch ein mehrer Anzahl von fremden Bettler da Jahr Uber sich allhier uffbalten'.

⁹³⁴ PO 2410 *Was massen einige handwercks Gesellen im Land herum vagiren* 30.12.1675. Original: 'sich mit Posseln oder anderer Tag-Arbeit sich so lange nehmen/ biß er Arbeit überkommet'.

problems. According to the ordinance, the poorhouse was established with the aim of abolishing the shameful begging on the streets (*umb das schändliche Gassenbettlen abzuschaffen*). From now on, journeymen unable to find work, foreign beggars and other vagrants (*Bettler und andere Vaganten*) had to report to the poorhouse where – after careful examination of each person's individual character and circumstances – they would receive some travel money (*Viatico/Zebrpfennig*) in order to leave Frankfurt. Those that failed to do so were arrested and expelled from the city.⁹³⁵ In the following begging ordinances, the distinction between local beggars and foreigners was reinforced. In both cases, offenders would be punished by having to perform some sort of forced labour, either working in the city's trenches (*Schanzen*), cleaning the streets and pulling the scavengers cart (*Kothkarren*) or pulling wool (*Wollkratzen*). Unlike locals, however, who were released without further punishment, foreigners were expelled from the city after they had performed hard labour.

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Simultaneous to regulations that were specifically aimed at begging, there was a development in which the mobility of unsettled people in general, and of ethnic minorities (Jews and gypsies) in particular, became subjected to control, discrimination and subsequent criminalisation.⁹³⁷ Again, the Reichs Police Ordinances of 1530, 1548 and 1577 formed the foundation for this process, introducing the basic norms and regulations, such as mandatory identification, expulsion of foreigners, etc.⁹³⁸ After the city council issued some general regulations in the early seventeenth century, in which innkeepers were strictly forbidden to house any wandering suspicious people or beggars under penalty of paying a significant fine and even risking the loss of citizenship, the ordinances became of a more repressive and discriminatory nature in the late 1660s and the 1670s.⁹³⁹ This first peak of repressive policing against wandering groups was directly related to the plague epidemic of 1666/67. 'Beggars, tramps, vagrants, itinerant artists, sick and in general all the loose and riff-raff' were seen as a massive threat for public health, as their uncontrollable movement meant they could easily have carried the disease from contaminated places to the city.⁹⁴⁰ Throughout the period, unsettled Jews (*Betteljuden*) in particular (especially

⁹³⁵ PO 2429 *umb das schändliche Gassenbettlen abzuschaffen* 04.09.1679.

⁹³⁶ E.g. PO 2984 *Gänzlich Verbot des Gassenbettelns* 12.04.1729; PO 3250 *Bettler und herrnloses nichtwürdiges Gesindel soll nicht geduldet werden* 26.04.1742; PO 3417 *Ausschaffung der Bettler und herrnlosen Gesindels* 18.01.1753.

⁹³⁷ For the prosecution of gypsies in early modern Frankfurt, see: Boes, 'Unwanted travellers', 96-98. For other regions in early modern German speaking territories, see (amongst others): Lucassen, *Zigeuner*; Härter, 'Cultural diversity', 73-83; V. Kallenberg, *Von "liederlichen Land-Läuffern" zum "asiatischen Volke". Die Repräsentation der 'Zigeuner' in deutschsprachigen Lexika und Enzyklopädien zwischen 1700 und 1850. Eine wissenschaftliche Untersuchung* (Frankfurt am Main 2010).

⁹³⁸ Härter, 'Recht und Migration', 62-63.

⁹³⁹ For early examples of ordinances against "Fabrende Leute", see: PO 1803 *Daß niemandt ohne unser deß Rahts, unserer Bürgermeister, oder deren darzu verordneten Rathspersonen Vorwissen und Bewilligung einige frembde anhero kommende Personen [...] bei ihme einziehen lassen* 02.05.1613; PO 2157 *Daß niemand einige frembde Personen hohes oder nidriges Stands, ohne vober erlangte [...] aufstrückliche und sonderbare Vergünstigung beherbergen* 16.06.1635.

⁹⁴⁰ PO 2342 *Ordnung wornach sich unsere dess Raths der Statt Franckfurt an die Statt Pforten zur Inspection der Feden verordnete Rathsfreunde und zur Wacht bestellte kriegs Officirer, Soldaten und Schreiber in Einlaß- und Abweisung der Fremden zu halten*

Eastern European Jews) were linked to the spread of diseases.⁹⁴¹ The link between controlling epidemics and intensified prosecution of wandering groups was common throughout the Holy Roman Empire. Similar developments, for example are visible in Frankfurt's neighbouring territory of Kurmainz, and continued throughout the eighteenth century.⁹⁴²

In the eighteenth century, the city council regularly implemented general ordinances that demanded the expulsion of vagrants. In 1706 they ordered the banishment of all 'useless and masterless scum, [...] but in particular the so-called gypsies'.⁹⁴³ Other general ordinances followed in 1708, 1709, 1714, 1717, 1723, 1729, 1738, 1742, 1749 and 1753.⁹⁴⁴ None of these regulations formulated clear definitions as to who should be prosecuted and who should not. Some of the regulations aimed at a certain group in particular (e.g. gypsies in the beginning of the 18th century and Jews in the late seventeenth century). The majority of the ordinances, however, used a more general and all-inclusive terminology, such as *Gesindel* (scum), *Vaganten*, *Landstreicher* (vagrants) and *Bettler* (beggars). These terms were accompanied by adjectives like *leichtfertig* (frivolous); *liederliche* (loose), *verdächtig* (suspicious), *unzüchtig* (bawdy), *herrenloß* (masterless), *müssiggehend* (idle), *gottlos* (godless), and *verrucht* (wicked). What was criminalised, therefore, was not so much an act, but rather a state of being. During the eighteenth century this state of being became increasingly associated with and equated to criminal behaviour. Beggars were associated with property offences, while vagrants and (in particular) gypsies were accused of even more serious offences such as robbery, arson, and - in times of war - espionage.⁹⁴⁵

On top of the layer of local ordinances issued by Frankfurt's city council itself was a layer of supra-regional ordinances issued by the *Oberrheinischer Kreis*.⁹⁴⁶ General ordinances against vagrancy (*Poenalordnungen*) were issued by the *Kreis* amongst others in 1709, 1711, 1722, 1726, 1728,

26.09.1667; PO 2348 *eine gewisse Ordnung, wo nach man sich alhie im Einlaß- Uffnehm- oder Abweisung der Frembdn zu verhalten habe* 04.08.1668.

⁹⁴¹ E.g. PO 2770 *Was massen die schädliche Seuche der Bestilentz in Bohlen und verschiedenen dahin gränzenden Orten und Landen, dergestaltten wiederumb überhand niemt* 16.09.1710.

⁹⁴² Härter, *Policey und Straffjustiz*, 951-953.

⁹⁴³ PO 2712 *Daß in denen zu allhiesiger Stadt Bottmässigkeit gehörigen Dorffschafften kein unnützes und herrnloses Gesindlein von Bettlern und andern ihres gleichen nicht geduldet* 10.08.1706. Original: 'kein unnützes und herrnloses Gesindlein von Bettlern und andern ihres gleichen nicht geduldet [...] in specie aber so viel die so genannten Zigeuner betrifft noch in verwichenem Jahr den gemessen Befehl dahin ergehen lassen/ daß selbige/ wo sie in unserm Gebieth angetroffen werden mögten [...] fortgetrieben werden sollen'.

⁹⁴⁴ Faber, *Topographische Beschreibungen* 2, 57; Hess, *Frankfurter Armen-, Waisen- und Arbeitshaus*, 66.

⁹⁴⁵ PO 2905 *Demnach die Zigeuner, Bettler und sonst allerhand Vagabunden und herrnloses unnützes Gesind [...] in hiesiger Gegend und Nachbarschaft Troupen weiß zusammen rottiret* [...] 22.06.1723.

⁹⁴⁶ The Holy Roman Empire was divided into several Reichskreise, which were administrative bodies, established primarily to organise a common defence structure and collect imperial taxes. Since the seventeenth century, Frankfurt had been the site of assembly for both the Oberrheinischer Kreis, and the Kurrheinischer Kreis. See: M. Müller, 'Die Reichsstadt Frankfurt am Main als Kur- und Oberheinische "Kreishauptstadt" im 17./18. Jahrhundert' in: A. Amend et al. eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch- Deutschen Reich* (München 2008) 107-137; M. Müller, *Die Entwicklung des Kurrheinischen Kreises in seiner Verbindung mit dem Oberrheinischen Kreis im 18. Jahrhundert* (Frankfurt am Main 2008).

1748 and 1763.⁹⁴⁷ They regulated cooperation between the members of the *Kreis*, and made the prosecution of vagrants a communal effort and obligation, through collective patrols, etc. The ordinances of the *Oberrheinischer Kreis* used a similar stigmatising semantic towards vagrants as Frankfurt's city council employed in their local legislation. However, the regulations were much more far-reaching. In contrast to Frankfurt, where expulsion and forced labour were the only punishments formulated in the ordinances, the *Poenalordnungen* of the *Oberrheinischer Kreis* stipulated branding and even hanging as punishments for incorrigible vagrants.

In general, Frankfurt did not impose such severe punishments, and there are only a handful of references to offenders who were branded following *Poenalordnungen* of the *Oberrheinischer Kreis* in the criminal records.⁹⁴⁸ Although it was rare for the magistrates in Frankfurt to brand offenders or impose the death penalty based on the ordinances of the *Oberrheinischer Kreis*, the ordinances *did* form the legal basis upon which Frankfurt expelled many offenders. It also led to increased cooperation between Frankfurt and other members of the *Oberrheinischer Kreis* in terms of policing. Because these patrols were mainly concerned with controlling the rural territories, they were of little influence on the policing in the city. Sometimes, however, vagrants arrested in the countryside were transported to Frankfurt for interrogation.⁹⁴⁹ Overall, however, Frankfurt does not appear as an important actor in large-scale operations rounding up beggars and vagrants from the territory. Compared to some of the vagrancy removals known particularly from Southern Germany or Austria, the prosecution efforts of Frankfurt and the neighbouring territories appear to be less excessive.⁹⁵⁰

The continuous publication of ordinances prohibiting vagrancy, begging and other related practices have been read by historians as a sign of failure of the early modern state. They argued that authorities often lacked the resources as well as the legitimacy to effectively enforce policies against begging and vagrancy.⁹⁵¹ More recently, however, scholars have considered this view to be too simplistic. Karl Härter argued, for example, that the continuous publication of new vagrancy

⁹⁴⁷ The *Poenalordnung des Ober- und Kurrheinischen Kreises* of 1748 is published in: B. Althammer and C. Gerstenmayer eds., *Bettler und Vaganten in der Neuzeit (1500-1933). Eine kommentierte Quellenedition* (Essen 2013) 164-171.

⁹⁴⁸ Criminalia 3783 (1729); Criminalia 3944 (1731); Criminalia 4210 (1734); Criminalia 4945 (1739); Criminalia 5875 (1747); Criminalia 6520 (1751); Criminalia 6353 (1750); Criminalia 6957 (1754).

⁹⁴⁹ E.g. Criminalia 3695 (1728); Criminalia 3845 (1730); Criminalia 7429 (1788); Criminalia 9233 (1781). On the influence of controlling vagrancy on the development of early modern 'police forces' and policing practices: policing, see: Lucassen, 'Harmful tramps', 29-50; Härter, 'Security and cross-border political crime'; V. Milliot, 'Urban police and the regulation of migration in eighteenth-century France' in: B. de Munck and A. Winter eds., *Gated communities? Regulating migration in early modern cities* (Farnham 2012) 135-157; C. Emsley, *Crime, police, and penal policy. European experiences 1750-1940* (Oxford 2007) 63-73.

⁹⁵⁰ R. Jütte, 'Bettelschübe in der frühen Neuzeit' in: A. Gestrich ed., *Ausweisung und Deportation Formen der Zwangsmigration in der Geschichte* (Stuttgart 1995) 61-71; L. Lucassen, 'Eternal vagrants? State formation, migration and travelling groups in Western Europe, 1350-1914' in: L. Lucassen, W. Willems and M. Cottaar eds., *Gypsies and other itinerant groups. A socio-historical approach* (New York 1998) 55-73; 63.

⁹⁵¹ J. Schlumbohm, 'Gesetze, die nicht durchgesetzt werden - ein Strukturmerkmal des frühneuzeitlichen Saates?', *Geschichte und Gesellschaft* 23 (1997) 647-663; Ammerer and Fritz, 'Die Gesellschaft der Nichtsesshaften', 11.

laws showed the capacity of the state to take action. It showed their ability to adapt their policies to (perceived) social threats and realities, and to develop new forms of disciplining, sanctioning, policing, registration and so on.⁹⁵² The ordinances were effective because they required those that were affected to adapt their tactics. They did so, for example, by stealing and forging required identity documents in order to maintain their mobility and circumvent the increasing pressure authorities put on settledness.⁹⁵³ As such they still influenced the lives of vagrants, and in turn forced the authorities to react to the new survival strategies displayed by those on the road.⁹⁵⁴ Second, they were 'effective' in the sense that they successfully criminalised marginal groups and formed "the enduring stereotype of external dangerous groups which threatened internal security [...]".⁹⁵⁵ In the eyes of the authorities, the failure to eradicate begging and vagrancy was not necessarily the result of their own incompetence, but a sign of the incorrigibility of the wandering poor, which in turn strengthened the stereotype of an unruly and deviant mobile underclass.

Thus, what these paragraphs have demonstrated is that the urban authorities in Frankfurt employed increasingly restrictive and criminalising regulations concerning mobility. In order to maintain social order and economic stability, settlement in the city was bound to much more regulations than are known for a centralized state like early modern England, or the relatively open cities in the province of Holland. In order to understand how this influenced the 'urban' effect on female crime patterns, it is necessary to consider how these regulations impacted male and female mobility differently.

Working on the issue of gender and vagrancy in the early modern period, scholars initially argued that women hardly played a role when it comes to vagrancy. They assumed that the majority of vagrants were young and male.⁹⁵⁶ Claudia Ulbrich, for example, stated that 'vagrancy was predominantly a male affair'.⁹⁵⁷ According to Carsten Küther (and others), women were less likely to have to resort to a life on the streets out of economic need, because they were more likely to be considered as deserving poor, and therefore receive communal support.⁹⁵⁸ Robert Jütte argued that as wives, daughters, and domestic servants women were more bound to the home and the settled

⁹⁵² Härter, *Policey und Strafrecht*, 1074-1080.

⁹⁵³ For Frankfurt: Kamp, 'Controlling strangers - Identifying migrants'. Also: Lucassen, *Zigeuner*; Ammerer, *Heimat Straße*; Fritz, *Öffentliche Sicherheit*.

⁹⁵⁴ Härter, 'Prekäre Lebenswelten', 21-38.

⁹⁵⁵ Härter, 'Security and "Gute Policey"', 49.

⁹⁵⁶ Von Hippel, *Armut, Unterschichten, Randgruppen*, 90; Finzsch, *Obrigkeit und Unterschichten*, 242; Fritz, *Öffentliche Sicherheit*, 227-229.

⁹⁵⁷ C. Ulbrich, 'Zwischen Resignation und Aufbegehren. Frauen, Armut und Hunger im vorindustriellen Europa' in: G. Klein and A. Treibel eds., *Begehren und Entbehren. Bochumer Beiträge zur Geschlechterforschung* (Paffenweiler 1993) 167-183, 176.

⁹⁵⁸ Küther, *Menschen auf der Straße*, 28. Also: R. Jütte, 'Dutzbetterinnen und Sündfegerinnen. Kriminelle Bettelpraktiken von Frauen in der Frühen Neuzeit' in: O. Ulbricht eds., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 117-137, 121.

community than men, both economically as well as legally. He stated that in times of need women therefore experienced more pressure and social control to remain settled.⁹⁵⁹ Both Robert Jütte and Helmut Bräuer considered this ‘pressure’ on settledness as a manifestation of existing moral norms, which put more pressure on women than it did on men. Illegitimacy was one of the main causes for women to be sentenced to a life on the road, while for men it had less of a discriminatory effect.⁹⁶⁰

More recently, Otto Ulbricht argued against explanations based on a supposed ‘moral pressure on settledness’ for women.⁹⁶¹ According to Ulbricht, sexual norms had only little validity among the lower classes, as the high illegitimacy rates during this period demonstrate. Instead, Ulbricht considered that a better, more general explanation was the traditional orientation of women on home and household, while men were more oriented towards the outside world. As a result of this (supposed) rootedness in the home, women were less familiar with the world of the road and therefore may have encountered more difficulties in making the transition to life on the road in contrast to men who had experienced this as soldiers, journeymen or other labour migration.

I argue, however, that such perceptions tend to reproduce older notions of migration and gender based on a dichotomy of female settledness and male mobility. In this perspective, female mobility (apart perhaps from the migration of domestic servants) is almost automatically considered as a transgression of existing norms. There are numerous studies that show that these perceptions hold little value. In fact, Beate Althammer pointed out that even though vagrancy is still largely framed as a male phenomenon, studies on German-speaking territories reveal that women represented about 35 to 40 percent among prosecuted vagrants in the eighteenth century.⁹⁶² Nevertheless, there were significant gender differences in the way authorities framed and regulated mobility, which in turn shaped the prosecution patterns of authorities.

Controlling male and female mobility: diverging approaches

The settlement regulations and vagrancy laws in early modern Frankfurt produced a gendered labelling of ‘dangerous’ mobility. Perceptions about gender influenced the way authorities regulated migration. As a result of this, regulations to control mobility and suppress vagrancy worked out

⁹⁵⁹ Jütte, ‘Kriminelle Bettelpraktiken’, 122.

⁹⁶⁰ Jütte, ‘Kriminelle Bettelpraktiken’, 123; H. Bräuer, “... weillen Sie nit alzeit arbeit haben khan” Über die “Bettelweiber” von Wien während der frühen Neuzeit’, *L'Homme. Europäische Zeitschrift für Feministische Geschichtswissenschaft* 7 (1996) 135-143.

⁹⁶¹ O. Ulbricht, ‘Bettelei von Frauen auf dem Land in den Herzogtümern Schleswig und Holstein (1770-1810)’ in: G. Ammerer et al. eds., *Armut auf dem Lande. Mitteleuropa vom Spätmittelalter bis zur Mitte des 19. Jahrhunderts* (Wien 2010) 63-90, 65-66.

⁹⁶² For references see: Althammer, ‘Roaming men, sedentary women?’.

differently for men and women. An analysis of the framing of unwanted mobility in the vagrancy laws, and the regulatory framework concerned with migration shows that men were both at the core of images about dangerous mobility, and that at the same time male (labour) migration was much more institutionalized and considered as the norm.

The language employed by the authorities in vagrancy laws (as well as regulations concerning mobility in general) was often written from the perspective that men were the main target that needed to be addressed. Most ordinances used masculine nouns: *Landstreicher*, *Bettler*, *Vaganten*, etc.⁹⁶³ This does not mean that women were excluded from these regulations. On the contrary, authorities apparently felt the need to specifically mention that women were included as well: both in the local ordinances as well as in the ordinances of the *Oberrheinischer Kreis*. Frankfurt's begging ordinance of 1729 stated that: 'no person, young or old, foreign or local, sick or healthy, regardless of their constitution or sex, should be tempted to beg for alms'.⁹⁶⁴ In the *Poenalordnung* of 1748 directed at '*das Land-verderbliche Ziegeuner- Jauner- und anderes Diebs- Raub- Mord- wie auch Herrnlose- liederliche Bettel-Gesinde und Landstreicher*' it was even made explicit that this terminology apparently only applied to men: it was not until the sixth article of the ordinance that it stated that all the previously mentioned regulations should also apply to women.⁹⁶⁵ Apparently the terminology and stereotypes employed made it necessary to explicitly state that these regulations also included women.

Such differences may seem superficial, but were in practice influential. According to Karl Härter, authorities employed different labelling tactics for each gender. In the case of men, they were more likely to frame men who were wandering around in pairs or small groups as organised gangs of robbers, or to attribute labels as gypsy or 'beggar Jew' (*Betteljuden*) and prosecuted them criminally in turn. According to Härter, this gender-specific labelling strategy of vagrancy as a sign of organised criminal activity for men vs. survival strategy for women influenced the age structure of vagrants. In Kurmainz hardly any men aged over 50 were arrested for vagrancy. Härter, argued that this was due to the fact that vagrant men were more likely to be sentenced to capital punishment because the authorities had labelled them as dangerous thieves and robbers, whereas women could count on more mercy.⁹⁶⁶

⁹⁶³ The only ordinance specifically including the female noun, *Bettlerinnen*, was from 1708 and renewed in 1714. PO 2734 *Bettler und Vaganten sollen nicht geduldet werden* 02.02.1708.

⁹⁶⁴ PO 2984 *Gänzlich Verbot des Gassenbettelns* 12.04.1729.

⁹⁶⁵ *Poenalordnung des Ober- und Kurrheinischen Kreises* 1748, article VI: '*Allermassen nun in vorstehenden §§phis, nach unterscheid derer Fällen, gegen die Ziegeuner, Jauner und Vagabunden, männlichen Geschlechts, das nöthige Verordnet worden; also wird auch ein solches, in Ansehung der Weiber und deren Kinder, ohne unterscheid des Geschlechts, welche das 20te Jahr erfüllet haben, anbero wiederbohlet und erstreckt.*'

⁹⁶⁶ Härter, 'Prekäre Lebenswelten', 32-36.

Perhaps even more important with regard to gender differences in the regulation of migration was the fact that all the ordinances associated the nomadic existence of journeymen with begging and vagrancy. Or, perhaps to put it more precisely, the ordinances considered the unregulated moving of young artisans in search of work to be a problem that was closely associated with their attempts to suppress begging. The tradition of moving as part of their apprenticeship and professional life was crucial for urban economies in Central Europe. According to Merry Wiesner, journeymen shared a self-identity and ideal of masculinity which was centred on independence and connected to mobility. For women, however, such qualities were not tolerated at all. A sixteenth-century author wrote that ‘one thinks highly of journeymen who have wandered, but absolutely nothing of maids who have done so’.⁹⁶⁷

Over the course of the seventeenth and eighteenth centuries, authorities increasingly aimed to regulate journeymen’s mobility. Journeymen were increasingly connected with potential risks for public order, but the perceptions of young men’s masculinity connected to mobility continued to have a lasting importance for normative gender roles. More than any other group of labour migrants, the mobility of journeymen was highly institutionalised and controlled by guilds, the use of *Kundschaften* (reference letters), designated inns etc.⁹⁶⁸ In Frankfurt, every journeyman entering the city was required to go directly to his *Gesellenherberge* (a lodging house for his own particular guild) and report to the *Stubenvatter*. If there was no designated inn for his particular craft, the journeyman was not allowed to choose his lodging freely, but had to report to the senior master of the guild. This master would supervise his search for a new service and make sure the journeymen would not go around begging. In order to prevent journeymen from staying too long in town if they were unable to find a new position, the period journeymen were allowed to stay in the lodgings was restricted, usually – depending on the guild – to eight days.⁹⁶⁹ In addition to carrying passports, which were increasingly required for everyone in the early modern period, journeymen had to carry written attestations from former employers, which served a twofold purpose.⁹⁷⁰ First, they functioned as recommendations for future employers, and enabled them to examine the

⁹⁶⁷ M.E. Wiesner, ‘“Wandervogels” and women. Journeymen’s concepts of masculinity in early modern Germany’, *Journal of Social History* 24:4 (1991) 767-782, 777. Also: R. Dürr, ‘Die Migration von Mägden in der Frühen Neuzeit’ in: M. Krauss and H. Sonnabend eds., *Frauen und Migration* (Stuttgart 2001) 117-132.

⁹⁶⁸ R. Reith, ‘Circulation of skilled labour in late medieval and early modern Central Europe’ in: S.R. Epstein and M. Prak eds., *Guilds, innovation, and the European economy 1400-1800* (Cambridge 2008) 114-142.

⁹⁶⁹ PO 2410 *Was massen einige handvercks Gesellen im Land herum vagiren* 30.12.1675; PO 2429 *umb das schändliche Gassenbetteln abzuschaffen* 04.09.1679.

⁹⁷⁰ R. Brandt, ‘Die Grenzen des Sagbaren und des Machbaren. Anmerkungen zur Rechtsgeschichte des Frankfurter “Zunfthandwerks” während der Frühen Neuzeit’ in: A. Amend et al. eds. *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München 2008) 247-264, 255. On the use of passports in the early modern Frankfurt see: Kamp, ‘Controlling Strangers’; Boes, ‘Unwanted travellers’, 110. In General: V. Groebner, *Der Schein der Person. Steckbrief, Ausweis und Kontrolle im Europa des Mittelalter* (München 2004); C. Bohn, *Inklusion, Exklusion und die Person* (Konstanz 2006) 71-94.

journeymen's past working experiences. Second, and perhaps more importantly, they served to distinguish journeymen on the road from vagrants. Guild masters were ordered not to employ journeymen if they could not present valid attestations.

Domestic service, the main form of female labour migration, is often compared to the practice of tramping. In older historiography, historians considered domestic service as a form of training for future marital life and household tasks. According to this view, a young girl serving in an alien household was no different from a young man learning a trade through being an apprentice working and living in the household of his master.⁹⁷¹ In contrast to the tramping of journeymen, however, contemporaries perceived the mobility of maids as undesirable. Leaving service and moving elsewhere on their own account was a sign of independence that was intolerable in a society with deep-rooted anxieties about women living independently outside patriarchal control. According to Renate Dürr, urban and household authorities treated the migration of domestic servants with much suspicion because their mobility threatened the domestic and social order.⁹⁷²

In contrast to the migration of journeymen, maids received far less assistance in their quest for work and the control over their mobility was far less institutionalised. In contrast to some other cities, like Nuremberg, Strasbourg or Munich, where the authorities had set up systems of employment agents that were organised similarly to the control of journeymen, the domestic service market in Frankfurt was primarily organised by common law, and not institutionalised at all.⁹⁷³ Maids looking for domestic service in Frankfurt depended on informal contacts of family, friends or acquaintances.⁹⁷⁴ Often they only moved to the city after arrangements for service had already been made, because it was risky to move to the city without having a proper place to stay.

In order to prevent servants from leaving their service prematurely to find a better paid service elsewhere, Frankfurt signed a *Taxordnung* – which fixed the wages for servants and day labourers – together with the neighbouring territories Kurmainz, Kurpfalz, Hessen-Darmstadt, Nassau-Idstein, Isenburg, the county of Hanau and the Imperial City Worms in 1654.⁹⁷⁵ Apart from regulating the wages, this ordinance also implemented measures to regulate the movement of labourers, including domestic servants. Masters were required to give their servants a document when they left their service temporarily or permanently, much like the recommendation letters used by journeymen. It was supposed to serve as proof of the servant's good conduct during service and

⁹⁷¹ Dürr, 'Migration der Mägde', 117-118.

⁹⁷² Dürr, 'Migration der Mägde', 120. Also: Wiesner, 'Paternalism in practice'.

⁹⁷³ I. Kaltwasser, *Häusliches Gesinde in der freien Stadt Frankfurt am Main: Rechtsstellung, soziale Lage und Aspekte des sozialen Wandels 1815-1866* (Frankfurt 1989) 21-22; R. Koch, 'Zum Gesindewesen in Frankfurt am Main (17.-19. Jahrhundert)', *Archiv für Frankfurts Geschichte und Kunst* 59 (1985) 231-250.

⁹⁷⁴ E.g.: Criminalia 5940 (1747) folio 3; Criminalia 6848 (1753) folio 5-6; Criminalia 8765 (1774) folio 6-9.

⁹⁷⁵ Kaltwasser, *Häusliches Gesinde*, 22.

the fact that the servant had left the service legitimately.⁹⁷⁶ In contrast to journeymen, however, the use of reference letters was never implemented for domestic servants.

In the eighteenth century, the city council considered the implementation of a servant order (*Gesindeordnung*) similar to those that were in use in other cities. They argued that such an ordinance was necessary because the city was swamped with masterless people (*“eine menge schutzlose Leute”*) who pretended to be servants looking for a position, thereby circumventing the restrictions on foreigners. In order to prevent genuine domestic servants being evicted from the city together ‘with the idle scum’, the authorities considered a better regulated labour market for domestic servants to be indispensable.⁹⁷⁷

The city council decided to order the consistory to draft a *Gesindeordnung*. Overseeing the domestic service market, which was ultimately a predominantly female labour market, was apparently most fitting for an office that was in charge of policing morals. Throughout early modern Europe, there are many examples that show how urban authorities considered the regulation of female migration primarily as a matter of maintaining morality.⁹⁷⁸ Leslie Page Moch argued that this was partially related to women’s reproductive capacities and the fear of becoming responsible for illegitimate children of migrant women.⁹⁷⁹ Lynn Hollen Lees also considered that the reproductive functions of women were one of the decisive factors that the overseers of the poor took into consideration in the prosecution of female vagrants in early modern London.⁹⁸⁰ As we have seen, financial considerations were also at the heart of the prosecution of illegitimacy in Frankfurt too. In 1755 the city council issued a decree that ordered that all single foreign mothers should be expelled.⁹⁸¹ And as we will see later on in this chapter, women migrating independently were likely to be associated with lewdness and immorality.

The gendered perceptions of authorities with regard to what they considered legitimate reasons for moving are also reflected in the provision of handing out casual assistance to travellers. In an attempt to control begging and vagrancy, they offered travellers an opportunity for casual assistance (*ein Zehrpfennig*) in order to continue their journey.⁹⁸² The main aim of the city council for handing out such casual assistance, was to prevent impoverished travellers, subsistence migrants

⁹⁷⁶ PO 2265 *Mayntzischer Receß [...] allgemeiner Taxordnung* 01.05.1654.

⁹⁷⁷ Criminalia 12880 (1756) folio 11-13: *Des Schatzungs Consulenten General-Plan zu Eintreibung der Schatzungsrestanten*, 17.02.1756.

⁹⁷⁸ M. Schrover et al., ‘Introduction. Illegal migration and gender in a global and historical perspective’ in: M. Schrover et al. eds., *Illegal migration and gender in a global and historical perspective* (Amsterdam 2008) 9-37, 13.

⁹⁷⁹ Moch, *Moving Europeans*, 15.

⁹⁸⁰ Hollen Lees, *Solidarities of strangers*, 58-59.

⁹⁸¹ PO 3445 *Daß man die Lapsas, so nicht von hier, mit ihren Kindern fortschaffen solle* 18.03.1755.

⁹⁸² Similar examples also existed in other early modern cities: G.P.M. Pot, ‘Het beleid ten aanzien van bedelaars, passanten en immigranten te Leiden, 1700-1795’, *Leids Jaarboekje* (1987) 89-92; J. Boulton, ‘Double deterrence. Settlement and practice in London’s West End, 1725-1824’ in: S. King and A. Winter eds., *Migration, settlement and belonging in Europe 1500-1930s. Comparative perspectives* (New York 2013) 54-80, 68; Kuijpers, *Migrantenstad*, 297-298.

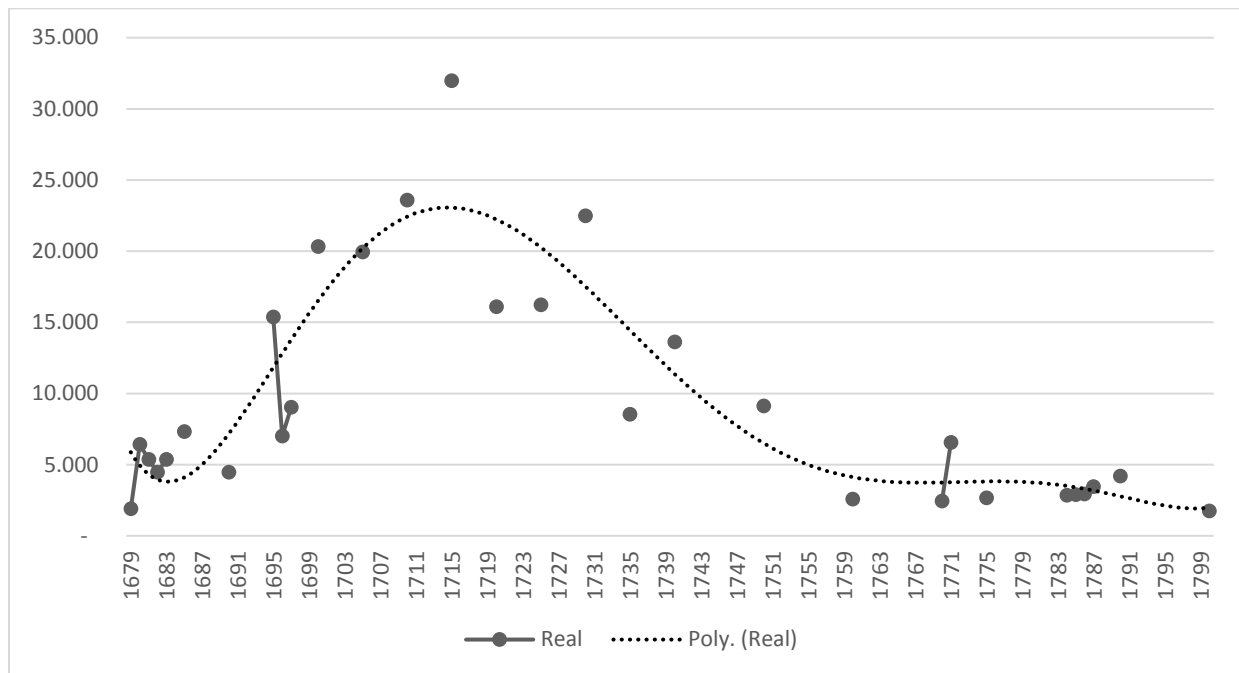
etc. from staying in town and relying on begging for their daily bread. Before the establishment of the poorhouse, foreigners could find assistance from the city council or the communal poor chest (*Almosenkasten*).⁹⁸³ The poorhouse published annual reports, listing the number of recipients of care, including the number of people that received a *Zebrpfennig*. The reports themselves were lost in WWII, but thanks to the numbers provided in the dissertation of Martin Hess on the poorhouse from 1921, it is still possible to gain an overview. Cross-references to various contemporary sources that also mentioned the number of *Passanten* for selected years made it possible to prove the reliability of the data provided by Hess.

Figure 1 shows the number of recipients since the establishment of the poorhouse. In 1680, its first full year in existence, the poorhouse had already provided 6,420 transients with a *Zebrpfennig*. By that time the city had a population of around 24,000 inhabitants, which means that a number of people as large as a quarter of the total urban population were granted a form of casual relief in order to make sure that they would continue their journey and not stay within the city. The number of recipients was at its highest in the 1710s, as a result of the increasing unsettledness due to the War of the Spanish Succession. In 1715, no fewer than 31,978 transients received assistance. The number of people granted a *viatico* that year even exceeded the total population of the city, which is estimated at about 26,400 inhabitants at that time.⁹⁸⁴ By 1730 the total number of transients who had received assistance since the establishment of the poorhouse was 777,196.⁹⁸⁵ These numbers clearly demonstrate the high level of mobility experienced by a city like Frankfurt.

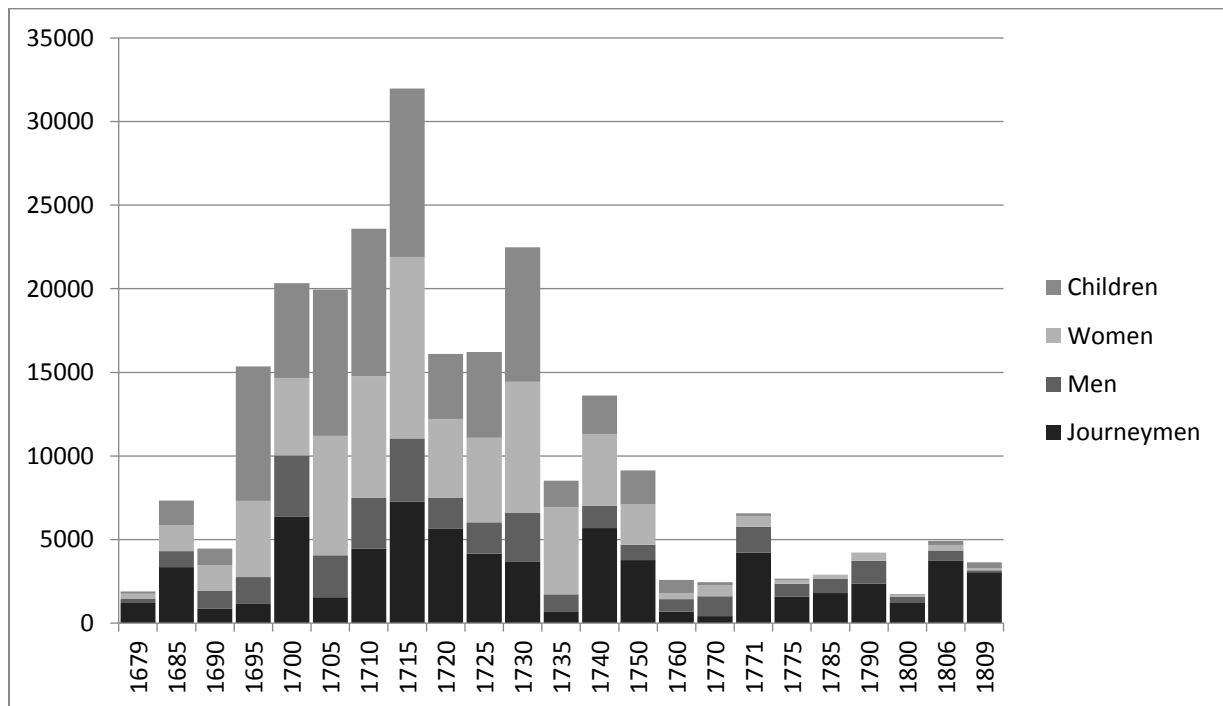
⁹⁸³ Jütte, *Obrigkeitliche Armenfürsorge*, 144-145.

⁹⁸⁴ Roth, *Stadt und Bürgertum*, 47; H. Mauersberg, *Wirtschafts- und Sozialgeschichte zentraleuropäischer Städte in neuerer Zeit. Dargestellt an den Beispielen von Basel, Frankfurt a.M., Hamburg, Hannover und München* (Göttingen 1960) 54.

⁹⁸⁵ Hess, *Frankfurter Armen-, Waisen- und Arbeitshaus*, supplement 2 and 3.

Figure 16 Number of Passanten granted travel money, 1679-1806

Sources: Haase, *Armenhausordnung* (1684); Hess, *Frankfurter Armen-, Waisen- und Arbeitshaus*, Supplement 2 and 3; P.J. Spener, *Berliner Predigten 1693-1701*. Edited by E. Beyreuther and D. Blaufuß (Hildesheim 2015) 584; *Monatliche Unterredungen einiger Guten Freunde von Allerhand Büchern und andern annehmlichen Geschichten. Allen liebhabern der Curiositäten zur Ergetzlichkeit und Nachsinnen* (1689) 251; H.G. Hüsgen, *Getreuer Wegweiser von Frankfurt am Main und dessen gebiete für Einheimische und Fremde* (Frankfurt am Main 1802) 25; Moritz, *Versuch einer Einleitung II*, 217; P. W. Gercken, *Reisen durch Schwaben, Baiern, die angränzende Schweiz, Franken, die Rheinische Provinzen, und an der Mose u.in den Jahren 1779-1787, nebst Nachrichten von Bibliotheken, Handschriften, Archiven, Röm. Alterthümern, Polit. Verfassung, Landwirthschaft und Landesproducten, Fabriken, Manufacturen, Sitten u.* (Worms 1788) 51; Faber, *Topographische Beschreibung I*, 146; F. Schäfer, *Gesichte des Frankfurter Waisenhauses von seiner Entstehung im Jahre 1679 bis zum Bezug des neuen Waisenhauses im Jahre 1829* (Frankfurt am Main 1842) 92.

Figure 17 Types of Passanten granted travel money, 1679-1806

Source: Hess, *Frankfurter Armen-, Waisen- und Arbeitshaus*, supplement 3.

After the 1730s, the number of recipients granted travel money decreased remarkably. This decline, however, did not affect all groups of recipients. The data of Hess make it possible to get more information on the composition of the groups of transients granted *Zehrpfennige*. Journeymen were registered separately from other “*allerhand Passanten*”: men without a profession, women and children. Until the 1730s they made up a considerable share among the recipients of casual assistance: they accounted for approximately 1/3 of all recipients and 40% if we include the artisans from the calculations. According to Hess, they included many soldiers’ wives and their children. So how come the authorities became increasingly restrictive regarding those to whom they granted assistance?

Hess argued that the existence of new labour opportunities for women in the developing proto-industry and new manufactories meant that fewer women had to move around in order to look for work. Similarly, the rise of standing armies would have provided new employment opportunities for men without any trained skills.⁹⁸⁶ Such an explanation, however, seems unlikely. First, the data provided by Hess do not specify whether or not the men and women granted assistance actually came from regions of developing proto-industry. Data provided by Robert Jütte on the origin of recipients in the first half of the sixteenth century reveal that poor transients in Frankfurt came from a wide geographical range: more than half originated from places beyond a radius of 150km. Moreover, the majority were not rural migrants, but originated from other cities. Of course, migration patterns are always subjected to change, and it is not possible to draw conclusions for the eighteenth century based on the data of Jütte. Still, they are a good reminder of the fact that migration flows to large cities like Frankfurt were not only comprised of migrants from the surrounding countryside, but also from other cities. Second, the relationship between declining mobility and expanding female labour opportunities due to proto-industrialisation are not as straightforward as suggested by Hess. In some regions there are indeed indications that cities experienced less inward migration as rural industries developed.⁹⁸⁷ Other regions, for example south-west Germany, saw a more complex change in migration flows to the city, and actually witnessed a ruralisation of migration flows.⁹⁸⁸ Third, there are no indications that the number of mobile poor decreased over the eighteenth century. In fact, as we will see below, data gathered for this period seem to indicate that the opposite was rather the case. What is even more telling is that the number of women amongst those arrested for vagrancy during the second half of the eighteenth century in the German speaking territories was very substantial.⁹⁸⁹

⁹⁸⁶ Hess, *Armen- Waisen- u. Arbeitshauses*, 93.

⁹⁸⁷ Moch, *Moving Europeans*, 53.

⁹⁸⁸ McIntosh, *Urban decline*, 174.

⁹⁸⁹ Althammer, ‘Roaming men’.

Thus, the disappearing of people on the move cannot serve as a sufficient explanation as to why authorities no longer granted assistance to people other than journeymen. Rather, the developments should be considered as a reflection of changing attitudes on the part of the authorities. The mobility of women associated with the army, for example, became less tolerated throughout the period. The rise of standing armies during the early modern period had a massive impact on women with connections to the military. Traditionally, women had played an important role in the provisioning and care of armies, as sutlers, laundresses and seamstresses. As the early modern armies became more professionalised, these roles were taken over by the state, who increasingly restricted the role of women in the armies.⁹⁹⁰ Soldier's wives and daughters following their husbands and fathers now faced the risk of being labelled as vagrants or prostitutes (see below). In addition to this, access to marriage for soldiers was restricted, as a result of which many women who had children with soldiers found themselves in the precarious position of having to take care of illegitimate children.⁹⁹¹ Frankfurt was known as a (European) recruitment centre, and attracted many men looking for employment with female family members and lovers following their tracks.⁹⁹²

The deeply rooted tradition of tramping, on the other hand, not only continued to be tolerated, but was also supported by the government. The practice of providing assistance to journeymen on the move existed throughout the Holy Roman Empire.⁹⁹³ It was not until well into the late nineteenth century that the formal and informal infrastructures aiding this type of mobility

⁹⁹⁰ B. Engelen, *Soldatenfrauen in Preußen. Eine Strukturanalyse der Garnisonsgesellschaft im späten 17. und im 18. Jahrhundert* (Münster 2005); K. Hagemann and R. Pröve eds., *Landsknechte, Soldatenfrauen und Nationalkrieger. Militär, Krieg und Geschlechterordnung im historischen Wandel* (Frankfurt 1998); M. Asche, 'Krieg, Militär und Migration in der Frühen Neuzeit. Einleitende Beobachtungen zum Verhältnis von horizontaler und vertikaler Mobilität in der kriegsgeprägten Gesellschaft Alteuropas im 17. Jahrhundert' in: M. Asche et al. eds., *Krieg, Militär und Migration in der Frühen Neuzeit* (Münster 2008) 11-36, 25-26; Lucassen and Lucassen, 'Mobility Transition Revisited', 24-25; G. Parker, *Military innovations and the rise of the West, 1500-1800* (2nd edition: Cambridge 1996) 77-78; J. Hurl-Eamon, 'The fiction of female dependence and the makeshift economy of soldiers, sailors, and their wives in eighteenth-century London', *Labor History* 49:4 (2008) pp. 481-501; T. Cardoza, 'Habits appropriate to her sex'. The female military experience in France during the age of revolution' in: K. Hagemann, G. Mettele and J. Rendall eds., *Gender, war and politics. Transatlantic Perspectives, 1775-1830* (New York 2010) 188-205.

⁹⁹¹ PO 2978 *Weibspersonen soll vorzüglich mit Soldaten unzünftiger Umgang verboten seyn* 01.02.1729. E.g.: Criminalia 2482 (1706); Criminalia 6131 (1748); Criminalia 6632 (1752); Criminalia 6986 (1753-54); Criminalia 7744 (1761); Criminalia 10036 (1791).

⁹⁹² J. Kamp, 'Between agency and force. The dynamics of desertion in a military labour market, Frankfurt am Main 1650-1800' in: M. van Rossum and J. Kamp eds., *Desertion in the early modern world. A comparative history* (London 2016) 49-72. For examples of soldier's wives, widows and daughters coming to Frankfurt following their husbands and fathers: Criminalia 2002 (1694); Criminalia 3290 (1723-1726); Criminalia 4227 (1734); Criminalia 4945 (1736-42); Criminalia 6094 (1748-1749); Criminalia 8504 (1770); Criminalia 8790 (1774-1776); Criminalia 10086 (1791); Criminalia 10392 (1795).

⁹⁹³ K.J. Bade, 'Altes Handwerk, Wanderzwang und Gute Policey. Gesellenwanderung zwischen Zunftökonomie und Gewerbereform', *Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte* 69:1 (1982) 1-37, 15; S.R. Epstein, 'Labour mobility, journeyman organisations and markets in skilled labour in Europe, 14th-18th century' in: M. Anrout and P. Monnet eds., *Le technicien dans la cité en Europe occidentale 1250-1650* (Rome 2004) 251-269, 252; Reith, 'Circulation of skilled labour', 129-130; A. Steidl, *Auf nach Wien! Die Mobilität mitteleuropäischen Handwerks im 18. und 19. Jahrhundert am Beispiel der Haupt- und Residenzstadt* (München 2003).

were dismantled by the authorities.⁹⁹⁴ The gendered perceptions of authorities created a complex paradox. Male mobility outside the parameters of legitimate labour migration was labelled as a massive danger to public order and increasingly associated with organised criminality. At the same time, the regulation of male labour migration was highly institutionalised and designed to facilitate (controlled) mobility, while women's mobility was perceived as a threat to the existing domestic and social order associated with immorality.

The decline in the number of people granted assistance, in particular people moving outside the framework of legitimate tramping traditions, coincided with the increasing criminalisation of mobility and ordinances issued both by Frankfurt's local urban authorities and the *Oberrheinischer Kreis* in the period between 1720 and 1760 (see above). As we will see below, this period also witnessed an increase in the prosecution of mobility offences by the criminal investigation office.

Mobility as a crime before the Verhöramt

The previous paragraphs have demonstrated how begging and vagrancy were increasingly criminalised through various police ordinances. But how were these ordinances enforced in practice? We know that even though the authorities aimed to strictly control migration into the city, many men and women defied the norms that restricted their mobility. Women *did* move to the city, and often did so independently or together with other women. Thus, they did so outside the parameters of what was considered legitimate for women. But to what extent were mobility offences prosecuted and sanctioned criminally, and how was this gendered? The following paragraph investigates the prosecution practices regarding begging and vagrancy in early modern Frankfurt.

Begging and vagrancy were not listed as acts that were punishable with corporal and capital punishments in the *Carolina* (1532), the central criminal law code of the Holy Roman Empire. But even though begging and vagrancy were not considered as felonies, they were already strongly associated with criminality in the law code.⁹⁹⁵ In the *Carolina*, authorities were urged to watch all suspicious beggars and vagrants closely in order to prevent crime and maintain public order.⁹⁹⁶ As demonstrated above, over the course of the seventeenth and eighteenth centuries the city council of Frankfurt issued several police ordinances that prohibited begging and criminalised vagrancy

⁹⁹⁴ B. Althammer, 'Vagabonds in the German Empire. Mobility, unemployment and the transformation of social policies (1870–1914)' in: L. Raphael ed., *Poverty and Welfare in Modern German History* (New York 2016) 78–104.

⁹⁹⁵ On the 'uniqueness' of vagrancy as a criminalised state of being, rather than a criminal act, see: P. Ocobock, 'Introduction. Vagrancy and Homelessness in Global and Historical Perspective' in: A.L. Beier and P. Ocobock eds., *Cast out. Vagrancy and Homelessness in Global and Historical Perspective* (Athens 2008) 1–34, 1.

⁹⁹⁶ T. Bauer, '"Es solt yhe niemand unter den Christen betteln gahn". Zur Geschichte der Bettler in Frankfurt am Main', *Archiv für Frankfurts Geschichte und Kunst* 62 (1993) 91–100, 95.

and mobile poverty in general. Despite this increasing intolerance towards unsettled individuals and mobile groups, neither begging nor vagrancy were listed as separate offences in the regulation of the criminal investigation office of 1788. The regulations merely stated that the *Verhöramt* should monitor all ‘suspicious’ persons that arrived in the city, in order to prevent crime.⁹⁹⁷ This means that vagrancy did not belong to the jurisdiction of the high criminal court, but was considered to be a petty offence.

Although the regulations did not list begging or vagrancy as separate offences, they considered them a state of being that allowed for a differentiated legal treatment by the investigators of the *Verhöramt*. In cases of petty crimes, the investigators of the *Verhöramt* had the jurisdiction to impose punishments themselves, instead of having to transfer the case to the city council. If the suspect was a ‘wandering vagrant without a place of residence’, they had the authority to impose punishments of up to three months of imprisonment or hard labour, and to expel the offenders from the city and its territory. However, if the suspects were persons of good standing or citizens, the *Verhöramt* could only keep them in custody or impose fines.⁹⁹⁸

For the most part, the prosecution and expulsion of foreign beggars and vagrants in the city was the responsibility of the overseers of the poor and other lower policing officials, such as the *Gemeine Weltliche Richter*. In 1498, the city council employed the first beadles *Bettelvögte* in order to police and oust foreign beggars from the city. They remained in charge throughout the early modern period (in the eighteenth century they were called *Armenknechte*). Their number increased from two at the beginning of the early modern period to five by the late seventeenth century and increased to a total of ten in the second half of the eighteenth century. They were increasingly accompanied in their task by soldiers of Frankfurt’s army, who patrolled the streets.⁹⁹⁹

Unfortunately, lists of the number of arrested and expelled beggars have not been preserved in the archives or were lost together with the archives of the poorhouse as a result of the bombings in WWII. Nevertheless, scattered references in other sources allow us to gain an idea of the number of people that were involved. In 1786, 470 beggars were granted *Zehrgeld* and expelled from the city. A year later, a total of 677 beggars were arrested, while 551 were given *Zehrgeld*. Another year later, close to a thousand beggars were arrested (970) and 713 were given *Zehrgeld*.¹⁰⁰⁰ During this time, the city had approximately 36,000 inhabitants, which means that the number of arrested/expelled beggars represented between 1.5 and 2.5% of the entire population. This corresponds with estimates for other regions during this period. For the eighteenth century,

⁹⁹⁷ PO 4346 *Verordnung und Unterricht für das peinliche Verhör*=*Amt der Reichs Stadt Frankfurt* 04.12.1788 § 6.

⁹⁹⁸ PO 4346 *Verordnung und Unterricht für das peinliche Verhör*=*Amt der Reichs Stadt Frankfurt* 04.12.1788 § 34.

⁹⁹⁹ Hess, *Frankfurter Armen-, Waisen- und Arbeitshaus*, 91-92.

¹⁰⁰⁰ Hess, *Frankfurter Armen-, Waisen- und Arbeitshaus*, table 1 and 2; J. H. Faber, *Topographische, politische und historische Beschreibung der Reichs- Wahl- und Handelsstadt Frankfurt am Mayn*. Vol. 1. (Frankfurt am Main 1788) 146.

historians have estimated the share of unsettled people among the population quite differently. Carsten Küther proposed a share of 10% for the second half of the eighteenth century, but his estimates have been contested by most other historians. Rather, they considered a share of between 2 to 4% to be accurate.¹⁰⁰¹

Thus, begging and vagrancy primarily belonged to the responsibility of the city's poor relief system, and not that of the criminal investigation office. Cases were often only transferred to the *Verhöramt* if vagrants were suspected of other criminal offences like theft or fraud, or if the authorities suspected connections with larger groups of criminals. It may come as no surprise, therefore, that numerically speaking, begging and vagrancy and other related mobility offences were of little importance in terms of the types of prosecuted criminal offences in early modern Frankfurt. Crimes against the authorities and public order, which included vagrancy and other related offences, made up just fewer than 16% of all investigated criminality before the *Verhöramt*.¹⁰⁰² Of the 1,898 public order offences, 431 investigations concerned vagrancy and other related offences, which means that they made up slightly less than a quarter (22.7%) of the offences in this category.¹⁰⁰³

When comparing this number to the total number of beggars expelled from the city in a single year, it becomes clear that the *Verhöramt* investigated only a fraction of all sanctioned mobility in Frankfurt during this period. Despite the fact that these cases only represent a minority, they allow us to trace the increased anxieties of the authorities. After all, they reflect when, why and how authorities considered a case to be serious enough to be investigated by the criminal investigation office. They are therefore particularly suitable to trace gendered perceptions of unwanted mobility. The intensity of prosecution varied considerably throughout the period. Most of the cases are from the period between the 1730s and the 1770s.¹⁰⁰⁴ This coincides with a period of intensified prosecution efforts in general: more cases were handled by the *Verhöramt* in this period than at any other time in the early modern period. The same period was characterised by an intensified association of vagrancy and criminality in the police ordinances, both in Frankfurt as well as in the neighbouring territories.¹⁰⁰⁵ Not all mobility crimes, however, were prosecuted with the same intensity at the same time. Collecting alms with false documents, for example, primarily

¹⁰⁰¹ Küther, *Menschen auf der Straße*, 20; Härter, *Policey und Strafjustiz*, 988; Schubert, *Arme Leute*, 3-5; Von Hippel, *Armut, Unterschichten, Randgruppen*, 89-90.

¹⁰⁰² IfSG, Criminalia 1600-1806, see appendix figure 6.

¹⁰⁰³ Because some offenders were prosecuted for a combination of offences, the total number is lower than the accumulated number of offenders in table 3.

¹⁰⁰⁴ See appendix figure 7.

¹⁰⁰⁵ Härter, *Policey und Strafjustiz*, 989-990.

occurred in times of war or other social crises, when it was common to go around and collect alms to rebuild burnt down churches, etc.¹⁰⁰⁶

Table 3 shows that the share of women among mobility offences varied considerably: from less than a quarter of all cases related to begging/vagrancy and collecting alms with false documents to more than a third of the ‘suspicious foreigners’ (*verdächtige Fremde*) arrested, more than half of the violators of banishment and even close to three-quarters of all gypsies arrested. With the exception of begging/vagrancy, these patterns correspond with what we know from other places in the Holy Roman Empire. As will be discussed in more detail below, women were usually well represented among violators of banishment. Despite the fact that gypsies were increasingly criminalised in police ordinances during the eighteenth century, and their presence prohibited in the entire *Oberrheinischer Kreis*, including Frankfurt, the total number of prosecutions is very low. Moreover, the cases were concentrated between the 1730s and the 1760s. Leo Lucassen has argued that the intensified prosecution of vagrants and gypsies was connected to pressure on military recruitment markets and the need to match the demand for manpower.¹⁰⁰⁷ This stimulated the authorities to intensify prosecution efforts for men to be sentenced with military labour. However, these policing efforts were more concentrated on the countryside, rather than in cities. This helps explain why women were overrepresented among those arrested as gypsies in early modern Frankfurt. Cities were considered too risky for men to enter, which is why families often sent the women to the city instead.¹⁰⁰⁸ They were less likely to be arrested, and if they were, they were more likely to receive favourable treatment. The numbers therefore reflect a division of labour which was directly influenced by the security policies of the authorities.¹⁰⁰⁹

¹⁰⁰⁶ Appendix table 2.

¹⁰⁰⁷ Lucassen, *Zigeuner*, 53. Also: Härter, *Policey und Straffjustiz*, 951.

¹⁰⁰⁸ E.g. Criminalia 2299 (1701); Criminalia 3944 (1731); Criminalia 6291 (1750); Criminalia 7409 (1759).

¹⁰⁰⁹ Härter, *Policey und Straffjustiz*, 992-997.

Table 20 Men and women prosecuted for ‘mobility offences’, 1600-1806

Offence	M	%	F	%
Begging/vagrancy	119	75.8%	38	24.2%
‘Acting suspiciously’	71	66.4%	36	33.6%
Illegal return/breaking banishment	100	48.8%	105	51.2%
Collecting alms with false documents	78	75.7%	25	24.3%
Gypsies*	12	26.1%	34	73.9%
Total	380	61.5%	238	38.5%

Source: Criminalia, 1600-1806.

Based on what we know for other regions in the Holy Roman Empire, the involvement of women prosecuted as vagrants in Frankfurt, on the other hand, appears to be rather low by comparison. Most, recent studies on early modern Germany have estimated a female share of 35 to 40%, and accepted a ratio of 2 to 3.¹⁰¹⁰ These data, however, are mostly based on a different type of source: *Gauner- and Diebslisten*. They contained information both of individuals that were actually prosecuted as well as individuals who were identified during the interrogations of others, but who were never formally prosecuted. *Gauner- and Diebslisten* served to facilitate the policing efforts of the authorities and were intended to function as a reference list.¹⁰¹¹ Thus, these sources are significantly different from the investigation records of Frankfurt. In the latter case, property offenders who were labelled as vagrants are not considered in the calculation, while in the case of *Gauner- and Diebslisten* they were. In the eighteenth century, roughly 20% of the property offenders in Frankfurt were identified as beggars or vagrants.¹⁰¹²

* Gypsies were not the only ethnic/religious minority that faced criminalisation during the early modern period. In many police ordinances published in the eighteenth century, poor Jews (*Betteljuden*), particularly from eastern Europe, were increasingly associated with criminality. They are not listed separately here, because, unlike gypsies, Jews were never criminalised as a group (see below). The cases in this table only relate to cases in which individuals were prosecuted simply for being labelled as gypsies. There are other cases in which individuals who were prosecuted for theft, for example, were labelled as gypsies, but these are not listed here. See also: Boes, *Crime and punishment*, part III.

¹⁰¹⁰ For numbers, see: Ammerer, *Heimat Straße*, 131; O. Ulbricht, ‘Bettelei von Frauen auf dem Land in den Herzogtümern Schleswig und Holstein (1770-1810)’, in G. Ammerer et al. eds., *Armut auf dem Lande* (Wien 2010) p. 65; H. Bräuer, *Armenmentalität in Sachsen 1500 bis 1800* (Leipzig 2008) 45; G. Fritz, ‘Eine Rotte von allerhandt räuberischem Gesindl.’ *Öffentliche Sicherheit in Südwestdeutschland vom Ende des Dreißigjährigen Krieges bis zum Ende des alten Reiches* (Ostfildern 2004) 228; R. Jütte, ‘Dutzbetterinnen und Sündfegerinnen. Kriminelle Bettelpraktiken von Frauen in der Frühen Neuzeit’ in: O. Ulbricht eds. *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 117-137, 132-133; H. Bräuer, ‘...weillen Sie nit alzeit arbeit haben khan.’ Über die ‘Bettelweiber’ von Wien während der frühen Neuzeit’ *L’Homme Z.F.G.* 7 (1996) 135-143; Härter, *Policey und Straffjustiz*, 992-993, 1091; Althammer, ‘Roaming Men, Sedentary Women?’; A. Blauert and E. Wiebel, *Gauner und Diebslisten. Registrieren, Identifizieren und Fahnden im 18. Jahrhundert* (Frankfurt am Main 2001) 57; Küther, *Menschen auf der Straße*, 29; Scheffknecht, ‘Arme Weiber’, 94; Schubert, *Arme Leute*, 276; A. Blauert, ‘Diebes- und Räuberbanden in Schwaben und in der Schweiz, am Bodensee und Rhein im 18. Jahrhundert’ in: H. Siebenmorgen ed., *Schurke oder Held? Räuber und Räuberbande* (Sigmaringen 1995) 57-64, 60.

¹⁰¹¹ On this type of sources, see: Blauert and Wiebel, *Gauner- und Diebslisten*, 12-31.

¹⁰¹² Eibach, *Frankfurter Verhöre*, 56.

More importantly, however, the investigation office only examined a fraction of all mobility offences. It is likely that the share of women was higher before the other lower policing institutions, and that in the case of women, authorities were less inclined to transfer their case to the *Verhöramt*. Although the number of men and women actually prosecuted for vagrancy before the *Verhöramt* was relatively low over the two centuries, there were fluctuations over time. In the seventeenth century, hardly any vagrancy cases were investigated by the criminal prosecution office: it was still primarily a social order offence handled by the overseers of the poor. It was not until the 1740s onwards that vagrants were prosecuted by the *Verhöramt* on a more regular basis.

Women arrested as vagrants were considered as less of a threat to public security than men. These considerations are clearly demonstrated in a case from 1718. A group of vagrants, consisting of two families, including seven women, four men and seven children, was arrested just outside the city at the *Galluswarte* by a general patrol. The case was transferred to the *Verhöramt* because the authorities suspected that some of those arrested, in particular the men, might be connected to a wanted gang of robbers. But not all those arrested were investigated by the *Verhöramt*. Three of the seven women were released together with their children, given a warning not to enter the city's territory again and escorted across the border. The other four women and their husbands, however, were interrogated by the *Verhöramt*. After a first round of interrogations, the investigators proposed to the city council that the women and children should be released because they could no longer be held in custody without further 'inconvenience and costs'.¹⁰¹³ For the men, however, they sent out correspondence to neighbouring cities to see if they could be connected to other street robberies. Apparently, in the eyes of the authorities, the women did not require further investigation, even though they were married to men they suspected of robbery and other criminal activities.¹⁰¹⁴

The sources of women arrested for vagrancy or other mobility-related offences demonstrate that a mobile (and unsettled) life was certainly not the "prerogative" of men. They show that early modern female mobility was much more diverse than the migration of domestic servants, and marriage or family migration.¹⁰¹⁵ Many women defied gender norms that dictated a settled life at home. The following biographies serve as an example to illustrate the diversity of women arrested for vagrancy. The road did not just belong to young single women: the sources include women of all ages, different marital status, and at all stages of their life. Women moved alone, together with casual acquaintances, and spouses or other family members. The first example

¹⁰¹³ Criminalia 9233 (1781) Folio 11. Original: '[...]ob es nicht rathsam seyn mögte, die arrestirte Weiber mit ihren Kindern los zu lassen, weil diese ohne vielen Unlust und Kosten nicht wohl länger in Arrest behalten werden könnten.'

¹⁰¹⁴ Also see: Criminalia 1189 (1660) 'die weiber mögten aber ohne fernerer straff erlassen und fortgeschafft werden'.

¹⁰¹⁵ Hahn, *Historische Migrationsforschung*, 138-151.

is perhaps closest to the image of early modern female migration encountered in the literature: that of young single migrant women responding to the demand for domestic servants in the city.¹⁰¹⁶ In 1765, nineteen-year-old Margaretha Neubertin from Würzburg was arrested together with a woman called Anna Maria Seibelin, for sleeping in one of the garden sheds outside the city, on Frankfurt's rural territory close to Bockenheim. They had previously worked together as *Viehmägde*, taking care of the animals of the innkeeper of *In dem Grünen Baum*. After he had dismissed them because there was no further work for them, the two women agreed to spend the night in the garden shed, as the city gates were closed and they would not be able to enter the city without paying a fee. According to Margaretha's testimony, she had previously worked in Mainz for six months on a farm, helping out during the harvest season, after which she had come to the Frankfurt area in the hope of finding service. She knew the city well, as she had already served as a domestic servant for a year with a baker in Sachsenhausen.¹⁰¹⁷ Anna Maria's mobility patterns were largely concentrated within the same region and determined by the availability of labour. She depended on knowledge and acquaintances she had gathered along the way, and her mobile life was 'interrupted' by longer periods of settledness.

More examples of female mobility are revealed in a case from 1764, when several people were arrested as 'suspicious foreign vagrants' during the *Herbstmesse*, and interrogated by the investigation office.¹⁰¹⁸ Among the seventeen suspects were four women, each with a different profile and mobility background. Magdalena Müllerin, aged 26, was born in Berlin and according to her statements she earned a living sewing and knitting. She did not have a fixed residence, and had previously stayed in the region around Cologne. Magdalena also had an illegitimate child of a year and a half, whose father was a French soldier.¹⁰¹⁹ The second woman that was interrogated was Maria Kleeberin, aged 24 and born in Maastricht (Netherlands). She had been married to a *Nassauischer* soldier, who had passed away. Maria stated that she made a living knitting and washing and that she had come to the city to visit her sister.¹⁰²⁰ The third woman, Dorothea Louisa, née Wieherkin, from Lubin (Poland), was arrested together with her husband Gottfried Henrich Castrop, 54. According to their statements Gottfried and Dorothea were settled in Emden, where they ran a business. The couple were able to show a passport from Emden, and declared that they

¹⁰¹⁶ Moch, *Moving Europeans*, 15; M. Mitterauer, 'Gesindedienst und Jugendphase im europäischen Vergleich', *Geschichte und Gesellschaft* 11 (1985) 177-204; J. Kok, 'The Family Factor in Migration Decisions' in: J. Lucassen, L. Lucassen and P. Manning eds., *Migration History in World History. Multidisciplinary Approaches* (Leiden 2010) 215-250, 225.

¹⁰¹⁷ Criminalia 8144 (1765).

¹⁰¹⁸ IfSG, Repertorium 251, 304; Criminalia 8055 (1764). Original: 'Protocollum Examinis die während der Herbstmesse als verdächtig in arrest gebrachte fremde Landstreicher und dergleichen Weibspersonen'.

¹⁰¹⁹ Criminalia 8055 (1764) folio 2-3. 'Sie habe keine sichere Wohnung, ihr Aufenthalt seije bisher in der gegend von Cöln gewesen [...] Sie habe ein Kind von einem frantz. Soldaten welches 1 1/2 Jahr alt seije'.

¹⁰²⁰ Criminalia 8055 (1764) folio 3. Original: 'Sie seije an einem Nassauischen Soldat verheurathet gewesen, welcher aber verstorben. Sie nähre sich mit Stricken und Waschen, seije erst in die Stadt gekommen um ihre Schwester aufzusuchen'.

had come to the city to purchase wine for their business.¹⁰²¹ Finally, the last woman was Anna Sophia, 28, a baptised Jewess from Mainz, who was arrested together with her husband Mattheus Schwaller from Trier, aged 36. The couple earned a living as pedlars, as a result of which they were often on the road, although they were domiciled in Ammerbach. They, too, had come to Frankfurt to purchase merchandise. In the end, all four women (and their husbands) were ordered to leave the city, and, with the exception of Anna Sophia and her husband, they were escorted out of the city gates by the city's militia, and warned not to return.

These examples are not exhaustive of the diversity of female mobility demonstrated in the sources. What they show is that women were on the move as singles, as breadwinners for their family, or together with their husbands as a working couple. A considerable number of females prosecuted as vagrants belonged to the military.¹⁰²² Generally speaking, female mobility was more regional than that of men, although there are many examples of women travelling considerable distances, defying the formal restrictions imposed on their mobility.¹⁰²³ Anna Margretha Metzgerin from Wormbs was arrested four days after her arrival in Frankfurt for begging with false papers. During her interrogation she declared that she had obtained the papers from a woman called Rothe Liese or 'die Maijnzerin' during an earlier stay in Frankfurt and that she had used them to go around begging in Hessen. Moreover, she had previously attempted to travel to Holland with another false document, but could not make it passed Bonn, where her documents were ripped into pieces by the authorities.¹⁰²⁴

¹⁰²¹ Criminalia 8055 (1764) folio 6-7. Original: 'seijen hierber gekommen um einen Weinbandel zu etabliren, und damit in Emden Wirthschaft zu treiben [...] und wolten so balden sie nun ihren Wein hier eingekauft sogl. wieder von hier wegreisen'.

¹⁰²² E.g. Criminalia 2002 (1694); Criminalia 2040 (1695); Criminalia 5279 (1741); Criminalia 7216 (1755); Criminalia 7409 (1759); Criminalia 7691 (1761); Criminalia 7718 (1761); Criminalia 8055 (1764); Criminalia 9900 (1789).

¹⁰²³ On gender differences in geographic radius of migrants: Moch, *Moving Europeans*, 50; Hahn, *Historische Migrationsforschung*, 120-121; McIntosh, *Urban decline*, 171; S. Kienitz, *Unterwegs. Frauen zwischen Not und Norm. Lebensweise und Mentalität vagierender Frauen um 1800 in Württemberg* (Tübingen 1989) 30; Bräuer, 'Bettelweiber', 139; H. Wunder, *Er ist die Sonn', sie is der Mond. Frauen in der Frühen Neuzeit* (München 1992) 179.

¹⁰²⁴ Criminalia 2080 (1696).

Map 2 Origin of vagrants arrested in Frankfurt

Source: Criminalia based on references in this chapter.

Only few of the men and women prosecuted before the *Verhöramt* can be characterised as permanently homeless and truly unsettled. Many found temporary employment, which allowed them to stay in a place for a least a period of time or travelled as itinerant workers and artisans. In many cases, they also remained connected to their home community, to which they occasionally returned. Even families or groups that can be considered as wandering more or less permanently had connections within the settled community.¹⁰²⁵ Often their mobility followed established routes driven by seasonal labour opportunities or the prospect of alms, through places where they were sure to find a place to stay.¹⁰²⁶ During Jewish holidays, for example, alms were handed out to impoverished Jews in Frankfurt's ghetto, attracting many poor to the city.¹⁰²⁷

¹⁰²⁵ E.g. Criminalia 7718 (1761); Criminalia 8055 (1764); Criminalia 8361 (1763).

¹⁰²⁶ G. Ammerer, 'Die "Betteltour"'. Aspekte der Zeit- und Raumökonomie nichtsesshafter Armer im 18. Jahrhundert' in: G. Ammerer et al. eds., *Armut auf dem Lande. Mitteleuropa vom Spätmittelalter bis zur Mitte des 19. Jahrhunderts* (Wien 2010) 37-62.

¹⁰²⁷ Criminalia 9079 (1778).

Certainly not everyone who could formally be considered as unsettled by the authorities was indeed prosecuted. Although anti-begging laws demanded strict enforcement and heavy punishments, they were not always carried out rigorously. Despite centralised regulations, local authorities tried to differentiate between ‘harmless’ and ‘harmful’ wandering. In certain cases, suspects arrested as suspicious foreigners were able to clear their name and continue their journey, sometimes even without having a formal place of residence.¹⁰²⁸ The local population continued to assist illegal beggars and there are several examples of altercations between beadle and locals trying to free arrested beggars.¹⁰²⁹ Nevertheless, the regulations created a legal framework that increased the precariousness for foreigners either visiting only for a couple of days, or looking for a position with the aim of staying for a longer time.

Precarious independence

The consequences of the authority’s attempts to control migration (in particular of the mobile poor and travelling groups) through vagrancy regulations, poor laws and the implementation of security policies went beyond the mere prosecution of vagrancy and begging.¹⁰³⁰ Leading a mobile life, not (yet) having a permanent place of residence or being sufficiently incorporated in the urban community could be enough for authorities to consider an individual to be a potential criminal. Contrary to locals, who could not be punished based on a mere suspicion, migrants could be punished with the so-called *Verdachtsstrafe*. This was a proceeding in which an offender who could not be found guilty, but whom the authorities highly suspected, could be expelled from the city without a formal conviction for a criminal act.¹⁰³¹ This increased the precarious position of migrants in early modern towns.

Historians have often highlighted the marginal and hazardous positions of migrant women in early modern towns, and have cited this as one of the explanations for the relatively high level of female involvement in criminality during this period.¹⁰³² In a city with strong formal control measures against outsiders, women had fewer opportunities to settle independently. This had a

¹⁰²⁸ Härter, *Policey und Straffjustiz*, 1082-1083.

¹⁰²⁹ Eibach, *Frankfurter Verböte*, 153-154.

¹⁰³⁰ For similar processes in Cologne see: A. Küntzel, ‘“Herrnloses Gesindel” und “Unqualificirte” Fremde in der freien Reichsstadt Köln im 18. Jahrhundert’, *Geschichte in Köln* 53 (2006) 63-74.

¹⁰³¹ B. Thäle, *Die Verdachtsstrafe in der kriminalwissenschaftlichen Literatur des 18. und 19. Jahrhunderts* (Frankfurt am Main 1993); Härter, *Policey und Straffjustiz*, 489-490; A. Roth, ‘Verdachtsstrafe’ in: *Handwörterbuch zur Deutschen Rechtsgeschichte*. Vol. 5. 681-684.

¹⁰³² J.M. Beattie, *Policing and Punishment in London. 1660-1750. Urban Crime and the Limits of Terror* (Oxford 2001) 63-73; A. Schmidt and M. van der Heijden, ‘Women Alone in Early Modern Dutch Towns. Opportunities and Strategies to Survive’, *Journal of Urban History* 42 (2016) 21-38; M. Van der Heijden, *Women and Crime in Early Modern Holland* (Leiden 2015) 161; Moch, *Moving Europeans*, 146; G. Schwerhoff, ‘Kriminalität in der Reichsstadt Köln um 1700. Ein neuer Blick vom Turm’, *Geschichte in Köln* 55 (2008) 63-86, 70-72; J. Kamp, ‘Female Crime and Household Control in Early Modern Frankfurt am Main’, *The History of the Family* 21 (2016) 531-550, 538-539; Rublack, *Crimes of Women*, 66-69.

rather contradictory effect. On the one hand, it meant that more women were incorporated in social support networks. The strong regulations meant that cities like Frankfurt provided less relaxation of paternalistic, patriarchal control than women in more open cities might have enjoyed. At the same time, the position of women outside the controlling structures of the household was even more precarious because they could constantly face prosecution and expulsion from the city.

The story of Christina Drachin is exemplary for the way that early modern policies of exclusion could marginalise migrant women and made them susceptible to control by the authorities. Christina, born in Umstadt (some 37km from Frankfurt) and aged 26 or 27, was accused by a crowd that had gathered around her as she passed the *Römerberg*, of having stolen someone's watch and wallet.¹⁰³³ In the middle of this consternation, the *Armenknecht* Mevius joined the scene, and arrested and imprisoned Christina in the poorhouse, after which she was brought to the *Verhöramt* for interrogation. Being asked for the reason of her arrest, it becomes clear that Mevius and Christina were no strangers to each other. She stated that she did not know why she had been arrested, but that the *Armenknecht* did not like her.¹⁰³⁴

So how had Christina and Mevius become acquainted with each other? During the interrogations, Christina was asked if she had been arrested before and had been 'escorted through the city's gates?' – to which she replied that this had happened twice before.¹⁰³⁵ The first time she was expelled on orders of the *Löbl. Schatzungsamt* – the office in charge of supervising the settlement of strangers. The second time she was arrested because she had returned to the city despite the orders of the *Schatzungsamt*, and lodged at a women's house on the *Breitengasse*. This time Christina was not escorted out of the city immediately but imprisoned in the poorhouse for a short period first. When the interrogators asked her for the reasons for her expulsions, Christina answered tellingly: 'because, as a stranger, she was not tolerated in the city'.¹⁰³⁶ The *Examinator* of the *Verhöramt* also wanted to know if she had been investigated by the consistory at any point, to which Christina answered in the negative. So, the reason the *Armenknecht* Mevius and Christina were already acquainted with each other was that he had whipped her in the poorhouse during her previous arrests, as well as escorted her through the city gates when she was told to leave town.

At the point when Christina was arrested by Mevius she had already been in the city again for over a year. During this period, she worked as a maid for a baker, who had let her go because he accused her of stealing and lewd behaviour, staying out every night until 11 or 12 and walking the streets. Because of her reputation, the *Examinator* of the *Verhöramt* also asked her if she had

¹⁰³³ Criminalia 9196 (1780).

¹⁰³⁴ Criminalia 9196 (1780) folio 2. Original: 'Die Ursache ihrer Arretirung wisse sie gar nicht. Der Armenknecht Mevius, der ihr nicht gut seije, habe sie am Freijtag Abend gegen 6 Uhr, als sie über den Römerberg geben wollen ergriffen [...]'.
¹⁰³⁵ Criminalia 9196 (1780). Original: 'Ob sie nicht schon einmal im Arrest gewesen und dem Thor hinaus geführt worden?'.
¹⁰³⁶ Criminalia 9196 (1780) folio 3. Original: 'Weil man sie als eine Fremde Person nicht in der Stadt leiden wolle.'

been investigated by the consistory before, to which she replied in the negative. Finally, despite not being convicted for theft or lewdness, Christina was ordered to work in the poorhouse for more than two months, after which she had to walk through the *Wachtparade* for two days before she was expelled again.

The case of Christina is important because it highlights several of the key aspects in understanding the impact of mobility on early modern female crime in Frankfurt. It shows how the settlement regulations and attitudes to the foreign poor made it difficult for women like Christina to settle in Frankfurt and make a living. Several institutions, ranging from the taxation office and the consistory to the criminal investigation office were either actually involved, or considered to be responsible. Despite these difficulties, Christina eventually managed to find employment, but due to her previous encounters with the authorities she was closely watched and monitored, which made it more likely for her to be arrested. Foreigners like Christina, who could not legitimate their stay in the city and provide evidence of some level of employment, were not allowed to stay in Frankfurt and could be expelled even without being convicted of committing any crime.

The Malefizbuch, an example of gendered framing of unwanted mobility

The example of Christina demonstrates how, compared to locals, foreigners were more likely to be subjected to formal social control by the authorities. They were often mistrusted and ran the risk of being associated with criminality. These associations were frequently based on gendered stereotypes, which are reflected in the prosecution practices. One source that allows us to study the way that unwanted foreigners were perceived and framed by the authorities is the so-called *Kleine Malefizbuch*, or as it was written on the title page: a register of suspicious people (*Verzeichnuß verschiedener verdächtig geschienener Personen*). This was a book in which the *Verhöramt* recorded offenders or other suspicious people who had been expelled from the city, mostly after only limited investigation. One of the purposes of this record was, as we can see from various cases, to check whether or not arrested offenders had been denied the city earlier.¹⁰³⁷ Unfortunately the *Malefizbuch* has only survived for the years between 1751 and 1771.¹⁰³⁸

¹⁰³⁷ E.g.: Criminalia 8574 (1771); Criminalia 8790 (1776); Criminalia 9079 (1778); Criminalia 10032 (1790); Criminalia 10161 (1792).

¹⁰³⁸ IfSG Frankfurt am Main, Das kleine Malefizbuch, 1751-1771. According to the first page of the *Malefizbuch*, the record was started 'pro Officio Examinatorio' in 1751 and continued until 1765. In the book, however, the entries continued for much longer until 1771. Presumably, more records were kept before the destruction caused by WWII. According to the late nineteenth century index, the city archive held *Malefizbücher* for the years 1751-1808: R. Jung, *Das Frankfurter Stadtarchiv. Seine Bestände und seine Geschichte* (Frankfurt am Main 1896).

Despite its importance in the investigation process, the record was kept irregularly. In 1753, for example, the *Malefizbuch* contained only three entries, while there were 44 in 1755. The record did not only contain cases that were investigated by the *Verhöramt*, but by other institutions as well, in particular the *Konsistorium*. In slightly under two-thirds of the cases in the *Malefizbuch* (63%), the offenders can also be traced in the *Criminalia*. There was a total of 379 entries in the record, relating to 350 individuals. This relates to just over 16% of all the offenders investigated by the *Verhöramt* during this period, and (although it is not possible to determine the exact share) even a smaller share of all migrants that arrived in Frankfurt at some point during these years. Despite the incompleteness of the register, it offers the possibility of tracing the way authorities in Frankfurt framed ‘unwantedness’. After all, they reflect cases in which, for one reason or another, it was considered necessary to make the effort and record the respective person in the registry.

Table 21 Type of ‘offence’ registered in the Malefizbuch (M/F), 1751-1771

	M	%	F	%	Total
Theft	85	65	46	35	131
Suspected person (<i>Verdacht</i>)	43	70	18	30	61
Lewdness (<i>Liederlichkeit</i>)	4	13	27	87	31
Vagrants	21	81	5	19	26
Stay (<i>Aufenthalt</i>)	15	60	10	40	25
Illegal return	15	62	9	38	24
Gambling	11	100	0	0	11
Begging	8	80	2	20	10
Violence	4	100	0	0	4
Suspected infanticide	0	0	4	100	4
Gipsy	2	67	1	33	3
Other	5	56	4	44	9
No reason	26	54	22	46	48
Total	234	62	145	38	379

Source: Das Kleine Malefizbuch.

As we can see in table 4, the majority of ‘offenders’ registered in the *Malefizbuch* had been suspected of committing theft. Often, however, there was no concrete evidence that the suspect had actually committed such an offence. Rather the fact that they were suspicious, known to the authorities

from previous encounters, or simply fit the profile of criminal poor, had been enough to arrest them and oust them from the city. Others were arrested simply for being ‘suspicious’ (*als verdächtig eingezogen*). Distinctions between the various categories are not straightforward and perhaps even create a reality that in the eyes of the investigators of the *Verhöramt* did not exist as such. There is for example no clear indication why some were characterized as ‘suspicious’, others were characterized as vagrants, others as ‘*Liederlich*’, or why in some cases the registers specifically referred to a person’s stay in the city as suspicious, and not the person itself.

Women made up 38% of the offenders registered in the *Malefizbuch*, which is substantial considering that their share among all registered offences was much lower. The *Malefizbuch* highlights some important gender differences when it comes to the framing and policing of what was perceived as unwanted behaviour of strangers, which is also supported by a more qualitative assessment of the *Criminalia* and other sources. In both cases, unwanted migrants were primarily associated with property offences. This corresponds with other studies in early modern Germany, which have demonstrated that vagabonds and the mobile poor were often associated with theft, and other related property offences.¹⁰³⁹ Similar to what we have seen in the paragraph above, female foreigners were less likely than men to be labelled as beggars or vagrants by Frankfurt’s authorities. While women comprised 38% of the offenders registered in the *Malefizbuch*, their share among those specifically referred to as beggars or vagrants was much lower: 20% and 19% respectively. Instead, female mobility, it appears, was considered more of a moral problem. Among those arrested for *Liederlichkeit*, women made up 87% of the registered persons.

In the *Deutsche Wörterbuch* by the brothers Grimm, *Liederlichkeit* is defined as carelessness with regard to the future, levity (*Leichtsinn*); neglect of duties (*Nachlässigkeit*); living disorderly (*ausschweifende art, unordentliches leben*).¹⁰⁴⁰ The *Deutsches Rechtswörterbuch* defines it in general as a behaviour that does not correspond to the societal norms (*ein Verhalten, das den gesellschaftl. Erwartungen nicht entspricht*) and more specifically as squandering, extravagance and illicit sexual behaviour (*Verschwendung, Unzucht*).¹⁰⁴¹ In short, *liederlichkeit* referred to all kinds of unacceptable behaviour. Ordinances regulating the mobility of marginal groups framed them as all kinds of loose scum (*allerhandt liederliches Gesindel*).

If we look at the uses of the term in the criminal records, it becomes clear that in its use the term was much more gendered than one would assume based on entries in the dictionary. In

¹⁰³⁹ Härter, *Police und Strafjustiz*, 1091-1100; Ammerer, *Heimat Straße*, 432-446.

¹⁰⁴⁰ *Deutsches Wörterbuch von Jacob Grimm und Wilhelm Grimm*

<http://woerterbuchnetz.de/DWB/?sigle=DWB&mode=Vernetzung&hitlist=&patternlist=&lemid=GL05934#XGL05934-Liederlichkeit>.

¹⁰⁴¹ DRW – Online Edition:

<http://drw-www.adw.uni-heidelberg.de/drw-cgi/zeige?index=lemmata&term=liederlichkeit&firstterm=liederlich>

the *Malefizbuch*, only four men were described with the adjective *Liederlich*, and mostly this was accompanied with another term. The notorious Blumenstock and Johann Jacob Dircks were both arrested in 1771 as ‘vagrants and highly suspicious and wanton fellows’ (*vagabunden und höchst verdächtige und liederliche Pursche*), expelled from the city and handed over to recruiters for the imperial army.¹⁰⁴² A year before, Nicolaus Keßler was arrested as a ‘debauched fellow and a deceitful player’ (*ein liederlicher pursch und betrüglicher Spieler*).¹⁰⁴³ And finally, in 1756 Christoph Rheinwaldt was released after four months of hard labour in the trenches for his lewd lifestyle (*liederlichen lebensart*).¹⁰⁴⁴ In none of these cases did the term have the connotation of illicit sexual behaviour, but rather referred to disorderly and illicit conduct in general. A similar picture emerges from the criminal investigation records.¹⁰⁴⁵

The opposite, however, was true for women. Whenever authorities referred to arrested women as *liederliche Dirnen*, *Weibspersonen* or *Weibsmenschen*, they suspected them of immoral behaviour, extramarital sex and prostitution. Mobile women in particular ran the risk of being branded and prosecuted as such. These associations were based on more general attitudes towards women, which feared (and criminalised) women living independently outside the male patriarchal control.¹⁰⁴⁶ Ulinka Rublack has demonstrated how in seventeenth-century Württemberg independent women (*Eigenbrödlerinnen*) were connected with lewdness and illegitimacy.¹⁰⁴⁷ The mobility of domestic servants was contested in moral tracts, because it was considered as a sign of women seeking independence and placing them outside the sphere of male control.¹⁰⁴⁸ In Frankfurt, too, control over the mobility of domestic servants was closely associated with moral issues and financial concerns, and the *Konsistorium* considered the institution to be primarily responsible for this. The connection of female mobility and immorality is also demonstrated in the way authorities described non-martial relationships among vagrants. As Gerhard Ammerer demonstrated for eighteenth-century Austria, in the case of women even longstanding and stable partnerships were described in pejorative terms, associating them with lewdness, promiscuity and

¹⁰⁴² Malefizbuch, 180 (20.06.1771); Criminalia 8545 (1771).

¹⁰⁴³ Malefizbuch, 171 (24.07.1770). Also: Criminalia 8579 (1771).

¹⁰⁴⁴ Malefizbuch, 50 (19.06.1756).

¹⁰⁴⁵ E.g. Criminalia 2435 (1705) about Bernd Johannsen, an apprentice from Copenhagen, who had “*ein sehr liederliches leben geführt*”; Criminalia 3328 (1723) about Philipp Jacob Guntermann, who was indicted by his father in law for “*einem [...] liederlichen und verschwendersichen Leben, wie auch s.v. Fressen, Sauffen und Müssiggang*”; Criminalia 6193 (1749) about several *Bäckerknechte* who had been sentenced to the poorhouse for ‘*liederliche Aufführung*’ and seducing others to engage in disorderly behaviour.

¹⁰⁴⁶ Beattie, *Policing and Punishment*, 64.

¹⁰⁴⁷ Rublack, *Crimes of Women*, 139.

¹⁰⁴⁸ Dürr, ‘Migration von Mägden’.

immorality. The same relationships were described much more neutrally in the case of men. There authorities spoke of ‘marriage-like’ relationships etc.¹⁰⁴⁹

In the majority of cases, the women that were investigated and expelled from Frankfurt as suspected prostitutes were never formally convicted of this offence because of a lack of proof. Most of the women shared similar characteristics: they were young and independent, and often had only casual employment histories. In 1750, for example, a patrol arrested six women as *liederliche Dirne* (prostitutes) in the forest close to the city.¹⁰⁵⁰ Their stories are exemplary of many of the women arrested as immoral or suspicious. The first woman who was interrogated was Catharina Franckin, a soldier’s daughter of 24 years old. She was born in Rosenau in Austria (some 560 km from Frankfurt) and married to a soldier of the imperial army. Her husband deserted three years previously near Maastricht in the Netherlands, after which she had not seen him anymore. After his desertion Catharina had worked as a servant, but for the past year and a half she had stayed with relatives of her husband, and had just recently travelled to Frankfurt with the aim of finding an opportunity to travel to Ludenberg near Düsseldorf. When she was asked by the interrogators ‘if she prostituted herself’ (*ob sie nicht auff hurerij sich zugelegt*), she vehemently denied this.

The stories of the women who were arrested together with her are remarkably similar. Anna Maria Castin was 20 years old and was born in Hallgarten (approx. 83 km from Frankfurt). She had worked as a domestic servant in Mainz for about a year, but became sick and was forced to leave, after which she had travelled to Frankfurt and on to Hanau where she had worked for a gardener. She had only recently returned to Frankfurt together with one of the other arrested women, Anna Catharina Zahnin, with whom she had planned to go to the Pfalz. There they wanted to earn some money by cutting grain to buy new clothes, so that they could find a new service (*da sie sich hernach mahl wieder Verdingen wollten*). The latter originated from Gemünden am Main (85 km east from Frankfurt) and, just like Anna Maria Castin, she had worked in Mainz as a domestic servant and in Hanau with gardeners.

The fourth woman, Albertina Louisa Krebsin, 20, from Darmstadt (approx. 30 km south of Frankfurt) had already been disciplined for loose behaviour on an earlier occasion by the consistory in Frankfurt. Next to her name in the criminal investigation record it was written that she had already been sanctioned to the donkey (shaming punishment) in front of the Hauptwache (*diese bereits vor 4 wochen an den Esel gebunden worden*).¹⁰⁵¹ According to her statements, she had tried

¹⁰⁴⁹ G. Ammerer, ‘Von “Gutschen”, “fleischlichen Begierden”, und “Ehefleppen”. Partnerschaft, Sexualität und Nachkommen im Milieu der Landstraße’ in: G. Ammerer and G. Fritz, *Die Gesellschaft der Nichtsesshaften. Zur Lebenswelt vagierender Schichten vom 16. bis zum 19. Jahrhundert* (Affalterbach 2013) 107-132, 112-113.

¹⁰⁵⁰ Criminalia 6283 (1750).

¹⁰⁵¹ Criminalia 6283 (1750). ‘An den Esel gebunden werden’ was a shaming punishment, usually meted out to disorderly soldiers or women who were punished for illicit sexual behaviour. Offenders were bound on a wooden donkey for public shaming. In Frankfurt the wooden donkey was situated in front of the Hauptwache.

to earn a living by knitting for the people on the Sandhof (a manorial estate just outside of Frankfurt). When she was asked if she lived her life as a prostitute (*‘ob sie nicht dem hurenleben nachgegangen’*) Albertina Louisa replied: ‘not much, just with one soldier – otherwise she’d rather go begging’.

The fifth woman, Anna Margaretha Wissnerin, aged 23, from Neustadt an der Aisch (170 km south-east from Frankfurt) had come to the region because she had a relative living in Offenbach, who had promised her to help her find a position as a servant. Finally, Maria Catharina Lampesin, aged 19 from Gießen (ca. 60 km north of Frankfurt) had previously worked in Frankfurt as a domestic servant for a year, and just returned to the city after a stay with her relatives in Darmstadt, hoping to find a new position. Only two of the six arrested women, Anna Margaretha Wissnerin and Maria Catharina Lampesin, managed to clear their name of any suspicions and were released without further punishment. The remaining four, however, were expelled from the territory and warned not to return again. Unfortunately, the records do not reveal why the authorities considered two of the women harmless and allowed them to stay, while the other four were expelled, particularly as their stories were very similar.

Just like the story above, women that were arrested on suspicion of prostitution were often arrested just outside of the city, close to the ramparts, walking on their own, together with casual acquaintances, or in small groups of women. The women often stated that they were travelling in search of work.¹⁰⁵² Whether or not this was an excuse or the truth, it reflects the double standards in relation to (labour) migration. Whereas the mobility of women was met with moralising disapproval, male labour migration in the form of tramping was institutionalised and assisted.¹⁰⁵³ Young women travelling in the company of soldiers, in particular, ran the risk of being labelled as harlots.¹⁰⁵⁴ Local women were certainly not spared from such associations. Unlike migrant women, however, they were not banished in the first instance, but only after repeated arrests.¹⁰⁵⁵ In some cases, foreign girls managed to clear their name and were allowed to continue their stay in the city. However, this was always accompanied with the strict condition that they should find an honest household to stay in.¹⁰⁵⁶ Independence, in other words, was not accepted.

Some historians have considered this moral pressure as one of the main causes of female vagrancy in the early modern period.¹⁰⁵⁷ The cases in Frankfurt, however, portray a more complex picture. Although there are many examples of women in the sources who were expelled based on

¹⁰⁵² E.g. Criminalia 3698 (1728); Criminalia 4493 (1736); Criminalia 5731 (1744); Criminalia 7559 (1759).

¹⁰⁵³ Althammer, ‘Roaming Men, Sedentary Women?’; Dürr, ‘Migration der Mägde’.

¹⁰⁵⁴ Criminalia 5296 (1741); Criminalia 3698 (1728); Criminalia 5004 (1739); 5563 (1743).

¹⁰⁵⁵ Criminalia 5745 (1744); Criminalia 5731 (1744); Criminalia 5882 (1747).

¹⁰⁵⁶ Criminalia 6501 (1751); Criminalia 5916 (1747).

¹⁰⁵⁷ Bräuer, ‘Bettelweiber’, 140; Jütte, ‘Kriminelle Bettelpraktiken’, 123.

moral grounds, it is not always possible to discern from the criminal records if, in fact, lewdness and extra-marital sexuality were the root causes of female unsettledness. There are examples of women whose ‘career’ on the road started after they had been prosecuted and expelled for prostitution or illegitimacy, but these were usually not women that had been strongly rooted within a community to begin with.¹⁰⁵⁸ It is very unlikely that illegitimacy alone drove women onto the streets. While Otto Ulbricht certainly had a point by stating that not all female mobility was equated with immorality by the authorities, it was a specific, gendered way of framing unsettledness that reflects the double standards concerning sexuality in this period.

Men wandering around did not risk being prosecuted based on their mobility being associated with improper independence and promiscuity. However, they faced other stereotypes which endangered their mobility in a different way. One of the most striking features of the men registered in the *Malefizbuch* was the high number of foreign Jewish offenders among them. 43% of the men listed as *verdächtig geschienener Personen* were labelled as Jews, compared to only 3% of the women. Frankfurt was home to one of the largest Jewish communities in early modern Europe, and as such it formed a major locus of attraction for Jewish migrants. The city was connected to other Jewish communities through family networks, ranging from Prague to Amsterdam.¹⁰⁵⁹ To a certain extent, the lower number of Jewish women is a reflection of the fact that Jewish women faced even stricter patriarchal control than Christian women and were less likely to be on the move independently. Although this is reflected by the fact Jewish women had a much lower share among registered offenders than their Christian counterparts, there are examples of female Jewish migrants committing offences in Frankfurt.¹⁰⁶⁰ However, they were less affected by stereotypes of male Jewish criminals, which explains their low number among suspects in the *Malefizbuch*, compared to men.

Framing Jews as dangerous and criminal had a longstanding tradition. Older stereotypes of Jewish criminality were concerned with accusations of ritual murder, poisoning wells, eating Christian babies, or killing entire Christian communities.¹⁰⁶¹ However, these older stereotypes had mostly ceased to exist by 1700, and they no longer played a role in the framing of Jews as suspicious

¹⁰⁵⁸ E.g. Criminalia 7256 (1756); Criminalia 6398 (1750); Criminalia 3960 (1732); Criminalia 4945 (1739).

¹⁰⁵⁹ T. Burger, *Frankfurt am Main als jüdisches Migrationsziel zu Beginn der Frühen Neuzeit, Rechtliche, wirtschaftliche und soziale Bedingungen für das Leben in der Judengasse* (Wiesbaden 2013); Karpf, *Eine Stadt und ihre Einwanderer*, 33-41.

¹⁰⁶⁰ V. Kallenberg, “und würde auch sonst gesehen haben, wie sie sich durchbrächte”. ‘Migration’ und ‘Intersektionalität’ in *Frankfurter Kriminalakten über jüdische Dienstmägde um 1800* in: S. Schraut et al. eds., *Femina Migrans. Frauen in Migrationsprozessen (18.-20. Jahrhundert)* (Sulzbach/Taunus 2011) 39-67.

¹⁰⁶¹ Ulbricht, ‘Criminality and Punishment of Jews’, 49; J. Wiltenburg, *Crime and Culture in early modern Germany* (Charlottesville 2012) 100.

in the *Malefizbuch* and the *Criminalia* of the eighteenth century.¹⁰⁶² By this time, popular accounts firmly established the association of Jews roaming the countryside as organised bands of robbers. Earlier studies on banditry implicitly took over some of the eighteenth century stereotypes regarding Jewish criminality, highlighting their role among criminalised gangs.¹⁰⁶³ Most of the Jews registered in the *Malefizbuch* were suspected of theft, either individually or as part of a larger gang. In 1752 Meijer Salomon from Prague was expelled because he was suspected of stealing.¹⁰⁶⁴ In 1762, Callmann Lazarus of Amsterdam experienced a similar fate and was expelled from the city after performing forced labour in the trenches.¹⁰⁶⁵ According to Karl Härter, labelling Jewish strangers as suspicious based on their religious background was strategically used by the authorities so that they could associate them more easily as robbers or members of criminalised gangs, thereby reinforcing the existing stereotypes.¹⁰⁶⁶

Despite the dominant association of Jews and criminality, local *Stättigkeitsjuden* were not overrepresented among property and violent offenders in the eighteenth century.¹⁰⁶⁷ In fact, in the latter case they were even underrepresented in relation to their overall share among the population, which was probably related to the high degree of autonomy that the Jewish community in Frankfurt had in terms of conflict regulation within their own community. Thus, it was particularly the combination of being male, foreign and Jewish which fostered the anxieties of Frankfurt's authorities.

Penal exclusion: the importance of banishment in early modern criminal justice

The previous paragraphs have shown how much the urban authorities of Frankfurt depended on exclusionary mechanisms as a way to maintain public order. People unable to prove their incorporation in the city's social control networks – either through household membership or otherwise – were denied settlement. It may come as no surprise, therefore, that banishment was one of the most commonly executed criminal punishments in the early modern period throughout the Holy Roman Empire.¹⁰⁶⁸ According to Jason Coy, penal migration (mobility as the result of

¹⁰⁶² On Jewish criminality in early modern Frankfurt, see: M. R. Boes, 'Jews in the Criminal-Justice System of Early Modern Germany', *Journal of Interdisciplinary History* 30 (2000) 407-435; V. Kallenberg, 'Extremely Common – Jews before the Frankfurt Penal Court, 1780-1814' (Unpublished PhD thesis TU Darmstadt 2016).

¹⁰⁶³ Lucassen, 'Blind Spot'; Ulbricht, 'Criminality and Punishment'; Egmond, *Underworlds*, 126.

¹⁰⁶⁴ *Malefizbuch*, 17 (20.10.1752).

¹⁰⁶⁵ *Malefizbuch*, 89 (05.04.1762).

¹⁰⁶⁶ Härter, 'Prekäre Lebenswelten', 36.

¹⁰⁶⁷ Eibach, *Frankfurter Verböte*, 212, 299.

¹⁰⁶⁸ J.P. Coy, *Strangers and Misfits. Banishment, Social Control and Authority in Early Modern Germany* (Leiden 2008) 52-56; H. Schnabel-Schüle, 'Die Strafe des Landesverweises in der Frühen Neuzeit' in A. Gestrich ed., *Ausweisung und Deportation. Formen der Zwangsmigration in der Geschichte* (Stuttgart 1995); A. Blauert, *Das Urfehdwesen im Deutschen Südwesten im Spätmittelalter und in der Frühen Neuzeit* (Tübingen 2000); G. Schwerhoff, 'Vertreibung als Strafe. Der Stadt- und

banishment) was an ‘engine of mobility’ that ‘helped shape larger patterns of migration in early modern Germany’.¹⁰⁶⁹ Penal migration certainly only affected a small percentage of people on the move during this period. Nevertheless, it is a clear example of the exclusionary regulations by authorities during the early modern period affecting foreigners in much greater numbers than locals. Studying banishment, therefore offers an opportunity to gain a deeper understanding of the way that the precariousness of mobility in the early modern period could be gendered. This part of the chapter studies a particular group of people: those that defied their sentence and returned to the city.

As we have seen in table 3 above, men and women were prosecuted for violating their banishment about equally often: approximately 100 male and 105 female offenders were investigated for this offence. Frankfurt was not the only city in the modern period where one can observe a marked female predominance among offenders who returned illegally after banishment.¹⁰⁷⁰ Scholars have related this to the fact that women were more dependent on settledness and experienced more difficulties faced with a life on the road than men. According to Robert Jütte, for example, women were more compelled to defy their sentence, because they were less likely to make a living being isolated from their social support networks than men.¹⁰⁷¹ Carl A. Hoffmann, on the other hand, argued quite the contrary. He claimed that women would have found less difficulty making a living than men after expulsion. For them there was always the possibility of entering domestic service. He based his assumption on the fact that there was a strong emphasis on honour in early modern guilds, leaving expelled journeymen excluded from that segment of the labour market.¹⁰⁷² Such a view ignores the fact that there were more casual employment opportunities available for men, even with a tarnished reputation, for example in military service, than there were for women. Thus, the question remains: how can one explain the female predominance among violators of banishment? Were the reasons for men and women to return to the city different? Or are these differences a sign of gendered prosecution policies of the urban authorities?

Landesverweis im Ancien Régime’ in: S. Hahn, A. Komlosy and I. Reiter eds., *Ausweisung, Abschiebung, Vertreibung in Europa, 16. – 20. Jahrhundert* (Innsbruck 2006) 48-72; Hahn, *Historische Migrationsforschung*, 95-101.

¹⁰⁶⁹ J.P. Coy, ‘Penal migration in early modern Germany’ in: J. Coy, J. Poley and A. Schunka eds., *Migrations in the German Lands, 1500-2000* (New York and Oxford 2016) 51-66, 51-52.

¹⁰⁷⁰ Schwerhoff, ‘Kriminalität in Köln’, 71; Blauert, *Das Urfehdedwesen*, 139; Hahn, *Historische Migrationsforschung*, 97; Van der Heijden, *Women and Crime*, 134-135; Jütte, ‘Geschlechtsspezifische Kriminalität’, 113; D.J. Noordam, ‘Criminaliteit van vrouwen in Leiden in de 17de en 18de eeuw’ *Jaarboekje voor Geschiedenis en Oudheidkunde van Leiden en Omstreken* 77 (1985) 36-46, 41-42.

¹⁰⁷¹ Jütte, ‘Geschlechtsspezifische Kriminalität’, 113. Also: G. Ammerer, “‘durch Strafen [...] zu neuen Lasten gereizt’”. Schandstrafe, Brandmarkung und Landesverweisung – Überlegungen zur Korrelation und Kritik von kriminalisierenden Sanktionen und Armutskarrieren im späten 18. Jahrhundert’ in: S. Schmidt ed., *Arme und ihre Lebensperspektiven in der Frühen Neuzeit* (Frankfurt am Main 2008) 311-339, 328-329.

¹⁰⁷² C.A. Hoffmann, ‘Der Stadtverweis als Sanktionsmittel in der Reichsstadt Augsburg zur Beginn der Neuzeit’ in: H. Schlusser and D. Willoweit eds., *Neue Wege strafgeschichtlicher Forschung* (Köln 1999) 193-237, 217.

In order to answer these questions, all cases of violations of banishment in the *Criminalia* have been studied for the 17th century as well as the following sample years for the eighteenth century: 1700-04; 1710-14; 1720-24; 1730-34; 1740-44; 1750-54; 1760-64; 1770-74; 1780-84; 1790-94. The sample includes a total of 102 criminal investigation records, 96 individual offenders (48 male and 48 female) and at least 143 occurrences of infraction of banishment.¹⁰⁷³ These numbers of course only represent illegal returns that were investigated by the *Peinliche Verhöramt* and not those that were dealt with by other institutions. We must also consider that there were presumably many cases in which offenders were simply escorted out of the city, again without a proper investigation. And, of course, not every returnee was detected and some managed to return to the city and stay under the radar. There are many references in the interrogation records in which offenders recall earlier occasions that they had returned to the city without getting caught.¹⁰⁷⁴

Before we can study the gender dynamics of violations of banishment, it is necessary to study how banishment was implemented by Frankfurt's authorities, and with what aims. In early modern Frankfurt various urban institutions possessed the authority to expel a person beyond the city borders and/or its territory. This stems from the fact that expulsion or banishment was both a petty penalty as well as a penal sentence. In the latter instance only the city council – which functioned as a high court – was authorised to execute the punishment. Banishment fulfilled various functions within the early modern legal system: as a punishment on its own; as a possibility to mitigate sentences for crimes where the legal code demanded the death penalty; as *Verdachtsstrafe*; as a policing effort.¹⁰⁷⁵ Banishments executed as a penal sentence were generally accompanied with the obligation to swear an oath (*Urfehde*), a condition which could only be imposed by the high court.¹⁰⁷⁶ The *Peinliche Verhöramt*, could, as we have seen, expel people in case of minor offences without the consent of the city council. A person could even be expelled if he/she was highly suspected by the authorities, but there was no evidence to prove him/her guilty by the *Verdachtsstrafe*. When it came to the policing of vagrancy and begging, the city's poorhouse and hospitals were authorised to apprehend any wandering and masterless person and escort them out of the city. Frankfurt's soldiers patrolled the city and its territory with the same purpose. Likewise, the institutions in charge of moral policing (the *Sendamt* in the seventeenth century and the *Konsistorium*

¹⁰⁷³ In many cases, infraction of banishment was not filed in a separate record by the *Verhöramt*. Often they included these cases with the previous investigation records, i.e. with the interrogation files for the crime for which they had received their banishment in the first place. This means that an infraction of banishment in 1755 could still end up in the sample.

¹⁰⁷⁴ E.g. Criminalia 4209 (1734); Criminalia 6257 (1750); Criminalia 8504 (1770).

¹⁰⁷⁵ Hofmann, 'Der Stadtverweis als Sanktionsmittel', 198; R. Laitinen, 'Banishment, Urban Community and Judicial Practice: Thieves in mid-17th century Turku', *Scandinavian Journal of History* 38:5 (2013) 549-567.

¹⁰⁷⁶ Originally the *Urfehde* was an oath taken to forswear any vengeance after imprisonment and was designed to restore peace and re-integrate the offender into the community. Throughout the early modern period, however, it became a synonym for forswearing a city or a territory. Blauert, *Das Urfehdenwesen*.

from 1728 onwards) could expel any loose, idle and disorderly people. This particularly affected women who were suspected of prostitution or illegitimacy.

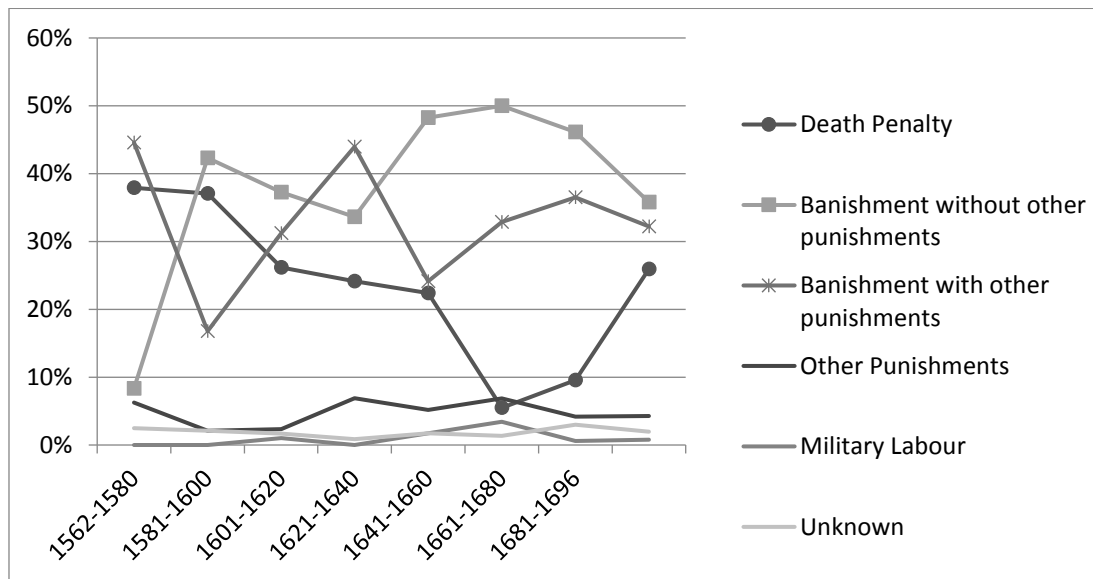
Providing an overview of how many people were indeed expelled from Frankfurt during the early modern period is not possible, as there are no sources available that allow for a calculation of the number of expelled persons per institution. In the late eighteenth century alone, more than 500 beggars were expelled on a yearly basis.¹⁰⁷⁷ It remains unclear how many people requesting permission to stay in the city at the *Inquisitionssamt* were denied access and ordered to leave the city. An overview of the number of foreign, unmarried, pregnant women expelled by the consistory is equally lacking. Fortunately, the criminal records offer the opportunity to study the prevalence of expulsion in early modern Frankfurt at least to a certain extent. The *Strafenbuch* records all the penal punishments meted out by the city council between 1562-1696. Moreover, although the *Criminalia* are investigation records, they still provide information about the punishment in three-quarters of the cases. The figures presented in this chapter are based on all *Criminalia* in 1700; 1720; 1740; 1760; 1780.

Of all recorded sentences in the *Strafenbuch*, banishment had a share of 68%, relating to 891 offenders banished between 1562 and 1696 (figure 3 and 4). The records also show that banishment became increasingly important throughout the seventeenth century: in the second half of the sixteenth century banishments ‘only’ made up 53% of all punishments recorded, but by the second half of the seventeenth century this had grown to 83%. The number of death penalties decreased simultaneously.¹⁰⁷⁸ Banishments were not only exclusionary punishments, but also served a public function for the authorities to demonstrate the boundaries of accepted behaviour.¹⁰⁷⁹ Banishments were therefore often imposed in combination with other shaming rituals or corporal sanctions.

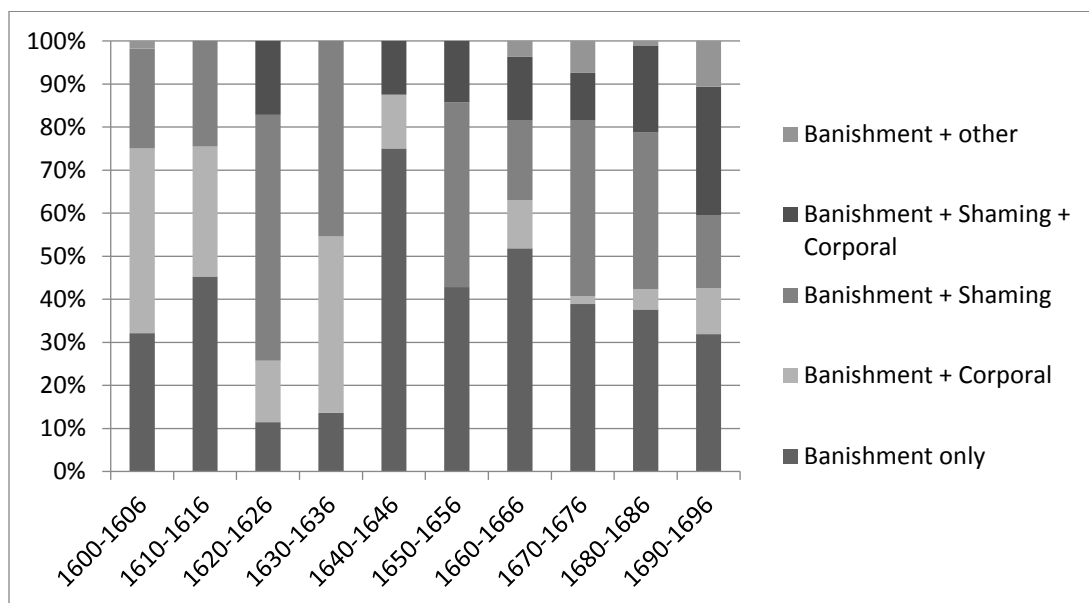
¹⁰⁷⁷ Hess, *Frankfurter Armen-, Waisen- und Arbeitshaus*, tabel 1 and 2; J. H. Faber, *Topographische, politische und historische Beschreibung der Reichs- Wahl- und Handelsstadt Frankfurt am Mayn*. Vol. 1. (Frankfurt am Main 1788) 146.

¹⁰⁷⁸ R. von Dülmen, *Theater des Schreckens. Gerichtspraxis und Strafrituale in der Frühen Neuzeit* (5th edition; München 2010) 187.

¹⁰⁷⁹ Coy, *Strangers and misfits*, 3.

Figure 18 Share of banishment on penal punishments, 1562-1696

Source: Von Dülmen, Theater des Schreckens, 187.

Figure 19 Banishment in combination with other punishments, 1600-1695

Source: Strafenbuch.

As has been mentioned before, the *Strafenbuch* only listed all the penal punishments (*peinliche Strafen*) but did not record cases that were sentenced with petty penalties such as fines, short imprisonment, verbal admonishments or simple expulsions (*Stadtverweise*). A comparison with the references to all punishments in the sample years of the *Criminalia* show that banishment still made up a significant proportion of the sentences: in 62% of the records with a reference to a final outcome, offenders were expelled from the city.¹⁰⁸⁰ Towards the end of the century ‘modern’ prison sentences became more common, but the authorities still relied heavily on expulsion. It was not uncommon that offenders were sentenced to perform forced labour either in the poorhouse or in the trenches first, and were expelled from the city after the completion of their sentence. Magdalena Fallerin from Elsass, for example, was sentenced to eight days of *Trassklopfen* in the poorhouse before being expelled for life (*für ewig*) for stealing three neckerchiefs from a shop (*Trass* is tuff which was used to make plaster – it was common for offenders to be sentenced to grind these rocks).¹⁰⁸¹ It is not always specified in the sources, however, whether the expulsion was part of the sentence or if they were ordered to leave town because their right to stay in the city was revoked. Either way, the result was the same.

Although it is always difficult to compare such numbers due to the heterogeneity of the legal systems and the sources, similar trends appear in other cities throughout the Holy Roman Empire. In all, every city banishment was central to law enforcement; it was either the most executed type of punishment or accounted for a significant share. In sixteenth-century Augsburg and Ulm, authorities sentenced offenders to banishment in more than 50% of the cases.¹⁰⁸² In Cologne, the city authorities expelled one out of five offenders at the turn from the sixteenth to the seventeenth century, making banishment the majority of all punishments. By the end of the seventeenth century, banishment had become even more significant: 58% of the offenders were now punished with exclusion.¹⁰⁸³

Authorities did not apply banishment sentences randomly. In his study of banishment in sixteenth-century Ulm, Jason P. Coy characterised banishment as an instrument to mark the socio-

¹⁰⁸⁰ These numbers are based on a sample of all investigation records in the *Criminalia* for the years 1700; 1720; 1740; 1760; 1780. Total no. of offenders: 369. Joachim Eibach calculated that in the eighteenth century, banishments accounted for 23.3% of all punishments (Eibach, *Frankfurter Verböte*, 387). However, in his calculations Eibach did not account for the fact that offenders were often punished with a combination of sentences, for example: banishment and whipping or imprisonment in the poorhouse and chastisement. This accounts for the variation in the calculations of Eibach and myself. Unfortunately, the picture remains incomplete, since there are fewer references to a final outcome in the investigation records concerned with violence or disturbing public order.

¹⁰⁸¹ *Criminalia* 5122 (1740). Also e.g.: *Criminalia* 5076 (1740); *Criminalia* 5079 (1740); *Criminalia* 7587 (1760); *Criminalia* 7650 (1760); *Criminalia* 9169 (1780).

¹⁰⁸² Hoffmann, ‘Der Stadtverweis als Sanktionsmittel’, 204-205; Coy, *Strangers and Misfits*, 25-26.

¹⁰⁸³ G. Schwerhoff, *Köln im Kreuzverhör. Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt* (Bonn 1991) 148; Schwerhoff, ‘Vertreibung als Strafe’, 52.

spatial boundaries of the urban community.¹⁰⁸⁴ Depending on the local jurisdiction, efforts of authorities to purge the city from undesired individuals were particularly directed towards offenders who were prosecuted for property offences, vagrancy, and moral offences.¹⁰⁸⁵ Violent offences, on the other hand, were far less likely to be punished with banishment as authorities preferred to opt for fines and reconciliations. As Joachim Eibach pointed out, violence was apparently not considered as a type of behaviour that threatened the urban community in the eyes of the authorities, whereas immoral conduct and property offences were.¹⁰⁸⁶

A central characteristic of banishment sentences throughout the cities of the Holy Roman Empire was that authorities were more likely to sentence foreigners to this type of punishment than citizens or settled resident aliens.¹⁰⁸⁷ In Frankfurt, the number of foreigners amongst expelled offenders varied between 64% (*Strafenbuch*) in the seventeenth century and 78% (*Criminalia*) in the eighteenth century, which was disproportionate to their overall share. Many of the offenders that were banished were characterised as vagrants, beggars or unsettled individuals. Banishment was just one of the methods employed by authorities to marginalise these types of behaviour. Whenever local citizens did get banished, this was particularly connected to moral offences.¹⁰⁸⁸

Looking at the absolute numbers, the share of women amongst banished offenders in Frankfurt in the *Strafenbuch* and *Criminalia* was 36%, which was disproportionately high compared to their share among overall offenders.¹⁰⁸⁹ The chance of female offenders being banished was higher than for men: in the *Strafenbuch*, 89% of the recorded sentences for women were banishments and in the *Criminalia* this was 68%. Men, on the other hand, were ‘only’ banished in 73% (*Strafenbuch*) and 59% (*Criminalia*) of the cases. On the one hand this divergence is the result of the reluctance of authorities to impose the death penalty on women, and the fact that certain types of punishments, such as military service, were not given to female offenders.¹⁰⁹⁰ Regardless of the severity of their recidivism, female thieves were hardly ever put to death. Men faced the risk of being branded as dangerous robbers and professional criminals, and were consequently hanged.¹⁰⁹¹

¹⁰⁸⁴ Coy, *Strangers and Misfits*, 52-56.

¹⁰⁸⁵ Hoffmann, ‘Der Stadtverweis als Sanktionsmittel’, 206-207; Coy, *Strangers and Misfits*, 29; Härter, *Policey und Strafrecht*, 638.

¹⁰⁸⁶ Eibach, *Frankfurter Verböte*, 388-390.

¹⁰⁸⁷ Coy, *Strangers and Misfits*, 30; Hoffmann, ‘Der Stadtverweis als Sanktionsmittel’, 206; Eibach, ‘Versprochene Gleichheit’, 526.

¹⁰⁸⁸ Coy, *Strangers and Misfits*, 79-112.

¹⁰⁸⁹ Sample *Strafenbuch*; Sample *Criminalia*.

¹⁰⁹⁰ R.J. Evans, *Rituals of Retribution. Capital Punishment in Germany 1600-1987* (Oxford 1996) 29-32; 138-40; H. Schnabel-Schüle, ‘Frauen im Strafrecht vom 16. bis zum 18. Jahrhundert’ in U. Gerhard (ed.), *Frauen in der Geschichte des Rechts. Von der Frühen Neuzeit bis zur Gegenwart* (München 1997) 185-98.

¹⁰⁹¹ An exception was the case of Maria Elisabeth Wagnerin, a notorious thief and part of a band of thieves, who was hanged in 1725. *Criminalia* 3416 (1724) and 12790-92 (1724).

More importantly, the divergence is a result of gendered crime patterns. Unlike men, women were hardly ever prosecuted for violent offences, a crime which was often sentenced with monetary fines. But women were often in the majority when it came to the prosecution of moral offences, and they were more likely than men to be expelled for fornication, illegitimacy and other related crimes. The preoccupation of authorities with maintaining financial stability and preserving moral order within the urban community helps to explain why in some other Free Imperial cities the share of banished women was also disproportionately high (compared to their general proportion among offenders). In the first half of the sixteenth century the share of women amongst banished offenders varied between 67% and 29% in Augsburg.¹⁰⁹² In Freiburg they accounted for 63% of all banishments between 1681 and 1780, and 47.7% of the offenders banished for theft between 1629 and 1762.¹⁰⁹³ In Cologne the female share of those expelled was 52% (1698-1712),¹⁰⁹⁴ and finally in Schwäbisch Hall (1760-69) it was 46%.¹⁰⁹⁵

Legitimising infractions and clashing perceptions

Despite the efforts of the urban authorities to regulate mobility and exclude unwanted individuals from the community, many people defied their sentence and returned to the city illegally. This allows us to study how the offenders themselves dealt with the restrictions that were imposed on their mobility and defied them. So, what were the reasons for people to return to Frankfurt despite their expulsion? During the interrogations of the *Peinliche Verhöramt*, investigators paid a great deal of attention as to how offenders wanted to justify their illegal return to the city. This information was needed in order to assess the punishment, as some reasons – such as poverty or improved conduct – could be considered as mitigating circumstances.¹⁰⁹⁶ There were many reasons for offenders to break their banishment and their statements allow us to gain a sense of the practical consequences of banishment and their lives after expulsion. They also reveal that offenders could have a different perception of what banishment actually entailed and as we will see, their views did not necessarily correspond with that of the authorities. There are more or less three different types of justifications that offenders used: 1. returning to what was left behind; 2. lack of knowledge/diverging views about the implication of the sentence; 3. to access specific urban infrastructures that were not available in the countryside.

¹⁰⁹² Hoffmann, 'Der Stadtverweis als Sanktionsmittel', 204.

¹⁰⁹³ Wettmann-Jungblut, 71. Blauert, *Das Urfehdedewesen*, 103.

¹⁰⁹⁴ Schwerhoff, 'Vertreibung als Strafe', 58.

¹⁰⁹⁵ Blauert, *Das Urfehdedewesen*, 139.

¹⁰⁹⁶ Orth, *Dritte Fortsetzung*, 880-881. See, for example, the explicit reference to Carpzov in the legal advices of the syndics in Criminalia 8049 (1764).

After receiving their banishment, most offenders were escorted out of the city without the possibility to collect their belongings or to settle any remaining business. It may not come as a surprise, therefore, that many people excused their return with the fact that they had come to collect belongings that were left behind or claim outstanding wages.¹⁰⁹⁷ The more strongly an offender was rooted in Frankfurt, the more he or she left behind and the more closely he or she remained connected to the city. People of course left behind not only their belongings, but also children, spouses and other family members. Although it was possible that authorities may have banished spouses and children along with an offender, this was not necessarily common practice. The care for remaining family members was, therefore, a strong incentive for people to return to the city.¹⁰⁹⁸

On 15 March 1721, burgher Wilhelm Ohler was banished for ten years for stealing and handling stolen goods after the great fire in the Jewish Ghetto (*Judengasse*) of 1721.¹⁰⁹⁹ It did not take long for Wilhelm to return to Frankfurt: in September of the same year he was arrested for infraction of banishment. Wilhelm stated that he would not have returned to the city if it were not for his old and sick father who had requested his help during the autumn fair. Both Wilhelm and his father had sent petitions to the city's magistrate for permission to return to the city prior to his return. But, since these requests were denied, Wilhelm saw no other option than to return to the city illegally. As a result, Wilhelm's banishment was extended to a total of twelve years by the city council. Considering his circumstances, the authorities refrained from any additional sentencing, such as condemning him to the pillory or whipping, which was the normal response to people who broke their banishment.

The situation was different, however, if children were involved. Johann Henrich Seiler, a local soldier, had been banished for "suspicious housekeeping" (*verdächtiges Haushalten* – i.e. keeping a brothel or housing prostitutes), leaving behind his wife and children in Frankfurt. After his expulsion, Johann's wife fell ill and passed away with no one to take care of their children. To prevent these four small children from becoming a financial responsibility and burden to the city, the magistrate cancelled his banishment under very strict conditions in order for him to take care of them.¹¹⁰⁰ In this case, the possible negative financial consequences of Johann's banishment for the city's poor relief system outweighed the magistrates' desire to purge the community of immoral individuals.

¹⁰⁹⁷ E.g.: Criminalia 1672 (1685); Criminalia 2327 (1702); Criminalia 2656 (1711); Criminalia 3090 (1720); Criminalia 3342 (1724); Criminalia 3850 (1730); Criminalia 3946 (1731); Criminalia 3956 (1731); Criminalia 5228 (1741); Criminalia 5456 (1742); Criminalia 6978 (1754).

¹⁰⁹⁸ Criminalia 2630 (1711); Criminalia 2760 (1714); Criminalia 3439 (1725); Criminalia 3932 (1731).

¹⁰⁹⁹ Criminalia 3129 (1721).

¹¹⁰⁰ Criminalia 3090 (1720).

Apart from returning to what they had left behind, the justification of offenders for their illegal entry to the city (or its territory) also appears to reveal that their perceptions of what the punishment entailed differed from those of the city's authorities. Banishment, as we have seen, was a multi-layered punishment. It could be imposed with or without corporal or shaming punishments; with or without a fixed duration; with or without the possibility of pardon in case of good behaviour; only from the city, from its entire territory or even further; and with or without swearing an oath. This diversity gave considerable room for interpretation of the sentence and the precise legal details and consequences were open to debate both by jurists as well as by the authorities that applied the sentence.

The multiple varieties of banishment sanctions created leeway for individuals who often used it as an excuse strategy. Some of the offenders, for example, justified their return by claiming that either they had not sworn an oath, or that they did not understand what it meant. There are also examples of cases in which the offender had refused to swear an oath, and where the *Gemeiner Weltliche Richter* had done this in their place.¹¹⁰¹ The authorities took such a rationale into consideration when assessing the punishment. Especially in the case of young female offenders, the authorities did not consider it unlikely that the offender may not have understood the concept or the consequences of swearing an oath.¹¹⁰² In such a case, Frankfurt's magistrate decided to refrain from punishing offenders for infraction of banishment, but to have them renew the oath with an extensive explanation of what it actually entailed. To make sure that offenders could not use this excuse in the future, the scribes added a reference to this in the final sentence.

A second point of (supposed) uncertainty was the geographical scope of the banishment: whether one was expelled only from the city or also from its territory, and, in case of the latter, what the reach of this territory actually was (see illustration 1 for a map of the territory of Frankfurt).¹¹⁰³ In 1723, Johannetta Schrader from Mainz was arrested by a patrol on the high road close to the *Friedberger Warte*, one of the defence towers of Frankfurt's countryside. A year and a half before, Johannetta had been expelled for fornication and was now asked by the interrogators to justify her presence on the city's territory. She replied that, according to her own knowledge, she had stayed on the 'free and public roads (*offenen freijen Strassen*)' and had not entered the city's territory at any time.¹¹⁰⁴ The authorities decided to expel Johannetta again, with the explicit warning

¹¹⁰¹ E.g. Criminalia 4520 (1736).

¹¹⁰² E.g.: Criminalia 1483 (1679); Criminalia 1672 (1685); Criminalia 2656 (1711); Criminalia 3090 (1720); Criminalia 3316 (1723); Criminalia 3946 (1731); Criminalia 6398 (1750).

¹¹⁰³ Criminalia 2706 (1712); Criminalia 2712 (1712); Criminalia 2735 (1712); Criminalia 3304 (1723); Criminalia 3342 (1724); Criminalia 4081 (1732); Criminalia 4210 (1734); Criminalia 4212 (1734).

¹¹⁰⁴ Criminalia 3304 (1723).

that she should keep a further distance from Frankfurt and its territory or else she would face the *Staupbesen* (the whip).

Others excused their infraction by referring to (supposed) conditions that allowed them to pass the city.¹¹⁰⁵ But even without referring to such conditions, many of the returnees excused their return with the fact that they were only passing Frankfurt on their way elsewhere. These excuses were often accompanied by explicitly mentioning that they would not stay the night.¹¹⁰⁶ Similar sentiments were voiced by offenders who stated that they had not entered the city on their own account, but that they were commissioned by their employer and that therefore their personal banishment did not apply.¹¹⁰⁷ Apparently, they did not perceive their banishment as a prohibition to enter the city entirely, but as a sentence not to settle in Frankfurt. Or to put it in other words: according to their own sense of justice, banishment was supposed to be an exclusion from the urban community as a legal entity – the right to obtain citizenship or a resident status and to be able to appeal to the city as a *Schutzgemeinschaft* with all its accompanying services and provisions – and not necessarily as an exclusion from the city as a geographical entity.

Such sentiments were also voiced by offenders who appealed to the fact that – according to their own opinion – they should not be considered a threat to the urban community. In January 1715, for example, Johann Boss was banished for violently assaulting a young girl. He was apprehended in August of the same year and excused his return by stating that “it wasn’t as if he had sworn the city due to theft or murder”.¹¹⁰⁸ Another, more common excuse strategy, was that violators appealed to the sentiments of authorities regarding vagrancy and unsettledness. Local soldier Niklas Hugern, for example, stated that he returned to Frankfurt to visit his mother in order to receive some allowance, as the only other options left would have been to go stealing and robbing, something he could not do.¹¹⁰⁹ These excuse strategies were sometimes combined with statements by offenders that they had bettered their life circumstances and therefore should be eligible again to enter the city.¹¹¹⁰

Finally, a third type of justification referred to the need to enter the city for services or supplies that were unavailable on the road, such as medical experts.¹¹¹¹ These explanations are not specific to those that violated their banishment, but reflect the general attractiveness of the city and

¹¹⁰⁵ Crim 2656 (1711); 3316 (1723); 3946 (1731); 5012 (1739); 6398 (1750).

¹¹⁰⁶ This was also considered a mitigating circumstance: Orth, *Dritte Fortsetzung*, 880-881. E.g. Criminalia 1483 (1679); Criminalia 3090 (1720); Criminalia 3405 (1724); Criminalia 4158 (1733); Criminalia 5098 (1740); Criminalia 5592 (1743); Criminalia 8578 (1771); Criminalia 8790 (1774); Criminalia 9246 (1781); Criminalia 10161 (1792).

¹¹⁰⁷ E.g. Criminalia 1205 (1660); Criminalia 4209 (1734); Criminalia 5231 (1741); Criminalia 7838 (1762).

¹¹⁰⁸ Criminalia 2760 (1740). Original: ‘Wäre ia keine diebereij und keine mördereij warmit er die Stadt verschwobren’.

¹¹⁰⁹ Criminalia 3439 (1725). Original: ‘Er bette also müssen zu seiner Mutter gehen, daß er was zu leben bekommen, dann er bette nicht können stehlen und rauben gehen.’

¹¹¹⁰ Criminalia 2327 (1702); 3090 (1720); 3932 (1731); 4209 (1734); 5098 (1740).

¹¹¹¹ Criminalia 2118 (1697); 2630 (1711); 3323 (1723); 5592 (1743); 8046 (1764).

its services. After all, one of the key characteristics of cities is their multifunctionality and the availability of services.¹¹¹² Foreigners arrested as suspicious often provided similar explanations for their stay in Frankfurt. Although the city was situated in one of the more urbanised regions of the Holy Roman Empire, its services still functioned as an important pull factor. The availability of relatively cheap goods and merchandise in particular attracted many people. Physical discomforts due to starvation, disease or extreme cold as a result of the aggravations of life on the road also drew people back to the city.

A particularly devastating tale is that of locally born Anna Justina Heintzebergerin, 30 years old. Both her parents passed away when she was still young and Anna was raised in the poorhouse. Her life was characterised by encounters with the law for property offences and immoral behaviour before she was banished in 1740 for theft. After her expulsion, she moved to Mannheim where she found employment working as a day labourer in a tobacco factory. But Anna was no longer tolerated there after her ‘whole body became unclean (*am ganzen Leib gantz unrein geworden*)’ and was forced to leave. What followed subsequently was a life of begging and roaming the countryside. As her disease progressed and she became verminous (*von dem ungezieffer fast aufgefressen worden*) Anna decided to return to Frankfurt only to buy a cap to cover her head so her physical appearance would not repel people too much. But before she was able to leave the city, Anna was apprehended by the *Gemeine Weltliche Richter* Winkler close to the *Affentor* and taken into arrest. Her pitiful situation did not move the magistrates to mercy and Anna was sentenced to the pillory and banished again.

Underneath all of these justifications one can read the more underlying causes for the return of offenders. Illegal returns to the city offered a (temporary) solution to hunger, poverty and marginalisation. During the interrogations, investigators often inquired after the whereabouts of offenders following their punishment and how they made a living in order to assess their character, whether or not they had improved their ways? In the majority of the cases the answers reveal a life that was characterised by mobility, odd jobs and occasional crime. For many, this was not a lifestyle created by banishment, but a continuation of their previous mobility patterns that were often regionally dominated. Because many offenders already lived a mobile life prior to their arrest, their networks extended beyond the borders of the city. The presence of family members back home or in other places often directed the movement of offenders.¹¹¹³ Even family-like structures among vagrants or networks of prostitution could offer social support on the road and offer valuable

¹¹¹² A. Lees and L. Hollen Lees, *Cities and the making of modern Europe, 1750-1914* (Cambridge 2007) 21-27; L. Lucassen and W. Willems eds., *Living in the city. Urban institutions in the Low Countries, 1200-2010* (New York 2012).

¹¹¹³ Criminalia 1672 (1685); Criminalia 4212 (1734).

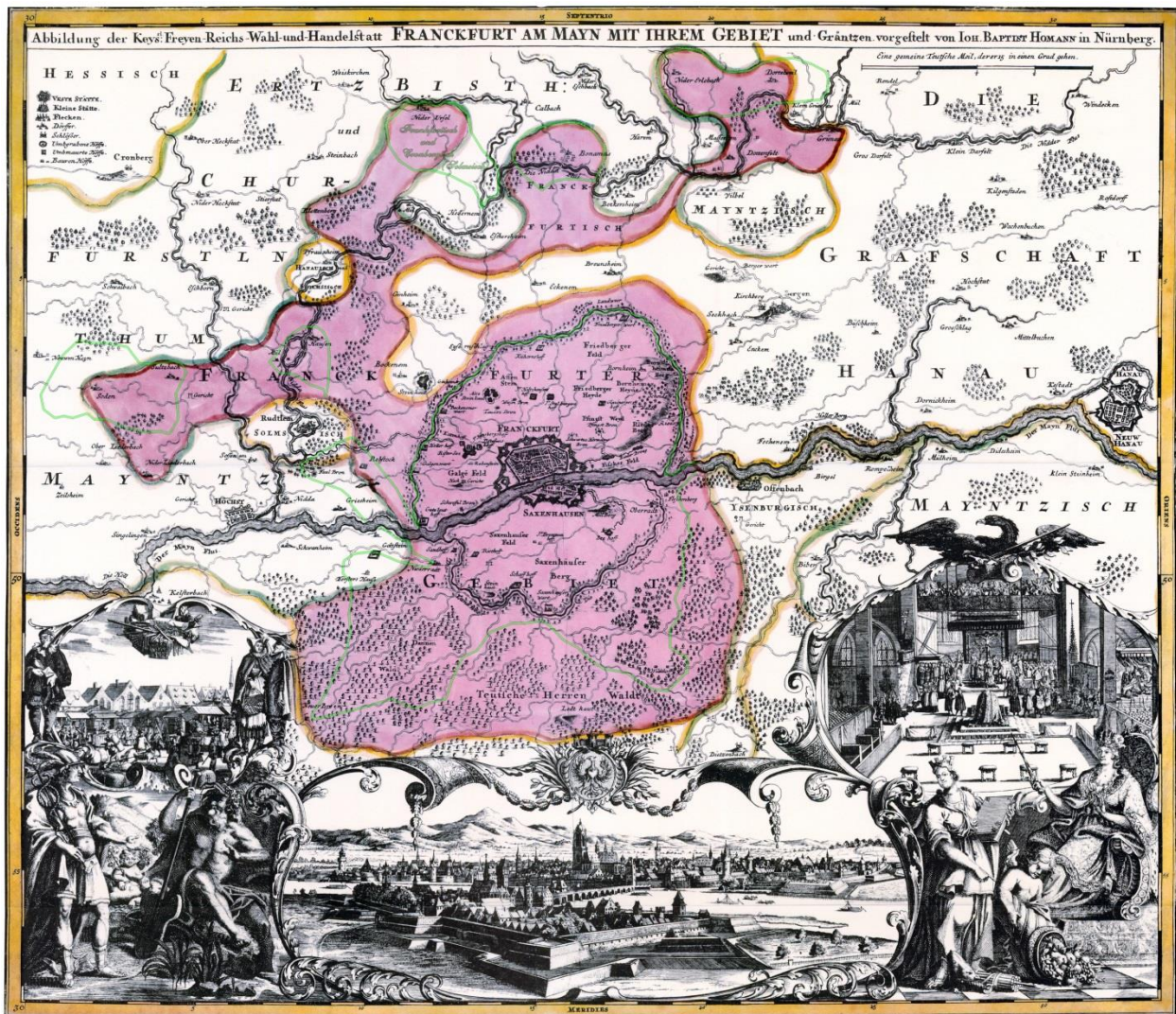
connections in other cities or villages.¹¹¹⁴ The problem was, however, that none of these connections offered long-lasting solutions to the precarious and deprived life of banished offenders. They could offer short-term support but no assistance to settle and escape a life that was characterised by moving from one place to another to find short-term employment.

For most local people, however, Frankfurt remained the primary economic and social lure. This was where they knew their way around and where there were family members that could provide shelter and a place to stay. Remaining close to the city, and only entering it on occasion, was a very common tactic employed by offenders after their banishment. In 1770 it was reported to the *Schatzungsamt* that Maria Catharina Dreherin, a local soldier's widow, had been seen in the city at her daughter's house, despite her expulsion eleven years before. During her interrogation it was revealed that she returned to the city repeatedly to collect wool to spin from the weaver Idstein, as she was unable to gather wool outside 'but still depended on it to make a living'.¹¹¹⁵ But Maria never returned to the city with the objective of staying, knowing very well that she was forbidden to do so. Instead she remained very close and stayed in places like Offenbach (8 km from Frankfurt), Ginnheim (6 km from Frankfurt) and Rödelheim (7 km from Frankfurt). The map of Frankfurt shows that it was relatively easy to move around in the proximity of the city, without actually entering Frankfurt's territory.

¹¹¹⁴ Ammerer, 'Schandstrafe, Brandmarkung und Landesverweisung', 328-329.

¹¹¹⁵ Criminalia 8504 (1770).

Map 3 The city of Frankfurt and its territory



Source: Joh. Baptist Hofmann in Nürnberg, ca. 1712

The practice of returning – a reflection of female settledness?

Thus, the question remains: was the attraction to return to the city greater for women than it was for men? Were women more dependent on settledness and less able to make a living on the road, especially if they had to take care of young, possibly illegitimate, children? Or was their overrepresentation a reflection of the prosecution efforts of the authorities? In order to answer these questions it is necessary to take a closer look at some of the characteristics of the violators of banishment before the *Verhöramt*. To this end a total sample of 102 criminal investigations records have been investigated, concerning 96 individual offenders. Considering the scope of banishment during this period, the number of investigated violations of banishment is rather small. However, we must take into account that these cases only represent the tip of the iceberg. There are references

in the Criminalia and other sources which show that first- and even second-time, returnees were simply expelled again by lower officials.¹¹¹⁶ Moreover, not all the cases of violation of banishment investigated by the *Verhöramt* can be distinguished as such from the description because the focus is on the crime committed upon return. Nevertheless, these cases offer a good sample to study the gendered aspects of this offence.

The sample reveals that there were an equal number of individual male and female offenders who violated their banishment. Women, however, were more likely than men to be prosecuted for breaking their ban more than once. If we take recidivism into account, the share of women becomes even more significant. According to the sources, 31 of the 96 offenders had ignored their expulsion more than once and of these 31 recidivists only 9 were men and 22 were women. Thus, women were more inclined to defy their sentence repeatedly than men. Data for other regions seem to confirm this image as well.¹¹¹⁷ Not only did women return to the city more often, they also appear to have returned to the city sooner. The data in table two shows that the majority of women were arrested within six months after their banishment, whereas men were more likely to return after a longer period of time. It must be noted that the time of arrest did not necessarily correspond with the time of return to the city. However, there are only a few examples of offenders who returned to the city almost immediately after their expulsion and managed to stay in Frankfurt for a couple of years before being detected.¹¹¹⁸ More often, offenders were caught the same day or at least within a week after their return to the city. They were often apprehended by the *Gemeine Weltliche Richter*, beadles, or staff members of the poorhouse. In effect, the very people that knew that they had been expelled because they were part of the judicial system and recognised them from the time they were imprisoned in the poorhouse, or because they had escorted them out of the city personally.¹¹¹⁹ The more notorious an offender was, the more likely it was that he/she would be recognised by either of the disciplinary officials. One of the *Gemeine Weltliche Richter* even stated that he kept a personal administration of all the people he had escorted out of the city.¹¹²⁰

¹¹¹⁶ Konsistorium 1746 folio 171 illegal return of Anna Christina Schillingsin; Konsistorium 1746 folio 13, 14 and 15 relating the illegal return of Elisabetha Brinckmännin. Relating to her case also: Criminalia 6062 (1748); Konsistorium 1759 folio 34, 121 and 129 of the case of Maria Katherina Dreherin. Relating her case also: Criminalia 7497 (1758-1759) and Criminalia 8504 (1770).

¹¹¹⁷ G. Schwerhoff, 'Kriminalität in der Reichsstadt Köln um 1700- ein neuer Blick vom Turm', *Geschichte in Köln* 55 (2008) 63-85, 71; P. Spierenburg, *The Spectacle of Suffering. Executions and the evolution of repression. From a preindustrial metropolis to the European experience* (Cambridge 1984) 166; Noordam, 'Criminaliteit van vrouwen', 41-42.

¹¹¹⁸ Criminalia 2656 (1711); Criminalia 8049 (1764).

¹¹¹⁹ E.g. Criminalia 2158 (1698); Criminalia 2656 (1711); Criminalia 2706 (1712); Criminalia 2709 (1712); Criminalia 2712 (1712); Criminalia 3245 (1722); Criminalia 3316 (1723); Criminalia 3375 (1724); Criminalia 3383 (1724); Criminalia 3385 (1724); Criminalia 3405 (1724); Criminalia 3887 (1731); Criminalia 3956 (1731); Criminalia 4081 (1732); Criminalia 4158 (1733); Criminalia 4209 (1734); Criminalia 5082 (1740); Criminalia 5098 (1740); Criminalia 5153 (1740); Criminalia 5231 (1741); Criminalia 5381 (1742); Criminalia 5456 (1742); Criminalia 5653 (1744); Criminalia 7725 (1761); Criminalia 8578 (1771); Criminalia 8651 (1770); Criminalia 8790 (1774).

¹¹²⁰ Criminalia 5004 (1739).

Table 22 Time between banishment and arrest for infraction of banishment (in months)

Time between banishment & arrest	Number of offenders	Male	Female
< Month	5	2	3
1-6 months	31	11	20
7-12 months	13	6	7
13-24 months	12	4	8
> 24 months	29	15	14

Sources: Sample Strafenbuch; Sample Criminalia.

These figures seem to confirm that there was indeed more incentive for women to return to the city than for men. Was this because they were more connected to the city? Were they more dependent on returning? As we have seen above, authorities were particularly inclined to expel foreigners without any formal residency and were very reluctant to banish citizens and, to a lesser extent, resident aliens. More than 38% of the women and 43% of the men who returned to the city illegally originated from Frankfurt or one of the villages under the dominion of the city.¹¹²¹ Considering that the share of locals among banished offenders during this period was significantly lower (see above), it is clear that the pull of the city was slightly greater for locals than for foreigners. In contrast to what one would expect, however, the proportion of locals among returnees was higher among men than among women. These mostly concerned (previously) well established citizens who mainly returned to the city once, or twice at the most, to settle some practicalities.

There are indications in the sources that seem to suggest that men were more successful in settling permanently elsewhere. In 1702, Anton Dietrich was expelled from Frankfurt *cum reservation fama* for insulting the city's mayors. Within two weeks he managed to become a citizen in Hanau and he returned to Frankfurt to sell his 'Burgundy wines and other securities (*Burgunder Weine und andere Effecten*)' so he could set up a new shop in Hanau with the profit.¹¹²² Forty years earlier, Philipp Jacob Knauss was banished for insulting the local clergymen and calling them '*Hurenmeister*'. Again, his banishment did not seem to have had any marginalising consequences for Knauss: he returned to the city on behalf of his new employer, the count of the neighbouring territory of Isenburg, who had employed him as a scribe.¹¹²³ And there are more occasions when male returnees

¹¹²¹ Sample Infraction of Banishment. Out of the 48 male offenders for infraction of banishment 17 originated from Frankfurt; 2 from one of its villages; 19 were characterized as aliens and in 9 cases the place of origin is unknown. As for women: 15 originated from Frankfurt, 3 from one of its villages; 28 originated from elsewhere and only in 2 cases their place of origin is unknown.

¹¹²² Criminalia 2327 (1702).

¹¹²³ Criminalia 1205 (1660).

carried written attestations of employers whom they had worked for after their banishment.¹¹²⁴ This must be related to the fact that the general population of male exiles was less uniform from the outset. Although the majority still belonged to the marginal poor, others were more established. It was this group that faced the least marginalisation after banishment.

Although the share of locals returning was higher among men than among women, there is still a dominant regional connection in case of female returns as well. Table 11 shows the distance from the places of origin of offenders in km to Frankfurt. This table indicates that local connections were not only important for offenders who were once members of the legal community of Frankfurt, but also played a role for other returnees. The data in the table indicate two important things. First, both male and female returnees tended to originate from places closer to Frankfurt than the overall population of banished offenders. Second, women had a much smaller mobility radius than men and more often originated from cities and villages that were closely connected to Frankfurt's regional network, like Hanau, Mainz and Darmstadt. While women predominantly moved around in the broader region of Frankfurt, they were not restricted to it. Susanna Rothin who originated from Oberrad, one of the villages in Frankfurt's territory, excused her banishment by stating that she had gone to Holland in order to try to find an honest living. However, as she lacked the right connections, she was unable to find a position there and returned home.¹¹²⁵

Table 23 Places of origin of banished offenders compared to violators, in km to Frankfurt

Distance to Frankfurt (in km)	Banished women (N=88)	Female returnees (N=27)	Banished men (N=98)	Male returnees (N=19)
> 25 km	20.5%	22.2%	9.2%	10.5%
25 > 50 km	18.2%	37.0%	8.2%	5.3%
50 > 100 km	22.7%	22.2%	13.3%	31.6%
100 > 150 km	13.6%	11.1%	16.3%	10.5%
150 > 200 km	4.5%	3.7%	11.2%	21.1%
200 > 250 km	4.5%	0.0%	13.3%	10.5%
250 km >	15.9%	3.7%	28.6%	10.5%

Sources: Sample Strafenbuch; Sample Criminalia.

¹¹²⁴ E.g. Criminalia 2118 (1697); Criminalia 3291 (1723).

¹¹²⁵ Criminalia 3932 (1731) and Criminalia 3946 (1731). Original: 'das sie sich ehrlich zu nehren gesucht und deswegen in Holland gereset, nirgend aber unterkommen, noch unterhalt finden können' [...] 'Sie hätte auff alle weis und wege gesucht sich ehrlich zu ernberen, hette aber nirgend unterhalt finden können, wie sie dann wercklich in Holland mit ihrer Schwester gewesen, allen weilen sie unbekandt nicht unter kommen können'.

Earlier in this chapter, it was demonstrated that women were mostly prosecuted for their mobility because it was framed by the authorities as loose and immoral, and connected to prostitution and illegitimacy. It may not come as a surprise, therefore, that the majority of women who violated their banishment (32) had originally been banished for moral offences like prostitution, illegitimacy or leading a loose and immoral life in general (*ein liederliches leben führen*).¹¹²⁶ This is striking, considering the fact that moral offences were not normally dealt with by the *Verhöramt*. The image of the prostitute returning to the city after banishment because she depended on her local clientele is dominant in popular literature.¹¹²⁷ However, studies on prostitution in the early modern period have indicated that it was a highly mobile profession: women moved around from city to city both on their own, as well as in more organised networks of procurers, brothel-keepers and prostitutes.¹¹²⁸ In the case of Frankfurt too, regional patterns of migration appear to have existed among women arrested for prostitution, though it is unclear to which extent these were organized networks of brothel and procurers, or simply followed other existing regional migration networks. A large number of women, for example, were connected to the military milieu and followed the armies.¹¹²⁹

The example of Anna Maria Krammerin is illustrative for these patterns. Over the course of two years, Anna Maria Krammerin, a young girl from Steinheim (now part of Hanau), illegally returned to Frankfurt on at least four occasions. In between her returns she had worked as a servant in Hanau and Mainz and carried tobacco as a day labourer. But she also continued to supplement her income with prostitution. Throughout the entire period, Anna remained connected to a network of prostitutes and brothel keepers that appeared to operate primarily in Frankfurt. On three out of four occasions she was arrested with another woman, Anna Kleinköpffin from Darmstadt, with whom she had stayed in several brothels. Before her final infraction of banishment that can be traced in the sources, Anna was living in the countryside near Hanau with one of her former brothel-keepers who had also been banished.¹¹³⁰ The example of Anna indicates that the attraction to the city must have been at least partially related to the existing regional networks, whether these were the reflection of organised structures or not. The majority of the women, both

¹¹²⁶ Sample Infraction of Banishment.

¹¹²⁷ K. Schneider, *Mörder, Diebe und Betrüger. Kriminalität in Frankfurt im 18. Jahrhundert* (Frankfurt 2017) 135-139.

¹¹²⁸ L. van de Pol, *The burgher and the whore. Prostitution in early modern Amsterdam* (Oxford 2011) 28, 146; M. Mechant, 'Selling sex in a provincial town. Prostitution in Burges' in: M. Rodríguez García; L. Heerma van Voss and E. van Nederveen Meerkerk eds., *Selling sex in the city. A global history of prostitution 1600s-2000s* (Leiden 2017) 60-84, 78-79; Kienitz, *Sexualität, Macht und Moral*, 81-84.

¹¹²⁹ Criminalia 3698 (1728); Criminalia 3893 (1731); Criminalia 5985 (1747); Criminalia 7569 (1759); Engel, *Soldatenfrauen*, 438-444.

¹¹³⁰ Criminalia 3090 (1720).

local and foreign, caught for infractions of banishment had led a life in the margins that was characterised by deviance, mobility, an economy of makeshift and previous encounters with the law long before their expulsion.

Thus, it appears to have been a particular group of women who were prosecuted for returning to the city illegally. In the eighteenth century, authorities repeatedly voiced their concern about the increasing numbers of offenders who ignored their banishment. In their minds, this was a problem with female offenders in particular. In 1790, the head of the *Verhöramt* recalled that during the year and a half that he had been in office, hardly a week passed by without a woman being arrested for ‘*gebrochener landesverweisung*’, while he only remembered one man being arrested for the same offence during this period.¹¹³¹ The women were framed by the *Kriminalrat* as headstrong and incorrigible, and having repeatedly insulted ‘God and the authorities’ (*‘Gott und die Obrigkeit’*) by ignoring their oath. These concerns were not new in the 1790s, but had been ongoing throughout the period. Between 1724 and 1731 Maria Margaretha Rücklerin from Herborn was arrested for infracting her banishment on three different occasions. In the legal advice, the syndics considered that Maria should be punished severely and made an example because the ‘violations of banishment were out of control’ (*‘die violirung der urphed gantz überhandt nehmen’*), particularly among such loose harlots (*‘dergl. ruchloosen dirnen’*), meaning women who were suspected of being prostitutes, fornicators or unwed mothers.¹¹³²

As we have seen earlier, the anxieties of the authorities towards loose women were not only fostered by moral considerations, but by financial concerns as well.¹¹³³ They were unwilling to carry the burden of children and their (foreign) mothers who could not support themselves. It is unlikely, however, that the overrepresentation of women among infraction of banishment cases was only due to the fact that authorities were more likely to police and detect (future) unwed mothers out of financial concerns. Prosecutions for *fracta urpheda* peaked in the 1720s and 1740s, whereas concerns about illegitimacy and expelling unwed mothers based on financial grounds peaked in the 1750s. If anything, the former inspired the latter and not the other way around.

The high level of female recidivists among violators of banishment is more likely to result from a gendered division of labour among larger gangs than from the prosecution efforts of the authorities. These gangs often operated regionally and were organised along the lines of family relations. Most of the time, they did not group together, but changed the composition continuously in order to complicate their prosecution by the authorities, and prevent the risk of being labelled as

¹¹³¹ Criminalia 10032 (1790).

¹¹³² Criminalia 3385 (1724).

¹¹³³ Also: D. Hüchtner, ‘Gender as a medium of change in Berlin’s politics of poverty, 1770-1850’ in: U. Gleixner and M.W. Gray eds., *Gender in transition. Discourse and practice in German-speaking Europe, 1750-1830* (Ann Arbor 2006) 25-50.

an organised criminal gang.¹¹³⁴ Historians have shown how they strategically used the gendered attitudes of the authorities towards poverty. Women were much more able to rely on excuse strategies that framed their actions as a result of poverty and destitution. Men, on the other hand, were more likely than women to be framed as dangerous criminals and consequently faced being hanged. In Kurmainz, two-thirds of the death penalties were imposed on offenders labelled as vagrants or on other marginal groups.¹¹³⁵ Repeatedly returning to a city from which they were previously banished was too risky for men.

One of the recidivist women was Anna Christina Müllerin, a converted Jewess from Gießen, who was investigated for the violation of her oath on at least five occasions during 1735 and 1741.¹¹³⁶ The first time Anna Christina was expelled from Frankfurt this was for prostitution and theft when she was approximately 18 years old. The first time she returned to the city was within two months, in order to visit some of her fellow townspeople from Gießen and collect some clothing. Between the period of her first return to the city and her last (as documented in the criminal records) in 1741, Anna Christina had given birth to three children, of which at least one was illegitimate, and had married a soldier, who had died in service in Holland. She had found casual employment as a maid, with sewing, knitting and washing. However, she was also arrested for theft and the violation of banishment in Frankfurt. But her criminal activities were not restricted to Frankfurt: in Würzburg she was banned and branded for illegally recruiting soldiers, and in Mainz she was banished for theft after being exposed at the pillory.

Another example is that of Anna Barbara Großin, who was arrested for theft and expelled from Frankfurt in 1748, but broke her banishment in 1750 when she was arrested again for suspected theft.¹¹³⁷ However, her criminal 'career' was not restricted to these two thefts. The criminal investigation records revealed that Anna Barbara's first encounter with the criminal justice system dated back 26 years, when she was arrested in Königstein for her connections with the *Breitfußischen* gang of thieves. Her body carried the proof of her past, as she had brandings both from Königstein as well as from Darmstadt. Finally, Anna Barbara was branded in Frankfurt for a third time and expelled from the city, with the warning not to return again or she would receive the death penalty. Anna Barbara was connected to a much wider group of notorious thieves that operated regionally. Her husband was expelled from Frankfurt in 1726, while two other male members called Heß and Sonnewald were hanged in the same year. Another female member of this group, Anna Maria Wagner, was one of the few female thieves to be hanged in Frankfurt.¹¹³⁸

¹¹³⁴ Härter, 'Prekäre Lebenswelten', 36-37.

¹¹³⁵ Härter, *Policey und Strafrecht*, 1107-1117.

¹¹³⁶ Criminalia 4945 (1739).

¹¹³⁷ Criminalia 6353 (1750).

¹¹³⁸ Criminalia 3416 (1722-1724); Criminalia 12790-12792 (1725).

The examples show that these women displayed considerable regional migration patterns. Their lives were not characterised by a moral pressure of female settledness at all. Although they continuously broke their banishment in Frankfurt, they also committed crimes elsewhere in the region. It is difficult to find evidence in these tales that women were more likely to defy their sentence because they were more dependent on the social support networks in the city than men. Rather, we may assume that their violations were the reflection of continuous regional migration and a gendered division of labour. Frankfurt was simply one of the many places in which they stayed from time to time.

Conclusion

The aim of this chapter has been to map how the increasing criminalisation of the mobility of vagrants and other travelling groups since the sixteenth century was gendered in order to get a better understanding of the position of women in a city which aimed at strictly regulating mobility. As a result of changing attitudes towards poverty, authorities in the early modern period, including Frankfurt, put increasing pressure on the concept of settledness. This chapter has shown that the regulations on mobility not only increasingly associated the mobile poor with criminality, but also that they were based on specific gendered attitudes concerning mobility. Male mobility beyond the parameters of legitimate labour migration was labelled as a massive danger to public order and increasingly associated with organised crime. At the same time and in contrast to female labour migration, male labour migration was highly institutionalised and designed to facilitate (controlled) mobility. Perceptions about female mobility, on the other hand, hardly played a role in Frankfurt's vagrancy laws. Domestic service remained a labour market that was regulated informally, although attempts were taken to increase control in the second half of the eighteenth century. These attempts demonstrated how anxieties about female mobility were connected to moral issues and the possible disruptions this posed to social order.

Authorities approached male and female mobility rather differently. This influenced the position of women in the city, and shows that a different type of city created a different 'urban factor' with regard to female criminality in the early modern period, from that which we know for open cities like Amsterdam or London. The position of migrants who were not formally connected in the city was precarious. The laws had created a legal framework in which foreigners risked being expelled on the mere suspicion of having committed a crime. What was considered unwanted behaviour of strangers, however, was different for men than for women. In the latter case, this was framed in terms of anxieties about female independence and sexuality, whereas for men it was about fears of organised criminal gangs. These differences produced an image of male criminal

mobility that was more likely to be prosecuted by the criminal courts, whereas women's mobility featured more prominently before the *Konsistorium*.

Finally, the study of violations of banishment as revealed interesting patterns with regard to male and female criminality. Previously, many historians have seen the high level of female involvement in this type of crime as a result of the fact that women were more dependent on local connections than men. Although this may have been true in some cases, the profile of the women that returned to Frankfurt illegally suggests that the reality was more complex. Women displayed regional migration patterns which were not only focused on Frankfurt. Additionally, gendered perceptions of authorities about dangerous mobility help explain why women were more likely to return than men.

In early modern Germany, including Frankfurt, authorities imposed stronger control on mobility and settlement than they did for example in England or the Netherlands. The regulation of poor relief was strongly connected to citizenship and legal incorporation into the community. Transients were restricted in their opportunities to stay in the city: after eight days they had to acquire formal consent from the authorities whose primary interest was preventing impoverished people from settling in the city. These principles clearly impacted the opportunities of women (and men) to settle in the city independently without being incorporated in social support networks through the household.

VII. Conclusions

In this book we have encountered many women whose life stories have been captured in the course of criminal investigations in early modern Frankfurt. Their tales are important for our understanding of the multitude of ways in which recorded criminality was impacted by both formal and informal means of social control, and the role of women's agency within this. Both bottom-up social control mechanisms as well as top-down social control exercised by the authorities determined the outcome of patterns of registered criminality. Heide Wunder formulated the task of crime historians as follows: it must be clear what remains in the dark, and for what reasons.¹¹³⁹ These reasons can only be understood by looking at the local context of crime and social control. What could have been a cause of under-registration for a type of offending or offender in one city might not have been the case in another.

Over the past two decades, historical studies on female crime in early modern Europe have significantly altered our image of gender and crime. Scholars no longer assume that the rate at which women contributed to recorded crimes was invariant over time and space. Yet, although these studies offered many important insights and contributions to historiography, they remained limited in their attempt to account for regional variations and the impact of local socio-cultural factors. On the contrary, despite the fact that the level of women's involvement in crime in early modern Europe varied considerably between 10 and 50%, it is often generalised as a period in which the female crime rate was rather high, especially in cities.

Scholars argued that during the early modern period female criminality was particularly an urban phenomenon. Early modern cities are presented as places that offered women a relatively high level of autonomy, fostered by urban demographic patterns that were characterised by relatively weak nuclear family structures and high levels of migration. At the same time, women in the city were also vulnerable in economic terms as they lacked social support networks. Theft, begging, prostitution and other petty offences were part of a wider range of survival strategies employed by these women in order to cope with their precarious situation. This independence and vulnerability in combination with highly institutionalised forms of formal control available in cities increased women's chances of coming into conflict with the law and can explain the exceptionally high female crime rates in cities like London and Amsterdam (ranging from 30% to 50%).

However, as I argue in this thesis, the urban factor did not play out in the same way in early modern Europe. Although the explanatory model which stresses the distinct nature of urban life

¹¹³⁹ Wunder, 'Weibliche Kriminalität', 56.

has offered very valuable clarifications for the different patterns of female offending in the city and in rural areas, it is too broad to understand the varieties in women's criminality between different urban centres in early modern Europe. The level of independence and relaxation of informal paternalistic community control that women experienced in cities differed widely across early modern Europe. Hitherto, our understanding of urban crime patterns has been modelled primarily by studies on large metropolitan cities like London or dense and highly urbanised regions like the Dutch province of Holland. However, these cities are generally perceived by historians as places in which women enjoyed a relatively high degree of independence.¹¹⁴⁰ Furthermore, they have linked the high proportion of female crime to the lack of informal social control mechanisms in cities. The case of Frankfurt shows that strong informal control through the household was not absent in urban settings. Informal social control was not a specific feature of rural societies in which close-knit family structures prevailed and formal control in the form of criminal courts was less present (literally speaking). Rather, the household was considered by the authorities and the community alike as an integral part of governance and policing alongside the criminal prosecution office.

In early modern Germany the patriarchal household was central in perceptions of social order. Of course, similar ideologies existed in other European countries. More than in other countries, however, *das Haus* embodied a legal entity in Germany and a unit of strongly regulated social control. The impact and extended reach of the household was possible because it was incorporated on a practical level. Single women, for example, were prohibited from setting up their own households because their independence defied the main principles of social order centred on the household. Frankfurt was a city with strong institutional control of mobility in which the right of permanent settlement was strongly connected to the institution of citizenship (*Bürgerschaft*) and, in extension, to household membership. For example, transients were only allowed to stay in the city for eight days before they needed formal consent from the authorities. Permission to stay was only granted to individuals who could prove that they possessed sufficient means to support themselves. Historians have often interpreted such characteristics in cities as a sign of 'closure' and exclusion towards migrants in general. Frankfurt and similar cities demonstrate, however, that the presence of strong institutional mechanisms to regulate mobility did not *exclude* migrants and did not lead to reduced levels of mobility. Rather, it created a framework in which newcomers, including women, were more incorporated in traditional urban corporate networks. Compared to cities with more open structures, such as London and Amsterdam, women (and men, for that matter) in Frankfurt, even if they had migrated to the city, had limited opportunities to settle

¹¹⁴⁰ Ogilvie, *Bitter living*, 328; Van der Heijden, *Women and crime*, 162-163.

independently. Indeed, the number of female headed households in early modern Frankfurt was low, and the overwhelming majority were headed by widows.

Considering the different levels of independence and subjection to the household experienced by women in early modern Frankfurt compared to cities like London and Amsterdam, this thesis therefore set out with the hypothesis that societies with stronger institutions exercising (informal) social control portray different and lower patterns of female criminality. The assumption was that the relative restrictions on women's independence in Frankfurt decreased the chances of their becoming involved with formal criminal justice, and at the same time lessened their socio-economic vulnerability in times of hardship. An important difference with cities like Amsterdam and London and the case of Frankfurt is the share of women in crime: in seventeenth and eighteenth-century Frankfurt women accounted for 22% of all the suspects investigated by the criminal investigation office. This thesis shows that the authoritative social control structures significantly impacted the level of women's prosecuted crime in early modern Frankfurt in various ways, but not always as expected in the hypothesis. The evidence shows that Frankfurt both resembled the general urban European pattern, and differed from it.

The case of Frankfurt and the European pattern of female crime

There were several ways in which female crime in early modern Frankfurt *did* follow similar patterns to those found for other cities in this period. The types of offences committed by women and their socio-economic profile fit into the European urban crime pattern. The majority of men and women in early modern Frankfurt were prosecuted for property offences (40 and 50% respectively). Compared to their overall share among registered offences women were overrepresented among moral crimes, like prostitution and illegitimacy, and underrepresented among violent crimes. These differences partially derived from gendered discourses about what was considered to be threatening behaviour. Women were more active in fights and physical altercations than their prosecution patterns might suggest. The *Verhöramt*, however, only investigated violence in case of severe physical injuries or when the violence led to concerns about the maintenance of public order. In many cases, women's fighting did not reach such a level and was settled informally in the neighbourhood or through lower judicial bodies. Overall, male and female recorded crimes were more similar than different.

The profile of the Frankfurter female offender resembled the general characteristics of criminal women in European cities as well. The typical female offender in Frankfurt was young, poor, living a mobile lifestyle (often working as domestic servants) and lacked an extended social network in the city. Most of them were independent: they were either unmarried or lived a life

independent of their husband (which was often the case, for example, for soldier's wives). In Frankfurt too, women's offences were particularly linked to the vulnerable stage in their life-cycle in their late teens and early twenties, which was generally a period of relatively high mobility and independence. Petty offences proved to be – at least for some – an occasional part of their survival strategies. Both for men and women, offences were often opportunistic and occasional. Like in other cities, the court records of Frankfurt demonstrated the precarious position of migrant. Independent migrant women, most of whom only stayed in Frankfurt temporarily, were the most vulnerable to becoming involved with the law. Over three-quarters of the women prosecuted for theft were foreigners. The position of foreign illegitimate mothers of illegitimate children was even more vulnerable than that of local women who were pregnant out of wedlock, because the urban authorities expelled them, unwilling to carry the financial burden of extra-marital children. The profile of women suspected of committing infanticide equally highlights the precarious position faced by female migrants when they were cut off from social support networks. These patterns have been highlighted for other cities as well. In fact, migration was one of the central features of urban crime patterns in this period.

The social profile of female offenders strengthens the observation that women's crimes in early modern Frankfurt were to a large degree shaped by their precarious socio-economic position. Fluctuations in the share of women among recorded offenders were primarily related to an increase in property offending in the middle of the eighteenth century. During this period Frankfurt experienced a time of economic crisis (visible in the increasing expenditure of the various urban poor relief funds). Overall, the period was characterised by increasing prosecution efforts on the part of the authorities which were fostered by contemporary social developments. Economic decline and disruptions due to warfare fed the anxieties of the local authorities about masterless people as a disruption to the social order. Ordinances against begging and vagrancy accumulated during this period and authorities' concern about social order and crime went hand in hand with efforts to improve policing and exclude outsiders from the community. Short-term events like war and subsistence crises indeed influenced prosecuted crime patterns, but it is difficult to find clear correlations between women's crime and such factors. Women's offences during this period were the result of the endemic poverty of large sections of the population that characterised early modern society.

Impact of authoritative social control structures

The case of Frankfurt shows that there were also considerable differences as a result of strong formal and informal authoritative social control structures. These impacted the actual pattern of women's crime as well as the visibility of their criminality.

First, informal patriarchal household control played a significant role in the way female offenders were handled. An important feature of German legal thinking in the early modern period was that households played an important part in the control of deviant behaviour. Households, therefore, were not considered as 'private spaces' but served a public function, as did the disciplining role of the head of the household. In order to emphasise the public function of early modern households, Joachim Eibach introduced the concept of the 'open house' which has proven to be particularly valuable for the study of crime.

This thesis demonstrates that household dependency played an important role in connection to thefts of domestic servants, in particular women, because of the bonded nature of their labour contracts. By entering into service, servants were legally bound to the authority of their master for the agreed term and could not leave their position on their own account as they required their master's consent. The latter possessed a semi-judicial authority to discipline all members of the household. The cases of domestic theft, as studied in chapter 4, reveal that this authority played an important role in the regulation of deviance in early modern Frankfurt. Usually, crimes by domestics only appeared in court if other disciplinary measures within the household had failed or the offender had failed. The role of the household thus had implications for quantification. I have argued that as a result of the different nature of male and female household dependency, the 'dark figure' caused by household discipline was more prominent among women than among men. The eighteenth century was characterised by a growing proletarianisation of the labour force, and this weakened mechanisms of incorporation in the household through guilds. This primarily affected male household members. Apprentices were increasingly boarding outside their master's household. Moreover, the apprentices and journeymen were not only subjected to control within the household but also by guilds. More research is needed to study how the changing nature of the household in the nineteenth century impacted the control of deviance of female domestic servants. The public function of the disciplinary authority of the head of the household was increasingly limited by the state. It is likely that these changing patterns led to tensions between household and state authorities.

Although household authority had a broader reach in German-speaking territories than it might have had in other urban centres in Europe, it would be taking it too far to state that households in Germany were fully autonomous legal spaces (*rechtsfreier Raum*) in which authorities

did not meddle. Neither did households elsewhere in Europe refrain from settling matters within the domestic space informally without interference from the authorities. Rather, it was the relative strength of households in early modern Germany as the central legal, political, and social unit to ensure public order that needs to be considered. This is not to suggest that without the relative strength of household control female criminality in early modern Frankfurt would have reached similar levels as in such cities as London or Amsterdam. After all, the household also offered protection from the socio-economic insecurities women faced when living independently. Nevertheless, it has to be taken into account as a crucial selection mechanism that determined what kinds of cases ended up before the court and what did not.

Second, while informal household control played an important role in early modern Frankfurt, it was simultaneously characterised by strong formal control mechanisms. In the course of the seventeenth-century, the criminal justice system became firmly institutionalised and underwent a process of increased professionalisation. Throughout the entire Ancien Régime, the city council functioned as Frankfurt's high court, and possessed the sole authority to impose corporal and capital punishments. At the beginning of the period, criminal investigations were conducted by the junior burgomaster, but following the call of the burgher community for a less arbitrary prosecution process the city council installed two council members to assist the interrogations. The city's criminal investigation office developed from these two council members and there was an increasing differentiation of the legal system in which the boundaries between various tribunals became more clearly defined than before. As has previously been demonstrated by Joachim Eibach in his study on crime in eighteenth-century Frankfurt, the early modern period was characterised by a process of centralisation (*Verobrigkeitlichung*) and juridification. Frankfurt's inhabitants experienced a much stronger presence of the legal system in their everyday life than people living in towns and villages incorporated in larger territorial states. The *Verhöramt*, however, was not an institution of top-down repressive disciplinary force imposed upon the population by the authorities, but functioned in interaction with the city's inhabitants.¹¹⁴¹

The criminal investigation office was not the only institution of formal control in the city. Given the importance of the household as the location of social order, households were not only the site of discipline and informal control, but they themselves were subjected to the controlling eye of the authorities. After the Reformation, marriage was no longer considered a sacrament but a secular contract, and as such became a matter for regulation by the secular authorities. The sixteenth and seventeenth centuries witnessed an increase in the regulation of matters relating to marriage, leading to the criminalisation of all extra-marital sexuality. Just as in many other cities,

¹¹⁴¹ Eibach, *Frankfurter Verböre*, 426-431.

the city council established a new semi-ecclesiastical tribunal, the *Sendamt* (replaced by the *Konsistorium* in 1726), to enforce the new regulations. The sphere of control of the authorities on marriage and household formation widened in the eighteenth century, and marriage was increasingly tied to financial requirements and questions of citizenship.

The semi-ecclesiastical tribunals in early modern Frankfurt functioned closely together with the criminal justice system. They did so both through control as well as through conflict settlement. They were not, as has often been suggested, competing or overlapping tribunals. The majority of the sexual offences were prosecuted before the city's *Sendamt/Konsistorium* and were in fact not registered among the offences of the criminal investigation office. The latter only prosecuted such offences if they exceeded a level of punishment that lay beyond the jurisdiction of the ecclesiastical tribunals. Both the *Verhöramt* and the semi-ecclesiastical courts pursued the same aim of maintaining moral and social order.

Moreover, early modern Frankfurt was a city with strong institutional control over mobility. More than in England and the Netherlands, urban authorities in Germany (including Frankfurt) employed advanced mechanisms to control and regulate the entry and residence of strangers. The opportunity for foreign men and women to settle in the city independently was restricted. This strong control over mobility had a rather contradictory effect. On the one hand, it meant that more female newcomers were incorporated in social support networks. Due to the strong regulations, cities like Frankfurt provided less relaxation of paternalistic patriarchal control than women in more open cities might have enjoyed. At the same time, the position of women outside the controlling structures of the household was even more precarious because they could face constant prosecution and expulsion from the city.

Throughout the early modern period, the city council imposed ordinances that marginalised the mobile poor. German authorities placed increasing importance on belonging and settledness, and criminalised vagrancy and begging. However, the exclusionary policies of Frankfurt's authorities affected men and women differently as a result of gendered labelling practices. Although mobility was perceived as a threat to social order that centred on the household, it was ubiquitous and a central aspect of early modern economies. While male mobility in the context of work and training (as journeymen or apprentices) was respected and even facilitated, women's mobility was associated with disobedience and a longing for independence. Women's mobility was mostly seen as a threat to the social order because it was - supposedly - connected to immorality. It was, therefore, primarily regulated through the city's moral court and not through the criminal court. Young, independent and mobile women in particular had often first been punished by the consistory on multiple occasions before they were finally investigated by the *Verhöramt*. For men,

on the other hand, the moral courts appeared to be much less of a 'gateway' to future encounters with the law and investigation by the *Verhöramt*. At the same time, men who moved beyond the controlled structures of tramping were perceived as a bigger threat and risked being framed as robbers and organised criminals.

Agency of women

Considering long-standing assumptions that lower levels of female offending could be explained by the restricted nature of their public lives, it might be tempting to assume that relatively low female crime figures in early modern Frankfurt were the result of ideological and practical restrictions regarding women's independence and their subjection to the sphere of the household. Detailed qualitative analysis of different types of crimes, however, disproves the idea that low female crime rates always point to a restriction of women's public lives.

First, while this study has emphasised the importance of households as a social order mechanism which impacted the involvement of women among registered offences, it must be remembered that the household was part of the public sphere. Housewives played an important role in the exercise of household control and in the disciplining of their servants. In doing so, they by no means refrained from the use of violence and excessive force. Housewives were thus an *integral* part in the mechanism of control to maintain public order. Moreover, the qualitative analysis of the distribution of stolen goods revealed that women played an important part as buyers and resellers as a result of their economic roles within the household. There were no signs of organised criminal networks in the city. Rather, both male and female thieves made use of the importance of the informal second-hand market in the urban economy. Although women played an important role, the prosecution efforts of the authorities were focused elsewhere in terms of the prosecution of receivers. Negative stereotypes about Jews as deceitful, fraudulent and dishonest meant that local *Stättigkeitsjuden* were disproportionately investigated for fencing. Furthermore, as we have seen, women also instrumentally exploited gendered stereotypes. The majority of female thieves stole from the houses of people they were unacquainted with. The access to such household spaces was gendered in the sense that women were less likely than men to arouse suspicion when they entered houses, even if they were unknown in the neighbourhood.

Second, institutions of control, such as the consistory, were shaped by the way women encountered them. Historians have amply demonstrated that the interest of authorities in the household as a locus of moral and social order offered women opportunities to indict abusive and profligate husbands because they disrupted this order. Such cases show that women found ways to accommodate the patriarchal ideologies and adapt them to their own needs, and instrumentally

used the interest of the authorities that sought to maintain this order. At the same time, the study of women prosecuted for illegitimacy demonstrates that the experience of women before the *Sendamt/Konsistorium* varied considerably. In the course of the eighteenth century, authorities increasingly focused on the regulation of illegitimacy. In this case too, the interests of unwed mothers could align with those of the authorities, as has been demonstrated for married women, enabling them to negotiate support. Because the authorities were interested in preventing mothers and their illegitimate children becoming a burden to the local poor relief institutions, they were keen on holding the fathers financially responsible by withholding their wages or even by imprisoning them.

The examples of women pursuing action in these cases have demonstrated the importance of incorporating a perspective of agency to gain a better understanding of social control mechanisms, even if the agency was limited. Because the authorities aimed at strict control over the regulation of moral conduct and prohibited extra-judicial settlement without the consent of the authorities, women's options for support in the case of extra-marital pregnancies were limited. As a result of the double-edged function of the semi-ecclesiastical court, for unmarried mothers, going to court to file for support always meant a self-disclosure of their crimes. Calling on the *Sendamt/Konsistorium* did not release them from punishment, and thus represented both a place of support and conflict settlement *and* punishment and control. Women appeared as plaintiffs and offenders simultaneously. However, by doing so, they also shaped the judicial system since authorities had to respond to their claims. Moreover, for migrant women especially the situation was precarious as the city council imposed regulations to expel foreign pregnant women to prevent them from becoming a financial burden to the city. Again, the punishment was separated from the civil function of the tribunal, as women could (and did) still start paternity suits before the same institution that had expelled them.

Third, despite gender ideologies that assume women's immobility, they often defied these norms. One of the typical early modern offences in which women featured prominently was the infraction of banishment. Historians have often explained this by suggesting that women were more dependent than men on the social support structures from the urban community they were expelled from. As the cases in Frankfurt have shown, however, these women had often led mobile lifestyles prior to their expulsion. Their return to Frankfurt was often a continuation of pre-existing (regional) migration patterns, rather than evidence of a moral pressure on female settledness. Nevertheless, the difference in the rules and rights of residence, and the resulting different mobility patterns in early modern European trading cities such as Frankfurt, compared to booming

metropolises such as London or Amsterdam, is certainly a relevant factor to explain the different level of female delinquency.

Future perspectives

This thesis shows that a detailed case study of one city can contribute to our general understanding of the impact of local factors on female offending. Prosecution patterns of men and women were shaped by their different roles within the early modern social order, but in different ways than historians have previously assumed. The household was not a private space, nor were household relationships characterised as a dichotomy between men and women. Dependency within the household was a factor of age, marital status, gender and class. This research again shows that the effects of gender depended on the specific institutional (local) context and on men's and women's position within the societal order. In order to understand women's encounters with the criminal justice system in the early modern Frankfurt, and elsewhere, it is crucial to think about gender in connection with the social, citizenship and legal status of individual women. The position of the mistress of a burgher household was fundamentally different from that of her domestic servants, who in turn had a better position than a migrant woman who was not (yet) incorporated in a household. This book shows that the extent to which city life offered a relaxation of patriarchal pressures could vary according to time and place, and that we have to be cautious in generalising the urban experience of early modern women. Moreover, the seventeenth and eighteenth centuries should not just be considered as a period of high female involvement in crime. Such a conclusion neglects the regional differences that were present in the early modern period itself.

The detailed analysis of formal and informal social control mechanisms in this study shows that it is important to consider a more inclusive approach to questions about gendered perceptions of social order. The experiences of women were central in this study, but we cannot ignore the fact that the central role of household order in early modern Frankfurt and beyond also shaped the patterns of male offending. In the historiography, the dominant notion is still that what needs to be explained is the absence of women in the criminal record, rather than considering which factors contributed to men appearing in them so frequently. As historians previously stated, the patriarchal social order put pressure on men as well as on women. Men labelled as vagrants and prosecuted as dangerous robbers are just as much 'victims' of societal norms that centred around the traditional burgher patriarchal household as were women prosecuted for illegitimacy or lewdness.

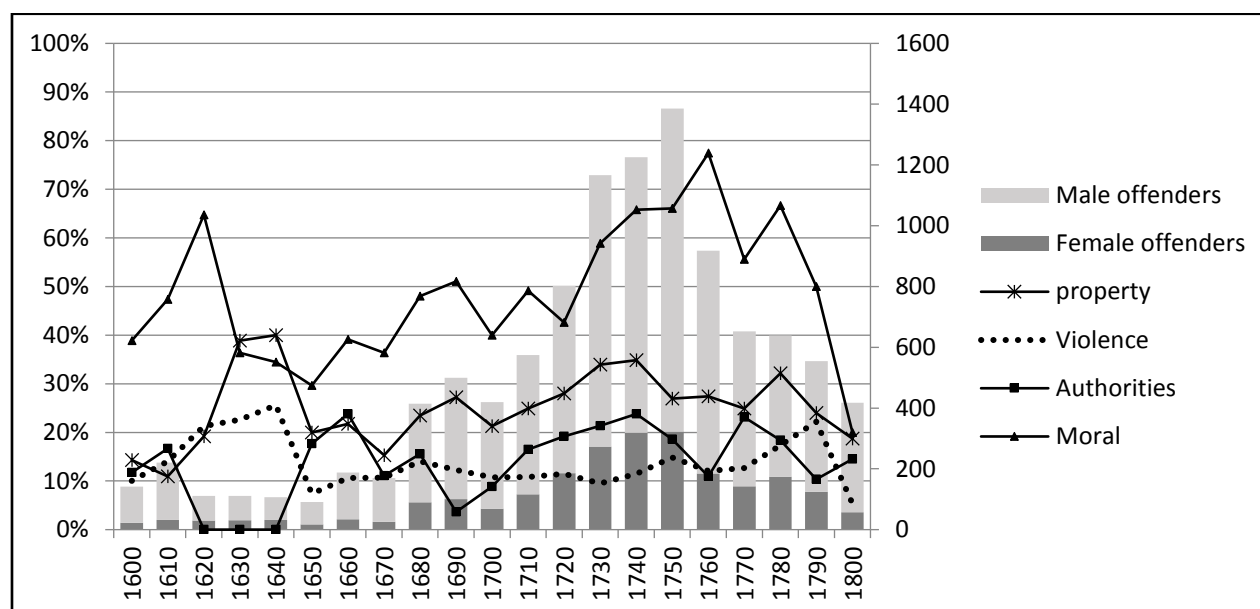
Patterns of male delinquency are also the product of institutional and societal selection mechanisms that produced criminal statistics, and should therefore equally be studied in the context of institutions of social control other than solely the criminal justice system. By now it has firmly

been established that the criminal justice system functioned alongside a whole range of institutions that regulated behaviour and settled conflicts. We have learned a great deal about the interactions between moral courts, neighbourhoods, lower courts, poor houses and other institutions when it comes to female criminality. Now it is time to have a better understanding how such institutions functioned in relation to men as well. We still know very little, for example, about the way that guilds regulated sexual or violent transgressions of their members and how this type of social control interacted with the criminal justice system. Unfortunately, the options for such an inclusive study for Frankfurt are limited due to the heavy archival losses during WWII, but other cities, in future comparative studies, could very well serve to pursue this.

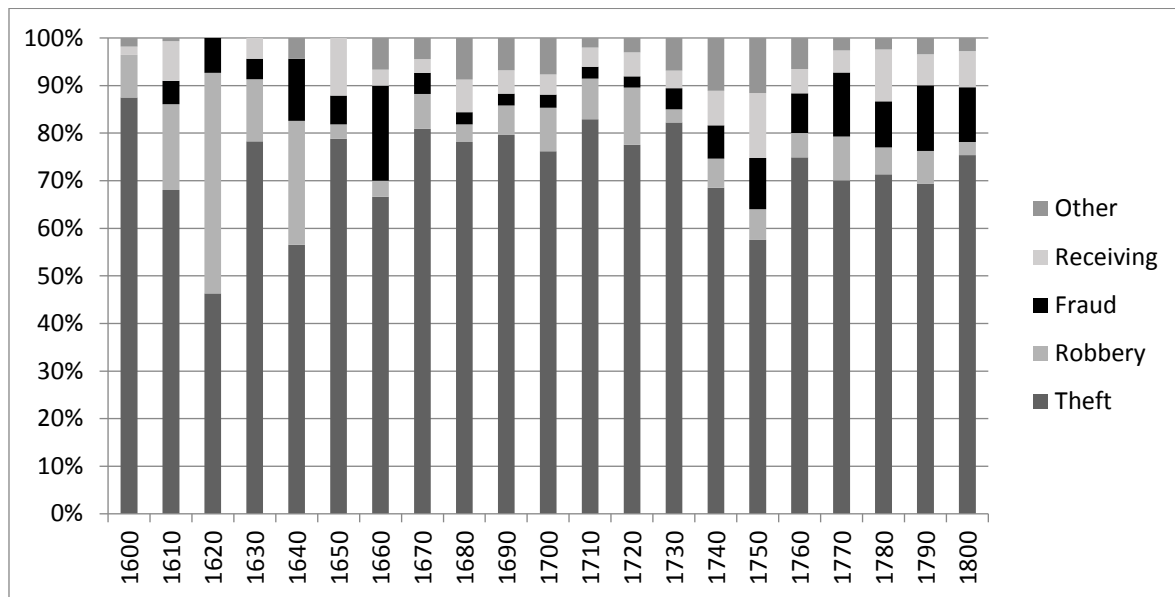
Finally, for future comparisons about female offending in early modern Europe, it will be useful to think of different typologies of cities and how these created different mechanisms of control. Patriarchal ideals were universal in early modern Europe, but the extent to which they were implemented depended on the context. In cities like Frankfurt, whose economy was still dominated by crafts, and where guild-like corporations shaped social order policies, the position of women was different from that of women in industrial towns or maritime centres. Although such towns obviously had guilds as well, their labour markets were more diverse, and guilds tended to be more open. Consequently, the nature and importance of incorporation within the household was different in such urban centres from in a city like Frankfurt.

VIII. Appendix

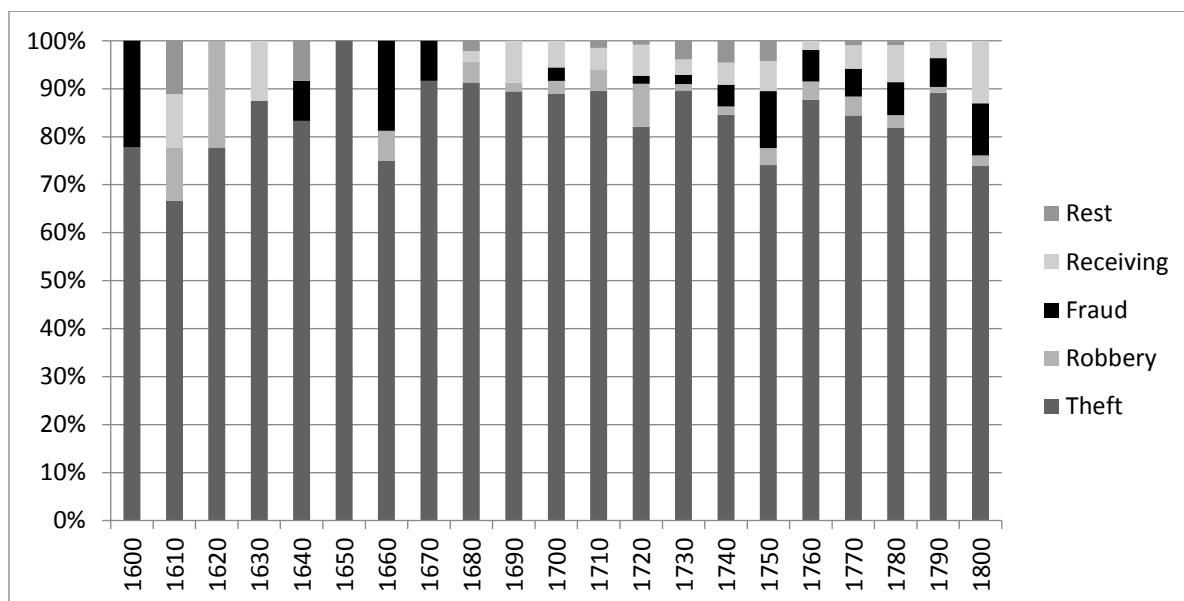
Figure 20 % of female offenders by type of crime, 1600-1800



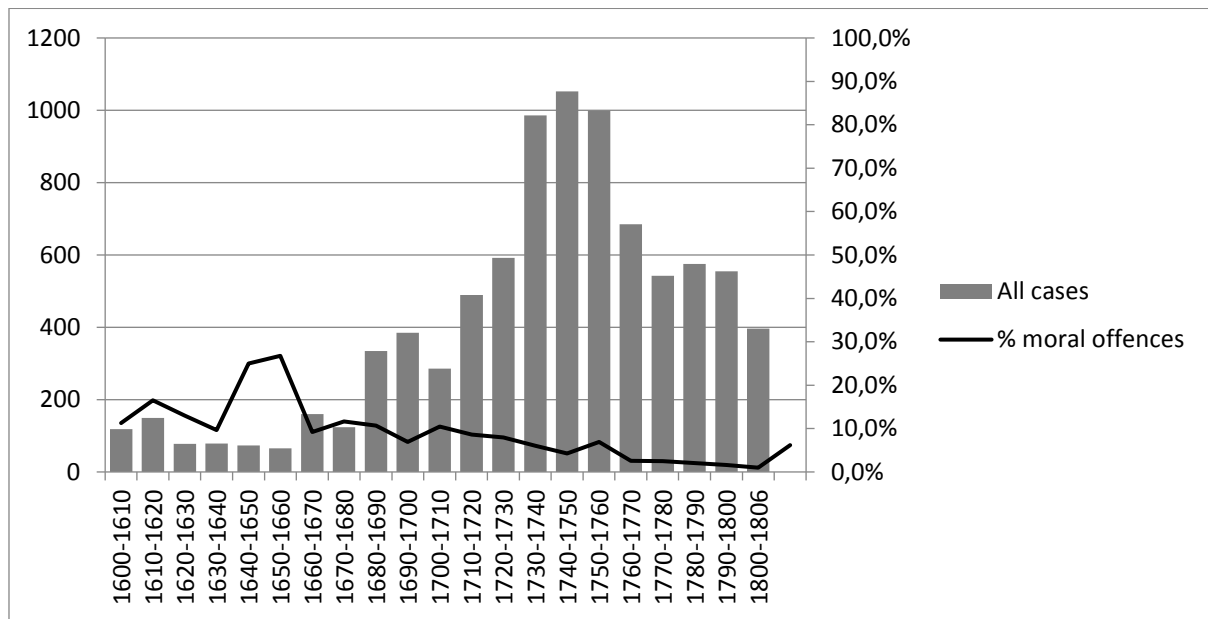
Source: IfSG, Criminalia 1600-1806.

Figure 21 Types of property offences committed by men

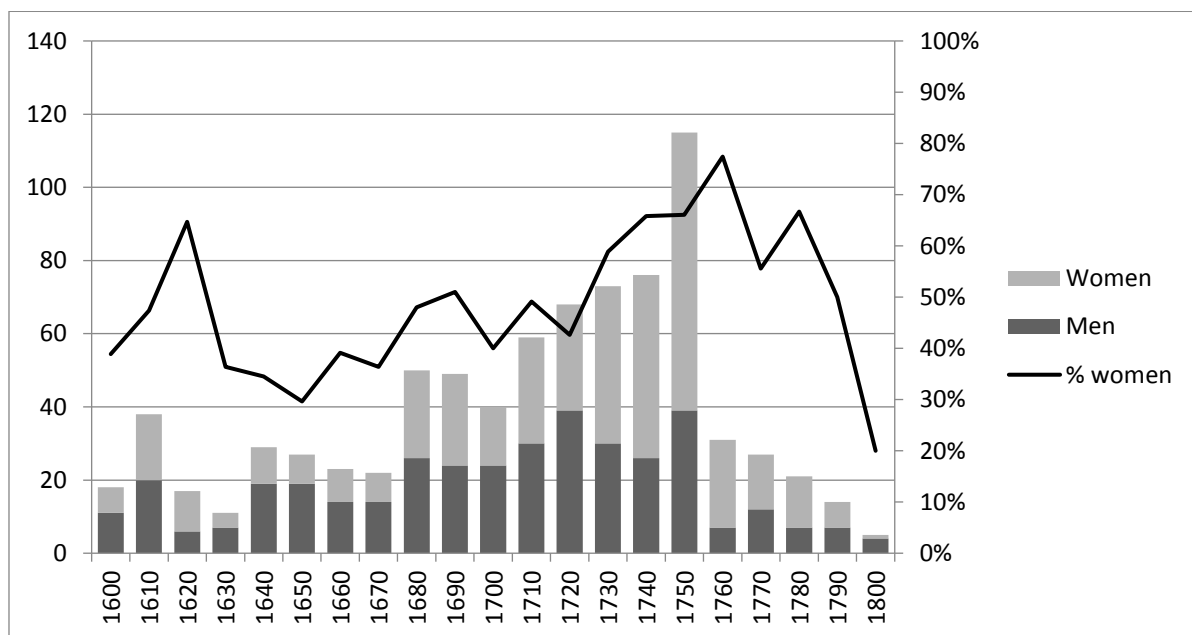
Source: IfSG, Criminalia 1600-1806.

Figure 22 Types of property offences committed by women

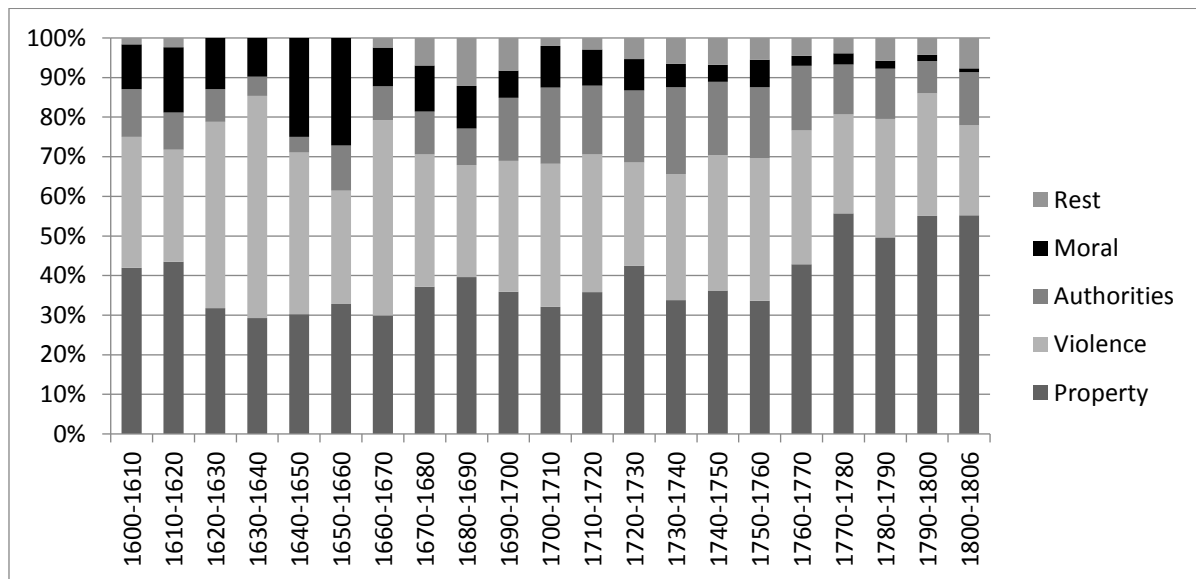
Source: IfSG, Criminalia 1600-1806.

Figure 23 Share of moral offences among crimes investigated, Verhöramt

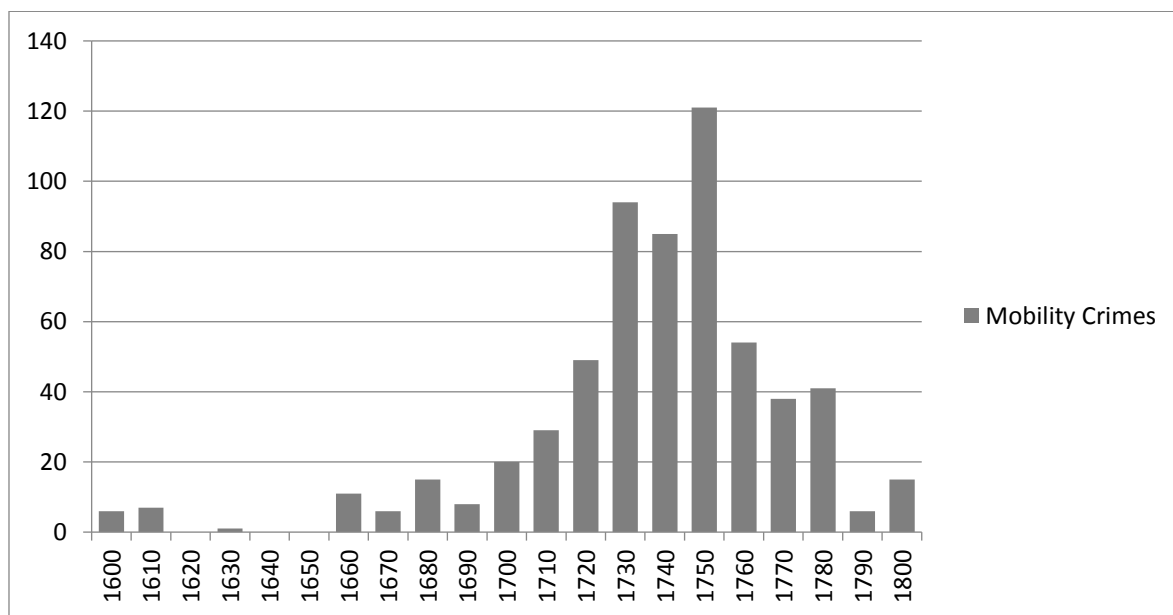
Source: IfSG, Criminalia 1600-1806.

Figure 24 % female offenders among moral offences, Verhöramt

Source: IfSG, Criminalia 1600-1806.

Figure 25 Types of offences prosecuted, Verhöramt

Source: IfSG, Criminalia 1600-1806

Figure 26 Prosecution of mobility offences, Verhöramt

Source: IfSG, Criminalia 1600-1806.

Figure 27 Schematic overview of the criminal justice system in early modern Frankfurt

High Court	City Council: jurisdiction to impose capital- and corporal punishments (<i>Peinliche Strafen</i>) Verhöramt: Acts as a court of enquiry for the city council to investigate capital- and corporal offences → inquisitorial procedure.				
Lower Courts	Verhöramt 1616 appointment of first <i>examinatorio ordinario</i> <u>Jurisdiction over:</u> 1. Offences punishable up to 3 months in prison/forced labour and/or simple expulsion for vagrants. 2. Offences punishable with monetary fines and private imprisonment (<i>‘bürgerliche Gefängnisstrafe’</i>) in case of citizens.	Frevelgericht Established in 1580s to unburden the <i>Schöffengericht</i> (until +/- 1650s). <u>Jurisdiction over:</u> Verbal and physical violence (that did not result in serious injury)	Sendamt/Konsistorium Established 1530/1726 <u>Jurisdiction over:</u> Moral offences (fornication; adultery; lewdness etc.)	Landamt Established as a central lower court for all villages early eighteenth century. <u>Jurisdiction over:</u> 1. All petty offences in Frankfurt’s rural territories including the villages belonging to the city’s dominion (Bornheim; Bockenheim etc.). 2. Court of enquiry for penal offences in Frankfurt’s dominion.	Ackergericht Dating back to the middle ages <u>Jurisdiction over:</u> Regulatory & administrative offences concerning agricultural fields, vegetable gardens, and vineyards etc. in the city; conflicts among landowners; minor property offences incl. theft of natural resources; poaching etc.
	Oberster Richter: Dating back to middle ages Jurisdiction over: Minor quarrels and disputes (<i>‘Zänkereyen und geringe Streithändel’</i>) among common people (<i>‘gemeinen Leuten’</i>).	Bettelvögte/Armenknechte: Dating back to middle ages; from 1679 part of the personnel of the poorhouse. In charge of: Policing begging and vagrancy.		Baumeister: Jurisdiction over: Petty conflicts and crimes among Jews in the <i>Judengasse</i> .	

Table 24 Sexual offences investigated by the Verhöramt 1600-1806

Period	Total	Adultery	Bigamy	Fornication /Lewdness	Illegitimacy incl. secret births	Brothel keeping /procuring	Rape
1600-1609	14	6	3	3	0	1	0
1610-1619	28	7	3	13	2	3	0
1620-1629	11	5	0	6	0	0	0
1630-1639	8	3	1	0	1	0	0
1640-1649	19	13	1	1	8	0	0
1650-1659	19	10	2	2	2	0	2
1660-1669	15	9	0	6	3	1	1
1670-1679	15	1	2	4	2	1	2
1680-1689	37	6	6	11	6	1	1
1690-1699	27	4	1	8	6	3	1
1700-1709	31	5	5	4	5	4	2
1710-1719	41	7	10	9	5	0	3
1720-1729	49	6	6	10	10	2	4
1730-1739	60	3	4	20	11	5	6
1740-1749	44	0	3	12	13	6	5
1750-1759	72	5	3	14	33	9	3
1760-1769	18	2	0	5	9	1	0
1770-1779	14	3	0	0	11	1	2
1780-1789	12	1	0	1	5	0	0
1790-1799	9	1	0	0	1	2	2
1800-1806	4	0	0	1	0	1	0
Total	547	97	50	130	133	41	34

Source: Criminalia 1600-1806¹¹⁴²

¹¹⁴² As said in chapter III, the survival rate of *Criminalia* before 1680 is not 100%. This means that there could be a distortion in the quantitative developments of the prosecution practice of the authorities if we only take the *Criminalia* into account. However, the development largely corresponds with what is known based on data of the *Strafgebuch* (1562-1696) and the city council records, as described by Anja Johann, *Kontrolle mit Konsens*, 120-129; 220-240.

Table 25 Type of mobility offences, by gender, 1600-1806

	Begging/vagrancy		'Acting suspiciously'		Illegal return/ breaking banishment		Collecting alms with false documents		Gypsies		Total	
	N= 157		N = 107		N = 205		N = 103		N = 46		N = 618	
	M	F	M	F	M	F	M	F	M	F	M	F
1600-1660	50%	50%	100%	0%	75%	25%	100%	0%	-	-	86%	14%
1650-1700	-	-	100%	0%	62%	38%	70%	30%	-	-	70%	30%
1700-1725	100%	0%	100%	0%	40%	60%	74%	36%	-	-	52%	48%
1725-1750	77%	23%	56%	44%	49%	51%	86%	14%	33%	67%	55%	45%
1750-1775	78%	22%	61%	39%	52%	48%	68%	32%	8%	92%	64%	36%
1775-1806	71%	29%	86%	14%	50%	50%	88%	12%	-	-	74%	26%

Source: IfSG, Criminalia 1600-1806

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XII. Summary in Dutch

Dit proefschrift onderzoekt de invloed van sekserollen op geregistreeerde criminaliteitspatronen in het zeventiende- en achttiende-eeuwse Frankfurt am Main. Lange tijd ging men ervanuit dat criminaliteit per definitie een aangelegenheid van mannen is, waar vrouwen maar weinig bij betrokken zijn. Hedendaagse criminaliteitscijfers, met een consequent laag percentage vrouwelijke daders, lijken dit beeld ook te bevestigen. Maar dankzij verschillende historische studies weten we inmiddels dat er geenszins sprake is van continuïteit als het gaat om het percentage vrouwen onder de geregistreeerde criminaliteit. Zo heeft onderzoek naar London en verschillende steden in de Republiek, zoals Amsterdam en Leiden, aangetoond dat het niet ongewoon was dat vrouwen in de vroegmoderne periode tot de helft van alle veroordeelden uitmaakten, en in sommige uitzonderlijke jaren zelfs de meerderheid.

Onderzoekers hebben zich tot op heden dan ook vooral gericht op het zoeken naar verklaringen voor het ‘verdwijnen van de vrouw’ uit de criminaliteit tussen de vroegmoderne tijd en nu. Deze studies hebben belangrijke inzichten opgeleverd om verschillen door de tijd te begrijpen. Net zozeer als het aandeel misdadige vrouwen door de tijd heen varieerde, verschilde deze echter ook per locatie in de zeventiende en achttiende eeuw zelf. Zo is uit eerder onderzoek bekend dat in Duitse steden in deze periode tussen de zestien en dertig procent van alle geregistreeerde criminaliteit werd gepleegd door vrouwen. Tot nu toe hebben historici zich maar weinig bezig gehouden met de vraag hoe dergelijke regionale verschillen verklaard kunnen worden. Dit onderzoek naar Frankfurt am Main brengt daar verandering in door te kijken naar de structurele impact van de lokale context op de vrouwelijke criminaliteit. In de internationale literatuur is de Duitse casus tot op heden nog nauwelijks onderdeel van analyse geweest en dit boek vult met het onderzoek naar Frankfurt dan ook een belangrijke lacune.

Aan de hand van de dossiers van het *Peinliche Verhöramt* – de stedelijke instelling belast met de vervolging van criminaliteit in Frankfurt – zijn de criminaliteitscijfers van de stad gereconstrueerd. Voor de gehele zeventiende en achttiende eeuw was het percentage vrouwelijke verdachten tweeëntwintig procent. Dit percentage was niet constant: het aandeel vrouwen fluctueerde tussen de veertien procent (in de tweede helft van de zeventiende eeuw) en kon oplopen tot dertig procent (tijdens de Dertigjarig Oorlog en het midden van de achttiende eeuw). Ook verschilde het aantal vrouwen sterk per type delict. Zij vormden ruim de helft van de verdachten voor zedendelicten en maar dertien procent voor geweldsdelicten. Verreweg de meeste vrouwen (en mannen) werden in deze periode vervolgd voor vermogensdelicten.

In verschillende opzichten volgde de criminaliteit van vrouwen in Frankfurt vergelijkbare patronen als elders in vroegmodern Europa. Zowel het type delicten dat gepleegd werd door vrouwen, als ook hun sociaaleconomische positie komt in hoge mate overeen met hetgeen voor andere steden bekend is. De meeste vrouwelijke daders waren jong, arm, leidden een mobiel leven en hadden nauwelijks sterke sociale netwerken in de stad om op terug te vallen in tijden van nood. Onderzoekers als John Beatty, Malcom Feeley, Manon van der Heijden en Ariadne Schmidt wezen eerder op het belang van de stad als verklarende factor voor dit patroon. Specifieke demografische- (ongelijke sekseratio, hoge migratie), socio-economische-, en culturele karakteristieken van de urbane samenleving zorgden ervoor dat vrouwen in de stad een relatief zelfstandig en publiek leven konden leiden. Tegelijkertijd waren zij ook kwetsbaarder, omdat ze veelal zelf moesten zien rond te komen. Diefstal, bedelen en (gelegenheids-)prostitutie kon in dergelijke gevallen een (tijdelijke)uitkomst bieden en vormden een belangrijk onderdeel van de overlevingsstrategieën van de stedelijke onderklasse, juist voor vrouwen. Deze combinatie van factoren verhoogde het risico voor vrouwen om in aanraking te komen met justitie.

De grote geografische variëteit van criminaliteitscijfers in deze periode roept echter vragen op over de mate waarin verklaringsfactoren zoals de ‘urban factor’ algemene geldigheid hebben. Duitse steden werden gekenmerkt door sterke instituties, in het bijzonder het huishouden, die ten grondslag lagen aan sterke sociale controlemechanismen. In heel Europa stond het patriarchale huishouden centraal in constructies van sociale orde. Maar sterker dan in andere landen betrof dit in Duitsland niet alleen een ideologische, maar ook een praktische invulling. Zo had het hoofd van het huishouden (de *Hausvater*) een semi-juridisch bevoegdheid om zijn gezinsleden, inclusief inwonende dienstmeiden en knechten, te disciplineren. Ongehuwde vrouwen mochten geen zelfstandig huishouden opzetten. En migranten zonder baan – en dus zonder plaats in een huishouden – mochten niet langer dan 8 dagen in de stad blijven. De relatieve vrijheid, maar ook de daarmee gepaard gaande kwetsbaarheid die vrouwen in andere steden kenden, was in Frankfurt hierdoor een stuk beperkter. Dit boek laat aan de hand van drie deelstudies, die ingaan op vermogensdelicten (in het bijzonder diefstal), zedendelicten en mobiliteitscriminaliteit, zien dat deze factoren een belangrijke impact hadden op de gepleegde en vervolgte criminaliteit in vroegmodern Frankfurt.

Verreweg de meeste vrouwen werden vervolgd voor vermogensdelicten. De locatie van deze delicten biedt inzicht in de stedelijke ruimtes waarin mannen en vrouwen zich bewogen. De procesdossiers laten zien dat vrouwen veel vaker dan mannen uit huizen stalen. Dit is echter geen bewijs – zoals eerder is betoogd – dat vrouwen aan het huis gekluisterd waren. In de meeste gevallen betrof het migranten die zeer mobiel waren, zelfstandig opereerden en nauwelijks geïntegreerd

waren in de stad. Zij wisten daarbij handig gebruik te maken van sekse-specifieke verwachtingspatronen die het voor vrouwen makkelijker maakten om vreemde huizen binnen te stappen dan voor mannen. In het geval van dienstmeiden die van hun werkgever stalen, speelde afhankelijkheid wel een grote rol vanwege het gebonden karakter van hun arbeidsrelatie. Huisdiefstallen kwamen maar zelden voor de rechtbank, omdat deze door de semi-judiciële bevoegdheid van de huisvader meestal in de informele sfeer werden afgehandeld. Het is aannemelijk dat in een stad als Frankfurt, waar disciplineren binnen het huishouden een formeler karakter had dan elders, het aantal zaken (met name van jonge vrouwen) dat formeel door de rechtbank werd vervolgd lager lag.

Naast de huishoudens en de hoge criminele rechtbank bemoeiden ook andere instituties zich met de regulering van criminaliteit. De vervolging van zedendelicten zoals buitenechtelijke seksuele relaties en prostitutie viel primair onder de jurisdictie van een, speciaal voor dit doeleinde opgerichte, lagere rechtbank. Hoewel voorechtelijke seksualiteit voor zowel mannen als vrouwen strafbaar was, waren het in de praktijk vooral zwangere vrouwen die zich hiervoor bij de rechtbank moesten verantwoorden. Dit had deels te maken met het feit dat vrouwen het bewijs van hun misdrijf letterlijk bij zich droegen, terwijl de mannen goede kansen hadden het vaderschap te ontkennen. Deels kwam het echter ook door het karakter van de rechtbank zelf, die tegelijkertijd functioneerde als een instelling voor geschilbeslechting. Buitenechtelijke moeders konden middels een vaderschapsactie de vader dwingen tot financiële verantwoordelijkheid. Het startten van zo'n civiele procedure betekende in de praktijk meestal een zelfaangifte, en was voor vrouwen dus een riskante zaak omdat ze daarmee voor lief namen crimineel vervolgd te worden om hun recht te halen. Toch maakten ze hier veelvuldig gebruik van omdat de kans op structurele financiële steun van de onderhoudsbetalingen de betaling van de geldboete die een veroordeling met zich meebracht compenseerde. Met name lokale vrouwen hadden daarbij een goede kans hun recht te halen bij de overheid, die illegitimiteit niet alleen uit morele overwegingen vervolgde maar vooral ook met het oog op de mogelijke financiële gevolgen voor de stedelijke armenzorg. Om diezelfde reden werden migrantenvrouwen in geval van buitenechtelijke zwangerschap vaak de stad uit gezet.

De ongelijke rechtspositie van migranten was kenmerkend voor heel vroegmodern Europa en hing samen met groeiende bezorgdheid en overheidsbemoeienis ten aanzien van mobiele bevolkingsgroepen en individuen. Frankfurt implementeerde al vanaf het einde van de zestiende eeuw allerlei wetgeving die de migratie naar, en vestiging in, de stad reguleerde. Hierdoor werd de relatieve zelfstandigheid die elders gepaard ging met migratie naar de stad beperkt, omdat nieuwkomers veel sneller in de sociale controle structuren van de stad werden ingebonden. Opvattingen over gewenste en ongewenste mobiliteit waren echter sterk bepaald door genderrollen

en beïnvloedden de vervolgingspraktijk van Frankfurts overheid. Vrouwelijke mobiliteit werd neergezet als losbandig gedrag en promiscuïteit, terwijl die van mannen ongerustheid over georganiseerde criminele benden opwekte. In verreweg de meeste gevallen ontzegde de stedelijke overheid ongewenste vreemdelingen simpelweg het recht op verblijf in de stad. Verbanning was dan ook de meest toegepaste straf voor buitenstaanders in deze periode. Dit was vaak echter een uiterst ineffectieve methode, omdat mensen hun verbanning verbraken. Opvallend is dat het vooral vrouwen waren die illegaal terugkeerden naar de stad. Dit was niet alleen omdat zij – zoals eerder werd gedacht – afhankelijker waren van hun sociale netwerken in de stad dan mannen. De vrouwen die terugkeerden hadden vaak voor hun verbanning al een uiterst mobiel leven geleid, en zetten dit na hun verbanning gewoon voort. Het was voor hen, door de sekse specifieke opvattingen over ongewenste mobiliteit, bovendien veel minder gevaarlijk. Mannen die banbreuk pleegden liepen een groter risico om bestempeld te worden als hardnekkige ‘beroepscrimineel’ - met een mogelijke doodstraf tot gevolg.

Het onderzoek naar Frankfurt draagt bij aan de bestaande literatuur over criminaliteit in de vroegmoderne periode en laat zien hoe criminaliteitspatronen werden gevormd door het ineengrijpen van verschillende mechanismes van sociale controle en de specifieke lokale context. Het beargumenteert dat universele verklaringsfactoren als de ‘urban factor’ en het patriarchaat moeten worden gedifferentieerd. Daarbij waren vrouwen geen passieve actoren, maar handelden actief, maakten hun eigen keuzes, en gaven daarmee (mede)vorm aan de manier waarop in de vroegmoderne periode werd omgegaan met criminaliteit.

XIII. Curriculum Vitae

Jeannette Kamp (Yverdon-Les-Bains, 1986) begon in 2006 haar universitaire opleiding geschiedenis aan de Vrije Universiteit te Amsterdam. Daar behaalde ze in 2010 haar Bachelor en in 2012 haar Research Master (cum laude). In 2011 verbleef zij voor een buitenlandse semester aan de Universität Bern in Zwitserland.

In 2012 startte Jeannette aan de Universiteit Leiden met haar promotieonderzoek in het door de Nederlandse Organisatie voor Wetenschappelijk Onderzoek (NWO) gefinancierde project *Crime and gender 1600-1900: a comparative perspective*. Haar onderzoek naar vrouwencriminaliteit in vroegmodern Frankfurt am Main voerde zij uit onder leiding van professor Manon van der Heijden en professor Leo Lucassen binnen de vakgroep sociaaleconomische geschiedenis van het Instituut voor Geschiedenis. Tijdens haar proefschrift was Jeannette verbonden aan de *graduate school* van het N.W. Posthumus Instituut. Zij gaf tevens onderwijs in het bachelor programma van de geschiedenisopleiding in Leiden en behaalde haar Basiskwalificatie Onderwijs. Op dit moment is Jeannette werkzaam als docent vroegmoderne geschiedenis aan de Radboud Universiteit in Nijmegen.