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'alliments 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. Monkkonen 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 hisotriography, 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 so 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 Unzuchtsverfahren 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 Usborne, 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.

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[29] Schwerhoff, *Aktenkundig*, 153-154.
[30] Arnot and Usborne, 'Why gender and crime' 3. Also: Wunder, 'Weibliche Kriminalität', 56.
[31] Eibach, *Frankfurter Verhöre*, 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 emit 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, historinas 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, porsecution 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]

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[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 seperate 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 frühneuezeitlichem Württemberg* (Weimar 1997) 175; Frank, M., *Dörfliche Gesellschaft und Kriminalität. Der Fallbeispiel Lippe 1650-1800* (Paderborn 1995).

[52] S. Ogilvie, 'How does social captial 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. 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, 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, *Frankfuter Verhöre*, 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, 1562-1969* (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. Rezensionsjournal 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 Policeyordnungen 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 und Hexenverfolgung in der Frühen Neuzeit* (Frankfurt am Main 1997); D. Nolde, *Gattenmord. Macht und Gewalt in der frühneuzeitlichen Ehe* (Köln 2003); S. Allweier, *Canaillen, Weiber, Amazonen. Frauenwiklichkeiten in Aufständen Südwestdeutschlands 1688 bis 1777* (Münster 2001); P. Klammer, *In Unehren beschlaffen. 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. Verwandschaft 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]

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[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 Strafjustiz im 17. und 18. Jahrhundert' in: H. Rudolph and H. Schnabel-Schüle eds., *Justiz = Justice = Justicia? Rahmenbedingungen von Strafjustiz 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 Aufmercksamkeit, welche sich in einer so Volckreichen 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 Gelegehneit 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 Konfessionelllen 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 in 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)*(Wiesbanden 1983) 86-87.

89 Roth, 'Blühende Handel', 362.

90On 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 udn Weibh ed., *FrauenStadtGeschichte. 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 Mayn im Spiegel alter Reisebeschreibungen vom 15. Bis zum 19. Jahrhundert* (Würzburg 1984).

[102] R. Brandt, 'Frankfurt sei doch eine "Freye=Reichs=Statt, dahin jedermann zu arbeithen 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 Verhöre*, 46.

[104] Ogilvie, *Bitter living*, 347.

[105] Wiesner, *Working women*.

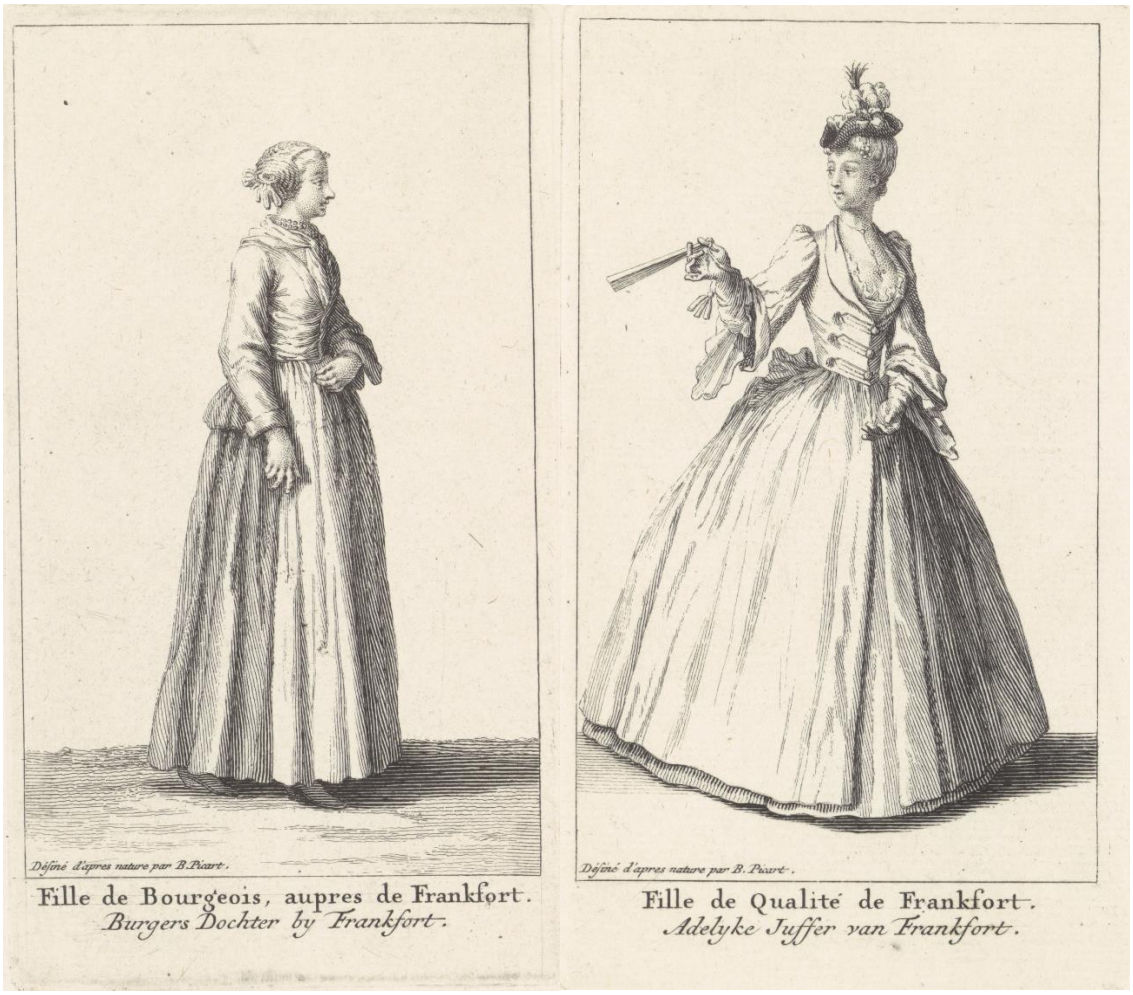
[106] R. Brandt, 'Frauen und Handwerk in Frankfurt im 18. Jahrhundert', Working Paper as part of "Colloquium Reichsstadt Frankfurt" published on: http://www.corf.de/texte/Brandt-Frauen&%20Handwerk.pdf (accessed 15-10-2015) 12.

[107] C. Werkstetter, *Frauen im Augsburger Zunfthandwerk. Arbeit, Arbeitsbeziehungen und Geschlechterverhältnisse im 18. Jahrhundert* (Berlin 2001); M. González Athenas, *Kölner Zunfthandwerkerinnen 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*, 1928. 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 – Responsoria*) 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. Scheut zand 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 *ipsissima 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 nüzlich erachteter Anmerkungen über die sogenante erneuerte Reformation der Stadt Frankfurt am Main. Dritte Fortsezung* (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 Verhöre*, 32. Also: Scheutz, 'Gerichtsakten', 32-35.
[112] See for example the *Ferdinandea* – 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.

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[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 XVIIIe 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. Htichcock, and R. Shoemmaker, *London Lives. Poverty, crime and the making of a modern city, 1690-1800* (Cambridge 2015) 4, 17-23.