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

Kamp, J.M.

II. A multi-layered legal system
Criminal justice in early modern Frankfurt

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

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

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

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

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

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

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

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

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

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

124 Härter, 'Security and "Gute Policey"', 42-43.

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

126 A. Amend et al. eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München 2008); J. Eibach, 'Stadt und Reichsstadt. Rahmenbedingungen der Frankfurter 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; J. Eibach, 'Städtische Strafjustiz als konsensuale Praxis. Frankfurt am Main im 17. und 18. Jahrhundert' in: R. Schlögl ed., *Interaktion und Herrschaft. Die Politik der frühneuzeitlichen Stadt* (Konstanz 2004) 181-214.

127 Eibach, 'Stadt und Reichsstadt', 362-363.

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

The administration of justice in a multifaceted legal landscape

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

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

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

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

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

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

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

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

130 Rössing, *Versuch*, 134-140. On the relation between women's role in the peasant economy, food gathering and theft of natural resources, see: U. Rublack, *The crimes of women in early modern Germany* (Oxford 1999) 94-98.
131 C.O. Schmitt, *Säuberlich banquerott gemachet. Konkursverfahren aus Frankfurt am Main vor dem Reichskammergericht* (Köln 2016) 81-82.
132 On the burgomaster sessions as a place for conflict settlement, see: G. Schlick-Bamberger, 'Die Audienzen des Jüngern Bürgermeisters in der Reichsstadt Frankfurt am Main. Ein Untergericht als Spiegel des reichsstädtischen Alltagslebens im 18. Jahrundert' in: A. Amend et al. eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reiche* (Oldenbourg 2008) 15-38.
133 Rössing, *Versuch*, 117-120.
134 Research on the legal history of the Imperial Chamber Court has grown tremendously during the past decade. For Frankfurt and the Imperial Chamber Court, see for example: I. Kaltwasser, *Inventar der Akten des Reichskammergerichts 1495-1806. Frankfurter Bestand* (Frankfurt am Main 2000); A. Amend-Traut, *Wechselverbindlichkeiten vor dem Reichskammergericht. Praktiziertes Zivilrecht in der Frühen Neuzeit* (Köln 2009); A. Baumann, 'Frauen vor dem Reichskammergericht. Frankfurt und Köln im Vergleich' in: F. Battenberg and B. Schildt eds., *Das Reichskammergericht im Spiegel seiner Prozessakten. Bilanz und Perspektiven der Forschung* (Köln 2010) 93-116; R. Riemer, *Frankfurt und Hamburg vor dem Reichskammergericht. Zwei Handels- und Handwerkszentren im Vergleich* (Köln 2012); Schmitt, *Säuberlich banquerott gemacht*.

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

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

Jurist and alderman Johann Philipp Orth wrote an extensive commentary on the city's legal constitution in the second half of the eighteenth century, which is a rich source of information on legal practices during that period. Furthermore, we are informed about the way criminal investigations were conducted by the so-called *Bürgermeisterunterricht*. These instructions for the city's burgomasters were issued amidst the political struggle of the *Verfassungsstrei*t in 1726. Despite the existence of these contemporary legal sources, many ambiguities still remain. The way that criminal justice was administered in early modern Frankfurt in practice has to be deducted from the criminal investigation records themselves. The analysis of the criminal legal system in Frankfurt in this chapter primarily builds on previous studies by Karl-Ernst Meinhardt on the seventeenth century and Joachim Eibach on the eighteenth century.[138]

---

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

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

[137] Eibach, *Frankfurter Verhöre*, 72.

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

Investigation of criminal offences: about the formation of the Verhöramt

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

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

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

[139] A. Johann, *Kontrolle mit Konsens. Sozialdisziplinierung in der Reichsstadt Frankfurt am Main im 16. Jahrhundert* (Frankfurt am Main 2001) 73; Meinhardt, *Das peinliche Strafrecht*, 22.
[140] For similar practices in other imperial cities in the Holy Roman Empire, see: Rublack, *Crimes of women,* 50.
[141] Meinhardt, *Das peinliche Strafrecht*, 29.
[142] E.g. IfSG Frankfurt am Main, Criminalia 943 (1610); Criminalia 1049 (1641); Criminalia 1188 (1660); Criminalia 1218 (1661); Criminalia 1425 (1674); Criminalia 1483 (1679); Criminalia 3062 (1720); Criminalia 3100 (1721).
[143] Eibach, *Frankfurter Verhöre*, 62.
[144] During the revolt agressions turned towards the Jewish minority in the city. The *Judengasse* was plundered and the Jews were expelled from the city. The ringleader, Vincenz Fettmilch, after whom the revolt is named, was executed.

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

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

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

[145] The *Gravimina* are partially printed in: F. Bothe, *Frankfurts wirtschaftilch-soziale Entwicklung vor dem Dreißigjährigen Kriege und der Fettmilchaufstand (1612-1616)* (Frankfurt 1920). Also see: Eibach, 'Stadt und Reichsstadt', 365.
[146] For the list of council members appointed, see: IfSG Frankfurt am Main, Ratswahlen und Ämterbestellungen, nr. 4 and 5 (1590-1675).
[147] Criminalia 1053 (1641).
[148] Criminalia 1188 (1660).
[149] Criminalia 1216 (1661).
[150] Criminalia 1339 (1668).
[151] Criminalia 1505 (1680).
[152] See e.g. Criminalia 643 (1610).
[153] Meinhardt, *Das peinliche Strafrecht*, 19.

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

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

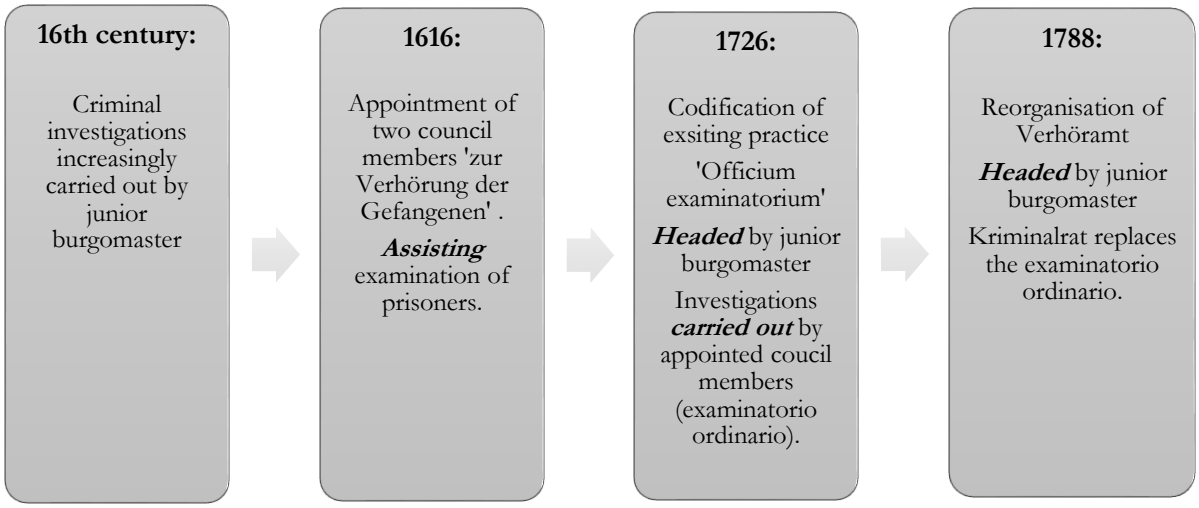
The city's syndics could be consulted during each phase of the interrogation. These were legally trained officials who advised on procedural questions, such as whether the application of torture would be legal in certain cases (i.e. in accordance with the regulations of the Carolina and other legal codes).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

[154] J.P. Orth, *Nötig und nüzlich erachteter Anmerkungen über die sogenante erneuerte Reformation der Stadt Frankfurt am Main. Dritte Fortsezung* (S.L. 1751) 828 and 839.
[155] Orth, *Dritte Fortsezung*, 826.
[156] *Extract Protocolli Commissionis de 26 Mart. 1727. Die Wahl des herrn Deputirten ad officium examinatorium ohne Kugelung betreffend*, printed in: C.S. Müller, *Vollständige Sammlung der kaiserlichen in Sachen Frankfurt contra Frankfurt ergangenen Resolutionen und anderer dahin einschlagender Stadt-Verwatlungs-Grund-Gesezzen* (Frankfurt am Main 1776) 40.
[157] Eibach, Reich, 'Stadt und Reichsstadt', 359-361.
[158] Meinhardt, *Das peinliche Strafrecht*, 31; Eibach, *Frankfurter Verhöre*, 62.

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

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

Figure 2 Development of the Peinliche Verhöramt in Frankfurt am Main



Prosecuted crimes and boundaries of jurisdiction

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

[159] About the consultation of legal faculties with regard to civil cases, see: A. Amend, 'Die Inanspruchnahme von Juristenfakultäten in der Frankfurer Rechtsprechung. Zur Rolle der Spruchkollegien auf territorialer Ebene und ihre Bedeutung für das Reich' in: A. Amend et al. eds., *Die Reichsstadt Frankfurt als Rehts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München 2008) 77-96.
[160] Meinhardt, *Das peinliche Strafrecht,* 88; Eibach, *Frankfurter Verhöre*, 63.
[161] See appendix for a schematic overview of Frankfurt's criminal justice system in the early modern period.

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

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

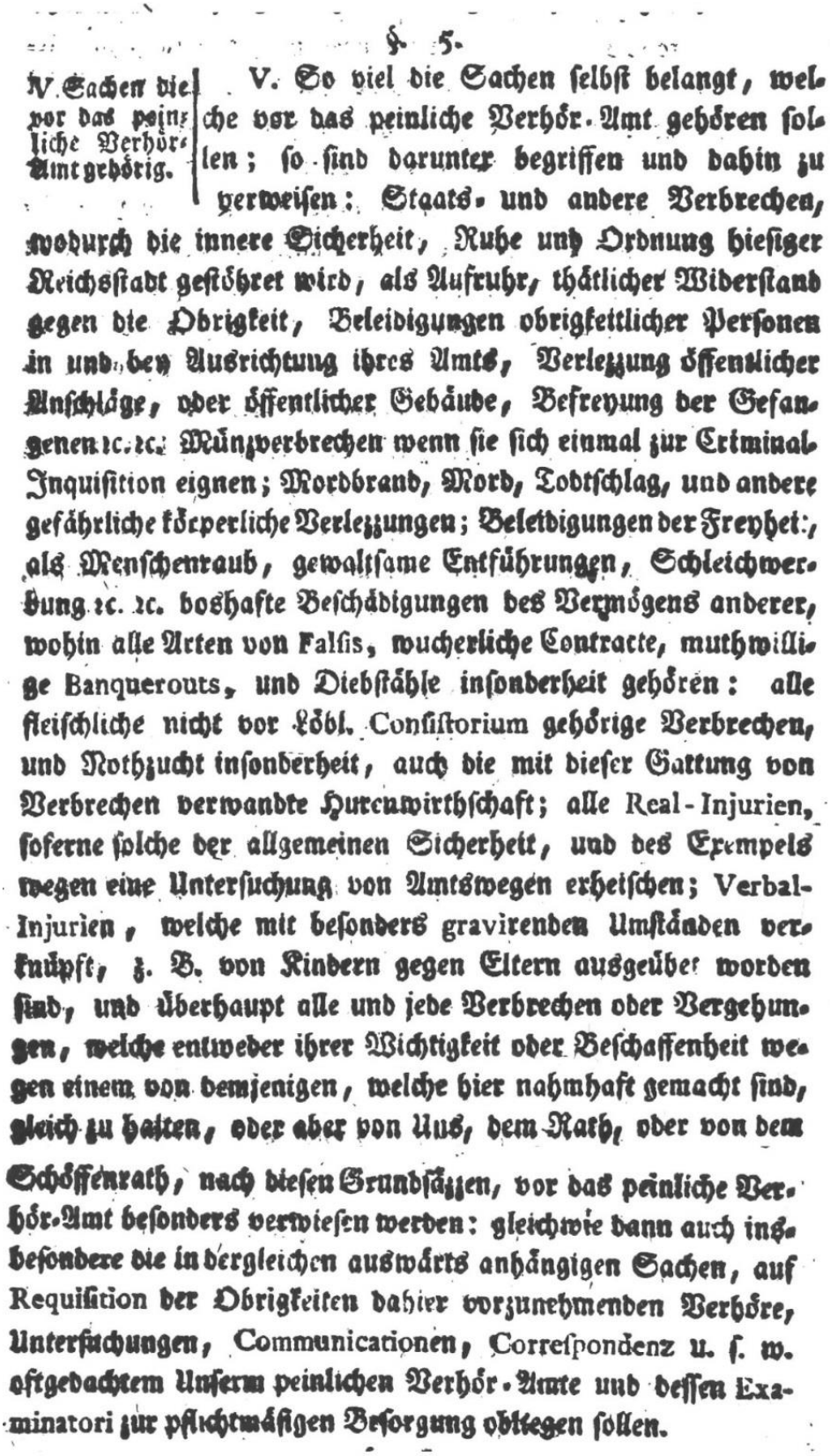
---

[162] M. Dinges, 'The uses of justice as a form of social control in early modern Europe' in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 159-175, 163.
[163] On the difficulty of distinguishing between felonies and misdemeanours, and higher and lower jurisdictions in early modern Germany: Härter, *Policey und Strafjustiz*, 173-188; G. Schwerhoff, *Historische Kriminalitätsforschung* (Frankfurt am Main 2011) 72-81.
[164] *Der Statt Franckfurt am Mayn erneuerte Reformation (*1611) § 10.8.1.
[165] Eibach, *Frankfurter Verhöre*, 71-72.
[166] Orth, *Dritte Fortsezung*, 827. Original: '*Der zu gefangenen verhör bestelte Ratsdeputirte der 2ten bank hat mit aßistenz und unter dem präsidio des jüngern Bürgermeisters die vorkommenden criminalsachen (worunter auch diejenige real injurien und schlägereien, wo üble verwundt und beschädigungen vorkommen mitbegriefen) fodersamst zu untersuchen […]'.*

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

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

Figure 3 Regulation of Verhöramt 1788



§. 5.

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

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

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

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

[167] PO 4346 *Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt* 04.12.1788, §34.
[168] Eibach, *Frankfurter Verhöre*, 67-68.
[169] Orth, *Dritte Fortsezung*, 794; Criminalia 9804 (1788) folio 77.
[170] Eibach, *Frankfurter Verhöre*, 69. For compensation and retaliation for violent offences in the criminal justice system and differences between private and public punishments, see: K. Härter, 'Violent crimes and retaliation in the European criminal justice system between the seventeenth and the nineteenth century' in: B. Turner and G. Schlee eds., *On retaliation. Towards an interdisciplinary understanding of a basic human condition* (New York 2017) 101-121.

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

Other offences that were not investigated by the *Verhöramt* included administrative and regulatory offences, and minor public order infringements. Some fragmentary records that have been preserved in the archives of the *Rechneiamt* list people being fined for minor offences, like Georg Brenner who was fined 1 guilder because he had sung lewd songs in 1614, or Hans Georg Schwelt and Paul Gottel, two skippers from *Aschaffenburg* who were fined 1.30 guilders because they had passed through one of the side arches of the bridge before it had opened in 1689.[174] Just as in other cities and territories in the Holy Roman Empire, the prosecution of vagrants and ethnic and religious minorities such as gypsies increasingly occupied the regulatory efforts of authorities. The police ordinances issued in early modern Frankfurt concerning such matters as begging and vagrancy, clearly demonstrate a process of increasing criminalisation. Vagrants and beggars were usually not prosecuted but expelled directly by the city's beadles (*Armenknechte*) or constables *(Gemeine Weltliche Richter*). Begging and vagrancy as such, were therefore not crimes prosecuted by the *Verhöramt*. However, as we will see in chapter 6, there are repeated cases involving offenders labelled as vagrants or unwanted foreigners who end up being expelled from the city simply because of their label. Most moral offences, including transgressions of the city's sumptuary laws, also did not belong to the jurisdiction of the *Verhöramt* but came under that of the *Sendamt* (until 1728) and

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

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

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

174 Rechnei vor 1816 14 *Einnam Bürger-Wehrschafften und Straffgelter vom 1 Maij 1689 ad 1 maij 1690*; Rechnei vor 1816 356, *Frevel Sachen, busen und Strafen*; Rechnei Vor 1816 658.

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

In addition to this, certain minorities or professions were excluded from the jurisdiction of the *Verhöramt* in minor offences. The Jewish community of Frankfurt (i.e. those that had Jewish citizenship) possessed the authority to impose control in minor offences in the *Ghetto*. The so-called *Baumeister* could impose monetary fines or strip offenders of their Jewish citizenship, which was basically the same as expelling them as it annulled their rights to reside in the city.[175] The soldiers of Frankfurt's army were subjected to military jurisdiction in case of minor fights and transgression. Serious violence and property offences, however, were investigated by the *Verhöramt* and judged by the city council. The city's handicraft associations had lost the authority to prosecute their members in criminal cases in the wake of the Fettmilch Uprising of 1616.[176] After this they could only impose disciplinary sanctions on their members, for example in the case of sexual offences. They could only do so after notifying the authorities, and their sanctions were not considered as independent criminal punishments, but were imposed in *addition* to the criminal sanctions imposed by the urban authorities.[177] Finally, minor offences committed outside the city walls or in one of the villages belonging to Frankfurt's territory were primarily handled by the *Landgericht* or *Ackergericht*.

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

[175] On the position of Jews, see: G. Schlick, 'Zur Rolle der reichsstädtischen Gerichtsbarkeiten in den Alltagsbeziehungen der Frankfurter Juden in 18. Jahrhundert' in: F. Backhaus et al. eds, *Die Frankfurter Judengasse. Jüdisches Leben in der frühen Neuzeit* (Frankfurt am Main 2006) 171-188; V. Kallenberg, *Jüdinnen und Juden in der Frankfurter Strafgerichtsbarkeit 1780-1814. Die Nicht-Einheit der jüdischen Geschichte* (Göttingen 2018).
[176] R. Brandt, 'Die Grenzen des Sagbaren und des Machbaren. Anmerkungen zur Rechtsgeschichte des Frankfurter "Zunfhandwerks" während der Frühen Neuzeit' in: A. Amend et al. eds., *Die Reichsstadt Frankfurt als Rechts und Gerichtslandschaft im Römisch-Deutschen Reich* (München 2008) 247-264.
[177] For examples, see chapter 6.

Criminal Procedures

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

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

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

[178] G. Jerouschek, 'Die Herausbildung des peinlichen Inquisitionsprozesses im Spätmittelater und in der frühen Neuzeit', *Zeitschrift für die gesamte Strafrechtswissenschaft* 104:2 (1992) 328-360; A. Vogt, 'Die Anfänge des Inquisitionsprozesses in Frankfurt am Main', *Zeitschrift der Savigny-Stiftung für Rechtsgesichte. Germanistische Abteilung* 68:1 (1951) 234-307.
[179] Meinhardt, *Das peinliche Strafrecht*, 60-61.
[180] *Der Statt Franckfurt am Mayn ernewerte Reformation (*1611) §10.6-7.
[181] Orth, *Dritte Fortsezung*, 830.
[182] Eibach, *Frankfurter Verhöre*, 64-65.
[183] Orth, *Dritte Fortsezung*, 828. Original: '*nach hiesigem Herkommen, summariter gefürter processus inquisitorius*'.

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

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

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

184 Eibach, *Frankfurter Verhöre,* 63.
185 Rössing, *Versuch*, 185. Original: '*Dem Inquisitorischen Criminal Proceß verfuhr von Amtswegen nur der Jüngere Bürgermeister oder der Oberster Richter ohne daß ein besonderere Ankläger dazu Anzutretten nöthig hatte*'.
186 J.H. Langbein, *Prosecuting crime in the Renaissance. England, Germany, France* (Cambridge MA, 1974) 177-178.
187 Rublack, *Crimes of women*, 41; R. van Dülmen, *Theater des Schreckens. Gerichtspraxis und Strafrituale in der frühen Neuzeit* (5th edition: München 2010) 14-37.
188 Meinhardt, *Das peinliche Strafrecht*, 60-67.
189 Meinhardt, *Das peinliche Strafrecht*, 74.

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

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

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

---

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

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

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

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

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

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

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

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

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

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

196 Boes, Crime and punishment, 125 and 133.

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

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

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

200 Eibach, *Frankfurter Verhöre*, 67.

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

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

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

Policing and social control

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

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

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

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

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

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

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

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

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

[208] J. Kamp, 'Controlling strangers - identifying migrants in early modern Frankfurt am Main' in: H. Greefs and A. Winter eds., *Materiality of migration* (Forthcoming 2018).
[209] I. Kracauer, 'Das Militärwesen der Reichsstadt Frankfurt am Main im 18. Jahrhundert', *AfGK* 12 (1920) 1-180, 27-29.
[210] Eibach, 'Burghers or town councils', 23.
[211] Eibach, *Frankfurter Verhöre*, 85; Eibach, 'Burgher or town councils', 20.
[212] R. Jütte, *Obrigkeitliche Armenfürsorge in Deutschen Reichsstädten der Frühen Neuzeit* (Köln 1984) 117-120; M. Hess, Die Geschichte des Frankfurter Armen-, Waisen- und Arbeitshaus (1679-1810) (1921). Unpublished PhD thesis, Universität Frankfurt am Main.
[213] On the *Gemeine Weltliche Richte,r* see: Johann, *Kontrolle mit Konsens,* 241-249.

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

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

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

[214] See chapter 6.
[215] Eibach, *Frankfurter Verhöre*, 82-83.
[216] See for example: Criminalia 4413 (1735); Criminalia 6129 (1748); Criminalia 4925 (1738); Criminalia 4904 (1739); Criminalia 6049 (1748); Criminalia 7142 (1754); Criminalia 7588 (1760); Criminalia 9216 (1781).
[217] Dinges, 'The uses of justice', 160. See for this argument for sixteenth-century Frankfurt: Johann, *Kontrolle mit Konsens*, 257. For eighteenth century Frankfurt: J. Eibach, 'The containment of violence in Central European cities (1500-1800). Repression or cooperation between courts and citizens?' in: R. McMahon ed., *Crime, law and popular culture in Europe since 1500* (Devon 2008) 52-73, 64-68.
[218] Eibach, *Frankfurter Verhöre*, 74-75.

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

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

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

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

[219] Criminalia 6935 (1754); Criminalia 7032 (1754); Criminalia 7057 (1754); Criminalia 7400 (1757); Criminalia 7998 (1763); Criminalia 10136 (1792).
[220] Eibach, *Frankfurter Verhöre*, 74-75.
[221] Out of 80 cases in these sample years, only 22 cases contain information about how the case came before the authorities, relating to 24 individuals (there were two cases in which offenders indicted each other).
[222] PO 1847 *Eines Erbarn Raths der Statt Franckfurt am Mayn Quartir Ordnung* 25.10.1614.

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

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

Conclusion

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

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

[223] On the importance of neighbourhoods in conflict regulation, see: C. Schedensack, *Nachbarn im Konflikt. Zur Entstehung und Beilegung von Rechtsstreitigkeiten um Haus und Hof im frühneuzeitlichen Münster* (Münster 2007); C.A. Hoffmann, 'Neighborhood in European cities' in: H. Roodenburg and P. Spierenburg eds., Social Control in Europe. Vol. 1: 1500-1800 (Columbus OH, 2004) 309-327; A. van Meeteren, *Op hoop van akkoord. Instrumenteel forumgebruik bij geschilbeslechting in Leiden in de zeventeniende eeuw* (Hilversum 2006) 27-61; B. Capp, *When gossips meet. Women, family, and neighbourhood in early Modern England* (Oxford 2003).
[224] Eibach, *Frankfurter Verhöre*, 266-279.
[225] For examples, see: Criminalia 644 (1609); Criminalia 1209 (1661); Criminalia 2139 (1698); Criminalia 3448 (1725).
[226] Shoemaker, *Gender*, 301-302.

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

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