



Universiteit
Leiden
The Netherlands

Crime, gender and social control in early modern Frankfurt am Main
Kamp, J.M.

Citation

Kamp, J. M. (2018, November 29). *Crime, gender and social control in early modern Frankfurt am Main*. Retrieved from <https://hdl.handle.net/1887/67106>

Version: Not Applicable (or Unknown)

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/67106>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/67106> holds various files of this Leiden University dissertation.

Author: Kamp, J.M.

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

Issue Date: 2018-11-29

V. Between control and agency?

The prosecution of sexual offences

The previous chapter has demonstrated the way in which informal social control within the household functioned alongside formal criminal prosecution of property offences, and consequently shaped gendered patterns in registered crime. This chapter now turns the focus to the way that institutions of formal control impacted the position of women before the courts by the study of sexual offences. In the early modern period, sexual matters were not considered a private concern but were subject to public control. In the wake of religious changes arising from the Reformation, the early modern period witnessed a process of increasing criminalisation of extra-marital sexuality.⁶⁵⁴ In early modern Frankfurt, as elsewhere in Europe, the gender gap was narrowest among recorded sexual offences in comparison to other crimes, with authorities prosecuting men and women roughly at the same rate.⁶⁵⁵

The enforcement of moral politics and the prosecution of sexual offences were dealt with by a variety of institutions. In many protestant territories, authorities set up new courts in order to facilitate the enforcement of the new marriage regulation following the Reformation. Offences like prostitution, fornication and adultery were dealt with by secular courts as well as by the newly established ecclesiastical and semi-ecclesiastical courts.⁶⁵⁶ This chapter focuses on the institutional

⁶⁵⁴ For a recent overview of this process, see: S. Burghartz, 'Competing logics of public order. Matrimony and the fight against illicit sexuality in Germany and Switzerland from the sixteenth to the eighteenth century', in: Seidel Menchi ed., *Marriage in Europe, 1400-1800* (Toronto 2016) 176-200.

⁶⁵⁵ See chapter 3 for prosecution figures. For prosecution of sexual offences in other German cities and territories see: W. Behringer, 'Weibliche Kriminalität in Kurbayern in der Frühen Neuzeit' in: O. Ulbricht ed., *Von Huren und Rabenmüttern. Weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 63-82, 65-66; G. Schwerhoff, 'Geschlechtsspezifische Kriminalität im frühneuzeitlichen Köln' in: O. Ulbricht ed. *Von Huren und Rabenmüttern: weibliche Kriminalität in der Frühen Neuzeit* (Köln 1995) 83-115, 91; K. Härter, *Policey und Strafjustiz in Kurmainz: Gesetzgebung, Normdurchsetzung und Sozialkontrolle im Frühneuzeitlichen Territorialstaat* (Frankfurt am Main 2005) 892; R. Dürr, *Mägde in der Stadt. Das Beispiel Schwäbisch Hall in der Frühen Neuzeit* (Frankfurt am Main 1995) 220-258; U. Rublack, *The Crimes of women in early modern Germany* (Oxford 1999) 134-162; U. Gleixner, "Das Mensch" und "Der Kerl". *Die Konstruktion von Geschlecht in Unzuchtsverfahren in der frühen Neuzeit (1700-1760)* (Frankfurt 1994); R. Beck, 'Illegitimität und voreheliche Sexualität auf dem Land. Unterfinning, 1671-1770' in: R. van Dülmen ed., *Kultur der einfachen Leute* (München 1983) 112-150; S. Breit, 'Leichtfertigkeit' und ländliche Gesellschaft. *Voreheliche Sexualität in der frühen Neuzeit* (München 1991); I.V. Hull, *Sexuality, state, and civil society in Germany, 1700-1815* (Ithaca NY, 1996); S. Burghartz, *Zeiten der Reinheit, Orte der Unzucht. Ehe und Sexualität in Basel während der frühen Neuzeit* (Paderborn 1999); H. R. Schmidt, *Dorf und Religion. Reformierter Sittenzucht in Berner Landgemeinden der Frühen Neuzeit* (Stuttgart 1995); P. Klammer, *In Unehren beschlafen. Unzucht vor kirchlicher und weltlicher Gerichtsbarkeit im frühneuzeitlichen Salzburger Lungau* (Frankfurt am Main 2004).

⁶⁵⁶ For an overview of these newly established institutions and accompanying references, see: S. Burghartz, 'Ordering discourse and society. Moral politics, marriage, and fornication during the Reformation and the confessionalisation process in Germany and Switzerland' in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 78-98. There was a large variety in the newly implemented courts in the Protestant and Reformed territories. In some cases there were separate marriage and moral courts and in others these were combined. The jurisdiction of the courts could differ considerably, as did the composition of the personnel, who could be composed of lay persons entirely or function as a joint venture of secular and religious authorities. This often leads to confusion about the terminology used in scholarly work as these institutions are interchangeably referred to as secular versus ecclesiastical, or ecclesiastical versus criminal.

setting in which control over sexual offences was exercised in early modern Frankfurt. The first part of this chapter focuses on the legal and institutional development following the Reformation, and the prosecution practices of the two main institutions that were involved: the *Sendamt* (for the seventeenth century) and *Konsistorium* (for the eighteenth century) on the one hand and the criminal court on the other hand. Historians assessed the relationship between these institutions rather differently: from perceiving them as complementary institutions each focusing on different aspects, to conflicting courts with overlapping jurisdictions creating leeway for people to use the courts to their own advantage.

Construing the way that control over sexuality was exercised by the various institutions is crucial for our understanding of gender and crime in this period. The legal tribunals were spaces in which gender norms were enforced and negotiated. Historians characterise the position of women before the courts in two different ways: from women being victims of a repressive policy on morals to being allies of the authorities. In the second part of the chapter, the focus is on the historical actors, in particular the women, that came before these courts. To what extent were they able to pursue their own objectives before these institutions? Did they have the leeway to use them instrumentally as well, or were they simply subjected to repressive control? Most historians focused on the uses of justice by women in marital conflicts. In order to gain a broader perspective of the nature of the regime of morals in the early modern period, and the relationship between authorities and individuals before the courts, this chapter focuses in particular on the treatment of illegitimacy. The position of illegitimate mothers during the early modern period was particularly precarious. Understanding whether and how they were able to use the courts increases our understanding of the nature of social control in this period.

Before we can turn to the regulation of sexual offences in practice, it is necessary to say a few words about the sources that are used in this chapter. Only a comparison of the different legal tribunals allows for a complete picture of the position of women prosecuted for such crimes. Unfortunately, the records of the *Sendamt* and the *Konsistorium* suffered severe losses during WWII. The unequal quality of the sources preserved for these two courts and the criminal investigation offices hampers a balanced comparison between the different courts, particularly on a quantitative level. The archives of the *Sendamt* were destroyed completely, as a result of which quantitative data is lacking for this institution. Fortunately, there is some qualitative material that allows us to get a sense of the legal practices before this tribunal. Anja Johann was able to reconstruct some of its activities with the help of the minutes of the city council (*Bürgermeisterbücher*) for the late sixteenth

and early seventeenth centuries.⁶⁵⁷ Additionally, some sources of the *Sendamt* have been preserved in the records of the criminal investigation office (*Criminalia*) as well, including interrogation records of witnesses and accused.

For the *Konsistorium*, some quantitative material is still available, as there are three completely preserved volumes of *Konsistorialprotokolle* for the years 1746, 1759 and 1780. In these books the scribe recorded for each session the cases that had been discussed, as well as the suspects and/or witnesses that had been interrogated. The information that is preserved in these records is very concise. The first time a case was discussed during a session, the scribe would record the type of case, and the name, profession, and often the origin, of the people involved. In later sessions the case was often only referred to by the name of the conflicting parties as ‘*in Sachen N contra N*’. Therefore, in some instances the actual dispute or case that was dealt with is not entirely clear from the records. Occasionally, the main statements of the suspects were summarised and the consistory’s final decision was recorded. In general, the more difficult, long-lasting and complicated a conflict was, the more information was written down in the records. Apart from the concise information preserved in the *Konsistorialprotokolle*, more detailed transcripts of the interrogations before the consistory are preserved in the *Criminalia* in cases that were eventually handed over to the investigation office. These allow for a further and more in-depth investigation of the cases that were heard by the consistory.

I have consulted the register of all *Criminalia* between 1600 and 1806 to analyse which types of sexual offences were investigated by the *Verhöramt*, what the gender ratio of suspects for these cases was, and how this developed over time. In order to be able to compare the activities of the *Sendamt* and the consistory on the one hand and the *Verhöramt* on the other hand, as well as gaining more information on the suspects involved, I have collected additional information for all cases of sexual offences as well as all cases of infanticide, abortion and child abandonment from the *Criminalia* for the following sample years: 1620-24; 1640-44; 1660-64; 1680-84; 1700-1704; 1720-24; 1740-44; 1760-64 and 1780-84. Some additional cases that appeared to be interesting have been collected for further qualitative information. Finally, for the seventeenth century additional quantitative data was available through the *Strafenbuch* (1562-1696) which listed all penal sanctions, and for which information about offenders, case, and punishment is collected for every first six years of each decade from 1600 onwards (thus 1600-1605; 1610-1615; 1620-1625, etc.).

⁶⁵⁷ A. Johann, *Kontrolle mit Konsens. Sozialdisziplinierung in der Reichsstadt. Frankfurt am Main im 16. Jahrhundert* (Frankfurt am Main 2001) 120-129.

Disciplining or assisting? Women and the regulation of morals

The early modern period saw a rise of new institutions designed to implement and control the new regulations concerning marriage and sexual behaviour. The nature of these institutions has been subject to extensive discussion, particularly in relation to the effect they had on the position of women.

Regarding the prosecution of morals, historians have judged church courts and criminal courts in contrasting ways, both as spaces of disciplining and control, as well as locations for conflict settlement. Accordingly, the position of women before these courts was perceived very differently, ranging from women as users of justice that found an ally in the authorities, to women that were the main victims of the policing of a repressive moral regime.

In her study on sixteenth-century Augsburg, Lyndal Roper argued that the introduction of marriage courts ultimately led to the consolidation of patriarchy, firmly establishing the rule of male household heads over their subjects.⁶⁵⁸ While Roper qualified this as a sign of the deteriorating position of women, others claimed that this ideal of the household as the primary location for social order also offered women opportunities. For seventeenth-century Basel Heinrich Richard Schmidt stated that women worked in ‘alliance’ with the authorities to discipline their men, upholding them to the duties and obligations associated with the patriarchal ideal.⁶⁵⁹ Joachim Eibach came to a similar conclusion for the regulation of marriage conflicts before Frankfurt’s *Konsistorium* in the eighteenth century. The court acted as a ‘guardian of Christian patriarchy’ that imposed rules on both sexes for a peaceful domestic co-existence, which opened up opportunities for individuals to use the court for their own agenda.⁶⁶⁰

Susanna Burghartz, on the other hand found that women’s recourse to justice was subject to change. In reaction to Schmidt, she argued that: ‘this thesis may possess a certain plausibility for the regulation of the marital disputes by the church court in the Bernese villages Schmidt has studied, but it cannot be generalized [...] given the growing repressiveness of the marriage and morals courts in the sixteenth century and even more so in the seventeenth century’.⁶⁶¹ According to her, the marriage courts moved from a place of conflict settlement and an ‘integrative position’ where pre-marital sex was legitimised through marriage, to institutions of growing repression

⁶⁵⁸ L. Roper, *The Holy household. Women and morals in reformation Augsburg* (Oxford 1991).

⁶⁵⁹ H.R. Schmidt, ‘Hausväter vor Gericht. Der Patriarchalismus als zweischneidiges Schwert’ in: M. Dinges ed., *Hausväter, Priester, Kastrate. Zur Konstruktion von Männlichkeit in Spätmittelalter und Früher Neuzeit* (Göttingen 1998) 213-236.

⁶⁶⁰ J. Eibach, ‘Der Kampf um die Hosen und die Justiz – Ehekonflikte in Frankfurt im 18. Jahrhundert’ in: S. Kesper-Biermann and D. Klippel eds., *Kriminalität im Mittelalter und Früher Neuzeit. Soziale, rechtliche, philosophische und literarische Aspekte* (Wiesbaden 2007) 167-188, 188.

⁶⁶¹ Burghartz, ‘Competing logics’, 191.

against extra-marital sexuality, where unmarried women of the lower classes were particularly affected.⁶⁶²

Thus, scholarly discussion regarding the control of sexuality and marriage in the early modern period is centred on the question of whether the courts were a location for conflict settlement or for punishment and exclusion. In this chapter, I will argue that such juxtaposition neglects the complexities of control over sexuality in the early modern period. First, most of the tribunals regulating morals combined both functions: fornication was prosecuted in the same tribunal that settled paternity charges.⁶⁶³ Therefore, in order to understand the nature of control regarding extra-marital sexuality, the dual function of the marriage courts cannot be neglected. Second, a better understanding of the relationship between the criminal court and the newly established tribunals regarding the differentiation of tasks is needed. As infractions of the state of marriage and social order, cases like adultery, fornication, bigamy and prostitution were prosecuted both by lower courts – including the newly established (semi-)ecclesiastical courts – as well as the higher criminal courts.⁶⁶⁴ Hitherto, most studies only focused on a single institution or a comparison of both institutions without studying the *interactions* between the two.

Heinz Schilling previously argued that there was a fundamental difference between church discipline and criminal jurisdiction. Whereas the first focused on the preservation of the unity and purity of the congregation, and was therefore aimed at reconciliation, the latter was of a repressive punitive top-down character and merely aimed at punishing the crime.⁶⁶⁵ Therefore, historians should make a factual and methodological distinction between the ‘history of sin’ and the ‘history of crime’: the discipline of sin and criminal punishment were two different and independent objectives. The extent to which the two were separated depended on the relationship between church and state. In areas where the church was subjected to the authority of the secular state there was less room for differentiation between penitential church discipline and secular criminal punitive discipline.⁶⁶⁶

⁶⁶² Burghartz, ‘Competing logics’, 189-193.

⁶⁶³ Hull, *Sexuality*, 26; Harrington, *Reordering marriage*, 250; Burghartz, *Zeiten der Reinheit*, 271; Breit, *Leichtfertigkeit*, 282; Gleixner, ‘Das Mensch’ und ‘Der Kerl’.

⁶⁶⁴ H. Wunder, ‘Gender norms and their enforcement in early modern Germany’ in: L. Abrams and E. Harvey eds., *Gender relations in German history. Power, agency and experience from the sixteenth to the twentieth century* (London 1996) 39-56, 48.

⁶⁶⁵ H. Schilling, ‘History of Crime’ or ‘History of Sin?’ – Some reflections on the social history of early modern church discipline’ in: E.I. Kouri and T. Scott eds., *Politics and Society in Reformation Europe. Essays for Sir Geoffrey Elton on his Sixty-Fifth Birthday* (London 1987) 289-310. This distinction, though not always referred to in the same way, is still present in scholarship. See, for example, Wunder, ‘Marriage’, 63. She distinguishes between ecclesiastical courts that were concerned with the preservation of the spiritual aspects or marriage, while municipal courts dealt with the issue from the perspective of order.

⁶⁶⁶ Schilling, ‘History of crime’, 301.

Various scholars opposed the distinction of a ‘history of crime’ and a ‘history of sin’. First, it is argued that separating secular and ecclesiastical perceptions of deviance is problematic for the early modern period, as crimes were always considered sins.⁶⁶⁷ Fears about the wrath of God coming down on the community played an important role in the prosecution of crime before secular courts, and the punishment of offenders was therefore seen as a tool to preserve the purity of the community.⁶⁶⁸ Moreover, the boundary between police and church ordinances was fluid, since in most Protestant areas church ordinances were decreed by the secular authorities.⁶⁶⁹ Second, early modern criminal courts are no longer viewed as top-down institutions where justice was simply imposed on the population. Instead, scholars emphasise that the courts were also used instrumentally as a place to settle conflicts and restore peace.⁶⁷⁰ Thus, criminal justice was not solely punitive, but reconciling as well. Third, as Martin Ingram previously stated, ‘it may well be misleading to infer the pattern of moral regulation from the records of only one jurisdiction: the *complementary* and *overlapping* activities of diverse institutions – sometimes reinforcing, sometimes obstructing each other – must be understood’.⁶⁷¹

A better understanding of the relationship between the various tribunals that were tasked with the control over sexual offences is needed because it impacted the position of women and their ability to have recourse to justice. According to Martin Dinges, the fact that both institutions had overlapping functions in the supply of regulation and sanctioning enabled contemporaries to use the courts to their own advantage. He argued that ‘[t]hey were quite aware of the functionally equivalent role of criminal justice and church discipline’, as a result of which ‘contemporaries knew perfectly well how to exploit the situation’.⁶⁷² Peter Gorski, on the other hand, argued that ‘the spiritual and worldly systems of justice tended to be tightly intertwined’, and saw cooperation rather

⁶⁶⁷ M. Ingram, ‘History of sin or history of crime? The regulation of personal morality in England, 1450-1750’ in: H. Schilling and L. Behrlich eds., *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitlichen Europa* (Frankfurt am Main 1999) 87-104, 89.

⁶⁶⁸ A. Kästner and G. Schwerhoff, ‘Religiöse Devianz in alteuropäischen Stadtgesellschaften. Eine Einführung in systematischer Absicht’ in: A. Kästner and G. Schwerhoff eds., *Göttlicher Zorn und menschliches Maß. Religiöse Abweichungen in frühneuzeitlichen Stadtgesellschaften* (Konstanz 2013) 9-17.

⁶⁶⁹ H.R. Schmidt, ‘Sozialdisziplinierung? Ein Plädoyer für das Ende des Etatismus in der Konfessionalisierungsforschung’ *Historische Zeitschrift* 265 (1997) 639-682, 661-662.

⁶⁷⁰ Ingram, ‘History of sin’, 94. In general: G. Schwerhoff, *Aktenkundig und gerichtsnotorisch. Einführung in die Historische Kriminalitätsforschung* (Tübingen 1999) 84-95. In relation to church discipline and confessionalisation: Schmidt, ‘Sozialdisziplinierung’; H. Roodenburg, ‘Social control viewed from below: New perspectives’ in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 145-158; P.S. Gorski, *The disciplinary revolution. Calvinism and the rise of the state in early modern Europe* (Chicago 2001).

⁶⁷¹ M. Ingram, ‘History of sin’, 95. Also: M. van der Heijden, ‘Punishment versus reconciliation. Marriage control in sixteenth- and seventeenth-century Holland’ in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 55-75.

⁶⁷² M. Dinges, ‘The uses of justice as a form of social control in early modern Europe’ in: H. Roodenburg and P. Spierenburg eds., *Social Control in Europe. Vol. 1: 1500-1800* (Columbus OH, 2004) 159-175, 163.

than competition.⁶⁷³ Hypothetically speaking, this would have decreased the opportunity of historical actors to display uses of justice by ‘exploiting’ the system.

Thus, in order to assess whether women were only subjected to discipline by the authorities, or could use the court to their own advantage as well, the interaction and relationship between the various judicial institutions plays a crucial role. The more overlap between the two, the more opportunities one would expect. By looking at the position of illegitimate mothers before the court and taking into account the institutional context they operated in, this chapter contributes to our understanding of the nature of social control with regard to sexuality in the early modern period. Who imposed control on extra-marital sexuality and with what aims? Were the women accomplices to the moral policy of the Frankfurt’s city government or were they its victims? Or was it something in between?

There are several reasons for looking at illegitimacy in particular. First, the position of women giving birth out of wedlock became particularly precarious as prosecution efforts increasingly focused on illegitimacy. The way they could or could not use the courts to their own advantage tells us something about the nature the legal institutions concerning their control over sexuality as well as the agency of women. Second, apart from sanctioning sexual offences, the *Sendamt* and *Konsistorium* also regulated paternity suits and the payment of child support. How this double function influenced the position of women will be extremely informative about the nature of early modern justice. Third, Rebekka Habermas and Joachim Eibach have previously studied the regulation of sexual and marital matters in early modern Frankfurt. Eibach has studied the way authorities controlled marital disputes and has systematically compared the treatment of such cases by the consistory and by the criminal investigation office for 1746. Habermas, on the other hand, focused on the treatment of sexual offences and the role of women from the perspective of the *Verböramt*.⁶⁷⁴ This chapter contributes to their findings by broadening the comparison between the two institutions with the study of sexual offences.

Legal and institutional developments

Changing ideals about the nature of marriage in the wake of the Reformation formed the basis for the prosecution of illicit sexuality in the early modern period. This section will focus on the way marriage was regulated in Frankfurt, which laws were implemented to preserve the state of marriage (i.e. laws against adultery and fornication) and which institutions were involved in the supervision

⁶⁷³ P.S. Gorski, ‘Historicizing the secularization debate. Church, state, and society in late medieval and early modern Europe, ca. 1300 to 1700’, *American Sociological Review* 65:1 (2000) 138-167, 154.

⁶⁷⁴ R. Habermas, ‘Frauen und Männer im Kampf um Leib, Ökonomie und Recht. Zur Beziehung der Geschlechter im Frankfurt der Frühen Neuzeit’ in: R. van Dülmen ed., *Dynamik der Tradition* (Frankfurt am Main 1992) 109-136.

of moral conduct. The developments in Frankfurt show a process of increasing institutional differentiation and specialisation of tasks in which new institutions were developed and increasingly aligned to each other. The city's secular authorities took over full control. Both on the normative as well as on the institutional level 'secularization' of sexual disciplining emerged.⁶⁷⁵ The emergence of new moral laws and courts in the sixteenth- and seventeenth centuries was inextricably linked to the confessionalization process.⁶⁷⁶ This had long lasting consequences with regard to the institutional framework in which sexual offences were controlled and prosecuted. By the eighteenth century the process of confessionalisation was more or less complete, but the laws and church courts introduced to enforce moral discipline as part of the confessional competition were not abolished. Instead, they offered authorities a framework to control sexuality, which became increasingly linked with economic concerns.⁶⁷⁷ Throughout the period there was a process of increasing intertwinement of moral and secular concerns regarding the nature of marriage, and the prosecution of extra-marital sexuality.

Already prior to the Reformation there had been a movement towards elevating 'wedlock to the morally normative centre of society'.⁶⁷⁸ Urban authorities began to take control over the regulation of sexual conduct from ecclesiastical authorities and developed their own laws and policies against immorality in a pursuit of establishing 'the sole validity of marriage within the urban society'.⁶⁷⁹ Moreover, criminalisation of extra-marital sexuality was also advocated by urban guilds, who implemented measures to exclude from their ranks anyone who had been born out of wedlock.⁶⁸⁰ Urban moral policies were specifically aimed at the regulation of prostitution, starting with the isolation of prostitutes in municipal brothels before it was completely abolished.⁶⁸¹ Although moral reform movements pre-dated the Reformation, there was a fundamental difference related to perceptions about what was considered a legitimate marriage and what was not.

⁶⁷⁵ For theoretical contemplations of differentiation in the legal processes, see: N. Luhmann, *Law as a social system* (Oxford 2004). Also: H. Rudolph and H. Schnabel-Schüle, 'Rahmenbedingungen von Strafjustiz in der Frühen Neuzeit' in: H. Rudolph and H. Schnabel-Schüle eds., *Justiz = Justice = Justitia? Rahmenbedingungen von Strafjustiz im frühneuzeitlichen Europa* (Trier 2003) 7-37, 13-14; Härter, *Policy und Strafjustiz*, 830.

⁶⁷⁶ Burghartz, 'Ordering discourse', 83; T. McIntosh, 'Confessionalization and the campaign against pre-nuptial coitus in Sixteenth-Century Germany', in J.M. Headly, H. J. Hillerbrand and A. J. Papalas eds. *Confessionalization in Europe, 1550-1700: Essays in Honor and Memory of Bobo Nischan* (Aldershot 2004) 155-174; U. Sibeth, *Eherecht und Staatsbildung. Ehegesetzgebung und Rechtsprechung in der Landgrafschaft Hessen-Kassel in der Frühen Neuzeit* (Darmstadt-Marburg 1994).

⁶⁷⁷ Burghartz, 'Ordering discourse', 92.

⁶⁷⁸ Wunder, 'Marriage', 68. Also: H. Wunder, "Er ist die Sonn', sie ist der Mond". *Frauen in der Frühen Neuzeit* (München 1992) 63; B. Schuster, *Die freien Frauen. Dirnen und Frauenhäuser im 15. und 16. Jahrhundert* (Frankfurt am Main 1995) 316-341.

⁶⁷⁹ Burghartz, 'Ordering discourse', 80.

⁶⁸⁰ E.g.: M.R. Boes, 'Dishonourable' youth, guilds, and the changed world view of sex, illegitimacy and women in late-sixteenth-century Germany' *Continuity and Change* 18:3 (2003) 345-372; M. Wiesner, 'Guilds male bonding and women's work in early modern Germany', *Gender & History* 1:2 (1989) 125-137.

⁶⁸¹ P. Schuster, *Das Frauenhaus. Städtische Bordelle in Deutschland (1350-1600)* (Paderborn 1992); Schuster, *Die freien Frauen*. On Frankfurt: M. Wiesner, *Working women in early Modern Germany* (New Brunswick NJ, 1986) 97-109; Johann, *Kontrolle mit Konsens*, 217-219, 231-233.

One of the major developments regarded the nature of marriage, as it was no longer considered a sacrament but a secular contract. This affected its legal status and the condition under which a marriage was considered to be concluded. Earlier, a legitimate marriage only required the mutual consent of a man and a woman, and intercourse following exchanged vows was considered a legitimate start of matrimony. No public confirmation or parental consent was required. This often led to practical and legal difficulties, since either of the parties could simply deny that vows were exchanged. The redefinition of marriage as a secular contract bound it to clear rules concerning its validity.⁶⁸²

For Frankfurt, this development can be clearly traced in the city's legal constitutions of 1509 and 1578⁶⁸³. According to the *Statt Franckenfurt erneuerte Reformation* from 1578 (re-issued in 1611), marriage was the single most important contract issued between a man and a woman.⁶⁸⁴ Moreover, the *Reformation* stipulated that for the marriage 'contract' to be legitimate it had to be preceded by a formal and public betrothal before the parents, relatives, guardians – or in the case of servants – before the head of the household. In addition, underage couples needed parental consent (under 25 for men, and under 22 for women).⁶⁸⁵ Contrary to pre-Reformation practices, secret betrothals and clandestine marriages (*Winckel Ehen*) were no longer considered as a legitimate start of matrimony. In comparison: the first *Frankfurter Reformation* of 1509 only dealt with marriage in relation to the transfer of property and inheritance. Betrothal, parental consent, and secret engagements were not perceived as matters that required regulation in a secular urban legal code.

Throughout the period, the political control over marriage extended and was increasingly bound to financial requirements and questions of citizenship. In the eighteenth century, parental consent became obligatory for all engaged couples regardless of their age.⁶⁸⁶ Couples were required to report their engagement to the consistory first in order to be given consent for the proclamation of the banns in church. After the successful proclamation in church, they could then request a

⁶⁸² I. Fleßenkämper, 'Die Ordnung der Ehe. Zum Verhältnis von weltlicher und geistlicher Strafgewalt in der reformierten Garfschaft Lippe im 17. Jahrhundert' in: M. Freudenberg and G. Plasger eds., *Kirche, Theologie und Politik im reformierten Protestantismus* (Neukirchen-Vluyn 2011) 79-94, 80.

⁶⁸³ On the Reformation in Frankfurt see: S. Jahns, 'Frankfurt im Zeitalter der Reformation (um 1500-1555)' in: Frankfurter Historischen Kommission eds., *Frankfurt am Main. Die Geschichte der Stadt in neun Beiträgen* (Sigmaringen 1994) 151-204.

⁶⁸⁴ *Der Statt Franckenfurt erneuerte Reformation* (1578) § 3.1.1.: 'Dienvijl under alle contracten der Menschen/ die Eheliche zusammen verpflichtunge zweyer ledigen Personen, Manns und Weybs/ der allerhöchst und fürnembste Contract ist'. On the question of whether marriages should be considered as a secular contract or an ecclesiastical manner in relation to Frankfurt's legal constitution, see: J.P. Orth, *Nöthig und nützlich erachtete Anmerkungen Über die so genannte Erneuerte Reformation der Stadt Franckfurt am Mayn. Zweyte Fortsetzung; in welcher der Dritte, Vierte und Fünfte Theil Vorerwebnten Stadt-Rechtes, Grund- und deutlich erkläret und erläutert (...)* (Frankfurt am Main 1744) 1-2.

⁶⁸⁵ *Der Statt Franckenfurt erneuerte Reformation* (1578) §3.8.9.

⁶⁸⁶ PO 3086 *Mandat gegen heimliche Eheverlöbniß* 15.09.1733; B. Dölemeyer, 'Privatrechtliche Handlungsspielräume von Frauen. Die Frankfurter Gesetzgebung' in: G. Engel, U. Kern und H. Wunder eds., *Frauen in der Stadt* (Königsstein im Taunus 2002) 87-102, 90; J.H. Bender, *Handbuch des Frankfurter Privatrechts* (Frankfurt am Main 1848) 27-34.

Copulations-Schein from the consistory to get married.⁶⁸⁷ For couples to receive this consent and essentially start their own household, they had to prove financial stability and were requested to show their *Schatzungs-Buch* (registry of paid taxes).⁶⁸⁸

The Protestant theology of marriage had introduced clear boundaries between legitimate and illicit marriages, which had resulted in a discourse about sexuality in clear binary terms. Whereas previously intercourse that resulted in marriage was considered legitimate, now all extra-marital sexuality was prohibited. This led to the creation of new ‘crimes’ such as fornication (*Unzucht*) and lewdness (*liederlichkeit*) which were inextricably linked to a new understanding of what a legitimate marriage was, and how it had to be contracted.⁶⁸⁹

Again, this process is clearly visible in Frankfurt’s legislation. Before the Reformation, laws only prohibited adultery and *Kuppelei* (in this case: enabling adultery or keeping a private brothel). Now, laws were extended to include all forms of extra-marital sexuality. Through the second half of the sixteenth- and during the seventeenth century – that is, roughly the period of confessionalisation – at least nine laws against adultery and fornication were issued by the city council.⁶⁹⁰ The earliest ordinance which introduced fornication as a punishable offence was clearly aimed at condemning the concubinage of the Catholic clergy and defined it as a male offence.⁶⁹¹ Soon, however, it was applied to everyone – men and women. By the early seventeenth century, laws referred to fornication as an act committed by single people.⁶⁹²

The introduction of the new legislation concerning adultery and fornication was followed by discussions on the appropriate level of punishment. The penalty for adultery, for example, became the subject of intense debate.⁶⁹³ The police ordinance of 1530, which was reissued in 1579 and 1598, stipulated a fine of ten guilders for first-time offenders. Despite the fact that the ordinance was reissued, the *Herren der Rathschlagung* (a committee of the city council) considered the penalty to be too low and raised it to 50 guilders as can be deduced from the proceedings

⁶⁸⁷ PO 3176 *Eines Hoch=Edl. und Hoch=Weisen Rathes des Heil. Reichs Stadt Franckfurth am Mayn Consistorial-Ordnung* 1739,7.

⁶⁸⁸ For the separate ordinances see: PO 3946 *Erneuerte Consistorial=Ordnung* 04.01.1774. For this process in general see: Hull, *Sexuality*, 107.

⁶⁸⁹ Wunder, ‘Marriage’, 72; Burghartz, ‘Ordering discourse’, 81; J.F. Harrington, *Reordering marriage and society in reformation germany* (Cambridge 1995) 216.

⁶⁹⁰ B. Günther, *Die Behandlung der Sittlichkeitsdelikte in den Policeordnungen und der Spruchpraxis der Reichsstädte Frankfurt am Main und Nürnberg im 15. bis 17. Jahrhundert* (Frankfurt am Main 2004). Laws against adultery and fornication were issued in 1529, 1530, 1531, directly after the appointment of the first reformed clerics in the city, and in 1534, 1576, 1579, 1597, 1598, 1608, 1620, 1629 and 1673.

⁶⁹¹ Johann, *Kontrolle mit Konsens*, 222. The ordinance referred to: someone who publically associates himself with suspicious women, or lives in concubinage. ‘*Welcher öffentlich mit verdächtigen Weibern zubielt, oder zur onehe sez?*’. PO 1063 *Mandat die Gotteslästerung, Ehebruch, Hurerey, Zutrinken etc. betr.* 08.03.1530.

⁶⁹² PO 2102 *Ordnung, wie hinführo die Hurerey, Unzucht und Ehebruch zu bestraffen* 14.11.1629. Referred to fornication as: ‘*die gemeine unzucht, so ledige Personen mit einander treiben?*’.

⁶⁹³ Johann, *Kontrolle mit Konsens*, 223-224; I. Kaltwasser, ‘Ehen vor Gericht. Kriminalfälle und zivilrechtliche Ehesachen aus den Akten der Frankfurter “Criminalia” und des Reichskammergerichts’, *AfGK* 68 (2002) 235-273, 249; IfSG Frankfurt am Main, *Criminalia* 1063 (1643).

(*Rathschlagungsprotokolle*) from 1576 and 1597. The same police ordinances (1530, 1579 and 1598) also regulated the punishment for fornication. Here as well, the ordinances did not match the intentions of the authorities since they still defined fornication as a male offence, even though in practice the ordinances applied to everyone. References in the *Rathschlagungsprotokoll* of 1534 reveal that the punishment for fornication was set at five guilders. Again, the amount was raised later on in the period. At the beginning of the seventeenth century a standard was set which would remain the same for the rest of the Ancien Régime. Adulterers were ‘no longer punished with the usual 50 guilders, but in accordance with their wealth, social rank or other qualities, with a much higher punishment’.⁶⁹⁴ Fornication was sanctioned with a ten-guilder fine for couples who proceeded to get married. Those that did not could be sanctioned with a prison punishment, a fine, or flogging and banishment according to the circumstances of their crime. Here the law clearly left room for the discretion of the judges.

The process of increased criminalisation of sexual offences after the Reformation is further marked by the introduction of new shaming punishments.⁶⁹⁵ In addition to paying a fine, offenders could be sentenced with the so-called *Schmähgulden* or *Schmachgulden* (lit. translation scandal guilders), first mentioned in 1576. This was a public shaming ritual in which the offender had to walk from the entrance of the *Römer* to the fountain in the middle of the square while being escorted by the city’s executioner (the *Nachrichter*) where he/she had to pay the *Schmähgulden* while the executioner loudly beat the drum. It was considered to be very dishonouring – even more than undergoing penance in church.⁶⁹⁶ Somewhere between the 1630s and the 1640s this type of punishment disappeared as one of the city’s syndics noted in an adultery case in 1643.⁶⁹⁷ Another public shaming ritual mentioned in the ordinances was reserved specifically for adulterous women: the *Narrenhäußlein*. This was an open cage where offenders were displayed for all to see, and there are references that this type of punishment was indeed put into practice.⁶⁹⁸ In the eighteenth century, women prosecuted for lewdness and fornication could be sanctioned to pull the scavenger’s cart.⁶⁹⁹

⁶⁹⁴ PO 2102 *Ordnung, wie hinführo die Hurerey, Unzucht und Ehebruch zu bestraffen* 14.11.1629. Original: ‘nicht mit denen bißbero gewöhnlichen 50fl., sonden nach beschaffenheit seines vermögens, Stand oder anderer qualitäten, mit einer weit höheren geldstraff’.

⁶⁹⁵ On the practice of shaming rituals in criminal justice, see e.g.: G. Schwerhoff, ‘Verordnete Schande? Spätmittelalterliche und frühneuzeitliche Ehrenstrafen zwischen Rechtsakt und sozialer Sanktion’, in: A. Blauert and G. Schwerhoff eds., *Mit den Waffen der Justiz. Zur Kriminalitätsgeschichte des späten Mittelalters und der Frühen Neuzeit* (Frankfurt am Main 1993); S. Lidman, *Zum Spektakel und Abscheu. Schand- und Ehrenstrafen als Mittel öffentlicher Disziplinierung in München um 1660* (Frankfurt am Main 2008).

⁶⁹⁶ Johan, *Kontrolle mit Konsens*, 126.

⁶⁹⁷ Criminalia 1063 (1643). According to the syndic, the Schmachgulden had still been in use in 1630: ‘der Schmachgulden anno 1630 noch in Übung gewesen’.

⁶⁹⁸ PO 2102 *Ordnung, wie hinführo die Hurerey, Unzucht und Ehebruch zu bestraffen* 14.11.1629; Criminalia 1053 (1641).

⁶⁹⁹ Hanauer, ‘Geschichte der Prostitution’, 27; Criminalia 3290 (1723); Criminalia 5882 (1747); Criminalia 6389 (1750); Criminalia 7559 (1759).

In contrast to the earlier process of differentiation in the sixteenth and seventeenth centuries, no new laws regarding the level of punishment of sexual offences were introduced in the eighteenth century. Instead, laws during this period followed a similar pattern to the regulation of marriage. They were now primarily concerned with the practical and financial consequences: illegitimacy. The ordinances published during this period regulated legal disputes concerning illicit marriage promises, extra-judicial settlements in paternity suits, the placement of illegitimate children in foster care, and the banishment of foreign pregnant women.⁷⁰⁰

The legal changes with regard to marriage and fornication in the wake of the Reformation were also accompanied by institutional changes, with the secular authorities setting up new judicial bodies to oversee their enforcement. The way these institutional changes were organised varied greatly within the Reformed territories. In some cities, there were separate marriage and morals courts, while in others these functions were combined in a single institution. In the majority of these institutions, theologians only made up a minority of the personnel, or were not even incorporated at all.⁷⁰¹

In Frankfurt, the control over morals and marriage was dealt with separately during the sixteenth and seventeenth centuries, until they were combined in a single institution in the eighteenth century. In 1530, amidst the Reformation, Frankfurt's city council established a new legal tribunal to enforce the regulation of morals called the *Sendamt*, which was formed by six council men (two from each bench).⁷⁰² It was in charge of the *causae mixtae ecclesiasticae*: the *delicta carnis* (adultery and fornication), decisions about the enforcement of marriage vows in case of pregnancy and the regulation of alimony charges for illegitimate children.⁷⁰³ Additionally the *Sendamt* was in charge of investigating and disciplining all cases that 'violated the external morality (*die äussere Sittlichkeit verletzende Vergehungen*):' i.e. transgressions against the city's sumptuary laws.

⁷⁰⁰ PO 2600 *Rabts-Conclusum die Außsetz- und Hinlegung der kleinen Kinder betreffend* 29.08.1695; PO 2974 *Das Land=Pfarrer die Namen derer zu unehelichen Kindern angegebenen Väter eher nicht als nach entschiedener Sache in das Kirchenbuch tragen, sondern sie ad interim nur zu ihrer Privat = Notiz vor sich aufzeichnen sollen* 09.12.1728; PO 2978 *Weibspersonen soll vorzüglich mit Soldaten unzüchtiger Umgang verboten seyn* 01.02.1729; PO 3152 *Die in Unehren erzählte und denen Leuten heimlich in die Kost und Verpflegung gegebene Kinder betreffend* 24.09.1737; PO 3181 *In Schwängerungssachen sollen keine heimliche Vergleiche getroffen werden* 20.01.1739; PO 3445 *Daß man die lapsas, so nicht von hier, mit ihren kindern fortschaffen solle* 18.03.1755; PO 3449 *Obne obrigkeitliche Erlaubniss sollen keine Kostkinder von Privatis angenommen werden* 19.08.1755; PO 3911 *Dass niemand, wann auch schon eine Schwängerung vorhanden wäre, vor Erhaltung des Burgerrechts oder Schutzes mit der Proclamation oder Copulation zu willfahren, und, woferne beyde sich vergangen habende Theile frembd, selbige schlechterdings dahier abzuweisen; weniger nicht dissensum parentum bey erfolgter Schwängerung betreffend* 24.12.1772.

⁷⁰¹ See: Roper, *Holy Household*, 61-69 (Augsburg); Burghartz, *Zeiten der Reinheit* (Basel); Watt, *Modern Marriage* (Neuchâtel); Hull, *Sexuality*, 58-61.

⁷⁰² On the situation prior to the Reformation see: Johann, *Kontrolle mit Konsens*, 121. In 1411 the synodal court (*Sendgericht*) had been assigned to the city council by the archbishop of Mainz. With it, the city council had acquired the right to prosecute sexual matters on their own account and soon the *Sendgericht* lost its function and was dissolved. The newly established *Sendamt* had nothing to do with this former synodal court.

⁷⁰³ J.G. Rössing, *Versuch einer kurzen historischen Darstellung der aunmäßigen Entwickleung und Ausbildung der heutigen Gerichts-Verfassung Frankfurts* (Frankfurt am Main 1806) 153-154.

Thus, the *Sendamt* fulfilled a double function. On the one hand it was installed to discipline extra-marital sexuality. As such it could impose monetary fines and shaming punishments. For cases that were considered too complex, or in which the required punishment exceeded the competences of the *Sendamt*, the city council had to be consulted.⁷⁰⁴ At the same time it also functioned as a tribunal to settle conflicts that belonged to sphere of civil law like paternity suits. How this influenced the position of women will be discussed later on, for now it suffices to highlight the fact that two possibly conflicting functions were united in one court.

Apart from the *Sendamt*, the city council also established a new office for the supervision over religious matters (*causae merae ecclesiasticae*) called the *Scholarchat*, which was also formed by six council members. They were in charge of supervising Frankfurt's churches, and appointed new clerics together with the association of preachers (*Predigerministerium*). Moreover, they were in charge of the appointment of teachers and supervised education. Thus, in Frankfurt church discipline (*Kirchenzucht*) and moral discipline (*Sittenzucht*) were formally divided during this period. Nevertheless, both were subjected to the control of secular authorities.

Unlike other cities, Frankfurt did not establish a new judicial body for the regulation of matrimonial affairs: they were transferred from the jurisdiction of the archbishop of Mainz to the city's civil court: the *Schöffengericht*.⁷⁰⁵ Disputes between spouses, requests for separation or divorce, issues regarding abandonment, etc., were all dealt with by the aldermen, reflecting the perception of marriage as a civil legal contract. Excluded from a voice in marital matters, the city's clergymen repeatedly expressed their wish to the city council for the establishment of a proper marriage court in Frankfurt following the example of other reformed cities.⁷⁰⁶ However, the aldermen did not grant any power over these matters to the city's clerics, and maintained full control over marital politics until the establishment of the consistory.

At the beginning of the eighteenth century the situation changed. The *Sendamt* and the *Scholarchat* were abolished, and their tasks were incorporated into a newly created institution, the *Konsistorium*, together with the control over marriage which had formerly belonged to the court of aldermen. The consistory was established in 1726 as part of the political transformations during the constitutional conflict (1705-1732). According to the tribunal's regulations, it was charged with maintaining pure Protestant thought, Christian discipline and social order.⁷⁰⁷ The regulations of the new consistory stated that it held jurisdiction over all affairs concerning marriage: granting consent

⁷⁰⁴ Johann, *Kontrolle mit Konsens*, 124-126.

⁷⁰⁵ *Der Stadt Franckfurt erneuerte Reformation* (1578) §3.1; Rössing, *Versuch*, 151.

⁷⁰⁶ Johann, *Kontrolle mit Konsens*, 221.

⁷⁰⁷ PO 3176 *Consistorial-Ordnung* 1739, §1.1. Original: 'Soll dieses Consistorium im Nahmen Unser des Raths, in denen Ihme aufgetragenen Sachen, das Richterliche Amt führen: über Beybehaltung reiner Evangelischer Lehre, wie auch Christlicher Zucht und Ordnung, beständig ein wachendes Auge haben, und die heilsame Justiz treulich administriren'.

to engaged couples to proceed with the banns of marriage in church; dealing with marriage promises that were not kept or in which either party requested an annulment; evaluating requests for marriage between related couples; marital disputes, divorce from bed and board, and annulment of marriage after desertion of a spouse or adultery.

Besides marital matters, the consistory held jurisdiction over the *delicta carnis* and related matters. According to the regulations, this concerned offences like lewdness, fornication and adultery (*Leichtfertigkeit, hurerey und Ehebruch*) as well as the investigation of paternity suits, handling requests for child support for illegitimate children, and requests for the enforcement of marriage promises.⁷⁰⁸ Additionally, the consistory was in charge of policing sumptuary laws. In sum, the consistory combined the activities subjected to ecclesiastical as well as moral discipline, and functioned as both a disciplinary court and a forum for conflict settlement at the same time.⁷⁰⁹

In many cases the consistory was a continuation of the *Sendamt*. In fact, with regard to sexual offences the regulations specifically stated that the consistory was to continue the practices of the *Sendamt* and prosecute these offences as usual.⁷¹⁰ However, there was one major change. While the *Sendamt* was composed of secular members only, the consistory had a mix of secular and ecclesiastical personnel. It was presided over by a director, who had to be one of the aldermen, together with three other council members (one from the first bench and two from the second bench). They were accompanied by two burgher representatives chosen by the *51er Kolleg* (a burgher committee). The ecclesiastical personnel were formed by the city's two most senior clergymen and the director of the *Predigerministerium*.

Despite the fact that representatives of the church now had a direct voice in the prosecution of moral offences, the establishment of the consistory is generally perceived as a strengthening of the position of the city council and increased secularisation.⁷¹¹ The reason for this is that with the establishment of the consistory the church convent had lost its independence to implement ecclesiastical penance completely.⁷¹² Previously, in the sixteenth and seventeenth centuries, the *Sendamt* had already seized control over the implementation of the *Kirchenbuße* (a form of public

⁷⁰⁸ PO 2950 *Consistorial Ordnung*, 1728, §7.17.

⁷⁰⁹ Rössing, *Versuch*, 160. Original: *‘welche aus der ihm übertragenen Ausübung des Kirchen: Gewalt und des Kirchen: Regiments fliesen, und hauptsächlich in der kirchlichen Gerichtsbarkeit, kirchlichen Aufsicht und Sitten-Polizey bestehen’*.

⁷¹⁰ PO 2950 *Consistorial Ordnung*, 1728, §11.1. Original: *‘so lässet man es hierinnen bye denen von Unserem Centen=Amt vormal verordneten und üblich gewesenem Geld und andere Strafen bewenden’*.

⁷¹¹ B. Dölemeyer, *Frankfurter Juristen im 17. und 18. Jahrhundert* (Frankfurt am Main 1993) xxxvi.

⁷¹² H. Völcker, ‘Kirche und religiöses Leben in Frankfurt am Main’, in: H. Völcker ed., *Die Stadt Goethes. Frankfurt am Main im XVIII. Jahrhundert* (Frankfurt am Main 1932) 133-148, 138. On church discipline meted out by the French-Reformed churches in Frankfurt: G. Petasch, *“Zur Ehre Gottes, zum ewigen Heil und zur Ordnung in unseren Kirchen...”*. Alltag und Grenzen reformierter Selbstverwaltung in Frankfurt um 1650’ in: A. Amend et al. *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München: R. Oldenbourg Verlag 2008) 217-246.

church penance).⁷¹³ Before the establishment of the *Konsistorium*, the *Predigerministerium* was still allowed to exercise church discipline independently to some extent. They could, for example, exclude offenders from the Lord's Supper. After 1726, such measures had to be consented to by the newly established *Konsistorium* and could no longer be imposed by the church convent independently.

This loss of control was contested repeatedly by the city's clergy. In 1759, for example, a Frankfurt preacher - Dr Fresenius - asked the consistory whether or not clergymen were allowed to interrogate 'fallen women' (*zu fall gekommene Weibspersonen*) on their own account – regardless of whether or not the cases had been reported to the authorities yet – and to exclude these women from confession and the Lord's Supper if they refused to name the father of the child. However, the consistory explicitly prohibited the church from investigating these matters themselves, and even ordered them to admit the women to the Lord's Supper regardless of their offence.⁷¹⁴ Thus, even though the consistory employed ecclesiastical members and the *Sendamt* had not, the general movement was towards a secularisation of moral discipline.⁷¹⁵

Apart from the *Sendamt* and *Konsistorium*, the prosecution of sexual offences in the early modern period continued to be subjected to the criminal court as well. It was precisely this co-existence of different legal tribunals disciplining sexuality which has sparked discussion among historians. Were their functions overlapping or complementary? Did the institutions reinforce each other or was there competition? As this chapter shows, in Frankfurt, the differentiation of tasks between the criminal investigation office (the *Verhöramt*) and the church courts were well defined. According to the regulations of the *Verhöramt*, they were in charge of all carnal offences that were not subjected to the jurisdiction of the *Konsistorium*, especially cases of sexual assault (*Nothzucht*), and brothel keeping.⁷¹⁶ Both the *Verhöramt* and the *Konsistorium* functioned as lower courts in the case of petty offences and could impose monetary fines and other minor punishments. Cases which demanded penal punishments could only be judged by the city council as Frankfurt's high court, for which the *Verhöramt* functioned as a court of enquiry (*Untersuchungsgericht*). Thus, according to the normative framework, one might expect that the *Verhöramt* and the *Sendamt/Konsistorium* were

⁷¹³ Johann, *Kontrolle mit Konsens*, 126. See e.g. Criminalia 1556 (1682) in which the daughter of Karl Holtzschuh (her name is not mentioned) was sanctioned by the *Sendamt* for her illegitimate child with a monetary fine as well as a church penance (*Kirchenbuße*). On the relationship between church penance and secular discipline for the prince bishoprics Münster and Osnabrück: C.D. Schmidt, *Sühne oder Sanktion? Die öffentliche Kirchenbuße in den Fürstbistümern Münster und Osnabrück während des 17. und 18. Jahrhunderts* (Münster 2009).

⁷¹⁴ IfSG Frankfurt am Main, Lutherisches Konsistorium, Protokolle 1759, folio 37-38.

⁷¹⁵ Also later developments: A. Roth, 'Die Sittlichkeitsdelikte zwischen Religion und Rationalität. Strafrechtspraxis und Kriminalpolitik im 18./19. Jahrhundert' in: R. Schulze et al. *Strafzweck und Strafform zwischen religiöser und weltlicher Wertevermittlung* (Münster 2008) 195-212.

⁷¹⁶ PO 4346 *Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt* 04.12.1788, § 5. Original: 'alle fleischliche nicht vor Löbl. Consistorium gehörige Verbrechen, und Nothzucht insondernheit, auch die mit dieser Gattung von Verbrechen verwandte bürenwirthschaft [...]'.

complementary to one another in their activities. The latter was the *primary* tribunal to regulate most of the sexual offences, while the *Verhöramt* handled such criminal acts in their function as a court of enquiry for the city council as a high criminal court. The following section demonstrates that this differentiation of tasks was largely followed in practice, regarding the prosecution of sexual offences in early modern Frankfurt. In order to understand the prosecution of sexual offences, therefore, both tribunals need to be taken into account.

Prosecution of morals in practice

The majority of sexual offences belonged to the jurisdiction of the *Sendamt/Konsistorium*. The loss of archival records of both institutions is particularly painful for the study of the way that sexual offences were prosecuted in practice. Scattered archival references still allow for a cautious reconstruction of their activities. The records show that the *Sendamt* and the *Konsistorium* dealt with a large variety of cases. Anja Johann managed to reconstruct some of the activities of the *Sendamt* based on the minutes of the city council for the late sixteenth and early seventeenth centuries.⁷¹⁷ These sources give the impression that adultery and fornication were prosecuted intensely by the *Sendamt*. In the late sixteenth- and early seventeenth centuries, prosecution efforts were aimed at all layers in society and even elite members of Frankfurt's citizenry were regularly interrogated as suspects. Transgressions were sanctioned with monetary fines and shaming rituals, such as the payment of a *Schmachgulden* for adulterers. According to Johann, the *Sendamt* and the city council hardly ever granted petitions filed for mitigation of punishments, and fines were usually collected. At the same time, elites increasingly managed to buy off dishonouring shaming punishments or to have them replaced with the *Kirchenbuße*, which was considered less dishonouring.⁷¹⁸

The punitive character of the regulation of morals by the *Sendamt* is also reflected in other sources. W. Hanauer's work on prostitution in Frankfurt published in 1903 contains several references to sources of the *Sendamt*. The tribunal sanctioned prostitutes with monetary fines, imprisonment or expulsion from the city. This image is also reflected in my sample of moral offences in the *Criminalia*. At least just over 20% (14 cases) of the sexual offences investigated by the *Verhöramt* in the sample years between 1600-1726 had also been investigated by the *Sendamt* and contain references to its activities. More than half of these were concerned with cases of adultery, and the rest were cases of fornication, brothel-keeping and illegitimate pregnancy.⁷¹⁹ Again, the punitive character of prosecution is dominant. Moreover, premarital intercourse was

⁷¹⁷ Johann, *Kontrolle mit Konsens*, 120-129.

⁷¹⁸ Johann, *Kontrolle mit Konsens*, 127, 223.

⁷¹⁹ E.g. *Criminalia* 1053 (1641); *Criminalia* 1149 (1755); *Criminalia* 1255 (1662); *Criminalia* 2324 (1702).

prosecuted as fornication, even if the couple married afterwards.⁷²⁰ Literature on other regions shows that sanctioning premature coitus was part of the intensified criminalisation of extra-marital sexuality which had gained a high-point in the seventeenth-century. In the late seventeenth-century Basel, for example, convictions for so-called premature carnal knowledge represented one-third of the cases handled by the city's marriage court.⁷²¹

Thus, references in sources about the activities of the *Sendamt* primarily highlight its function as a disciplinary institution. Still, Johann argues, compared to other cities, such as for example Konstanz, the prosecution of sexual offences in Frankfurt was carried out with much less rigour, organisational perfection and religious fanaticism.⁷²² It is difficult, however to assess the precise nature of the *Sendamt* without the possibility of measuring all of its activities. After all, the institution was also responsible for handling paternity suits and settling alimony cases, and thus fulfilled a double function. As such, individuals could experience the court from the perspective of an offender and that of a plaintiff, sometimes even at the same time.

For the seventeenth century then, it is difficult to assess the precise nature of the *Sendamt* since we do not know what types of cases predominantly occupied the court. Fortunately, this type of information – albeit limited – is available for the eighteenth century. Three complete volumes of the consistory's minutes (*Konsistorialprotokolle*) from 1746, 1759 and 1780 have been preserved, which allow for a quantification of the type of cases handled by the *Konsistorium*.⁷²³ In these, a total of 589 cases of moral offences were recorded (see table 1).⁷²⁴ As has been noted above, according to the regulations the consistory was in charge of all types of cases related to marriage and sexual conduct, as well as overseeing Frankfurt's schools and churches, including those in its territory. These have been left out of the table below. A broad estimate based on the alphabetical registries of the minutes shows that the court's activities concerning moral offences formed the core of its existence, as they comprised approximately two-thirds of all cases.

⁷²⁰ Hanauer, 'Geschichte der Prostitution', 22-26.

⁷²¹ Burghartz, *Zeiten der Reinheit*, 119. Also see: McIntosh, 'Confessionalization', 155-174.

⁷²² Johann, *Kontrolle mit Konsens*, 129.

⁷²³ Joachim Eibach has previously reconstructed the court's activities for the year 1746. I have used his categorisation as a format for my own calculations, but changed how the cases were counted. For 1746, Eibach counted 16 cases of *Festnahme verdächtiger Frauen auf Straße*. The difference between his recorded 16 cases and my 25 cases of *lewdness* is explained by the fact that I have counted each offender as an individual case, rather than counting each arrest, which often included multiple women. Repeat offenders have not been counted for each additional offence, just as repeated marital conflicts were not counted separately. See: Eibach, 'Männer vor Gericht – Frauen vor Gericht'.

⁷²⁴ References to the appointment of schoolteachers and clerics have not been counted for this purpose. Requests to proceed with the marriage banns in church are also excluded, as long as they were uncontested and therefore did not represent an offence.

Table 13 Moral offences handled by the Konsistorium 1746, 1759, 1780

Case	1746		1759		1780		Total	
	N	%	N	%	N	%	N	%
Marital and family conflicts	47	32%	34	20%	39	15%	120	20%
Disputed marriage promises	8	5%	13	8%	12	5%	33	6%
Extramarital sexuality ⁷²⁵	56	38%	92	53%	158	59%	306	52%
Lewdness	25	17%	9	5%	12	5%	46	8%
“Suspicious” households	2	1%	5	3%	6	2%	13	2%
Other transgressions	10	7%	21	12%	40	15%	71	12%
Total	148		174		267		589	

Sources: Institut für Stadtgeschichte, Lutherisches Konsistorium, 1746; 1759; 1780.

As might be expected from what we know in other cities and territories, by far the largest number of moral offences dealt with by the consistory concerned matters of extra-marital sexuality. In the three years under study, a total of 306 cases were recorded, accounting for 52% of all offences. The consistory records referred to the act of fornication as ‘*in unehren begangen*’, ‘*getriebener Unzucht*’, and ‘*fleischlich Vermischt*’. The majority of the cases that were dealt with by the consistory during these years were in fact cases that had resulted in illegitimate pregnancies. Only rarely were cases recorded in which it was not explicitly mentioned that the woman was pregnant: fewer than 7% of extramarital sexuality cases in 1780, a single case in 1759 and none in 1746. Even in these cases one can assume that there was a pregnancy involved. In 1780, for example, Margaretha Abtin was interrogated for fornication with a foreign journeyman named Johann Adam. While the latter was not referred to as *impraegnator* in the first entry for this case in the consistory records, it can be deduced from later entries that in fact their relationship had resulted in a pregnancy. When Margaretha pleaded for the elimination of her fine, she was granted her request, but expelled from the city together *with* her illegitimate child.⁷²⁶

Adultery had been at the heart of moral reform following the Reformation, as is visible in the many ordinances issued against it during the sixteenth and seventeenth centuries, and the

⁷²⁵ This is a broad category which includes various types of offences that were judged differently by contemporaries. Adultery, for example, was considered a more serious offence than fornication. Consequently, penalties for the former were much higher than for the latter. However, as the records of the consistory in the eighteenth century were particularly focused on investigating illegitimate pregnancies (which in itself can be seen as a reflection of the changing interests of authorities), it is difficult to distinguish the offenders according to the judicial category of their offences, i.e. according to fornication or adultery. Therefore, although these two constituted two very different offences, they are included in the same category of pre- and extramarital sexuality here. A similar change in the language of record keeping has been observed elsewhere too: Watt, *Modern Marriage*, 107; S. Lesemann, *Arbeit, Ehre, Geschlechterbeziehungen. Zur sozialen und wirtschaftlichen Stellung von Frauen im frühneuzeitlichen Hildesheim* (Hildesheim 1994) 139.

⁷²⁶ IfSG Frankfurt am Main, Lutherisches Konsistorium, Protokolle (1780), folio 272 and 273.

prosecution efforts of the *Sendamt* and (as we will see) the criminal investigation office as well. By the second half of the eighteenth century, however, it hardly played a role anymore, at least not in the prosecution efforts of the *Konsistorium*. No cases of adultery were recorded in 1746, and only five in 1759, four of which had resulted in a pregnancy. The lower level of anxiety of the authorities in relation to adultery is further highlighted by the way the offence was labelled. By the 1780s it was no longer referred to as *adulterio* or *Ehebruch*, but as fornication with a married man (*‘mit einem Ehemann getriebenen Unzucht’*). In 1780 only five cases of such fornication with a married person could be identified, each of which had resulted in pregnancy.

A second type of extra-marital sexuality which had occupied the courts in the seventeenth century, but lost its significance in the eighteenth century, was that of prenuptial coitus. Historians argued that this process is an indication of the fact that during the course of the early modern period, the focus of authorities shifted. They became less concerned with children that, although conceived out of wedlock, were actually born within the (financially secure) confines of marriage.⁷²⁷ Financial considerations had become more important than moral objections. This does not appear to have been any different in Frankfurt. Only the records of 1746 mention cases of *praematurum concubitu* relating to couples whose child was conceived before the start of matrimony but born within wedlock. More common, and recorded in all three years, were cases of *anticipatum concubitum*. This referred to illegitimacy cases of *engaged* couples who applied to the consistory for the consent to get married and thereby retro-actively legitimise their fornication by marriage. In 1746 this related to at least 16% of the extra-marital cases, in 1759 11% and in 1780 even 22%. During this period, the *Konsistorium* usually considered this as an extenuating circumstance, gave the consent for marriage, and often reduced the fines.

The majority of the consistory’s prosecution efforts, however, concerned sexual intercourse of unengaged and unmarried couples, and women were disproportionately targeted. Most entries in the minutes only report that the woman was interrogated and who she had denounced as the father of her illegitimate child. Only rarely do the minutes specifically mention that the man was interrogated as well. In 1780, this was only recorded in 13% of the illegitimacy cases, in 1759 11% and in 1746 21%. This divergence was not necessarily the result of biased prosecution policies. If men could be found guilty of fornication, they faced punishment. However, it was much more difficult to do so for men, than for women whose bodies carried the proof of their crime. Moreover, many men who were disclosed as the father by unwed mothers were no longer present in Frankfurt, and the consistory had no hold over them. Another reason why men would not appear in the sources of the consistory was because many of them were soldiers and were therefore

⁷²⁷ Hull, *Sexuality*, 74-75.

subjected to the military jurisdiction of the *Kriegszengamt*.⁷²⁸ Nevertheless, there was a clear gender difference in the language used by the consistory's clerks when referring to both parties. Unmarried pregnant women were always referred to as *lapsa* (fallen women) - a term with a clearly derogatory meaning. Men, on the other hand, were recorded as *impraegnator* - a far more neutral and less demeaning term. Moreover, the term was always used with reservation because it was mostly accompanied by the adjective 'alleged' (*angeblichen*). What this means for the relationship between the women and the court in terms of assistance versus repression will be discussed in the second part of this chapter.

The second biggest category of cases handled by the consistory were marital disputes and other conflicts within the family context. Based on the consistory records of 1746, Joachim Eibach has shown how the majority of these conflicts were concerned with physical violence, general misbehaviour (drinking, disobedience) and 'ill housekeeping', i.e. not providing basic necessities and/or not performing household chores properly.⁷²⁹ Marriage conflicts usually took up a considerable part of the consistory's time, as complaints were often met with counter-claims, and conflicts were often reignited. For the consistory marriage was not private matter, and neither were marital disputes. The sanctity of marriage and its convergence with perceptions about social order meant that maintaining peace within the domestic sphere was essential for maintaining public order as well. Therefore, the peaceful co-existence of husband and wife (or *Hausvater* and *Hausmutter*) was a public matter. The consistory did not meddle in marital disputes to protect the well-being of the parties involved but to fulfil its role as a 'guardian of an older Christian Patriarchy'. Nevertheless, as shown by Eibach, this still opened up options for battered wives to initiate cases against their husbands in court.⁷³⁰

The third main category of cases dealt with by the *Konsistorium* concerned cases in the context of prostitution. These included women who were arrested at night for 'acting suspiciously', and cases in which women were investigated for indecency (*Unzüchtiger Lebenswandel*) or living a loose lifestyle (*Liederliches Leben*). In the early modern period there was no legal distinction between extra-marital intercourse in exchange for payment and without. Prostitution was prosecuted as fornication, even if it was often treated as an aggravating circumstance and influenced the

⁷²⁸ See for Frankfurt's militia: I. Kracauer, 'Das Militärwesen der Reichsstadt Frankfurt am Main im 18. Jahrhundert', *AfGK* 12 (1920) 1-180. Criminalia 5208 (1740/1741) two soldiers that were arrested together with Anna Katharina Mayer, Anna Maria Stadlerin and Maria Magdalena Albertin on suspicion of prostitution were handed over to the *Kriegszengamt* to be sanctioned, while the three women were expelled from the city by the consistory; Criminalia 5217 (1741) tambour Matthäus Petermann and his wife Sybilla were prosecuted for bigamy. While Sybilla was sanctioned by the consistory, Matthäus was judged by the military court.

⁷²⁹ Eibach, 'Kampf um die Hosen' 177-178.

⁷³⁰ Eibach, 'Kampf um die Hosen', 188.

punishments that were imposed.⁷³¹ However it was often difficult for authorities to present definite proof that the women they suspected of being prostitutes had actually committed fornication (unless, of course, they were pregnant or had been caught red-handed). They were therefore arrested for lewdness instead. Most of the cases of *liederliche weibsleuthe* actually concerned suspected prostitutes who were arrested walking the streets during the night-time and worked on their own or with other women rather than waiting for clients in a brothel.⁷³² People providing couples with the opportunity to engage in fornication - for example, by opening up their houses to the occasion, or even operating professional brothels - were investigated as well. Their operations were referred to by the consistory as '*verdächtiges Haushalten*' – suspicious housekeeping, which could refer to a whole range of activities, including concubinage, housing single women, or anything which could be interpreted as immoral behaviour. Most of the cases of 'suspicious housekeeping', however, referred to brothel keeping, i.e. *lenocinium*.⁷³³

Fourthly, the consistory handled cases related to disputed marriage promises, but they only comprised a small proportion of its activities. Public marriage vows played a central role in the reordering of marriage after the Reformation. Overseeing whether these were properly conducted was important for authorities in order to legitimise the distinction between licit and illicit marriage vows. The consistory dealt with cases relating to broken marriage promises, disputes concerning parental consent and requests to annul existing marriage promises. In eighteenth-century Frankfurt, many cases were issued by engaged couples themselves in order to circumvent parents' unwillingness to grant consent. The consistory often granted the wishes of the couple because financial considerations were involved. At the same time, there are also examples where the consistory sanctioned couples who got married without the necessary parental consent and circumvented regulations by marrying elsewhere. Only a handful of disputes about marriage contracts were issued by women with the aim of enforcing unfulfilled promises of marriage.⁷³⁴

⁷³¹ Studies about prostitution in early modern Germany usually deal with the sixteenth century, when prostitution was criminalized, or with the late eighteenth and early nineteenth century. Schuster, *Das Frauenhaus*; D.M.H. Hemmie, *Ungeordnete Unzucht. Prostitution im Hanseraum (12.-16. Jahrhundert)* (Köln 2007); D. Hüchtker, "*Elende Mütter*" und "*liederliche Weibspersonen*". *Geschlechterverhältnisse und Armenpolitik in Berlin (1770-1850)* (Münster 1999); S. Kienitz, *Sexualität, Macht und Moral: Prostitution und Geschlechterbeziehungen Anfang des 19. Jahrhunderts in Württemberg: ein Beitrag zur Mentalitätsgeschichte* (1995). On prostitution in early modern Amsterdam: L. van de Pol, *The burgher and the whore. Prostitution in early modern Amsterdam* (Oxford 2011). For Bristol and Nantes: M. Pluskota, *Prostitution and social control in eighteenth-century ports* (Abingdon and New York 2015).

⁷³² See e.g. Konsistorium, Protokolle (1746), folio 14. Officials of the consistory discussed complaints from neighbourhood people about *liederliche weibsleuthe* who were walking the streets at night, openly accosted men on the street, inviting them to engage in fornication.

⁷³³ See e.g. Konsistorium, Protokolle (1759), folio 36 and 43.

⁷³⁴ See e.g. Konsistorium, Protokolle (1780): Dietz contra Egerische Eheleut; Hildebrandt contra Matrem; Liebmann contra Vogel; Konsistorium, Protokolle (1759): Rossel contra Patrem; Pfeiffer contra Leichumin; Konsistorium, Protokolle (1746): Fahlberg contra Müller; Neumann et Oppeltin. On men initiating complaints for broken marriage promises see: Lesemann, *Arbeit*, 110-114; Watt, *Modern Marriage*, 70-87; Burghartz, *Zeiten der Reinheit*, chapter 5. On

Finally, the consistory also dealt with cases that have been categorised here as ‘other deviance’. They included a whole range of transgressions, such as for example breach of banishment, child abuse, ill-housekeeping, and general disobedience against secular and ecclesiastical authorities. This also included cases that can be considered as church discipline, for example warnings issued to properly attend church. However, there are only a handful of such cases dealt with by the consistory. The relationship between the consistory and the individual churches with regard to the regulation of such offences remains unclear.

Thus, the cases dealt with by the consistory in the eighteenth century highlight the dual function of the court: it was both a place of conflict settlement as well as discipline and control. The records of cases dealt with by the criminal investigation office, on the other hand, portray a different picture (see table 2). Between 1600 and 1806 there were about 564 cases dealing with moral and/or religious offences handled by the secular *Verhöramt*.⁷³⁵ As we can see in table 2, the majority of these cases concerned offences such as illegitimacy (here cases referred to as *Schwängerung*, *Impraegantion* and *heimliche Niederkunfft*); fornication and lewdness (*Unzucht*, *Hurerei*, *Leichtfertigkeit*, *liederliche(s) Leben/Dirnen*); adultery; bigamy; brothel-keeping and procuring (*Lenocinium*, *Kuppelei*); and rape. Cases of incest (according to the broader early modern definition) are not listed separately here as this was dealt with as an aggravating circumstance of adultery or fornication. Moreover, the *Verhöramt* investigated cases of sodomy, elopements and transgressions concerning the contract of marriage.⁷³⁶ Similar to the cases prosecuted before the *Sendamt* and the consistory, there was a development through time. The nature of this change will be discussed in more detail below; for now, it suffices to say that attention shifted from cases of adultery – of which two-thirds of the cases were investigated in the seventeenth century alone – towards fornication and related offences such as illegitimacy and brothel-keeping in the eighteenth century.⁷³⁷

women: S. Burghartz, ‘Rechte Jungfrauen oder unverschämte Töchter? Zur weiblichen Ehre im 16. Jahrhundert’ in: K. Hausen and H. Wunder eds. *Frauengeschichte – Geschlechtergeschichte* (Frankfurt am Main 1992) 173-183.

⁷³⁵ Religious offences included cases of blasphemy and conversions of Jews. They consisted less than 10% of the cases in the category moral and religious offences and will not be discussed in this chapter.

⁷³⁶ Illegitimacy (unlike hiding pregnancy or childbirth) was not an offence in itself in the early modern period. Men and women were not convicted for having an illegitimate child but for fornication or adultery. I have nevertheless chosen to include this category in the table here, because it reflects the focus of the authorities of the time. The index of the *Verhöramt* referred to these cases as ‘in puncto impraegnation’, ‘in puncto Schwängerungssachen’, or ‘wegen unehelicher Niederkunfft’. Cases were it was not specifically mentioned in the index that the women was pregnant were categorised as fornication/lewdness. On the deliberate vagueness of the terminology used with regard to sexual offences see: Burghartz, who stated that increasing use of polarizing terminology (‘Un’ – words like Unzucht, Unehe etc.) ‘led to the establishment of a rhetoric characterized by sexual vagueness that could be used correspondingly in broad ways’. ‘Ordering discourse’, 81. For the broader definition of early modern incest see: C. Jarzebowski, *Inzest. Verwandtschaft und Sexualität im 18. Jahrhundert* (Köln 2006).

⁷³⁷ See Appendix Tabel 1.

At first sight the cases investigated by the *Verhöramt* are more or less the same type of cases that were investigated by the city's church courts. However, considering that the consistory dealt with 589 cases in three years alone, it is clear that only a relatively small number of moral offences were investigated by the *Verhöramt*. During the entire period, sexual offences made up just over 6% of the criminal investigation office's workload, but the proportion varied considerably throughout the period. Between 1640 and 1660 they had reached a high point of around a quarter of all cases, while they made up 3% or less from the 1760s onwards.⁷³⁸ The share of moral offences which were sanctioned with penal punishments corresponds with their share among prosecuted offences: they made up 18% of the cases in the *Strafenbuch* in the collected seventeenth-century sample years. These fluctuations were partially related to the increasing prosecution of other offences, and partially to a process of decriminalisation of sexual offences in the course of the eighteenth century.⁷³⁹

Table 14 Types of sexual offences, Verhöramt 1600-1806

Offence	N	%
Illegitimacy	133	24.7%
Fornication/Lewdness	130	24.2%
Adultery	97	18.0%
Bigamy	50	9.3%
Brothel keeping/Procuring	41	7.6%
Rape	34	6.3%
Rest	53	9.9%
Total	538	

Source: IfSG Criminalia 1600-1806.

The share of moral offences investigated by the secular *Verhöramt* is considerably smaller than that of criminal courts in centralised territorial estates in early modern Germany. In the territories of Baden, Kurbayern and Kurmainz, the share of sexual offences even constituted the majority of offences prosecuted: 38% of the cases prosecuted before the high court between 1560 and 1802 of Kurmainz were sexual offences; in Kurbayern in the first half of the seventeenth century they formed 30% of all offences.⁷⁴⁰ The numbers for Frankfurt are more comparable to those of the

⁷³⁸ See Appendix Figure 4.

⁷³⁹ For the decriminalization of sexual offences see: Behringer, 'Weibliche Kriminalität'; Härter, *Kriminalität und Strafjustiz*, 837 and 884; Hull, *Sexuality*, 139-145.

⁷⁴⁰ Härter, *Policey und Strafjustiz*, 546; Behringer, 'Weibliche Kriminalität', 65-66.

criminal courts in Cologne (11.7% between 1568 and 1612) or the Dutch cities of Leiden, Delft and Rotterdam which ranged from 13% (Delft) to 20% (Leiden) for the early modern period.⁷⁴¹ It is of course difficult to compare figures about the criminal prosecution of single cities with that of entire territories.⁷⁴² What is important to emphasise in this respect is that the prosecution of sexual offences in centralised estates was inextricably linked to processes of state formation and the legitimisation of central authorities over local rulers and churches.⁷⁴³ In a city state like Frankfurt, the process was different. Here the council directly supervised the church and a fight over legitimacy with local rulers was no issue. The prosecution of sexual offences in Frankfurt, therefore, was not an arena of power struggles between central and local secular authorities. This made it much easier to delegate the task of policing sexual offences to a lower judicial body like the consistory, which was in any event under direct control of the city council.

Consistory versus *Verhör*amt - sin versus crime or institutional differentiation?

A closer look at the relationship between the church court and the criminal investigation office in early modern Frankfurt shows that there was no conflict of interests between the two. Indeed, they functioned in relation to each other to preserve the ‘social order of Christian patriarchy’.⁷⁴⁴ The sample of the *Criminalia* reveals that many sexual offences were not reported to the criminal investigation office directly. At least close to a third of the cases investigated by the *Verhör*amt had actually been transferred by the church court for further investigation (28 out of 92). The *Criminalia* contain written decisions either taken by the church court itself or by the city council along the lines of: ‘these proceedings should be transferred to the *Officium Examinatorio* for further investigation.’⁷⁴⁵ It is very likely that this number was much higher since particularly for the seventeenth century information about how cases were reported to the *Verhör*amt is mostly lacking.

There was a variety of reasons for the *Sendamt* or the consistory to send the cases to the *Verhör*amt. First, the nature of the offence – and in relation to this the level of punishment – played an important role in their decision. This was particularly the case for offences which were listed in the *Carolina*, such as incest, rape, procuring, and sodomy, and which required capital or penal

⁷⁴¹ Cologne: Schwerhoff, ‘Geschlechtsspezifische Kriminalität’, 91; Rotterdam: M. van der Heijden, ‘Criminaliteit en sexe in 18^e-eeuws Rotterdam. De Verschillen tussen vrouwen- en manncriminaliteit tussen 1700 en 1750’, *Tijdschrift voor Sociale Geschiedenis* 21:1(1995) 1-36, 16; Leiden: E. Kloek, *Wie hij zij, man of wijf. Vrouwengeschiedenis en de vroegmoderne tijd. Drie Leidse studies* (Hilversum 1990) 132; Delft: D.J. Noordam, ‘Strafrechtspleging en criminaliteit in Delft in de vroeg-moderne tijd’, *Tijdschrift voor Sociale Geschiedenis* 15:3 (1989) 209-244, 228.

⁷⁴² On the influence of different governmental structures on penal justice see the contributions in: H. Rudolph and H. Schnabel-Schüle eds., *Justiz = Justice = Justitia? Rahmenbedingungen von Strafjustiz im frühneuzeitlichen Europa* (Trier 2003).

⁷⁴³ Härter, *Policy und Strafjustiz*, 830-832; Hull, *Sexuality*, 60, 98.

⁷⁴⁴ Eibach, *Der Kampf*, 188.

⁷⁴⁵ Original: ‘solle dieses Protocollum zu weiteren untersuchung löb. Officio Examinatorio zugestellet werden’, *Criminalia* 6848 (1753). Also: *Criminalia* 9484 (1781); *Criminalia* 7756 (1761); *Criminalia* 3082 (1720); *Criminalia* 2428 (1704).

(*peinliche*) punishments. Neither the *Sendamt* nor the *Konsistorium* had the jurisdiction to do this. The cases were transferred to the *Verhöramt* in their function as a court of enquiry for the high criminal court, i.e. the city council. This is evident, for example, in the case of Anna Katharina Kriegin. In 1740 her guardians Johann Jeremias and Johann Jakob Krieg issued a written complaint to the consistory about their pupil who – according to their account – had fallen into a life of godlessness and sin (*‘einem solchen liederlichen gottlosen burengeist ergeben’*). Seduced by another woman, Anna Katharina had prostituted herself in the tavern *Zum Schwabnen* in Oberrad and reportedly had intercourse with two Italian men (who during the interrogations turned out to be Flemish).⁷⁴⁶ Anna Katharina’s guardians requested that she would be disciplined so she could return to a proper Christian life and her soul would be redeemed.⁷⁴⁷ Following this request, the consistory themselves interrogated both Anna Katharina, as well as the woman who had reportedly seduced her. After hearing both suspects, the consistory issued them with an official admonition and transferred the case to the *Verhöramt* for further investigation, the reason being that the nature of the offences exceeded that of simple fornication. First, it involved *pto. criminis Lenocinii* – i.e. procuring. Second, based on the letter of her uncles, there was reason to suspect that the intercourse between Anna Katharina and the two men had occurred in a sodomitical fashion (i.e. involved oral and/or anal penetration).⁷⁴⁸ Both crimes were considered as felonies and thus exceeded the jurisdiction of the *Konsistorium*.

Similar considerations played a role in a case concerning the illegitimate child of Lorenz Winter, burgher and master of the tailors’ guild, and Maria Sibylla Küsterin. The case was initially reported to the consistory, but transferred to the investigation offices because Lorenz Winter had married Maria Sibylla’s grandmother. This meant that the case had become an important criminal matter (*‘ein wichtiger Criminal-vorfall’*) because it was now considered a *criminis incestus*, which according to the *Carolina* was a capital offence.⁷⁴⁹

All of the cases transferred to the *Verhöramt* either by the *Sendamt* or the *Konsistorium* concerned felonies in which capital punishments could be applied or that involved recidivists. In the first case, the *Verhöramt* was involved as a court of enquiry for the high criminal court (i.e. the city council). The *Carolina* is characterised by harsh penalties and prescribed the death penalty for many offences, including sexual crimes. The entries of the *Strafenbuch* (listing all *peinliche Strafen*

⁷⁴⁶ Criminalia 5146 (1740).

⁷⁴⁷ The original reads: *‘durch ihre gerechte Verordnung, dahin zubringen, daß sie zur Arbeit und Christenthum angeblaten werden möge, ihres sündhaften bösen Gottesvergeßene Leben entrißen, Gott aber die arme Seele erhalten werde’*.

⁷⁴⁸ Original: *‘weilen nicht nur des Lohnlaquaj Christoph Bierbrauers Eheweib Anna Maria, dabei pto criminis Lenocinii impliciret ist, sondern auch die vormündern der arrestirten Kriegin in ihren schriftlichen anzeige unter andern gemeldet, welcher gestalten, zweij Italianer (welches nach Prot. zweij Lübe Tuchhändler gewesen) zu Oberrad mit der Kriegin ihre sodomitischer und himmelschreijende Sünde begangen’*.

⁷⁴⁹ Criminalia 7756 (1761). Also: Criminalia 6064 (1748); Criminalia 6847 (1753).

imposed by the city council) for the seventeenth century reveal that in practice capital punishment was only rarely imposed for sexual offences. During the sample years, only 4 out of 89 (4.5%) offenders were sanctioned with capital punishment: three men and one woman. Each of them was punished for adultery or fornication in combination with incest.⁷⁵⁰ To make a comparison: offenders who had committed property offences were sanctioned with capital punishment in 20.9% of the cases during this period. Thus, the authorities were reluctant to impose the most severe and punitive sentences with regard to sexual offences.⁷⁵¹ The *Criminalia* also reveal a similar attitude by the authorities for the eighteenth century. The majority of the offenders that were investigated by the *Verhöramt* and sanctioned by the city council were sentenced with banishment.⁷⁵² Throughout the entire period there were only five suspects in the sample years that were acquitted completely, four of which were cases of men who had been indicted for rape or child molestation.⁷⁵³ This means that for most sexual offences the chances for acquittal were slim, once the case was investigated by the *Verhöramt*.

Moreover, men and women were often subjected to different types of punishment. For the latter, sanctions more often included shaming rituals. The *Strafenbuch* reveals that men and women were subjected to different type of punishments: 13% of the men in the sample years judged with banishment in combination with the *Halseisen*. For women however, this was the case 51% of the time, whereas men were more likely to receive additional corporal punishments (39% vs. 24%). This confirms previous research that shows that shaming punishments for sexual offences were imposed particularly on women, rather than men.⁷⁵⁴ Renate Dürr argued that, as a result, sexual offences were more dishonouring for women than they were for men.⁷⁵⁵

Besides the nature of the punishment, recidivism was the most important reason for a case to be handled by the criminal investigation office rather than the consistory. Most cases of women wandering the streets late at night and arrested for suspected prostitution by the city's soldiers, constables or beadles concerned known recidivists who had previously been sanctioned by the

⁷⁵⁰ IfSG Frankfurt am Main, Strafenbuch, 10.10.1602 Johann Heusser; Criminalia 440 (1602); Strafenbuch, 01.06.1610 Philipps Wormbser; Criminalia 628 (1610); Strafenbuch 24.05.1694 Michael Müller; Criminalia 2001 (1694); Strafenbuch 10.07.1694 Gertdraudta Müllerin; Criminalia 2001 (1694).

⁷⁵¹ Similar conclusions were found with regard to infanticide: R. van Dülmen, *Frauen vor Gericht. Kindsmord in der frühen Neuzeit* (Frankfurt am Main 1991) 59.

⁷⁵² E.g. Criminalia 2292 (1701); Criminalia 3082 (1720); Criminalia 3323 (1722); Criminalia 5072 (1740); Criminalia 9216 (1781).

⁷⁵³ Criminalia 3086 (1720); Criminalia 3278 (1722); Criminalia 5522 (1743); Criminalia 5636 (1744). On the prosecution of rape in early modern Germany: Rublack, *Crimes of women*, 236-243. On the unequal power balance between men and women in rape cases also see: S. Burghartz, 'Verführung oder Vergewaltigung? Reden über sexuelle Gewalt vor dem Basler Ehegericht in der Frühen Neuzeit' in: B. Dausien et al. eds., *Erkenntnisprojekt Geschlecht. Feministische Perspektiven verwandeln Wissenschaft* (Opladen 1999) 325-344; G. Walker, 'Rereading rape and sexual violence in early modern England', *Gender & History* 10:1 (1998) 1-25.

⁷⁵⁴ Lidman, *Spektakel*, 371; Gleixner, 'Das Mensch' und der 'Kerl', 59.

⁷⁵⁵ Dürr, *Mägde in der Stadt*, 239.

church court.⁷⁵⁶ It was not necessarily the level of punishment alone that informed the decision of *Sendamt* or *Konsistorium* to transfer cases to the investigation office. In most of these cases, the *Verhöramt* simply expelled the women from the city, a punishment which would not have formally required their interference as the church court could have imposed this sanction itself.

Finally, a third reason was related to the different types of procedure followed by the courts. According to the regulations, the *Sendamt/Konsistorium* followed a civil law procedure in order to avoid lengthy and expensive procedures whereby they preferred to hear cases through oral summary proceedings and urge people to settle conflicts amicably.⁷⁵⁷ The principles of civil law, however, did not form the foundation of the activities of the *Verhöramt*. They followed the inquisitorial procedure, and conflict settlement in order to avoid lengthy investigations was not part of their job description.⁷⁵⁸ The procedure at the *Verhöramt* was better equipped to investigate suspects and to find a person guilty (for example because the use of torture could be applied).⁷⁵⁹

The differentiation of tasks between the *Sendamt/Konsistorium* and the criminal investigation office is further highlighted by the fact that the latter also transferred cases to the former. There are many examples of cases in which sexual offences occur as a ‘secondary’ offence, for instance if a prostitute was investigated for theft. While the *Verhöramt* took on the investigation for thefts, it called on the moral court to investigate the moral transgressions.⁷⁶⁰ A similar institutional division between the prosecution of ‘moral’ offences and ‘criminal’ offences becomes evident in cases of suspected infanticide reported to the investigation office by midwives, the *Sendamt/Konsistorium*, or women’s family or household members. Single women who had hidden their pregnancy and/or delivered a still-born baby were always at risk of being suspected of infanticide.⁷⁶¹ As a capital offence, this crime was investigated by the *Verhöramt*. If the latter found no evidence that the child had not died of natural causes, the case was usually transferred (back) to the *Sendamt/Konsistorium*, where it would then be handled as a normal illegitimacy case.⁷⁶²

A remarkable example of this is a case from 1783 when a clergyman called Bechtold came to the junior burgomaster to report that the widow of notary Stöpler, had come to him the night

⁷⁵⁶ E.g. Criminalia 1483 (1679); Criminalia 2671 (1711); Criminalia 3090 (1720); Criminalia 3245 (1722); Criminalia 3290 (1723).

⁷⁵⁷ PO 3176 *Eines Hoch=Edl. und Hoch=Weisen Rathes des Heil. Reichs Stadt Franckfurth am Mayn Consistorial-Ordnung* 1739, §8.1,2 and 4.

⁷⁵⁸ Eibach, *Frankfurter Verböre*, 62-64.

⁷⁵⁹ For a similar distinction see: K. Härter, ‘Kriminalität und Praxis im geistlichen Territorialstaat des Alten Reiches. Sexuelle Delinquenz und Justiznutzung im frühneuzeitlichen Kurmainz’ in: M. Bellabarba, G. Schwerhoff and A. Zorzi eds., *Criminalità e giustizia in Germania e in Italia. Pratiche giudiziarie e linguaggi giuridici tra tardo medioevo ed età moderna* (Bologna 2001) 101-134.

⁷⁶⁰ Criminalia 6934 (1754).

⁷⁶¹ Rublack, *Women and crime*, 163-164; Hull, *Sexuality*, 114-116.

⁷⁶² Criminalia 7956 (1763); Criminalia 5150 (1740); Criminalia 6934 (1754); Criminalia 9484 (1784); Criminalia 9422 (1783); Criminalia 5042.

before and revealed that a woman she did not know had abandoned her illegitimate fourteen-day-old child. As the child was very sick, Stöplerin had performed an emergency baptism, which she reported to the clergymen, who urged her to report the case to the authorities. By the time the junior burgomaster was involved, the child had passed away and the case was referred to the *Verhöramt* for further investigation. During these interrogations it turned out that the child was not left to Stöplerin by a foreign woman, but that it was in fact her own illegitimate child. This caused considerable concern that the child had not died through natural causes and an autopsy was ordered on the child. The investigations cleared Stöplerin of the suspicion that she had committed infanticide, but she was sanctioned with a fine for her efforts to conceal her pregnancy. At the same time, it was decided that she and her oldest daughter, a thirteen-year-old girl, were to be sent to the consistory to receive a formal admonition for their loose and dishonourable lifestyle.⁷⁶³

The findings presented above are in line with what Joachim Eibach has found with regard to the treatment of marriage conflicts. Here as well the criminal investigation office was only rarely involved, and the consistory was the primary legal tribunal to handle such cases. Only marriage conflicts that involved considerable physical harm or in which the conflict had exceeded the physical boundaries of a couple's house (thereby becoming a public matter) were dealt with by the *Verhöramt*.⁷⁶⁴ Both the consistory and the criminal investigation office aimed at the reconciliation of the couples in order to preserve the order of 'Christian patriarchy'. Moreover, the interrogation records reveal that both the *Verhöramt* and the *Sendamt/Konsistorium* emphasised the sinful character of moral offenders. In fact, one of the standard questions suspects of illegitimacy, adultery, prostitution, infanticide etc. had to answer was how they could account for their sinful behaviour to God?⁷⁶⁵

What these cases demonstrate is that there was no binary division between the disciplining of sin or the punishment of crime in early modern Frankfurt. The different nature of punishment imposed by the *Sendamt/Konsistorium* and the criminal court were not the result of reconciling versus punitive objectives, but of the different competences. Neither do the individual cases demonstrate that there was any overlap between the moral courts and the criminal investigation office. Minor sexual offences belonged primarily to the jurisdiction of the *Sendamt/Konsistorium* and sexual felonies belonged to the competence of the criminal investigation office. As we will see below, this

⁷⁶³ Criminalia 9422 (1783). Original: 'dabeij aber gedachte wittib mit ihrer ältesten tochter, weil letzter, ob sie gleich kaum 13. jähriges alters ist, allschon, wie ihre mutter in einem sehr üblen Ruff, der leichtfertigkeit und losen mauls stebet, vor löbliches consistorium vorzuladen'.

⁷⁶⁴ Eibach, 'Kampf um die Hosen', 173-174.

⁷⁶⁵ E.g. Criminalia 6632 (1752) 'Ob sie nicht erkennen, das sie sich dadurch abermahls sehr an Gott dem Herren verschuldiget?'; Criminalia 6760 (1753) 'Ob sie nicht genust das es verbothen hurereij zu treiben, und ob sie nicht erkenne, das sie sich durch diesen wiederholte, und an gott dem herren schwer versundiget?'

constellation had an important impact on the position of women prosecuted for sexual offences and the options available to them to use the law to their own advantage.

Changes in time: from adultery to illegitimacy

The prosecution of moral offences in the early modern period was not static over time but was subject to change. Since the *Criminalia* reflect cases that triggered the strongest responses they are informative for the social and moral anxieties of the *Sendamt/Konsistorium* and the urban authorities that fostered prosecution efforts, both with regard to the type of offences (and offenders) that were prosecuted as well as the level of prosecution in relation to other crimes. In the seventeenth century, the types of sexual offences investigated by the criminal investigation office were quite diverse. The dominant focus of the *Verhöramt* in this period concerned cases of adultery, mostly of higher middle-class citizens who had impregnated their maids or female relatives (usually not blood relatives of the men themselves, but women related to their wives).⁷⁶⁶ As burghers and head of the households, adulterous men not only endangered the union of husband and wife, but of the social and political order in general.

Nevertheless, early modern authorities usually did not prosecute adultery relentlessly, but aimed to restore the marriage in order to preserve the household economy. Examples for sixteenth century Ulm and seventeenth century Württemberg reveal a policy of punishment, repentance and reconciliation as authorities usually only fined adulterous men and minimised the dishonouring punishments.⁷⁶⁷ In Frankfurt, too, adultery was primarily sanctioned with monetary punishments.⁷⁶⁸ Certain cases, in particular those involving incest (according to the early modern definition), transgressed the level of deviance which could be handled with petty penalties and left no room for repentance. In such cases, only public punishments could restore the social order towards God and the urban community. Most illegitimacy cases investigated by the *Verhöramt* during this century were actually connected to adultery cases and usually both the men and the women were sanctioned with banishment, even if the women had most likely been the victim of rape.⁷⁶⁹ There were two investigation peaks concerning fornication and lewdness (in the 1610s and the 1680s) which mostly involved prostitution cases, some of which were linked to the rounding up of hidden brothels.⁷⁷⁰ Overall, the criminal prosecution of sexual offences during this period was linked to the efforts of

⁷⁶⁶ Johann, *Kontrolle mit Konsens*, 224-225.

⁷⁶⁷ Rublack, *Crimes of women*, 213-224; J.P. Coy, *Strangers and misfits. Banishment, social control, and authority in early modern Germany* (Leiden 2008) 68-69.

⁷⁶⁸ Johann, *Kontrolle mit Konsens*, 127-128.

⁷⁶⁹ E.g. *Criminalia* 897 (1623); *Criminalia* 1641 (1049); *Criminalia* 1225 (1662).

⁷⁷⁰ Johann, *Kontrolle mit Konsens*, 225, 227; *Criminalia* 1556 (1682); *Criminalia* 1567 (1682); *Criminalia* 1608 (1684); *Criminalia* 1635 (1684).

urban authorities to preserve matrimony and household relationships as the primary source of social and political order.

In the eighteenth century then, the focus of authorities altered and illegitimacy became the major focus in the authorities' prosecution efforts. Financial considerations and the political control over access to marriage were increasingly at the forefront during this period, both with regard to legislation as well as in practice. These changes were not characteristic for early modern Frankfurt, but were ubiquitous in the Holy Roman Empire.⁷⁷¹ This process was fostered by the eighteenth-century population growth and impoverishment of a significant part of the population. One of the measures authorities across early modern Germany implemented to regulate the collective welfare burden was to restrict the access to marriage. Since marriage and the establishment of a new household were closely linked to - and sometimes a prerequisite of - matters of citizenship, and, as an extension to this, entitlement to poor relief, authorities attempted to prevent destitute people from entering matrimony, and keeping community networks closed.⁷⁷² This altered longstanding courtship practices, where young couples engaged in sexual intercourse with the expectation that marriage would follow, particularly in rural territories.⁷⁷³ Inevitably, this increased the number of single people who might produce illegitimate offspring.

In early modern Frankfurt, the ratio of extra-marital births increased sharply towards the end of the eighteenth century, which follows the general trend in neighbouring territories and across central Europe.⁷⁷⁴ In Frankfurt, too, the city council implemented regulations to prevent impoverished foreigners from marrying and settling in Frankfurt.⁷⁷⁵ Options for legitimising through marriage children born out of wedlock decreased considerably as a result of such measures.⁷⁷⁶ The city had very limited labour opportunities outside of the regulated handicrafts and trade, and therefore did not provide enough options for young people to be financially independent and set up new households. In the second half of the eighteenth century, there were only a couple of small manufactories related to the tobacco industry and textile production with limited labour

⁷⁷¹ E.g. P. Becker, "Ich bin halt immer liederlich gewest und habe zuwenig gebetet." Illegitimität und Herrschaft im Ancien Régime. St. Lambrecht 1600-1850' in: R. Vierhaus ed., *Frühe Neuzeit - Frühe Moderne? Zur Vielschichtigkeit historischer Übergangsprozesse (17.-19. Jahrhundert)* (Göttingen 1992) 157-179; Härter, *Policey und Straffjustiz*, 833.

⁷⁷² Ogilvie, *Bitter Living*, 50-53, 177; J. Ehmer, *Heiratsverhalten, Sozialstruktur, ökonomischer Wandel. England und Mitteleuropa in der Formationsperiode des Kapitalismus* (Göttingen 1991); Schmidt, *Dorf und Religion*, 198.

⁷⁷³ Beck, 'Illegitimität und voreheliche Sexualität'; Mitterauer, *Ledige Mütter*; C. Pfister, *Bevölkerungsgeschichte und Historische Demographie 1500-1800* (2nd Edition: 2007) 86-89; Breit, *Leichtfertigkeit*.

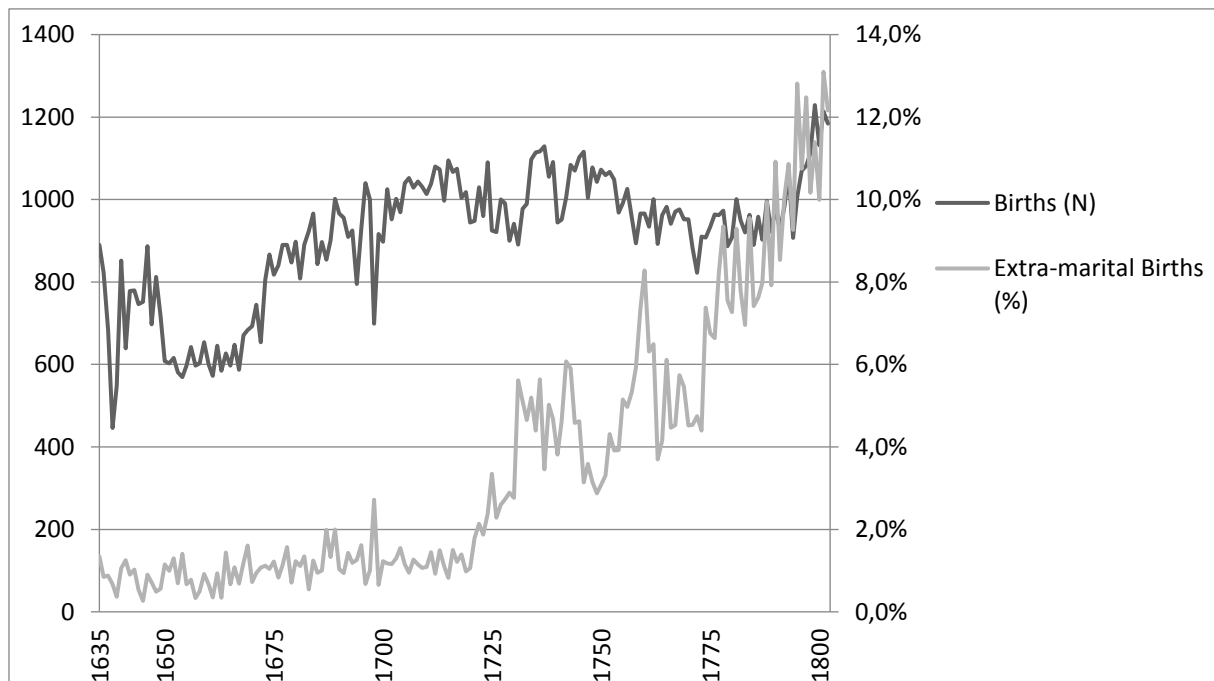
⁷⁷⁴ W.R. Lee, 'Bastardy and the socioeconomic structure of South Germany', *Journal of Interdisciplinary History* VII:3 (1977) 403-424; T.P.R. Laslett, K. Oosterveen, and R.M. Smith, *Bastardy and its comparative history. Studies in the history of illegitimacy and marital nonconformism in Britain, France, Germany, Sweden, North America, Jamaica and Japan* (London 1980); J. Knodel, *Demographic behavior in the past. A study of fourteen German village populations in the 18th and 19th centuries* (Cambridge 1988) 192-198; Breit, *Leichtfertigkeit*, 317-318; Schmidt, *Dorf und Religion*, 221-222; Härter, *Policey und Straffjustiz*, 925.

⁷⁷⁵ See regulations in: PO 3946 *Erneuerte Consistorial=Ordnung* 04.01.1774, 203.

⁷⁷⁶ Pfister, *Bevölkerungsgeschichte*, 31,

opportunities.⁷⁷⁷ Although the neighbouring town of Offenbach developed new industries in the eighteenth century, in general the region was characterised by rather limited proto-industrial development.⁷⁷⁸ Michael Mitterauer has linked the rising illegitimacy rates in eighteenth-century Austria to changing patterns of labour migration: domestic servants increasingly came from regions without previous connections and networks in the city.⁷⁷⁹ It is not known whether similar changes contributed to the rise of illegitimacy as well, but it is very likely that, as a result of demographic growth and pauperisation of the countryside, the increasing pressures on the socio-economic model of labour concentrated in corporatist institutions and the household as the locus for social order also played a role in Frankfurt.⁷⁸⁰

Figure 13 Extra-marital births, Frankfurt 1635-1800



Source: Source: Hanauer, 'Uneheliche Geburten, 660-662; Konsistorium, Protokolle 1746, 1759, 1780.

As a potential burden for the city's poor relief system, illegitimate mothers became the primary target of the court's prosecution efforts concerning sexual offences. This was a trend that can be witnessed across early modern Europe. In early modern England, illegitimate children had to be

⁷⁷⁷ Roth, *Stadt und Bürgertum*, 277-279.

⁷⁷⁸ H. Gräf, 'Small towns in early modern Germany. The case of Hesse 1500-1800' in: P. Clark ed., *Small towns in early modern Europe* (Cambridge 1995) 184-205, 203; Härter, *Policey und Strafjustiz*, 41.

⁷⁷⁹ Mitterauer, *Ledige Mütter*, 88-89.

⁷⁸⁰ Eibach, *Frankfurter Verböre*, 55-57, 294.

taken care of by their birth parish. For this reason, women who lacked local entitlement were particularly vulnerable to prosecution for vagrancy.⁷⁸¹ In early modern Holland, by the end of the seventeenth century similar financial motives played a role in the rise of prosecutions for fornication.⁷⁸² Overseers of the poor urged women to enforce the father's financial responsibility for the child's upbringing through legal action.⁷⁸³

This change of focus had an impact on the gender ratio of the suspects for sexual offences. Whereas in the seventeenth century men constituted the majority of suspects, in the eighteenth century women clearly outnumbered men.⁷⁸⁴ Unlike adultery, which often targeted men, fornication was a crime for which women were more likely to be prosecuted.⁷⁸⁵ In order to prevent foreign women and their illegitimate children becoming a burden on the city's social relief system, the city council had issued an ordinance to expel all unmarried foreigners together with their children.⁷⁸⁶ Preferably, they were expelled while still pregnant to avoid the city having to pay the costs of childbirth of women who were unable to afford it themselves. In 1755, for example, the *Gemeine Weltliche Richter* Rücker was ordered by the consistory to expel twenty-four-year-old Wilhelmina Schröderin from Marburg, after she had been summoned by the court because of her extra-marital pregnancy. Despite his orders, Rücker did not escort heavily pregnant Wilhelmina out of town, and she gave birth in Frankfurt soon after. For his failure to remove her from the city before she gave birth, Rücker was imprisoned for eight days in the *Hauptwache*.⁷⁸⁷

In the case of Maria Anna Sünderin from Oberusel in 1758, the financial considerations are even more explicit. Maria Anna was arrested for night walking and prostitution, and imprisoned in the poorhouse for the duration of the investigations. During her interrogations she denounced several of her clients, including a local burgher and clockmaker named Matthäus Christoph von Hilden. As his name had been associated with prostitution, adultery and all other sorts of immoral conduct, the authorities were particularly interested in investigating his case further. Von Hilden, however, did everything in his power to stall the case and filed for appeal. This posed a problem for the authorities, as Maria Anna was pregnant. Normally, the consistory was not allowed to report anything about the case to the city council on their own initiative during an appeal in order to prevent any conflict of interest. They had to wait before sending their documents until they were

⁷⁸¹ L. Hollen Lees, *The solidarity of strangers. The English poor laws and the people, 1700-1948* (Cambridge 1998) 58

⁷⁸² Van der Heijden, 'Punishment versus reconciliation', 66;

⁷⁸³ G. Vermeesch, 'The legal agency of single mothers. Lawsuits over illegitimate children and the uses of legal aid to the poor in the Dutch town of Leiden (1750-1810)', *Journal of Social History* (2015) 1-23

⁷⁸⁴ Appendix Figure 5.

⁷⁸⁵ This also applied to the late sixteenth and early seventeenth centuries: Johann, *Kontrolle mit Konsens*, 224-225.

⁷⁸⁶ PO 3445 *Daß man die Lapsas, so nicht von hier, mit ibren Kindern fortschaffen solle* 18.03.1755.

⁷⁸⁷ Criminalia 7142 (1755). Also: Criminalia 6131 (1748). Anna Maria Ambildin, pregnant with her fifth illegitimate child while imprisoned in the poorhouse, is released and banished because she would otherwise be a financial burden, ('*dem Armenhaus zu schwebren lasten fallen durffte*').

ordered to do so by the city council. In this case the consistory went against the normal procedures, and send their records concerning the case to the city council anyway. They did this to speed up the investigations as they feared that otherwise the case would result in a long and tedious process ('as was customary in cases of appeal') which would ultimately result in a large burden on the city's treasury. This was especially pressing because Maria Anna was pregnant and due to give birth within six to eight weeks. If she were to go in to labour in Frankfurt and have her child there, the expenses would be even greater.⁷⁸⁸ As Maria Anna Sünderin suffered a miscarriage, this never happened and the city council decided to continue the investigations as normal and keep Maria Anna incarcerated in the poorhouse during that time, as the main argument to release her (preventing her illegitimate child from becoming a burden to the city's finances - '*damit nemlich der Stadt das Kind nicht zur last bleiben möge*') was no longer valid.

The eighteenth century marked not only a transition in the type of offences that were investigated by the *Verhöramt*, it was also a period of change with regard to the extent to which sexual offences occupied the workload of the criminal investigation office. Sexual offences were decreasingly sanctioned with penal punishments, and therefore withdrew from the realm of the high criminal court. Debates on the nature of infanticide increasingly focused on prevention, instead of harsh punishment, which inspired reform movements and alternative treatment of extra-marital sexuality.⁷⁸⁹ As we will see, both processes – the increased focus on financial consequences of illegitimacy and the gradual decriminalisation of extra-marital sexuality – shaped the position of unwed mothers before the court as it influenced their opportunities to use the law to their advantage.

Unwed mothers before the court

Thus, illegitimacy became the hallmark of prosecution in the eighteenth century. Although it is difficult to determine with certainty, the sources indicate that the prosecution rate (or perhaps the term detection rate is more suitable in this respect) of illegitimacy during this period was rather high. In fact, the number of illegitimate births reported to/or discusses by the consistory according

⁷⁸⁸ Criminalia 7417 (1758) Original: '*Da nun unsers dafür haltens, eines Theils, die Untersuchung des von der Sünderin Denuncirten, zu mal mit dem Von Hilden verübt seijn sollende Schandlebens höchst nöthig, dazu aber die bejbehaltung der Person arrestantin onentbehrlich ist, anderer theils hingegen, woferne wegen der ergriffene Revision und in casu fernere confirmatione nach dem bis herigen übler gebrauch darauf obnfehlbabr folgender Appellation die Sache in das weite Feld gespielet werden sollten, solches hiesigem Aerario grosse kosten, zumalen wann die Sünderin würkl. in das Kindbett kommen sollte, zu ziehen wird*'.

⁷⁸⁹ O. Ulbricht, 'The debate about foundling hospitals in Enlightenment Germany. Infanticide, illegitimacy and infant mortality rates', *Central European History* 18:3/4 (1985) 211-256; Härter, *Policey und Strafjustiz*, 845-858; A. Freyh, 'Angeklagt "in puncto infanticidii". Frankfurter Kindsmordprozesse im 18. Jahrhundert' in: G. Engel, U. Kern and H. Wunder eds., *Frauen in der Stadt. Frankfurt im 18. Jahrhundert* (Königstein/Taunus 2002) 117-132, 117.

to the minutes, exceeded the number of baptised children born out of wedlock in the respective year (see table 3).

Table 15 Comparison of number of illegitimacy cases and baptisms of extra-marital children

	1746	1759	1780
Consistory	56	92	156
No. of baptisms	35 (3.1%)	71 (7.3%)	66 (7.3%)
No. of baptisms (5-year average)	41 (3.8%)	63 (6.6%)	78 (8.3%)

Source: Hanauer, 'Uneheliche Geburten, 660-662; Konsistorium, Protokolle 1746, 1759, 1780.

There are several reasons for this divergence. First, information about the number of baptised children is retrieved from the city's church records (*Kirchenbücher*). From 1635, there are printed lists of the number of baptisms, marriages and burials recorded in the church records for each year, which were published in an article by W. Hanauer in 1928. However, the data provided by the church records do not include information on Jewish births, and are incomplete for the Catholic and Reformed part of the population since their births were only recorded irregularly because they kept their own church records. However, the consistory did have jurisdiction over cases of extra-marital sexuality of the Jewish, Catholic and Reformed part of the population as well. The same goes for illegitimacy in Frankfurt's rural territory: while children born on the countryside are not recorded in the city's church records, those born illegitimately were to be investigated by the consistory. Also, the records only record children that were born alive and that were actually baptized, but the consistory investigated cases of illegitimate pregnancy regardless of whether the child lived or not.

Second, apart from the information gap of the church records, the consistory also investigated cases of fornication that had not resulted in pregnancy (although as we have seen, this was only rarely the case) or in which the fornication, and even childbirth, had taken place elsewhere. In the consistory records of 1759 several women had excused their deviance by stating that they could not be prosecuted for this by the consistory in Frankfurt, because the act had happened elsewhere. However, the consistory felt compelled to insist that 'all fallen women, should be punished with a ten-guilder fine, even if the act had taken place *extra territorium Francofurtense*'.⁷⁹⁰

⁷⁹⁰ Konsistorium, Protokolle (1759) folio 91-92. Original: 'jede zu fall gekommene weibspersonen wenn sie gleich vorgeben den bejschlaff *extra territorium Francofurtense* gepflogen zu haben, dennoch mit einer Straffe von 10fl. belegt zu werden'.

This explains cases like that of Katharina Wirth. In 1755 Katharina was arrested for theft for the third time. During her interrogations by the criminal investigation office it had become evident that she had conceived three different illegitimate children by three different men. None of the children had been born in Frankfurt or its territory, and they all had passed away already. Nevertheless, the *Verhöramt* notified the consistory and Katharina was investigated and received a punishment for fornication, after which the case was transferred back to the *Verhöramt* again.⁷⁹¹ Finally, in some cases the investigation stretched over a longer period of time which meant that they were recorded in the consistory records of multiple years. Unfortunately, the data does not allow for a correction of such cases, as the date of the actual birth was not recorded in the consistory records.

When it came to the control of illegitimate pregnancies, midwives, just as elsewhere in Europe, played an important role.⁷⁹² The city's regulation for midwives, first published in 1573 and renewed in 1703 and 1767, stipulated that whenever the midwife was called to an unmarried woman, she was obliged to ask the father's identity, and to subsequently report the birth to the authorities.⁷⁹³ As such, midwives functioned as agents of the state during a period in which women were particularly vulnerable and midwives could even refuse assistance in order to retrieve the identity of the child's father.⁷⁹⁴ In the course of the eighteenth century their role in the prosecution of illegitimacy was increasingly institutionalized, and midwives had to use standardised forms in order to report the illegitimate mothers (figure 2). Although one can assume that a large number of extra-marital births were indeed reported by midwives (as their importance in the detection of infanticide and secret births indicates as well), there are repeated references to cases in which the midwife had reported the birth too late or not at all.⁷⁹⁵ There were many reasons why a midwife might refrain from reporting the case to the authorities. Thus, the high prosecution level cannot solely be explained by the increasing incorporation of midwives as agents of the state. As we will see below, the double function of the *Konsistorium* as a place of conflict settlement *and* control influenced the prosecution patterns.

Although it is not possible to determine exactly what percentage of the illegitimate pregnancies were actually investigated by the consistory, the comparison between the number of baptised children that were born out of wedlock and the number of cases dealt with by the

⁷⁹¹ Criminalia 6934 (1755).

⁷⁹² U. Rublack, 'Pregnancy, childbirth and the female body in early modern Germany', *Past & Present* 150 (1996) 84-110; M.E. Wiesner, 'The midwives of south Germany and the public/private dichotomy' in: H. Marland ed., *The art of midwifery. Early modern Midwives in Europe* (London 1993) 77-94; Van der Heijden, *Huwelijk in Holland*, 122-123

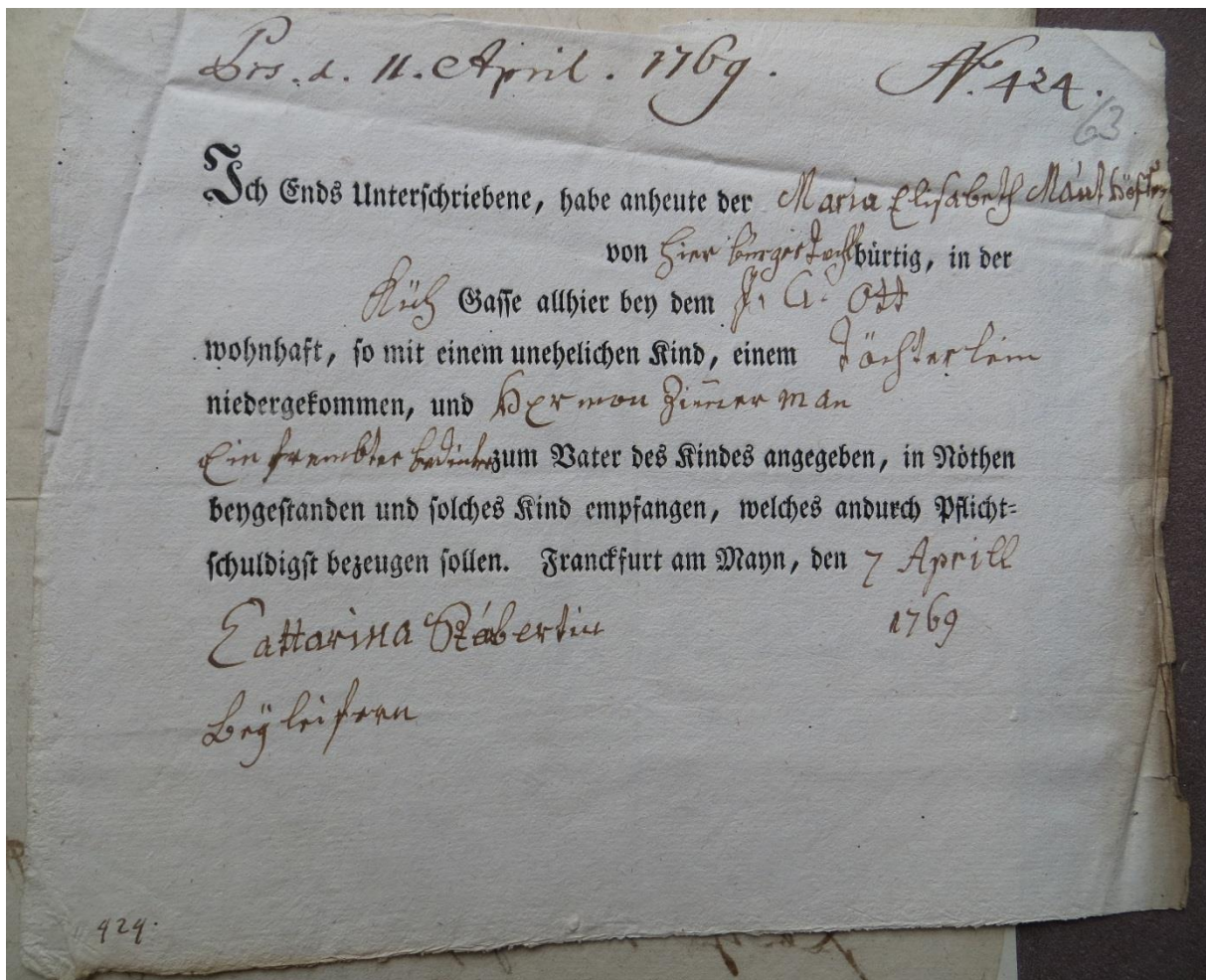
⁷⁹³ PO 2684 *Erneurt- und verbesserte Hebammen-Ordnung [...] allhieſiger löblichen Stadt Franckfurt am Mayn* 1703, § 2.7.

⁷⁹⁴ E.g. Criminalia 2163 (1698); Criminalia 2789 (1714).

⁷⁹⁵ E.g. Criminalia 6760 (1750); *Konsistorium* 1759, folio 90-91; folio 236; Rublack, *Crimes of Women*, 178-180; Härter, *Policy und Strafrecht*, 848-852, 857.

consistory indicates that there was a relatively high prosecution rate in Frankfurt. Although there were big territorial differences, numbers indicate that the prosecution rate of illegitimate pregnancies could be relatively high. In eighteenth century Lippe between 65.4% and 77.8% of the mothers of baptised extramarital children were sentenced.⁷⁹⁶

Figure 14 Form for midwives to report extra-marital children



Source: Criminalia 8605 (1771) Case against Maria Elisabetha Mauthöferin for the birth of her sixth illegitimate child, and the suspicion of attempted abortion.

Information on the social background of offenders is often limited, particularly for the cases that were only handled by the consistory. However, as we can see in table 4, the available data indicates that unlike what we know for property offences, migrants did not necessarily constitute the majority of offenders. In fact, in all three years the majority of the women originated from the city itself or from one of the villages that were part of Frankfurt's territory. For 1780 we are able to get more information about the social standing of the women, because the profession of the women's father

⁷⁹⁶ M. Frank, *Dörfliche Gesellschaft und Kriminalität. Der Fallbeispiel Lippe 1650-1800* (Paderborn 1995) 331.

was registered in more than half of the cases. About 1/3 belonged to the lower middle class and were daughters of artisans and craftsmen: shoemakers, bakers, linen weavers, brewers and butchers. Another 1/5 of the women were local soldiers' daughters, and about a 1/10 were daughters of vine growers (*Wein-gärtner*). An equal share of the women's fathers were recorded as day labourers. References to the profession of the men they denounced as the father of their child reveal that they usually had a similar social background. They usually worked as *Knechte* or *Geselle* or were employed as soldiers in the local army.⁷⁹⁷ Thus the criminalisation of sexuality particularly affected the lower classes – which is not to say that they were more prone to transgress the authority's sexual norms, but rather that they were subjected more strongly to its prosecution policies.⁷⁹⁸

Table 16 Origin of women prosecuted for illegitimacy before the consistory

	1746		1759		1780	
Frankfurt	16	29%	17	19%	58	37%
Villages	8	14%	6	7%	14	9%
Migrants	14	25%	15	16%	61	39%
Unknown	18	32%	54	59%	25	16%

Sources: Konsistorialprotokolle 1746, 1759, 1780

Between plaintiff and defendant: women and the prosecution of illegitimacy

The efforts of authorities to regulate extra-marital pregnancy had a significant impact on the position of women. A recent comparison between the treatment of illegitimacy in the Netherlands and early modern Germany, including Frankfurt, carried out by myself and Ariadne Schmidt, showed that the prosecution practices of urban authorities were remarkably different in both regions. In the Netherlands, for example, secular authorities were inclined not to proceed with criminal investigations if women had come to an agreement with the father either through a civil suit or an agreement through a notary, because it meant that the financial responsibility for their illegitimate children was taken care of.⁷⁹⁹ In early modern Frankfurt, as elsewhere in early modern Germany, this was different. In most territories, both paternity suits and cases for broken marriage vows were handled by the same court that prosecuted extra-marital sexuality. Moreover, Frankfurt's secular authorities actively implemented policies to hinder the possibility of extra-

⁷⁹⁷ Pfister, *Bevölkerungsgeschichte*, 86-89; Dürr, *Mägde in der Stadt*, 256.

⁷⁹⁸ Lesemann, *Arbeit*, 164-165.

⁷⁹⁹ Kamp and Schmidt, 'Getting Justice'.

judicial agreements. Such arrangements were only allowed if the *Konsistorium* was informed beforehand. In 1739, the city council issued an ordinance against paternity settlements before the notary without the interference of the *Konsistorium* as this was seen as an attempt to conceal the paternity of the true father and pervert justice.⁸⁰⁰ For similar reasons, women were not allowed to put their illegitimate children in (paid) foster care without notifying the authorities first.⁸⁰¹

Consequently, going to court to start a paternity suit almost always meant self-disclosure.⁸⁰² This resulted from the dual function of the consistory. On the one hand it functioned as a disciplinary court and sanctioned sexual transgressions with monetary fines, imprisonment or shaming punishments, while on the other hand, it also dealt with matters of a more civil law nature, such as the settlement of paternity suits and alimony cases.⁸⁰³ Usually, the criminal prosecution preceded the civil lawsuit, and was even mandatory for women to claim alimony or compensation for the costs of childbirth and the loss of honour.⁸⁰⁴ In many cases it is impossible to distinguish the criminal procedure from the civil one.

The dual function of the *Sendamt/Konsistorium* influenced the way in which women were able to use the court in order to pursue their objectives. Going to court to start a paternity case meant that authorities would be notified about the criminal offence of extramarital sex and prosecute this accordingly. This was considerably different in regions where secular authorities had not set up special courts in the wake of the reformation, as in the Netherlands, and church consistories had no jurisdiction to impose criminal sanctions.⁸⁰⁵ Thus, women often appeared before the court as plaintiffs and offenders at the same time. In the consistory records, the number of *Schwängerungs-* and *Satisfaktionsklagen* that can be distinguished ranged from 12.5% in 1746 to 13% in 1759 and 11% in 1780. It is very likely that the number of financial arrangements determined by the court was even higher, as usually only the more long-lasting and conflicting cases could be detected as such.

Despite these restrictions, women *could* and *did* take legal action. Depending on the situation, there were several possibilities a woman who found herself pregnant out of wedlock could pursue. First, there was the opportunity to start a marriage suit – i.e. to claim broken marriage promises. This of course only applied to women, who could actually prove that they had only engaged in intercourse with the prospect of marriage. Formally, only legitimate public vows could

⁸⁰⁰ PO 3181 *In Schwängerungssachen sollen keine heimliche Vergleiche getroffen werden* 20.01.1739.

⁸⁰¹ PO 3152 *Die in Unehren erzielte und denen Leuten heimlich in die Kost und Verpflegung gegebene Kinder betreffen* 24.09.1737; PO 3449 *Ohne obrigkeitliche Erlaubniß sollen keine Kostkinder von Privatis angenommen werden* 19.08.1755; Criminalia 7093 (1753).

⁸⁰² Schmidt, *Dorf und Religion*, 387; Breit, *Leichtfertigkeit*, 114; Burghartz, 'Ordering discourse', 85; Hull, *Sexuality*, 58-61.

⁸⁰³ Rössing, *Versuch*, 153-154.

⁸⁰⁴ Also in Basel: Burghartz, *Zeiten der Reinheit*, 277-283.

⁸⁰⁵ Kamp and Schmidt, 'Getting Justice'; Burghartz, 'Ordering discourse', 86.

be claimed before the court. However, if a woman was pregnant, the court offered her the opportunity to obtain the consent of her parents retroactively.⁸⁰⁶ In this case, theoretically women's legal agency was even greater than that of men, as they could not claim any compensation in cases of secret marriage promises.⁸⁰⁷ Usually the man was given the choice of either marrying the woman who appealed for marriage or to pay her a compensation for the dowry (*'eine Ausstattung'*). The sum of the latter was to be determined by the consistory according to the wealth and standing of both the man and the woman.⁸⁰⁸ There are only a couple of examples left that specify the compensation women received for broken marriage promises. Anna Catharina Kneibin from Gedern was awarded 10 Reichsthaler compensation to be paid by Jacob Bernhard from Ober-Ulm who was also sentenced to pay a weekly sum of 30xr for their illegitimate child until the age of seven, and 45xr till the child turned fourteen.⁸⁰⁹ For Catharina Dorothea Kochin, the compensation was even greater. She was awarded a *'Aussteuerung'* of 200 guilders.⁸¹⁰ In both cases, the sum of the indemnity shows that it was worth for the women to go to the consistory and report themselves: the sum they were awarded exceeded the fine that had to be pay for fornication.

In order to start a marriage suit successfully, women required parental consent. This may have posed a considerable obstacle particularly to migrant women, who lived far away from home. If a woman managed to get parental consent and start a suit, she had to cope with a second obstacle, namely proving the identity of the child's father. Frankfurt's regulations concerning fornication were not biased towards women, and both genders were held accountable and received a fine. Still, in practice women were more vulnerable to be prosecuted. While unmarried pregnant women carried the undeniable proof of their transgression, this was not the case for men, and their position in court was rather strong as they had multiple options to deny being the father of an illegitimate child and avoiding prosecution. One of the most common strategies of men who were faced with such a suit was to either deny that they had intercourse with the plaintiff completely, to claim infertility or to argue that there was no possibility to determine with certainty that they were the child's father because the plaintiff had multiple sexual partners.⁸¹¹ They could enforce their

⁸⁰⁶ PO 3806 *Mandat gegen heimliche Eheverlöbniß* 15.09.1733. Original *'Wofern aber diejenige Personen, so wider diese Verordnung handeln, und sich heimlich verkuppeln, überdieß in Unehren sich mit einander verkuppeln, es möge daraus eine Schwängerung erfolgen oder nicht, so bleibt der Geschwächten, wenn ihre Eltern solches vor gut befinden, auf die Vollziehung der Ehe zu klagen unbenommen.'*

⁸⁰⁷ J. von Adlerflycht, *Das Privatrecht der freien Stadt Frankfurt. Erster und zweiter Theil* (Frankfurt am Main 1824) 22.

⁸⁰⁸ Von Adlerflycht, *Privatrecht*, 22-23.

⁸⁰⁹ Konsistorium 1780, folio 65, 73, 87, 99, 115, 124, 138, 147.

⁸¹⁰ Konsistorium 1780, folio 245, 248, 249, 254, 255, 263, 266, 270, 280, 287, 289, 297, 298.

⁸¹¹ E.g. Criminalia 1904 (1692) Friedrich Blattenschläger admitted to having intercourse with Elisabetha Erlenbachin but argued that 'the interaction accured in such a manner that he was certain that she could not be pregnant of him and that she also had relationships with other men (*were er uff solchen manier mit ihr umbgegangen, dass sie, wie er gewiss wüste von ihm nicht schwanger, sie hette mit andern mebr zu gehalten*)' Criminalia 7093 (1753) Peter Weijdt denied to be the father of Anna Margaretha Lutterin's illegitimate child by stating that 'she was a lewd woman, who already had an illegitimate child before, and had relations with anyone (*seije ein liederliches mensch, die schon vorhero ein unehelich kind gebabt und mit jedermann zu gehalten*)'. Also: GLeixner, *'Das Mensch'* und *'Der Kerl'*, 59.

statement by an oath (a *Reinigungseid*) which was used as a proof of the validity of their statements. If the man had admitted to having sex with the plaintiff, but successfully denied that he was the father of the child, the *Reinigungseid* did not exempt him from being punished.⁸¹² Women not only depended on witnesses to support their claims, but could also use the testimonies of midwives and baptismal records instrumentally in court, because authorities usually considered this to be a valuable proof of the identity of the child's father.⁸¹³

A third obstacle was the fact the men were highly mobile. Cases like that of Anna Sibylla Schomburger, a 28-year-old local woman, who was interrogated for her first illegitimate child, are countless. She denounced a *Schlossergeselle* from Vienna, named Joseph Plezer, as the father. By the time she was interrogated for her illegitimacy, Joseph was no longer present in Frankfurt. The last time Anna had heard from him was when he had written to her from Mainz, without informing her about his future whereabouts.⁸¹⁴ Ulrike Gleixner argued that it is unlikely that this type of mobility of men was a deliberate ploy, and advocated that it should not be interpreted as a flight from justice. In order to find work, make a living and keep their mobility, journeymen were dependent on their masters to provide them with written attestations and they could not just run away when they needed to. Gleixner even hypothesised that if journeymen really tried to escape punishment for fornication (and, consequently, the possible payment of child support), they could only do so with the assistance of their masters, which would point to a considerable level of tolerance for pre-marital relations on their side.⁸¹⁵ Further research about guild control over their members with regard to pre- and extra-marital sexuality would be needed to investigate whether this could be the case. However, a quick glance at some of Frankfurt's *Handwerker Akten* reveal that the guilds aimed to exclude offenders from their ranks over and over again and indicate little tolerance from their side, although personal relations with their journeymen could always prompt single masters to act differently.⁸¹⁶

⁸¹² Criminalia 2395 (1703).

⁸¹³ E.g. Criminalia 5745 (1744); Criminalia 6847 (1753); Criminalia 6959 (1754). Also: Härter, *Policey und Straffjustiz*, 849.

⁸¹⁴ Criminalia 5745 (1744). For similar cases in which women claimed that their impregnators had moved elsewhere and could not be contacted: Criminalia 2163 (1698); Criminalia 6763 (1753). On the mobility of women and hotspots of illegitimacy: Moch, *Moving Europeans*, 143-147.

⁸¹⁵ Gleixner, *'Das Mensch' und 'Der Kerl'*, 103-107.

⁸¹⁶ See e.g. *Handwerker Akten* 686 (1617-1618) where Dietrich Faulhaber is sanctioned by the Schneiderhandwerk for pre-nuptial coitus; other cases from the Schneiderhandwerk in *Handwerker Akten* 671 (1657-1688); *Handwerker Akten* 761 (1625-1662). Similar complaints and sanctions from the shoemakers craft guild about individual members who committed pre-nuptial coitus and fornication; *Handwerker Akten* 626 (1673) from the Wollweber und Tuscherer; *Handwerker Akten* 408 (1695) 'Anfrage der Stadt Ulm vom 17.8.1695 wie man in Frankfurt mit Handwerkern verfährt, die „sich mit denen Weibs-bilder in unehren übersehen“ und diese danach heiraten'; *Handwerker Akten* 354 (1728-1729) 'Anfrage von Burggraf, Bürgermeister und Rat der Reichsstadt Friedberg vom 29.12.1728, wie man es in Frankfurt mit einem Handwerksmeister halte, der seiner späteren Frau vorzeitig beigeschlafen habe'

Particularly evident are cases in which guild members tried to avoid prosecution because this often resulted in sanctions by the guilds, and could even lead to exclusion entirely.⁸¹⁷ This gave women leverage to negotiate a beneficial agreement without the interference of the courts. In order to prevent Catharina Rau from disclosing him as the father of her illegitimate child to the authorities, Niclas Burg had promised to pay her half a guilder weekly for the care of the child and to provide 100 guilders to cover her other expenses. During the interrogations Niclas stated that he had done this because he feared the repercussions of the guild (*‘aus Furcht vor dem Handwerck’*).⁸¹⁸ The loss of honour accompanied with a conviction for fornication, and the resulting consequences for his economic position, had led to Niclas’ decision to compensate Catharina, even though he knew that he could not be the father of her child as the time of their intercourse did not correlate with that of the birth of her child. The agreement was discovered by the authorities because Catharina’s statements about the identity of the father before the consistory varied considerably, which eventually led her to disclose the agreement. Eventually Niclas was acquitted of the paternity charges, but still convicted for fornication and additionally sanctioned by the guild with a suspension of one year.⁸¹⁹

Some women, however, were denied the opportunity to start a marriage suit all together. According to an ordinance from 1729, women who had engaged in a sexual relationship with a soldier were explicitly forbidden to start a suit in response to broken marriage promises and, regardless whether or not they became pregnant, they could not count on any compensation (*‘ohne Unterscheid, ob hieraus Schwängerung erfolgt seyn möchte oder nicht, sich dieservegen der geringsten Satisfaction nicht zugetrösten haben’*).⁸²⁰ The authorities justified the ordinance by stating that as a rule soldiers were denied marriage during their service and would be too poor in most cases to compensate the women anyway. In 1751, the authorities adapted the law, stating that soldiers were to be held accountable to pay child support if they had some property or income besides their wages.⁸²¹

Thus, filing a marriage suit was one option women could pursue, although it was a rather limited option. Even if this option was closed, however, women could still count on ‘support’ from the authorities to a certain extent. One of the consistory’s central aims in interrogating mothers of illegitimate children was to disclose the identity of the child’s father. These efforts were not only prompted by their desire to prosecute fornication and immorality on the part of men whose

⁸¹⁷ Stuart, *Defiled trades*, 15; P. Lourens and J. Lucssen, “‘Zunftlandschaften’ in den Niederlanden und im benachbarten Deutschland’ in: W. Reininghaus ed., *Zunftlandschaften in Deutschland und den Niederlanden im Vergleich* (Münster 2000) 11-44; Hull, *Sexuality, State*, p. 41-44; M.R. Boes, ‘Dishonourable’ youth, guilds, and the changed world view of sex, illegitimacy and women in late-sixteenth-century Germany’, *Continuity and Change* 18:3 (2003) 345-372.

⁸¹⁸ Criminalia 2395 (1703).

⁸¹⁹ Also: Criminalia 2789 (1714); Criminalia 5150 (1740).

⁸²⁰ PO 2978 *Den Weibspersonen soll vorzüglich mit Soldaten Unzüchtiger Umgang verboten seyn* 01.02.1729.

⁸²¹ PO 3390 *Den Weibspersonen soll vorzüglich mit Soldaten Unzüchtiger Umgang verboten seyn* 15.01.1751.

transgressions would otherwise remain unknown; it also meant that they could force the father to take financial responsibility.⁸²² For this reason, women were also willing to report their case to the authorities. Of course, similar obstacles in determining the father's identity as mentioned above apply here as well.

Once the identity of the father was established in court, however, women could count on the consistory as their ally when the fathers continued to deny paternity and refused to pay child support. Christina Röderin, a *Mitbnachbarstochter* in one of Frankfurt's villages, reported to the authorities that the father of her illegitimate child - a man named Peter Müller - had refused to pay alimony and left town, but had returned and was employed by the master butcher Heij. The consistory summoned Peter, who replied that he neither had any money, nor that he owed anything to Christina, as he was not the father of her child. However, according to the consistory, his paternity was proven without a doubt and Peter was therefore ordered to pay the sum of 26 guilders and 30 kreuzer to Christina within eight days or would else he would be imprisoned. These were not empty threats: upon his continuous refusal to pay the outstanding amount, Peter was indeed imprisoned by the consistory.⁸²³ There are also examples in which the consistory seized the wages or property for women to be compensated when the men were unwilling to pay.⁸²⁴

For early modern Kurmainz, Karl Härter has shown how the opportunities for financial compensation prompted mothers to report their cases to the criminal authorities even though they had the opportunity to start a civil suit. Claiming broken marriage promises before a civil or ecclesiastical court often meant long, difficult and expensive procedures. In order to speed up the procedure, women reported to the criminal court themselves. The inquisitor trial there made it easier for them to establish the identity of the father of their illegitimate child. Women could then use their conviction as evidence in a civil suit in order to speed up trial there. The potential child support women could receive outweighed the criminal fine by a ratio of 200:1, and thus made the risk of being convicted worthwhile. Härter concludes that the increase in fornication offences in Kurmainz in the mid-eighteenth century was partially the result of the use of justice by the illegitimate mothers themselves due to the changes in judicial regulations between local and central state level.⁸²⁵

The extent to which the high 'prosecution' rates for illegitimacy by the consistory were fostered by the use of justice by women is not possible to determine for Frankfurt. However, it is

⁸²² J.H. Bender, *Handbuch des Frankfurter Privatrechts* (Frankfurt am Main 1848) 81. 'Wer sich als Vater eine unehelichen Kindes bekennt, muß in Folge dessen das Kind alimentiren.'

⁸²³ Konsistorium 1780 folio 197.

⁸²⁴ Konsistorium 1759 Von Carbin @ Gebhardt: folio 4, 26, 28, 42, 49, 57, 61, 67, 109, 113, 121, 124, 129, 135, 223, 249; Konsistorium 1759 Kuchin @ Kreul: folio 80, 82, 216, 223, 255; Konsistorium 1759 Pachhelbelin @ Böckler: folio 217, 276, 277, 280, 282, 289, 295, 298, 302.

⁸²⁵ Härter, *Policey und Strafrecht*, 898-901. Also: Schmidt, *Dorf und Religion*, 387.

clear that women in early modern Germany were not afraid to start a paternity suit in one of the lower criminal courts, even if this led to prosecution and possible punishment. This is underlined by the fact that women even reported the case themselves if it was not known yet by the authorities. In more than half of the alimony cases in Bavaria, authorities had not yet started a criminal investigation about the extramarital pregnancy when the woman reported the case to the court herself in order to receive financial compensation from the child's father.⁸²⁶ This could even happen several years after the child's birth if the couple had failed to settle the case outside the court.

Women not only reported their cases to the authorities to force the father of the child to compensate them financially; there were other reasons why unwed mothers took the risk of prosecution instead of hiding their case from the consistory. One of the reasons was that this demonstrated that they were remorseful and knew that what they had done was wrong in the eyes of god and the law. This way, they had a better chance of persuading the authorities to impose more lenient punishments. The standard ten-guilder fine for fornication was the equivalent of about a third of the yearly wages of a male servant and for women often even represented the full sum of their annual wages.⁸²⁷ It is no surprise that for many, and women in particular, these fines could put offenders in serious financial difficulties. Women therefore repeatedly requested 'submissively to impose a merciful punishment, because of inability and poverty [to pay]'.⁸²⁸ The consistory records show that women were often granted such consents or that they were allowed to pay the fine in instalments. Obviously, a woman's bargaining position with the authorities was much stronger in cases where they showed remorse, than if they had tried to hide their pregnancy.

Moreover, some women felt confident enough to request financial aid from the very institution that was prosecuting them. One example is the case of Maria Magdalena Beyer, a resident's daughter, who was already under investigation by the consistory for her extramarital pregnancy when she appealed to the authorities for financial aid so she could pay the costs of childbirth. She had no relatives or other people she could turn to for help, and due to her situation, she was not able to find employment to support herself. In short, her situation was quite hopeless.⁸²⁹ This may seem a risky move, particularly considering that one of the main motives of the authorities to make illegitimacy the main focus of their prosecution efforts was to reduce the burden on the city's poor relief. Indeed, the authorities were reluctant to provide assistance, as it

⁸²⁶ Breit, «*Leichtfertigkeit*» und ländliche Gesellschaft, 144.

⁸²⁷ Habermas, 'Frauen und Männer', p. 113.

⁸²⁸ Criminalia 5745 (1744). Original: 'als wollte sie unterthänlichst gebethen haben mit gnädiger Strafe sie zu belegen wegen ohnvermögen und vorgeschütztem Armutb'.

⁸²⁹ Criminalia 6987 (1754). Also see: Crim 7415 (1758) where sixteen-year old Anna Gertraud Bockin arrested for prostitution and sleeping on the streets is put into the care ('in Kost und Verpflegung') of Gamasch, one of the city's beadles (*Bettelvogt*) to avoid the risk that she would kill her child ('zu vermeidung eines besorglichen kindermordt').

could set a bad example to other ‘loose harlots’ (*liederliche Dürnen*). However, they still agreed to pay her childbirth charges in fear of her possibly committing suicide, or – even worse – infanticide.

Here, the legal status of offenders was important as well. Although foreign women could plead for a reduction of their sentence, which they were often granted as well, this ‘clemency’ was usually followed with expulsion.⁸³⁰ Moreover, local women could not count on the endless leniency of the authorities. Susanne Elisabetha Blechschmitdin, a 30-year old local soldier’s daughter, gave birth to her third illegitimate child in 1754. Unable to pay her fines for the first two children, she had served short sentences in the poorhouse. This time, however, Susanne Elisabetha was expelled from the city.⁸³¹ A year earlier, Anna Sophia Ilsterin, a local burgher’s daughter, suffered a similar fate. For her first three illegitimate children the consistory sanctioned Anna Sophia with fines. After her fourth illegitimate child, however, she was banished.⁸³²

Besides financial reasons, women may have been motivated to disclose their pregnancy to the authorities because of honour motives. As self-disclosure to the authorities automatically meant conviction, it was a public display of showing remorse and taking responsibility for their sins. As such, their honour may not necessarily be restored completely, but it at least opened up the possibility of re-integration within the community.⁸³³ This may also explain why women who were punished with banishment by the consistory would still appeal to the very same institution that had expelled them as plaintiffs and start a paternity suit.⁸³⁴ For foreign women, expulsion for illegitimacy did not necessarily mean being cut off from family and social support networks. There are several examples in which women returned to their home town, where they could count on support to file a case against the child’s father back in Frankfurt.⁸³⁵

⁸³⁰ Konsistorium 1746 folio 100-101 Magdalena Weberin from Würth. Her fine was reduced from 10 guilders to 3 because of her poverty, with the condition that she had to leave the city; Konsistorium 1780 folio 272-273 Margaretha Abtin from Niedernhausen im Amt Wiesbaden. ‘Due to outmost poverty (*wegen äusserster bedürftigkeit*)’ Margaretha’s fine was cancelled but she was orderd to leave the city together with her child; Konsistorium 1780 folio 313, 315 Josepha Schmidin from Tondorff im Erfurtische. She requested the annulment of her fine and the permission to give birth in Frankfurt. The *Konsistorium* decided to repeal the fine, but denied her other request and expelled her from the city;

⁸³¹ Criminalia 6914 (1754).

⁸³² Criminalia 6763 (1753).

⁸³³ Kamp and Schmidt, ‘Getting Justice’; Gleixner, ‘*Das Mensch’ und ‘der Kerl*’, 115-116.

⁸³⁴ Criminalia 9216 (1781).

⁸³⁵ E.g. Criminalia 9160 (1781); IfSG Bürger und beisassen wider Fremde, Ugb D. 60 L. Nr. 64. (1726). Anna Catharina Staffelin from Ortenburg had become pregnant in Frankfurt from a chimneysweeper called Johann Henrich Lauck, for whom she had worked as a domestic servant. She delivered the illegitimate child in Ortenburg and called upon the authorities in Frankfurt for a *privat satisfaction* from her former employer even though she was punishable with a prison sentence for adultery; Bürger und beisassen wider Fremde, Ugb. D. 69 W. Nr. 279. (1792). Anna Gertraud, daughter of a teacher from Schönbach requested the city council to have the *Konsistorium* interrogate the son of her former employer the innkeeper of zum Affen because he impregnated her and to make this known publicly. Also: Dürr, *Mägde in der Stadt*, 254.

Self-disclosure in case of pregnancy was not only a tool of legal agency of single mothers, but could be used by couples as well in order to circumvent marriage regulations.⁸³⁶ In 1780, Susanna Rebecca Eulerin, the daughter of a local burgher and day labourer, appealed to the consistory on the grounds that Wolfgang Rothenburger, a burgher and *Schubkärcher*, the father of her illegitimate child, had not married her yet, despite an earlier decree from the consistory that had ordered him to do so. Wolfgang defended himself by stating that had not been able to marry Susanna yet, because he had so far been unable to pay his taxes, which was a formal requirement for marriage.⁸³⁷ The consistory decided to loosen the requirements for marriage in the case of Susanna and Wolfgang because ‘it was desired for the good of public order and the well-being of the child that the couple would be married’.⁸³⁸ The consistory additionally ordered that until Susanna and Wolfgang were formally married he was to pay a weekly sum of 30xr as alimony for their illegitimate child. It is unlikely that Wolfgang was forced to marry Susanna against his will, as men were usually given the choice either to marry the woman or pay compensation instead.

Although the authorities were usually willing to consent to requests for marriage by couples who had intercourse before marriage, and even reduce their sentences, self-disclosure even in such cases was not without risk. The authorities constantly had to balance several considerations, which could work to the disadvantage of offenders as well. This becomes particularly evident in the case of Maria Magdalena Hartmann and Markus Schuh, son of a local soldier. Maria Magdalena went to the consistory to disclose that she and Markus had recently welcomed a third illegitimate child together. Maria Magdalena had a specific purpose: she requested a reduction of their punishment and wished to receive consent for their marriage. Markus himself filed a petition with the same request to the city council. Although in the first instance the authorities were inclined to accede to the requests made by Markus and Maria Magdalena, they decided not to do so after all. Their decision was motivated by the fact that the couple was so poor; they would not have been able to pay their punishment anyway. In order not to put a drain on the city’s finances, the city council decided not to imprison the couple, but to expel them instead.⁸³⁹ In this case, the city’s financial considerations outweighed any wishes to restore moral order and legitimise a child born out of wedlock through marriage.⁸⁴⁰

⁸³⁶ Härter, *Policey und Strafrecht*, 895-897; Breit, *Leichtfertigkeit*, 175.

⁸³⁷ PO 3566 *Strafen des Schatzungs Rückständigen* 11.12.1760; PO 3614 *Daß auch fremde sich anbero verburathende vor der Proclamation ihre übrige bürgerliche Praestanda denen kayserlichen Resolutionen zufolge praestiret und entrichtet haben müssen* 28.10.1762.

⁸³⁸ Konsistorium 1780 folio 30. Ratssupplikationen 1780, Bd 1. ‘zu wünschen wäre, das zu Abstellung alles öffentlichen Ärgermisses und zum besten des Kindes diese Leute mittelst priesterlichen copulation in ordnung gebracht würden’.

⁸³⁹ Criminalia 7744 (1761).

⁸⁴⁰ Also: Criminalia 6064 (1748). Johann Tobias Justus a *nachbarhs sohn* (subject of Frankfurt’s rural territory) requested to marry Anna Margretha with whom he had an illegitimate child. The consistory, however, denied his request because Anna Margretha was the widow of Johann Tobias’ brother, and their relationship was therefore considered incestuous.

Thus, we may assume that in Frankfurt the high number of cases of illegitimacy brought before the consistory were the result of both strict control by the authorities, who tried to prevent any type of extra-judicial settlements, and the uses of justice by offenders themselves.⁸⁴¹ The latter was ultimately incorporated by the authorities as a means of control in itself as they prohibited any other opportunity of settlement without their knowledge. As the cases presented above have shown discussing the position of women before such courts in opposing terms of *either* assistance or *repressive control* does not do justice to the complexity of the early modern situation. It was not a question of either/or, as both typologies could apply, and they could even apply at the same time. There were many motives that had to be considered and weighed by the authorities. Their desire to maintain Christian order, social and financial stability opened up options to women to enforce financial agreements with the child's father, which at the same time demanded that they were to be sanctioned themselves as well. Moreover, the experiences of women in relation to the consistory were diverse and differed according to the matter that was brought before the court. For a battered woman, who relied upon the court to discipline her husband, the consistory may have indeed served as an 'assistant in need', whereas for unmarried, foreign, pregnant women this may have been less the case.

Infanticide, abortion and child abandonment

The previous paragraph has dealt with women displaying legal agency, even when this meant that they were faced with prosecution. However, some women turned to more desperate measures when they were faced with the consequences of having a child out of wedlock. In a chapter about the prosecution of sexuality, it is not possible to omit mention of the topics of infanticide, abortion and child abandonment.⁸⁴² According to the law, infanticide was a crime of single mothers. The *Carolina*, which formed the legal basis for prosecuting infanticide well into the eighteenth century, defined it as a crime committed during or immediately after childbirth by women to cover up their lewd behaviour (*geübte leichtfertigkeit*). Concealment of pregnancy thus lay at the heart of defining what abortion was.⁸⁴³ Stillborn babies were common in the early modern period and child mortality

Both Johann Tobias and Anna Margretha were sanctioned with banishment; Criminalia 6986 (1753). Local soldier's daughter Susanna Elisabetha Geiderin and Johannes Lein, a local musketeer, had two illegitimate children together, but were repeatedly denied permission to get married by the *Kriegszeugamt*.

⁸⁴¹ Kamp and Schmidt, 'Getting justice'.

⁸⁴² For infanticide in early modern Frankfurt, see: A. Freyh, 'Angeklagt "in puncto infanticidii". Frankfurter Kindsmordprozesse im 18. Jahrhundert' in: G. Engel, U. Kern, and H. Wunder eds., *Frauen in der Stadt: Frankfurt im 18. Jahrhundert* (Königstein/Taunus 2002) 117-131; A. Freyh, 'Verdacht auf Kindsmord. Frauen aus der Frankfurter Judengasse vor Gericht' in: U. Kern ed., *Blickwechsel. Frankfurter Frauenzimmer um 1800* (Frankfurt am Main 2007) 88-97; R. Habermas and T. Hommen, *Das Frankfurter Gretchen. Der Prozess gegen die Kindsmörderin Susanna Margaretha Brandt* (München 1999); M.R. Boes, *Crime and punishment in early modern Germany. Courts and adjudicatory practices in Frankfurt am Main, 1562-1696* (London 2013) 145- 180.

⁸⁴³ M. Brannan Lewis, *Infanticide and abortion in early modern Germany* (New York 2016) 24-25.

was common. However, for married women this frequent occurrence did not pose an additional risk of being investigated. For single women, however, infant deaths were always treated with suspicion.

The two subsequent articles of the Carolina dealt with child abandonment and abortion. Just like infanticide, the Carolina considered child abandonment as a crime that could only be committed by women. It distinguished between cases of child abandonment where the child was found alive and where it was deceased. In the latter case the women were to be punished with the death penalty. Abortion on the other hand could also be committed by men. The Carolina even included purposely making a man or a woman infertile as a result of abortion (*‘wer auch mann oder weib vnfruchtbar machet’*) and thus employed a rather broad definition.⁸⁴⁴

Already in its definition infanticide was linked to single mothers attempting to hide their pregnancy in order to evade punishment for fornication. In the second half of the eighteenth century, infanticide became the subject of intensified enlightened debates in Germany. Commentators discussed the state’s policy concerning sexuality and the harsh punishments imposed on single mothers as one of the main causes behind infanticide.⁸⁴⁵ However, historians have pointed out that even though motives of shame and escaping prosecution lay at the core of most infanticide cases (as we will see below), there was no simple causal relationship between the prosecution of fornication and infanticide cases.⁸⁴⁶ Rainer Beck even argued that the fear of punishment for fornication could not be a cause for infanticide. According to him, the shame that accompanied public punishments was only temporary and he therefore concluded that the criminal system gave little cause for infanticide.⁸⁴⁷

In early modern Frankfurt, infanticide was not a ‘mass crime’. Between 1562 and 1696 the *Strafenbuch* registered 23 women who were convicted of infanticide or suspected infanticide. For the eighteenth century, the figure has to be reconstructed from the index of the *Criminalia*, as conviction records do not exist for this period.⁸⁴⁸ There were 47 cases of women being prosecuted for suspected infanticide, and another 8 cases of women where the register itself did not mention the offenders as suspects for infanticide, but provided more vague descriptions such as a women being prosecuted for ‘burying an illegitimate child in a house’, or ‘about the post-mortem examination of a dead baby discovered in the Main, of which Anna Maria Friesin was suspected’.⁸⁴⁹ In total, during the entire seventeenth and eighteenth centuries there were 83 *Criminalia* with

⁸⁴⁴ Brannan Lewis, *Infanticide and abortion*, 22-27.

⁸⁴⁵ O. Ulbricht, *Kindsmord und Aufklärung in Deutschland* (München 1990).

⁸⁴⁶ Härter, *Policy und Strafjustiz*, 845; Hull, *Sexuality*, 70; Lesemann, *Arbeit, Ehre, Geschlechterbeziehungen*, 163.

⁸⁴⁷ Beck, ‘Illegitimität und voreheliche Sexualität’, 128-130.

⁸⁴⁸ Freyh, ‘Frankfurter Kindsmordprozesse’, 129.

⁸⁴⁹ IfSG Frankfurt am Main, Repertorium 249 Index über die *Criminalia* 1680-1732, 158.

investigations for suspected infanticide and 18 cases of abortion, which was much harder to prove or investigate.⁸⁵⁰

Table 5 and figure 3 show that in Frankfurt, too, there was no relation between intensified prosecution of sexuality and infanticide. The *Strafenbuch* recorded the highest number of infanticide cases between 1641 and 1660, whereas fornication peaked between 1601 and 1620, and was even at its lowest during 1641 and 1660. For the eighteenth century, one can depict a similar pattern. While the prosecution of illegitimacy intensified during the 1750s, the number of infanticide cases during this period was rather low compared to the previous and the following decade.⁸⁵¹ Overall, the number of infanticide cases remained quite stable throughout the entire early modern period. Considering that the overall number of prosecuted offences rose until the 1760s, the relative weight even decreased considerably.

Infanticide-related cases such as child abandonment or abortion also do not show a clear correlation with the prosecution of sexual offences. Child abandonment was only very rarely prosecuted by the criminal court before the eighteenth century.⁸⁵² In the eighteenth century, however, the number of women prosecuted for child abandonment (*exposi. infantis*) rose, as did the number of foundlings that were registered by the criminal investigation office, and for whom the authorities issued notices to find the mother. The rise in the number of these cases coincided with the increase in illegitimate births, and increasing restrictions on women to put their illegitimate children in foster care. In the eighteenth century, the authorities issued several ordinances to prohibit women from doing so without the knowledge of the authorities.⁸⁵³ This may have limited the opportunities available to unwed mothers in their search for work, as they were less mobile when they had to carry their child and employers would have been less willing to employ them.

⁸⁵⁰ On abortion see: R. Jütte, *Die Geschichte der Abtreibung. Von der Antike bis zur Gegenwart* (1993); Brannan Lewis, *Infanticide and abortion*; U. Rublack, 'The public body. Policing abortion in early modern Germany' in: L. Abrams and E. Harvey eds., *Gender relations in German history. Power, agency and experience from the sixteenth to the twentieth century* (London 1997) 57-79.

⁸⁵¹ Hanauer, 'Uneheliche Geburten', 660-662.

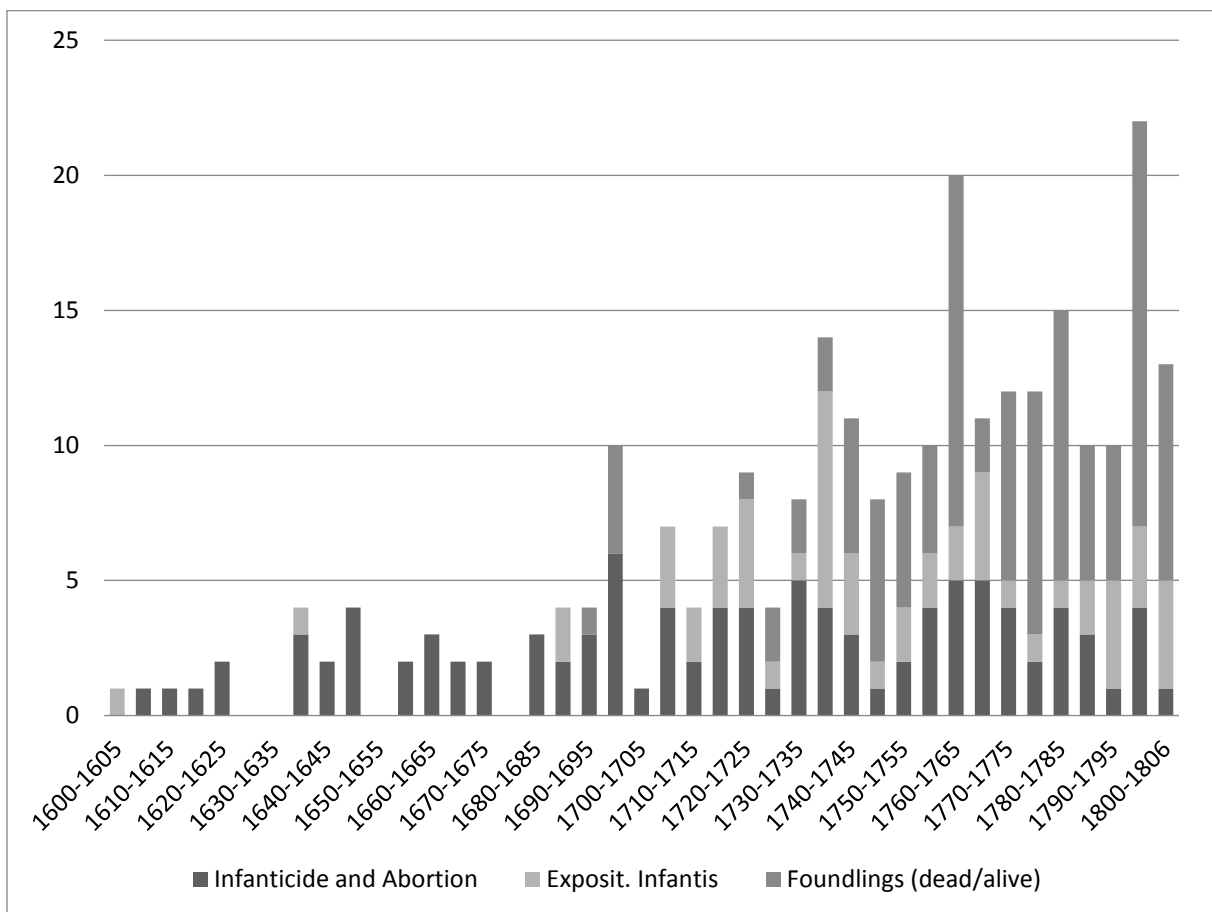
⁸⁵² On foundlings and orphans, see: M. Meumann, *Findelkinder, Waisenhäuser, Kindsmord. Unversorgte Kinder in der frühneuzeitlichen Gesellschaft* (München 1995); J.F. Harrington, *The Unwanted Child. The Fate of Foundlings, Orphans, and Juvenile Criminals in Early Modern Germany* (Chicago 2009). Harrington used the concept of "child circulation" in order to study the myriad ways in which early modern society dealt with unwanted children, instead of simply viewing it from the state's perspective. He prefers this to formulations such as child abandonment, because in his view this term is too restricted and inflexible to encompass all the variety of ways in which children were separated from their parents.

⁸⁵³ PO 3152 *Die in Unehelichen erzielte und denen Leuten heimlich in die Kost und Verpflegung gegebene Kinder betreffend* 24.09.1737; PO 3449 *Ohne obrigkeitliche Erlaubnis sollen keine Kostkinder von Privatisten angenommen werden* 19.08.1755; Criminalia 7093 (1753).

Table 17 Infanticide, fornication and adultery in Frankfurt 1562-1696

	Infanticide	Fornication	Adultery
1562-1580	2	15	0
1581-1600	3	29	8
1601-1620	4	47	15
1621-1640	4	19	6
1641-1660	7	10	3
1661-1680	2	17	3
1681-1696	1	20	10
Total	23	157	45

Source: Van Dülmen, *Theater des Schreckens*, 187.

Figure 15 Infanticide, abortion and child abandonment in Frankfurt 1600-1806

Source: IfSG, *Criminalia 1600-1806*.

Illegitimate mothers usually found employment as wet-nurses, which meant that they had to move in with their employer, who was usually unwilling to take in the illegitimate child as well.⁸⁵⁴ This assumption is supported by the fact that the number of women prosecuted for child abandonment was particularly high during the period when the city council first issued a decree that criminalised the placement of illegitimate children in foster care. Most of the foundlings were not abandoned immediately after their birth, but were usually already several months or even years old. This indicates that women who abandoned their children were probably driven by very different motives than women who had committed infanticide.

In other regions of early modern Germany, the enlightened infanticide debate had fostered the establishment of foundling homes or other institutions to aid unmarried single mothers, specifically with the purpose of preventing infanticide. In Frankfurt, such initiatives did not exist, even though the infanticide debate was also very much alive in legal and public debates in the city.⁸⁵⁵ This pattern suggests that the increasing restrictions placed on illegitimate mothers during this period led women to seek other solutions to cope with the hardship they faced, but that this solution was not infanticide.

The motives for infanticide during this period were undoubtedly complex, but nevertheless it cannot be ignored that women prosecuted for infanticide all shared similar characteristics. One of the main characteristics that stand out was the fact that the majority of them were foreign servants. Based on the index of the *Verhöramt*, it was possible to establish the origin of 64 of the women accused of infanticide: 51 (80%) were migrants.⁸⁵⁶ This number is especially high considering, as we have seen, that the share of migrants and locals among women being prosecuted for illegitimacy was divided equally. This is not just a Frankfurt pattern, but is characteristic of most infanticide cases in early modern Europe.⁸⁵⁷ Equally similar was the age of offenders. In the sample years I collected for this chapter, 23 women were investigated for infanticide and for 18 of them the age was recorded: 2 women were younger than 20; 9 were aged 20 to 25; 5 were aged 25 to 30 and the last 2 were older than 30. Thus, the majority of women that committed infanticide had reached an age that coincided with or was very close to the average age of marriage, and which they might have been able to achieve had circumstances been different.

The precarious social position of unmarried pregnant migrant women has to be taken into account as an explanatory factor when it comes to child infanticide. Unlike local women, they were

⁸⁵⁴ For unwed mothers working as wet nurses, e.g.: Criminalia 3138 (1721); Criminalia 7142 (1754); Criminalia 7756 (1761); Criminalia 7806 (1762); Criminalia 9606 (1786); Konsistorium, Protokolle 1780, folio 77.

⁸⁵⁵ Freyh, 'Frankfurter Kindsmordprozesse', 117.

⁸⁵⁶ Also: Freyh, 'Frankfurter Kindsmordprozesse', 121-122.

⁸⁵⁷ Van Dülmen, *Frauen*, 82-83; A.M. Kilday, *A history of infanticide in Britain, c. 1600 to the present* (New York 2013) 24-25; Van der Heijden, *Women and Crime*, 55.

less able to find enough informal support or start a paternity suit.⁸⁵⁸ Of course, not every migrant woman who became pregnant out of wedlock resorted to infanticide, but it is clear that their situation was more precarious than that of women who could rely on a social support network. The women usually denounced men of a similar social standing as the child's father; in many cases they had worked together for the same employer. Anna Maria Kochin from St. Goar (the last woman to be sentenced to death for infanticide in Frankfurt) stated that the father was a *Gürtlersgesell* from Berlin, whom she met when she was employed by his master as a maid. When their employer discovered the relationship, Anna Maria was dismissed.⁸⁵⁹ Katharina Beuscherin also met the father of her illegitimate child while working for her master, a local pig slaughter. She too, was dismissed upon the discovery of her pregnancy.⁸⁶⁰

Although it is clear from these two and other examples that the discovery of pregnancy could lead to unemployment, both Anna Maria and Katharina managed to find employment after their dismissal while still pregnant. In fact, the majority of the women prosecuted for infanticide were employed when they gave birth, which also led to the discovery of the crime in most cases. Cases were either denounced to the authorities by household members, or by midwives or sworn women who were called to the scene by the household members.⁸⁶¹

Moreover, the infanticide cases reveal how single women were monitored closely by employers and the neighbourhood.⁸⁶² The women themselves often denied that they knew of their pregnancy and claimed to be surprised and overwhelmed by their labour. The interrogation of witnesses reveals, however, that they were often confronted by employers and neighbours prior to the birth because they suspected a pregnancy. In 1680, Anna Katharina Stättin had given birth under suspicious circumstances early in the morning in the privy of her employer's home.⁸⁶³ Anna Katharina claimed that the child was stillborn, but the authorities suspected otherwise and pointed out several aggravating circumstances, most particularly Anna Katharina's attempts to hide the pregnancy. Her mistress, Anna Sophia Cratzin, testified that she had asked Anna Katharina point blank whether or not she was pregnant, to which the latter took her hand and pressed it on her belly, asking: 'Where do you feel a child?' Anna Sophia investigated the belly of her maid, but stated she felt nothing, and that the belly felt normal and soft. Still suspicious, she warned her maid and told her that 'if she was pregnant she shouldn't hurt the child in any case'.⁸⁶⁴ During her

⁸⁵⁸ Freyh, 'Frankfurter Kindsmordprozesse', 130; Kamp and Schmidt, 'Getting Justice'; Vermeesch, 'Legal agency'.

⁸⁵⁹ Criminalia 9444 (1783).

⁸⁶⁰ Criminalia 7675 (1760).

⁸⁶¹ E.g. Criminalia 1241 (1662); Criminalia 3349 (1724); Criminalia 7734 (1761); Criminalia 8109 (1764); Criminalia 9167 (1780); Criminalia 9192 (1780).

⁸⁶² E.g. Criminalia 1610 (1684); Criminalia 2281 and 2296 (1701); Criminalia 7675 (1760); Criminalia 8109 (1764).

⁸⁶³ Criminalia 1505 (1680); Strafenbuch, 16.04.1681..

⁸⁶⁴ Criminalia 1505 (1680) folio 15.

interrogations, Anna Katharina admitted that her mistress suspected that she was pregnant, but that she had denied this because another maid in the household had told her that if their mistress were to find out that she was pregnant, she would send her away. When she found herself in labour, she did not call anyone to assist her because she felt 'ashamed [...] and was afraid that people would kill her'.

Especially women who left town for a short period only to return much slimmer than when they left were suspected. Just how much the mobility of women was watched by neighbours and townspeople and could be associated with trying to cover up an illegitimate pregnancy is revealed by the case of Juliana Adolphin from the small village of Hausen, which was part of Frankfurt's territory.⁸⁶⁵ Juliana had worked as a domestic servant for the baker Glöcker in Frankfurt for over three years when she returned to her native village in the spring because she was sick. Despite the fact that Juliana, according to the various testimonies of her neighbours in Hausen, had a good reputation and was not known to have 'loose contacts' (*liederlichen umgang*) with men, her return to the village caused some serious gossip. As Juliana had gained considerable weight and stayed indoors due to her sickness, people started saying that she might be pregnant. These circumstances had even led Juliana's mother to believe that her daughter was pregnant, as a result of which she arranged a midwife and baby clothing in preparation for the birth, which, of course, fostered the gossip. As a result of the gossip, the village *Schultheiss* reported the case to the *Landamt*, who in turn referred it to the examination office. Juliana was examined by two midwives as part of the investigation. The two women concluded that Juliana was not, and had not been, pregnant. Due to the medical examination and the positive testimonies about her character by various villagers, it was concluded by the examination office that there was no reason to sentence Juliana, and she was released from prison and cleared of all suspicion.

The actual number of prosecuted infanticide cases throughout early modern Germany in the early modern period was rather low.⁸⁶⁶ Richard van Dülmen has argued that, compared to other cities in early modern Germany, Frankfurt's treatment with regard to infanticide was rather lenient. The *Carolina* imposed high standards for possible conviction of infanticide. It had to be proven that the child had actually died at the hand of the mother and a confession was always needed in order for her to be convicted. More than half of the women, therefore, were eventually not sentenced to death. But even though the women could not be convicted of infanticide, they were convicted of fornication (or adultery) and banished from the territory.⁸⁶⁷ There are only a couple of examples where the woman was acquitted of any suspicion entirely and allowed to stay in the

⁸⁶⁵ Criminalia 7781 (1762).

⁸⁶⁶ Ulbricht, *Kindsford*, 176-188.

⁸⁶⁷⁸⁶⁷ Van Dülmen, *Frauen*, 63.

town. Usually these women were locals and were able to find trustworthy character witnesses who could vouch for them.⁸⁶⁸

The fact that for some women, even if they formed a minority, infanticide felt like the only option (or at least this is what the authorities suspected) when faced with the loss of honour and the resulting financial insecurity and shame option shows that the early modern moral's regime cannot be understood simply in opposing terms of either oppression or leniency.

Conclusion

This chapter set out to investigate the nature of Frankfurt's moral policy. After the Reformation, the secular authorities increasingly took over control of the regulation of marriage and sexuality. The sixteenth and seventeenth centuries were characterised by the implementation of new laws that criminalised all extra-marital sexual relationships. Fornication and adultery became punishable by law. Moreover, in the eighteenth century the city council widened the control over marriage by linking it to economic and demographic policies. In order to marry, and set up a new household, couples now needed to prove that they were financially able to do so. Thus, the early modern period witnessed an increasing effort by the secular authorities to take control over matters that had hitherto been submitted to ecclesiastical authorities. Moreover, economic and moral considerations regarding the control over marriage and sexuality became increasingly intertwined.

The prosecution of sexual offences in early modern Frankfurt was dealt with by the ecclesiastical and semi-ecclesiastical moral courts (the *Sendamt* and the *Konsistorium*) as well as the secular criminal court. Historians have previously perceived such institutions as contradicting or overlapping, each pursuing different aims. This chapter has shown that in Frankfurt this was not the case. Rather, the tasks of both institutions were clearly differentiated but both contributed to maintaining the '*Christliche Zucht- und Ordnung*'. The *Sendamt/Konsistorium* were the primary institution in charge of prosecuting carnal offences. As such, it functioned as a lower court and had the capacity to impose monetary fines, imprisonment or expulsion. The *Verhöramt* on, the other hand, mostly dealt with offences that exceeded the competences of the moral court, and dealt with sexual offences in their role as a court of enquiry for the high criminal court. Both institutions prosecuted the offences with the same aim, but differed in their capacity to do so. The institutions functioned complementary to each other, and worked together in order to prosecute immorality and maintain social order and financial stability.

However, the prosecution of sexual offences was not only characterised by authorities imposing punitive discipline, either through the consistory or through the criminal court. The

⁸⁶⁸ E.g.: Criminalia 3327 (1723); Criminalia 5598 (1743).

consistory was a place in which sexual transgressions were punished, but where at the same time, disputes resulting from the same transgressions could be settled as well. Although a large variety of sexual acts were considered as crimes, in the eighteenth century Frankfurt's authorities increasingly focused on the prosecution of illegitimacy. Even so, women who had become pregnant out of wedlock were not necessarily left defenceless. The opportunities available to women were determined by the aim of the urban authorities to impose strict control. Unlike what is known for other countries, the city council of Frankfurt imposed restrictions on the freedom to settle moral issues through extra-judicial arrangements without notifying the *Konsistorium*. Thus, settling paternity suits always meant self-disclosure. Consequently, the double function of the consistory meant that women therefore often appeared before these courts as plaintiff and defendant at the same time.

A woman had the opportunity to claim financial compensation for the expenses of childbirth, demand damages for her defloration (if she was a virgin, of course), enforce alimony payments from the child's father or even file a suit to force him to fulfil broken marriage promises. However, this does not mean that the authorities can be regarded as 'helpers' for women in need, or women as 'accomplices' to the moral policies of the authority. This would deny the fact that authorities implemented the uses of justice in order to control sexuality. Settling paternity cases did not exempt women from receiving punishment by the *Konsistorium*. Moreover, the opportunity to start paternity suits was not open to all women. For many women who became pregnant out of wedlock, the consequences were high – especially if they were expelled. To some women the threat of prosecution could lead to desperate measures, including infanticide. Still, women *did* make use of the courts and accommodated them to their own needs. By doing so, even if it was from a subordinate position, women shaped the institutions as well.