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By

Jeannette Kamp

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Maps by UvA-Kaartenmakers, Castricum.

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CHAPTER 1

Introduction

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

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

1 'Frauenkriminalität fördern', *Spiegel Online*, 11 March 2015, (accessed 03-07-2017), https://www.spiegel.de/spam/satire-bei-spiegel-online-frauenkriminalitaet-foerdern-a-1022763.html.

2 Michael R. Gottfredson and Travis Hirschi, *A General Theory of Crime* (Stanford, CA: Stanford University Press, 1990), 145; Frances Heidensohn and Marisa Silvestri, 'Gender and Crime', 2012, 344.

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

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towards women by law enforcement, judges, or the community as possible explanations for a consistent underrepresentation of female offenders.[4]

In 1991 historian Robert Jütte published the first German-language article providing an overview of available data about gender differences in recorded crime in late medieval and early modern Europe. Although Jütte pointed out local variations in the relative number of women prosecuted, he stressed that there was a historical continuity of female underrepresentation in the area of criminal justice.[5] Since then, however, historians have moved away from a perspective of viewing female criminality in terms of continuity, and have rather adopted the perspective of change. In reaction to Jütte's article, renowned German crime historian Gerd Schwerhoff argued that considering the evidence presented in the study, with the share of women out of the total number of offenders varying between 10 percent and 40 percent, female 'underrepresentation' seems to be a very crude common denominator.[6]

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

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4 Gerd Schwerhoff, *Aktenkundig und Gerichtsnotorisch: Einführung in der Historische Kriminalitätsforschung* (Tübingen: Diskord, 1999), 149–67.

5 Robert Jütte, 'Geschlechtsspezifische Kriminalität im Späten Mittelalter und in der Frühen Neuzeit', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung* 108, no. 1 (1991): 93.

6 Schwerhoff, *Aktenkundig und Gerichtsnotorisch*, 152.

7 Malcolm M. Feeley and Deborah L. Little, 'The Vanishing Female: The Decline of Women in the Criminal Process, 1687–1912', *Law & Society Review* 25, no. 4 (1991): 719–57; Malcolm M. Feeley, 'The Decline of Women in the Criminal Process: A Comparative History', *Criminal Justice History* 15 (1994): 235–74.

8 Peter King, *Crime and Law in England, 1750–1840: Remaking Justice from the Margins* (Cambridge: Cambridge University Press, 2006), 196–223; Shani. D'Cruze and Louise A. Jackson, *Women, Crime and Justice in England since 1660* (Basingstoke: Palgrave Macmillan, 2009), 16–19; Barry S. Godfrey and Paul Lawrence, *Crime and Justice: 1750–1950* (Cullompton: Willan, 2005), 130–34; Greg T. Smith, 'Long-Term Trends in Female and Male Involvement

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The academic debate about 'The Vanishing Female' has yielded important insights into the nature of women's offending and changes over time. However, the discussions have tended to oversimplify the early modern period as a time of high female involvement in crime, and paid little attention to regional differences within the period itself. While cities like Amsterdam and London indeed showed high levels of female offending (with percentages up to 50 percent), data for German cities displayed much lower figures. In sixteenth-century Cologne, women accounted for 16 percent of registered offenders, and in seventeenth- and eighteenth-century Frankfurt this was around 22 percent.[9] In order to properly understand what factors contributed to gender differences among recorded offences in the period, it is therefore necessary to study not only regions with high figures, but also those with lower rates.

Most recently Manon van der Heijden and Marion Pluskota stated that we still know very little about 'the structural impact of the local and regional contexts of female crime'.[10] They argue that thorough analysis is needed in order to understand whether or not one can really speak of 'a general pattern of women's crime in the early modern period'.[11] More input is needed in order to understand variations in early modern female offending, as well as to gain a better understanding of different factors that shaped the representation of women in recorded crime. This book aims to do exactly that. It investigates the development of female crime in seventeenth- and eighteenth-century Frankfurt and places it in the context of other studies on early modern female crime in Europe. It examines why women were underrepresented in recorded crime in early modern Frankfurt, and how this pattern was shaped by the distinct interplay of local factors, most notably social and legal norms, patterns

in Crime', in *The Oxford Handbook of Gender, Sex, and Crime*, ed. Rosemary Gartner and Bill McCarthy (New York: Oxford University Press, 2014), 139–57; Manon Van der Heijden and Valentijn Koningsberger, 'Continuity or Change? Female Crime in the 19th-Century Netherlands', *Crime, History & Societies* 17, no. 1 (2013): 101–28; Manon Van der Heijden, 'Women and Crime, 1750–2000', in *The Oxford Handbook of the History of Crime and Criminal Justice*, ed. Paul Knepper and Anja Johansen (Oxford: Oxford University Press, 2016), 250–67; G. Geltner, 'No-Womans Land? On Female Crime and Incarceration, Past, Present, and Future', *Justice Policy Journal* 7, no. 2 (2010); Paul Knepper, *Writing the History of Crime* (London: Bloomsbury Academic, 2016), 173–201.

9 Gerd Schwerhoff, 'Geschlechtsspezifische Kriminalität im frühneuzeitlichen Köln', in *Von Huren und Rabenmüttern: weibliche Kriminalität in der frühen Neuzeit*, ed. Otto Ulbricht (Köln: Böhlau, 1995), 91; Jeannette Kamp, 'Female Crime and Household Control in Early Modern Frankfurt Am Main', *The History of the Family* 21, no. 4 (2016): 536–37.

10 Manon Van der Heijden and Marion Pluskota, 'Introduction to Crime and Gender in History', *Journal of Social History* 51, no. 4 (2018): 665.

11 Ibid.

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of deviance and mechanisms of social control. It will argue that regional variations can be explained by different regimes of social control, which in their interplay with other factors shaped patterns of crime, gender and prosecution. The following section engages with the historiography on crime and gender in the early modern period. It will focus on the various factors that scholars have put forward to explain the level of women's participation in crime and will explain why more local case studies are needed for a better understanding of these factors, and why the case study of Frankfurt is particularly important. I will then explain why social control mechanisms are a crucial factor in the study of gender differences in crime.

1 Forgotten Women: Putting Gender in Histories of Crime

Under the influence of the 'new social history' and the 'history from below' in the 1970s and 1980s, the study of crime developed as an important subdiscipline of social history.[12] Most scholars paid little or no attention to crime patterns of women in the early days of the discipline.[13] Notable exceptions were the study by Barbara Hanawalt on the female felon in fourteenth-century England, John Beattie's analysis of female offending in eighteenth-century Surrey, and the work of French historians Nicole Castan and Arlette Farge.[14] Part of the reason why women were paid little attention by historians of crime was the focus on quantitative methods, long-term trends, and serious offences. As women tended to form a minority of offenders prosecuted for crimes

12 Barry S. Godfrey, Paul. Lawrence, and Chris A. Williams, *History & Crime* (Los Angeles, CA: Sage, 2008), 16–21; Paul Lawrence, 'The Historiography of Crime and Criminal Justice', in *The Oxford Handbook of the History of Crime and Criminal Justice*, ed. Paul Knepper and Anja Johansen (Oxford: Oxford University Press, 2016), 17–37.

13 For a recent overview of the historiography on female crime, see: Ariadne Schmidt and Marion Pluskota, 'Gevaarlijke vrouwen, gewelddadige mannen? Een review van het historisch onderzoek naar criminaliteit en gender in Europese steden, 1600–1900'., *Stadsgeschiedenis* 8, no. 1 (2013): 60–77; For German speaking territories see: Gerd Schwerhoff, *Historische Kriminalitätsforschung* (Frankfurt: Campus, 2011), Zusatztext 1. Zur Sozialgeschichte der Kriminalität. Geschlecht—Alter—sozialer Status'.

14 Barbara A. Hanawalt, 'The Female Felon in Fourteenth-Century England', *Viator* 5 (1974): 253–68; John M. Beattie, 'The Criminality of Women in Eighteenth-Century England', *Journal of Social History* 8, no. 4 (1975): 80–116; Nicole. Castan, *Les criminels de Languedoc: les exigences d'ordre et les voies du ressentiment dans une société prérévolutionnaire (1750–1790)* (Toulouse, 1980), 24–36; Arlette Farge, *Délinquance et criminalité: le vol d'aliments à Paris au 18. siècle* (Paris: Plon, 1974).

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as murder and manslaughter, gender was not considered a factor of importance.[15] Whenever women were considered, this was usually in their role as victims, both of male perpetrators and of a discriminatory patriarchal criminal justice system, or as perpetrators of typically 'female' offences such as witchcraft, prostitution and infanticide. The statistical absence of women was seen as an indicator for their weak and passive nature, and the limited extent of their public lives. Women were usually not considered as agents on their own account—their criminal activities considered to be limited to that of acting as accomplices for male offenders.[16]

This attitude began to change by the early 90s, as the dominant focus on the use of criminal statistics to study early modern criminality received considerable criticism, particularly from historians studying the aspect of gender. In their introduction to the first edited volume on female criminality in the early modern period, Garthine Walker and Jenny Kermode stated that as a result of the emphasis on quantification women had been 'duly counted and then discounted'.[17] Rather than facilitating our understanding of the nature

15 Ted Robert Gurr, 'Historical Trends in Violent Crime: A Critical Review of the Evidence', *Crime and Justice* 3 (1981): 295–353; Pieter Spierenburg, 'Long-Term Trends in Homicide: Theoretical Reflections and Dutch Evidence, Fifteenth to Twentieth Centuries', in *Civilization of Crime: Violence in Town and Country since the Middle Ages*, ed. Eric A Johnson and Eric H Monkkonen (Urbana, IL: University of Illinois Press, 1996), 63–105; Manuel Eisner, 'Modernization, Self-Control and Lethal Violence: The Long-Term Dynamics of European Homicide Rates in Theoretical Perspective', *British Journal of Criminology* 41, no. 4 (2001): 618–38; For a discussion on the interpretation of long-term trends in violent offences: Pieter Spierenburg, 'Violence and the Civilizing Process: Does It Work?', *Crime, History & Societies* 5, no. 2 (2001): 87–105; Gerd Schwerhoff, 'Criminalized Violence and the Process of Civilisation—a Reappraisal', *Crime, History & Societies* 6, no. 2 (2002): 103–26; Pieter Spierenburg, 'Theorizing in Jurassic Park: A Reply to Gerd Schwerhoff', *Crime, History & Societies* 6, no. 2 (2002): 127–28; More recently, historians have incorporated a gender aspect in the study of violence by focusing on the importance of honour and masculinity: Pieter Spierenburg, *Men and Violence: Gender, Honor, and Rituals in Modern Europe and America* (Columbus, OH: Ohio State University Press, 1998); Joachim Eibach, 'Violence and Masculinity', in *The Oxford Handbook of the History of Crime and Criminal Justice*, ed. Paul Knepper and Anja Johansen (Oxford: Oxford University Press, 2016), 229–49; Gerd Schwerhoff, 'Early Modern Violence and the Honour Code: From Social Integration to Social Distinction?', *Crime, History & Societies* 17, no. 2 (2013): 27–46.

16 Otto Ulbricht, 'Einleitung: Für eine Geschichte der weiblichen Kriminalität in der Frühen Neuzeit oder: Geschlechtergeschichte, historische Kriminalitätsforschung und weibliche Kriminalität', in *Von Huren und Rabenmüttern: weibliche Kriminalität in der frühen Neuzeit*, ed. Otto Ulbricht (Köln: Böhlau, 1995), 1–35.

17 Garthine Walker and Jenny Kermode, 'Introduction', in *Women, Crime and Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker (London: UCL Press, 1994), 4.

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of women's offending, Walker and Kermode argued, the prevalent (statistical) methodologies were having a hampering effect. Critical voices were also raised among the early advocates for studying crime and gender among German-speaking scholars.[18] After a self-proclaimed slow start in the history of crime in the early 90s, German crime historians almost immediately incorporated the aspect of gender.[19] Susanne Burghartz argued that gender should always be an important factor in the study of crime, regardless of women's statistical weight among prosecuted offenders. She stated that even if criminal statistics demonstrated a relatively constant underrepresentation of women over time, this does not necessarily imply a universal explanation, given that they resulted from different historical societal contexts and attitudes towards deviance.[20]

The shift towards a more inclusive approach towards female offending put into perspective what should be studied and considered as female crimes in the first place. For a long time, the label 'female crime' seemed to refer only to offences in which women constituted the majority of offenders, such as witchcraft, infanticide, scolding and prostitution.[21] However, careful examinations of the actual crime patterns of women in several late medieval and early modern cities revealed that the majority were not prosecuted for so-called 'female crimes', but rather for more mundane offences such as theft. In many ways, women's criminality was similar to that of men, or at least more similar than

18 Andrea Griesebner and Monika Mommertz, 'Fragile Liebschaften? Methodologische Anmerkungen zum Verhältnis zwischen historischer Kriminalitätsforschung und Geschlechtergeschichte', in *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Konstanz: UVK Universitätsverlag Konstanz, 2000), 205–32.

19 Gerd Schwerhoff, 'Kriminalitätsgeschichte im deutschen Sprachraum: Zum Profil eines "verspäteten" Forschungszweiges', in *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Konstanz: UVK Universitätsverlag Konstanz, 2000), 21–67; Claudia Ulbrich, '"Kriminalität" und "Weiblichkeit" in der Frühen Neuzeit: Kritische bemerkungen zum Forschungsstand', *Kriminologisches Journal* 27, no. 5 (1995): 208–20; Susanna Burghartz, '"Geschlecht" und "Kriminalität"—ein "fruchtbares" Verhältnis?', in *Weiblich—männlich : Geschlechterverhältnisse in der Schweiz: Rechtsprechung, Diskurs, Praktiken*, ed. Rudolf. Jaun and Brigitte. Studer (Zürich: Chronos, 1995), 23–31; Otto Ulbricht, ed., *Von Huren und Rabenmüttern: weibliche Kriminalität in der frühen Neuzeit* (Köln: Böhlau, 1995); Ulinka Rublack, *The Crimes of Women in Early Modern Germany* (Oxford: Clarendon Press, 1999).

20 Burghartz, 'Geschlecht und Kriminalität', 25–26.

21 Walker and Kermode, 'Introduction', 5; Ulbricht, 'Einleitung', 6; Lyndan Warner, 'Women Before the Law', in *The Ashgate Research Companion to Women and Gender in Early Modern Europe*, ed. Allyson M. Poska, Jane Couchman, and Katherine A. McIver (Farnham: Ashgate, 2013), 247.

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was previously acknowledged.[22] Moreover, historians were able to show that the criminal sources of the highest courts that were traditionally used, and on which many of the quantifications were based, reflected only a limited part of the criminal justice system. Evidence from across Europe established that lower courts usually showed much higher levels of female involvement.[23]

These new insights put older explanatory models under pressure. It is no longer sufficient to explain early modern female crime patterns and gender differences in recorded offences simply as a result of patriarchal power relationships.[24] First, it leaves little room to study the agency of female offenders, and continues to portray women's delinquency as a deviation from the norm (i.e. male delinquency). More and more, historians turned their focus on women as active historical agents within the realm of criminal justice and focused on women as users of justice rather than passive players or victims of their subordinate position in early modern society. They demonstrated how women instrumentally employed expected gender norms in court as a defence strategy.[25] Scholars working on early modern moral courts, for example, established that women actively made use of these institutions to discipline their husbands for misconduct. Patriarchy functioned as a 'double-edged' sword which bound men just as women to expected gender norms.[26] Ulinka Rublack's study on female

22 Garthine Walker, *Crime, Gender, and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), 412; Trevor Dean, 'Theft and Gender in Late Medieval Bologna', *Gender & History* 20, no. 2 (2008): 412.

23 Karen Jones, *Gender and Petty Crime in Late Medieval England: The Local Courts in Kent: 1460–1560* (Woodbridge: Boydell & Brewer, 2006); King, *Crime and Law*, 219; Manon Van der Heijden, 'Women,Violence and Urban Justice in Holland c. 1600–1838', *Crime, History & Societies* 17, no. 2 (2013): 83–85.

24 Schwerhoff, *Aktenkundig und Gerichtsnotorisch*, 151.

25 Joachim Eibach, 'Böse Weiber und grobe Kerle: Delinquenz, Geschlecht und soziokulturelle Räume in der frühneuzeitlichen Stadt', in *Kriminalitätsgeschichte: Beitr äge zur Sozial- und Kulurgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Konstanz: UVK Universitätsverlag Konstanz, 2000), 672; Schwerhoff, 'Geschlechtsspezifische Kriminalität', 105–7; Laura Gowing, 'Language, Power and the Law: Women's Slander Litigation in Early Modern London', in *Women, Crime and Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker (London: UCL Press, 1994), 26–47; Jennine Hurl-Eamon, *Gender and Petty Violence in London, 1680–1720* (Columbus, OH: Ohio State University Press, 2005); Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park, PA: The Pennsylvania State University Press, 1998).

26 Heinrich Richard Schmidt, 'Hausväter vor Gericht: Der Patriarchalismus als zweischneidiges Schwert', in *Hausväter, Priester, Kastraten: zur Konstruktion von Männlichkeit in Spätmittelalter und Früher Neuzeit*, ed. Martin Dinges (Göttingen: Vandenhoeck & Ruprecht, 1998), 213–36; Joachim Eibach, 'Der Kampf um die Hosen und die Justiz: Ehekonflikte in Frankfurt im 18. Jahrhundert', in *Kriminalität in Mittelalter und*

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crime in seventeenth-century Germany highlighted the experiences of ordinary women and showed how they actively and consciously shaped the way conflicts were handled, for example through the use of gossip.[27] Second, explaining women's offending only a result of patriarchal power relations neglects the impact of both the local context and changes over time. Gender ideologies, legal norms, demographic and economic realities all shaped the everyday lives of men and women, and were highly determined by the local context.

2 Crime and Social Control

Thus, by now historians generally agree that criminal statistics are not only a reflection of actual behaviour, but the result of societal and institutional selection processes that determine what actually ends up in criminal courts. That is not to say that quantitative data holds no value for the study of gender and crime, but that they should offer a starting point of analysis, instead of the answer.[28] According to Arnot and Usborne, this means that 'the deconstruction and critical interrogation of the 'terms of the judicial record' is a crucial part of understanding the historical relationship between gender norms and institutional processes.[29] Joachim Eibach called this an 'enlightened' approach to (constructed) criminal statistics—one where historians do not simply see statistics as facts, but analyse the social, cultural and institutional selection processes behind the statistics.[30]

Früher Neuzeit: soziale, rechtliche, philosophische und literarische Aspekte, ed. Sylvia Kesper-Biermann and Diethelm Klippel (Wiesbaden: Harrassowitz, 2007), 167–88; Ulrike. Gleixner, *'Das Mensch' und 'der Kerl': die Konstruktion von Geschlecht in Unzuchtsverfahren der Frühen Neuzeit (1700–1760)* (Frankfurt am Main: Campus, 1994); Susanna Burghartz, *Zeiten der Reinheit, Orte der Unzucht: Ehe und Sexualität in Basel während der frühen Neuzeit* (Paderborn: Schöningh, 1999).

27 Rublack, *The Crimes of Women*.

28 Schwerhoff, *Aktenkundig und Gerichtsnotorisch*, 153–54.

29 Margaret L. Arnot and Cornelie Usborne, 'Why Gender and Crime? Aspects of an International Debate', in *Gender and Crime in Modern Europe*, ed. Margaret L. Arnot and Cornelie Usborne (London: Routledge, 1999), 3; Also: Heide Wunder, '"Weibliche Kriminalität" in der Frühen Neuzeit: Überlegungen aus der Sicht der Geschlechtergeschichte', in *Von Huren und Rabenmüttern: weibliche Kriminalität in der frühen Neuzeit*, ed. Otto Ulbricht (Köln: Böhlau, 1995), 39–61.

30 Joachim Eibach, *Frankfurter Verhöre: städtische Lebenswelten und Kriminalität im 18. Jahrhundert* (Paderborn: Schöningh, 2003), 27.

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Older studies on crime and deviance in early modern Germany were strongly influenced by Gerhard Oestreich's concept of social disciplining.[31] He argued that the rise of the early modern absolutist state enabled authorities to impose coercive discipline on their subjects through the implementation of new norms in the form of ordinances and other formal mechanisms. Since the 90s, the study of crime has witnessed a paradigm shift. This changed the perspective from criminal courts as a repressive force of early modern 'weak' states attempting to gain control, linking it to processes of state formation, to a perspective in which criminal prosecution is seen as (partially) driven by local demand. The population made active use of the courts in order to settle conflicts, which shaped the way these institutions (and the norms they aimed to impose) functioned. In this perspective, courts were not simply a place of top-down control but a locus for interaction and conflict settlement.[32]

The top-down disciplining perspective was increasingly supplemented and replaced with the concept of social control that enabled bottom-up approaches to be studied as well. Historians of crime have widely accepted Martin Dinges' definition, according to whom social control referred to 'all forms by which historical agents define deviant behaviour and react to it'.[33] It thus represents a much wider concept than social disciplining, as it includes both formal and informal regulation of transgressive behaviour. The former refers to state institutions and instruments of control, in particular the criminal justice system, while the latter refers to regulations within the community itself. In

31 Gerhard Oestreich, 'Strukturprobleme des europäischen Absolutismus: Otto Brunner zum 70. Geburtstag', *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte* 55, no. 3 (1968): 329–47; Heinz Schilling, 'Profil und Perspektiven einer interdisziplinären und komparatistischen Disziplinierungsforschung jenseits einer Dichtotomie von Gesellschafts- und Kulturgeschichte', in *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitliche Europa*, ed. Heinz Schilling and Lars Behrisch (Frankfurt am Main: Klostermann, 1999), 3–36; Pieter Spierenburg, 'Social Control and History: An Introduction', in *Social Control in Europe: Volume 1, 1500–1800*, ed. Herman Roodenburg and Pieter Spierenburg (Columbus, OH: Ohio State University Press, 2004), 16.

32 Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984); Richard Van Dülmen, *Theater des Schreckens: Gerichtspraxis und Strafrituale in der frühen Neuzeit*, 5th ed. (München: C.H. Beck, 2010); Martin Dinges, 'The Uses of Justice as a Form of Social Control in Early Modern Europe', in *Social Control in Europe: Volume 1, 1500–1800*, ed. Herman Roodenburg and Pieter Spierenburg (Columbus, OH: Ohio State University Press, 2004), 159.

33 Dinges, 'Uses of Justice', 161.

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this book I follow the approach of Gerd Schwerhoff, according to whom the history of crime is focused on the triangular relationship between (social and legal) norms, deviance (i.e. the transgression of these norms) and the different institutions and mechanisms of social control.[34]

In early modern cities, criminal courts were not the only places where deviance was regulated. Social control was exercised by a whole range of formal and informal institutions, including ecclesiastical courts, guilds, and notaries, and through mechanisms like gossip, insults and violence.[35] Bernard Capp, for example, demonstrated that female networks in urban neighbourhoods played an important role in the policing of boundaries of acceptable behaviour through the use of gossip. The importance of honour in early modern societies meant that gossip could generate collective pressure and thereby force individuals to conform to the expected norms.[36]

The gender gap among recorded offences can be partially related, historians argued, to differences in social control. First, it is assumed that authorities were less inclined to prosecute female offenders, because they considered the transgressions of women as less disrupting to social order than those of men.[37] Second, historians have argued that women's crimes were more likely to be handled by lower courts or more informal means of control, such as informal sanctioning within the household or the neighbourhood community.[38] Third, it is assumed that the restricted socio-economic roles assigned to women

34 Schwerhoff, *Aktenkundig und Gerichtsnotorisch*, 10–14.

35 Heinz Schilling and Lars Behrisch, eds., *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitliche Europa* (Frankfurt am Main: Klostermann, 1999); Herman Roodenburg, 'Social Control Viewed from below: New Perspectives', in *Social Control in Europe: Volume 1, 1500–1800*, ed. Herman Roodenburg and Pieter Spierenburg (Columbus, OH: Ohio State University Press, 2004), 145–58; Francisca Loetz, 'L'infrajudiciaire: Facetten und Bedeutung eines Konzepts', in *Kriminalitätsgesch ichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Konstanz: UVK Universitätsverlag Konstanz, 2000), 545–62.

36 B. S. Capp, *When Gossips Meet : Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003).

37 Lucia Zedner, 'Women, Crime, and Penal Responses: A Historical Account', *Crime and Justice* 14 (1991): 320; Joachim Eibach, 'Männer vor Gericht—Frauen vor Gericht', in *Grenzen und Grenzüberschreitungen: Bilanz und Perspektiven der Frühneuzeitforschung*, ed. Christine Roll, Frank Pohle, and Matthias Myrczek (Köln: Böhlau, 2010), 565–68.

38 Ulbricht, 'Einleitung', 11; Carol Z. Wiener, 'Sex Roles and Crime in Late Elizabethan Hertfordshire', *Journal of Social History* 8 (1975): 39; Drew D. Grey, *Crime, Prosecution and Social Relations: The Summary Courts of the City of London in the Late Eighteenth Century* (Basingstoke: Palgrave Macmillan, 2009), 170.

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influenced their opportunities to commit offences, because they were confined to the domestic sphere.[39]

3 Crime and the City

Historians and criminologists alike commonly consider that the chances of women becoming involved with the law were (and still are) closely related to the extent to which they are able to assume public roles.[40] Scholars found that female criminality in the early modern period was a typical urban phenomenon, and that this is an important factor in explaining the levels of male and female crime in relation to public roles. John Beattie was the first historian to mention the influence of the urban environment in relation to the criminality of women. He found that levels of female offending were higher in the city than in the countryside. According to Beattie, the relatively independent and public life in the city increased their risk of breaking the law. Moreover, the loss of social and economic support networks—often present in more traditional close-knit communities—made women more vulnerable in times of hardship.[41]

Beattie's findings were later confirmed for other regions as well. Peter King and Manon van der Heijden, amongst others, emphasised the importance of urban demographic characteristics in this context.[42] Early modern cities attracted migrants, many of whom were women whose move to the city was connected to life-cycle patterns of work and mobility typical for North-West Europe. But urban economies were precarious and, as Andrew Lees and Lynn Hollen Lees stated, 'created marginal people along with marginal jobs'.[43] Most

39 Jütte, 'Geschlechtsspezifische Kriminalität', 99; Malcolm M. Feeley and Hadar Aviram, 'Social Historical Studies of Women, Crime, and Courts', *Annual Review of Law and Social Science* 6 (2010): 151–71.

40 Van der Heijden, 'Women and Crime', 2016, 250; Robert B. Shoemaker, *Gender in English Society, 1650–1850: The Emergence of Separate Spheres?* (Harlow: Pearson Education, 1998), 296–304; Wunder, 'Weibliche Kriminalität', 45.

41 Beattie, 'Criminality of Women', 96–101; John M. Beattie, *Policing and Punishment in London 1660–1750: Urban Crime and the Limits of Terror* (Oxford: Oxford University Press, 2001), 65.

42 Peter King, 'Female Offenders, Work and Life-Cycle Change in Late-Eighteenth-Century London', *Continuity and Change* 11, no. 1 (1996): 61–90; Ariadne Schmidt and Manon Van der Heijden, 'Women Alone in Early Modern Dutch Towns: Opportunities and Strategies to Survive', *Journal of Urban History* 42, no. 1 (2016): 21–38; Manon Van der Heijden, *Women and Crime in Early Modern Holland*, 2016, 160.

43 Andrew Lees and Lynn Hollen Lees, *Cities and the Making of Modern Europe, 1750–1914* (Cambridge: Cambridge University Press, 2010), 35.

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female migrants were young and unattached. Some turned to petty theft and prostitution as part of a broader 'economy of makeshift', in particular if they had no access to formal or informal social support networks.[44]

Influenced by the theories of Emile Durkheim and Ferdinand Tönnies, historians argued that in contrast to rural societies people who lived in cities were less likely to form close-knit paternalistic networks. As a result, informal social control was less tight in cities where anonymity ruled and face-to-face communities only existed in smaller entities, such as the neighbourhood.[45] However, the city was not only a place of relative freedom, but also of discipline and control.[46] Authorities often perceived young and independent women as a particular threat to social order. The public anxiety towards the many independent migrant women in the city heightened the prosecution efforts of the authorities.[47] Robert Shoemaker stated that 'women's crime was dealt with differently in urban areas: whereas suspected female criminals in rural areas were often dealt with informally, in towns they faced greater distrust'.[48] The stronger formal control in cities was facilitated by the presence of, and easy access to, the criminal justice system and other disciplinary institutions. In rural regions, the nearest court could be far away, and even if there was one nearby, courts often convened only occasionally.[49]

Thus, the city offered a distinct environment which increased both the opportunities for women to commit offences, as well as the chance of their coming into contact with formal control through the criminal justice system. Hitherto this has been used as a very general explanation for crime patterns

44 Olwen H. Hufton, *The Poor of Eighteenth-Century France, 1750–1789* (Oxford: Clarendon Press, 1974), 247, 307.

45 Knepper, *Writing the History of Crime*, 115–44; Mathieu Deflem, 'Ferdinand Tönnies on Crime and Society: An Unexplored Contribution to Criminological Sociology', *History of the Human Sciences* 12, no. 3 (1999): 87–116; Martin Dinges and Fritz Sack, eds., *Unsichere Großstädte? Vom Mittelalter bis zur Postmoderne* (Konstanz: UVK Universitätsverlag Konstanz, 2000).

46 Lees and Lees, *Cities*, 36; Christian Casanova, *Nacht-Leben: Orte, Akteure und obrigkeitliche Disziplinierung in Zürich, 1523–1833* (Zürich: Chronos, 2007).

47 Robert B. Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c. 1660–1725* (Cambridge: Cambridge University Press, 1991), 184–86; Leslie Page. Moch, *Moving Europeans : Migration in Western Europe since 1650* (Bloomington: Indiana University Press, 2003), 145.

48 Shoemaker, *Gender in English Society*, 301–2.

49 Helga Schnabel-Schüle, *Überwachen und Strafen im Territorialstaat: Bedingungen und Auswirkungen des Systems strafrechtlicher Sanktionen im frühneuzeitlichen Württemberg* (Köln: Böhlau, 1997), 175; Michael Frank, *Dörfliche Gesellschaft und Kriminalität: das Fallbeispiel Lippe 1650–1800* (Paderborn: Schöningh, 1995).

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in a large variety of urban locations. Although it offers a valuable explanation for the different extent and patterns of female crime between cities and rural areas, it is too broad a hypothesis to understand the variation between cities and over time. Indeed, the level of independence that women could achieve in early modern cities varied considerably.

Sheilagh Ogilvie argued that patriarchal values were universal in early modern Europe, but that they varied according to the context in which they were put in effect.[50] According to her, they could be enforced most effectively where there were social institutions manifesting 'closure' and 'multiplex relations', such as strong and closely knit communities and guilds.[51] She argued that as a result of the decentralised nature of the Holy Roman Empire, there was a high level of communal autonomy left in the hands of male heads of households, who had a keen interest in cooperating with the state to implement intensified legislation concerning economic, social and demographic behaviour that particularly affected women.[52] Guilds in early modern Germany appear to have been able to manifest 'closure' more effectively than elsewhere. Comparing requirements for access to citizenship and guilds, Jan Lucassen and Piet Lourens found that the regulations were more inclusive in the Dutch Republic than in Germany.[53] Indeed, studies indicate that there were strong legal and ideological sanctions in place for single women living alone in early modern German cities.[54]

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50 Sheilagh Ogilvie, 'How Does Social Capital Affect Women? Guilds and Communities in Early Modern Germany', *The American Historical Review* 109, no. 2 (2004): 356.

51 Ibid., 332; Also: Katherine A. Lynch, *Individuals, Families, and Communities in Europe, 1200–1800: The Urban Foundations of Western Society* (Cambridge: Cambridge University Press, 2003), 25, 56–57; Merry E. Wiesner-Hanks, 'Guilds, Male Bonding and Women's Work in Early Modern Germany', *Gender & History* 1, no. 2 (1989): 125–37.

52 Sheilagh Ogilvie, *A Bitter Living: Women, Markets, and Social Capital in Early Modern Germany* (Oxford: Oxford University Press, 2003), 19–20; For a similar argument, but contrasting it less with other countries: Isabel V. Hull, 'Sexualstrafrecht und geschlechtsspezifische Normen in deutschen Staaten des 17. und 18. Jahrhunderts', in *Frauen in der Geschichte des Rechts: von der frühen Neuzeit bis zur Gegenwart*, ed. Ute Gerhard (München: C.H. Beck, 1999), 221–34; Ulrike Strasser, *State of Virginity: Gender, Religion, and Politics in an Early Modern Catholic State* (Ann Arbor, MI: The University of Michigan Press, 2004).

53 Piet Lourens and Jan Lucassen, ' "Zunftlandschaften" in den Niederlanden und im benachbarten Deutschland', in *Zunftlandschaften in Deutschland und den Niederlanden im Vergleich*, ed. Wilfried Reininghaus (Münster: Aschendorff, 2000), 31–32.

54 Merry E. Wiesner-Hanks, 'Having Her Own Smoke: Employment and Independence for Singlewomen in Germany, 1400–1750', in *Singlewomen in the European Past, 1250–1800*, ed. Judith M. Bennett and Amy M. Froide (Philadelphia, PA: University of Pennsylvania Press, 1999), 192–216; Renate Dürr, 'Die Migration von Mägden in der Frühen Neuzeit', in

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Across North-West Europe, most town dwellers lived in households that Katherine Lynch termed 'plebeian', comprised by relatively few people centred around the nuclear family, but that could include living-in servants.[55] An important feature of legal thinking in the early modern period was that households played an important part in the control of deviant behaviour.[56] More than in other countries, however, the household (*Das Haus*)[57] in early modern Germany embodied a legal entity and a unit of strongly regulated social control.[58] Notions of householding and citizenship, for example, were strongly intertwined.[59] More than elsewhere, German urban authorities controlled the entry and residence of people in their cities by making incorporation into a household a prerequisite for settlement.[60] The authority of the house father (*Hausvater*) stretched beyond the nuclear family and incorporated other household members, also including live-in apprentices and domestic servants. In order to be able to exercise his disciplinary duties, the head of the household possessed a far-reaching, semi-judicial authority to discipline and control household members.

The dominance of the household as a place for social order in the early modern period must not be confused with the ideal of separate spheres, which developed in the nineteenth century. According to this ideal, women occupied

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Frauen und Migration, ed. Marita Krauss and Holger Sonnabend (Stuttgart: Steiner, 2001), 117–32; Ogilvie, *Bitter Living*.

55 Lynch, *Individuals, Families, and Communities*, 25.

56 Wunder, 'Weibliche Kriminalität', 55.

57 Claudia Opitz-Belakhal, 'Neue Wege der Sozialgeschichte? Ein kritischer Blick auf Otto Brunners Konzept des "Ganzen Hauses"', *Geschichte und Gesellschaft* 19, no. 1 (1994): 88–98; Philip Hahn, 'Trends der deutschsprachigen historischen Forschung nach 1945: Vom "ganzen Haus" zum "offenen Haus"', in *Das Haus in der Geschichte Europas: ein Handbuch*, ed. Joachim Eibach and Inken Schmidt-Voges (Berlin: De Gruyter Oldenbourg, 2015), 47–64.

58 Heide Wunder, 'Gender Norms and Their Enforcement in Early Modern Germany', in *Gender Relations in German History: Power, Agency and Experience from the Sixteenth to the Twentieth Century*, ed. Lynn Abrams and Elizabeth Harvey (London: UCL Press, 1996), 45–46; Rublack, *The Crimes of Women*, 35; Inken Schmidt-Voges, 'The Ambivalence of Order : Gender and Peace in Domestic Litigation in Eighteenth Century Germany', in *Gender Difference in European Legal Cultures : Historical Perspectives*, ed. Karin Gottschalk (Stuttgart: Steiner, 2013), 71–83.

59 Barbara Ann Tlusty, *The Martial Ethic in Early Modern Germany: Civic Duty and the Right of Arms* (Basingstoke: Palgrave Macmillan, 2011), 1–4; Ulrike Gleixner and Marion W. Gray, 'Introduction: Gender in Transition', in *Gender in Transition: Discourse and Practice in German-Speaking Europe, 1750–1830*, ed. Ulrike Gleixner and Marion W. Gray (Ann Arbor, MI: The University of Michigan Press, 2006), 5–6.

60 Lees and Lees, *Cities*, 37.

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the household and the domestic sphere, which was considered a private space, while men occupied the public sphere.[61] Such a characterisation of the home as a private space is problematic for the early modern period. Garthine Walker and Jenny Kermode have argued that the public/private paradigm was too rigid to discuss women's criminal activities in the early modern period as they moved around between the two spheres. Domestic and economic areas which had traditionally been categorised as private, had in fact much broader functions within the community, thus transcending our modern notions of a private sphere.[62] Similarly, studying the differences between male and female violence, Manon van der Heijden has argued that the paradigm of separate private and public spheres is not adequate to explain differences in male and female behaviour, as normative household ideologies did not reflect daily practices.[63] Moreover, as Danielle van den Heuvel mentioned, the early modern house was not a space of separation of genders, but rather one of regular interaction between men and women.[64] To highlight the public functions and interactions of the early modern household within the urban community during this period, Joachim Eibach has introduced the concept of the 'open house'.[65] Following this new conception of the home, Riitaa Laittinen stated that it is no longer possible to see the home as separate, domestic space, but that instead it should be viewed as an integral part of the urban space.[66]

In order to get a better understanding of the local impact on women's registered crime patterns across early modern Europe, I argue that it is important to consider a more differentiated approach regarding the urban impact. I hypothesise that societies with strong authoritarian social control structures, like there were present Frankfurt, result in significantly different patterns of women in crime compared to the general urban pattern of female crime in North-West Europe. The relatively strong restrictions experienced by women in early

61 Lynch, *Individuals, Families, and Communities*, 154–55.

62 Walker and Kermode, 'Introduction', 7, 12; Amanda Vickery, 'Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History', *The Historical Journal* 36, no. 2 (1993): 383–414.

63 Van der Heijden, 'Women, Violence and Urban Justice', 95–96.

64 Danielle Van den Heuvel, 'Gender in the Streets of the Premodern City', *Journal of Urban History*, 21 May 2018, 0096144218768493, https://doi.org/10.1177/0096144218768493.

65 Joachim Eibach, 'Das offene Haus: kommunikative Praxis im sozialen Nahraum der europäischen Frïhen Neuzeit', *Zeitschrift für Historische Forschung* 38, no. 4 (2011): 621–64.

66 Riitta Laitinen, 'Home, Urban Space and Gendered Practices in Mid-Seventeenth-Century Turku', in *The Routledge History Handbook of Gender and the Urban Experience*, ed. Deborah Simonton (Abingdon: Routledge, 2017), 142.

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

4 History of Crime in Early Modern Frankfurt

This study is not the first to deal with Frankfurt for investigating the history of crime. First and foremost, there is the work of Joachim Eibach. In his study on crime in Frankfurt in the eighteenth century, Eibach provided an overview of the quantitative development of criminality, showing that there was no linear development from violence to property offences in this period. Eibach characterised the criminal justice system in early modern Frankfurt as an institution with a dual function. On the one hand it served as a forum for conflict regulation and the preservation of urban stability and peace, which particularly integrated members of the urban community benefited from and made use of. On the other hand, it was an instrument of repression used by the authorities to channel their growing anxiety towards poor migrants and other marginal groups.[67] Although Eibach paid attention to the influence of gender norms—for example by looking at the role of taverns as a place of male sociability in relation to the prosecution of violence; and the role of women in property offences—it did not form a core analytical aspect of his monograph,

67 Eibach, *Frankfurter Verhöre*, 427–28; Joachim Eibach, 'Die Straßen von Frankfurt am Main: ein gefährliches Pflaster? Sicherheit und Unsicherheit in Großstädten des 18. Jahrhunderts', in *Unsichere Großstädte? vom Mittelalter bis zur Postmoderne*, ed. Martin Dinges and Fritz Sack (Konstanz: UVK Universitätsverlag Konstanz, 2000), 153–73.

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though he reflected on the role of gender in several articles.[68] Eibach's work has demonstrated the importance of inclusionary and exclusionary mechanisms employed by the city authorities to understand the patterns of prosecuted crime. This study will add to his findings by investigating how these mechanisms worked and how they were gendered.

Maria R. Boes' study on criminality in Frankfurt is devoted to the second half of the sixteenth and the seventeenth century. She argued that the professionalisation of the criminal justice system and the growing influence of Roman law had a detrimental effect on the lives of the 'less fortunate', including women, gypsies and Jews, as it strengthened the 'power of male rulers'.[69] Her work has, however, received considerable criticism from other historians. Boes' micro-history approach, they argued, does not support her statements about long-term developments and the influence of Roman law.[70] Although her conceptual framework and overarching conclusions are therefore less suitable as a starting point for this study, her work nonetheless offers some interesting observations that are relevant. Similar to what Eibach witnessed regarding the social profile of offenders in the eighteenth century, Boes showed that in the sixteenth and seventeenth centuries it was the lower classes in particular that were punished: between 1562–1696 not a single patrician woman was recorded in the *Strafenbuch* (book of punishments) for receiving a penal punishment (*peinliche Strafe*).[71]

The changing moral and legal norms following the adoption of Roman Law and under the influence of the Reformation have been studied by several

68 Eibach, 'Böse Weiber'; Eibach, 'Männer vor Gericht—Frauen vor Gericht'; Eibach, 'Violence and Masculinity'.

69 Maria R. Boes, *Crime and Punishment in Early Modern Germany: Courts and Adjudicatory Practices in Frankfurt Am Main, 1562–1696* (Farnham: Ashgate, 2013), 267; Maria R. Boes, ' "Dishonourable" Youth, Guilds, and the Changed World View of Sex, Illegitimacy, and Women in Late-Sixteenth-Century Germany', *Continuity and Change* 18, no. 3 (2003): 345–72; Joy Wiltenburg, 'Book Review : Crime and Punishment in Early Modern Germany by Maria R. Boes', *German History* 32, no. 4 (2014): 633–34; Joachim Eibach, 'Rezension Zu Maria R. Boes: Crime and Punishment in Early Modern Germany : Courts and Adjudicatory Practices in Frankfurt Am Main, 1562–1696', *Sehepunkte. Rezensionsjournal Für Die Geschichtswissenschaften* 6 (2014).

70 John Jordan, 'Book Review: Maria R. Boes, Crime and Punishment in Early Modern Germany: Courts and Adjudicatory Practices in Frankfurt Am Main, 1562–1696', *Continuity and Change* 29, no. 2 (2014): 295–96; Joel F. Harrington, 'Book Review: Maria R. Boes, Crime and Punishment in Early Modern Germany: Courts and Adjudicatory Practices in Frankfurt Am Main, 1562–1696', *Central European History* 48, no. 1 (2015): 115–16.

71 Boes, *Courts and Adjudicatory Practices*, 135–36.

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historians dealing with Frankfurt. Bettina Günther studied the implementation of new laws against sexual offences in early modern Frankfurt and Nuremberg from a legal history perspective.[72] Anja Johann focused more broadly on the implications of the process of social disciplining in the sixteenth and early seventeenth centuries. She argued that the intensified regulations of the city council in the realm of religion, poor relief, education and public order were not a process enforced from the top down, but carried broad consensus among the urban community.[73] A similar perspective of collaboration between authorities and subjects was provided by Rebekka Habermas. In her article on the prosecution of sexual offences and marital misconduct, Habermas witnessed a positive alliance between women and the courts.[74] Finally, Vera Kallenberg studied the position of Jewish women before the criminal justice system in Frankfurt around the turn of the eighteenth and nineteenth century.[75]

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

72 Bettina Günther, *Die Behandlung der Sittlichkeitsdelikte in den Policeyordnungen und der Spruchpraxis der Reichsstädte Frankfurt am Main und Nürnberg im 15. bis 17. Jahrundert* (Frankfurt am Main: P. Lang, 2004).

73 Anja Johann, *Kontrolle mit Konsens: Sozialdisziplinierung in der Reichsstadt Frankfurt am Main im 16. Jahrhundert* (Frankfurt am Main: Kramer, 2001).

74 Rebekka Habermas, 'Frauen und Männer im Kampf um Leib, Ökonomie und Recht: Zur Beziehung der Geschlechter im Frankfurt der Frühen Neuzeit', in *Dynamik der Tradition*, ed. Richard Van Dülmen (Frankfurt am Main: Fischer, 1992), 109–36.

75 Vera Kallenberg, '"und würde auch sonst gesehen haben, wie sie sich durchbrächte": Migration und "Intersektionalität" in Frankfurter Kriminalakten über jüdische Dienstmägde um 1800', in *Femina migrans: Frauen in Migrationsprozessen (18.—20. Jahrhundert)*, ed. Edeltraud Aubele and Gabriele Pieri (Sulzbach/Taunus: Helmer, 2011), 39–67 The author wrote a doctoral thesis on the position of Jews before the criminal court in Frankfurt from 1780–1814 which was unfortunately not yet published during the completion of this manuscript. Vera Kallenberg, *Jüdinnen und Juden in der Frankfurter Strafjustiz, 1780–1814: die Nicht-Einheit der jüdischen Geschichte* (Göttingen: Wallstein Verlag, 2018).

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5 Composition of the Book

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

The third chapter then moves on to an investigation of the gendered patterns of prosecuted crime in early modern Frankfurt and places these findings in a broader context. How did the nature and extent of female offending in early modern Frankfurt compare to that in other European regions and cities? Is there a distinctive Frankfurt pattern or not? The book next considers three selected spheres of criminal activity: property offending, sexual offences and mobility crimes. This thematic breakdown allows for a more in-depth analysis of the relationship between recorded offences and social control within the urban context. Each of the three chapters discusses a different sphere of control, ranging from the household to moral courts and finally settlement regulations.

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

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

Finally, chapter 6 deals with offences that can best be described as mobility crimes: vagrancy, infraction of banishment etc. In early modern Germany, the authorities envisioned a model of social order centred around the household, which put increasing pressure on people living beyond its controlling structures. As a result of changing attitudes towards poverty, the authorities in Frankfurt strengthened the importance of settledness and increasingly criminalised vagrancy, begging, and marginal groups like gypsies. Moreover, historians argued that in early modern Germany in particular, the social and institutional restrictions (in relation to access to guilds, citizenship, marriage, etc.) affecting women restricted the position of independent single women.[76] The chapter studies how these perceptions influenced the prosecution and position of mobile women.

Thus, in order to gain a better understanding of the variations in early modern female offending, it is important to study the impact of different social control mechanisms. A German case study, such as Frankfurt am Main, offers the opportunity to dig deeper into the relationship between social control and female involvement in recorded offences. Despite providing valuable insights on the nature of female crime and the position of early modern women within the criminal justice system, studies on early modern Germany have only marginally contributed to international academic debates about female offending.

76 Ogilvie, *Bitter Living*, 312–14.

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This is not due to a lack of quality, but partially results from the fact that in general German scholarship on early modern crime is characterised more by a cultural approach and a reservation about study long-term macro developments.[77] To this day, Ulinka Rublack's study remains the only monograph that deals with female offending in its entirety, rather than focusing on a single offence.[78] More recently legal scholars have started to unravel the position of women appearing before civil courts, thereby extending our knowledge of women's legal position in practice.[79] This book therefore aims to bridge the gap between English and German scholarship on early modern crime.

6 Setting the Scene: Frankfurt am Main as a Case Study for Female Crime

The case study of Frankfurt is relevant for the study of crime and gender, as it combines some of the characteristics of urban life (anonymity, high levels of migration), with efforts to strictly control matters like settlement, citizenship, mobility, diligence and consumption, and social stratification. It was a traditional corporative society (*altständische Gesellschaft*) which relied on

77 Schwerhoff, 'Kriminalitätsgeschichte', 29; Karl Härter, *Strafrechts- und Kriminalitätsgeschichte der Frühen Neuzeit* (Berlin: De Gruyter Oldenbourg, 2018).

78 Rublack, *The Crimes of Women*; Ingrid Ahrendt-Schulte, *Zauberinnen in der Stadt Horn (1554–1603): magische Kultur und Hexenverfolgung in der Frühen Neuzeit* (Frankfurt am Main: Campus, 1997); Dorothea Nolde, *Gattenmord: Macht und Gewalt in der frühneuzeitlichen Ehe* (Köln: Böhlau, 2003); Sabine Allweier, *Canaillen, Weiber, Amazonen: Frauenwirklichkeiten in Aufständen Südwestdeutschlands 1688 bis 1777* (Münster: Waxmann, 2001); Peter Klammer, *In Unehren beschlaffen: Unzucht vor kirchlicher und weltlicher Gerichtsbarkeit im frühneuzeitlichen Salzburger Lungau* (Frankfurt am Main: P. Lang, 2004); Francisca Loetz, *A New Approach to the History of Violence: 'Sexual Assault' and 'Sexual Abuse' in Europe, 1500–1850* (Leiden: Brill, 2015); Dagmar M.H. Hemmie, *Ungeordnete Unzucht: Prostitution im Hanseraum (12.-16. Jahrhundert)* (Köln: Böhlau, 2007); Susanne Hehenberger, 'Sexualstrafrecht und Geschlechterordnung im frühneuzeitlichen Österreich', in *Hat Strafrecht ein Geschlecht? Zur Deutung und Bedeutung der Kategorie Geschlecht in strafrechtlichen Diskursen vom 18. Jahrhundert bis heute*, ed. Gaby Temme and Christine Künzel (Bielefeld: Transcript, 2014), 101–18; Sibylle Malamud, *Die Ächtung des 'Bösen': Frauen vor dem Zürcher Ratsgericht im späten Mittelalter (1400–1500)* (Zürich: Chronos, 2003).

79 Siegrid Westphal, ed., *In eigener Sache: Frauen vor den höchsten Gerichten des Alten Reiches* (Köln: Böhlau, 2005); Nicole Grochowina, *Das Eigentum der Frauen: Konflikte vor dem Jenaer Schöppenstuhl im ausgehenden 18. Jahrhundert* (Köln: Böhlau, 2009); Hendrikje Carius, *Recht durch Eigentum: Frauen vor dem Jenaer Hofgericht (1648–1806)* (München: Oldenbourg, 2012).

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clear distinctions of social and legal positions of inhabitants within the urban society, and can be characterised as an exclusive regime. Furthermore, the development of new institutions of control and the evolving criminal justice system in the late medieval and early modern period primarily occurred in cities.[80] As a free imperial city, Frankfurt was autonomous and almost entirely independent in its regulation of criminal justice and implementation of legal norms.[81] The city's criminal justice system had much stronger presence of the legal system in the everyday life of the population than people living in towns and villages incorporated in larger territorial states.[82]

The city was governed by a council that existed of three benches, of which membership was only preserved for Lutheran burghers. The members of the first two benches were recruited from the main patrician families of the city, and third bench was reserved for masters from selected guilds. The city council coopeted their own members, who were chosen for a lifetime. The elder burgomaster, who was mostly in charge of external affairs, presided over the first council bench, and the younger burgomaster, who was responsible for internal affairs, presided over the second bench. In the course of the eighteenth century, council members were increasingly recruited from academic and mercantile families.[83] The balance of power between the council and the citizenship led to several conflicts during the early modern period. Between 1612 and 1614, a call of grievances by the city's guild members cumulated to the plundering of the Jewish quarter and the restructuring of the power balances within the city. Citizens and council faced each other again in the longstanding constitutional conflict (*Verfassungskonflikt*) from 1705 to 1732 that resulted in increased influence for the citizens through various committees.[84]

By German standards, early modern Frankfurt was a large city, and it was perceived as such by its inhabitants. Johann Bernhard Müller, a local burgher and jurist, wrote in the middle of the eighteenth century that life in Frankfurt

80 Peter Clark, *European Cities and Towns: 400–2000* (Oxford: Oxford University Press, 2009), 168.

81 Peter Johanek, 'Imperial and Free Towns of the Holy Roman Empire: City-States in Pre-Modern Germany?', in *A Comparative Study of Thirty City-State Cultures: An Investigation Conducted by the Copenhagen Polis Centre*, ed. Mogens Hansen (Copenhagen: Reitzel, 2000), 295–319.

82 Joachim Eibach, 'Stadt und Reichsstad: Rahmenbedingungen der Frankfurter Strafjustiz im 17. und 18. Jahrhundert', in *Justiz = Justice = Justicia? Rahmenbedingungen von Strafjustiz im frühneuzeitlichen Europa*, ed. Harriet Rudolph and Helga Schnabel-Schüle (Trier: Kliomedia, 2003), 363–363.

83 Eibach, *Frankfurter Verhöre*, 45.

84 Ibid., 113–30.

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was characterised by the possibility of anonymity. People could go about their business without necessarily being monitored by others. According to Müller, many took advantage of this to pursue their 'evil dispositions', for which the anonymity of the big city offered them better opportunities.[85] By the time Müller wrote his observations, Frankfurt had approximately 32,000 inhabitants. For Germany, the early modern period was characterised by urban decline, rather than growth. Most of the major medieval urban centres, such as Cologne, Augsburg and Nuremberg, stagnated or decreased in population.[86] Frankfurt, however, managed to maintain its position thanks to the importance of its function as a hub for European commerce and trade, and as the political centre within the Holy Roman Empire as the city of election and coronation of the Emperor.[87] The city grew from around 12,000 inhabitants in the middle of the sixteenth century to 20,000 by 1620, with a short decrease in population during and shortly after the Thirty Years' War. By 1675 the number of inhabitants had reached pre-war levels again and grew to approximately 25,000 in around 1700 and 40,000 by the end of the eighteenth century, a level of growth the city could not have reached without high levels of immigration.[88]

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

86 Heinz Schilling, *Die Stadt in der frühen Neuzeit* (München: Oldenbourg, 2004), 13–24; Terence MacIntosh, *Urban Decline in Early Modern Germany: Schwäbisch Hall and Its Region, 1650–1750* (Chapel Hill, NC: University of North Carolina Press, 1997).

87 Schilling, *Die Stadt*, 21; Anton Schindling, 'Wachstum und Wandel vom Konfessionellen Zeitalter bis zum Zeitalter Ludwigs XIV. Frankfurt am Main 1555–1685', in *Frankfurt am Main: die Geschichte der Stadt in neun Beiträgen*, ed. Frankfurter Historischen Kommission (Sigmaringen: Thorbecke, 1994), 205–60; Heinz Duchhardt, 'Frankfurt am Main im 18. Jahrhundert', in *Frankfurt am Main: die Geschichte der Stadt in neun Beiträgen*, ed. Frankfurter Historischen Kommission (Sigmaringen: Thorbecke, 1994), 216–302.

88 Hans Mauersberg, *Wirtschafts- und Sozialgeschichte zentraleuropäischer Städte in neuerer Zeit: dargestellt an den Beispielen von Basel, Frankfurt a. M., Hamburg, Hannover und München*, Wirtschaftsgeschichte und Sozialgeschichte zentraleuropäischer Städte in neuerer Zeit (Göttingen: Vandenhoeck & Ruprecht, 1960), 54; Ralf Roth, *Stadt und Bürgertum in Frankfurt am Main: ein besonderer Weg von der ständischen zur modernen Bürgergesellschaft 1760–1914* (München: Oldenbourg, 1996), 47; Gerald Lyman Soliday, *A Community in Conflict: Frankfurt Society in the Seventeenth and Early Eighteenth Centuries*

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Although European cities shared many similar characteristics which stimulated women's independence, there were also considerable differences. Scholars have distinguished between various patterns of female legal dependence throughout early modern Europe which—at least normatively—influenced their position before the criminal court as well as their scope of action in many other spheres of public life. Early modern Germany is often presented as a region in which there was strong patriarchal control over women as a result of their subordinate legal status, compared to men.[89] In early modern Württemberg, as the study of Ulinka Rublack revealed, neither single nor married women could take complaints to the junior bailiff on their own account but needed a guardian to represent them.[90] Widows also had to be represented by a so-called *Kriegsvogt* (male representative) if they wanted to make economic transactions or file civil lawsuits.[91] However, practices of *Geschlechtsvormundschaft* (gender tutelage) varied greatly across the Holy Roman Empire, and the case of Württemberg should not be considered as representative for the position of women in early modern Germany. Ernst Holthöfer provided an overview of the various levels of legal restrictions faced by women in early modern Germany, as a result of different legal traditions and influence of local customs.[92]

The legal position of women in early modern Frankfurt appears to have been relatively favourable compared to other regions in Germany. According to Barbara Dölemeyer, there was no universal *Geschlechtsvormundschaft*, which meant that in theory widows and single women who had reached majority were able to engage in legal matters on their own account, while married women had to be represented by their husbands.[93] These restrictions only applied to economic transactions and civil legal matters (private lawsuits, notary

(Hanover, NH: Brandeis University Press, 1974), 35; Allan Sharlin, 'Natural Decrease in Early Modern Cities: A Reconsideration', *Past & Present*, no. 79 (1978): 126–38.

89 Warner, 'Women Before the Law', 239; Ogilvie, *Bitter Living*, 344–45; Jennine Hurl-Eamon, *Women's Roles in Eighteenth-Century Europe* (Santa Barbara: Greenwood, 2010), 66.

90 Rublack, *The Crimes of Women*, 47.

91 Ogilvie, *Bitter Living*, 249–52.

92 Ernst Holthöfer, 'Die Geschlechtsvormundschaft: Ein Überblick von der Antike bis ins 19. Jahrhundert', in *Frauen in der Geschichte des Rechts: von der frühen Neuzeit bis zur Gegenwart*, ed. Ute Gerhard (München: C.H. Beck, 1999), 390–451; Sheilagh Ogilvie, 'Married Women, Work and the Law: Evidence from Early Modern Germany', in *Married Women and the Law in Premodern Northwest Europe*, ed. Cordelia Beattie and Matthew Frank Stevens (Woodbridge: Boydell & Brewer, 2013), 213–40.

93 Barbara Dölemeyer, 'Privatrechtliche Handlungsspielräume von Frauen: Die Frankfurter Gesetzgebung', in *Frauen in der Stadt: Frankfurt im 18. Jahrhundert*, ed. Gisela Engel, Ursula Kern, and Heide Wunder (Königstein/Taunus: Helmer, 2002), 92.

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agreements, contracts, etc.). Moreover, married female traders were exempted from this rule: they could conclude contracts, and even issue letters of exchange providing that they could prove an annual income of more than 2000 guilders and traded in their own name for the family business.[94] Another evidence of the relatively favourable legal status of women in Frankfurt was found by Annette Baumann. She revealed a legal practice unique to Frankfurt based on the civil court cases before the *Reichskammergericht*: former widows who had entered a second marriage were granted full legal capacity. Their status before the court was thus not based on their current marital state—which in theory would have restricted their position to act without a legal guardian—but on that of her former status as a widow.[95] With regard to criminal cases, however, women faced no formal restrictions; they could report crimes and act as witnesses without the consent of their husband or guardian. They were also fully accountable for their own conduct, or misconduct.

The examples of women filing civil suits and negotiating their status before the *Reichskammergericht* shows that the implementation of the norms regarding coverture were at least implemented more flexibly than one might expect based on the law. However, they refer only to a small and privileged group of women in early modern Frankfurt. Heide Wunder reminds us that a binary construction of gender did not exist but that 'man' and 'woman' were defined in relation to one another moving alongside an asymmetrical social and political hierarchy in which gender was just one of the various factors defining social inequality. Gender norms were different for an unmarried domestic servant than for a married woman of a citizen household.[96]

Apart from legal norms, women's scope of action in early modern societies was related to family systems and their position on the labour market. North-Western Europe, including Frankfurt and other parts of early modern Germany, was characterised by nuclear family patterns and relatively late age at marriage for both men and women. A conspicuous feature of this pattern was

94 Christina Klausmann, 'Handelsfrau, Marktfrau, Handelsgehilfin: Aspekte weiblicher Handelstätigkeit in Frankfurt am Main zwischen 1700–1900', in *FrauenStadtGeschichte: zum Beispiel, Frankfurt am Main*, ed. Hessische Landeszentrale für Politische Bildung (Frankfurt am Main: Helmer, 1995), 83–102; Robert Beachy, 'Business Was a Family Affair: Women of Commerce in Central Europe, 1650–1880', *Social History* 34, no. 68 (2001): 307–30; Inge Kaltwasser, 'Handelsfrauen in Frankfurt: Rechtsfälle aus dem Reichskammergericht', in *Frauen in der Stadt: Frankfurt im 18. Jahrhundert*, ed. Gisela Engel, Ursula Kern, and Heide Wunder (Königstein/Taunus: Helmer, 2002), 103–16.

95 Anette Baumann, 'Frauen aus Köln und Frankfurt am Main vor dem Reichskammergericht', *Geschichte in Köln* 54, no. 1 (2007): 108–9.

96 Wunder, 'Gender Norms', 43, 45–46.

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the relatively long period of freedom before marriage, resulting in widespread migration patterns, particularly related to life-cycle service. As a result of this, households often had more members than the nuclear family, consisting of living-in servants, lodgers, etc. Such family patterns are believed to have increased the role of women in society, as they enabled them to work outside the household economy, contributing to the labour market as maidservants or even independent employees.[97] The latter, however, depended on the nature of the urban economy and the attitudes of urban authorities towards men and women working independently.

Early modern Frankfurt was famous for its biannual fairs and functioned as a hub in European long-distance trading networks. The presence of European traders and religious minorities, and the accessibility of exotic spices, precious cloths, etc., gave Frankfurt a cosmopolitan flair.[98] Despite this cosmopolitan atmosphere, however, the socio-economic make-up of the city was dominated by craftsmen and their families, who formed the largest group among citizens. Even though the guilds had lost considerable political power, their protectionist and exclusionary policies were largely supported by the city council.[99] Since guilds dominated the urban economy in Frankfurt and managed to protect their status with the help of the city council by hindering the settlement of non-guild industries and manufactories, we may assume that the economic opportunities for single women were heavily restricted.[100] In general, it is found that the range of occupations held by women in Germany was much more narrow than that of women in the Netherlands or England. One of the few acceptable forms of employment for single women was domestic service, as this placed them under household control.[101] Working as domestic

97 Christian Pfister, *Bevölkerungsgeschichte und historische Demographie 1500–1800*, 2nd ed. (München: Oldenbourg, 2007), 24–32; Lynch, *Individuals, Families, and Communities*, 8–12, 61–67; Jan Kok, 'The Family Factor in Migration Decisions', in *Migration History in World History: Multidisciplinary Approaches*, ed. Jan Lucassen, Leo Lucassen, and Patrick Manning, vol. 3 (Leiden: Brill, 2010), 227–29; Ogilvie, *Bitter Living*, 10, 339.

98 Schindling, 'Wachstum und Wandel', 209; Marina Stalljohann-Schemme, *Stadt und Stadtbild in der Frühen Neuzeit: Frankfurt am Main als kulturelles Zentrum im publizistischen Diskurs* (Berlin: De Gruyter Oldenbourg, 2016).

99 Robert Brandt, 'Frankfurt sei doch eine "Freye=Reichs=Statt, dahin jedermann zu arbeithen frey stünde": Das Innungshandwerk in Frankfurt am Main im 18. Jahrhundert—zwischen Nahrungssemantik und handwerklicher Marktwirtschaft', in *Nahrung, Markt oder Gemeinnutz: Werner Sombart und das vorindustrielle Handwerk*, ed. Robert Brandt and Thomas Buchner (Bielefeld: Verlag für Regionalgeschichte, 2004), 155–99.

100 Roth, *Stadt und Bürgertum*, 279; Eibach, *Frankfurter Verhöre*, 46.

101 Ogilvie, *Bitter Living*, 347.

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servants—at least in Germany—therefore did not lead to greater independence of patriarchal control, but simply replaced the paternal authority with that of the employer.

Studies on women's economic status and labour participation in early modern Frankfurt are largely missing. For the sixteenth century, Merry Wiesner traced increasing restrictions imposed on women from guild labour.[102] A first impression based on an analysis of guild records in the eighteenth century by Robert Brandt showed that widows and married women were still part of the family workshop. He considered that a total exclusion of women probably did not happen. The exclusionary politics of guilds were not necessarily directed towards women, but to *everyone* working outside the corporate structures, and as such mostly related to men.[103] Thus the findings of Robert Brandt seem to indicate that women's position in guilds resembled that of other cities in the eighteenth century, such as Augsburg and Cologne, on which we are better informed.[104] However, it is important to note that even in the best case scenario, access to guilds was only reserved for women with the right legal and marital status (i.e. as daughters, wives or widows of guild members, and therefore by definition of citizenship status).

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

7 Sources

Early modern criminal courts and judicial institutions produced a whole range of different types of criminal sources, ranging from wanted lists, to interrogation records and sentencing books, each with its own characteristics and challenges for historians.[105] The *Criminalia* form the cornerstone of this study on

102 Merry E. Wiesner-Hanks, *Working Women in Renaissance Germany* (New Brunswick, NJ: Rutgers University Press, 1986).

103 Robert Brandt, 'Frauen und Handwerk im Frankfurt im 18. Jahrhundert—Forschungsstand, Quellen und offene Fragen', n.d., http://www.corf.de/texte/Brandt-Frauen&%20Handwerk.pdf.

104 Muriel González Athenas, *Kölner Zunfthandwerkerinnen 1650–1750: Arbeit und Geschlecht* (Kassel: Kassel University Press, 2014); Christine Werkstetter, *Frauen im Augsburger Zunfthandwerk: Arbeit, Arbeitsbeziehungen und Geschlechterverhältnisse im 18. Jahrhundert* (Berlin: Akademie Verlag, 2001).

105 Schwerhoff, *Historische Kriminalitätsforschung*, 40–49; Martin Scheutz, 'Scheiternde Mütter oder reulose Kindsmörderinnen? Gerichtsakten in der Frühen Neuzeit als Quelle',

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female offending. These are the investigation records of Frankfurt's criminal investigation office: the *peinliche Verhöramt*. This office was in charge of investigating all felonies, and also held jurisdiction over petty offences. More than 13,000 individual investigation records have been preserved for the years 1508–1856, of which close to 11,000 cover the research period. Apart from the *Criminalia*, a range of other criminal sources has also been consulted. These include the *Strafenbuch*, the register of criminal punishments (*Peinliche Strafen*) for 1562–1696. This source only provides a limited view of the criminal justice system in Frankfurt, as it does not include cases that were acquitted or in which suspects received monetary fines, short imprisonment or simple expulsion. Considering that they only contain offenders that received capital or corporal punishments, they primarily provide information on more serious offences. Moreover, the surviving records of the moral court, the *Konsistorium*, and the poorhouse are also included in this study, alongside police ordinances.

The *Criminalia* are investigation records and as such contain a variety of documents that are a reflection of this process. First and foremost, the dossiers contain the interrogations of the suspects and of the witnesses that were heard as part of the inquiries. From the late seventeenth century onwards, the scribes provided a verbatim testimony of the questions and answers given in the interrogation. They sometimes provided additional data about the state of the suspects, for example by stating that the suspect was weeping or that he/she exclaimed the answer. Most of the scribes were trained lawyers, and they were instructed to write down the testimonies *ipsissima verba*[106] and to do so without contempt or benevolence.[107] Although the scribes did not record the literal answers, which is shown by the fact that the answers only contain full sentences and are recorded in indirect speech, they come as close to the voices of ordinary people as is perhaps possible for the early modern period. There are no indications that the scribes consciously and purposely altered or stereotyped answers.[108] At the beginning of each proceeding, defendants were asked about their origin, family status, employment, and recent whereabouts in order to establish their social standing and reputation. They thus provide a rich

in *Diebe, Sodomiten und Wilderer? Waldviertler Gerichtsakten aus dem 18. Jahrhundert als Beitrag zur Sozialgeschichte*, ed. Martin Scheutz and Thomas Winkelbauer (St. Pölten: Verein für Landeskunde von Niederösterreich, 2005), 35–43.

106 Johann Philipp Orth, *Nötig und nüzlich erachteter Anmerkungen über die sogenante erneuerte Reformation der Stadt Frankfurt am Main*, vol. 3 (Frankfurt am Main, 1751), 827.

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

108 Eibach, *Frankfurter Verhöre*, 32.

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source for the social context of early modern offenders. It is known for other regions that investigators employed a fixed set of questions during investigations (at least for some crimes), where they had only relatively little freedom to deviate from the preassigned queries. This, of course, greatly shaped the answers of suspects, who were given only limited room to give an account of the circumstances in the way they chose.[109] For Frankfurt, this does not appear to have been the case.

Besides containing interrogation records, the *Criminalia* often hold references to the outcome of the case and the sentences imposed. The investigation office only had the competence to punish offenders in minor cases, the rest was sent for judgement to the city council. They made their decision based on the legal opinions of the city's syndics, who in turn based their recommendations for a fit punishment on the investigation records.[110] The detailed transcripts of the interrogations were the only way in which the voices of the suspects were heard by the both the syndics as well as the city council who gave the final judgement: they never saw the accused in person. The legal opinions of the syndics (if available) were also kept in the dossier, as well as well as records of defence councils (which were consulted if the suspect faced the death penalty).

A third type of document that the *Criminalia* can contain were petitions of the accused and his/her family, and other members of their social network for release from imprisonment or mitigation of punishment. The decisions of the city council were not systematically recorded in the *Criminalia*, although there are often references to be found in the sources. Analysing the process of petitioning would be a very fruitful approach to study the importance of social networks and incorporation into the community with regard to the decision-making process of the authorities.[111] However, this would require cross-referencing individual investigation records with the archives of the city council, which is extremely time-consuming.[112]

Reports by medical experts in cases of physical injuries or (suspected) infanticide form a fourth type of record found in the *Criminalia*. The investigatory nature of the dossiers is further highlighted by the fact that some records also contain pieces of evidence such as murder weapons, forged coins and documents, and even items as curious as an early modern dildo, which

109 Scheutz, 'Scheiternde Mütter', 22.

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

111 Rublack, *The Crimes of Women*, 66–69.

112 Boes, *Courts and Adjudicatory Practices*, 142–44.

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unfortunately has been lost.[113] Finally, an important part of the proceedings involved communication with outside authorities, who either sent information about suspects to Frankfurt or who inquired after suspects of their own.

Since the 1970s, historians have discovered court records as a gateway to study the mentalities and daily lives of everyday people. They were one of the few types of records in which the voices of people that are normally silenced in historical records could be heard. Of course, these voices do not come to the reader unfiltered. Court records are shaped by the formal judicial framework in which they were created. There was an unequal power balance between prosecutors and suspects.[114] Martin Scheutz defined court records as a testimony of a praxis shaped by the authorities ('*obrigkeitlich geprägten Herrschaftspraxis*') and as such they are not an 'authentic' reflection of the mentalities of early modern 'common' people. Rather they are coloured by the roles people played in court. Defence strategies employed by suspects were often based on norms and expectations regarding their gender, age, social and marital status.[115] At least since Nathalie Zemon Davis' *Fiction in the archives,* historians can no longer ignore the fact that every person in the court room constructs his/her story to their advantage, potentially resorting to lies or altering the truth in the process. Victims do so to make sure their assaulter is convicted, and suspects try to prove their innocence or at least to minimise the gravity of their actions.

Nevertheless, a careful analysis of the sources offers the historian the opportunity to reconstruct gender roles, social conventions and practices of everyday life. Even lies have to have a certain level of plausibility to be convincing and therefore reflect everyday norms and mentalities. This study will combine both quantitative and qualitative examination of the criminal court records. The interrogation records are especially valuable for the purpose of this study because they allow us to analyse the various perspectives and selection

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

114 Arlette Farge, *La vie fragile: violence, pouvoirs et solidarités à Paris au XVIIIe siècle* (Paris: Hachette, 1986), 8; Thomas V. Cohen and Elizabeth S. Cohen, *Words and Deeds in Renaissance Rome: Trials before the Papal Magistrates* (Toronto: University of Toronto Press, 1993), 3–7.

115 Scheutz, 'Scheiternde Mütter', 32.

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processes that shaped prosecution patterns. In chapter three I elaborate on the various choices that were made regarding the selection and categorisation of crimes for the quantitative study of the criminal records. The qualitative examinations focus on the interactions of the criminal offenders with the various layers of social control in the city, both formal and informal.

This approach makes it possible to include the agency of offenders as part of the analysis. In recent decades, agency has become an integral part of historical scholarship, particularly of 'marginal' groups (including women and the urban poor). It has been defined in many different ways and was initially applied to study how individuals resisted existing norms and oppressive power relationships. Many historians, however, considered this definition to be too narrow as it focuses on exceptional occasions of resistance and ignores the daily manoeuvring and interactions with power structures. In a recent discussion on female agency in the context of early modern economy, Deborah Simonton and Anne Montenach provided a definition that enables a broader application of the concept. According to them, agency is not 'conceptualised strictly in terms of resistance to male authority or patriarchal patterns but arose from the variety of everyday interactions in which women accommodated, negotiated, or manipulated social rules'.[116] Thus interactions between 'ruled' and 'subordinates' were much broader, and the influence of one on the other much more complex. Here, the concept of pauper agency as defined by Robert Shoemaker and Tim Hitchcock is especially helpful. They introduce the concept to refer to the way historical actors shaped social policies (or in this case: institutions of social control)—even when negotiating from a position of weakness—by the tactics and strategies with which they approached such institutions.[117]

116 Anne Montenach and Deborah Simonton, 'Introduction: Gender, Agency, and Economy: Shaping the Eighteenth-Century European Town', in *Female Agency in the Urban Economy: Gender in European Towns, 1640–1830*, ed. Deborah Simonton and Anne Montenach (New York: Routledge, 2013), 5.

117 Tim Hitchcock and Robert Shoemaker, *London Lives: Poverty, Crime and the Making of a Modern City, 1690–1800* (Cambridge: Cambridge University Press, 2015), 17–23.

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CHAPTER 2

A Multi-Layered Legal System: Criminal Justice in Early Modern Frankfurt

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

The criminal justice system is just one of the various measures which were used by historical agents to react to transgressive behaviour. It has since been firmly established that early modern courts were not only an instrument of top-down control employed by the authorities to discipline their subjects. Rather, historians have emphasised how much the enforcement of criminal justice depended on the willingness of contemporaries to take recourse to justice and to involve formal institutions in mutual conflicts.[1] What is reflected in the criminal investigation records that form the basis of this study thus depends at least in part on the intensity with which the criminal justice system was involved in the regulation of deviant behaviour. The availability of alternative and possibly competing formal and informal institutions of control, as well as potentially complicated and/or expensive legal procedures, all influenced the recourse to justice. Moreover, the scope of the criminal justice system to control deviant behaviour also depended on more 'technical' factors such as the number and

1 Spierenburg, 'Social Control and History'; Martin Dinges, 'Justiznutzung als soziale Kontrolle in der Frühen Neuzeit', in *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Konstanz: UVK Universitätsverlag Konstanz, 2000), 503–44; Carl A. Hoffmann, 'Außergerichtliche Einigungen bei Straftaten als vertikale und horizontale soziale Kontrolle im 16. Jahrhundert', in *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Konstanz: UVK Universitätsverlag Konstanz, 2000), 563–79; Karl Härter, 'Konfliktregulierung im Umfeld frühneuzeitlicher Strafgerichte: Das Konzept der Infrajustiz in der historischen Kriminalitätsforschung', *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft* 95, no. 2 (2012): 130–44; ibid.

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qualities of the people involved, i.e. legal personnel, 'policing officials', number of sessions held, and boundaries of jurisdiction.

The early modern period forms a crucial period in the development of the public criminal justice system. It was a period that witnessed a process of juridification, professionalisation, and differentiation.[2] The principle of '*gute Policey*' (good policing) gained increasing importance during this period. It referred to the 'general concept and the overall purpose of the 'good order' of a community, society or state'.[3] Connected to this was a development of increasing regulation through the publication of police ordinances and the expansion of executive instruments and institutions. Despite the increasing distinction and boundaries between civil and criminal jurisdiction, the boundaries between simple transgressions, misdemeanours, and serious offences often remained ill defined. Moreover, different legal traditions, ranging from Roman law, Germanic Law, customary law, canon law etc., influenced everyday legal practice.[4]

These general characteristics also apply to the legal landscape of Frankfurt, which at the same time was shaped by its position as a Free Imperial City.[5] The

2 Schwerhoff, *Aktenkundig und Gerichtsnotorisch*, 84–112; Harriet Rudolph, *Eine gelinde Regierungsart: peinliche Strafjustiz im geistlichen Territorium: das Hochstift Osnabrück (1716–1803)* (Konstanz: UVK Universitätsverlag Konstanz, 2001); Harriet Rudolph and Helga Schnabel-Schüle, eds., *Justiz = Justice = Justicia? Rahmenbedingungen von Strafjustiz im frühneuzeitlichen Europa* (Trier: Kliomedia, 2003); For specific territories see: Gerd Schwerhoff, *Köln im Kreuzverhör: Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlicher Stadt* (Bonn: Bouvier Verlag, 1991); Peter Schuster, *Eine Stadt vor Gericht: Recht und Alltag im spätmittelalterlichen Konstanz* (Paderborn: Schöningh, 2000); Schnabel-Schüle, *Überwachen und Strafen*; Rudolph, *Eine gelinde Regierungsart*; Eibach, *Frankfurter Verhöre*; Karl Härter, *Policey und Strafjustiz in Kurmainz: Gesetzgebung, Normdurchsetzung und Sozialkontrolle im frühneuzeitlichen Territorialstaat*, 2 vols (Frankfurt am Main: Klostermann, 2005); Lars Behrisch, *Städtische Obrigkeit und soziale Kontrolle: Görlitz 1450–1600* (Epfendorf: Bibliotheca Academica, 2005); Ulrike Ludwig, *Das Herz der Justitia: Gestaltungspotentiale territorialer Herrschaft in der Strafrechts- und Gnadenpraxis am Beispiel Kursachsens 1548–1648* (Konstanz: UVK Universitätsverlag Konstanz, 2008).

3 Karl Härter, 'Security and "Gute Policey"' in Early Modern Europe: Concepts, Laws, and Instruments"', *Historical Social Research* 35, no. 4 (2010): 42; Karl Härter, 'Social control and the enforcement of police-ordinances in early modern criminal procedure', in *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitliche Europa*, ed. Heinz Schilling and Lars Behrisch (Frankfurt am Main: Klostermann, 1999), 39–63.

4 Harriet Rudolph and Helga Schnabel-Schüle, 'Rahmenbedingungen von Strafjustiz in der Frühen Neuzeit', in *Justiz = Justice = Justicia? Rahmenbedingungen von Strafjustiz im frühneuzeitlichen Europa*, ed. Harriet Rudolph and Helga Schnabel-Schüle (Trier: Kliomedia, 2003), 33.

5 Anja Amend et al., eds., *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich* (München: Oldenbourg, 2008); Eibach, 'Stadt und Reichsstadt'; Joachim Eibach, 'Städtische Strafjustiz als konsensuale Praxis: Frankfurt am Main im 17. und

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city's authorities were not subjected to the rule of a territorial overlord and were almost entirely independent in their regulation of criminal justice. This also meant that in contrast to territorial rulers, Frankfurt's city council did not face competing judicial authorities within its territory and had a more autonomous position in the enforcement of criminal justice.[6] Frankfurt's inhabitants, therefore, experienced a much stronger presence of the legal system in their everyday life than people living in towns and villages incorporated in larger territorial states.

This chapter provides an overview of the institutions involved with the criminal prosecution in early modern Frankfurt, and its development through time, in order to properly interpret the 'criminal statistics' which will be discussed in the next chapters. The criminal investigation records (*Criminalia*) form the backbone of this book. The institutional framework in which the *Criminalia* were created transformed considerably during the seventeenth and eighteenth centuries. Moreover, the criminal investigation office (*Verhöramt*) and its predecessors only handled more serious offences. Thus, the sources only represent a portion of the criminality sanctioned in Frankfurt. Finally, the chapter discusses the various actors involved with policing in the city. Urban officials were not the only actors involved with reporting crime to the authorities, rather the population itself also played an influential role. All of these characteristics contributed (amongst others) to the prosecution patterns in early modern Frankfurt, which will be discussed in the subsequent chapters. For now, it is important to sketch the judicial framework from which these patterns emerged.

1 The Administration of Justice in a Multifaceted Legal Landscape

In early modern Frankfurt, a whole range of legal and semi-legal institutions existed that had the jurisdiction to impose punishments and regulate conflicts among individuals. In the period from the sixteenth to the eighteenth century, Frankfurt experienced a process of juridification and the resulting differentiation created a complex legal system: new institutions were established for specific legal matters without the old ones necessarily being abolished. This created a situation where formally—and practically—multiple institutions with competing jurisdictions existed, particularly in the realm of civil conflict

18. Jahrhundert', in *Interaktion und Herrschaft: die Politik der frühneuzeitlichen Stadt*, ed. Rudolf Schlögl (Konstanz: UVK Universitätsverlag Konstanz, 2004), 181–214.

6 Eibach, 'Stadt und Reichsstadt', 362–63.

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regulation. Until the middle of the sixteenth century, the city council and the court of aldermen (*Schöffengericht*—first bench of the city council) were the main institutions holding jurisdiction in the city. By the end of the eighteenth century there were no fewer than twenty legal and semi-legal institutions in Frankfurt. In the intervening period, new institutions had developed, while others were dissolved or merged with existing institutions.[7] Johann Georg Rössing, a contemporary jurist who wrote about Frankfurt's constitution of the courts (*Gerichtsverfassung*), stated that, due to the diversity of offices and institutions, this topic was 'undoubtedly one of the most complex and difficult matters in the history of our state'.[8]

The majority of Frankfurt's legal institutions dealt with a variety of civil and administrative matters. Many of these institutions combined administrative tasks with judicial functions, like the *Ackergericht* which was responsible for the oversight and administration of the city's agricultural fields, vegetable gardens, and vineyards. At the same time, the office also administered justice in conflicts between private individuals and sentenced transgressions including minor thefts of field products, illegal wood gathering and poaching.[9]

Inhabitants in search of civil adjudication could appeal to a large variety of institutions. The city's aldermen (first bench of the city council) were heavily involved in the administration of civil justice. They formed the court of aldermen (*Schöffengericht*) and the council of aldermen (*Schöffenrat*). Moreover, aldermen were represented in the *Schöffenreferier* (which comprised the sheriff (*Schultheiß*), a selection of aldermen, and a syndic) which was increasingly used to settle disputes between private parties.[10] Although formally these

7 Johann Heinrich Faber, *Topographische, politische und historische Beschreibung der Reichs-, Wahl- und Handelstadt Frankfurt am Mayn*, vol. 1, 2 vols (Frankfurt: Im Verlag der Jägerischen Buchhandlung, 1788); Johann Heinrich Faber, *Topographische, politische und historische Beschreibung der Reichs-, Wahl- und Handelstadt Frankfurt am Mayn,* vol. 2, 2 vols (Frankfurt: Im Verlag der Jägerischen Buchhandlung, 1789); Johann Anton Moritz, *Versuch einer Einleitung in die Staatsverfassung der Reichsstadt Frankfurt*, vol. 1 (Frankfurt am Main: Andreä, 1785); Johann Anton Moritz, *Versuch einer Einleitung in die Staatsverfassung der Reichsstadt Frankfurt*, vol. 2 (Frankfurt am Main: Andreä, 1786); Johann Georg Rössing, *Versuch einer kurzen historischen Darstellung der allmähligen Entwickelung und Ausbildung der heutigen Gerichts-Verfassung Frankfurts* (Frankfurt am Main, 1806).

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

9 Ibid., 134–40.

10 Christian O. Schmitt, *Säuberlich banquerott gemachet: Konkursverfahren aus Frankfurt am Main vor dem Reichskammergericht* (Köln: Böhlau, 2016), 81–82.

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bodies were assigned different legal matters, the fact that they were composed of the same group of people created overlap in practice.

Additionally, the senior and junior burgomaster sessions also offered the opportunity to settle conflicts up to five guilders until 1732 and twenty-five guilders from 1732 onwards.[11] Less serious disputes could also be handled by the *Oberster Richter* (highest judge), who—despite his name—was a lower urban official.[12] Plaintiffs had the opportunity to appeal against cases settled by the *Oberster Richter* at one of the burgomaster sessions, whose decision in turn could be appealed to the city's aldermen. Finally, civil cases could be appealed to the Imperial Chamber court, which was particularly used for disputes concerning trade, inheritance, and other financial matters.[13] This multifaceted legal landscape offered contemporaries various legal procedures to choose from in order to settle their disputes.

Compared to the large variety of civil judicial bodies, Frankfurt's penal jurisdiction was less complex as only a couple of institutions were involved. Generally, there was clear distinction between cases that had to be judged through a civil procedure (*civiliter*) and those that demanded a criminal procedure (*criminaliter*). However, many of the urban officials involved with civil justice matters were also involved in the prosecution of crimes. Moreover, ambiguities remain in terms of how the criminal justice system functioned, as legal norms were often only vaguely defined or not codified at all.[14]

There are few contemporary legal sources that inform us about the practice of the administration of justice in Frankfurt. The city of Frankfurt did not have

11 Gabriela Schlick, 'Die Audienzen des Jüngeren Bürgermeisters in der Reichsstadt Frankfurt am Main: Ein Untergericht als Spiegel des reichsstädtischen Alltagslebens im 18. Jahrhundert', in *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich*, ed. Anja Amend et al. (München: Oldenbourg, 2008), 9–38.

12 Rössing, *Versuch einer kurzen historischen Darstellung*, 117–20.

13 Inge Kaltwasser, *Inventar der Akten des Reichskammergerichts 1495–1806: Frankfurter Bestand* (Frankfurt am Main: Kramer, 2000); Anja. Amend-Traut, *Wechselverbindlichkeiten vor dem Reichskammergericht: Praktiziertes Zivilrecht in der Frühen Neuzeit* (Köln: Böhlau, 2009); Anette Baumann, 'Frauen vor dem Reichskammergericht', in *Das Reichskammergericht im Spiegel seiner Prozessakten: Bilanz und Perspektiven der Forschung*, ed. Friedrich Battenberg and Bernd Schildt (Köln: Böhlau, 2010), 93–115; Robert Riemer, *Frankfurt und Hamburg vor dem Reichskammergericht: Zwei Handels- und Handwerkszentren im Vergleich* (Köln: Böhlau, 2012); Schmitt, *Säuberlich banquerott gemachet*.

14 Eibach, *Frankfurter Verhöre*, 61. In the case of Frevel (insults, petty violence and libels) the city's legal constitution of 1611 defines a criminal procedure as one where fines were to be paid to the authorities, compared to a civil procedure where fines were paid to the offenders as compensation. Der Statt Franckfurt am Mayn ernewerte Reformation (1611) §10.2.1.

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an extensive penal code of its own. The city's legal constitution (*Stadtrechtsreformation*) of 1578, which was extended in 1611, primarily regulated civil matters. With regard to the treatment of serious offences (*'Malefitz und Peinlichen Sachen, so an Leib und Leben straffbar seyndt'*), the legal constitution simply referred to the imperial penal code, the *Constitutio Criminalis Carolina* of 1530, and Frankfurt's own customary legal tradition (*'bey uns bißheroüblichen herkommenem Gebrauch nach'*) without further specification, with some minor exceptions.[15] However, how criminal investigations and procedures were conducted, and which urban officials were involved was not specified in the *Stadtrechtsreformation* which remained in force throughout the entire early modern period. Additional police ordinances, statutes and edicts extended, specified or altered existing legal procedures and introduced new offences.[16]

Jurist and alderman Johann Philipp Orth wrote an extensive commentary on the city's legal constitution in the second half of the eighteenth century, which is a rich source of information on legal practices during that period. Furthermore, we are informed about the way criminal investigations were conducted by the so-called *Bürgermeisterunterricht*. These instructions for the city's burgomasters were issued amidst the political struggle of the *Verfassungsstrei*t in 1726. Despite the existence of these contemporary legal sources, many ambiguities still remain. The way that criminal justice was administered in early modern Frankfurt in practice has to be deducted from the criminal investigation records themselves. The analysis of the criminal legal system in Frankfurt in this chapter primarily builds on previous studies by Karl-Ernst Meinhardt on the seventeenth century and Joachim Eibach on the eighteenth century.[17]

2 Investigation of Criminal Offences: about the Formation of the *Verhöramt*

From the late fourteenth century onwards, the city council possessed full autonomy in legal matters and had the right to administer justice and impose

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

16 Eibach, *Frankfurter Verhöre*, 72.

17 Karl-Ernst Meinhardt, *Das peinliche Strafrecht der freien Reichsstadt Frankfurt am Main … 16 und 17 Jahrhunderts* (Frankfurt am Main: [s.n.], 1957); Eibach, *Frankfurter Verhöre*, 58–88.

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penal punishments. From that point in time onwards, the city council functioned as a high criminal court, as this was the only legal body with the authority to execute corporal and capital punishments. They exercised their right to administer criminal justice as part of their responsibility to maintain the city's peace (*Stadtfrieden*). As such, administering criminal justice was seen as an essential part of *Gute Policey*—good policing.[18] Although the city council was responsible for sentencing serious offenders, they did not conduct the criminal investigations themselves. In fact, they did not even face offenders they sentenced in person, but issued their verdicts based on written records.[19]

In the late medieval period and beginning of the early modern period, the responsibility for carrying out criminal investigations lay with the city's senior and junior burgomasters. Initially both burgomasters carried out criminal investigations. Later on, this became in practice the main responsibility of the junior burgomaster, who was responsible for domestic affairs, while the senior burgomaster became primarily responsible for foreign affairs.[20] Still, the sources reveal that well into the eighteenth century, when the position of the junior burgomaster as the head of criminal investigations was firmly established, the senior burgomaster could still conduct all or parts of the criminal investigation process.[21] The junior burgomaster ordered arrests, carried out investigations, supervised the application of torture and was in charge of ordering the execution of sentences.

The appointments for public functions (*Ratsämterbestallungen*) of 1616 include the first mention of an office for the interrogation of witnesses.[22] This office comprised the junior burgomaster and two deputies from the second bench of the city council. It is very likely that the decision to appoint two council members to assist the burgomaster with the criminal investigations arose from the political reforms implemented after the Fettmilch uprising, a revolt resulting from tensions between the city council and the guilds who demanded greater political influence in urban policies.[23] In the complaints (*Gravimina*) issued by the burghers to the city council in one of the stages of

18 Johann, *Kontrolle mit Konsens*, 73; Meinhardt, *Das peinliche Strafrecht*, 29.

19 For similar practices in other imperial cities see: Rublack, *The Crimes of Women*, 50.

20 Meinhardt, *Das peinliche Strafrecht*, 29.

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

22 Eibach, *Frankfurter Verhöre*, 62.

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

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the conflict, they accused the burgomasters of arbitrariness in their investigations and sentencing. The burghers demanded that interrogations should no longer be carried out solely in the presence of the burgomaster, but always in the presence of several council members and a jurist as well.[24] Unlike most of the other popular demands during the conflict, this one was at least partially implemented: from 1616 onwards one or two council member were appointed on a yearly basis as deputies for the interrogation of prisoners (*'zur Verhör der Gefangenen*).[25] In the course of the period, the council members who were initially only appointed to *assist* the burgomaster increasingly *carried* out the investigations themselves. Gradually this construction developed into what would later be known as the *Verhöramt*—the office of criminal investigation. Still, the city council continued to have the final vote with regard to all important judicial decisions regarding the criminal investigation. The appointment of designated investigators did not, therefore, mean a separation of legislative and executive powers.

The criminal records refer to the deputies of the city council as '*deputirten herren examinatore*';[26] '*Herren Deputirten zur Examination der Gefangenen*'[27]; '*deputirte ad examen carceratorium*';[28] '*Herren deputirten zum Verhör der Gefangene*';[29] '*Herren Deputirten zu Criminalsachen*'.[30] Their duty was to assist the junior burgomaster with the interrogations. They were further assisted by the council clerk (*Ratschreiber*) who was in charge of maintaining the criminal records and recording the interrogations. The latter also had to carry out interrogations of offenders or witnesses who were unable to be present in person in the *Römer* for such reasons as sickness, for example.[31]

The process regarding criminal investigations in Frankfurt was written down for the first time in the instructions for the burgomasters, the *Bürgermeisterunterricht* of 1726. These instructions—which were implemented during the constitutional conflict between burghers and city council—were not a result

24 Joachim Eibach, 'Stadt Und Reichsstad : Rahmenbedingungen Der Frankfurter Strafjustiz Im 17. Und 18. Jahrhundert', in *Justiz = Justice = Justicia? Rahmenbedingungen von Strafjustiz Im Frühneuzeitlichen Europa*, ed. Harriet Rudolph and Helga Schnabel-Schüle (Trier: Kliomedia, 2003), 365.

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

26 Criminalia 1053 (1641).

27 Criminalia 1188 (1660).

28 Criminalia 1216 (1661).

29 Criminalia 1339 (1668).

30 Criminalia 1505 (1680).

31 See e.g. Criminalia 643 (1610).

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of reform but confirmed the practice as it had developed in the course of the seventeenth century.[32] The instructions stated that the junior burgomaster was responsible for investigating reported crimes. First, he had to determine whether or not there were sufficient indications to initiate criminal investigations. If this was indeed the case, he had to arrest the suspect and start the investigations, in which he was assisted by a representative of the city council, referred to as the *examinatore ordinario*, who held this post for three consecutive years. The *Bürgermeisterunterricht* referred to this office as *officium examinatorium*, *Examinationsamt* and *Verhöramt.*[33]

Formally the *examinatore* was only an assistant, but in practice he carried out much of the investigations individually because the burgomaster was usually engaged in other business.[34] The *examinatore* was therefore the person who interrogated the suspects and witnesses. However, in the case of the application of torture, the burgomaster had to be present. Before the implementation of the *Bürgermeisterunterricht,* it had not been a requirement for the *examinatore* to have undergone legal training. The instructions stated that it was now determined that the *examinatore* could no longer be elected by chance but had to be voted by the majority of the council instead.[35] Although the requirement of a legal training was now formally regulated, the process of juridification (*Verrechtlichung*) of the criminal justice system had already begun much earlier. Many of the council members from the first and second benches were actually trained jurists.[36]

The city's syndics could be consulted during each phase of the interrogation. These were legally trained officials who advised on procedural questions, such as whether the application of torture would be legal in certain cases (i.e. in accordance with the regulations of the Carolina and other legal codes). Most importantly they drew up legal opinions advising about the punishment that should be applied. After the termination of the investigation, the *Verhöramt* handed over all the investigation records to the syndics, who based their legal opinions solely on the written records. They took as their basis various legal texts (mostly the *Carolina* and later in the seventeenth century the work of the

32 Meinhardt, *Das peinliche Strafrecht*, 19.

33 Orth, *Nötig und nüzlich erachteter Anmerkungen*, 1751, 3:828, 839.

34 Ibid., 3:826.

35 Extract Protocolli Commissionis de 26 Mart. 1727. Die Wahl des herrn Deputirten ad officium examinatorium ohne Kugelung betreffend, printed in: Christoph Siegmund Müller, *Vollständige Sammlung der kaiserlichen in Sachen Frankfurt contra Frankfurt ergangenen Resolutionen und anderer dahin einschlagender Stadt-Verwaltungs-Grund-Gesezzen unter allerhöchst. kaiserlichem Privilegio* (Frankfurt am Main: Andreä, 1776).

36 Eibach, 'Stadt und Reichsstadt', 359–61.

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famous Saxon criminal law scholar Carpzov). In the seventeenth century these legal opinions were usually drawn up by two or the three syndics, but later in the eighteenth century their number was extended to four and later five.[37] The most junior syndic was the first to evaluate the case, after which the others commented on his opinion either by simply confirming it (which rarely happened), or by extending it with different points, or simply giving a whole new account of the legal matters themselves. Thus, the legal opinions were not used as a uniform and definite verdict to be simply applied by the city council, but were rather used as a guideline on which it could base its punishment. It was on the grounds of these legal opinions that the city council determined the punishment. Although they would usually follow the suggested punishments, they also regularly deviated from them. In serious legal matters the city council could also decide to draw upon the expert opinion of an external law faculty.[38] In the eighteenth century it became common to do this in capital cases.[39]

It was not until 1788, when the *Verhöramt* re-organised, that it received its first official regulation. This was a further step in the professionalisation process of criminal prosecution in Frankfurt. The junior burgomaster remained the chair of the investigation office, but his presence was no longer required during interrogations. The day-to-day business of the investigation office was the responsibility of a newly appointed, legally trained *Kriminalrat*, who replaced the *examinatore ordinario*. The latter remained part of the *Verhöramt* as a replacement for the *Kriminalrat* when he could not conduct the investigations due to sickness or other obligations, and had a vote in summary cases that were handled directly by the *Verhöramt*. Furthermore, the activities that were previously fulfilled by the council scribe—recording interrogations and maintaining the criminal records, conducting interrogations outside the *Römer*—were now conducted by a clerk, called an *Aktuar*. As such, the *Verhöramt* remained in existence well into the nineteenth century (see figure 1 for a schematic overview of the developments).[40]

37 Meinhardt, *Das peinliche Strafrecht*, 31; Eibach, *Frankfurter Verhöre*, 62.

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

39 Meinhardt, *Das peinliche Strafrecht*, 88; Eibach, *Frankfurter Verhöre*, 63.

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

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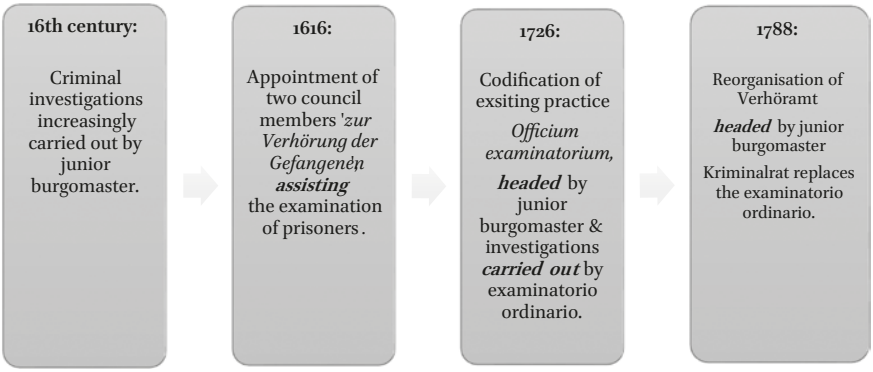

FIGURE 1 Development of the *Peinliche Verhöramt* in Frankfurt am Main

3 Prosecuted Crimes and Boundaries of Jurisdiction

The *Verhöramt* functioned as a court of enquiry for all penal offences (*peinliche Sachen*), in other words crimes that were sanctioned with corporal and/or capital punishment that only the city council could impose. At the same time, the office also held jurisdiction to sanction petty offences above a certain level in their function as a lower court. Apart from the *Verhöramt,* there were other lower courts and urban offices that also held some form of criminal jurisdiction and/or followed quasi-criminal procedures, for example with regard to the regulation of morals, and vagrancy and begging. Martin Dinges formulated a rather broad concept of early modern 'criminal justice' to avoid the difficulties of handling the early modern fluid boundaries between civil and criminal jurisdictions. He defined 'criminal justice' as referring to 'those legal institutions that at least also had a kind of criminal jurisdiction'. This definition therefore also includes, amongst others early modern semi-ecclesiastical moral courts (*Sittengerichte*).[41] In Frankfurt (like in most of early modern Europe) there was no extensive legal code that defined what kind of transgressions were to be prosecuted as a criminal offence or where the boundaries between specific lower courts should be drawn. Some offences were defined clearly by a variety of laws and ordinances, while others were not. Distinctions between felonies and misdemeanours (for example between grand or petty theft) were often fluid.[42] This created considerable room for discretion by law enforcers, but also

41 Dinges, 'Uses of Justice', 163.

42 Härter, *Policey und Strafjustiz*, 173–88; Schwerhoff, *Historische Kriminalitätsforschung*, 72–81.

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offered opportunities for bargaining and mediation by offenders or their family members.

What types of offences were investigated by the *Verhöramt*? The city's legal constitution (1578/1611) stated that with regard to the penal offences (*'Malefitz und Peinliche Sachen, so an Leib und Leben straffbar seyndt'*) Frankfurt followed the imperial penal code, the *Carolina*, and their own customary law.[43] The *Carolina* was a reflection of attitudes towards crime at the beginning of the sixteenth century, which was reflected in the offences the code listed. Sorcery, for example, hardly played a role in criminal prosecutions during the seventeenth and the eighteenth centuries. Moreover, the code only listed violent offences with a fatal ending (murder, manslaughter and infanticide) or in relation to robberies, but assaults were not regulated in the *Carolina*.[44] The *Bürgermeisterunterricht* of 1726 confirmed the *Carolina* as the principle legal code, while differentiating further, even if only slightly, regarding the type of offences that were investigated by the *Verhöramt*. The instructions stated that they had to investigate all occurring criminal offences, including those fights and assaults that resulted in serious bodily harm or disrupted public order.[45] What else specifically was considered a criminal offence was not specified. It wasn't until the reorganisation of the *Verhöramt* in 1788 that it was codified which crimes belonged to their jurisdiction.

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

- Political offences and other crimes that endanger public security and order. Including: upheavals; tumults; assaulting urban officials on duty; insulting the city's authorities; damaging public buildings; aiding prisoners to escape etc.
- Coining offences
- Violence. Including: killing through arson (*Mordbrand*); murder; manslaughter and other assaults.
- Infractions of freedom (*'Beleidigung der Freyheit'*) such as kidnapping; human trafficking, illegal recruitment.

43 *Der Statt Franckfurt am Mayn ernewerte Reformation* (1611) § 10.8.1.

44 Eibach, *Frankfurter Verhöre*, 71–72.

45 Orth, *Nötig und nüzlich erachteter Anmerkungen*, 1751, 3:827. Original: 'Der zu gefangenen verhör bestelte Ratsdeputirte der 2ten bank hat mit aßistenz und unter dem präsidio des jüngern Bürgermeisters die vorkommenden criminalsachen (worunter auch diejenige real injurien und schlägereien, wo üble verwundt und beschädigungen vorkommen mitbegriefen) fodersamst zu untersuchen […]'.

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- Malicious damage to private property (‘*Boshafte Beschädigungen des Vermögens anderer*’). Including: Fraud; usury; wanton bankruptcy; thefts etc.
- All crimes against the flesh (i.e. sexual offences) that do not belong to the jurisdiction of the *Konsistorium*, such as rape and brothel keeping.
- All physical injuries (*‘Real-Injurien*’) providing they required an official investigation (‘*von Amtswegen*’) to secure public safety or set an example (as opposed to a civil settlement).
- Insults (‘*Verbal-Injurien’*) if they occurred in aggravating circumstances, for example if they concerned oral insults from children against their parents.
- Moreover, all crimes that according to their quality (‘*ihrer Wichtigkeit oder Beschaffenheit wegen*’) are transferred to the *Verhöramt* by the city council, court of aldermen or others, including cases from external authorities that require investigation in Frankfurt).

The regulations of 1788 provide the most comprehensive overview of crimes that fell within the jurisdiction of the *Verhöramt*, either in their function as a court of enquiry or because of the jurisdiction they held as a lower court. Nonetheless it still provides only a fragmentary image. For example: in relation to property offences, the regulations specifically mention theft, but not robbery; with regard to *real injurien*, the regulation does not specify those cases where a criminal investigation is legitimated and those where it is not. Moreover, ambiguities remain about the delineation between penal offences and petty crimes, which considerably affected the role of the criminal investigation office. According to the regulations of 1788, the *Verhöramt* held jurisdiction over crimes that could be sanctioned with up to three months imprisonment or forced labour and/or expulsion in the case of vagrants (‘*ohne Wohnort herumirrenden Vagabunden*’), and fines or private imprisonment (*‘Bürgerliche Gefängniß Strafe’*) in case of citizens.[46] In such cases, the *Verhöramt* functioned as a lower court. Any crimes exceeding that level and demanding corporal or capital punishment were investigated by the *Verhöramt* but tried by the city council. Before the reorganisation of the office in 1788 the city council also tried levels below the threshold of corporal and capital offences. The exact boundaries of what the investigation office could sanction itself were less clearly defined, which sometimes even led to confusion and conflict between the city council and the officials at the *Verhöramt*.[47] For the purpose of this study, however, this distinction is less relevant as both types of offences are reflected in the *Criminalia,* the records collected by the *Verhöramt* in the course of the criminal investigations.

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

47 Eibach, *Frankfurter Verhöre*, 67–68.

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A more important issue for this study (especially for the subsequent chapter that deals with the different crime patterns of men and women) is the question of which crimes and transgressions were *not* investigated by the *Verhöramt* and therefore are *not* reflected in the *Criminalia*. As an example, the *Verhöramt* did not investigate every fight, brawl or assault, but only handled cases that involved a certain level of physical injury or involved a risk to public safety. According to the burgomasters' instructions of 1726, minor quarrels and insults ('*schlechte Zänkereien und Scheltworte*') among the lower classes could be transferred to the so-called *Oberster Richter*, who always required confirmation of the sentences he imposed from the junior burgomaster.[48] Verbal abuse (despite being specifically mentioned in the regulations of 1788) was generally investigated only if it was aimed at public officials or people of high standing. In other cases, victims of insults or verbal abuse could file a suit before one of the various civil courts of the city.[49]

In the late sixteenth century, a special court was established to accommodate the need of Frankfurt's inhabitants to settle petty conflicts (*Frevel*) such as conflicts of honour, insults, quarrels etc.[50] This so-called *Frevelgericht* was established to reduce the workload of the court of aldermen, and could handle the *Frevel* both through a civil as well as a criminal procedure (*criminaliter* and *civiliter*). The former was defined as one where compensation was to be paid to private parties, and the latter included cases which were sanctioned with a fine paid to the authorities.[51] The court personnel was made up by two (later six) aldermen (*Schöffen*) and the *Schultheiss*, which means that the offences were still handled by the same people as before, but in a different constellation and in fewer numbers. Somewhere in the middle of the seventeenth century the court fell into disuse, and only fragmented sources have survived shedding light on the conflicts settled before the *Frevelgericht*. Most cases were settled with monetary fines, and offenders could be held in custody awaiting

48 Criminalia 9804 (1788) folio 77; Orth, *Nötig und nüzlich erachteter Anmerkungen*, 1751, 3:794.

49 Eibach, *Frankfurter Verhöre*, 69.

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

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

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their punishment or imprisoned if they could not (or did not want to) pay the fines.[52]

Other offences that were not investigated by the *Verhöramt* included administrative and regulatory offences, and minor public order infringements. Some fragmentary records that have been preserved in the archives of the *Rechneiamt* list people being fined for minor offences, like Georg Brenner who was fined 1 guilder because he had sung lewd songs in 1614, or Hans Georg Schwelt and Paul Gottel, two skippers from Aschaffenburg who were fined 1,30 guilders because they had passed through one of the side arches of the bridge before it had opened in 1689.[53] Just as in other cities and territories in the Holy Roman Empire, the prosecution of vagrants and ethnic and religious minorities such as gypsies increasingly occupied the regulatory efforts of authorities. The police ordinances issued in early modern Frankfurt concerning such matters as begging and vagrancy, clearly demonstrate a process of increasing criminalisation. Vagrants and beggars were usually not prosecuted but expelled directly by the city's beadles (*Armenknechte*) or constables (*Gemeine Weltliche Richter*). Begging and vagrancy as such, were therefore not crimes prosecuted by the *Verhöramt*. However, as we will see in chapter 6, there are repeated cases involving offenders labelled as vagrants or unwanted foreigners who end up being expelled from the city simply because of their label. Most moral offences, including transgressions of the city's sumptuary laws, also did not belong to the jurisdiction of the *Verhöramt* but came under that of the *Sendamt* (until 1728) and the *Konsistorium* (from 1728 onwards). Prostitution, fornication, bigamy, adultery, and marital disputes were often only referred to the *Verhöramt* in cases of repeat offenders, serious domestic violence or large-scale brothel-keeping (see chapter 5).

In addition to this, certain minorities or professions were excluded from the jurisdiction of the *Verhöramt* in minor offences. The Jewish community of Frankfurt (i.e. those that had Jewish citizenship) possessed the authority to impose control in minor offences in the Ghetto. The so-called *Baumeister* could impose monetary fines or strip offenders of their Jewish citizenship, which was basically the same as expelling them as it annulled their rights to reside in the city.[54] The soldiers of Frankfurt's army were subjected to military jurisdiction

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

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

54 Gabriela Schlick, 'Zur Rolle der reichsstädtischen Gerichtsbarkeiten in den Alltagsbeziehungen der Frankfurter Juden in 18. Jahrhundert', in *Die Frankfurter*

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in case of minor fights and transgression. Serious violence and property offences, however, were investigated by the *Verhöramt* and judged by the city council. The city's handicraft associations had lost the authority to prosecute their members in criminal cases in the wake of the Fettmilch Uprising of 1616.[55] After this they could only impose disciplinary sanctions on their members, for example in the case of sexual offences. They could only do so after notifying the authorities, and their sanctions were not considered as independent criminal punishments, but were imposed in *addition* to the criminal sanctions imposed by the urban authorities. Finally, minor offences committed outside the city walls or in one of the villages belonging to Frankfurt's territory were primarily handled by the *Landgericht* or *Ackergericht*.

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

4 Criminal Procedures

The main purpose of this study is to understand sex differences among recorded offences. Which crimes actually ended up being recorded (i.e. prosecuted) and which did not, depended not only on the effectiveness and reach of the institutional infrastructure of the different judicial bodies, but also on the legal procedures followed. In many parts of early modern Europe, the transition between the medieval and early modern period marked a significant

Judengasse: jüdisches Leben in der frühen Neuzeit, ed. Fritz Backhaus (Frankfurt am Main: SocietätsVerlag, 2006), 171–88; Kallenberg, *Jüdinnen und Juden*.

55 Robert Brandt, 'Die Grenzen des Sagbaren und des Machbaren: Anmerkungen zur Rechtsgeschichte des Frankfurter "Zunfthandwerks" während der Frühen Neuzeit', in *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich*, ed. Anja Amend et al. (München: Oldenbourg, 2008), 247–64.

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transformation of criminal procedures.[56] In the Middle Ages, trials were essentially a matter between private individuals, where the authorities only took on the role of mediator. Crimes were only prosecuted if the victim filed a complaint and both parties remained equal in the process (accusatorial procedure—*Akkusationsprozess*). Trial outcomes had the character of a civil agreement, where compensation for the victim or their family was the prime objective. The early modern period marked the adoption of the inquisitorial system in which the responsibility for prosecution no longer lay with a private party. The initiative for the procedure now lay with the authorities and the offender no longer stood before the court as an equal party, but was subjected to investigation and had to defend him-/herself.

With a few exceptions, Frankfurt adopted the inquisitorial procedures for criminal cases. In the late sixteenth century, accusatorial procedures were still in practice in some cases in which foreigners or Jews filed a complaint. By the seventeenth century, however, this practice had faded.[57] According to the city's legal constitution (1611), accusatorial procedures still applied in certain cases of manslaughter and belonged to the jurisdiction of the court of aldermen.[58] A third option was the so-called *Fiskalischer Prozess*, which was essentially a mix of the accusatorial and the inquisitorial practice. Instead of the victim or the victim's family, the case would be initiated by the *Oberster Richter*, who would take up the role of public prosecutor *Fiskal*.[59] During the seventeenth century, such cases were still judged by the court of aldermen independently, but by the eighteenth century the city council as a whole issued the verdicts.[60]

The overwhelming majority of criminal cases in early modern Frankfurt followed the inquisitorial procedure. According to the *Bürgermeisterunterricht* of 1726, Frankfurt's criminal procedure was a 'summary inquisitorial procedure according to the customary practice'.[61] Joachim Eibach explains that this formulation of the criminal procedure is likely to be misunderstood because it might suggest that crimes were tried based on a quick summary procedure,

56 Günter Jerouschek, 'Die Herausbildung des peinlichen Inquisitionsprozesses im Spätmittelalter und in der frühen Neuzeit', *Zeitschrift für die gesamte Strafrechtswissenschaft* 104, no. 2 (1992): 328–60; Alfons Vogt, 'Die Anfänge des Inquisitionsprozesses in Frankfurt am Main', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung* 68, no. 1 (1951): 234–307.

57 Meinhardt, *Das peinliche Strafrecht*, 60–61.

58 *Der Statt Franckfurt am Mayn ernewerte Reformation* (1611) §10.6–7.

59 Orth, *Nötig und nüzlich erachteter Anmerkungen*, 1751, 3:830.

60 Eibach, 'Stadt und Reichsstadt', 64–65.

61 Orth, *Nötig und nüzlich erachteter Anmerkungen*, 1751, 3:828. Original: 'nach hiesigem Herkommen, summariter gefürter processus inquisitorius'.

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instead of an extensive trial and investigation. The phrase simply refers to the fact that there was no distinction made between the *Generalinquisition* (preliminary investigation, aimed at establishing the *corpus delicti* and determining the grounds for arrest) and the *Spezialinquisition* (the actual interrogation procedure on the basis of which the verdict was imposed): there was no clear line between the investigation of the crime and the trial.[62] Nor was there a public prosecutor, but rather crimes were investigated by the junior burgomaster or the *Oberster Richter* through the powers of their position.[63]

The impact of the offender's social status and incorporation in the community were key aspects of the early modern criminal justice system, which is reflected in the various legal codes of the time. The imperial criminal code, the *Carolina*, had been instrumental in the regulation of criminal procedures in the Holy Roman Empire.[64] It set the grounds on which suspects could be arrested and prosecuted, torture could be applied, and verdicts could be imposed.[65] The *Carolina* prescribed several circumstances that provided clear evidence and firm grounds for arrest: being caught red-handed at the scene of the crime, carrying stolen goods, rumours and a bad reputation, and carrying tools that could be used to break into houses (e.g. possessing picklock keys). For unknown foreigners, on the other hand, simply acting suspiciously could be considered sufficient reason for arrest. Additionally, other authorities could issue warrants for arrest.[66] It was not uncommon in Frankfurt for suspects to be arrested at the request of foreign rulers.

The grounds for arrest were relatively broad and suspects, especially foreigners and burghers from the lower classes, could be imprisoned relatively easily. The application of torture and issuing a verdict of guilty, however, were more complicated and bound to strict rules. Suspects could only be found guilty and the full punishment imposed if they confessed to the crime, or if there were enough witnesses to the crime who could identify the offender.[67] In the latter case, however, the authorities still aimed for a confession by the offender, as

62 Eibach, *Frankfurter Verhöre*, 63.

63 Rössing, *Versuch einer kurzen historischen Darstellung*, 185. Original: 'Dem Inquisitorischen Criminal Proceß verfuhr von Amtswegen nur der Jüngere Bürgermeister oder der Oberster Richter ohne daß ein besonderere Ankläger dazu Anzutretten nöthig hatte'.

64 John H. Langbein, *Prosecuting Crime in the Renaissance: England, Germany, France*, Constitutio Criminalis Carolina (Cambridge, MA: Harvard University Press, 1974), 177–78.

65 Rublack, *The Crimes of Women*, 41; Van Dülmen, *Theater des Schreckens*, 14–37.

66 Meinhardt, *Das peinliche Strafrecht*, 60–67.

67 Ibid., 74.

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this was considered the purest form of evidence of having committed a crime. Extracting a confession from the suspect was thus central to the interrogations. The authorities could apply a number of different methods to achieve their aim. First and foremost, investigators interrogated the suspect and witnesses individually. If his statement conflicted with that of the witness accounts, the suspect had to defend himself in a face-to-face confrontation with the witness.

The importance of a confession in convicting offenders is particularly evident in cases of infanticide. For a woman to be convicted of this crime, authorities had to prove that the death of the infant resulted from intentional harm, which was extremely difficult to prove without a confession. Infanticide was a capital crime, but in order for a woman to be executed for this crime, it had to be proven without doubt that it was intentional. The execution rate for this offence, therefore, rarely exceeded 50 percent in the early modern period.[68] Instead, women were usually banished from the city on the grounds of minor offences like fornication and concealment of pregnancy.

In order to extract a confession from suspects, authorities could resort to the use of torture.[69] In early modern Frankfurt, suspects could only be subjected to torture in cases that required a serious corporal or capital punishment.[70] Moreover, investigators could not impose torture on their own account, but required the consent of the city council, who based their decision on the consultation of the investigation records, and the legal opinion of the city's syndics.[71] The latter also drew up the questions the suspect had to answer during the painful (*peinliche*) interrogation. These interrogations took place in the torture chamber in the *Bornheimer Turm* in the presence of the junior burgomaster, one syndic, the *Oberster Richter*, and the clerk, and the torture was applied by the executioner (*Scharfrichter*). The interrogation would always start with the display of the instruments of torture only, to give the suspects a chance to

68 Margaret Brannan Lewis, *Infanticide and Abortion in Early Modern Germany* (New York: Routledge, 2016), 53; Richard Van Dülmen, *Frauen vor Gericht: Kindsmord in der Frühen Neuzeit*, 5th ed. (Frankfurt am Main: Fischer, 2010), 59.

69 John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago: University of Chicago Press, 1977).

70 Orth, *Nötig und nüzlich erachteter Anmerkungen*, 1751, 3:840. Original: 'Weshalb auch dieses mittel allein, in solchen harten verbrechen, die eine lebens oder schwere leibesstrafe, als ruten aushauen, verstimmelung der glieder u. dergl. Nach sich ziehen, zu zulassen ist'. 'Weshalb auch dieses mittel allein, in solchen harten verbrechen, die eine lebens oder schwere leibesstrafe, als ruten aushauen, verstimmelung der glieder u. dergl. Nach sich ziehen, zu zulassen ist'.

71 Meinhardt, *Das peinliche Strafrecht*, 74–79; Orth, *Nötig und nüzlich erachteter Anmerkungen*, 1751, 3:838–43; PO 4346 Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt 04.12.1788, §28.

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confess without the need to actually put them to use. With regard to the use of torture, women were not treated differently. Only the physical conditions of offenders were treated as grounds for exemption from torture. That does not mean that pregnant women were automatically spared torture. There are several examples in which women, while being pregnant, were threatened with torture and interrogated with the display of instruments of torture.[72] Still, it was specifically stated that pregnant women could not be interrogated or punished in such a way that this could endanger the unborn child.[73]

According to Maria Boes, in little less than half of the cases (47 percent) that were recorded in the book of punishments (1562–1696), torture was applied during the interrogations. The application of torture had declined considerably during this period. During most of the seventeenth century, in more than 75 percent of the cases recorded in the book of punishments offenders had not been subjected to the use of torture.[74] Although there are no precise numbers for the eighteenth century, the application of torture appears to have declined even further in this period and was only applied incidentally beyond the simple display of instruments of torture.[75]

In the case of minor offences, the *Verhöramt* could impose lesser punishments without a confession or significant evidence. In such a case, offenders were not necessarily convicted for a specific crime, but for being a notorious person in general. Such so-called *Verdachtstrafen* were particularly imposed

72 Maria R. Boes, 'Crime and Punishment in the City of Frankfurt Am Main from 1562 to 1696' (City University of New York, 1989), 132.

73 See, for example, the legal opinion in the case of Eulalia Denhard who was prosecuted for adultery and prostitution. Eulalia was heavily pregnant and was interrogated with the display of the torture instruments (*'with Güte'*) and confessed to the crime. According to the syndics, the law demanded that her offences should be punished with a corporal punishment (*peinliche Bestraffung*). However, because she was pregnant, they could not impose such a punishment until at least 40 days after she had given birth. To avoid having to keep her in custody for such an extended period of time, it was decided that she was to be banished from the city indefinitely. Original: '[…] dahero nach anleitung der Rechten mit Peinlicher bestraffung desto schärffer angesehen werden könte […] bevorauß ohne das in Rechten Verbotten ist, einige Schwangere Weibsperson in Zeit der tracht auch nach der geburt innerhalb 40 tagen peinlich anzugreiffen, oder dieselbige dermassen zu schrecken, das daraus gefar der leibsfrucht zustehen mögte, alß laßen wir eß, wegen ihrer abstraffung, doch unvergreifflich, dahin gestellet sein, daß umb verhütung mehrer Costens, und Weitläuffigkeit sie Ayla der Statt auf 12 meil wegs in perpetuum förder-sambst verwiesen werden solle'. Criminalia 1091 (1646).

74 Boes, 'Crime and Punishment', 125, 133.

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

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on migrants, who were usually expelled. In other cases, the *Verhöramt* offered offenders the opportunity to swear an oath of purgation (*Reinigungseid*) with which the suspects could swear their innocence. This opportunity was hardly ever granted to outsiders.[76] In the rare event that foreigners were given this opportunity, it did not necessarily save them from being expelled from the city; the authorities could still decide to deny them the right to stay in the city.[77] Regardless of their legal status, offenders were always allowed to consult a defence lawyer. However, except for cases that involved serious corporal or capital punishments—in which case the city council appointed a lawyer at the city's expense—suspects had to finance any legal counsel themselves. This probably contributed to the fact that offenders hardly ever consulted lawyers, as did the fact that offenders never actually consulted with their lawyer in person. The latter drew op his defence solely based on the investigation records.[78]

Thus, social standing and legal belonging largely determined the treatment of suspects.[79] It could mean the difference between a fine or admonishment and expulsion; between being granted the opportunity to swear a *Reinigungseid* and receiving a *Verdachtsstrafe*. These factors cut across gender lines, reminding us that gender never was and never is a homogenous category and should not be treated as such.[80] Such a two-track judicial system (*zweigleisige Strafjustiz*) was typical in early modern Germany and was intended to enforce distinctions between insiders and outsiders.

The legal norms did not discriminate according to gender in terms of criminal justice. In contrast to civil law suits, women, regardless of their marital status, were held fully responsible for their criminal actions. The formulations in the *Carolina*, were gender neutral when referring to offenders. Similarly, in the articles on the proof of witnesses, there are no regulations that exempted women as witnesses or that consider their testimonies of lesser value than those of men.[81] With regard to the substantive law of the *Carolina*, there were only three gender-specific crimes: rape (*die Notzucht* Art. 119) was considered to be a male offence only, while infanticide and child abandonment (Art. 131

76 Joachim Eibach, 'Versprochene Gleichheit—verhandelte Ungleichheit: Zum sozialen Aspekt in der Strafjustiz der Frühen Neuzeit', *Geschichte und Gesellschaft* 35, no. 4 (2009): 521–22.

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

78 Eibach, *Frankfurter Verhöre*, 67.

79 Rublack, *The Crimes of Women*, 60–69; Eibach, 'Versprochene Gleichheit', 533.

80 Wunder, 'Weibliche Kriminalität', 45–46.

81 Helga Schnabel-Schüle, 'Frauen im Strafrecht vom 16. bis zum 18. Jahrhundert', in *Frauen in der Geschichte des Rechts: von der frühen Neuzeit bis zur Gegenwart*, ed. Ute Gerhard (München: C.H. Beck, 1999), 191.

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and 132) were considered as female offences. Although there were specific gendered regulations when it came to the execution of punishment (the death penalty for women was to be imposed through drowning, while men could be hanged, quartered, or decapitated) these were not always observed in practice. Moreover, there were no regulations for the mitigation of punishment for women, based on the notion of women being a weaker and less accountable sex.[82] In contrast to civil law, where married women in particular were restricted in their scope of action through the institution of gender tutelage, women could indict criminal cases on their own account and act as witnesses in the trial.[83] In contrast to early modern England, where normatively the principle of *feme covert* restricted the accountability of crimes committed by a woman in the presence of her husband, there was no distinction between women according to marital status in early modern Frankfurt, according to the legal norms.[84]

5 Policing and Social Control

In line with other European cities, Frankfurt witnessed a fundamental shift in the maintenance of urban stability during the early modern period.[85] In the sixteenth century, burghers organised in burgher guards were still responsible for most of the policing tasks in the city, together with a handful of urban officials, such as the city's beadles and the previously mentioned *Gemeine Weltliche Richter*. The town council increasingly took over responsibility for securing public security and maintaining the city's peace (*Stadtfrieden*), and in order to achieve this gradually restricted the burghers' traditional liberty to bear arms in public. From the beginning of the seventeenth century onwards, the city council increasingly relied on the city's soldiers for policing and maintaining public order, at the cost of the old burgher guards, who continued to hold administrative functions in the neighbourhoods.[86] At the beginning

82 Ibid., 192–94.

83 Eibach, *Frankfurter Verhöre*, 66.

84 Walker, *Crime, Gender, and Social Order*, 201–5, 277.

85 For the following see: Joachim Eibach, 'Burghers or Town Council: Who Was Responsible for Urban Stability in Early Modern German Towns?', *Urban History* 34, no. 1 (2007): 14–26; Eibach, *Frankfurter Verhöre*, 79–89.

86 Jeannette Kamp, 'Controlling Strangers: Identifying Migrants in Early Modern Frankfurt Am Main', in *Migration Policies and Materialities of Identification in European Cities: Papers and Gates, 1500–1930s*, ed. Hilde Greefs and Anne Winter (London: Routledge, 2018), 46–65.

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of the seventeenth century, Frankfurt employed 60 soldiers in their service, but by the eighteenth century this number had grown to 800–1,000, half of whom originated from the city or one of its surrounding villages.[87] Of these soldiers, approximately 200 were deployed for policing the city and maintaining public order. They patrolled the streets, guarded the city gates, and carried out searches of houses and taverns.[88] Their guardhouses, the *Hauptwache* and the *Konstablerwache,* functioned as 'police stations': suspects were held in custody there and crimes could be reported there in the event that guards were needed to arrest a suspect. As a result of this 'militarisation of urban stability', the number of urban officials tasked with law enforcement per inhabitant had increased. Joachim Eibach calculated that in 1587 there was one guard for every 188 inhabitants (including the burgher night patrols). By the middle of the eighteenth century, the ratio was one guard for every 144 to 162 inhabitants (excluding the burgher night patrols).[89]

Besides soldiers, the authorities relied on constables (*Gemeine Weltliche Richter*) and beadles (*Bettelvögte/Armenknechte*) for law enforcement throughout the entire period. The beadles were tasked with policing, arresting and expelling beggars and vagrants. At the beginning of the seventeenth century the city employed two to three beadles. By the end of the seventeenth century their number had increased to five, and by the middle of the eighteenth century there were ten beadles.[90] The *Gemeine Weltliche Richter* were tasked with carrying out orders for arrest, delivering subpoenas, collecting fines and guarding prisoners.[91] Moreover they were instructed to inform the authorities about any suspicious persons present in the city, or possible offences they may have heard about. Their activities thus exceeded the scope of merely executing orders from the city's authorities.

The *Criminalia* reveal that both the *Gemeine Weltliche Richter* and the city's beadles often appeared before the *Verhöramt* to report suspects. Mostly these were offenders whom they had encountered before in their role as 'policing' officials. They often reported offenders who had broken their banishment or who were simply arrested on the charge of exhibiting suspicious behaviour,

87 Isidor Kracauer, 'Das Militärwesen der Reichsstadt Frankfurt am Main im 18. Jahrhundert', *Archiv für Frankfurts Geschichte und Kunst* 12 (1920): 27–29.

88 Eibach, 'Burghers or Town Council', 23.

89 Eibach, *Frankfurter Verhöre*, 85.

90 Robert Jütte, *Obrigkeitliche Armenfürsorge in deutschen Reichsstädten der frühen Neuzeit: städtisches Armenwesen in Frankfurt am Main und Köln* (Köln: Böhlau, 1984), 117–21.

91 Johann, *Kontrolle mit Konsens*, 241–49.

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and thus fulfilled an important function in the maintenance of social order in the city. Most of the *Gemeine Weltliche Richter* and city beadles belonged to the same socio-cultural stratum of society as the people they policed and they were not considered as 'honourable' individuals by most of their contemporaries.[92] The *Criminalia* reveal multiple cases in which those tasked with enforcing law and order became lawbreakers themselves. They were suspected of such nefarious activities as corruption, contacts with criminal gangs, or carelessness resulting in the escape of prisoners.[93]

Despite the increasing control over the maintenance of public order and law enforcement by urban authorities, social control and crime reporting remained to a large extent in the hands of private individuals. Historians have emphasised the importance of the 'uses of justice' by individuals in early modern conflict resolutions and argued that by using the courts subjects accepted, formed and altered what was seen as deviance or criminality.[94] In eighteenth-century Frankfurt, slightly less than two-thirds of the property crimes and violent offences were reported to the authorities by the victims themselves. Less than 10 percent of these cases came before the *Verhöramt* as a result of the direct intervention of urban officials tasked with policing and keeping public order, such as constables (*gemeine Weltliche Richter*), overseers of the poor (*Bettelvögte*) or soldiers.[95] This was different, however, in cases such as begging, vagrancy and breach of banishment. There are hardly any examples found in the *Criminalia* in which Frankfurt's inhabitants considered it to be in their own interest to report such an offence to the authorities: they did not *use* the courts to assist the authorities in their efforts to control the 'vagrancy problem'. In fact, it was rather the opposite as there are several examples in which bystanders entered into violent conflicts with the city's beadles to free beggars from arrest.[96]

Naturally, individuals who could be categorised (or who ran the risk of being categorised) as vagrants or 'unwanted migrants' did not appear before the court as plaintiffs to report crimes, although they were often to be found among the accused. For the eighteenth century, Joachim Eibach has demonstrated that

92 Eibach, *Frankfurter Verhöre*, 82–83.

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

94 Dinges, 'Uses of Justice', 160.

95 Eibach, *Frankfurter Verhöre*, 74–75.

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

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the majority of plaintiffs were citizens, particularly from the middle classes. Their share among plaintiffs was disproportionate compared to their share among the city's population or even among the victims, which suggests that locals were slightly more inclined to make use of the criminal justice system than others. Women accounted for 20 percent of the plaintiffs, which more or less corresponded with their share among the victims.[97]

Unfortunately, the seventeenth-century *Criminalia* are more restricted in their information. A review of eight sample years (1620–21; 1640–41; 1660–61; 1680–1681) shows that in slightly more than one-fifth of the cases there is information available about who reported the case to the authorities.[98] The gender ratio is rather similar to that of the eighteenth century, with five (21 percent) of the complainants being women. As the absolute numbers are very small for this period, however, drawing general conclusions based on these numbers would be problematic. Therefore, making statements about possible changes of the uses of justice by women throughout this period based on statistical information is not possible.

Apart from taking recourse to the law, other formal and informal platforms of social control were important throughout the entire early modern period. The way various mechanisms of formal and informal social control shaped gendered patterns of prosecuted offences will be developed further in subsequent chapters. Household authorities, poor relief and migration policies, and the control of sexual offences by ecclesiastical courts: all these shaped the public roles of men and women on a different level and also influenced the various ways they interacted with the court. One platform of social control that receives less attention in this book, but needs to be mentioned here nonetheless, is the importance of neighbours and neighbourhoods. In 1614, in an attempt to gain control over the city during the *Fettmilch Uprising*, the city council organised Frankfurt into 14 districts, each with one neighbourhood captain to maintain public order.[99] Unlike what is known for cities in northern Germany or the Netherlands, Frankfurt's neighbourhood captains had no formal judicial capacities.[100] Their tasks mainly belonged to matters regarding fire safety,

97 Eibach, *Frankfurter Verhöre*, 74–75.

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

99 PO 1847 *Eines Erbarn Raths der Statt Franckfurt am Mayn Quartir Ordnung* 25.10.1614.

100 Christine Schedensack, *Nachbarn im Konflikt: zur Entstehung und Beilegung von Rechtsstreitigkeiten um Haus und Hof im frühneuzeitlichen Münster* (Münster: Aschendorff, 2007); Carl A. Hoffmann, 'Neighborhood in European Cities', in *Social Control in Europe: Volume 1, 1500–1800*, ed. Herman Roodenburg and Pieter Spierenburg (Columbus, OH: Ohio State University Press, 2004), 309–27; Aries Van Meeteren, *Op hoop*

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maintaining the administration of who lived in the quarter, and generally patrolling the streets to intervene in cases of public disturbance.

Of course, neighbourhood control was not only restricted to the neighbourhood watch but was exercised by everyone. There are several examples that show that even in a large city like Frankfurt, neighbours kept track of what fellow residents were doing and did not hesitate to regulate deviance among themselves or report it to the authorities.[101] Unlike what is known for Dutch cities, where it was common for neighbours to report deviant behaviour to the magistrates together, such examples of collective neighbourhood action are rare in early modern Frankfurt.[102] This may be due to the fact that the controlling functions of the neighbourhood were less institutionalised in Frankfurt where they had fewer judicial capacities than in Dutch cities.

6 Conclusion

The judicial system plays an important part in the prosecution of male and female crime. Historians have argued that the presence of criminal courts and other formal control mechanisms in the city shaped the urban nature of early modern female criminality.[103] The criminal justice system in early modern Frankfurt was characterised by a process of differentiation and professionalisation. The *Verhöramt* developed into an independent office that was in charge of carrying out the criminal investigations in the city. It had jurisdiction to sanction offences with punishments up to three months in prison but functioned solely as a court of enquiry for serious crimes. These were tried by the city council as a whole in the absence of the offender. Council members based their judgements on the investigation records and legal opinions of the city's jurists, the *Syndics*.

The investigation records of the *Verhöramt* generally reflect serious offences that were committed within the city. Petty fights, scolding, disorderly conduct, and regulatory offences were usually not investigated by the *Verhöramt*, but by

van akkoord: instrumenteel forumgebruik bij geschilbeslechting in Leiden in de zeventiende eeuw (Hilversum: Verloren, 2006), 27–61; Bernard S. Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003).

101 Eibach, *Frankfurter Verhöre*, 266–79.

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

103 Shoemaker, *Gender in English Society*, 301–2.

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lower urban officials. The same applied to offences like begging and vagrancy, that belonged to the authority of the poorhouse, and moral offences, that were judged by the semi-ecclesiastical court. The criminal justice system in Frankfurt followed the principles of the inquisitorial procedure. The city had no criminal law code of its own, but followed the imperial law code, the *Carolina* (1532). There were no legal principles according to which women could be held less accountable for offences they committed or were hindered in indicting crimes.

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

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CHAPTER 3

Gender and Recorded Crime: Long-Term Patterns and Developments

Now that we have established a clear picture of the judicial framework, it is time to turn to the main objective of this study: gender differences in recorded criminality in early modern Frankfurt. Historians generally accept that women's contribution to registered offences varied through time and place, however there is no consensus yet about how these figures should be interpreted and what the determining factors were that impacted the level of female offenders on prosecution rates. While there is a lively academic debate discussing changes in the transition from the early modern to the modern period, much less is known about fluctuations and developments in the early modern period itself.[1]

Indeed, data for early modern Europe show that in the seventeenth and eighteenth centuries women accounted for anything between 10 percent and 50 percent of all registered offenders. Historians have drawn contradictory conclusions based on these figures. Older studies on gender and crime read them as evidence of a general pattern of women's underrepresentation among recorded offences.[2] More recently the early modern period is characterised as a period in which women 'were present in courts as criminal defendants in larger numbers [...] than common criminological wisdom suggests', and that this is a pattern predominantly found in cities.[3]

This chapter adopts a more differentiated approach. It analyses the female crime pattern in Frankfurt in comparison with the cities in North-West Europe that have until now dominated our understanding of women's offending in the early modern period. Such a comparative perspective promotes a more complex explanation of female crime patterns than is usually adopted by scholars for this period. As it highlights local and regional differences, it becomes clear that generalisations, such as the effects of urban life on the chances of women to become involved with the law, only tell part of the story.

The first part of this chapter discusses the variations in female participation among recorded offences across early modern Europe, linking these variations

1 Feeley, 'The Decline of Women'; King, *Crime and Law*; Van der Heijden and Koningsberger, 'Continuity or Change'.

2 Jütte, 'Geschlechtsspezifische Kriminalität'.

3 Feeley and Aviram, 'Social Historical Studies', 153.

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to the different urban demographic contexts. The second part moves on to a closer examination of the gendered crime patterns in early modern Frankfurt, and focuses on the way that prosecution patterns, and consequently female crime levels, were shaped by socio-economic fluctuations, and how this developed over time.

1 Women in Recorded Crime

The analysis of selected data on the level of female offenders in early modern Germany, Holland, and England reveals that there was considerable variation throughout the period. Of course, one has to exercise some caution when comparing such figures for the early modern period, as they are each derived from a specific legal context and have been reconstructed based on very different sources. The data in table 1 represent the higher court levels, and allow us to draw comparisons of some general trends between the different cities. As one can see, the share of women was highest in London and Newcastle and in cities in the highly urbanised province of Holland. In London women constituted 30 to 50 percent of the cases brought before the Old Bailey during the seventeenth and eighteenth century.[4] For the city of Newcastle, overall crime rates are lacking, but women constituted half of the property offenders during the eighteenth century. Similar figures were found in the Dutch Republic, with Amsterdam topping the list: 42 percent of all defendants between 1620 and 1810 were women.[5] The figures for the entire epoch are somewhat lower in the other cities, but here too there were substantial periods in which women contributed a significant share to all prosecuted offences. Leiden had a share of 32 percent female delinquents, but witnessed a process of 'feminisation' of criminality in the second half of the eighteenth century with women contributing half over more to all the prosecuted offenses.[6] Delft showed a similar pattern to Leiden, with women making up more than a third of all offenders in the entire period and close to half in the end of the eighteenth century. Figures for eighteenth-century Rotterdam show that there a well women formed a substantial part of all suspects before the criminal court.

4 Feeley and Little, 'The Vanishing Female', 235; Beattie, *Policing and Punishment*, 65.

5 Ariadne Schmidt, *Prosecuting Women : A Comparative Perspective on Crime and Gender before the Dutch Criminal Courts, c.1600–1810* (Leiden: Brill, 2019).

6 Dirk-Jaap Noordam, 'Criminaliteit van vrouwen in Leiden in de 17de en 18de eeuw', *Jaarboekje voor Geschiedenis en Oudheidkunde van Leiden en Omstreken* 77 (1985): 38; Schmidt, *Prosecuting Women*.

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TABLE 1 Share of women among defendants in Germany, Holland and England

City/Region	% property offenders	% all offenders
Germany		
Frankfurt (1600–1806)[a]	27	22
Cologne (1568–1612; 1698–1712)	23–36	16–45
Nuremberg (1578–1617)	16	27
Kurmainz (1560–1802)	24	34
Bavaria (1600–1650; 1685–1689)	12–15	23–29
Heiden (1680–1795)	19	11
Freiburg (1763–1772)	34	-
Thorn (1704–1792)	-	16
Netherlands		
Amsterdam (1680–1810)	31	42
Delft (1591–1810)	-	36
Rotterdam (1700–1750; 1750–1810)	28–33	33–35
Leiden (1600–1810)	37	32
England		
London (1670–1750)	39	36
Newcastle (1725–1800)	50	-
Surrey (1663–1802)	24	21
Cheshire (1590–1660)	22	-
Oxfordshire (1750–1800)	22	-

SOURCES: **GERMANY:** *FRANKFURT*: IFSG, CRIMINALIA 1600–1806; *COLOGNE*: SCHWERHOFF, *KÖLN IM KREUZVERHÖR*, 350; SCHWERHOFF, 'KRIMINALITÄT IN KÖLN', 71–72; *NUREMBERG:* JÜTTE, *GESCHLECHTSSPEZIFISCHE KRIMINALITÄT*, 97; *KURMAINZ:* HÄRTER, *POLICEY UND STRAFJUSTIZ*, 541; *BAVARIA:* BEHRINGER, 'WEIBLICHE KRIMINALITÄT IN KURBAYERN', 65–66.; *HEIDEN:* FRANK, *DÖRFLICHE KRIMINALITÄT*, 232, 235; *FREIBURG:* WETTMANN-JUNGBLUT, *NÄCHSTE WEG ZUM GALGEN*, 83–84; *THORN*: THOMSEN, *ZWISCHEN HAUPTWACHE UND STOCKHAUS*, 89–91. ***NETHERLANDS*: *LEIDEN:*** SCHMIDT, *PROSECUTING WOMEN*; *ROTTERDAM:* VAN DER HEIJDEN, 'CRIMINALITEIT EN SEKSE', 16; SCHMIDT, *PROSECUTING WOMEN*; *AMSTERDAM:* FABER, *STRAFRECHTSPLEGING*, 253–259; SCHMIDT, *PROSECUTING WOMEN*; *DELFT:* NOORDAM, 'STRAFRECHTSPLEGING'. **ENGLAND AND SCOTLAND:** *LONDON:* THE DATA FOR PROPERTY OFFENCES ARE FOUND IN BEATTIE, *POLICING AND PUNISHMENT*, 65. FOR WOMEN'S SHARE AMONG THE OVERALL OFFENDERS, THE OLD BAILEY ONLINE DATABASE HAS BEEN CONSULTED: OLD BAILEY PROCEEDINGS ONLINE (WWW.OLDBAILEYONLINE.ORG, VERSION 6.0, 17 APRIL 2011), TABULATING DEFENDANT GENDER, BETWEEN 1674 AND 1750. COUNTING BY DEFENDANT; *NEWCASTLE:* MORGAN AND RUSHTON, *ROGUES,* 67; *SURREY:* BEATTIE, 'CRIMES OF WOMEN', 81; *CHESHIRE:* WALKER, *CRIME, GENDER AND SOCIAL ORDER*, 159; *OXFORDSHIRE:* KILDAY, 'CRIMINALLY POOR', 512.

[a] For a justification of the recostruction of crime rates in this book, see appendix 1.

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Data for cities and territories in early modern Germany are more scattered and usually cover a shorter time frame. The available figures display a somewhat different pattern, and overall the gender gap appears to be more profound than in the cities mentioned above. In Frankfurt, women formed 22 percent of all suspects recorded in the *Criminalia.* Like elsewhere, these figures were not stable and fluctuated over time, but women never constituted more than 30 percent of all offenders per decade. In late sixteenth century Cologne, women accounted for only 16 percent of all offenders, as they did in the small town of Thorn in the eighteenth century. However, as Gerd Schwerhoff found, this had changed considerably by the beginning of the eighteenth century. By this time, women comprised close to 45 percent of all defendants. According to Schwerhoff this pattern was likely due to economic changes, as the period was characterised by poverty and decline, and women were primarily tried for 'poverty crimes' (*'Armut- und Notdelinquenz'*) like theft, prostitution and infraction of their banishment. At the same time, he could not rule out that the pattern was the result of changing selection mechanisms by the authorities, and if it was a short-term deviation of a 'normal' pattern or more structural.[7]

Moreover, other data for larger territories in Germany caution us make generalisations about the early modern period as a time in which 'female crime rates were rather high [...] and subsequently declined in the late-eighteenth and nineteenth centuries'.[8] For early modern Kurbayern, Wolfgang Behringer observed a decline from 29 percent female offenders at the beginning of the seventeenth century to 23 percent by the end of the century.[9] And in Kurmainz, a large territory in the vicinity of Frankfurt, Karl Härter found that women constituted 34 percent of all offenders prosecuted by the central authorities.[10] In both regions the relatively high rate of women was the result of intensified prosecution of sexual offences by the central authorities in their attempt to centralise the legal apparatus and firmly establish their authority over local judicial institutions.[11]

7 Gerd Schwerhoff, 'Kriminalität in der Reichsstadt Köln um 1700—ein neuer Blick vom Turm', *Geschichte in Köln* 55, no. 1 (2008): 71–72.

8 Feeley and Aviram, 'Social Historical Studies', 153.

9 Wolfgang Behringer, 'Weibliche Kriminalität in Kurbayern in der Frühen Neuzeit', in *Von Huren und Rabenmüttern: weibliche Kriminalität in der frühen Neuzeit*, ed. Otto Ulbricht (Köln: Böhlau, 1995), 65–66.

10 Härter, *Policey und Strafjustiz*, 539.

11 Behringer, 'Weibliche Kriminalität', 78; Härter, *Policey und Strafjustiz*, chap. 8.

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2 Urbanisation and Female Offending

The picture that emerges from this comparison is one of variation in which the gender gap in early modern Frankfurt appears to be more profound than in other urban centres in the Dutch Republic or United Kingdom. Historians have often stressed the relationship between urbanisation and female offending. Manon van der Heijden stated recently that '[T]he close relationship between the degree of urbanisation and the percentage of female offenders is particularly relevant to the highly urbanised region of Holland'.[12] As mentioned earlier, the link between city life and high levels of female crime is generally explained as a combination of their independent and—at the same time—precarious position. The loss of social and economic support networks—often present in more traditional close-knit communities—was an especially important factor in making women more vulnerable in times of hardship. At the same time, means of formal prosecution were more available in towns than on the countryside, making it more likely for women to be subjected to the law.[13] For non-urban settings, on the other hand, it is argued that informal sentencing, for example a master dismissing his maid, occurred more often than formal recourse to the law, thereby creating a possibly larger dark number than in cities.[14]

Given these general observations it is tempting to assume that there is a relationship between the size of the city, and consequently the level of urban precariousness, and the rate of female offending. At first glance the comparison between the various regions supports such an assumption. After all, urbanisation levels were much lower in early modern Germany than they were, for example, in the Netherlands.[15] Peter King, however, previously warned against 'making too simplistic a model of links between levels of urbanisation and levels of female involvement in recorded crime'.[16] And indeed, a closer look at the cities in table 1 reveals that there was not a one-on-one relationship between the size of the city and the percentage of female offenders. With a population of 23,000 by the beginning of the eighteenth century and 39,000 by the end of the Ancien Régime, Frankfurt was certainly smaller than London (676,000) or

12 Van der Heijden, 'Women, Violence and Urban Justice', 93.

13 Beattie, 'Criminality of Women', 71; Shoemaker, *Prosecution and Punishment*, 184–86; Moch, *Moving Europeans*, 2003, 146.

14 Anne-Marie Kilday, 'Criminally Poor? Investigating the Link Between Crime and Poverty in Eighteenth Century England', *Cultural and Social History* 11, no. 4 (2014): 511; Schwerhoff, *Aktenkundig und Gerichtsnotorisch*, 149–55.

15 Jan De Vries, *European Urbanization, 1500–1800* (London: Methuen and Co, 1984), 45; Pfister, *Bevölkerungsgeschichte*.

16 King, *Crime and Law*, 217–18.

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Amsterdam (219,000).[17] However, size in urban population alone cannot explain the differences. Population sizes of Rotterdam (39,000) and Newcastle (25,000) in the middle of the eighteenth century resembled that of Frankfurt, but they had considerably higher shares of female crime. Leiden's population size had reached 67,000 inhabitants in around 1650, but by 1750 it had declined to 38,000.[18] Rather than declining, the percentage of women among sanctioned offenders actually increased.[19]

Other factors, therefore, need to be taken into account. As underscored by scholars, it was in particular the relative independence and relaxation of patriarchal control, which was closely connected to urban migration patterns, that explain the high levels of female criminality in cities like London and Amsterdam. The cities with the highest share of women—Leiden, Rotterdam, Amsterdam, Newcastle and London—were all characterised by specific demographic patterns due to labour markets which ensured high female migration to the city and a considerable level of male outward migration either through service as sailors or soldiers.[20] In most early modern cities, there was a surplus of women, but the numbers of women were particularly high in some of the cities experiencing high levels of female crime listed in the table above. In eighteenth-century Leiden, for example, 26 percent of the households were headed by women, and their share among households classified as poor was even larger: 48 percent. And across Holland, the share of households headed by widows varied between 14 and 27 percent.[21]

In early modern Germany, on the other hand, the position of never-married females is believed to have been more restricted. In early modern Württemberg

17 Paul Hohenberg and Lynn Hollen Lees, *The Making of Urban Europe, 1000–1994* (Cambridge, MA: Harvard University Press, 1995), 226.

18 Jan Lucassen, 'Immigranten in Holland 1600–1800: een kwantitatieve benadering', *Centrum voor de Geschiedenis van Migranten Working Paper* 3 (2002): 26–28; Gwenda Morgan and Peter Rushton, *Rogues, Thieves, and the Rule of Law the Problem of Law Enforcement in North-East England, 1718–1800* (London: UCL Press, 1998).

19 Els Kloek, *Wie hij zij, man of wijf: vrouwengeschiedenis en de vroegmoderne tijd: drie Leidse studies* (Hilversum: Verloren, 1990), 133.

20 Erika Kuijpers, *Migrantenstad: immigratie en sociale verhoudingen in 17e-eeuws Amsterdam* (Hilversum: Verloren, 2005), 192–94; Schmidt and Van der Heijden, 'Women Alone', 24; Lotte Van de Pol and Erika Kuijpers, 'Poor Women's Migration to the City: The Attraction of Amsterdam Health Care and Social Assistance in Early Modern Times', *Journal of Urban History* 32, no. 1 (2005): 44–60; Peter Earle, 'The Female Labour Market in London in the Late Seventeenth and Early Eighteenth Centuries', *Economic History Review* 42, no. 3 (1989): 328–53; Morgan and Rushton, *Rogues, Thieves, and the Rule of Law*, 102.

21 Schmidt and Van der Heijden, 'Women Alone', 24.

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they were not allowed to head households and were instructed either to enter service or to take in a male authority figure who could keep their conduct under surveillance.[22] There are no signs that such formal restrictions also existed in Frankfurt, but the majority of female household heads in the city were widows. According to tax records from the end of the sixteenth and early seventeenth centuries, around 20 percent of the households were headed by women, 90 percent of whom were widows.[23] Similar numbers are available for the eighteenth century as well: in 1761, 18 percent of Frankfurt's real estate was owned by women, and again 90 percent were widows. Finally, in 1811, only 7 percent of the women heading households among the citizenry were single.[24] Households headed by women were often among the city's poorest. In the sixteenth century more than 40 percent of them were registered in the lowest tax categories.[25] Although at first hand these figures are relatively comparable to those available for the Dutch cities, one must keep in mind that they only include citizens, leaving out half of the population. Considering that foreigners were not allowed to establish their own household, the level of independent female household heads in Frankfurt was quite limited. These figures make clear that the majority of women in Frankfurt were incorporated into male-governed households, and few women lived independently.

Self-employment by women, especially unmarried migrant women, as washers or seamstresses, was objected to by the authorities and prohibited as much as possible in early modern Germany, including Frankfurt.[26] The conditions for women to live independently in early modern Frankfurt were more restricted than in cities like London or Amsterdam where women may have found more employment opportunities and possibilities for independence. The share of domestic servants among the population may be informative in this respect. According to Frankfurt's first census of 1811, 17 percent of the city's inhabitants belonged to the *Gesinde*—servants who lived as subordinates in their master's household.[27] The share of women among the servants listed in the 1811 census was 76 percent.[28] These figures correspond with what is known

22 Ogilvie, *Bitter Living*, 54–63; Rublack, *The Crimes of Women*, 154; Wiesner-Hanks, 'Having Her Own Smoke'.

23 Wiesner-Hanks, *Working Women*, 5.

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

25 Wiesner-Hanks, *Working Women*, 5.

26 Rublack, *The Crimes of Women*, 152–54; Eibach, *Frankfurter Verhöre*, 342.

27 Roth, *Stadt und Bürgertum*, 86; Inge Kaltwasser, *Häusliches Gesinde in der freien Stadt Frankfurt am Main: Rechtsstellung, soziale Lage und Aspekte des sozialen Wandels 1815–1866* (Frankfurt am Main: Kramer, 1989), 75.

28 Kaltwasser, *Häusliches Gesinde*, 78.

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for other cities during this period and reflect the typical gender structure and feminisation of domestic service as it developed throughout the eighteenth century.[29] In eighteenth-century Amsterdam, on the other hand, domestic servants are estimated to be 9 percent of the total population and for London, Tim Meldrum considered a share of around 7.7 percent to be plausible.[30] The figures suggest that the labour markets in these cities were more diverse, and that fewer women were incorporated in alien households as dependents than in Frankfurt.

3 Gendered Patterns of Crime

Although the quantitative comparison between Frankfurt and various other cities reveals that the level of female offending was relatively low, a qualitative comparison shows that there were also many similarities when looking at the pattern of offending. The crimes women were prosecuted for, match the typical early modern urban pattern found elsewhere in European cities.[31] An overview of the share of women for each crime category (table 2) shows that while women made up more than half of defendants for moral offences (53 percent) and represented over a quarter of property offences (27 percent), their share among violent crimes and crimes against public order was below their overall average among recorded crime, at 13 percent and 17 percent respectively. Earlier studies that mentioned female criminality these differences often led to a stereotypical portrayal of women's offending in the early modern period. It was often reduced to distinctively female offences such as infanticide, fornication, or prostitution.[32] This reaffirmed older notions about gender and crime in which women's transgressions were related to their sexuality and body, a sign

29 Sylvia Hahn, *Migration—Arbeit—Geschlecht: Arbeitsmigration in Mitteleuropa vom 17. bis zum Beginn des 20. Jahrhunderts* (Göttingen: Vandenhoeck & Ruprecht, 2008), 208; Steve Hochstadt, 'Migration in Preindustrial Germany', *Central European History* 16, no. 3 (1983): 202; Renate Dürr, *Mägde in der Stadt: das Beispiel Schwäbisch Hall in der Frühen Neuzeit* (Frankfurt am Main: Campus, 1995).

30 Jan Lucassen, 'Female Migration to Amsterdam', in *Women of the Golden Age: An International Debate on Women in Seventeenth-Century Holland, England and Italy*, ed. Els Kloek, Nicole Teeuwen, and Marijke Huisman (Hilversum: Verloren, 1994), 85; Tim Meldrum, *Domestic Service and Gender, 1660–1750: Life and Work in the London Household* (London: Longman, 2000), 14.

31 Jütte, 'Geschlechtsspezifische Kriminalität', 96–97; Ulbricht, 'Einleitung', 18–21; Van der Heijden, 'Women and Crime', 2016, 5–7; Beattie, *Policing and Punishment*, 63–71.

32 Walker, *Crime, Gender, and Social Order*, 4.

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TABLE 2 Share of men and women among prosecuted offences, Frankfurt 1600–1806[a]

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

SOURCE: IFSG, CRIMINALIA 1600–1806.

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

of the weak character of the female nature which was driven by desire rather than reason.[33] Women's behaviour was characterised as more law-abiding, passive and peaceful, and contrasted to 'male' assertiveness and aggressiveness.[34]

Looking only at the relative weight of women among each category of crime leads to a distorted image about what female criminality actually characterised in the early modern period. It was not the offences in which women featured disproportionately that made up the bulk of the crimes they were prosecuted for, but rather more 'mundane' offences like theft (table 3). In fact, both for men *and* women, property offences constituted the largest category of crimes, although this was more significant for women than for men (50 percent vs 40 percent respectively). The relative weight of violent and public order offences was considerably less for women than for men (17 percent vs 34 percent and 14 percent vs 20 percent respectively), whereas sexual offences were relatively more prevalent among female defendants than among males (17 percent vs 5 percent).

It was not uncommon for offenders to be prosecuted for several offences at the same time, and sometimes it is hard to distinguish the primary reason why they were investigated in the first place. Men and women who had to defend themselves for infraction of banishment, for example, were often

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

34 Arnot and Usborne, 'Why Gender and Crime', 14.

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TABLE 3 Types of prosecuted crime by gender, Frankfurt 1600–1806[a]

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

SOURCE: IFSG, CRIMINALIA 1600–1806

[a] For more detailed figures of the development through time, see figures 4 and 5 below.

simultaneously prosecuted for other crimes. And in cases where people were arrested as vagrants, or for acting 'suspiciously', there was often the assumption (or at least insinuation) that they had committed theft, or were members of a gang of thieves. They could be investigated for suspected theft, even if there were hardly any indications of such an offence having taken place. Ultimately, lacking evidence to convict them of a crime, the authorities often banished them as vagabonds or unwanted foreigners.[35] Women were investigated slightly more often for more than one category of offence than men: this was the case for 6.5 percent of the women compared to 3.5 percent for men at that time.[36] This is related to the fact that women were prosecuted relatively more often for offences related to survival strategies, for example the combination of theft and prostitution or infraction of banishment and theft. Prosecutions for violence, on the other hand, were hardly ever accompanied by other types of crimes. Considering that these crimes made up such a significant part of prosecuted male criminality, explains the difference in prosecutions for single or multiple offences. Overall, however, the majority of offenders were prosecuted for a single type of offence at the same time.

An important characteristic of female offending in Frankfurt, and that fits with the broader European urban pattern, was that the majority of prosecutions were aimed at a single offender. In 51.2 percent of the cases women were investigated alone without other suspects. For men, this figure was slightly lower, at 49.9 percent. When women were prosecuted together with others, they

35 See chapter 6.

36 IfSG, Criminalia 1600–1806.

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were more likely to have operated in mixed gender groups, than together with other women (31.2 percent vs 17.6 percent respectively). For men, this was the exact opposite: they were more often investigated with other men (40.4 percent) than with other women (10.1 percent).[37] The majority of women, therefore, committed their crimes independently, and not (as has long been suggested) only as accomplices of men.[38] That women were less likely than men to commit offences with partners of their own gender is primarily related to the different crimes they were prosecuted for. Fights often involved multiple offenders, and thus men were likely to be prosecuted with other men.

Moreover, institutional selection mechanisms and gendered biases played a significant role in the patterns that arise from the investigation records of the *Verhöramt*. Violence, for example, was only handled by the criminal investigation office if it involved serious physical injuries or was considered a danger to public order. In the *Criminalia,* women only accounted for approximately 13 percent of all suspects of violence, and a high proportion of these (47 percent) were related to 'typical' female crimes like infanticide, child abandonment and abortion. If such cases were excluded from the calculations, the share of women would drop considerably, to 7 percent. Women also made up a minority of violent offences, ranging between 6 percent and 16 percent, in other regions in early modern Europe.[39]

These and other examples have often led scholars to conclude that women were more subordinate, law-abiding and peaceful than men, thereby reinforcing both contemporary as well as historical notions of gendered behaviour. Female violence, it was often assumed, only manifested itself as verbal violence. When Pieter Spierenburg asked the question 'How violent were women?' in a 1997 article, he concluded that they were not fighters, and that the few women that did defy cultural stereotypes were imitating male aggression.[40] More recent research has offered nuances to this picture and argued that our image of female violence was largely distorted by the sources we study. Studies on petty violence before lower courts in London and Rotterdam, for example, show that the share of women was much higher there.[41] In a recent article on violence

37 IfSG, Criminalia 1600–1806.

38 Ulbricht, 'Einleitung', 19.

39 Pieter Spierenburg, 'How Violent Were Women ? Court Cases in Amsterdam, 1650–18101', *Crime, History & Societies* 1, no. 1 (1997): 17; Van der Heijden, 'Women, Violence and Urban Justice', 77; Schwerhoff, 'Geschlechtsspezifische Kriminalität', 91; Behringer, 'Weibliche Kriminalität', 65–66; Jütte, 'Geschlechtsspezifische Kriminalität', 96–97.

40 Spierenburg, 'How Violent Were Women?', 26.

41 Hurl-Eamon, *Gender and Petty Violence*, 66–67; Van der Heijden, 'Women, Violence and Urban Justice', 84; Also: Anne-Marie Kilday, *Women and Violent Crime in Enlightenment*

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and masculinity, Joachim Eibach argued that male violence was more likely to be perceived as dangerous and a breach of public order than similar behaviour by women. He stated that it was 'the interplay of social perceptions, crime reporting, and prosecution that produced male delinquency'.[42] Thus, gendered notions on what is perceived as troublesome behaviour played a role in the prosecution of violence.

In Frankfurt, petty violence was usually transferred to the *Oberster Richter*, which did not leave any written records, or settled through civil adjudication. This means that much of the everyday fighting and scolding is not incorporated in the criminal statistics that have been reconstructed based on the *Criminalia*. Cases in which women *were* prosecuted for violence often resulted from conflicts in an economic setting (fights among market women, etc.) and within the neighbourhood and the family.[43] Disciplining domestics is usually associated with the master of the household, but the sources show that mistresses also played a crucial part in the disciplining of household members.[44] Moreover, Joachim Eibach showed that in Frankfurt social control in the neighbourhood was to a large extent dominated by women, and could in addition include the use of violence in various forms.[45] In many of the neighbourhood conflicts husband and wife acted as a team against their opponents. There was no gender division in these fights, in the sense that a woman would only act as accomplice to their husband's fights. On the contrary: not only did men and women act as equal parties in violent neighbourhood conflicts, women were often the instigators of such quarrels. Moreover, a quantitative assessment of the *Criminalia* reveals that in 58 percent of violent offences (excl. infanticide, abortion, child abandonment and suicide) women were either investigated alone or together with another woman.[46]

Scotland (London: Boydell Press, 2015), 207; Sanne Muurling and Marion Pluskota, 'The Gendered Geography of Violence in Bologna, 17th-19th Centuries', in *The Routledge History Handbook of Gender and the Urban Experience*, ed. Deborah Simonton (Abingdon: Routledge, 2017), 153–63.

42 Eibach, 'Violence and Masculinity', 234–35.

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

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

45 Eibach, *Frankfurter Verhöre*, 217–74; For the importance of women in neighbourhood conflicts, see: Van der Heijden, *Women and Crime*, 2016, chap. 5; Jacob Melish, 'Women and the Courts in the Control of Violence between Men. Evidence from a Parisian Neighborhood under Louis XIV', *French Historical Studies* 33, no. 1 (2010): 1–31.

46 IfSG, Criminalia 1600–1806.

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Similar gendered selection mechanisms in the prosecution practices of the authorities are also visible in the category of crimes against authority and public order. This category contains the most heterogeneous offences among all the different categories, ranging from anything between insulting the city council or other governmental and public officials, resisting arrest, coining offences and arson, to begging, vagabondage and infraction of banishment, to riots and public disturbance, violations of police ordinances, and military offences such as desertion and illegal recruitment. Overall, women made up 17 percent of offenders, but their share varied considerably between the different offences within this category. Women were rarely prosecuted for insulting authorities, hindering arrest or disrupting public order. That does not mean, however, that women were not part of such offences, rather, their behaviour was judged differently by the authorities and considered as less of a threat or insult. An example of this double standard is revealed in an altercation at the Eschenheimer Gate. Control at the city gates often gave rise to conflict between travellers or burghers and the gate guards.[47] Johann Kling, one of the gatekeepers, came to the *Verhöramt* in order to report Herr Echzeller, member of the third bench of the city council, and his son-in-law, beer brewer Jäger. They insulted gate clerk (*Einlassschreiber*) Trapp and assaulted the gatekeeper's daughter when they were told to wait at the gates until another carriage had exited the city.[48] Echzeller and Jäger were accompanied by their daughter and wife, who was not indicted by the gate keeper. It was not until the gatekeeper's daughter was heard as a witness that it became clear that Jäger's wife also insulted the guards. Neither the gate keeper, nor the guards considered this worth reporting. Apparently for them, it was not as serious an infraction of their authority and honour as the insults by the two men.

Although women were rarely investigated for offences that were seen as an insult or threat to political stability and authority, they were prosecuted much more often for offences such as infraction of banishment (51 percent of defendants), begging and vagrancy (24 percent of defendants), or 'acting suspiciously' (34 percent of defendants). The majority of such 'mobility offences' were dealt with by the city beadles, *Weltliche Richter* and the poor house without the intervention of—and thus registration—by the *Verhöramt*. The language employed by the authorities in ordinances against begging etc. labelled male

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

48 Criminalia 9184 (1780).

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mobility specifically as a threat to public order. This framing influenced the policing patterns considerably, as we will see in chapter 6.

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

More importantly, qualitative analysis of the sources shows that a large part of women's interactions with the judicial apparatus are excluded from the sources of the *Verhöramt.* For many women, their first encounter with the law was through the moral court. A good example is the case of Maria Elisabetha Heßlerin from Mainz. Her first encounters with the law in Frankfurt date back to 1730, when she was arrested on several occasions for prostitution and sanctioned by the *Konsistorium* with dragging the scavenger's cart (a typical sentence for loose women) and expulsion. It was not until she was arrested for breaking her banishment for the third time that she was investigated by the *Verhöramt*.[49] Maria Elisabetha's case is not unique: there are repeated references made in the sources to female offenders, especially young, independent and mobile women, who had previously been punished by the *Konsistorium* on multiple occasions before they were finally investigated by the *Verhöramt*.[50] For men, on the other hand, the moral courts was much less of a 'gateway' to future encounters with the law and investigation by the *Verhöramt*.

Thus, these patterns reveal that although women had a relative low share among criminal offenders in early modern Frankfurt, the qualitative analysis demonstrates how problematic older characterisations of female offending are. To some degree, the crime patterns of men and women were more similar than that they were different. Women did not appear before the courts solely as dependants, but as individual and independent offenders, more likely to be prosecuted for theft, than 'crimes of passion'. Moreover, institutional selection biases played a considerable role in the prosecution of crime.

49 Criminalia 3850 (1730).

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

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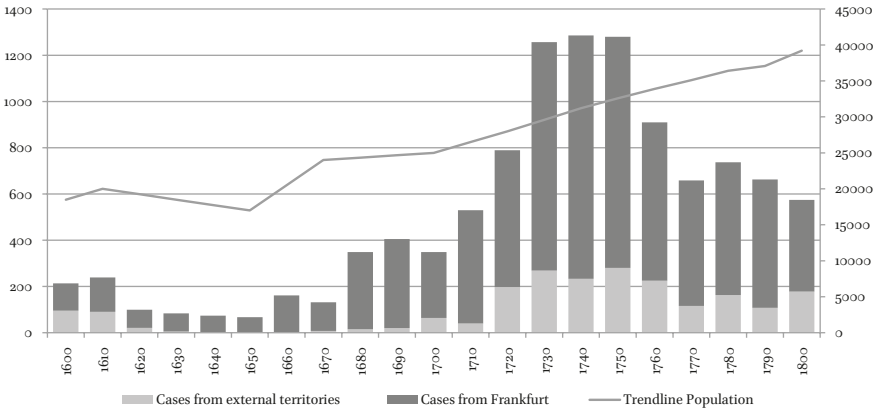

FIGURE 2 Total number of cases investigated by the *Verhöramt* per decade, Frankfurt 1600–1806
SOURCE: IFSG, CRIMINALIA 1600–1806

4 Fluctuations over Time

An overview of the total number of cases prosecuted before the *Verhöramt* reveals that there was considerable variation in the intensity of prosecution during the seventeenth and eighteenth centuries (figure 2).[51] In the first twenty years of the seventeenth century at least more than 200 criminal investigations were conducted each decade, only to decline considerably towards the middle of the century. In the 1640s and 1650s less than half of the number cases were investigated.[52] A similar pattern emerges from the city's the book of punishments: between 1601–1620 the city council imposed 298 penal punishments. From 1621–1640 this had dropped to a total of 116 and declined even further between 1641–1660, when it dropped to 58.[53]

The obvious explanation for this decline was the impact of the Thirty Year's War and its aftermath on the demography of the city and the prosecution capacities of Frankfurt's authorities—a general pattern which is witnessed throughout the Holy Roman Empire.[54] This decline, however, differed according to the types of offences: investigations based on requests from other

51 Compare: Eibach, *Frankfurter Verhöre*, 89–108.
52 IfSG, Criminalia 1600–1806.
53 Van Dülmen, *Theater des Schreckens*, 187.
54 Ulrike Ludwig, 'Strafvervolgung und Gnadenpraxis in Kursachsen unter dem Eindruck des Dreißigjährigen Krieges', *Militär und Gesellschaft in der Frühen Neuzeit* 10 (2006): 200–219.

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rulers almost came to a halt completely and property offences declined more intensely, while the number of prosecutions for violence remained relatively the same. Thus, the city's authorities were selective when it came to which types of offences could be ignored due their declining prosecution capacities and which could not.

It was not until the 1680s that the number of investigations exceeded pre-war levels again. As a result of a combination of factors the number of cases prosecuted by the *Verhöramt* increased considerably towards the middle of the eighteenth century. After the war-related demographic decline in the seventeenth century, the city experienced a considerable population growth from circa 20,000 in the 1670s/80s to circa 25,000 by 1700 and increasing sharply towards to circa 40,000 by the end of the eighteenth century. Moreover, it was a period of socio-economic transformation during which many people became uprooted. This led to public anxieties of the authorities, which perceived the increasing number of mobile men and women as a threat to the existing social order. Ordinances against begging, vagrancy and all kinds of 'masterless' people characterised the period, not only in Frankfurt, but in the neighbouring territories as well.[55] These anxieties about social disorder and crime went hand in hand with efforts to improve policing and exclude outsiders from the community.[56] After the 1760s the socio-economic situation in Frankfurt improved and the city's authorities were less tense as the implemented security measures and cooperation with other territories regarding the prosecution of vagrants appeared effective.[57] The prosecution patterns of the *Verhöramt* are a reflection of these larger societal developments. In the first half of the 1740s (when the number of cases was at its highest), the *Verhöramt* investigated 114 cases on average per year, but by the beginning of the nineteenth century this had declined to only 59 cases. Moreover, specific events, such as the fire in the *Judengasse* in 1721 or the election and coronation of the Holy Roman Emperor could cause periodic spikes or lows.[58]

The number of women prosecuted by the *Verhöramt* fluctuated between ca. 14 percent at the lowest and 30 percent at the highest per decade (figure 3). Women made up a considerable share of the offenders during the first half

55 Eibach, *Frankfurter Verhöre*, 105–8; Härter, *Policey und Strafjustiz*, 536, 1080; Schnabel-Schüle, *Überwachen und Strafen*, 272.

56 Eibach, *Frankfurter Verhöre*, 95, 105–108.

57 Ralf Roth, '"… der blühende Handel macht uns alle glücklich …": Frankfurt am Main in der Umbruchszeit 1780–1825', *Historische Zeitschrift. Beihefte* 14 (1991): 362–63; Eibach, *Frankfurter Verhöre*, 106–7; Härter, *Policey und Strafjustiz*, 534–37, 553–56.

58 Eibach, *Frankfurter Verhöre*, 93–95.

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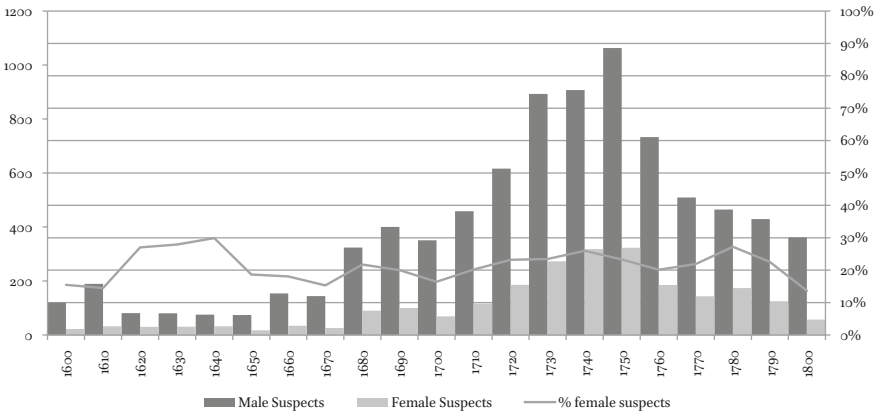

FIGURE 3 Number of male and female offenders investigated by the *Verhöramt* per decade, Frankfurt 1600–1806
SOURCE: IFSG, CRIMINALIA 1600–1806

of the seventeenth century when the prosecution levels of the *Verhöramt* dropped, particularly at the 'cost' of male offenders. After the restoration of the war as the number of cases increased, the relative share of women declined again, but their absolute numbers grew. Towards the middle of the eighteenth century their absolute numbers increased more significantly than the number of male offenders, increasing women's relative share among all offenders, only to decrease slightly again after the 1750s, with a short-term increase in the 1780s. Towards the end of the eighteenth century, the share of women declined again.

It is impossible to determine to what extent this was a long-term trend or simply a short-term decline. Due to a reorganisation of the archives, all criminal cases after 1806 except for the political offences have been destroyed. The number of women declined more drastically than the number of men. With regard to female property offenders, Joachim Eibach found that this decline was primarily caused by the disappearance of local burgher women from the sample (1801–1805). Similar to arguments formulated by Feeley in his thesis of the 'vanishing female', Eibach considered that this pattern was connected to changing gender roles, and the emergence of an ideology of domesticity in which burgher women could participate but other women could not.[59]

Explanations for this pattern have to remain tentative, as the sources are lacking. Evidence for other regions, however, suggests that there was a period

59 Ibid., 295.

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of long-term stability with regard to the share of female offenders in the nineteenth century rather than a sharp decline. Rebekka Habermas' work on theft in the nineteenth century shows that in Marburg women still made up a considerable share of property offenders (26.7 percent), the majority of whom were actually married.[60] Marriage, therefore, was not a guarantor for the withdrawal of women from the public sphere, nor from criminality. Gerd Schwerhoff pointed out that available figures for nineteenth-century Prussia showed that the share of women among offenders remained relatively stable at around 20 percent throughout the period, while female employment rates increased sharply towards the end of the period.[61] Similar patterns were found elsewhere in Europe too, problematising an overall pattern of decline for the nineteenth century.[62]

It is not unlikely, therefore, that the changing gender patterns in Frankfurt during the two final decades of the period under research resulted from the political upheavals from the Revolutionary Wars, which ended with the occupation by the French and loss of the city's independence in 1806, rather than representing a long-term pattern of change. The period between 1789 and 1803 was a characterised by social unrest, with riots, social protests and hunger revolts. Local—frequently poor—burgher women played active roles in these massive public gatherings and were not at all relegated to the domestic sphere. With their legitimacy at risk, the authorities were hesitant to quash disturbances with full force in this period, and rather opted for a strategy of conflict control, which explains why so few people received criminal sentences for riots in this period.[63]

Moreover, the trends in absolute numbers for male and female suspects show that for most of the period they followed the same pattern. Overall fluctuations in the number of investigated offences affected men and women to the same degree in the sense that there do not appear to be clear, intensified prosecution peaks aimed at one sex in particular: both genders were affected equally by the intensified prosecution efforts of the authorities towards the middle of the eighteenth century. However, there were considerable differences in what type of offences

60 Rebekka Habermas, *Diebe vor Gericht: die Entstehung der modernen Rechtsordnung im 19. Jahrhundert* (Frankfurt am Main: Campus, 2008), 34–35, 395–96.

61 Schwerhoff, *Aktenkundig und Gerichtsnotorisch*, 152–53; Eric A. Johnson, *Urbanization and Crime: Germany, 1871–1914* (Cambridge: Cambridge University Press, 1995), 188–89.

62 King, *Crime and Law*, 220; Van der Heijden and Koningsberger, 'Continuity or Change'.

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

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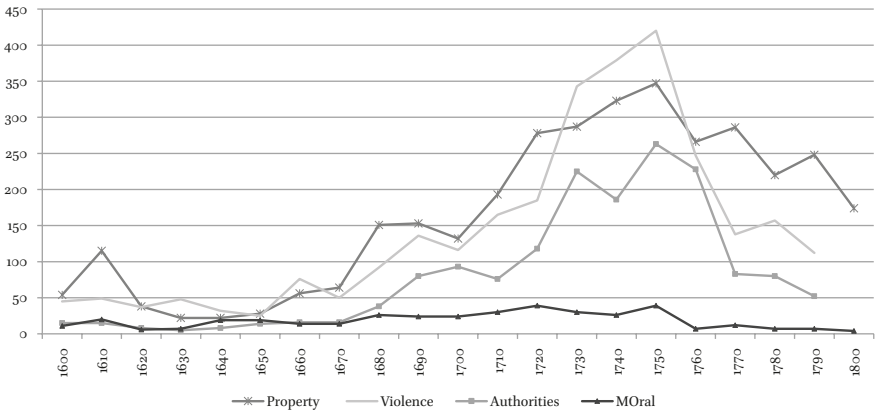

FIGURE 4 Number of male defendants per category of crime per decade, Frankfurt 1600–1806
SOURCE: IFSG, CRIMINALIA 1600–1806

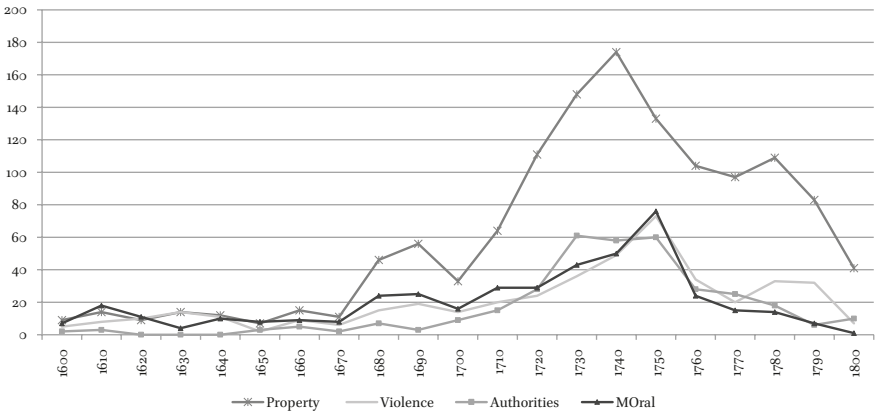

FIGURE 5 Number of female defendants per category of crime per decade, Frankfurt 1600–1806
SOURCE: IFSG, CRIMINALIA 1600–1806

were prosecuted. For men the growth in the number of cases was evenly distributed across all different types of crime. The anxieties and prosecution efforts of the authorities were aimed at 'thieving vagrants' just as much as at 'unruly fighting journeymen' (figure 4).[64] For women, on the other hand, the growth in the number of prosecutions was first and foremost related to property offences (figure 5).

64 Eibach, 'Violence and Masculinity'.

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5 Women Facing Crisis

Changes in the number of prosecutions of women thus seem to be primarily related to their property offending, at least in the eighteenth century. Historians generally assume that there is a link between periods of economic decline or impoverishment and a growing share of female delinquency, in particular in relation to property offences. Considering that women in general held a more precarious position—they were often dependent on poorly paid, low or unskilled (seasonal) labour, and their share among recipients of poor relief was disproportionately high—economic fluctuations are considered to have had a more severe impact on their survival strategies.[65] The link between difficult socio-economic conditions and criminality should therefore be stronger for women than it was for men.[66]

Others suggested that the increased share of female offenders also resulted from weakening patriarchal control as a result of economic difficulties. According to Joachim Eibach, the relatively high share of women among property offenders as well as among vagrants in the second half of the eighteenth century was a sign of the fact that the traditional economy centred around the house (*'die traditionelle, auf das Haus zentrierte Ökonomie*') no longer provided sufficient support for women, neither financially nor socially.[67] Moreover, as Ulinka Rublack pointed out, periods of socio-economic crises could lead to 'more rigid defence of resources and hierarchies of rank as well as reinforced defences of marriage and family', leading to intensified prosecution of poor independent women. Particularly if they were migrants.[68]

The eighteenth century is generally considered as period of increasing impoverishment of the lower classes and a decline in real wages.[69] Unfortunately for early modern Frankfurt, there are hardly any sources that enable an

65 Feeley and Aviram, 'Social Historical Studies', 154; Ulbricht, 'Einleitung', 14; Peter Wettmann-Jungblut, *Der nächste Weg zum Galgen? Eigentumskriminalität in Südwestdeutschland 1550–1850* (Saarbrücken, 1997), 93.

66 Ulbricht, 'Einleitung', 14.

67 Eibach, *Frankfurter Verhöre*, 294; Beattie, 'Criminality of Women', 65, 70–71.

68 Rublack, *The Crimes of Women*, 257.

69 Carsten Küther, *Menschen auf der Straße: vagierende Unterschichten in Bayern, Franken und Schwaben in der zweiten Hälfte des 18. Jahrhunderts* (Göttingen: Vandenhoeck & Ruprecht, 1983), 20–28; Martin Rheinheimer, *Arme, Bettler und Vaganten: Uberleben in der Not 1450–1850* (Frankfurt am Main: Fischer, 2000), 15–16; Wolfgang Von Hippel, *Armut, Unterschichten, Randgruppen in der Frühen Neuzeit*, 2nd ed. (München: Oldenbourg, 2013), 15.

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assessment of the development of the economic position and possible pauperisation of the city's inhabitants since the tax registers (*Schatzungslisten*) and other serial data that would allow for an analysis of income or wealth have been burnt. Based on an evaluation of the city's trading fairs, wholesale trading companies, and developing banking industry, historians have established that Frankfurt's economy was characterised by increasing growth after the period of the Thirty Years' War. Particularly the last quarter of the eighteenth century was a period of economic prosperity.[70]

The economic benefits of Frankfurt's role as a centre of trade and finance, however, were not felt equally among the population. The city's wealthy mercantile elite made up only a minority of the burgher community and they were disproportionally represented in the highest and wealthiest tax categories.[71] The majority of the city's burghers, however, worked as craftsmen, who were disproportionately represented among the lower tax categories. During the eighteenth century, the artisan class experienced economic impoverishment, which mostly affected the dependent journeymen whose opportunities to make a career and gain an independent livelihood declined.[72] Women especially were vulnerable economically. According to the eighteenth-century real estate taxation 18 percent of the houses were owned by women, 90 percent of whom were widows, mostly of artisans. More than two-thirds of them (67 percent) belonged to the lowest tax categories, inhabiting the humblest dwellings.[73] Moreover, most foreigners also did not benefit from the city's prosperity. Most resident aliens and migrants worked in lower occupational groups, such as the clothing and transport industries, or were simply employed as day labourers.[74]

Available data indicate that, despite the economic growth, poor relief expenditures from the communal poor chest per thousand inhabitants rose in early modern Frankfurt throughout the second half of the seventeenth century, and towards the early eighteenth century.[75] Unfortunately, only scattered references about the number of recipients are available for the later period. In

70 Schindling, 'Wachstum und Wandel', 224; Roth, 'Der blühende Handel'.

71 Roth, *Stadt und Bürgertum*, 131.

72 Soliday, *A Community in Conflict*, 158; Eibach, *Frankfurter Verhöre*, 255.

73 Roth, *Stadt und Bürgertum*, 127–33.

74 Soliday, *A Community in Conflict*, 158; Heinz Karpf, *Eine Stadt und ihre Einwanderer: 700 Jahre Migrationsgeschichte in Frankfurt am Main* (Frankfurt am Main: Campus, 2013), 67–77.

75 Robert Jütte, 'Poverty and Poor Relief', in *Germany: A New Social and Economic History, Vol. 2: 1630–1800*, ed. Sheilagh Ogilvie and Bob Scribner, vol. Vol. 2 (London: Arnold, 1996), 399.

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1784 the communal poor chest distributed assistance in the form of bread or money to 697 burghers, and an additional 921 received assistance in the form of clothing.[76] In 1787 the number of recipients of bread or alms was 739 and 830 were assisted with clothing.[77] The city's population during these years was approximately 36,000, of which half belonged to the burgher community. This means that between 8–9 percent of the burghers received some form of assistance, on which probably a much larger part depended (if we consider that their families are not included in these calculations). Daniela Heinisch estimated that between 1770 and 1809 about half of all requests for long-term relief to the city council were made by women.[78] Unfortunately there are no figures available about the gender of recipients of the communal poor chest during the eighteenth century. Figures for other cities in the Holy Roman Empire have shown that women figured disproportionately among recipients of relief, which was also the case elsewhere in Western Europe.[79]

Next to the communal poor chest, which was only reserved for burghers, the city's poorhouse (*Armenhaus*) offered relief for the city's *Beisassen* or transient aliens. In practice, however, it also catered for burghers. The number of people that were provided with assistance in the form of bread or a small sum of money by the poorhouse increased during the eighteenth century. François Dreyfus estimated that in total about 21.5 percent of Frankfurt's population depended on poor relief in the late eighteenth century.[80] As we can see in the table 4 and figures 4 and 5, there was a certain correspondence with the years of a growing number of recipients of relief, and the high levels of prosecuted property offences.

The question is then, if there is a clear link between economic distress and the level of women's offending. A traditional methodology that is used by historians to study the relationship between offending and economic fluctuations, is to study if there is a correlation between the number of offences and rising grain and/or bread prices. These studies have shown contradictory results. John Beattie found a general relationship between indictments for property offences and price indexes, both over the long term and in year-to-year

76 Moritz, *Versuch einer Einleitung*, 1785, 1:209.

77 Faber, *Topographische, politische und historische Beschreibung*, 1788, 1:141–42.

78 Daniela Heinisch, 'Unterstützungsgesuche und Bittschreiben von Frauen an den Frankfurter Rat, 1770–1809', in *Prekariat im 19. Jahrhundert: Armenfürsorge und Alltagsbewältigung in Stadt und Land*, ed. Anke Sczesny, Rolf Kießling, and Johannes Burkhardt (Augsburg: Wißner Verlag, 2014), 118.

79 Von Hippel, *Armut, Unterschichten, Randgruppen*, 21.

80 François Dreyfus, *Sociétés et mentalités à Mayence dans la seconde moitié du XVIIIe siècle* (Paris: Librairie Armand Colin, 1968), 353.

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TABLE 4 Recipients of bread and alms from the poorhouse, 1700–1800

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

SOURCES: HESS, *FRANKFURTER ARMEN-, WAISEN- UND ARBEITSHAUS*, APPENDIX 4; MORITZ, *VERSUCH*, VOL. 2, 217; FABER, FABER, *BESCHREIBUNG,* VOL. 1, 146–147

changes.[81] Gerd Schwerhoff, on the other hand, found no relationship at all between the price for rye and property offences in sixteenth-century Cologne.[82] Most recently, Anne-Marie Kilday, in a study on eighteenth-century Oxfordshire, concluded that 'attempts at establishing a link between poverty and crime are extremely problematic'. Rather, she argued, '[i]ndictment levels can be more indicative of attitudes towards criminal behaviour [...], than the 'true incidence of illegality itself'.[83]

Joachim Eibach has demonstrated that in eighteenth-century Frankfurt the number of property offences was only marginally related to changing bread prices, albeit much stronger than violent offences. There were years in which fluctuations in the number of property offences corresponded with changing bread prices, whereas in other years there was only a delayed effect or no effect at all.[84] One of the most severe subsistence crises was in the years 1770–1774

81 John M. Beattie, 'The Pattern of Crime in England 16601800', *Past & Present* 62, no. 1 (1974): 95.

82 Schwerhoff, *Köln im Kreuzverhör*, 358–61.

83 Kilday, 'Criminally Poor', 521; Also: Peter King, *Crime, Justice, and Discretion in England, 1740–1820* (Oxford: Oxford University Press, 2003), 145–53; Schmidt, *Prosecuting Women*.

84 Eibach, *Frankfurter Verhöre*, 93–99.

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and, indeed, there appears to be a relationship between the crises and the prosecuted offences in this case: during this period, the share of impoverished journeymen and day labourers among offenders was relatively high.[85] At the same time, as Joachim Eibach demonstrated, there was no significant increase in the number of prosecutions for domestic theft, suggesting that incorporation in a household provided at least some form of social support during times of need.[86]

The link between economic fluctuations and the proportion of women offenders proves to be difficult to establish as well. Between 1725 and 1755, more than 30 percent of the suspects in property offences were women. This largely coincides with the period in which the number of recipients of poor relief was high (table 4). At other times, however, the link is less straightforward. During the subsistence crisis in 1770–1774, for example, the share of women fluctuated considerably as they made up between 19 percent and 45 percent of the suspects. Other periods of short-term crises also reveal that economic distress did not necessarily correspond with a steady increase in female involvement. Between 1691 and 1693, another period of famine due to bad harvests, the share of women among property offences varied between 22 and 29 percent, while in the years before the famine (1687–1689) it had reached above 40 percent.[87]

Apart from looking at poverty in general, historians have also pointed out that changes in women's economic situation as a result of war could impact their prosecution levels. Peter King and John Beattie both found that periods of war in early modern England coincided with a rising percentage of female offenders. Usually this rise was not absolute but resulted from a declining number of prosecuted men, many of whom were employed in the military during such periods. The absence of men during war had a double effect. On the one hand, there were fewer men present to be prosecuted. On the other hand, women faced more difficulties in providing for their families, which increased their vulnerability, but also their independence.[88]

The patterns for early modern Frankfurt show that the effect of war on criminality was not unilateral. In Frankfurt, the percentage of female offenders was at its highest during the tumultuous years of the Thirty Years' War and the subsequent decade. Here as well, this was not caused by an increase in female offenders, but by a declining number of prosecuted men. The absolute number of women remained rather stable. The declining number of men was

85 Ibid., 305.
86 Ibid., 350.
87 IfSG, Criminalia 1600–1806.
88 King, *Crime and Law*, 212–14; Beattie, *Policing and Punishment*, 65.

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not distributed evenly across all crimes, but particularly affected property offences, while the number of violent offences remained relatively stable.[89] It is very likely that such patterns resulted from the withdrawal of many young men from the urban population, taking up service in one of the many armies recruiting during this period. After all, (mercenary) armies were often comprised of men most vulnerable to prosecution for property offences.[90]

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

More importantly, it has to be remembered that war and the vicinity of war also created anxieties that influenced prosecution policies, which may have been different on the continent than they were in England which was confronted far less with fighting on their own ground. In 1689, when the nearby city of Mainz was besieged by the French, several men were arrested on suspicion of spying for the French army.[91] As a recruiting city for several large armies (most dominantly the Prussian and the Imperial army), prosecutions for desertion and illegal recruitment peaked during times of war.[92] Moreover, fears about roaming soldiers and former soldiers intensified security policies and discrimination against wandering groups.[93] Thus, war could also increase the prosecution of typical male offences, such as desertion, which evened out their decline in other spheres of offending.

89 Similar patterns are found elsewhere in early modern Germany: Bernd Rüdiger, 'Kriminalität während des Dreißigjährigen Krieges in Leipzig: Ein Sonderfall innerstädtischer Kommunikation', in *Die Stadt als Kommunikationsraum*, ed. Helmut Bräuer and Elke Schlenkrich (Leipzig: Leipziger Universitätsverlag, 2001), 609–32.

90 King, *Crime and Law*, 212.

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

92 Jeannette Kamp, 'Between Agency and Force: The Dynamics of Desertion in a Military Labour Market, Frankfurt Am Main 1650–1800', in *Desertion in the Early Modern World: A Comparative History*, ed. Matthias Van Rossum and Jeannette Kamp (London: Bloomsbury Academic, 2016), 59.

93 Kamp, 'Controlling Strangers', 57.

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Short-term events like war and subsistence crises evidently influenced prosecution patterns, although they did not always have the same effect. Rather than being related to short-term crises, crime patterns in Frankfurt are more likely to result from the endemic poverty of large sections of the population. The majority of offenders belonged to the lower classes of society and lived a mobile lifestyle, either temporarily or permanently. In particular those individuals who were poorly incorporated into the settled community, and thus did not have access to formal and informal relief networks, were vulnerable to prosecution for such offences as theft, vagrancy or prostitution. Being excluded from the controlling structures of belonging to a sedentary household (whether voluntarily or not) heightened the chances of attracting suspicion by the authorities, and entering the city and trying to settle independently became increasingly difficult.[94] In sum, the fluctuations in female crime patterns in early modern Frankfurt cannot be explained by mono-causal factors. Overall, they were shaped by social crises and poverty, as well as by the prosecution practices of the authorities fostered by their anxieties towards unsettled and 'masterless' people.

6 Conclusion

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

94 Jeannette Kamp, 'Female Crime and Household Control in Early Modern Frankfurt Am Main', *The History of the Family* 21, no. 4 (1 October 2016): 11–13.

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This chapter argued that the dynamics of the precariousness and anonymity of urban life and its effects on female crime varied greatly throughout Europe. The connection between the 'urban factor' and high levels of female offending was particularly prevalent in cities where the proportion of single women living independently was high. In Frankfurt, on the other hand, the opportunities for women to settle independently were more restricted. This created a distinct urban crime pattern with relatively low levels of female offending. At the same time, women's crime patterns in Frankfurt fit the common characteristics found across early modern Europe. For both sexes, the majority of the *Criminalia* dealt with property offences, although for women this was more significant than for men. The gender gap was smallest in the category of moral offences and most significant among violent offences. The chapter has argued that the different level at which men and women appeared as defendants before the *Verhöramt* was partially related to the organisational structures of the criminal justice system and gendered notions of what was perceived as troublesome behaviour.

Moreover, the chapter has shown that the prosecution practices of the authorities were partially fostered by the socio-economic developments of the period. It was a time in which many people became uprooted, which the authorities perceived as a threat to the existing social order. The level of female involvement in registered crime was characterised both by long-term stability and short-term changes. There was no linear development of decline or increase, as has been suggested for other places. Rising percentages of female defendants among the recorded offences of the *Verhöramt* were mostly related to property offences, at least in the eighteenth century. The chapter has shown that short-term events like war and subsistence crises evidently influenced prosecution patterns. But their effect was not always the same. Therefore, a more nuanced approach about the link between urbanisation, independence, economic distress and female offending is needed. Although general patterns can be detected, they say little if the local context is not taken into account.

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CHAPTER 4

Transcending Dichotomies: Gender, Property Offending and the 'Open House'

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

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

The first part of this chapter is devoted to a discussion of the historiography. It then moves on by investigating the different types of property crimes committed by men and women, and the social profile of the offenders. Subsequently, the locations of theft and patterns of distribution are analysed to investigate if and how the gendered socio-economic spheres contributed to differences in criminality. Finally, the last part of this chapter discusses the importance of informal control within the household in the context of servants' thefts.

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1 Female Property Offending and the Public/Private Dichotomy

For a long time, historians argued that women's unlawful appropriation was considerably different from that of men because of their contrasting economic and public roles. Barbara Hannawalt was one of the first historians to deal with gender differences in the rate of theft in the past. Studying thefts in late medieval England, she argued that women's thefts were directly related to household concerns.[1] John Beattie argued in his study on female offending in eighteenth-century Surrey and Sussex that 'for women even more than for men, it was theft and related offences that most often brought them into trouble with the law'.[2] However, the patterns of women's property offending, he stated, were distinctly different from men's in the sense that they were not likely to use violence or force and that 'women's crimes were on the whole much less serious'.[3]

The conclusions drawn by Beatty and Hannawalt in the 1970s influenced the image of women's property offending for a long time. Pieter Spierenburg argued along similar lines to Hannawalt, stating that women's theft in early modern Amsterdam was connected to their household roles and providing food for the family.[4] Otto Ulbricht and Robert Jütte, who were among the first German historians to study early modern female crime in Europe in the 1990s, stated that women's offences were more common, mundane and conformist than those of men. When women committed crimes, they did so differently: with less violence and usually together with someone else. They took on the role of helpers and accomplices, rather than being pro-active criminals in their own right. Apart from refraining from the use of violence, women supposedly also committed more simple thefts, stealing items of low monetary value but of immediate utility value.[5] For sixteenth century Cologne Gerd Schwerhoff, argued that such differences were related to the restricted scope of action of women. Offences such as purse cutting, burglary or church theft required certain specialised skills, which women possessed to a much lesser degree, in correspondence with a gender division of labour in the formal economy.[6]

More recently, research has demonstrated that it is problematic to relate women's property offending to their restricted public roles. First, historians like Garthine Walker and Trevor Dean argue that portraying male and female

1 Hanawalt, 'The Female Felon'.
2 Beattie, 'Criminality of Women', 89.
3 Ibid., 96.
4 Spierenburg, 'How Violent Were Women?', 13.
5 Ulbricht, 'Einleitung', 19; Jütte, 'Geschlechtsspezifische Kriminalität', 107–8.
6 Schwerhoff, 'Geschlechtsspezifische Kriminalität', 94.

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patterns of appropriation as a dichotomy is too restricted. As Walker has shown for seventeenth-century Cheshire and Dean has argued for medieval Bologna, property offences by men and women shared more similarities than difference, both in the ways they were carried out, as well as the context within these crimes were committed. Violent robberies are often seen as the epitome of male property crime, while they only constituted a minority of their offences. Moreover, both sexes particularly committed offences that were related to their own social and economic networks and activities.[7] For early modern Holland, Manon van der Heijden argued along similar lines, stating that women used their labour networks in order to steal or distribute stolen goods. Women usually committed thefts in places they knew through their work, and they usually committed thefts in other people's homes.[8]

Second, scholars have questioned the usefulness of the concept of public and private spheres for the early modern period. According to modern notions. the household clearly represents a private space, but this was not the case for the early modern period. In fact, boundaries between the private and the public were much more fluid.[9] Due to the importance attached to early modern households as the central location for social order, urban authorities and neighbours were much more invested in meddling with household affairs if they were considered to endanger this social order.[10] Simultaneously, it also implied that household authorities, in particular the male head of the household, were expected to govern their households properly. This 'governing', therefore, was not a private matter, but served an important public function in the maintenance of social order.[11]

In order to underscore both the material and social openness of early modern households, Joachim Eibach introduced the concept of 'Open House' (*das*

7 Walker, *Crime, Gender, and Social Order*, 160, 208–9; Dean, 'Theft and Gender'.

8 Manon Van der Heijden, *Misdadige vrouwen: Criminaliteit en rechtspraak in Holland 1600–1800* (Amsterdam: Bert Bakker, 2014), 96.

9 Walker and Kermode, 'Introduction', 7, 12; Van der Heijden, 'Women, Violence and Urban Justice', 95–96; Vickery, 'Golden Age to Seperate Spheres'; Heide Wunder, 'Herrschaft und öffentliches Handeln von Frauen in der Gesellschaft der Frühen Neuzeit', in *Frauen in der Geschichte des Rechts: von der frühen Neuzeit bis zur Gegenwart*, ed. Ute Gerhard (München: C.H. Beck, 1999), 27–54.

10 Hoffmann, 'Neighborhood in European Cities'; Schmidt, 'Hausväter vor Gericht'; Eibach, 'Das offene Haus'.

11 Walker, *Crime, Gender, and Social Order*, 9–13; Hardwick, *The Practice of Patriarchy*; Karin Hassan Jansson, 'Haus und Haushalt im frühneuzeitlichen Schweden: Geschichts wissenschaftliche Trends und neue Zugänge', in *Das Haus in der Geschichte Europas: ein Handbuch*, ed. Joachim Eibach and Inken Schmidt-Voges (Berlin: De Gruyter Oldenbourg, 2015), 113–29.

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'offene Haus').[12] Due to the public importance of households, the domestic was to a large degree a permeable space. This openness was crucial to ensure the household as a central location of social order, and the role of the head of the household in maintaining this. With his concept, Eibach replaced the older model of '*das Ganze Haus*'—the total household. The concept was introduced by Otto Brunner in the late 1950s, who used it to refer to the household not just as a social, but as an economic unit as well.[13] Since then, the model has evolved considerably, and was criticised by later historians for portraying a too rigid ideal of early modern households as self-sufficient economic units.[14] Older notions of *das Ganze Haus* portrayed the household as an (almost) autonomous closed legal space in which the housefather ruled over his subjects. This does not correspond with the public functions of household control, in which the housefather himself also had to uphold norms of respectability and was bound by public responsibilities.[15] Thus, even informal control by household authorities had a public connotation, at least in the eyes of early modern authorities.

To gain a better understanding of gendered patterns of property offending, the concept of the 'open house' is extremely relevant, particularly in the case of early modern Germany. Of course, the patriarchal household as a representation of social and public order was not unique to Germany, but rather existed across Europe.[16] However, more than in other countries, *das Haus* in Germany embodied a legal entity and a unit of strongly regulated social control. As a result, both the internal social control exercised by the head of the household

12 Eibach, 'Das offene Haus'; Joachim Eibach, 'Das Haus: zwischen öffentlicher Zugänglichkeit und geschützter Privatheit (16.—18. Jahrhundert)', in *Zwischen Gotteshaus und Taverne: öffentliche Räume in Spätmittelalter und Früher Neuzeit*, ed. Susanne Rau and Gerd Schwerhoff (Köln: Böhlau, 2004), 183–205.

13 Otto Brunner, 'Das ganze Haus und die alteuropäische Ökonomik', in *Neue Wege der Verfassungs- und Sozialgeschichte*, ed. Otto Brunner, 2nd ed. (Göttingen: Vandenhoeck & Ruprecht, 1968), 103–27.

14 Inken Schmidt-Voges, 'Das Haus in der Vormoderne', in *Das Haus in der Geschichte Europas: ein Handbuch*, ed. Joachim Eibach and Inken Schmidt-Voges (Berlin: De Gruyter Oldenbourg, 2015), 1–18; Opitz-Belakhal, 'Neue Wege der Sozialgeschichte'; Heinrich Richard Schmidt, '"Nothurfft vnd Hußbruch": Haus, Gemeinde und Sittenzucht im Reformiertentum', in *Ehe, Familie, Verwandtschaft: Vergesellschaftung in Religion und sozialer Lebenswelt*, ed. Andreas Holzem and Ines Weber (Paderborn: Schöningh, 2008), 301–28; Inken Schmidt-Voges, 'Strategien und Inszenierungen häuslichen Lebens zwischen 1750 und 1820: Eine Einführuing', in *Ehe, Haus, Familie: soziale Institutionen im Wandel 1750–1850*, ed. Inken Schmidt-Voges (Köln: Böhlau, 2010), 9–27.

15 Eibach, 'Das offene Haus', 633.

16 Walker, *Crime, Gender, and Social Order*, 9–13; Hardwick, *The Practice of Patriarchy*; Thomas Kuehn, *Family and Gender in Renaissance Italy, 1300–1600* (Cambridge: Cambridge University Press, 2017); Lynch, *Individuals, Families, and Communities*.

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over his/her dependents, as well as the external control of authorities in neighbours in household affairs, was stronger than elsewhere.[17] As the previous chapter demonstrated, the majority of women in early modern Frankfurt were indeed incorporated into a male-governed household. This chapter, therefore, discusses how the centrality of the household impacted gendered differences among recorded property offences, both in the way that the crimes were committed as well as in the way they were controlled.

Until now most research on property offending in early modern Germany has focused largely on the study of robberies and thefts by gangs of bandits and vagrants, and questions to what extent these should be characterised as professional and well-organised gangs that are part of a criminal underworld.[18] Within this context, the role of women has been relatively well studied, and has moved away from a perspective that depicts women solely as accomplices to male crimes. Quite the contrary: in some cases, women even functioned as heads of 'gangs.[19] Similarly, Florike Egmond has demonstrated based on research for the early modern Netherlands that women functioned as the 'social glue' in criminal gangs.[20]

17 Ogilvie, *Bitter Living*, 63, 311–12; Rublack, *The Crimes of Women*, 8–9; Merry E. Wiesner-Hanks, *Gender, Church, and State in Early Modern Germany* (London: Longman, 1998), 94–101.

18 E.g. Uwe Danker, *Räuberbanden im Alten Reich um 1700: ein Beitrag zur Geschichte von Herrschaft und Kriminalität in der Frühen Neuzeit* (Frankfurt am Main: Suhrkamp, 1988); Carsten Küther, *Räuber und Gauner in Deutschland: das organisierte Bandenwesen im 18. und frühen 19. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 1976); Gerhard Fritz, *Eine Rotte von allerhandt rauberischem Gesindt: öffentliche Sicherheit in Südwestdeutschland vom Ende des Dreissigjährigen Krieges bis zum Ende des Alten Reiches* (Ostfildern: Thorbecke, 2004); Härter, *Policey und Strafjustiz*; Gerd Schwerhoff, 'Karrieren im Schatten des Galgens: Räuber, Diebe und Betrüger um 1500', in *Kriminalität und Gesellschaft in Spätmittelalter und Neuzeit*, ed. Sigrid Schmitt and Michael Matheus (Stuttgart: Steiner, 2005), 11–46.

19 Eva Wiebel, 'Die "Schleiferbärbel" und die "Schwarze Lise": Leben und Lebensbeschreibungen zweier berüchtigter Gaunerinnen des 18. Jahrhunderts', in *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Konstanz: UVK Universitätsverlag Konstanz, 2000), 759–800; Fritz, *Öffentliche Sicherheit*, 227–29; Andreas Blauert, *Sackgreifer und Beutelschneider: die Diebesbande der Alten Lisel, ihre Streifzüge um den Bodensee und ihr Prozess 1732* (Konstanz: UVK Universitätsverlag Konstanz, 1993).

20 Florike Egmond, 'Between Town and Countryside: Organized Crime in the Dutch Republic', in *Civilization of Crime: Violence in Town and Country since the Middle Ages*, ed. Eric A. Johnson and Eric H. Monkkonen (Urbana, IL: University of Illinois Press, 1996), 144.

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More 'common' and everyday property offences have received somewhat less attention, and their study (with the exception of the study of domestic theft) has remained largely gender neutral or has analysed women's property offences only in comparison to those of men, in which the latter was considered as the norm.[21] In her work on female crime in seventeenth-century Württemberg, Ulinka Rublack argued that women's property offences were characterised by various degrees of opportunities and constraints according to their social standing: thefts by servants differed from those by vagrant women, which in turn differed from local and married women.[22] While her analysis offers many fruitful insights, her findings are not contrasted with the crime patterns of men, and therefore largely stand on their own.

For Frankfurt it is possible to build upon Joachim Eibach's earlier study of property crimes in eighteenth-century Frankfurt.[23] His very rich chapter offers much contextualisation and shows that property offences during this period were *grosso modo* committed out of poverty (*'Armutskriminalität'*). The types of offences committed reflected the characteristics of the city as a place of trade and commerce, which was particularly true for cases of fraud. There was no large-scale organised gang activity in the city, nor were there any signs of an existing 'underworld', such has been observed for other larger eighteenth-century metropolises or the nineteenth century.[24] Eibach's analysis of property offending remained gender neutral at large, apart from a section devoted to domestic theft and a quantitative assessment of the share of women among different types of property offences. His characterisation of women's property offences followed the general traditional historiography, arguing that women committed more low-risk, ad-hoc, and 'unspectacular' offences than men.[25]

This chapter follows up on recent studies which highlight the similarities, rather than the differences of male and female offences, and reconsiders the

21 Wettmann-Jungblut, *Eigentumskriminalität*; Otto Ulbricht, ed., 'Zwischen Vergeltung und Zukunftsplanung: Hausdiebstahl von Mägden in Schleswig-Holstein vom 16. bis zum 19. Jahrhundert', in *Von Huren und Rabenmüttern: weibliche Kriminalität in der frühen Neuzeit* (Köln: Böhlau, 1995), 139–70; Andrea Griesebner, 'Verbannung statt Todesstrafe? Diebstahlsprozesse aus dem Erzherzogtum Österreich unter der Enns im 18. Jahrhundert', *WerkstattGeschichte*, 5–24, 42 (2006); Schwerhoff, *Köln im Kreuzverhör*, 344–61; Eibach, *Frankfurter Verhöre*, 287–374; Rublack, *The Crimes of Women*, chap. 3.

22 Rublack, *The Crimes of Women*, 92–93.

23 Eibach, *Frankfurter Verhöre*, 287–374.

24 Heather Shore, *London's Criminal Underworlds, c. 1720-c. 1930: A Social and Cultural History* (Basingstoke: Palgrave Macmillan, 2015); Richard J. Evans, *Tales from the German Underworld: Crime and Punishment in the Nineteenth Century* (New Haven, CT: Yale University Press, 1998).

25 Eibach, *Frankfurter Verhöre*, 324.

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thefts of women in early modern Frankfurt. Historians have frequently pointed out that the dichotomy between male/public and female/private spheres does not hold for the early modern period, but that boundaries between the two were fluid. Gender differences in relation to locations of theft and types of stolen goods did not result from women's dependent role in a family-based economy but were related to their broader economic activities and contemporary perceptions of gender which provided easier access to certain spaces than others.

2 Gendered Patterns of Property Crimes

For a better understanding of the contexts in which men and women committed property offences, it is necessary to differentiate between various forms unlawful appropriation. Most of the research that has altered our image of the 'passive' female in cases of theft is based on studies for early modern England. There, the sources allow for a clear differentiation between all sorts of theft because the legal statutes clearly differentiated between various categories such as: burglary, grand theft, petty theft, pickpocketing, shoplifting.[26] Working on late eighteenth- and early nineteenth-century London, for example, Deirdre Palk demonstrated that women's involvement in shoplifting and pickpocketing outnumbered that of men, as a result of the legal definition of these crimes and the different spheres men and women operated in.[27] Garthine Walker showed for seventeenth-century Cheshire that although women were *numerically* less often prosecuted for offences like housebreaking or burglary, they were *relatively* more likely to commit such offences than men.[28]

Unfortunately, the sources in Frankfurt do not allow for such a precise differentiation. According to the regulations of the *Verhöramt* from 1788, the investigation office was in charge of investigating 'all malicious damage to other people's property, including all types of fraud, usurious contracts, wanton bankruptcies, and thefts in particular.[29] More 'everyday' crimes such as

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

27 Deirdre Palk, *Gender, Crime and Judicial Discretion, 1780–1830* (London: Boydell Press, 2006), 39, 67.

28 Walker, *Crime, Gender, and Social Order*, 160–61.

29 PO 4346 *Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt* 04.12.1788, §5. Original: 'boshaftige Beschädigungen des Vermögens anderer,

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burglary, housebreaking, domestic theft, shoplifting, pickpocketing or even robbery were not mentioned separately in the office's regulations of 1788, even though the investigation records of the *Verhöramt* show that these were much more numerous than other property crimes.[30] In the registries of the investigation offices, too, there was often no differentiation made between the different types of theft. Burglary, domestic theft, robbery etc. were mostly only registered as *furtum* without further specification.

Nevertheless, authorities appear to have differentiated between petty property offences that did not require a formal criminal procedure and were therefore handled by other institutions, and more serious property offences. The legal statutes do not make clear, however, what would be considered a minor property offence and what would not. According to the imperial law code, the *Carolina,* the limit between a grand and petty theft was five guilders.[31] Legal commentators often debated on this limit in the following decade and centuries, and it is not clear whether the authorities in Frankfurt maintained the limit set by the *Carolina* either. Joachim Eibach suggested the possibility that the *Verhöramt* followed the same guidelines as were set for the civil law procedures before the burgomaster sessions, and considered that the criminal investigators adhered to a benchmark of thefts above the value of five guilders.[32] We know for the early nineteenth century that larcenies below the value of twenty guilders were not investigated by the *Verhöramt*, but by a lower police office which was not established yet in the eighteenth century.[33] If a similar threshold was applied before the establishment of that police office is unclear.

It appears that rather than following a fixed boundary, the decision to investigate or not was based on the social status of the offenders. The sources show that it was not uncommon for the petty thefts to be investigated by the criminal investigation office, some of which were even sanctioned with penal punishments.[34] In 1781, for example, Susanna Gerlingin, an unemployed maid from Eichenbühl, was condemned to the poorhouse for a little over a month, birched twenty-five times and expelled from the city, because she had

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wohin alle Arten von Falsis, wucherliche Contracte, muthwillige Banquerots, und Diebstähle insonderheit gehören'.

30 Eibach, *Frankfurter Verhöre*, 67–71.

31 Heinrich Janssen, *Der Diebstahl in seiner Entwicklung von der Carolina bis zum Ausgang des 18. Jahrhunderts* (Göttingen, 1969).

32 Eibach, *Frankfurter Verhöre*, 69–70.

33 Johann Heinrich Bender, *Die Verhandlungen der gesetzgebenden Versammlung der freien Stadt Frankfurt in den Jahren 1816 bis 1831* (Frankfurt am Main, 1834), 55.

34 Meinhardt, *Das peinliche Strafrecht*, 229.

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pickpocketed 14.5 *Batzen* (less than a guilder) from the Jewess Süßchen of Mainz.[35] A year earlier, Wolff from Amsterdam was sentenced to forced labour in the trenches after which he was banished for the theft of a peasant's wallet which contained two guilders.[36] There were many cases in which people labelled by the authorities as paupers, vagrants etc. were expelled after being investigated on suspicion of theft, but where the investigation office had failed to find sufficient proof to allow for a formal criminal procedure and conviction.[37] In contrast to such cases, Joachim Eibach referred to a legal opinion in which the syndic Johann Simon Seyfried argued that two servants who were indicted by their master, baker Johann Georg Schluckbier, for the theft of some flour could not be taken into custody and subjected to a formal criminal procedure because the supposed theft was not worth more than some small change.[38]

Moreover, the *Verhöramt* did not investigate all types of property offences in Frankfurt's territory. Thefts of natural resources from communal grounds, illegal wood gathering, poaching, stealing grain from agricultural fields etc. were more likely to be investigated by the city's *Ackergericht* or the *Landgericht*, which were in charge of minor offences in the city's territory.[39] Even though the theft of agricultural products or other natural resources received considerable attention from the authorities during the early modern period, which is evident from the numerous police ordinances issued related to this topic, the actual prosecution policies appear rather lenient. Or to put it differently: the authorities were rarely inclined to prosecute such offences with a formal criminal procedure by the *Verhöramt* and/or to impose penal punishments.[40] The *Criminalia* therefore primarily reflect property offences committed in an urban context.[41]

35 Criminalia 9264 (1781).

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

37 On the increasing legal insecurity experienced by people labelled as vagrants or ethnic minorities and the increasing use of expulsion as a regulatory measure instead of a formal criminal conviction in the course of the early modern period, see: Härter, *Policey und Strafjustiz*, 640–41; Karl Härter, 'Die Sicherheit des Rechts und die Produktion von Sicherheit im frühneuzeitlichen Strafrecht', in *Sicherheit in der Frühen Neuzeit: Norm, Praxis, Repräsentation*, ed. Christoph Kampmann and Ulrich Niggemann (Köln: Böhlau, 2013), 661–72.

38 Criminalia 5622 (1743) as quoted in: Eibach, *Frankfurter Verhöre*, 70.

39 Faber, *Topographische, politische und historische Beschreibung*, 1789, 2:94–94, 121.

40 Rublack, *The Crimes of Women*, 94.

41 Eibach, *Frankfurter Verhöre*, 70.

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In sum, the legal norms in early modern Frankfurt only broadly distinguished between various types of property offences. The regulation of the *Verhöramt*, for example, did not differentiate between burglary, shoplifting or larceny, and it appears that distinctions between grand and petty theft were not systematically applied.[42] This is also reflected in the registration of crimes. Offences registered as *furtum* (theft) could refer to simple thefts, shoplifting, burglary, domestic theft etc. In some cases, an additional description enabled further specification, but this was not done systematically.

Still, based on the relative broad differentiations between various types of property offences in the sources it is possible to draw some conclusions. It is clear that, numerically speaking, women committed fewer property offences than men. But does this justify a distinction of women as petty criminals and men as hard-core organised robbers? The findings of the *Criminalia* for the seventeenth and eighteenth centuries confirm previous findings by historians: differences with regard to the type of thefts men and women engaged in were less distinct than is often assumed.[43]

Table 5 shows the types of property offences men and women were prosecuted for based on the contemporary registers of the *Criminalia*. This shows that in proportion to their overall activity in property offences, both men and women predominantly committed offences registered as *furtum*. For women this accounted for 83 percent of all their property offences, and for men 72.9 percent. The table shows that although men were more likely to be prosecuted for offences like fraud or (accessory to) robbery, the differences are less marked than might be expected (8 percent vs 5.5 percent and 7.6 percent vs 3.3 percent respectively).[44] Moreover, these offences only constituted a relatively small percentage of male property offending. Violent robbery, often seen as a distinguishing feature of male thieving, was not the defining characteristic of male property offenders in early modern Frankfurt. Due to its relatively small territory, there were hardly any cases of stereotypical

42 This was not unique to Frankfurt. See e.g.: Martina Thomsen, *Zwischen Hauptwache und Stockhaus: Kriminalität und Strafjustiz in Thorn im 18. Jahrhundert* (Marburg: Verlag Herder-Institut, 2005), 187.

43 Walker, *Crime, Gender, and Social Order*, 160; Dean, 'Theft and Gender', 405; Van der Heijden, *Women and Crime*, 2016, 63–66.

44 This is confirmed by Joachim Eibach's earlier findings of a relatively high share of women among offenders prosecuted for robbery or gang membership in the eighteenth century: Eibach, *Frankfurter Verhöre*, 323; Eibach, 'Böse Weiber', 683.

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TABLE 5 Types of prosecuted property crimes by gender, Frankfurt 1600–1806

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

SOURCE: IFSG, CRIMINALIA 1600–1806

highway robbery or large gangs of thieves, who generally operated primarily in the countryside.[45] A third type of offence for which men were prosecuted proportionately more frequently than women, was poaching and other related offences. It is likely that this was a result of judicial organisation, rather than gendered behavioural patterns. The majority of these offences would have been investigated by the *Landamt* or the *Ackergericht*, which were lower courts and may have included more women. Evidence in criminal records demonstrates that women were often prosecuted for offences like collecting firewood illegally, which was related to their tasks within the household and the rural economy.[46] Overall, there appear to have been more similarities than differences between men and women. Relatively speaking, both genders were equally prosecuted for offences such as receiving stolen goods, damage to property and extortion.

The broad range of offences that were covered by the term *furtum* may conceal more specific gendered behavioural patterns. A closer analysis of the *Criminalia* themselves allows for a further differentiation between the various types of offences defined as *furtum* in the contemporary register. In his study

45 Eibach, *Frankfurter Verhöre*, 313; On the urban-rural connection of gangs of robbers: Florike Egmond, *Underworlds: Organized Crime in the Netherlands, 1650–1800* (Cambridge: Polity Press, 1993).

46 Bernd D. Plaum, *Strafrecht, Kriminalpolitik und Kriminalität im Fürstentum Siegen: 1750–1810* (St. Katharinen: Scripta Mercaturae, 1990), 207; Rublack, *The Crimes of Women*, 94–97.

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on eighteenth-century Frankfurt, Joachim Eibach distinguished between theft, domestic theft, burglary, fraud, fencing, and robbery. In the analysis of his sample years 1741–43, 1771–75 and 1801–1805, he studied the proportion of women among each category of property offending, rather than analysing the relative importance of each type of offence according to gender. Compared to their overall share among property offenders during his sample years (28 percent), their share was much higher among cases of simple theft and domestic theft (32.3 percent and 51.4 percent) and considerably lower among cases of fraud and burglary (17.9 percent and 21.7 percent).[47] Although this exercise provides very valuable insights, as it proves that the share of women varied considerably among the different type of offences, it also runs the risk of masking similarities and exaggerate differences.

In my own sample I have also distinguished between the different types of property offending: domestic theft (theft by servants, journeymen and other dependents living in the household of their master); burglary (breaking into dwelling houses, inns, public buildings etc.) and theft.[48] But rather than looking at the percentage of women among each category, I have examined the relative importance of each category according to gender. Table 6 reveals that for both men and women, the majority was prosecuted for 'normal' thefts without breaking or entering, including everything from market thefts to pickpocketing, etc. (65.4 percent for men and 60 percent for women). Furthermore, the table also reveals that relatively speaking women were only slightly less likely to commit burglary or housebreaking then men. Based on these figures there is no reason to assume that women refrained from more 'complicated' property offences that involved some use of force and possible confrontation with the victim. The most significant difference is the importance of domestic theft. This figured more prominently among the property crimes committed by women than men: 22 percent vs 9 percent respectively. The 'female' nature of domestic theft will be discussed in more detail below. For now, it suffices to say that in terms of the gendered pattern of property offences investigated by the *Verhöramt*, the similarities between men and women are more salient than the differences. Both my own sample years as well as those of Joachim Eibach reveal that normal theft was the most important category of property offending by men and women, and that women were only slightly less inclined

47 Eibach, *Frankfurter Verhöre*, 323.

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

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TABLE 6 Types of thefts committed by men and women, eighteenth-century Frankfurt

Types of property offence	Men		Women	
Theft	70	65.4%	77	60%
Domestic Theft	10	9.4%	28	22%
Burglary (*Einbruch/Einsteigen*)	27	25.2%	23	18%

SOURCE: CRIMINALIA 1700(01); 1720(21); 1740(41); 1760(61); 1780(81)

to commit offences that would normally be considered as 'male' offences such as burglary or fraud.

Moreover, contrary to the previous stereotypical portrayal of women as accessories and subordinates to male offenders, the *Criminalia* show that in Frankfurt am Main the majority of women investigated before the *Verhöramt* in the seventeenth and eighteenth centuries committed property offences on their own. Women were prosecuted on their own in 53 percent of the cases compared to 49 percent of the men. When committing offences together with others, women were more likely to operate in mixed groups (27 percent of the cases) rather than in single-sex groups (20 percent). For men this was the opposite (13 percent in mixed groups vs 38 percent in single-sex groups).[49] Women found partners in crime through all types of social connections. They committed property offences together with their spouses, with other family members, and via connections they made through work. But they also formed short-term, opportunistic alliances together with complete strangers whom they had met in inns or taverns.[50] All of these different types of 'partnerships' emphasise that women's agency in property offending was not confined to the domestic arena.

49 IfSG, Criminalia 1600–1806.

50 E.g. Criminalia 2241 (1700) Anna Barbara Langing and Anna Margaretha Mundin shared a family connection through Anna Barbara's stepmother; Criminalia 5065/5066 (1740) Christina Magdalena Weissnerin and Friedrich Hass travelled together posing as a married couple called Bernardi; Criminalia 7650 (1760) Anna Elisabetha Weigandin worked as a domestic servant for the gardener Winter. She committed domestic theft and escaped with the help of the gardener's neighbours with whom she had forged an alliance. Also see: Gerhard Ammerer, *Heimat Strasse: Vaganten im Österreich des Ancien Régime* (Wien: Oldenbourg, 2003), 433–34.

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3 Social Profile of Property Offenders

The socio-economic background of property offenders in eighteenth-century Frankfurt demonstrates that it was not just the type of theft where similarities between men and women outweighed the differences. Historian Peter Wettmann-Jungblut developed a typology of early modern property offenders based on his study of theft in south-west Germany which has been very influential in German historiography.[51] His typology distinguished three different types of property offenders. First, property offences committed by vagrants, unsettled and uprooted people, who formed the mass of all offenders. Second, thefts by servants, journeymen or others in a dependent wage relationship, who stole from their employer or master. Finally, theft by locals who stole within their community motivated by need, greed, envy or personal conflict. Ulinka Rublack has applied this typology in her study on female crime in seventeenth-century Württemberg as well, though slightly adapting the first category to 'predominantly mobile, professional thieves', which she defined as thieves for whom the main source of income for longer periods of time was theft. However, she did not consider them as belonging to a 'criminal' underworld because many of them went back to regular work from time to time and only rarely operated in large organised groups.[52]

This differentiation tends to disguise the fluid boundaries that existed between short-term (labour) migration and permanent unsettledness. Not all men or women on the road who had to casually supplement their income with an opportunistic theft were necessarily characterised by the authorities as a vagrant, nor would they fit any of the other two typologies. Additionally, it masks the importance of life-cycle changes, which influenced labour and mobility patterns in the early modern period and were different for each gender. In a study of late-eighteenth-century London, Peter King demonstrated how theft was closely related to life-cycle experiences and a period of high mobility and economic vulnerability.[53] In order to provide a more nuanced classification of early modern property offenders, a closer look is needed at the origin and legal status of offenders, their age, and employment status.

51 Peter Wettmann-Jungblut, '"Stelen inn rechter hungersnodtt": Diebstahl, Eigentumsschutz und strafrechtliche Kontrolle im vorindustriellen Baden 1600–1850', in *Verbrechen, Strafen und soziale Kontrolle,* ed. Richard Van Dülmen (Frankfurt am Main: Fischer, 1990), 154–55; Schwerhoff, *Köln im Kreuzverhör*, 351; Härter, *Policey und Strafjustiz*, 581; Schnabel-Schüle, *Überwachen und Strafen*, 271.

52 Rublack, *The Crimes of Women*, 119.

53 King, 'Female Offenders'.

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The first characteristic according to which we can differentiate property offenders was their origin/legal status, for which information is available in the majority of the cases. Frankfurt's inhabitants were divided according to legal status, with burghers being at the top and enjoying full citizenship rights, and transients at the bottom, whose stay in the city was conditional and who enjoyed no legal protection. It was not always possible to determine the exact legal category of offenders. In some cases, it was simply stated that the suspect was born in Frankfurt (*'von hier gebürtig'*) or originated from there (*'seije von hier'*) without specifying whether they enjoyed full citizenship or belonged to the community of resident aliens. Domestic servants and journeymen enjoyed a different status from other strangers because they were incorporated in their master's household and enjoyed his protection (*'Schutz'*). However, since this was not a formal legal category, they have not been listed separately here. Moreover, it was often not possible to establish from the sources which servants suspected of theft were still considered as household members and which had lost this status and were considered as strangers.

The data reveal that 66 percent of the female suspects and 74 percent of the male suspects were foreigners (*Fremde*) (see table 7). This means that measured against the population as a whole, migrants were over-represented among property offenders in early modern Frankfurt.[54] Burghers (including their families) constituted about 46 percent to 50 percent of the city's inhabitants in the eighteenth century, resident aliens about 5 percent (approximately 20 percent including their families), and the local Jewish community slightly less than 10 percent.[55] Among the criminal offences, however, all local groups together represented only 22 percent of the male suspects and 32 percent of the female suspects. Both for men and for women, then, theft was primarily a crime of outsiders. Or at least outsiders were more likely to be subjected to criminal investigation on suspicion of theft. The majority of the prosecuted offenders in early modern Frankfurt were either transient or had lived in the city for just a short period of time. Most of them were only loosely incorporated within the social-economic networks of the city, which made them vulnerable to prosecution.

Although this observation accounts for both male and female suspects, some gender differences can nevertheless be discerned. 'Foreignness' was

54 Joachim Eibach found comparable figures for his sample years: Eibach, *Frankfurter Verhöre*, 299.

55 Hochstadt, 'Migration', 202; Soliday, *A Community in Conflict*, 45; Roth, 'Der blühende Handel', 326.

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TABLE 7 Legal status of property offenders by gender, eighteenth-century Frankfurt

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

SOURCES: CRIMINALIA 1700(01); 1720(21); 1740(41); 1760(61); 1780(81)

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

TABLE 8 Mobility radius of foreign male and female property offenders, eighteenth-century Frankfurt

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

SOURCE: IFSG, *CRIMINALIA*, 1700(01); 1720(21); 1740(41); 1760(61); 1780(81)

more marked among male offenders than female offenders. Moreover, the geographical radius of male offenders arrested in Frankfurt was larger than that of women. While for women 45 percent of the offenders originated from places within a 50 km radius of Frankfurt, for men this was only the case 23 percent of the time (table 8). These differences can partially be explained

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by gendered migration patterns as female migration is generally characterised as more regional than that of men.[56] Nevertheless, one should not underestimate the high level of mobility displayed by female property offenders in the sources: 10 percent of the female migrants originated from places further than 250 km away, and some even came from places in Denmark, Bohemia and the Czech Republic. One reason women may have migrated to Frankfurt was the prospect of better wages. Anna Margaretha Blumin, who was born in Kassel, some 160 km away from Frankfurt, stated that she had come to the city because of the higher salary for servants in Frankfurt than in Kassel.[57] Frankfurt was located in one of the most densely populated regions of the Holy Roman Empire, with many people living in small to medium-sized towns.[58] Many of the migration patterns of male and female offenders were similar to that of Blumin, in the sense that they were characterised by intra-urban mobility (see map 1).

The second characteristic that can be discerned from the sources, the age of the offenders, shows that the high level of migrants was closely connected to life-cycle mobility patterns typical of the early modern period. This was the period in their lives, between the age of 15 and 29, that men and women left their parental home in order to look for employment as apprentices, journeymen or domestic servants.[59] In general, the age distribution of male and female property offenders was quite similar (table 9). More than half of the offenders (51 percent of male offenders and 53 percent of female offenders) were below the age of 25. At the same time, however, there are also slight differences in the age distribution by gender.

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

56 Leslie Page Moch, *Moving Europeans: migration in Western Europe since 1650*, 2nd ed. (Bloomington, IN: Indiana University Press, 2003), 14–18.

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

58 Pfister, *Bevölkerungsgeschichte*, 16–17.

59 Michael Mitterauer, *Ledige Mütter: zur Geschichte illegitimer Geburten in Europa* (München: C.H. Beck, 1983).

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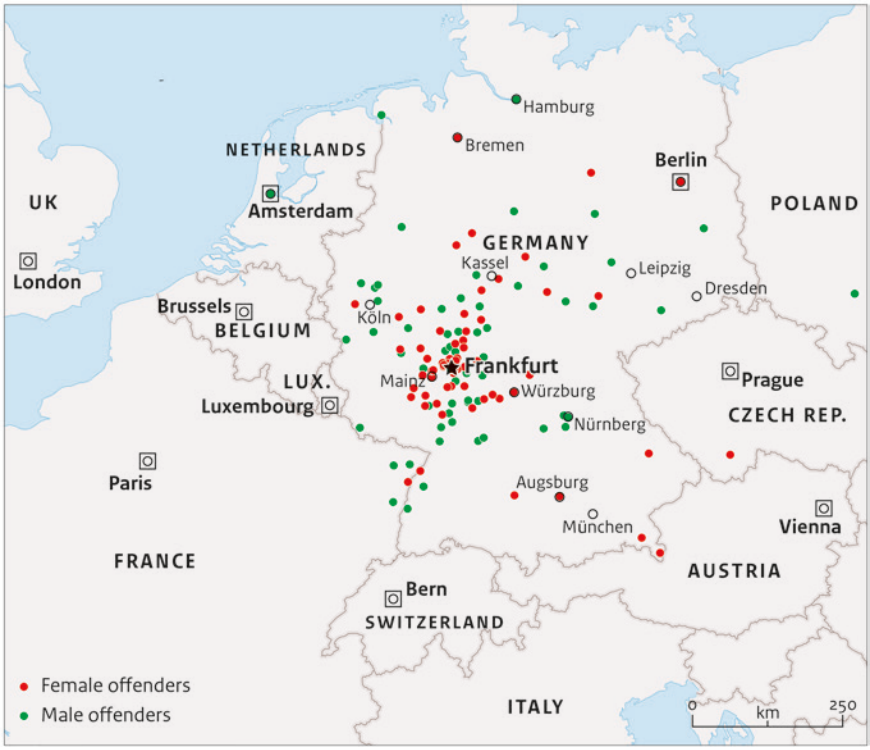

MAP 1 Place of birth of male and female property offenders, eighteenth-century Frankfurt
SOURCES: CRIMINALIA 1700(01); 1720(21); 1740(41); 1760(61); 1780(81), UVA-KAARTENMAKERS, CASTRICUM

TABLE 9 Age distribution of property offenders by gender, eighteenth-century Frankfurt

Age Category	Men		Women	
Under 20	22	23%	35	30%
20-29	39	42%	51	44%
30-39	22	23%	18	15%
40-49	7	7%	5	4%
50 and above	4	4%	8	7%
Total	94		117	

SOURCE: IFSG, *CRIMINALIA*, 1700(01); 1720(21); 1740(41); 1760(61); 1780(81)

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domestic service at an early stage in life was the death of one (and more often) two parents.[60]

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

And finally, the number of offenders aged 50 and above was slightly more significant among women. It would be tempting to relate this to the precarious position of widows in the early modern period.[61] However, of the eleven female offenders in this category, only three were identified as widowed and six were married.[62] Women in this age category were prosecuted for all sorts of property offences including committing simple theft, being gang members, and receiving stolen goods. It may be more likely that the gender differences in this age group were related to the prosecution patterns of the authorities. In Frankfurt's neighbouring territory of Kurmainz, Karl Härter has discerned similar age differences among prosecuted vagrants and property offenders. Among life-long offenders, the chances for men to reach old age before being arrested by the authorities and sentenced to death were much slimmer than for women.[63]

Finally, the third characteristic that can be discerned from the sources is the employment status of offenders. Investigators at the *Verhöramt* regularly inquired after the ways in which offenders supported themselves—'*womit sie sich nähre?*' in order to determine whether or not suspects were in fact honourable people (*ehrbahre menschen*) or not. The sample informs

60 Dürr, *Mägde in der Stadt*, 157–62.

61 On widows in early modern Germany: Gesa Ingendahl, *Witwen in der Frühen Neuzeit: eine kulturhistorische Studie* (Frankfurt am Main: Campus, 2006); On widowhood as a distinct form of early modern 'singleness', see various contributions to a recent collection of essays: Isabelle Devos, Julie De Groot, and Ariadne Schmidt, eds., *Single Life and the City, 1200–1900* (Basingstoke: Palgrave Macmillan, 2015).

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

63 Karl Härter, 'Prekäre Lebenswelten vagierender Randgruppen im frühneuzeitlichen Alten Reich: Überlebenspraktiken, obrigkeitliche Sicherheitspolitik und strafrechtliche Verfolgung', in *Die Gesellschaft der Nichtsesshaften: Zur Lebenswelt vagierender Schichten vom 16. bis zum 19. Jahrhundert*, ed. Gerhard Ammerer and Gerhard Fritz (Affalterbach: Didymos-Verlag, 2013), 36.

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us about the way women supported themselves in 85 cases (out of 137) and an additional 18 women were identified through the work of their husbands. For men there are references to work for 89 out of 132 offenders (which is only slightly higher than for women!). The examples in the sources affirm that for most suspects, the property offences were committed in the context of specific life-cycle vulnerability and arose from precarious economic positions.

The references show how women coped with the restricted employment opportunities available to them and are demonstrative for the unstable and insecure economic circumstances most of the women engaged in. In the majority of cases (46), the female suspects answered that they made a living as domestic servants. However, more than half of these (25) were not in service at the moment of their crimes and/or arrest and they had to make a living by other means. Rosina Barbara Appoldtin, for example, was arrested because she had stolen a basket of beans from the garden of Matthias Fuchs. Rosina was twenty-five years old and originated from a small town near Wurzburg. According to her statements, she had arrived in Frankfurt a year earlier and worked as a servant for a tailor for about six months after which she was only able to find short-term employments as a servant. At the time of her arrest, however, she was out of work again and had to support herself by carrying wood chips ('*Spähne tragen*').[64] She excused her theft by stating that she had not eaten for two days and had only stolen the beans driven by the greatest need and poverty.[65] The story of eighteen-year-old Barbara Elssin from Mainz, who was arrested together with another girl for stealing cloth and clothes, is yet another tale showing the precariousness of domestic servants. Barbara had worked as a domestic servant in her home town until she became ill and was dismissed by her master two years earlier. No longer able to support herself as a servant, she now sold fruit and vegetables that she purchased in Frankfurt with which 'she earned an honest but bitter living'.[66]

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

64 Criminalia, 5229 (1741).

65 Criminalia, 5229 (1741). Original: 'sie die größte Noth und Armuth darzu angetrieben'.

66 Criminalia, 5292 (1741). Original: 'und ihr stück brod ehrlich doch säuerlich damit verdienet'.

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had to make ends meet by combining several sources of income. Maria Elisabetha Erlin was arrested in 1760 and expelled from the city on the orders of the French military administration, because she was a known recidivist. She earned a living by sewing, but according to her own statements, she faced increasing difficulties to find enough work and therefore supplemented her income by trading lemon kummel (*Citronen Cümmel*) and working as a vivandière as well.[67]

Finally, eight women were referred to as prostitutes or 'loose' women. These women were not necessarily full-time professional prostitutes. Rather, many of the cases provide the impression that intercourse in exchange for money was occasional and part of a broader range of survival strategies. In half of the thefts involving prostitutes, their offences were directly related to their activities as prostitutes.[68] In 1741, Friedrich Roth reported the theft of 'fifteen or sixteen Carolinen' (approximately 150 to 160 guilders) from his wallet to the authorities. In his testimony, Friedrich recalled how he—after drinking too much wine in the journeymen's inn of the tailor's guild—went out onto the street and was lured into a house by an unknown woman, where they were joined by two other women and continued drinking. According to Friedrich, the women had deliberately plied him with wine so that they could rob him after he had passed out. While Friedrich himself never described the women as prostitutes, the situation seemed clear for the investigators. Two of the three women involved had been arrested in prostitution-related cases on earlier occasions. Because neither of the women admitted the theft, the authorities could not formally convict them, and therefore expelled them on the charge of being vagrants and loose and idle people.[69]

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

67 Criminalia, 7636 (1760).

68 King, 'Female Offenders', 75–80; Marion Pluskota, *Prostitution and Social Control in Eighteenth-Century Ports* (Abingdon: Routledge, 2015), 97–103.

69 Criminalia 5275 (1741).

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recruitment officers from the Prussian and Imperial armies made it easy to find employment.[70]

Although the male suspects display a wider range of professions, their testimonies are very similar to those of the women. They demonstrate the temporary and unstable nature of their employments and highlight how their lives were characterised by an economy of makeshift. Andreas Helfmann, aged twenty, was arrested on suspicion of theft from one of the market stalls during the Easter fair—he stated that he was a basket maker and worked as a day labourer.[71] Johann Hermann Wiegand, aged twenty-three and born in Hessen Homburg, stated that at the time he made a living selling hair (‘*handle mit haaren*’), but that he had previously worked as a servant for four-and-a-half years, but was a trained linen weaver.[72] 40-year-old Jacob Wagner from Oppenroth, who was arrested on suspicion of stealing a copper kettle, stated that he sold flax and nuts as a peddler trader, and would work as a day labourer wherever he could earn something (‘*wo er etwas verdienen können*’).[73] Due to his age, Wagner’s mobility was no longer part of accepted life-cycle migration, and the authorities labelled him a suspicious ‘thug and vagrant’(‘*verdächtiger jauner und vagabund*’).

The social characteristics of property offenders in early modern Frankfurt demonstrate that the majority of them were migrants who were not incorporated (or only loosely incorporated) in the city’s social control networks. Mostly they were not settled in the city but led very independent mobile lifestyles. The overall characteristics of urban female (property) offenders correspond to those identified for other early modern cities in Europe.[74] The majority of female offenders did not originate from the city in which they were prosecuted and they committed offences on their own account. They belonged to the age groups for which single status and life-cycle mobility were characteristic, and whose economic position was precarious. These characteristics show how problematic it can be to study women’s property crimes from the perception that they must have been related to household concerns and taking care of the family.

70 Kamp, ‘Between Agency and Force’, 49–72.
71 Criminalia 5080 (1740).
72 Criminalia 2254 (1700).
73 Criminalia 5076 (1740).
74 King, *Crime, Justice, and Discretion*, 169–217; Van der Heijden, *Misdadige vrouwen*, 221–25.

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4 Locations of Theft: Transcending the Private and the Public

Identifying the locations where property offences were committed may inform us about spaces in which men and women moved and participated. As mentioned earlier, historians previously suggested that women were more likely to commit offences in or around the household because they led less public lives and were more subjected to the private sphere than men.[75] However, more recently, the supposed distinction between female/private and male/public crimes has been called into question.[76] This means, that the locations of theft need to be considered from an early modern perspective in which boundaries between the private and public were blurred. The crime scene itself only gains meaning if we put the relationship of the offender to this location into context. Moreover, the socio-economic characteristics of thieves in early modern Frankfurt already indicate that the 'public/male' versus 'private/female' dichotomy is inadequate to properly interpret gendered patterns of illegal appropriation, as many of the female offenders led lives beyond the confinements of the domestic sphere.

The fluent boundaries between the private and the public have to be borne in mind when looking at the locations of theft in early modern Frankfurt, for several reasons. First, contrary to what we know for later periods, early modern houses were literally open in the sense that they were accessible to outsiders and that there was a high degree of visibility in relation to what happened inside the domestic space.[77] Many houses in early modern Frankfurt had a so-called *Geräms* attached to the house. When the famous poet Goethe described his hometown in *Dichtung und Wahrheit*, he described the *Geräms* as a structure resembling a bird cage which offered the opportunity to communicate with the outside world from within the house, without the necessity of actually having to enter the street. Many of the domestic economic activities of women actually took place in this *Geräms.*[78] These structures are a sign of the

75 Schwerhoff, *Köln im Kreuzverhör*, 180; Malcolm M. Feeley and Hadar Aviram, 'Where Have All the Women Gone? The Decline of Women in the Criminal Justice Process', *SSRN Journal SSRN Electronic Journal*, 2008; Barbara A. Hanawalt, *Crime and Conflict in English Communities: 1300–1348* (Cambridge, MA: Harvard University Press, 1979), 119–22.

76 Walker and Kermode, 'Introduction', 7, 12.

77 Eibach, 'Das offene Haus', 648–51.

78 Marianne Rodenstein, 'Vom "Gassesitzen", "Spaziergucken" und der Geselligkeit: Modernisierung des städtischen Raums und Wandel des Geschlechterverhältnisses im Frankfurt des 18. Jahrhunderts', in *Frauen in der Stadt: Frankfurt im 18. Jahrhundert*, ed. Gisela Engel, Ursula Kern, and Heide Wunder (Königstein/Taunus: Helmer, 2002), 23; Also: Daniel Jütte, 'Das Fenster als Ort sozialer

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permeability of early modern homes, in which the boundaries between the public sphere of the street and the privacy of the household were fluid. In the course of the eighteenth-century the *Geräms* slowly but surely vanished from the urban houses, particularly in the building boom of the second half of the century (between 1741 and 1800 close to 730 new building were constructed).[79]

Second, this openness also served an important function within a society where notions of honour and ritualised sociability were crucial. This could only be achieved through a culture of visibility, where domestic practices were public or semi-public.[80] The house was a locus of contact within the neighbourhood. This was not only necessary in social terms, but in economic terms as well. Households were much less stable units than is often been assumed: they depended on the support of—and interaction with—the neighbourhood.[81] There were spaces which were less visible or accessible by outsiders, but these should not be characterised as private in the modern sense of the word.

Moreover, when categorising locations of theft, there are several difficulties that have to be kept in mind. Most houses in the early modern period were multifunctional, encompassing workspaces, living quarters, storage rooms etc. all in one building.[82] Distinguishing between different spaces in the house is not always possible. Although for some regions in early modern Europe there are signs of a functional distinction among spaces, examples for German cities have shown that well into the eighteenth century beds were found in multiple spaces in the house: in the corridor, living room and even in the kitchen—a sign that most spaces in the house continued to be multifunctional.[83] In most of Frankfurt's buildings the ground floors usually housed stores and workshops, featuring windows that could be converted into vending tables when lowered. These rooms were not necessarily used by the owner of the house itself, but could be rented out to others, particularly during fairs, when they

Interaktion', in *Das Haus in der Geschichte Europas: ein Handbuch*, ed. Joachim Eibach and Inken Schmidt-Voges (Berlin: De Gruyter Oldenbourg, 2015), 467–83.

79 Roth, *Stadt und Bürgertum*, 35.

80 Eibach, 'Das offene Haus', 650–51.

81 Maria Ågren, 'Introduction: Making a Living, Making a Difference', in *Making a Living, Making a Difference: Gender and Work in Early Modern European Society*, ed. Maria Ågren (Corby: Oxford University Press, 2017), 1–23.

82 Schmidt-Voges, 'Das Haus in der Vormoderne', 5; Julia Schmidt-Funke, 'Städtische Wohnkulturen in der Frühen Neuzeit', in *Das Haus in der Geschichte Europas: ein Handbuch*, ed. Joachim Eibach and Inken Schmidt-Voges (Berlin: De Gruyter Oldenbourg, 2015), 219.

83 Schmidt-Funke, 'Städtische Wohnkulturen', 222–23.

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could also be used as storage- and show room for merchandise.[84] Inventories for early modern Frankfurt also suggest that many rooms in the upper floors of houses were not used for living space, but were rather used as storage rooms for household items, raw materials, foodstuffs, tools, junk and so on.[85]

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

4.1 *Theft from Dwelling Houses*

As table 10 demonstrates, the majority of thefts occurred from dwelling houses. This was the case for offences committed by both men and women. As one can see, however, the house as a location for theft was particularly dominant in the case of women. In almost 60 percent of the cases, female suspects were investigated for stealing items from other people's houses, whereas for men this was the case for only 29 percent of the cases investigated. It would be tempting to view such numbers simply as the result of women's confinement to the domestic sphere. However, a further analysis of the men and women stealing from houses shows that the picture was more complicated than that.

There are three different 'types' of offenders who stole from dwelling houses. The first are of course domestic servants and other household dependents, and, indeed, they constituted a large share of offenders for both sexes. Little more than a third of the women stealing property from houses were maidservants who stole from their employer or someone else in the household where they were working. In the case of men, the significance of their position as servants or living-in apprentices and journeymen was less profound than for women, but still made up one-fifth of the property offences that took place in

84 Julia Schmidt-Funke, 'Between Change and Persistence: Material Culture and Consumerism in Xvith-Century Frankfurt on Main' (11th International Conference on Urban History of the European Association for Urban History, Prague, 2012).

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

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TABLE 10 Locations of theft by gender of suspects, eighteenth century Frankfurt[a]

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

SOURCE: IFSG, *CRIMINALIA*, 1700(01); 1720(21); 1740(41); 1760(61); 1780(81)

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

the house. Clearly, for both sexes, working and living in a household provided opportunities and temptations that were hard to resist. An analysis of the gender differences in cases of domestic theft will be discussed in more detail later on in the chapter.

The majority of thefts from houses, however, were committed by non-household members. The second type of offenders stealing from houses did so in the context of the neighbourhood and early modern living arrangements. In early modern Frankfurt, only citizens were allowed to own real estate. About two-thirds of the citizens owned their own house, while the remaining one-third lived together with relatives or rented living spaces.[86] On average, there were about fifteen to sixteen inhabitants per house.[87] Travelers often remarked on Frankfurt's narrow alleys and small streets as something extraordinary. Compared to other towns and cities in the region, which were characterised by wide streets and many open public spaces, the building style in Frankfurt had barely changed since the Middle Ages, providing ample opportunities for

86 Roth, *Stadt und Bürgertum*, 128.

87 Harry Gerber, 'Die Stadt Frankfurt am Main und ihr Gebiet', in *Die Stadt Goethes: Frankfurt am Main im XVIII. Jahrhundert*, ed. Heinrich Völcker (Frankfurt am Main: Universitätsbuchhandlung, 1932), 20.

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thieves to sneak into houses unseen.[88] Most of the thefts in a neighbourhood setting were committed by women (ten women versus three men), which reflects the important roles women played in neighbourhood communities.[89]

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

There was, however, a gendered aspect that enabled women—even if they were unknown in the neighbourhood—to enter people's homes more easily without arousing any suspicion than men. This was in part related to the fact that women in general were considered less suspicious. Historians have shown how the perception of women as being less dangerous, as well as the fact that women usually received more empathy, had also resulted in a gendered division of labour among vagrants. In most cases it was women who maintained contacts with the settled population, went begging or asked for assistance through other means.[90] Thus, women circulating in the neighbourhood begging would not necessarily raise suspicion, and some women used this as an excuse when they were caught stealing.

Several cases demonstrate how female strangers had no problem entering dwellings in Frankfurt. In 1781, Helena Kalbfussin, resident in Frankfurt, was caught red-handed when stealing four plates from the kitchen of a house on

88 Stalljohann-Schemme, *Stadt und Stadtbild*, 303.

89 Criminalia 5077 (1740); Criminalia 5208 (1740); Criminalia 5298; Criminalia 7631 (1760); Criminalia 7733 (1761); Criminalia 9295 (1781); Criminalia 9296 (1781). On the role of women in early modern neighbourhoods see: Eibach Eibach, 'Böse Weiber'; Van der Heijden, 'Women, Violence and Urban Justice'; Capp, *When Gossips Meet*, 2003; Rublack, *The Crimes of Women*, 197–230; Muurling and Pluskota, 'The Gendered Geography'.

90 Härter, 'Prekäre Lebenswelten', 31; Otto Ulbricht, 'Bettelei von Frauen auf dem Land in den Herzogtümern Schleswig und Holstein (1770–1810)', in *Armut auf dem Lande: Mitteleuropa vom Spätmittelalter bis zur Mitte des 19. Jahrhunderts*, ed. Gerhard Ammerer et al. (Köln: Böhlau, 2010), 67.

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the *Zeil*. According to Helena, she had entered the house in order to beg for alms but found that no one was present. And as she saw that the kitchen door was open, she took her chances, picked up the plates and quickly left, only to be caught by the maid.[91] Margaretha Veltin, a notary's daughter from Mainz, was another woman who also instrumentally appealed to sympathy for female 'weakness'. She had entered the house of Nikolaus Gerlach, a mercer, through his shop where she had bought some cloth and asked him if she could warm herself in his *Stube*. There was apparently no reason for Gerlach or his wife to suspect Margareta and they invited her in. As soon as Gerlach's wife had left the room, however, Margareta took her chance and stole some clothing from the wardrobe.[92] Another—very plausible—excuse used by women in order to justify the fact that they had entered people's homes was that they were looking for domestic service or some other form of casual labour. Maria Müllerin, for example, was prosecuted for several thefts within the same neighbourhood, where she was going around legitimising her entrance by asking 'if there was something for her to sew' in one house and in another 'if they could use a maid'.[93] Unlike other cities in the Holy Roman Empire where authorities had set up employment agencies for domestic servants in order to regulate the mobility of women seeking employment in the city, in Frankfurt women seeking employment depended on informal methods.[94] For journeymen, however, this was much more regulated through the handicraft associations and did not require going from door to door in order to look for service.

Although it was relatively easy for women to enter the houses of strangers, this does not mean that they refrained from the use of violence. Due to the 'openness' of early modern houses, most household items and valuables were stored in locked chests or cupboards.[95] Storing one's valuable items safely was considered the responsibility of the owners, and investigators usually spent some time to ask victims whether or not they had locked away their items safely. In newspaper advertisements where victims of theft appealed to the public

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

92 Criminalia 3174 (1741).

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

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

95 Barbara Krug-Richter, 'Unter Verschluss! Familiäre Grenzziehungen in der ländlichen Gesellschaft der Frühen Neuzeit', in *Grenzen & Differenzen: zur Macht sozialer und kultureller Grenzziehungen*, ed. Thomas Hengartner and Johannes Moser (Leipzig: Leipziger Universitätsverlag, 2006), 65–78; For England: Amanda Vickery, 'An Englishman's Home Is His Castle? Thresholds, Boundaries and Privacies in the Eighteenth-Century London House', *Past & Present* 199, no. 1 (2008): 147–73.

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for information about the whereabouts of their stolen items, it was common to remark that things had been stolen from a secured house '*ein sicheres Haus*'.[96] This meant that even if one could sneak into a house without any problems, obtaining more valuable items meant the use of physical force or lock-picking.[97] In their efforts to break open cabinets, wardrobes, chests, drawers etc., women behaved just as men did. Sophia Veronica, wife of a notary, reported that one of her closets was broken into with such a force by the 16 year-old Maria Catharina Mayerin that the closet frames had burst open ('*die leisten davon auffgespengt worden*').[98] Anna Elisabetha Raabin used a knife to cut out the window glass from the lead frame to enter the house[99] and Anna Elisabetha Weigandin had used an axe in order to open a chest and steal household linen and garments.[100]

While there were no clear gendered patterns in the techniques that were applied to break into dwelling houses, there was a gender divide in the timing of burglary. The night appears to have been the domain of men, at least in relation to property offences.[101] This corresponds with what we know from other studies on early modern cities.[102] Committing burglary during the night was considered an aggravating circumstance. Night-time in general became a specific focus of discipline and policing for early modern authorities, and women's presence on the streets during the night was prohibited.[103] Policing the night was highly gendered: women caught in the streets during the night were almost automatically associated with prostitution.[104] Thus for women, it was more difficult to move around in the city during the night-time, which may help to explain their prerogative for daytime offences.

96 See advertisments in the *Franckfurter Frag- und Anzeigungsnrachrichten* under the header 'Sachen die Gestohlen worden'—items that were stolen. *Franckfurter Frag- und Anzeigungs Nachrichten* Nr. XX 10.03.1750; Ibidem Nr. XCII 06.11.1750; Ibidem, Nro. XCVII 28.11.1750; *Franckfurter Frag- und Anzeigungs Nachrichten* Nr. XIV 16.02.1753.

97 Dean, 'Theft and Gender', 409; Walker, *Crime, Gender, and Social Order*, 161.

98 Criminalia 5208.

99 Criminalia 5298.

100 Criminalia 7650.

101 Examples of men breaking in during night time: Criminalia 2240 (1700); Criminalia 2258 (1700); Criminalia 3091 (1720); Criminalia 5076 (1740); Criminalia 7637 (1760).

102 Ammerer, *Heimat Strasse*, 431; Gregory Durston, *Victims and Viragos: Metropolitan Women, Crime and the Eighteenth-Century Justice System* (Suffolk: Arima, 2007), 122–23; ibid.

103 Beattie, *Policing and Punishment*, 169–97; Casanova, *Nacht-Leben*; Paul Griffiths, *Lost Londons: Change, Crime, and Control in the Capital City, 1550–1660* (Cambridge: Cambridge University Press, 2008), 332–60.

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

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4.2 *Other Locations*

Shops and market stalls were the second most frequent location of theft for men and women (19 percent and 13 percent respectively). These are usually offences that are typically associated with women, as they are linked to household tasks like doing groceries.[105] For early modern England, in particular London, historians have linked the high presence of women among those prosecuted for shoplifting to an emerging consumer society and the development of a 'modern' retail trade with shops, shop windows and shop displays that enticed consumers to come in and buy—or possibly—steal merchandise.[106] Moreover, legal statutes defining the act of shoplifting were clearly gendered, being specifically aimed at women.[107]

Studies on early modern Germany have shown that there was a relatively late transition to a retail landscape with mostly closed shops. This only started to develop properly in the nineteenth century, much later than in a large metropolis like London.[108] Most of the trade Frankfurt was famous for was wholesale trade. This did not cater primarily for shopping by the local public, but for regional and international merchants. To maintain its attraction as a trading centre, Frankfurt depended on the reputation of the city as a safe space for merchants, especially during the famous fairs. The city's authorities intensified the prosecution of suspected individuals, during the fairs and arrested many without a specific suspicion of a committed offence. The suspects were being held in custody until after the fair was over and they were banished from the city.[109] This also helps to explain why Frankfurt, despite being an important trading town, had relatively few thefts from shops and markets. Outside the fairs, the right to keep shop ('*offene Läden*') was reserved for citizens only. Such

105 Wiebel, 'Die "Schleiferbärbel" und die "Schwarze Lise"', 766–67; Ammerer, *Heimat Strasse*, 431; Michaela Fenske, *Marktkultur in der Frühen Neuzeit: Wirtschaft, Macht und Unterhaltung auf einem städtischen Jahr- und Viehmarkt* (Köln: Böhlau, 2006), 103; Rublack, *The Crimes of Women*, 120.

106 Palk, *Gender, Crime and Judicial Discretion*, 38–66; Durston, *Victims and Viragos*, 126–29; John M. Beattie, 'Crime and Inequality in Eighteenth-Century London', in *Crime and Inequality*, ed. John Hagan and Ruth D. Peterson (Stanford, CA: Stanford University Press, 1995), 128.

107 Beattie, *Policing and Punishment*, 67.

108 Heidrun Homburg, 'German Landscapes of Consumption, 1750–1850: Perspectives of German and Foreign Travellers', in *The Landscape of Consumption: Shopping Streets and Cultures in Western Europe, 1600–1900*, ed. Jan Hein Furnée and Clé Lesger (Basingstoke: Palgrave Macmillan, 2014), 125–56; Sheilagh Ogilvie, 'Consumption, Social Capital, and the "Industrious Revolution" in Early Modern Germany', *Journal of Economic History* 70, no. 2 (2010): 287–325.

109 Eibach, *Frankfurter Verhöre*, 382.

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ENGRAVING 1 The Hühnermarkt in Frankfurt am Main
SOURCE: SALOMON KLEINER'S ENGRAVING OF THE MARKET IN FRANKFURT, PRINTED IN: DAS FLORIRENDE FRANCKFURTH AM MAYN, 1725, WIKIMEDIA COMMONS

shops were mostly located within residential buildings without a clear boundary between the living quarters and the shop. Commodities were displayed outside the shop on benches or tables and shutters, in removable booths and stalls, or simply in hampers in front of the sellers. The local market served as the most important site for trading, both for daily groceries as well as luxuries.[110] It was still heavily regulated by the authorities, and handicraft associations and corporative restrictions (*Zunftzwang*) dominated and controlled the access to markets. Shopping as an activity to pass time, especially for women, had not yet developed.

110 Homburg, 'German Landscapes of Consumption', 135; Heinrich Völcker, 'Handel, Gewerbe und Verkehr in Frankfurt am Main', in *Die Stadt Goethes: Frankfurt am Main im XVIII. Jahrhundert*, ed. Heinrich Völcker (Frankfurt am Main: Universitätsbuchhandlung, 1932), 105–33.

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ENGRAVING 2 Hucksters and market stalls at the Römer square in Frankfurt
SOURCE: SALOMON KLEINER'S ENGRAVING OF THE RÖMER SQUARE IN FRANKFURT, PRINTED IN: DAS FLORIRENDE FRANCKFURTH AM MAYN, 1725, WIKIMEDIA COMMONS

Overall, shops and market stalls in early modern Frankfurt were busy public spaces, rather than closed and confined (engravings 1 and 2). This means three things that have possibly influenced the prosecution of this type of offence and the gender composition of the suspects. First, there are repeated references in the sources that make it reasonable to assume that informal control was common (and probably preferred) in early modern shops and markets. If offenders were caught, merchants and shopkeepers settled the case by retrieving their property on their own account, rather than going through the hassle of reporting the case to the authorities.[111] Second, the crowded streets made it easy for offenders to escape. Although victims could still report thefts by an absent or unknown offender to the authorities, the *Verhöramt* hardly ever investigated cases for which there were no identified suspects. In early modern

111 Fenske, *Marktkultur*, 104.

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Württemberg, theft and petty fraud from markets and shops by local women was tolerated to a great extent by the authorities and often only admonished or sanctioned with fines.[112] Third, although grocery shopping was usually a chore for maids, the market place was not an exclusive female space: men and women moved around freely in the streets, having the opportunity to snatch products from unattended market stalls and shops. Offenders pretending to be customers could cause a distraction so that their accomplices could steal items unnoticed.[113] These factors probably contributed to the fact that there is a less profound gender pattern among such thefts than one might expect.

There was one type of unlawful appropriation from shops, however, that was almost entirely committed by women. Obtaining goods form mercers or grocers under false pretences was a typical female offence. Nineteen-year-old Anna Maria Waltherin, for example, had already left the service of Johann Adolph Stentzel for a while, but she continued to take out goods on his credit from several mercers in the neighbourhood. This way she obtained butter and sugar from spice trader (‘*Specereyhändler*’) Johann Jacob Bettbier, meat from butcher Johann Georg Achs and again butter from a confectioner (‘*Zuckerbäcker*’) called Schroder.[114] Another case was that of nineteen-year-old Catharina Sibylla Meissnerin *modo* Schaffnerin, who was prosecuted for buying two dresses on her mother’s credit from wigmaker Weberin under false pretences. She also obtained shoe buckles form a shoemaker in the Schnurgasse using a fake name, and from stocking weaver Geisler she had taken several pairs of stockings in the name of Fräulein von Humbecht.[115] This type of offence was not only committed by young single women. In 1760 the wife of carter Wilhelm Petermanns was prosecuted because she tried to obtain coffee and sugar form the trading company Franz Meermanns seel. Sohnen in the name of Frau Dauthin from a chemist’s shop. However, she aroused suspicion because she was unable to pronounce the name of Frau Dauthin correctly and instead referred to her as Taufferin.[116]

Taking goods under false pretenses was closely linked to women’s lawful economic activities. As daughters, domestic servants and wives, they were responsible for going to the market and shopping for groceries, and as such

112 Rublack, *The Crimes of Women*, 119.

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

114 Criminalia 5162 (1741).

115 Criminalia 5278 (1741).

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

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became acquainted with opportunities to procure goods under false pretenses. As households regularly changed servants, it was not suspicious for women unknown to merchants to take goods in their (fake) employer's name. Buying goods on credit was a widespread practice and women made instrumental use of the trust shown by grocers and other shopkeepers. Because it was such a central part of women's activities in the household economy, it was not likely that they were mistrusted and their chances of getting away with it were quite high. There are several newspaper advertisements in which victims warned the public about specific women taking goods under false pretenses. In the *Franckfurter Frag-und Anzeigenachrichten* from 06.03.1761, for example, an advertisement contained a report on a servant who pretended to buy ribbons for a person of good standing. Later inquiries, however, informed the victim that this person had not given anyone orders to buy ribbons in their name.[117]

At 13 percent taverns and inns were the third most frequent location from which women stole goods (see table 10). For men, however, this location only ranked in fifth place with a share of 8 percent. This may come as a surprise as such places have been interpreted largely—or even exclusively—as the domain of male sociability. As Joachim Eibach has shown, most of the violent conflicts that took place in eighteenth-century Frankfurt arose from a context of journeyman sociability in the tavern, from which women were indeed excluded.[118] Just like houses, however, taverns and inns were multifunctional places, and even though women did not participate in the honour rituals of journeymen, they were present in inns and taverns as guests, servants, etc.[119] Since foreigners, regardless of their standing, were largely dependent on finding accommodation in inns or guesthouses, these were always crowded places with opportunities for thieves to find large spoils. In her travel writings, English author Ann Ward Radcliffe regarded Frankfurt as a pleasurable place and argued that it would probably be an attractive place of residence for foreigners 'if the magistrates, either dreading the increase of luxury, or the interference of strangers in their commerce, did not prevent this by prohibiting them from

117 *Franckfurter Frag- und Anzeigungs Nachrichten*, Nr. XIX 06.03.1761. Also *Franckfurter Frag- und Anzeigungs Nachrichten*, Nr. XXXV 28.04.1767.

118 Eibach, *Frankfurter Verhöre*, 241–65; Eibach, 'Böse Weiber', 678.

119 On early modern taverns, see: Martin Scheutz, ' "Hab ichs auch im würtshauß da und dort gehört […]": Gaststätten als multifunktionale öffentliche Orte im 18. Jahrhundert', in *Orte des Wissens*, ed. Martin Scheutz, Wolfgang Schmale, and Dana Stefanova (Bochum: Winkler, 2004), 169–207; Barbara Ann Tlusty, ' "Privat" oder "öffentlich"? Das Wirtshaus in der deutschen Stadt des 16. Und 17. Jahrhunderts', in *Zwischen Gotteshaus und Taverne: öffentliche Räume in Spätmittelalter und Früher Neuzeit*, ed. Susanne Rau and Gerd Schwerhoff (Köln: Böhlau, 2004), 53–73.

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being lodged otherwise than at inns'.[120] It is within this context—the tavern as a place of lodging for strangers—that many of the thefts in these locations took place.[121] Others resulted from the tavern as a place of sociability,[122] a place of work,[123] or as a place for prostitutes to find clients.[124]

Finally, the last location of theft that will be discussed here is the street. Men appear to have been more likely to commit property offences in public: pickpocketing on the streets, on market squares or in the crowds awaiting entry before the city gates. The street as a location of theft only had a share of 6 percent for women, while for men this was 16 percent. This discrepancy results from gender differences in pickpocketing practices. The women who were investigated for pickpocketing in this sample usually committed the offence on their own and in an opportunistic fashion. Besides men who operated in a similar fashion to women, there are also several examples of men working in groups, making use of the crowdedness of the streets and stealing in a more coordinated fashion. Friedrich Schramm, for example, was robbed of 400 guilders while waiting at the local weigh house (*Stadtwage*) by a group of male Jewish pickpockets. Only four of them were arrested and expelled from the city, while the others managed to make their getaway in the crowds.[125] The authorities were particularly apprehensive of groups of thieves and pickpockets during the Fall and Easter Fairs, when they would often arrest larger groups of suspected offenders, and keep them in custody during the time of the fair before expelling them.[126]

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

120 Ann Ward Radcliffe, *A Journey Made in the Summer of 1794, through Holland and the Western Frontier of Germany with a Return down the Rhine: To Which Are Added Observations during a Tour to the Lakes of Lancashire, Westmoreland, and Cumberland* (London, 1796), 410–11.

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

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

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

124 Criminalia 5103 (1740).

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

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

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committed in the private sphere as such a distinction disregards the permeable structures of early modern houses and households.

5 Between Necessity and Fashion

In addition to looking at the location of theft as a way to investigate if and how male and female patterns of unlawful appropriation were linked to different spheres of social and economic activity, another approach may be to look at the goods that were targeted by thieves. First, the different economic circles men and women operated in shaped their expertise about the value of certain types of goods, and this influenced which items they stole. It also provided them with knowledge about possible distribution channels. Second, the early modern period is said to have been characterised by a 'consumer revolution', spearheaded (amongst other things) by women's spending patterns and growing desire to acquire a certain level of 'luxury'.[127] The thefts in early modern Frankfurt thus possibly reflected gendered consumption patterns linked to new and growing consumption markets as is shown for other early modern European cities.[128]

So, what types of items did men and women steal in early modern Frankfurt? As table 11 demonstrates, there are some noticeable gender differences that can be discerned. While the top three were the same for both men and women—consisting in each case of clothing and shoes, money, and textiles—their relative importance was different. Women were significantly more likely to steal items of clothing, textiles, and other household goods than were men. Such items were probably even more important than the numbers suggest, as it has not been possible to take the total volume of spoils into account (i.e. the exact number of stolen linens, clothes, etc.). A maid who stole the majority of her master's clothing and textile inventory is counted the same as a market thief who snatched one piece of cloth from a market stall.

The locations of theft determined to a great extent what types of items men and women stole. As women mostly stole from houses, their spoils usually contained items of clothing, household items like cutlery, crockery, tableware, linens and other textiles, but also money which was available in households. In general, women tended to steal a larger variety of goods than men: where the latter stole items from the same category in 80 percent of the cases, for women

127 Ogilvie, 'Consumption, Social Capital, and the "Industrious Revolution" '; ibid., 289.
128 Van der Heijden, *Women and Crime*, 2016, 69–72.

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TABLE 11 Items stolen by women and men, eighteenth century Frankfurt

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

SOURCE: IFSG, *CRIMINALIA*, 1700(01); 1720(21); 1740(41); 1760(61); 1780(81)

this was the case 64 percent of the time. More than women, men tended to target single items, whereas women—in an opportunistic fashion—stole whatever they could find within the house. Whereas men tended to steal money through pick-pocketing in the business of the market during the fairs, women were more likely to steal money they found in houses.

Initially, historians have tended to characterise women's thefts as petty, arguing that women were more likely to steal items of little value and direct use. However, Garthine Walker was able to demonstrate for seventeenth-century Cheshire that although men and women stole *different* type of items, the total value of their spoils was very *similar*.[129] For Frankfurt it is unfortunately not possible to investigate this, as the value of the stolen items was not registered systematically. The sample years reveal a number of cases in which men were accused of thefts or malversation of goods and assets of great value. Most of these occurrences were situated in Frankfurt's role as an important centre of trade. Carter Johannes Gottschalck, for example, was accused by the wealthy merchants Etienne Conte and Dionys Nothäi, two wholesale traders with a firm based in Frankfurt, of having (deliberately) lost part of their trade goods

129 Walker, *Crime, Gender, and Social Order*, 161.

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from Amsterdam with an estimated worth of 1000 guilders.[130] Another example is that of Johann Georg Otto Werth, who was employed as a journeymen upholsterer (*Tapezierergesellen*) in the *Dielische* workshop. He was prosecuted for the malversation of goods from his employer with an estimated worth of more than a 1000 guilders.[131] Joachim Eibach also noted that large-scale trading frauds in eighteenth-century Frankfurt were the domain of men.[132] In contrast, the largest known value of theft by a woman in the sample years was by Maria Elisabetha Köpperin who had stolen a considerable number of different coins from her employer, which he valued at a total of 200 guilders.[133]

Although it is not possible to systematically compare the value of the goods stolen by men and women in early modern Frankfurt, the perceived differences do not allow for a simple model of serious looting by men and petty pilfering by women. Clothing and household items (which featured more prominently among women's spoils) may seem of little value from a contemporary perspective, but this was not at all the case during the early modern period. They made up a large share of the expenditures from the household budget and were therefore often safely locked in cabinets or chests.[134] For domestic servants and apprentices, clothes were often the only valuables they possessed. Whenever they were on the road between finding employment positions, clothes were the last items they would sell to support themselves since they were an important aspect to distinguish themselves from vagrants and beggars. Clothing, therefore, was not just valuable but also belonged to people's social capital.[135] The importance of clothing during this period is reflected in their use as an alternative currency as well as a savings strategy.[136] Women more than anyone knew the value of household items, as they came in contact with them through their

130 Criminalia 3073 (1720).

131 Criminalia 9165 (1780).

132 Eibach, *Frankfurter Verhöre*, 324.

133 Criminalia 2238 (1700).

134 Karin Gottschalk, 'Schlüssel und "Beschluss": Verfügungsgewalt über Verschlossenes', *Comparativ* 15, no. 4 (2005): 21–32.

135 Katharina Simon-Muscheid, '"Und ob sie schon einen dienst finden, so sind sie nit bekleidet dernoch": die Kleidung städtischer Unterschichten zwischen Projektionen und Realität im Spätmittelalter und in der frühen Neuzeit', *Saeculum* 44 (1993): 54.

136 Beverly Lemire, 'The Theft of Clothes and Popular Consumerism in Early Modern England', *Journal of Social History* 24, no. 2 (1990): 255–76; Robert Jütte, *Poverty and Deviance in Early Modern Europe* (Cambridge: Cambridge University Press, 1994), 78–82; Georg Stöger, 'Urban Markets for Used Textiles: Examples from Eighteenth-Century Central Europe', in *Selling Textiles in the Long Eighteenth Century: Comparative Perspectives from Western Europe*, ed. John Stobart and Bruno Blondé (Basingstoke: Palgrave Macmillan, 2014), 210–25.

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household duties.[137] Moreover, the *Criminalia* reveal that women did not steal household items randomly, but targeted items made from expensive materials like copper, tin, brass and silver which could be sold as raw material to artisans (see the paragraph below). The spoils of thieves in early modern Frankfurt are, therefore, in line with findings by other historians. Rather than assuming that women would steal items of lesser value because their criminality is inherently pettier than that of men, it becomes clear the different patterns were more related to the different economic spheres in which men and women operated.

A second point that needs to be addressed in this paragraph concerning the types of stolen goods is the importance of a 'consumer revolution'. Historians have argued that the growing demand for—and the availability of—market goods influence patterns of theft. Beverly Lemire related the frequency of theft of clothing in early modern England to a growing popular consumerism and sensitivity to fashionable products. Stealing items that were popular ensured thieves of a large market to easily distribute the stolen items. At the same time, it offered individuals an opportunity to take part in the culture of fashionability through illegal means if they lacked the means to do so legally.[138] Contemporaries and historians alike have often linked the theft of clothing by domestic servants as a sign of their desire to own luxurious items, which would otherwise remain beyond their reach.[139]

It is difficult to assess to what extent thieves in early modern Frankfurt, too, were influenced by a growing desire of the lower and middle classes to participate in a growing consumer culture. The 'consumer revolution' was of course not limited to textiles and clothing, but to a growing market for consumer goods in general, including the expanding availability of colonial commodities. The extent of this revolution varied across Europe. Sheilagh Ogilvie has suggested that due to dominant non-market agents, and strong sumptuary regulations, the 'consumer revolution' in early modern Germany was less strong and occurred later than in countries like the Netherlands and England.[140]

As an important European trading centre, Frankfurt was acquainted with new colonial products from early on.[141] According to Julia Schmidt-Funke, there is no clear-cut evidence that suggests a change in consumption in early modern Frankfurt, despite the large range of goods that were available in the

137 Walker, *Crime, Gender, and Social Order*, 165.
138 Lemire, 'The Theft of Clothes'.
139 Beattie, 'Crime and Inequality', 128.
140 Ogilvie, 'Consumption, Social Capital, and the "Industrious Revolution" ', 297.
141 Alexander Dietz, *Frankfurter Handelsgeschichte*, 4 vols (Frankfurt am Main: Knauer, 1910).

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city.[142] Frankfurt with its fairs was known as an important trading centre for luxury items. Both the raw materials, like diamonds, jewels and gold, as well as the jewellery itself were available in large quantities and from early on.[143] Sugar and coffee from the Atlantic also found their way to Frankfurt from the sixteenth century onwards. Flemish refugees played an important role in establishing trading networks for these colonial goods. In 1689 Frankfurt was the second city in early modern Germany (after Hamburg in 1671) to establish a coffeehouse.[144] But the majority of the trade during the fairs, roughly 80 percent to 90 percent consisted of all types of textiles (especially precious cloth and expensive fabrics).[145]

The city's Lutheran authorities and burgher community had an ambiguous relationship with consumption and the new consumer items. On the one hand they valued the riches of the fairs and importance of the market, while on the other hand it was also considered reprehensible to offer too much room for splendour and public display of wealth. The authorities sought to regulate conspicuous consumption patterns through the implementation of dress ordinances and other sumptuary laws. The dress ordinances regulated the type and amount of fabric that was allowed to be worn according to social status. Velvet, for example, was preserved for the first social order according to the ordinances of the seventeenth century, and in the last dress ordinance of 1731 it was still only allowed for the first and second order.[146]

These dress ordinances were often difficult to enforce in practice. The *Sendherren* (the deputies of the *Sendamt,* who were responsible for policing sumptuary regulations) often struggled to distinguish the many various types of fabrics that were available, not to mention the fact that fabrics were produced

142 Julia Schmidt-Funke, 'Wandel des Konsums? Frankfurt am Main im 17. Jahrhundert', in *'Eigennutz' und 'gute Ordnung': Ökonomisierungen der Welt im 17. Jahrhundert*, ed. Guillaume Garner and Sandra Richter (Wiesbaden: Harrassowitz, 2016), 147–48.

143 Gabriele Marcussen-Gwiazda, 'Die Frankfurter Juwelenhandlung de Briers in 1. Drittel des 17. Jahrhunderts', in *Brücke zwischen den Völkern: zur Geschichte der Frankfurter Messe*, ed. Rainer Koch, vol. 2 (Frankfurt am Main: Historisches Museum, 1991), 122–28; Dietz, *Frankfurter Handelsgeschichte*, 200–243.

144 Donald Harreld, 'Atlantic Sugar and Antwerp's Trade with Germany in the Sixteenth Century', *Journal of Early Modern History* 7, no. 1 (2003): 155–56; Andreas Thiel, 'Spezereien und andere Luxuswaren, Kaffe, Kakao und Tee', in *Brücke zwischen den Völkern: zur Geschichte der Frankfurter Messe*, ed. Rainer Koch, vol. 2 (Frankfurt am Main: Historisches Museum, 1991), 238–41; Roth, *Stadt und Bürgertum*, 173.

145 Dietz, *Frankfurter Handelsgeschichte*, 88–89; Roth, *Stadt und Bürgertum*, 53.

146 PO 3056 *Der Kayserl. Und des Heil. Röm. Reichs freyer Stadt Franckfurt am Mayn Kleider= Hochzeit= Kind= Tauf= und Leich=Begängnuß=Ordnung* 19.06.1731.

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in various qualities.[147] Johann Bernhard Müller, aldermen and syndic in Frankfurt in the second half of the eighteenth century, wrote about the social and cultural state of the city. He lamented the riches and 'abundance of needless things' that were available in the city, stating that 'what previously used to be preserved for the gentry only, was no longer considered good enough by a wealthy burgher'. Müller went on to complain that the common people (*Pöbel* […] *geringeren und gemeinen Leuten*) did not know how to deal with the abundance of luxury goods available in the shops and markets and, particularly during the fairs, squandered their money. As a result, they ended up destitute and penniless, and became a burden to the city's poor relief, which as burghers they were entitled to.[148]

Although it proved difficult to enforce sumptuary laws and dress ordinances, various cases have been persevered in the mayor's records to demonstrate that the sumptuary laws were not entirely dead-letter laws. The cases analysed by Inke Worgitzki indicate that it were particularly women who were accused of transgressing the dress codes, and therefore of dressing above their standing.[149] There are many other contemporary sources that commented on servants dressing above their station either as a desire for luxury or to increase their attractiveness to prospective marriage partners. Frankfurt's criminal records, however, only reveal single cases in which women stole luxury items within this context.[150] Nevertheless, items were often found among the spoils of female thieves which they could not have worn themselves, according to the dress codes. These prohibited servants and other women in the lowest social order from wearing clothes in bright colours or any type of embellishment. Moreover, jewellery, and any type of headwear except for modest (night) caps were not allowed. The same applied to fashionable clothing like crinolines (*Reifröcke*), *Andriennes*, and *Manteaulettgen*.[151]

147 Inke Worgitzki, 'Samthauben und Sendherren: Kleiderordnungen im frühneuzeitlichen Frankfurt', *Archiv für Frankfurts Geschichte und Kunst* 68 (2000): 190; Neithard Bulst, 'Kleidung als sozialer Konfliktstoff: Probleme kleidergesetzlicher Normierung im sozialen Gefüge', *Saeculum* 44, no. 1 (1993): 32–46.

148 Johannes Müller, 'Transmigrant Literature: Translating, Publishing, and Printing in Seventeenth-Century Frankfurt's Migrant Circles', *German Studies Review* 40, no. 1 (2017): 203–5 Original: 'so müsten sie endlich, der Casten und andere milde Stiftungen erhalten, und dieses: weil sie in der Bürgerschaft stünden'.

149 Worgitzki, 'Kleiderordnungen', 192.

150 Eibach, *Frankfurter Verhöre*, 335.

151 PO 3056 *Der Kayserl. Und des Heil. Röm. Reichs freyer Stadt Franckfurt am Mayn Kleider= Hochzeit= Kind= Tauf= und Leich=Begängnuß=Ordnung* 19.06.1731.

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Overall, the cases of theft show that in early modern Frankfurt the link between theft, targeted spoils, and a growing consumer society is complex and ambiguous. Jewellery and clothing made from precious textiles with extensive embellishments were stolen alongside less expensive and non-fashion-sensitive household linens. At the same time, the expansion of available products throughout the early modern period is visible in Frankfurt. Suspects who were accused of stealing food usually did not steal food for their own consumption. These thefts were more often related to more 'luxury' products like coffee and sugar, and even champagne. Margaretha Emmerichin, for example, was prosecuted because she had obtained sugar on credit from several stores, which she had sold on to several mercers in order to be able to pay her rent as well as have some money in order to buy food for herself.[152] Overall, regardless of the products men and women stole, they were usually sold on and turned into cash immediately. The profits were mostly used to pay for daily necessities, travelling, and place to stay, rather than saved in order to acquire expensive luxuries.

6 Distributing of Stolen Goods

Now that we have a clear picture of the different types of theft men and women committed, and consequently the different goods they targeted, it is necessary to take a closer look at the way that stolen goods were sold and circulated. 'Networks' of distribution can tell us a great deal about the economic circles that men and women were involved in: both from the perspective of the receivers as well as from the perspective of the offenders. Studies have shown that women featured prominently among receivers of stolen goods in early modern Europe.[153] In the city of Leiden, a staggering 63 percent of the offenders prosecuted for fencing, were women.[154] In late eighteenth-century London, fencing made up only a minority of both male and female property crimes. However, it constituted a larger proportion of women's crimes, than of men's

152 Criminalia 7719 (1761). Also: Criminalia 7713 (1761).

153 Garthine Walker, 'Women, Theft, and the World of Stolen Goods', in *Women, Crime and Courts in Early Modern England*, ed. Garthine Walker (London: UCL Press, 1994), 81–105; Kathy Callahan, 'On the Receiving End: Women and Stolen Goods in London 1783–1815', *The London Journal* 37, no. 2 (2012): 106–21; Van der Heijden, *Women and Crime*, 2016, 62–76.

154 Kloek, *Wie hij zij*, 136.

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(4 percent vs 2 percent).[155] While figures are lacking for other cities, historians have characterised receiving as a typical female offence.[156]

Scholars related the high level of female involvement in networks of distribution and selling of stolen goods to women's dependent position in the household.[157] Gerd Schwerhoff, found that in late sixteenth-century Cologne, concealment and fencing were offences equally committed by men and women. He explained this by the fact that such crimes usually took place in or around the home, and therefore belonged to the female sphere.[158] More recently scholars have argued that such patterns should not be explained by women's dependent position in the household. Garthine Walker stated that women's involvement in receiving stolen goods should be connected to 'women's own economic activities and interactions'.[159] Many women were involved in lawful economic activities that involved pawning, recycling, selling and reselling second-hand goods. It was through these activities that women were involved in unlawful networks of receivers of stolen goods, as they often had a better understanding of second-hand markets than men. Among the women redistributing stolen goods there was often no clear-cut separation between their lawful and unlawful activities. Additionally, Kathy Callahan argued that receiving stolen goods fitted the expected stereotypes of female gender roles as it did not involve violence or require special skills, which made it easy for women to participate. Women in particular were familiar with reselling used items, through their regular use of pawnshops or other second-hand retail networks.[160] Working on eighteenth-century Bristol, Matt Neale also emphasised that women were not only important as sellers of stolen goods because this was associated with their economic activities, but also because these activities meant that they were less likely to be *suspected* of selling stolen goods.[161] Finally, Manon van der Heijden suggested that in the Netherlands as well women used job-related networks either to commit theft or to distribute their spoils.[162]

155 Callahan, 'On the Receiving End', 110.
156 Matt Neale, 'Making Crime Pay in Late Eighteenth-Century Bristol: Stolen Goods, the Informal Economy and the Negotiation of Risk', *Continuity and Change* 26, no. 3 (2011): 449–50.
157 Walker, 'Women, Theft, and the World of Stolen Goods', 91.
158 Schwerhoff, 'Geschlechtsspezifische Kriminalität', 96; Also: Spierenburg, 'How Violent Were Women?', 13; Rublack, *The Crimes of Women*, 109–10.
159 Walker, *Crime, Gender, and Social Order*, 166.
160 Callahan, 'On the Receiving End', 111.
161 Neale, 'Making Crime Pay', 451–52.
162 Van der Heijden, *Women and Crime*, 2016, 66–67.

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The general picture that women played a central role in the distribution of stolen goods and that this is linked to their economic roles is not confirmed by the evidence on early modern Frankfurt at first sight. On the contrary, judging from the prosecution patterns of the authorities, women seemed to be much less involved in fencing compared to studies on British and Dutch cities. Receiving of stolen goods made up only a minority of the investigations for property offences before the *Verhöramt*: between 1600 and 1806 this made up just over 4 percent of the cases involved.[163] Maria Boes' calculations of the *Strafenbuch* (1562–1696) reveal that only 3.8 percent of the recorded penal punishments were related to the sale of stolen goods.[164] Women's overall share among property offenders in Frankfurt between 1600 and 1806 was 27 percent. Their share among those prosecuted for receiving stolen goods, however, was 20 percent. Compared to their overall share among property offenders, this figure is rather low. Or at least it seems to suggest that in Frankfurt women were much less involved in networks of receivers than one may assume based on the evidence from elsewhere.[165]

How can we explain this difference? Several scholars have argued that women's legal position in the Netherlands and England provided favourable opportunities for them to become involved in commercial enterprises, and female traders could run businesses on their own account independently from their husbands.[166] It were precisely these activities that provided opportunities for women to sell and resell stolen goods. Callahan has shown that a considerable proportion of the women prosecuted for receiving before the Old Bailey were shopkeepers.[167] The question then arises of whether or not one could attribute the relatively low share of women among receivers of stolen goods in early modern Frankfurt to more restricted economic activities?

Although figures on women's economic activities in early modern Frankfurt are lacking to a great extent, both the interrogation records as well as other

163 IfSG Criminalia 1600–1806.

164 Boes, 'Crime and Punishment', 179.

165 IfSG Criminalia 1600–1806. In Joachim Eibach's eighteenth-century samples, the share of women among prosecuted receivers was 22.2%, which is only slightly higher than their overall share throughout the seventeenth and eighteenth centuries and still considerably below their average share among property offenders.

166 Daniëlle Van den Heuvel, *Women and Entrepreneurship: Female Traders in the Northern Netherlands c. 1580–1815*, Women & Entrepreneurship (Amsterdam: Aksant, 2007), 84–85; Ogilvie, *Bitter Living*, 9; Hannah Barker, *The Business of Women: Female Enterprise and Urban Development in Northern England, 1760–1830* (Oxford: Oxford University Press, 2006).

167 Callahan, 'On the Receiving End', 116.

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sources reveal that they were involved in many different economic activities, working as peddler traders, in craft workshops or as merchants, either alongside their husband or as widows on their own.[168] According to the city's legal constitution, married women could trade in partnership with their husband, and sign contracts and bills of exchange etc. on their own account, without the use of guardianship. With the consent of their husband, married women could also trade independently.[169] Robert Beachy emphasised the importance of women as independent traders in large-scale family businesses in early modern Frankfurt.[170] Similarly, Robert Brandt suggested that the role of women among artisans may not have been as grim as previously perceived. In 1762, widows ran close to 12 percent of the workshops on their own accounts, mostly employing journeymen as well. This figure, of course, excludes the many women that worked alongside their husbands.[171]

Women featured prominently in small-scale trading activities, many of which were closely associated with the distribution of stolen goods. In the late medieval period and early sixteenth century, most of the so-called *Kleiderhocken* (second-hand traders in clothing) were almost exclusively female.[172] In the course of the early modern period, the trade of peddlers in Frankfurt was increasingly restricted, as a result of which they were only allowed to sell agricultural products on the market during special hours.[173] For early modern Leipzig, Susanne Schötz has shown how such economic limitations went hand in hand with the feminisation of the industry: by the beginning of the

168 Dölemeyer, 'Privatrechtliche Handlungsspielräume', 98–99; Kaltwasser, 'Handelsfrauen in Frankfurt'; Klausmann, 'Handelsfrau, Marktfrau, Handelsgehilfin'; Henrik Halbleib and Ursula Kern, "Amazonen' im Frankfurter Zunfthandwerk: Ein Werkstattbericht', in *Blickwechsel: Frankfurter Frauenzimmer um 1800*, ed. Ursula Kern (Frankfurt am Main: Kramer, 2007), 68–77; Brandt, 'Frauen und Handwerk'; Wiesner-Hanks, *Working Women*; Merry E. Wiesner-Hanks, 'A Response to Women and Business in Eighteenth- and Nineteenth-Century Northwestern Europe', *Histoire Sociale* 34, no. 68 (2001): 371–76.

169 Dölemeyer, 'Privatrechtliche Handlungsspielräume', 97–99; Schmitt, *Säuberlich banquerott gemachet*, 110–16.

170 Beachy, 'Business Was a Family Affair', 316–17.

171 For the statistics see: Franz Lerner, 'Eine Statistik der Handwerksgesellen zu Frankfurt a. M. vom Jahre 1762', *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte* 22, no. 2 (1929): 174–93; Moritz, *Versuch einer Einleitung*, 1786, 2:287–311; For the role of women in guilds Werkstetter, *Frauen im Augsburger Zunfthandwerk*; González Athenas, *Kölner Zunfthandwerkerinnen*.

172 Karl Bücher, *Die Frauenfrage im Mittelalter*, 2nd ed. (Tübingen, 1910), 79; Georg Stöger, *Sekundäre Märkte? Zum Wiener und Salzburger Gebrauchtwarenhandel im 17. und 18. Jahrhundert* (München: Oldenbourg, 2011), 181.

173 Moritz, *Versuch einer Einleitung*, 1786, 2:239.

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eighteenth century, most *Hockinnen* were women.[174] A similar development appears to have occurred in early modern Frankfurt as well.[175] At the same time, historians have shown how women, and particularly unmarried women, faced increasing restrictions on engaging in market and retail activities, including the market for second-hand goods, during the seventeenth and eighteenth centuries, pushing them into the informal economy.[176]

Thus, even though women's economic roles in early modern Germany were potentially less diverse compared to those of women in England or the Netherlands, they were certainly not excluded completely from the economic activities that were often related to networks of receiving. And indeed, as a closer look at the sources shows, women *did* play a role as receivers of stolen goods. But due to the prosecution efforts of the city's authorities, women were less frequently subjected to criminal investigations for fencing and other related activities.

Who then was prosecuted for fencing in early modern Frankfurt? Jewish men featured prominently among those prosecuted for selling stolen goods. Joachim Eibach has shown that more than three-quarters of all suspects prosecuted for this offence in eighteenth-century Frankfurt were Jewish, the majority of them being male local Jews with citizenship (*Stättigkeitsjuden*).[177] Other studies on early modern Germany as well have indicated that Jews were

174 Susanne Schötz, 'Female Traders and Practices of Illicit Exchange: Observations on Leipzig's Retail Trade between the Sixteenth and Nineteenth Century', in *Shadow Economies and Irregular Work in Urban Europe: 16th to Early 20th Centuries*, ed. Thomas Buchner and Philip R. Hoffmann-Rehnitz (Wien: LIT, 2011), 130.

175 Rebekka Habermas, 'Die Ordnung der Stadt: Frauen und Männer im Frankfurt des 18. Jahrhunderts', in *Frauen in der Stadt: Frankfurt im 18. Jahrhundert*, ed. Gisela Engel, Ursula Kern, and Heide Wunder (Königstein/Taunus: Helmer, 2002), 52–53.

176 Merry E. Wiesner-Hanks, 'Paltry Peddlers or Essential Merchants? Women in the Distributive Trades in Early Modern Nuremberg', *The Sixteenth Century Journal* 12, no. 2 (1981): 3–13; Anne Montenach, 'Formal and Informal Economy in an Urban Context: The Case of Food Trade in Seventeenth-Century Lyons', in *Shadow Economies and Irregular Work in Urban Europe: 16th to Early 20th Centuries*, ed. Thomas Buchner and Philip R. Hoffmann-Rehnitz (Berlin: LIT, 2011), 91–106; Stöger, *Sekundäre Märkte*, 181–201.

177 Joachim Eibach, 'Stigma Betrug: Delinquenz und Ökonomie im jüdischen Ghetto', in *Kriminalität und abweichendes Verhalten: Deutschland im 18. und 19. Jahrhundert*, ed. Helmut Berding, Diethelm Klippel, and Günther Lottes (Göttingen: Vandenhoeck & Ruprecht, 1999), 22; On the general stigma of Jewish people as criminals in the early modern period see: Otto Ulbricht, 'Criminality and Punishment of the Jews in the Early Modern Period', in *In and out of the Ghetto: Jewish-Gentile Relations in Late Medieval and Early Modern Germany*, ed. R. Po-chia Hsia and Hartmut Lehmann, In & out of the Ghetto (Cambridge: Cambridge University Press, 1995), 49–70.

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overrepresented among those prosecuted for receiving stolen goods.[178] This overrepresentation of local Jewish men among those prosecuted for fencing was related both to their economic marginalisation, as well as to dominant stereotypes about Jews as swindlers and frauds. These associations made it more likely that they would be subjected to criminal investigation (as a result of biased policing practices). Moreover, the stereotypes had also penetrated into the legislation of the city and the empire, thus continuously reinforcing the image of Jews (in particular Jewish men) as dishonest criminals.[179]

There are several examples in Frankfurt's legislation that explicitly mention the (perceived) link between Jews and fencing. In the legal constitution for Frankfurt's Jewish citizens (*Stättigkeit* 1616), for example, they were explicitly prohibited from buying, selling or pawning items that were undoubtedly stolen.[180] Moreover, the *Stättigkeit* stipulated that Jews were prohibited from selling or pawning items from young people who still lived with their parents or in their master's household. This regulation was often specifically referred to in cases of domestic theft where the servant had sold the items to a Jewish pawnbroker or seller.[181] While fencing featured in the regulations of Jewish citizenship, there were no references to this offence in that of the Christian burgher community (*Bürgervertrag*). Later police ordinances also reinforced the existing stereotypes. In an ordinance against the receiving of stolen goods from 1760 the city council directed the ordinance to the city's gold and silver workers *and* the entire Jewish community (*'wie auch die gesamte Judenschafft'*).[182] It is clear that according to the legal codes there was a close association between Jewish commerce, theft and the sale of stolen goods.

178 Rublack, *The Crimes of Women*, 116, 121–22; Ammerer, *Heimat Strasse*, 437; Christoph Kühn, *Jüdische Delinquenten in der Frühen Neuzeit: Lebensumstände delinquenter Juden in Aschkenas und die Reaktionen der jüdischen Gemeinden sowie der christlichen Obrigkeit* (Potsdam: Universitätsverlag, 2008), 82–82; Härter, *Policey und Strafjustiz*, 579; Egmond, *Underworlds*, chap. 6.

179 Eibach, 'Stigma Betrug', 23; Sabine Ullmann, 'Die jüdische Minderheit vor dörflichen Niedergerichten in der Frühen Neuzeit', *Geschichte und Gesellschaft* 35, no. 4 (2009): 547–48; Karl Härter, 'Cultural Diversity, Deviance, Public Law and Criminal Justice in the Holy Roman Empire', in *Law Addressing Diversity: Pre-Modern Europe and India in Comparison*, ed. Thomas Ertl and Gijs Kruijtzer (Berlin: De Gruyter Oldenbourg, 2017), 73–78.

180 PO 1861 *Der Juden zue Franckfurth Stättigkeit und Ordnung, wie die im Nahmen der Kayserlichen Maytt. Geendert und verbeßert worden* 28.02.1616. Orginal: *'Item sie sollen nicht kauffen noch leihen, auf Naß oder blutig Gewandt, oder aber andere unzweiffentlich dergleichen gestohlene wahren* […].

181 Criminalia 9199 (1780); Criminalia 5283 (1741); Criminalia 5111 (1740).

182 PO 3561 *Vermuthlich gestohlene Sachen soll man nicht kaufen oder Geld darauf leihen* 19.09.1760.

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A second factor that needs to be considered in order to understand the overrepresentation of Jews among receivers of stolen goods is their economic position. Jewish inhabitants of Frankfurt (like elsewhere) were heavily restricted in the kind of commercial activities they were allowed to employ. For one, they could not become guild members, as a result of which they were denied access to the majority of skilled professions. Additionally, Frankfurt's *Stättigkeit* limited the opportunities for Jewish merchants to trade to a large extent (they could not own trading firms, for example). The retail of second-hand clothes and textiles was one of the few branches in which Jews could trade without restrictions. Similarly, they were allowed to work as pawnbrokers. Many people never redeemed their pawned items, as a result of which a lively trade in second-hand goods existed in the *Judengasse*. Unsurprisingly, considering the restrictions, the majority of Frankfurt's Jewish population was involved in (second-hand) clothing and textile retail trade or worked as pawnbrokers and money lenders.[183]

These were all professions that were closely associated with most of the goods that were stolen in the early modern period. Most offenders—both men and women—stole in order to substitute their income through the sale of stolen items, rather than stealing food as an immediate relief for hunger and starvation. In order to turn stolen goods into money, one needed knowledge about possible buyers and markets where one could sell one's spoils with a minimum risk of getting caught. With the large variety of pawnbrokers, second-hand dealers and small 'shops' available, the *Judengasse* offered a plethora of opportunities to do so. As a result, it functioned as a prominent go-to place for thieves to turn their spoils into money. Being asked where she planned to sell the two copper plates she had stolen from a silversmith, Elisabeth Vachingerin answered that she planned to sell them to the first Jew who would offer her a price for them.[184] Helena Kalfbussin had stolen four soup plates from a house in her neighbourhood. She declared to the authorities that she had taken the plates home in order to set them aside until she had found a Jew she could sell them to.[185] The reputation of Frankfurt's *Judengasse* as a place where on could easily distribute stolen goods exceeded the city walls and also attracted thieves from other cities who were looking to sell their goods. Johannes Albert,

183 Isidor Kracauer, *Geschichte der Juden in Frankfurt am Main* (Frankfurt am Main: Kauffmann, 1925), 109; Cilli Kasper-Holtkotte, *Die jüdische Gemeinde von Frankfurt am Main in der Frühen Neuzeit: Familien, Netzwerke und Konflikte eines jüdischen Zentrums* (Berlin: De Gruyter Oldenbourg, 2010), 92–94.

184 Criminalia 9239 (1781).

185 Criminalia 9292 (1781).

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for example, came to Frankfurt with some garments, several pairs of shoes and a tin jug he had stolen from an inn in Mainflingen, some 30 kms upstream the Main, in order to sell his goods in the *Judengasse*.[186]

The Jewish quarter was not only known to thieves as a place to distribute stolen goods. The investigation records reveal many examples of victims who had gone to the *Judengasse* in order to retrieve their property and find the thief before they went to the *Verhöramt* to report the theft.[187] Additionally, the authorities had the power to proclaim a so-called *Schulbann*: the stolen items were announced in the synagogue. After the proclamation, the *Schulklopper* (a Jewish official in service of the synagogue) had to go around and take oaths from all the inhabitants of the *Judengasse* in which they declared they would return the stolen goods if they turned up in the quarter.[188] Such a *Schulbann* could also be requested by other authorities, who suspected that goods stolen in their territory might be sold in the ghetto in Frankfurt.[189]

For seventeenth-century Württemberg, Ulinka Rublack witnessed a 'perfect division of labour' among Jewish receivers: the women stayed at home to collect the spoils from thieves and, in turn, their men traded these as pedlars.[190] It remains unclear from Rublacks' account whether this gender division is also reflected statistically among the offenders prosecuted, and if Jewish women were prosecuted for fencing in seventeenth-century Württemberg to the same extent as men. For eighteenth-century Frankfurt at least, this was not the case. Both in my own sample years, as well in Joachim Eibach's, the prosecution efforts of the authorities were mainly directed at male Jewish receivers.[191] Moreover, the investigation records of Frankfurt do not point to a similar gendered division of labour concerning the distribution of stolen goods as Rublack detected in Württemberg. There are several examples in which thieves sold their spoils to Jewish women, but there is no evidence that they worked alongside their husbands in a coordinated fashion to distribute the stolen goods.[192] They

186 Criminalia 9203 (1780).
187 Criminalia 5283 (1741); Criminalia 3138 (1721); Criminalia 9203 (1780); Criminalia 7664 (1760); Eibach, 'Stigma Betrug', 23.
188 Ibid., 23–24.
189 Criminalia 3523 (1726); Criminalia 7299 (1756); Criminalia 2024 (1694); Criminalia 4655 (1737); Criminalia 6188 (1749); Criminalia 6543 (1751); Criminalia 6866 (1753); Criminalia 7328 (1757); Criminalia 7350 (1757); Criminalia 8982 (1777).
190 Rublack, *The Crimes of Women*, 116.
191 Eibach, 'Stigma Betrug', 23.
192 Cases in which items were sold to Jewish women: Criminalia 5296 (1741); Criminalia 5298 (1741); Criminalia 5088 (1740); Criminalia 5081 (1740); 7586 (1760).

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were usually not subjected to a criminal investigation because evidence was lacking that they had knowingly bought stolen goods.

Thus, the prosecution efforts of the authorities in relation to fencing discriminated according to gender and religion. However, despite the fact that the Jewish ghetto featured prominently in the world of stolen goods in early modern Frankfurt, it should not be characterised primarily as a black market for stolen items. Most of the trade in the *Judengasse* was legitimate and not dominated by fencing. Equally, there are no signs of large existing networks of professional receivers in the sources. In fact, most of the receivers prosecuted had come into contact with property offenders through their lawful economic networks and activities.[193] The boundaries between lawful and unlawful activities were often blurred.

Even though the majority of the prosecutions for fencing involved Jewish suspects, a close reading of the sources reveals that men and women sold their spoils through a variety of channels and did not restrict themselves to selling goods in the ghetto. Pawning, recycling materials, and selling second-hand items were an integral part of the early modern urban economy.[194] Even guilds did not solely focus on manufacturing new goods: repair work and recycling constituted a significant part of their day-to-day business, which meant that a large part of their activities involved second-hand goods.[195] The majority of thieves in early modern Frankfurt—be it local or non-local, men or women—sold their goods on this large-scale second-hand 'market', which was part of the everyday lawful economy.

It is difficult to discern a very clear gendered strategy among offenders as to where they chose to distribute their goods. To a large extent, men and women used the same economic networks to make a profit from their crimes. Male thieves would go around the houses selling stolen goods as peddler traders directly to local women, or sell them on to female hucksters.[196] Women, too, sold their goods where they would find a market. They often sold their spoils to other women, but also to male buyers. In little less than half of all the cases where it was possible to find information about how spoils were distributed, women were involved as buyers, pawners or receivers—although many of

193 Eibach, 'Stigma Betrug', 24.

194 Bruno Blondé, ed., *Buyers & Sellers: Retail Circuits and Practices in Medieval and Early Modern Europe* (Turnhout: Brepols, 2006).

195 Stöger, 'Urban Markets', 210.

196 Criminalia 7637 (1760); Criminalia 7628 (1760); Criminalia 7619 (1760).

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them claimed not to know anything about the theft.[197] This shows that women were not necessarily excluded from economic activities connected to receiving in early modern Frankfurt, as a first look at the profile of formally prosecuted receivers would suggest.

As the low number of fencing cases already indicates, authorities often had difficulty in prosecuting receivers of stolen goods. This was in part related to the legal norms. The *Carolina* did not mention receiving as a separate crime, but stated that anyone who kept or sold items that were stolen, should be convicted as a thief. However, due to the strong emphasis on definite proof in the code (see chapter 2), this was only possible if there was conclusive evidence that the person buying the spoils had been aware that they were stolen.[198] If the authorities managed to prove a receiver's criminal intent and convict them of fencing, they usually imposed monetary fines and on top of that Jews could expect the loss of their *Stättigkeit* (which *de facto* was equal to expulsion).[199] According to Gerhard Fritz, the fact that many receivers were locals also contributed to the relatively low and mild prosecution of authorities.[200] The local *Trödelfrau* (second-hand seller) Maria Bettenhäuserin was one of the few Christians convicted of fencing. She was ordered to return the goods and share part of the investigation costs as well as pay a fine of ten Reichsthaler.[201] More often than being investigated themselves, receivers were called as witnesses against the suspected thieves. Also, it was not uncommon that they were even compensated for the financial loss they suffered for having to return the goods to the owner, either by the thief or the owner itself.[202]

The prosecution of receivers was further complicated by the fast turnover and circulation of goods in the second-hand market. Usually by the time authorities came to investigate the case and questioned the original buyer, he/she often already sold the items on to someone else. Maria Magdalena Kadnowein, a fourteen-year-old soldier's daughter from Mannheim, was investigated for several thefts, including a frock worth sixteen guilders from Johann Carl Müller, a local jug maker (*Kannenmacher*). Maria Magdalena sold the frock to a local huckster for three guilders, who in turn had sold it on to a Jew from

197 It was possible to find information on receivers for 41 cases: these involved 26 female receivers and 33 male receivers (as offenders often distributed their spoils to multiple receivers).

198 Janssen, *Der Diebstahl*, 4.

199 Eibach, 'Stigma Betrug', 25.

200 Fritz, *Öffentliche Sicherheit*, 418–22.

201 Criminalia 9293 (1781).

202 Criminalia 9202 (1781); Criminalia 7628 (1760); Criminalia 7619 (1760).

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Friedberg. It was at this point that Johann Carl discovered the crime as he found the frock among the merchandise the Jew was selling on the street.[203]

In the majority of cases, offenders sold their goods to strangers in an opportunistic and ad-hoc fashion, rather than knowing beforehand to whom they would sell the goods or having an established network of receivers. Both small and large spoils were split up and distributed over several different pawnbrokers, peddler traders, or second-hand dealers, who would in turn sell the goods on themselves. This strategy was applied for several reasons. First, it would have been difficult to find a buyer that was able to buy up large spoils, since many of these petty traders did not have sufficient capital themselves. Second, selling only single items reduced the risk of being suspected as a thief and therefore made it easier to sell the goods without further inquiries. Third, it made it more difficult for investigators to trace all the stolen goods to one person, which consequently made it more likely that he/she could only be prosecuted for petty theft.

Another common strategy that was employed by both men and women to turn stolen goods into profit, was to sell them as raw material to artisans. Items made of silver, (less often) gold, tin, copper or brass were popular to steal. Elisabeth Vachingerin, for example, who was mentioned earlier, had stolen a tin water jug from master tailor Johann Leonard Foster and sold it to tin founder Baijerbach.[204] Similarly, Catharina Schwendlerin stated that she had sold the tin she had stolen from her former mistress to a tin founder 'whose name she did not know'.[205] Susanna Margaretha Wachtin had stolen two silver shoe buckles and a silver Hungarian water jar from her mistress. She had sold these to a silversmith, who testified in court that he had melted these items down immediately.[206]

Crafts and guilds are usually considered as primarily male spheres of economic activity. However, the investigation records also reveal several widows of master artisans who continued to run workshops independently after the death of their husband as buyers of stolen goods.[207] Perhaps their weaker economic positions may have made them particularly susceptible

203 Criminalia 5269 (1741). Also: Criminalia 9295 (1781); Criminalia 5283 (1741); Criminalia 5232 (1741); Criminalia 3138 (1721); Criminalia 7642 (1760); Criminalia 7664 (1760).

204 Criminalia 9321 (1781).

205 Criminalia 9199 (1780).

206 Criminalia 5273 (1741).

207 Criminalia 5278 (1741); Criminalia 9201 (1780); Criminalia 5076 (1740); Criminalia 5095 (1740).

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to such risky illegal activities, but it is hard to find evidence in the sources that the offenders did this as a specific strategy as Ulinka Rublack previously suggested for seventeenth-century south-west Germany.[208] Furthermore, the examples described above show that women knew their way around the workshops of the city. Selling raw materials directly to artisans was not necessarily something that would arouse suspicion, as it was common for households to trade or recycle old utensils or use them (partially) as currency. For many maids, running errands also involved pawning and trading second-hand items, which meant that they knew such places well, or at least were aware of how to locate them.[209] Stolen food could be sold to victuallers in a similar fashion.[210]

The interrogations provide examples of servants and former servants who used knowledge about possible buyers that they had acquired during their service. An example of this is the case of bell founder Johann Georg Schneidewind against seventeen-year old Margaretha Eckhardtin. In 1780, Schneidewind reported to the authorities that Margaretha had come to him in order to buy brass tools on the account of her employer coppersmith Derscho.[211] At first there was nothing that aroused Schneidwind's suspicion: he knew both Margaretha and Derscho. However, about half an hour after Margaretha had left his shop he was summoned by one of his colleagues, the bell founder Barthels. The latter showed him the very tools that Margaretha had just bought at Schneidewind's shop. According to Barthels, Margaretha had told him the tools belonged to her cousin and that he had requested her to sell them. Unlike Schneidewind, however, Barthels did not trust the situation and ordered Margaretha to go and get her cousin, while he held on to the tools. After Margaretha failed to return, Barthel called for Schneidewind, who recognised the tools as his. Schneidewind immediately went to Derscho, who knew nothing of the business. Indeed, Margaretha had left his service five months previously. Together with Derscho's wife, Schneidewind summoned Margaretha under the pretence that they had found her a service. After she turned up, they confronted her with her theft and had her arrested. During her interrogations at the *Verhöramt*, Margaretha revealed

208 Rublack, *The Crimes of Women*, 117.

209 See, for example, Criminalia 5271 (1741) in which Katharina Charlotta Marpurgerin lists all the items she had to pawn or sell for her mistress and carpenter widow Maria Elisabetha Rückmännin.

210 Criminalia 5162 (1741); Criminalia 7631 (1760).

211 Criminalia 9178 (1780). Also: Criminalia 5280 (1741); Criminalia 9172 (1780); Criminalia 5111 (1740).

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that she had planned to buy new clothes from the profit of the tools. She had specifically chosen to go to Schneidewind because she often ran errands at his workshop when she was still in the service of Derscho, and he would be more likely to trust her.

Although the investigation records show that it was a common strategy to sell items of valuable materials directly to manufacturers, the example presented above also shows that this was perhaps the riskiest method of turning stolen items into profit. Other cases as well reveal that the intimate knowledge of craftsmen about hallmarks of goods either they or one of their colleagues had manufactured meant that they were more skilled at recognising stolen property than others. Guild members were often informed to look out for specific stolen items.[212] It was not uncommon for thieves to be apprehended through the help of craftsmen or guild masters who reported offenders that tried to sell them raw materials.[213]

Thus, studying the ways though which thieves in early modern Frankfurt distributed their spoils displays a very varied picture of all the people involved. Contrary to Heather Shore's observations for eighteenth-century London, there are no clear signs of 'organised' networks of receivers that functioned as a go-between the 'criminal underworld' and the lawful community in early modern Frankfurt.[214] Moreover, although the prosecution efforts of Frankfurt's authorities mainly targeted Jews, the analysis shows that women were equally involved in buying and selling stolen goods through their economic activities. The examples confirm that women's role in these activities did not stem from their position as dependent household members. They were not accomplices in their men's criminal activities, but acted on their own account through independent economic activities. Furthermore, it was difficult to detect gendered patterns in the way that thieves disposed of their spoils. In general, all the examples illustrate that the majority—if not all—of the goods were easily sold on in an economy in which selling and reselling of second-hand items was common practice, and in which boundaries between formal and informal trade were fluid and difficult to determine.

212 Criminalia 7719 (1761); 5076 (1740).

213 Criminalia 5076 (1740); Criminalia 5289 (1740); Criminalia 9178 (1780).

214 Heather Shore, 'Crime, Criminal Networks and the Survival Strategies of the Poor in Early Eighteenth-Century London', in *The Poor in England, 1700–1850: An Economy of Makeshifts*, ed. Steven King and Alannah Tomkins (Manchester: Manchester University Press, 2003), 137–65.

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7 Domestic Theft

In the previous sections, theft by servants and other household dependents has only been mentioned in passing. Unlike the other cases discussed so far, the offences of domestics *were* committed from a position of dependent household members. Household dependency, however, was not a general *female* characteristic (as it was often made out to be in the early historiography on women and theft) but a social status. Both male and female servants were in a subordinate position in the household hierarchy. Therefore, in order to fully understand how gender differences, both in the methods and the prosecution of property crimes, played out, a closer look at domestic thefts is crucial. This section looks at the connection between the nature of the crime and the dependent position of servants. The following section then will deal with the relationship between household control and criminal prosecution of domestic theft.

In the course of the early modern period, domestic theft became an increasing concern for public officials. The sixteenth-century *Carolina* had not yet defined it as a separate offence. By the eighteenth century, domestic theft had become a popular subject among legal commentators. Moreover, in several cities and territories in early modern Germany authorities published police ordinances defining domestic theft as a separate offence and specifying harsher punishments.[215] A similar development was visible in early modern England, where the increasing anxiety about servant thefts led to the implementation of an extraordinary statute in 1713 that made 'theft from a house' a capital offence.[216]

The context from which the increased anxiety arose in the two countries, however, was rather different. In England authorities were particularly concerned with the potential danger posed by servants, as they might invite strangers into the house. Maids especially were often suspected of having connections with the 'criminal underworld', and enabling others to steal from their employers' houses.[217] In Germany, the discussions were much more framed as a crisis in hierarchical relations that endangered the existing social order. Domestic theft was considered a breach of loyalty towards the head of the household, and therefore an aggravating circumstance.[218]

215 Härter, *Policey und Strafjustiz*, 580–81; Wettmann-Jungblut, *Eigentumskriminalität*, 278; Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung', 140.

216 Beattie, *Policing and Punishment*, 39.

217 Ibid., 38.

218 Eibach, *Frankfurter Verhöre*, 346; Härter, *Policey und Strafjustiz*, 580–81.

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Contrary to other cities in Germany, no police ordinances were issued defining domestic theft as a separate offence in early modern Frankfurt. Nevertheless, several sources reveal that it was a topic of discussion among the city's authorities and legal professionals as well. Syndic Johann Ludwig Burgk called for harsh punishments ('*scharfe Strafen*') against disloyal servants.[219] Illegal appropriation of household property took up a considerable part of the servant order that was drafted by the *Konsistorium* on the initiative of the city council in 1756.[220] The ordinance stated, for example, that 'servants should be loyal, and not only prove their loyalty by not stealing anything, but also by making sure that they prevent any harm to the fortune of their master, when they sell or buy anything on his account'.[221] Moreover, servants were not allowed to keep their chests of personal belongings outside their master's household, as this would enable them to hide stolen property.[222]

The attention domestic thefts received in the legal writings and moralistic literature of that time is in stark contrast with the actual number of cases prosecuted before the courts. Based on primarily German examples, Otto Ulbricht considered a percentage of domestic thefts of 3–8 percent as common for the early modern period.[223] In Frankfurt's neighbouring territory of Kurmainz, domestic theft constituted about 5 percent of all prosecuted property offences between 1560 and 1802.[224] In eighteenth-century Frankfurt, suspects prosecuted for domestic theft had a share of 10.7 percent among all property offenders. This is comparatively high, but it has to be remembered that the data only cover the eighteenth-century, which was marked by increasing attention towards this type of theft.[225]

The majority of cases of domestic theft in early Frankfurt were committed by women. The share of women investigated for domestic during the thirteen sample years in the second half of the eighteenth century analysed by Joachim Eibach was 51.4 percent.[226] In my own sample 56.5 percent of the domestic

219 Criminalia 5610 (1743) quoted in: Eibach, *Frankfurter Verhöre*, 352.
220 Criminalia 12880 (1756). For more information on this servant order: Chapter 6.
221 Criminalia 12880 (1756) folio 52. Original: 'Überhaupt sollen die dienstbotten getreu seijn, und ihre Treue nicht nur damit bezeigen das sie würcklich nichts entwenden, sondern auch darinnen, das sie allen Schaden nach Vermögen abwenden, dasjenige was sie für ihre herrschafft kauffen oder verkauffen auf das genaueste bedingen, ohne für sich oder andern einigen Vortheil dabeij zu machen'.
222 Criminalia 21880 (1756).
223 Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung', 144.
224 Härter, *Policey und Strafjustiz*, 578.
225 Eibach, *Frankfurter Verhöre*, 323.
226 Ibid.

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thefts were committed by women.[227] This corresponds with what is known for other cities and regions as well: in terms of numbers, domestic theft was predominantly a female offence.[228] According to John Beattie, the common involvement of women in theft by servants may partially explain why theft of goods from a house or warehouse to the value of forty shilling or more was made a capital offence in England in 1713, as this act was particularly aimed servants who stole from their employer.[229] In the German moral and legal writings dealing with domestic theft, the underlying assumption was also that it was idle and immoral young girls that masters had to fear most when it came to the need to protect their property.[230]

This gender pattern stems from a variety of reasons. The first issue that needs to be considered is the unequal balance of the sexes among domestic servants. In Frankfurt, by the beginning of the nineteenth century, three-quarters of domestic servants were female. For the early modern period a proportion of men to women of 1:2 is generally accepted.[231] However, this number does not include journeymen and apprentices, who were also incorporated in their master's household. Looking at the group of dependent household members as a whole, the sex ratio was more balanced than among servants. The female nature of domestic service alone, therefore, cannot explain why women appear more frequently as suspects of domestic theft than men. Rather, I will argue, the differences must be understood from the different nature of labour relations experienced by men and women in service, and the different level of dependence within the household.

Let us first take a look at the gender division of labour among servants. Otto Ulbricht found that in the rural duchies of Schleswig-Holstein and Lauenburg the different tasks of male and female servants influenced the type of goods they had access to, which in turn led to different tactics of stealing.[232] Women tended to have better access to places where valuables such as clothing,

227 In the sample years 10 men were investigated for domestic theft and 28 women. However, as my sample included more years for women than they did for men, the extra years have to be excluded: this leaves us with 10 men and 13 women.

228 Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung', 145; Herman Diederiks, *In een land van justitie: criminaliteit van vrouwen, soldaten en ambtenaren in de achttiende-eeuwse Republiek* (Hilversum: Verloren, 1992), 77–80; Durston, *Victims and Viragos*, 133–36.

229 Beattie, *Policing and Punishment*, 63–71.

230 Katharina Simon-Muscheid, *Die Dinge im Schnittpunkt sozialer Beziehungsnetze: Reden und Objekte im Alltag* (*Oberrhein, 14.-16. Jahrhundert*) (Göttingen: Vandenhoeck & Ruprecht, 2004), 149–60; Dürr, *Mägde in der Stadt*, 91.

231 Hahn, *Migration—Arbeit—Geschlecht*, 207–12.

232 Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung', 148–49.

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jewellery and money were stored (i.e. the house) than male servants, who had more access to livestock and provender. Because women were more likely to target 'unique' items in the sense that their absence was easily discovered, they usually stole many items simultaneously and fled immediately. Men, on the other hand, targeted smaller items connected to their tasks, such as animal fodder, which could be hidden more easily without anyone noticing. This made it easier for them to steal little by little over a longer period of time.[233]

Ulbricht's analysis was based on rural households, but the case of Frankfurt shows that a gendered division of labour among domestic servants also attributed to different patterns of appropriation in the city. Johann Philipp Friedrich Weyland, for example, worked as a servant in the *Zum Krachbrein* inn, from which he was accused of stealing several bottles of expensive wine and selling it to a servant at another inn. Moreover, he also served wine to the maids of the inn, who unlike Johann, did not have access to the wine cellar.[234] Ludwig Rusch, a servant of beer brewer Peter Schulge, was responsible for taking care of the stables. When he left his service prematurely, he stole his master's horse.[235] Anna Barbara Langin worked as a servant for Johann Baptist Eisen, a member of the city council, and she knew her way around in the pantry of her master. This allowed her to provide her accomplice access to the pantry to steal butter, flour and other provisions.[236] Unlike what Ulbricht found for the rural case, however, there are no signs that the division of labour also resulted in different methods of appropriation. Both men and women were accused of stealing a small number of items gradually, only to be noticed by the master or mistress after some amount of time.[237]

Easy access of servants to valuable items certainly goes some way to explaining why servants were motivated to steal from their masters. Maids came into contact with luxuries they were not able to afford themselves on a daily basis, and for some this may have been a temptation too hard to resist.[238] But temptation alone does not offer a sufficient explanation. Besides the gendered division of labour, the second aspect that needs to be considered is the subordinate position of domestic servants as a whole. Their marginal position in

233 Renate Dürr, '"Der Dienstbote is kein Tagelöhner …": Zum Gesinderecht (16. bis 19. Jahrhundert)', in *Frauen in der Geschichte des Rechts: von der frühen Neuzeit bis zur Gegenwart*, ed. Ute Gerhard (München: C.H. Beck, 1999), 118–19.

234 Criminalia, 5123 (1740).

235 Criminalia 2239 (1700).

236 Criminalia 2241 (1700).

237 Criminalia 3138 (1721); Criminalia 5111 (1740).

238 Durston, *Victims and Viragos*, 133–36; Grey, *Crime, Prosecution and Social Relations*, 89; Ammerer, *Heimat Strasse*, 144.

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early modern society is an important factor in understanding domestic theft in general and that of women in particular. From the moment that servants accepted the hiring penny (*Mietpfennig*—a small sum given to a servant upon being hired), he or she was legally bound to the service, and therefore the authority of their master, for the agreed term.[239] Domestics could not dissolve their contracts and leave before the end of their service, without the consent of their master.[240]

One motive for theft that was connected to the 'bound' status of servants was what Otto Ulbricht referred to as the *Vergeltungsdiebstahl*: theft out of 'retaliation' for maltreatment, general social inequality or unpaid wages.[241] There are a number of cases of domestic thefts in the *Criminalia* which are set in this context. The aforementioned Ludwig Rusch, for example, excused the theft of his master's horse by stating that he had not received his full wages and had broken his arm during his work, which left him lame.[242] Maria Margaretha Gerstin justified her theft with the fact that her mistress, duchess Wilhelmina Louisa Friedrica von Leiningen-Westerburg, only gave her one *Batzen* daily for beer and bread, and fed her nothing more than leftover soup.[243] And Johann Jakob Notwang stated that he had left because the work his master made him do was too hard, and he feared that he would not receive his full wages. He therefore stole some household linen and clothing which he hoped to sell in order to make some *Zehrgeld* (allowance) for on the road.[244] Anna Margaretha Burkhardin, who was accused of theft by her master Willhelm DeAhna, declared that she had entered into service for a yearly wage of eight guilders with the promise of an increase after the first year of service, which she claimed to have never received.[245] Moreover, Anna Margaretha stated that she had left her service prematurely, because her mistress had treated her violently. She herself denied that she took the items DeAhna reported as stolen with her.

Conflicts over salary are difficult to decipher for outsiders. Whereas servants could perceive a cut in pay as unjustly, employers could argue that they were simply part of disciplinary measures of servants acting lazily, not doing chores

239 Alessandro Stanziani, *Bondage: Labor and Rights in Eurasia from the Sixteenth to the Early Twentieth Centuries* (New York: Berghahn, 2014), 147–74.

240 The regulation of contracts formed an important part of Frankfurt's servant order from 1810 and in the draft of 1756. Criminalia 12660 (1756) folio 37–36; Kaltwasser, *Häusliches Gesinde*, 38–41; Dürr, 'Der Dienstbote'.

241 Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung', 155.

242 Criminalia 2239 (1700).

243 Criminalia 5282 (1741).

244 Criminalia 7580 (1760).

245 Criminalia 3078 (1720).

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correctly, or spoiling and wasting household goods.[246] Moreover, 'thefts' could also be related to misunderstandings of customary rights and gratuities which were often part of a servant's salary.[247] Master baker Gernhard, for example, dismissed three of his apprentices for 'stealing' milk rolls without paying their salary. According to one of the journeymen, their master had told them that they could eat as many milk rolls as they wanted, while the other two reported that they were allowed three or four a day.[248] Withholding wages was only one of the many disciplinary methods employed by household authorities. And as we will see below, such methods of informal discipline played a crucial role in dealing with household theft in the early modern period.

The motive of retaliation inspired some scholars to define domestic thefts as a 'social crime', a way to claim or reclaim customary rights and a form of protest against social inequality.[249] Joachim Eibach objected to this perception and found little evidence for this in Frankfurt's criminal records. Although he found many examples of domestics stealing out of retaliation, they did not match the concept for two reasons. First, although many of the victims of domestic thefts were burghers, they did not belong to the privileged and ruling classes of the city, but were part of the middle or lower-middle class. Second, unlike such crimes as poaching and wood theft, there was no shared sense of 'reclaiming old rights' within the community with regard to domestic thefts. Within all layers of society, it was perceived as a breach of loyalty.[250] Eibach is certainly right in stating that domestic thefts do not fit the traditional definition of social crimes. However, this does not mean that social inequality and the bound status of servants did not play a role. While they may not have been committed out of 'protest' against their social status, they *were* often committed within a context where it was difficult to get justice through other means.

246 Criminalia 5226 (1741); Criminalia 9257 (1781). Also: Rublack, *The Crimes of Women*, 192.

247 Penelope Lane, 'Work on the Margins: Poor Women and the Informal Economy of Eighteenth and Early Nineteenth-Century Leicestershire', *Midland History* 22, no. 1 (1997): 89; Joanne McEwan, 'Negotiating Support: Crime and Women's Networks in London and Middlesex, c. 1730–1820' (University of Western Australia, 2008), 165–67.

248 Criminalia 7581 (1760). Other cases in which conflicts about access to provision or other perquisites of their employment played a role: Criminalia 9804 (1788); Criminalia 5123 (1740).

249 Douglas Hay, Peter Linebaugh, and John G. Rule, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London: Allen Lane, 1975), 44; Rheinheimer, *Arme, Bettler und Vaganten*, 44; Beattie, 'Crime and Inequality', 137; Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung', 154–55.

250 Eibach, *Frankfurter Verhöre*, 349.

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Technically, servants, even though they were in a subordinate position, could indict their master for maltreatment or not upholding agreements about wages or other forms of remuneration. After all, the master-servant relationship was a contract based on mutual obligations and reciprocity.[251] Indeed, the criminal records reveal several examples of servants indicting their master before the *Verhöramt*. Charlotte Chatillon accused her master Johannes Maijer, who was a master shoemaker, of having beaten her excessively, lifting up her skirt and whipping her in front of one of his journeymen and his wife. According to Charlotte, the latter even encouraged her husband to beat harder with the words that she was happy to pay any possible fine for maltreatment.[252] As several of the testimonies in this case highlighted, the conflict was set in the context of Charlotte's desire to leave her service before fulfilling her term, which Maijer denied her. In the end, he was ordered to pay a fine of six Reichsthaler (which was later reduced to only four Reichsthaler) and cover Charlotte's expenses in the hospital where she had stayed as a result of the assaults.[253]

The unequal power balance between servants and masters may have prevented many from bringing their case to the authorities. One reason may be that, if the authorities considered the complaints to be unjust, servants could potentially be ordered to pay the costs of investigation. This may have decreased the likelihood of domestics initiating a case against their masters, because they carried the burden of proving the case themselves.[254] Moreover, even if servants managed to prove their case and their masters were sentenced (usually with a fine) for the use of excessive force, this did not automatically exclude them from being disciplined themselves. 32-year old Catharina Elisabetha Rachin, a local burgher's daughter, ended up in hospital after being maltreated by her master, master baker Johannes Schäffer. The hospital's doctor reported the assault to the junior burgomaster who ordered the *Verhöramt* to investigate the case. The interrogation of Schäffer himself, as well as the statements by Catharina Elisabetha, revealed that master and servant had come into conflict over the fact that Catharina had used some left-over coffee grounds and coals to make some coffee for herself. When Schäffer confronted

251 Wunder, 'Gender Norms', 43; Schmidt, 'Hausväter vor Gericht'.

252 Criminalia 9610 (1786). Original: 'das wenn sie auch die strafe von 5 und noch einmal so viel guden geben müssten sie solche gern daran wenden wollte'.

253 Others: Criminalia 5452 (1742); Criminalia 8637 (1772); Criminalia 8673 (1772); Criminalia 8825 (1775); Eibach, *Frankfurter Verhöre*, 342–43.

254 This happened in the case of Schöngen, who indicted her master for slapping her and going through her trunk without permission. Criminalia 9207 (1780).

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her with this, Catharina Elisabetha reacted defiantly and insulted her master as well as his wife. The authorities punished Schäffer for his excessive disciplining, but acknowledged that he had the right to discipline his servants as part of the 'right to punish (*Strafrecht*) that parents, teachers, and masters were entitled to'.[255] Schäffer was ordered to pay a fine and the costs of Catharina's stay in hospital.[256] However, although the authorities considered the *force* with which Schäffer had disciplined his maid to be unjust, they did acknowledge his *reasons*. Initially, the authorities considered sending Catharina Elisabeth to the poorhouse for her disobedience and insubordinate behaviour, but finally decided against this because she was a burgher's daughter. Honourable citizens were commonly not confined to poorhouses, which were meant to discipline the loose and disorderly sections of the urban population. Clearly, Catharina did not belong to these social layers. Catharina, however, was a minority as most domestic servants in early modern Frankfurt came from elsewhere and did not belong to the city's burgher community.[257] Their social and legal position, therefore, was much weaker than Catharina's.

These examples make clear that there were serious disincentives to be considered for servants who wished to indict their master. Leaving service prematurely and taking away goods that could be turned into money to help them leave the city and survive a little while on the road offered an alternative in these cases.[258] There was a gendered aspect to this as well. Women working as domestic servants could only turn to the urban authorities for help if they felt they were ill-treated by their master. Journeymen and apprentices, on the other hand, could also turn to the guild authorities and may have had more bargaining power to settle labour conflicts.[259] At the same time, the way a master treated his journeymen was subject to more social control than the way he

255 Criminalia 9804 (1788) Original: 'des den Eltern, Lerern, Herrschaftens allerdings zustehenden Strafrechts'.

256 Criminalia 9804 (1788).

257 Eibach, *Frankfurter Verhöre*, 338; Rainer Koch, 'Zum Gesindewesen in Frankfurt am Main (17.-19. Jahrhundert)', *Archiv für Frankfurts Geschichte und Kunst* 59 (1985): 231–50.

258 Alessandro Stanziani, 'Runaways: A Global History', in *Desertion in the Early Modern World: A Comparative History*, ed. Matthias Van Rossum and Jeannette Kamp (London: Bloomsbury Academic, 2016), 15–16.

259 Criminalia 7581 (1760); Eibach, *Frankfurter Verhöre*, 256; Andreas Grießinger and Reinhold Reith, 'Lehrlinge im deutschen Handwerk des ausgehenden 18. Jahrhunderts: Arbeitsorganisation, Sozialbeziehungen und alltägliche Konflikte', *Zeitschrift für Historische Forschung* 13, no. 2 (1986): 149–99; Bert De Munck and Hugo Soly, 'Learning on the Shop Floor in Historical Perspective', in *Learning on the Shop Floor: Historical Perspectives on Apprenticeship*, ed. Bert De Munck, Steven L. Kaplan, and Hugo Soly (New York: Berghahn, 2007), 21–22.

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treated his maids, as the latter was primarily played out in the domestic arena. All in all, this may partially explain why domestic theft was mostly a female offence. The gender division of labour not only influenced the different spaces men and women had access to, it also meant that relatively speaking female servants were more bound to the household and their master than apprentices and journeymen.

Finally, it has to be mentioned that not *all* domestic thefts were disguised labour conflicts. There were other motives at play as well. For rural Schleswigh-Holstein, Otto Ulbricht identified thefts committed in the context of gaining independence and matchmaking. He referred to this as illegal dowry collecting ('*illegales Brautschatzsammeln*').[260] It concerned domestic servants, particularly women, who were enticed to steal jewellery and nice clothing in attempt to attract the attention of a possible marriage partner or who stole in order to save up for a future dowry. According to Ulbricht, such thefts could also be related to a quest for more independence and self-determination, which women were more likely to achieve being married, than as dependents in an alien household.[261] Although securing a marriage partner may be less of a motive for male servants, Joachim Eibach pointed out that for men as well thefts could be motivated by the desire to take part in social culture with peers (*Geselligkeitskultur*). They stole in order to be able to go to inns to drink, smoke and gamble, for example.[262] My own examples show that domestic theft was also seen a way of saving for insecure times and to cover the period between employments, or possibly even to be able to live independently.[263] In these cases, the thefts by servants show many similarities to 'normal' thefts from dwelling houses committed by outsiders. Often, the maids did not carefully plan their thefts, but committed them ad hoc and opportunistically.

8 Criminal Prosecution and Household Control

Now that we have a clear picture of how the dependent status of servants shaped the context within which domestic thefts were committed, it is necessary to take a closer look at the relationship between household control and criminal prosecution. The cases that have been cited thus far were visible in

260 Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung', 156–59; Rublack, *The Crimes of Women*, 103; Ammerer, *Heimat Strasse*, 144; Eibach, *Frankfurter Verhöre*, 342.

261 Criminalia 7587 (1760). Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung', 156–57.

262 Eibach, *Frankfurter Verhöre*, 350.

263 Criminalia 3138 (1721); Criminalia 9296 (1781).

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the investigation records because they were part of a formal criminal investigation. However, these cases most likely represent only a fraction of all the domestic thefts, because the majority probably never made it to the criminal investigation office. Instead, they were handled informally within the household. In the prescriptive literature of that time, masters and mistresses were instructed to govern their dependents to maintain peace and public order, and to discipline where necessary. The emphasis lay on regulating conflicts within the household, rather than before the court.[264] As mentioned before, this should not be considered as a form of private control as the household was regarded as a 'public' foundation of state and society. Thus, the disciplinary actions by the head of the household—though informal—served a public function.[265] In order to be able to exercise his disciplinary duties, the head of the household possessed a 'semi-judicial authority' over household members. Authorities generally chose not to intervene directly in cases of in-house conflicts, but rather favoured settlements out of court and disciplining by the housefather.[266]

There was a whole range of informal options available to household heads to punish servants whom they caught stealing. These included withholding their wages or part of their wages, dismissal before the end of the contract or simply reprimanding the offender. There are plenty of references in the sources of domestic thefts that were not prosecuted by the authorities, but sanctioned within the household. When Anna Katharina Keckin was arrested and investigated for the theft of a silver cup from silversmith Von Hilten, investigators called in several witnesses to testify about the character of Anna Katharina. One of the witnesses was her former employer, female shoemaker Lehrin. According to her testimony, Anna Katharina had stolen from her multiple times during her service. In the first instance, Lehrin retained the clothing of her servant, in order to make up for the financial loss. Even in the second instance, Lehrin did

264 Maike-Franziska Van Haag, *Recht in der Hausväterliteratur: der 'Oeconomus prudens et legalis' von Franz Philipp Florin im Kontext seiner Zeit* (Münster: LIT, 2014), 91; Dürr, *Mägde in der Stadt*, 108; Eibach, *Frankfurter Verhöre*, 352; Meldrum, *Domestic Service*, 34–67; Marianna Muravyeva, '"A King in His Own Household": Domestic Discipline and Family Violence in Early Modern Europe Reconsidered', *The History of the Family* 18, no. 3 (2013): 227–37.

265 Eibach, *Frankfurter Verhöre*, 291; Schmidt-Voges, 'Das Haus in der Vormoderne', 184.

266 Criminalia 5320 (1741) quoted in: Eibach, *Frankfurter Verhöre*, 341 The Syndic Seyfried concluded in a case between a servant and his master that petty conflicts (Streitigkeiten) between masters and their servants, for example disagreement about a curfew, were not considered a 'Crimina Publica' and should therefore not be handled by the Verhöramt or the authorities.

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not go to the authorities to indict Anna Katharina, but simply dismissed her. This is a clear example of a domestic theft that was not reported to the criminal authorities for formal investigation. We only learn about the case because Lehrin was asked to testify as a witness about the character of Anna Katharina in another criminal investigation.[267]

The majority of indicted household thefts before the *Verhöramt* were cases in which informal control had failed or in which the servant had fled and the authorities were called in for assistance to retrieve the stolen items. Anna Margaretha Engelmannin, widow of a brewer, reported the theft of textiles by her maid Katharina Schwendlerin to the authorities. According to Anna Margaretha's account, she had initially promised her maid not to report the theft to the *Verhöramt*, as long as Katharina promised to return all of the stolen goods, or a sum of money equal to the worth of the textiles. Katharina agreed to this, but fled during the following night without reimbursing anything. It was only at this point, Anna declared, that she felt obliged to report the theft to the authorities and to ask for assistance to recover the possessions.[268] Another example is the case of Philippina Kitzingerin. Her domestic theft was only mentioned in passing after her former mistress, *Gärtnersfrau* Maria Elisabetha Bockin went to the authorities to indict Philippina of harming her cows in retaliation for her dismissal, causing their udders to get infected.[269] Again, the initial reaction was not to report the case to the authorities, but to handle the case informally.

The examples above demonstrate that disciplining household subjects was not a male prerogative. The mistresses were equally—or perhaps even more—involved in disciplining their maids. These examples show how much the position of women depended on their social and marital status. As mistresses of a household, women were instrumental in maintaining social order, which after all was centred on the house. Since household discipline, in the perception of contemporaries, served a public function and was not restricted to the private sphere, married women fulfilled public roles. Even if this was 'only' in the space of their own home.[270] Joachim Eibach suggested that household authorities, in particular men, were reluctant to report domestic theft to the authorities for various reasons. Indeed, household authorities wished to maintain control

267 Criminalia 5240 (1741). Also: Criminalia 9804 (1788); Criminalia 9207 (1780).

268 Criminalia 9199 (1780).

269 Criminalia 7635 (1760). Original: 'Sie sehe sich also jezo in die Nothwendigkeit versetzet, dieses gehorsamst anzuzeigen'.

270 Wunder, 'Herrschaft und öffentliches Handeln'; Gerhard Dilcher, 'Die Ordnung der Ungleichheit: Haus, Stand und Geschlecht', in *Frauen in der Geschichte des Rechts: von der frühen Neuzeit bis zur Gegenwart*, ed. Ute Gerhard (München: C.H. Beck, 1999), 55–72.

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over their own matters and to exercise discipline without the interference of authorities. But they might also have been afraid that their stealing servants might be perceived as a failure on their behalf, as a sign of weakness and lack of mastership. First, because they had failed to employ (and therefore judge) an honest person. Second, because it could be considered as a sign of failing discipline and possible incompetence as household authority.[271]

Informal household disciplining was thus an important tool for social control in early modern Frankfurt. But it did not affect male and female household members in a similar fashion. There are several reasons that suggest that maids were more intensely supervised within the household than male dependents. These differences partially explain the female nature of the domestic thefts. First, the tasks of maids were more likely to take place within the household itself, which increased their 'exposure' to the watchful eye of their mistresses and masters.[272] Second, although apprentices and journeymen were also subjected to the household of their master, there is evidence for early modern Europe that suggests that social ties weakened and the relationship between apprentices and masters gradually began to resemble that between employer and labourer, particularly in industries that experienced 'pre-capitalist' growth.[273] Apprentices increasingly boarded outside their master's household, which must have had a considerable effect on the nature of control in cases of domestic theft. Moreover, Frankfurt's guilds also exercised a high degree of informal social control.[274] Not only did this broaden the circles of control that apprentices and journeymen were subjected to, it also offered them more opportunities to regulate possible conflicts over wages, maltreatment and other factors which could lead to thefts out of 'retaliation' via different means as mentioned above.[275]

271 Eibach, *Frankfurter Verhöre*, 347–48.

272 Ulbricht, 'Zwischen Vergeltung und Zukunftsplanung', 148.

273 Bert De Munck, 'From Brotherhood Community to Civil Society? Apprentices between Guild, Household and the Freedom of Contract in Early Modern Antwerp', *Social History* 35, no. 1 (2010): 9; Grießinger and Reith, 'Lehrlinge im deutschen Handwerk', 165; Raffaella Sarti, 'Criados, Servi, Domestiques, Gesinde, Servants: For a Comparative History of Domestic Service in Europe (16th-19th Centuries)', *Obradoiro de Historia Moderna* 16 (1970): 33.

274 Brandt, 'Die Grenzen des Sagbaren und des Machbaren'; Maarten Prak, 'Moral Order in the World of Work: Social Control and the Guilds in Europe', in *Social Control in Europe: Volume 1, 1500–1800*, ed. Herman Roodenburg and Pieter Spierenburg (Columbus, OH: Ohio State University Press, 2004), 176–99.

275 Criminalia 9172 (1780); IfSG, Handwerker Akten 352, 11.4.1772.

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Informal disciplining by the household clearly affected the way offenders were prosecuted. Due to the nature of patriarchal control and household relationships, the dark number of thefts committed within the domestic arena must be considerable, and probably higher than with other type of property offences.[276] As result of the nature of domestic service and household authority, this underreporting may have concerned more women than men. It is impossible to make assumptions about the scope of unreported crimes as a result of this. Neither is it possible to calculate how the gendered nature of this underreporting affected the gender balance among recorded offences. What *can* be considered, however, is that the share of informally sanctioned offences was larger in urban societies with strong household authority, such as Germany, than in cities with weaker household structures like Amsterdam or London.

There are several reasons to allow for such a consideration. First, as the previous chapter demonstrated, the share of domestic servants among the urban population was relatively high in early modern Frankfurt. Thus, more people were incorporated in patriarchal households and therefore possibly subjected to informal control by household heads. Cities like Amsterdam and London maintained migration regimes that were more open than those in Frankfurt, where incorporation into an orderly household was one of the conditions to stay in the city. The importance of household control may likely be more important in cities and regions with a dominant artisanal economy, such as was the case in Frankfurt, as there were fewer labour opportunities for men and women which would enable a certain degree of independence from the more informal traditional household discipline. Tim Meldrum, for example, argued that in early modern London the scale of the market for domestic servants, the constant need for servants and the accompanying 'abundance' of opportunities for hire, lessened the effectiveness of disciplinary tools such as summary dismissal.[277]

Second, there are indications that the level of 'semi-judicial authority' of household heads in early modern Germany was relatively strong. In contrast to England, where masters and mistresses needed an official warrant to indict their servants and search their personal storage chests when they suspected them of stealing, the *Hausvater* or *Hausmutter* in Frankfurt could do this at their own discretion if they felt that there was reasonable suspicion of theft.[278] There are indications that employers were much more inclined to make use of urban 'disciplinary facilities' with regard to their servants in early modern

276 Eibach, *Frankfurter Verhöre*, 347.
277 Meldrum, *Domestic Service*, 67; Capp, *When Gossips Meet*, 2003, 132–34.
278 Vickery, 'An Englishman's Home', 162–63.

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London than they were in Frankfurt. In the early eighteenth century, a quarter of the depositions in the City of London session papers were concerned with an alleged theft by a servant.[279] Moreover, correctional facilities like Bridewell in London were established as a house of correction for disobedient servants among others.[280]

Despite these differences in the extent of household authority, it would be going too far to state that households in Germany were fully autonomous legal spaces (*rechtsfreier Raum*) in which authorities did not meddle. Neither did households elsewhere in Europe refrain from settling matters within the domestic space informally without the intervention of the authorities.[281] Rather it was the relative strength of households in early modern Germany as the central legal, political, and social unit to ensure public order that needs to be considered. Moreover, in Germany, too, authorities were increasingly inclined to regulate household matters publicly. This is evident from the numerous police ordinances defining household theft as a separate offence in the eighteenth century. In Frankfurt, the first attempt at a servant act in 1756 prescribed formal punishments for servants' thefts. It was not until the introduction of the servant act in 1810, however, that household relationships in Frankfurt were no longer regulated according to customary law. The authority of the *Hausvater* became subjected to more rules and greater conformity to the authorities. The latter increasingly took over the regulation of domestic servants through the alien's police.[282] Thus, throughout the early modern period, household disciplining played an important role in relation to domestic thefts. By the beginning of the nineteenth century relationships altered, as did the concepts of domesticity and privacy. This must have impacted the prosecution of thefts by servants in this period considerably, but that is beyond the scope of this investigation.

9 Conclusion

The majority of women that faced criminal prosecution in early modern Frankfurt were suspected of having committed some sort of property crime. The findings of this chapter contribute to the existing historiography. They have shown that in order to understand the gendered patterns of prosecuted thefts,

279 Beattie, *Policing and Punishment*, 37.
280 Ibid., 25; Shoemaker, *Prosecution and Punishment*, 174, 184–86.
281 Capp, *When Gossips Meet*, 2003, 135–38.
282 Eibach, *Frankfurter Verhöre*, 352–53; Kaltwasser, *Häusliches Gesinde*, 28.

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it is not sufficient to consider female criminality as an extension of normative roles, where they only acted as associates of their husbands or other male family members. Overall, male and female thieves displayed more similarities than differences in the type of property offences they committed, although some gender differences could nevertheless be discerned. Another resemblance was that the majority of thieves committed their offences independently, women even slightly more so than men. The social profile of property offenders in Frankfurt corresponds with what we know for other cities: most of them were young, single and migrant. Many committed their crimes out of economic hardship that was associated with life-cycle mobility. All of these factors underline that women's thefts were not committed in a context of dependence, but of independence, with all the socio-economic precariousness that was associated with this.

Differences between male and female offending did exist, but they were more complex than earlier studies have suggested. Differences, for example, could be found in the locations men and women stole from: the range of locations of theft was more diverse for men than for women, who predominantly stole from houses. This, however, was not because women led less public lives than men. Due to the 'openness' of early modern houses, these buildings were relative accessible by outsiders. The majority of women stealing from houses were in fact strangers, who were unconnected to the household. The access to certain spaces was gendered in the sense that women were less likely to arouse suspicion when they entered houses, even if they were unknown in the neighbourhood, than men. The locations of theft also determined what types of items were stolen, with women being slightly more likely to steal items of clothing and shoes, linen or other textiles, and household stuffs in general. The distribution of stolen goods was facilitated by the importance of reselling used commodities for many early modern household economies and small-scale producers: copper, tin, and silver (materials) could be sold to artisans, and textiles could be sold to second-hand dealers or directly to housewives. Women played an important role in the economies of second-hand goods and in the distribution of stolen goods. However, the prosecution efforts of Frankfurt's authorities were primarily aimed at male Jews, and burghers were only rarely prosecuted for this offence.

Finally, this chapter investigated the importance of informal control exercised by the head of the household over domestic servants and other dependents. In early modern Germany, the head of the household possessed a high degree of (legal) autonomy to discipline his dependents, which was considered a public function. The social profile women being investigated by the *Verhöramt* in the eighteenth century reveals that women living outside

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the controlling structures of the household were the most vulnerable to be prosecuted for property offences. Domestics were more likely to be sanctioned through the disciplining authority of the head of the household. Crimes by servants were usually only reported to the authorities if household discipline had failed or the offender had fled. Moreover, the subjection to household control may have been considerably different for women than for men. The eighteenth century witnessed an attenuation of incorporation in the household of apprentices and journeymen, who increasingly lodged outside their master's household. Additionally, they were also incorporated in more extended social support and control networks through the handicraft associations. Thus, household dependency *did* play a role in the crimes of women, but not as previously suggested. The differences in status between married women and maids have to be considered.

In sum, the chapter has demonstrated that female property offending in early modern Frankfurt was shaped by the urban context of the city. It has shown the importance of household control in the early modern period, which was particularly important for women. The public 'open' nature of household control was emphasised, and it should not be considered as a form of the public vs private dichotomy that has been argued as existing for the nineteenth century. In order to understand variations of female involvement in early modern crime, it may be fruitful to consider the different demographic, cultural, social and institutional contexts that existed in European cities. Historians agree that women are more likely to be over-represented among unreported crimes than men, and one may consider that this was higher in cities and regions with strongly institutionalised household control than was present in early Modern Frankfurt.

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CHAPTER 5

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.[1] 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.[2]

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.[3] Construing

1 For a recent overview see: Susanna 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 *Marriage in Europe: 1400–1800*, ed. Silvana Seidel Menchi (Toronto: University of Toronto Press, 2016), 176–200.

2 Behringer, 'Weibliche Kriminalität', 65–66; Schwerhoff, *Köln im Kreuzverhör*, 91; Härter, *Policey und Strafjustiz*, 892; Dürr, *Mägde in der Stadt*, 220–58; Rublack, *The Crimes of Women*, 134–62; Gleixner, *Das Mensch*; Rainer Beck, 'Illegitimität und voreheliche Sexualität auf dem Land: Unterfinning, 1671–1770', in *Kultur der einfachen Leute: bayerisches Volksleben vom 16. bis 19. Jahrhundert*, ed. Richard Van Dülmen (München: C.H. Beck, 1983), 112–50; Stefan Breit, *'Leichtfertigkeit' und ländliche Gesellschaft: voreheliche Sexualität in der frühen Neuzeit* (München: Oldenbourg, 1991); Isabel V. Hull, *Sexuality, State, and Civil Society in Germany, 1700–1815* (Ithaca, NY: Cornell University Press, 1997); Burghartz, *Zeiten der Reinheit*; Heinrich Richard Schmidt, *Dorf und Religion: reformierte Sittenzucht in Berner Landgemeinden der Frühen Neuzeit* (Stuttgart: Gustav Fischer Verlag, 1995); Klammer, *In Unehren beschlaffen*.

3 Susanna Burghartz, 'Ordering Discourse and Society: Moral Politics, Marriage, and Fornication during the Reformation and the Confessionalization Process in Germany and Switzerland', in *Social Control in Europe: Volume 1, 1500–1800*, ed. Herman Roodenburg and Pieter

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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.

Hitherto, most historians focused on the uses of justice by women in marital conflicts. In order to gain a broader perspective of 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 precarious, as they faced the loss of honour, criminal prosecution and economic difficulties. In early modern Germany, the legal options of women in such cases was often restricted.[4] Understanding whether and how they were able to use the courts, therefore, increases our understanding of the nature of social control in this period.

1 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, especially about the effect they had on the position of women. Regarding the prosecution of morals, historians have judged moral 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.

Spierenburg (Columbus, OH: Ohio State University Press, 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.

4 Jeannette Kamp and Ariadne Schmidt, 'Getting Justice: A Comparative Perspective on Illegitimacy and the Use of Justice in Holland and Germany, 1600–1800', *Journal of Social History* 51, no. 4 (1 June 2018): 637–74.

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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.[5] 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. 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.[6] 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.[7]

Susanna Burghartz, on the other hand, adopted a perspective of change. In reaction to Heinrich Richard Schmidt, she argued that: 'this thesis may possess a certain plausibility for the regulation of the marital disputes by the moral courts 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'.[8] 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 against extra-marital sexuality, where unmarried women of the lower classes were particularly affected.[9]

This debate about women's position in court, is closely related to discussions about the nature of discipline exercised by the various courts. 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.[10] Therefore, historians should

5 Lyndal Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford: Clarendon Press, 1989).

6 Schmidt, 'Hausväter vor Gericht'.

7 Eibach, 'Der Kampf um die Hosen', 188.

8 Burghartz, 'Competing Logics of Public Order', 191.

9 Ibid., 189–93.

10 Martin Ingram, 'History of sin or history of crime? The regulation of personal morality in England, 1450–1750', in *Institutionen, Instrumente und Akteure sozialer Kontrolle und Disziplinierung im frühneuzeitliche Europa*, ed. Heinz Schilling and Lars Behrisch (Frankfurt am Main: Klostermann, 1999), 87–104; This distinction, though not always

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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.[11]

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.[12] 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.[13] Moreover, the boundary between police and church ordinances was fluid, since in most Protestant areas church ordinances were decreed by the secular authorities.[14] 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.[15] 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

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referred to in the same way, is still present in scholarship. Wunder, for example, 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. Heide Wunder, 'Marriage in the Holy Roman Empire of the German Nation from the Fifteenth to the Eighteenth Century: Moral, Legal, and Political Order', in *Marriage in Europe: 1400–1800*, ed. Silvana Seidel Menchi (Toronto: University of Toronto Press, 2016), 63.

11 Ingram, 'History of Sin or history of Crime', 301.

12 Ibid., 89.

13 Alexander Kästner and Gerd Schwerhoff, 'Religiöse Devianz in alteuropäischen Stadtgesellschaften: eine Einführung in systematischer Absicht', in *Göttlicher Zorn und menschliches Mass: religiöse Abweichung in frühneuzeitlichen Stadtgemeinschaften*, ed. Alexander Kästner and Gerd Schwerhoff (Konstanz: UVK Universitätsverlag Konstanz, 2013), 9–43.

14 Heinrich Richard Schmidt, 'Sozialdisziplinierung? Ein Plädoyer für das Ende des Etatismus in der Konfessionalisierungsforschung', *Historische Zeitschrift* 265, no. 3 (1997): 661–62.

15 Ingram, 'History of Sin or history of Crime', 94; Schwerhoff, *Aktenkundig und Gerichtsnotorisch*, 84–95; Schmidt, 'Sozialdisziplinierung'.

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complementary and *overlapping* activities of diverse institutions—sometimes reinforcing, sometimes obstructing each other—must be understood'.[16]

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'.[17] Peter Gorski, on the other hand, argued that 'the spiritual and worldly systems of justice tended to be tightly intertwined', and saw cooperation rather than competition.[18] Hypothetically speaking, this would have decreased the opportunity of historical actors to display uses of justice by 'exploiting' the system.

In this chapter, I will argue that a simple juxtaposition between courts as helpers or prosecutors 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.[19] 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.[20] Hitherto, most

16 Ingram, 'History of Sin or history of Crime', 95; Manon Van der Heijden, 'Punishment versus Reconciliation: Marriage Control in Sixteenth- and Seventeenth-Century Holland', in *Social Control in Europe: Volume 1, 1500–1800*, ed. Herman Roodenburg and Pieter Spierenburg (Columbus, OH: Ohio State University Press, 2004), 55–75.

17 Dinges, 'Uses of Justice', 163.

18 Philip 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, no. 1 (2000): 154.

19 Hull, *Sexuality*, 26; Joel F. Harrington, *Reordering Marriage and Society in Reformation Germany* (Cambridge: Cambridge University Press, 1995), 250; Burghartz, *Zeiten der Reinheit*, 271; Breit, *Leichtfertigkeit*, 282; Gleixner, *Das Mensch*.

20 Wunder, 'Gender Norms', 48.

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studies only focused on a single institution or a comparison of both institutions without studying the *interactions* between the two.

This chapter focuses on the prosecution of illegitimacy in particular for several reasons. 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, it allows us to study the dual function of early modern courts in practice, as they were not only in charge of sanctioning sexual offences, but also of regulating paternity suits and the payment of child support. 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 *Konsistorium* and by the criminal investigation office for 1746. Habermas, on the other hand, focused on the treatment of sexual offences and the role of women from the perspective of the *Verhöramt*.[21] This chapter contributes to their findings by broadening the comparison between the two institutions with the study of sexual offences. 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?

2 Legal 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 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

21 Habermas, 'Frauen und Männer'.

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city's secular authorities took over full control. Both on the normative as well as on the institutional level 'secularisation' of sexual disciplining emerged.[22] The implementation of new moral laws and courts in the sixteenth- and seventeenth centuries was inextricably linked to the confessionalisation process.[23] 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 moral 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.[24] 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'.[25] 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'.[26] Moreover, criminalisation of extra-marital sexuality was also advocated by urban guilds, who implemented measures to exclude anyone from their ranks who had been born out of wedlock.[27] 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.[28] Although moral reform movements pre-dated the Reformation,

22 Rudolph and Schnabel-Schüle, 'Rahmenbedingungen von Strafjustiz', 830.

23 Burghartz, 'Ordering Discourse', 83; Terence MacIntosh, 'Confessionalization and the Campaign against Prenuptial Coitus in Sixteenth-Century Germany', in *Confessionalization in Europe, 1555–1700: Essays in Honor and Memory of Bodo Nischan*, ed. Bodo Nischan et al. (Aldershot: Ashgate, 2004), 155–74; Uwe Sibeth, *Eherecht und Staatsbildung: Ehegesetzgebung und Eherechtsprechung in der Landgrafschaft Hessen (- Kassel) in der frühen Neuzeit* (Darmstadt: Historische Kommission für Hessen, 1994).

24 Burghartz, 'Ordering Discourse', 92.

25 Wunder, 'Marriage in the Holy Roman Empire', 68.

26 Burghartz, 'Ordering Discourse', 80.

27 E.g. Boes, '"Dishonourable" Youth'; Wiesner-Hanks, 'Guilds, Male Bonding and Women's Work'.

28 Peter Schuster, *Das Frauenhaus: städtiche Bordelle in Deutschland (1350–1600)* (Paderborn: Schöningh, 1992); Beate Schuster, *Die freien Frauen: Dirnen und Frauenhäuser im 15. und 16. Jahrhundert* (Frankfurt am Main: Campus, 1995); Wiesner-Hanks, *Working Women*, 231–33.

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there was a fundamental difference related to perceptions about what was considered a legitimate marriage and what was not.

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.[29]

For Frankfurt, this development can be clearly traced in the city's legal constitutions of 1509 and 1578.[30] According to the *Statt Franckenfurt erneuwerte Reformation* from 1578 (re-issued in 1611), marriage was the single most important contract issued between a man and a woman.[31] 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).[32] 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.

29 Iris Fleßenkämper, 'Die Ordnung der Ehe: Zum Verhältnis von weltlicher und geistlicher Strafgewalt in der reformierten Garfschaft Lippe im 17. Jahrhundert', in *Kirche, Theologie und Politik im reformierten Protestantismus*, ed. Matthias Freudenberg and Georg Plasger (Neukirchen-Vluyn: Neukirchener Verlagsgesellschaft, 2011), 80.

30 Sigrid Jahns, 'Frankfurt im Zeitalter der Reformation (um 1500–1555)', in *Frankfurt am Main: die Geschichte der Stadt in neun Beiträgen*, ed. Frankfurter Historischen Kommission (Sigmaringen: Thorbecke, 1994), 151–204.

31 Der Statt Franckenfurt erneuwerte Reformation (1578) § 3.1.1.: 'Diewijl 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: Johann Philipp Orth, *Nötig und nüzlich erachteter Anmerkungen über die sogenante erneuerte Reformation der Stadt Frankfurt am Main*, vol. 2 (Frankfurt am Main, 1744).

32 *Der Statt Franckenfurt erneuwerte Reformation* (1578) §3.8.9.

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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.[33] Couples were required to report their engagement to the *Konsistorium* 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 marriage licence (*Copulations-Schein*) from the *Konsistorium* to get married.[34] 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).[35]

The Protestant theology of marriage had introduced clear boundaries between legitimate and illicit marriages, and consequently a new discourse about sexuality in general emerged. 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.[36]

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.[37] 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.[38] Soon, however, it

33 PO 3086 Mandat gegen heimliche Eheverlöbniß 15.09.1733; Dölemeyer, 'Privatrechtliche Handlungsspielräume', 90.

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

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

36 Wunder, 'Marriage in the Holy Roman Empire', 72; Burghartz, 'Ordering Discourse', 81; Harrington, *Reordering Marriage*, 216.

37 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: Günther, *Sittlichkeitsdelikte*.

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

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was applied to everyone—men and women. By the early seventeenth century, laws referred to fornication as an act committed by single people.[39]

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.[40] A Frankfurt police ordinance of 1530, which was reissued in 1579 and 1598, stipulated a fine of ten guilders for first-time offenders. The *Herren der Rathschlagung* (a committee of the city council), however, considered the penalty to be too low and raised it to 50 guilders as can be deduced from the proceedings (*Rathschlagungsprotokolle*) from 1576 and 1597. 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 for both offences, which would remain 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'.[41] 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.[42] 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

39 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*'.

40 Johann, *Kontrolle mit Konsens*, 223–24; Inge Kaltwasser, 'Ehen vor Gericht: Kriminalfälle und zivilrechtliche Ehesachen aus den Akten der Frankfurter "Criminalia" und des Reichskammergerichts', *Archiv für Frankfurts Geschichte und Kunst* 68 (2002): 249.

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

42 Gerd Schwerhoff, 'Verordnete Schande? Spätmittelalterliche und frühneuzeitliche Ehrenstrafen zwischen Rechtsakt und sozialer Sanktion', in *Mit den Waffen der Justiz: zur Kriminalitätsgeschichte des Spätmittelalters und der frühen Neuzeit*, ed. Andreas Blauert and Gerd Schwerhoff (Frankfurt am Main: Fischer, 1993), 158–88; Satu Lidman, *Zum Spektakel und Abscheu: Schand- und Ehrenstrafen als Mittel öffentlicher Disziplinierung in München um 1600* (Frankfurt am Main: P. Lang, 2008).

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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.[43] 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.[44] In practice, urban authorities were more inclined to impose shaming punishments for sexual offences on women, rather than men.[45] In Frankfurt, the *Narrenhäußlein*, an open cage where offenders were displayed for all to see, was reserved specifically for adulterous women.[46] And in the eighteenth century, women prosecuted for lewdness and fornication were often sanctioned to pull the scavenger's cart.[47]

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.[48] All in all, the normative developments regarding

43 Johann, *Kontrolle mit Konsens*, 126.

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

45 Lidman, *Zum Spektakel und Abscheu*, 371; Gleixner, *Das Mensch*, 59; Dürr, *Mägde in der Stadt*, 239.

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

47 W. Hanauer, 'Geschichte der Prostitution in Frankfurt a M'., in *Geschlecht-Krankheiten und Prostitution in Frankfurt a. M.: Festschrift zum I. Congress der Deutschen Gesellschaft zur Bekämpfung der Geschlechts-Krankheiten in Frankfurt a. M. vom 8.-10. März 1903*, ed. M. Flesch, C. Grünwald, and K. Herxheimer (Frankfurt am Main, 1903), 27; Criminalia 3290 (1723); Criminalia 5882 (1747); Criminalia 6389 (1750); Criminalia 7559 (1759)..

48 PO 2600 *Rahts-Conclusum die Außsetz- und Hinlegung der kleinen Kinder betreffend* 29.08.1695; PO 2974 *Das Land=Pfarrer die Namen derer zu unehelichen Kindern angegebenen Vätter 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 erzielte und denen Leuten heimlich in die Kost und Verpflegung gegebene Kinder betreffend* 24.09.1737; PO 3181 *In Schwängerungssachen sollen keine heimliche Vergleiche getroffen werden* 20.01.1739; PO 3445 *Daß man die lapsas, so nicht von hier, mit ihren kindern fortschaffen solle* 18.03.1755; PO 3449 *Ohne obrigkeitliche Erlaubniss sollen keine Kostkinder von Privatis angenommen werden* 19.08.1755; PO

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the regulation of sexuality and marriage show that the worldly authorities assumed full control over these matters in the early modern period.

3 Prosecuting Sexual Offences

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 the majority of these institutions, theologians only made up a minority of the personnel, or were not even incorporated at all. In some cities, there were separate marriage and morals courts, while in others these functions were combined in a single institution.[49]

Unlike other cities, Frankfurt did not establish a new judicial body for the regulation of matrimonial affairs during the Reformation. Instead, these matters were transferred from the jurisdiction of the archbishop of Mainz to the city's civil court: the *Schöffengericht*.[50] 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.[51] 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 *Konsistorium*.

The city council did, however, establish a new legal tribunal to enforce the regulation of sexuality.[52] Established in 1530, and comprised of six council

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3911 *Dass niemand, wann auch schon eine Schwängerung vorhanden wäre, vor Erhaltung des Burgerrechts oder Schutzes mit der Proclamation oder Copulation zu willfahren, und, woferne beyde sich vergangen habende Theile frembd, selbige schlechterdings dahier abuzweisen; weniger nicht dissensum parentum bey erfolgter Schwängerung betreffend* 24.12.1772.

49 Roper, *The Holy Household*, 61–69; Burghartz, *Zeiten der Reinheit*; Jeffrey Rodgers Watt, *The Making of Modern Marriage: Matrimonial Control and the Rise of Sentiment in Neuchâtel, 1550–1800* (Ithaca, NY: Cornell University Press, 1992); Hull, *Sexuality*, 58–61.

50 Der Stadt Franckfurt erneuerte Reformation (1578) §3.1; Rössing, *Versuch einer kurzen historischen Darstellung*, 151.

51 Johann, *Kontrolle mit Konsens*, 221.

52 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

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men (two from each bank), the *Sendamt* was in charge of 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.[53] Moreover, it also dealt with transgressions against the city's sumptuary laws. 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.[54] At the same time it also functioned as a tribunal to settle conflicts that belonged to sphere of civil law like paternity suits.

Unfortunately, only scattered archival references about the dealings of the *Sendamt* survived, and these primarily highlight the court's disciplinary character. Fornication and adultery appear to have been prosecuted intensely. Anja Johann found that 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.[55] The tribunal sanctioned prostitutes with monetary fines, imprisonment or expulsion from the city.[56] Other transgressions too were sanctioned with monetary fines and shaming rituals, such as the payment of a *Schmachgulden* for adulterers, or expulsion. Premarital intercourse was prosecuted as fornication and sanctioned as such, even if the couple married afterwards.[57] 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.[58] 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

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; Ibid., 121.

53 Rössing, *Versuch einer kurzen historischen Darstellung*, 153–54.

54 Johann, *Kontrolle mit Konsens*, 124–26.

55 Ibid., 120–29.

56 Criminalia 1053 (1641); Criminalia 1149 (1655); Criminalia 1255 (1662); Criminalia 2324 (1702); Hanauer, 'Geschichte der Prostitution'.

57 Ibid., 22–26.

58 Burghartz, *Zeiten der Reinheit*, 119; MacIntosh, 'Confessionalization'.

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have them replaced with the *Kirchenbuße*, which was considered less dishonouring.[59]

At the beginning of the eighteenth century the situation changed. In 1726/28, the city council established a new institution, the *Konsistorium*, to take over the control of marriage and the regulation of sexuality. According to the tribunal's regulations, it was charged with 'maintaining pure Protestant thought, Christian discipline and social order'.[60] All affairs concerning marriage—such as issuing marriage licences; contested marriage promises; marital disputes and divorces—were transferred from the jurisdiction of the city's civil court to the *Konsistorium*. Moreover, the court was in charge of the *delicta carnis* and related matters: thus, 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.[61] Additionally, the *Konsistorium* was in charge of policing sumptuary laws. In sum, the court functioned as both a disciplinary court and a forum for conflict settlement at the same time.[62]

In many cases the *Konsistorium* was a continuation of the *Sendamt*. However, there was one major change. While the *Sendamt* was composed of secular members only, the *Konsistorium* had a mix of secular and ecclesiastical personnel. Despite the fact that representatives of the church now had a direct voice in the prosecution of moral offences, the establishment of the *Konsistorium* is generally perceived as a strengthening of the position of the city council and increased secularisation.[63] With the establishment of the *Konsistorium* the church convent had lost most of its independence, including the right to implement ecclesiastical penance without prior consent of the secular authorities.[64]

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

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

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

62 Rössing, *Versuch einer kurzen historischen Darstellung*, 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'.

63 Barbara Dölemeyer, *Frankfurter Juristen im 17. und 18. Jahrhundert* (Frankfurt am Main: Klostermann, 1993), xxxvi.

64 Heinrich Völcker, 'Kirche und religiöses Leben in Frankfurt am Main', in *Die Stadt Goethes: Frankfurt am Main im XVIII. Jahrhundert*, ed. Heinrich Völcker (Frankfurt

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Three complete volumes of the court's minutes (*Konsistorialprotokolle*) from 1746, 1759 and 1780 have been preserved, recording a total of 589 offences (table 12).[65] The cases that the *Konsistorium* dealt with highlight the dual function of the court, showing that it was both a place of conflict settlement as well as discipline and control.[66] As might be expected from what we know in other cities and territories during this period, by far the largest number of moral offences dealt with by the *Konsistorium* concerned matters of extra-marital sexuality. In the three years under study, a total of 306 cases were recorded, accounting for 52 percent of all offences. The *Konsistorium* 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 *Konsistorium* 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, and even in these cases one can assume that there was a pregnancy involved.[67] 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 *Konsistorium* records, it can be deduced from later entries that in fact their relationship had resulted in a pregnancy.[68]

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am Main: Universitätsbuchhandlung, 1932), 138; Gudrun Petasch, '"Zur Ehre Gottes, zum ewigen Heil und zur Ordnung in unseren Kirchen …': Alltag und Grenzen reformierter Selbstverwaltung in Frankfurt um 1650', in *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich*, ed. Anja Amend et al. (München: Oldenbourg, 2008), 217–46.

65 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; Eibach, 'Der Kampf um die Hosen'.

66 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. 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.

67 This concerned fewer than 7% of extra-marital sexuality cases in 1780, a single case in 1759 and none in 1746.

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

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TABLE 12 Moral offences handled by the *Konsistorium* 1746, 1759, 1780

Case	1746		1759		1780		Total	
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[a]	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

[a] 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; Lesemann, *Arbeit, Ehre, Geschlechterbeziehungen*, 139.

Although adultery had been at the heart of moral reforms following the Reformation, by the second half of the eighteenth century, it hardly played a role. 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. 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*'). 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

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conceived out of wedlock, were actually born within the (financially secure) confines of marriage.[69] Financial considerations had become more important than moral objections. This does not appear to have been any different in Frankfurt (for more information on the development of the prosecution of sexual offences see below). 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 *Konsistorium* for the consent to get married and thereby retro-actively legitimise their fornication by marriage.[70] 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 *Konsistorium*'s prosecution efforts, however, concerned sexual intercourse of unengaged and unmarried couples that resulted in a pregnancy, 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.[71] This divergence was not necessarily the result of biased prosecution policies. Men did face punishment when they were found guilty. 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 *Konsistorium* had no hold over them. Another reason why men would not appear in the sources of the *Konsistorium* was because many of them were soldiers and were therefore subjected to the military jurisdiction of the *Kriegszeugamt*.[72] Nevertheless, there was a clear gender difference in the language used by the *Konsistorium*'s clerks when referring to both parties. Unmarried pregnant women were always referred to as

69 Hull, *Sexuality*, 74–75.

70 In 1746 this related to at least 16% of the extra-marital cases, in 1759 11% and in 1780 even 22%.

71 In 1780, this was only recorded in 13% of the illegitimacy cases, in 1759 11% and in 1746 21%.

72 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 *Kriegszeugamt* 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.

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lapsa (fallen women)—a term with a clearly derogatory meaning. Men, on the other hand, were recorded as *impraegnatore*—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 later on in this chapter.

Apart from dealing with sexual offences, the court was also in charge of marital disputes and other conflicts within the family context. Based on the *Konsistorium* 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.[73] Marriage conflicts usually took up a considerable part of the *Konsistorium*'s time, as complaints were often met with counter-claims, and conflicts were often reignited. For the *Konsistorium* marriage was not a 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. Therefore, the peaceful co-existence of husband and wife (or *Hausvater* and *Hausmutter*) was a public matter. The *Konsistorium* 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.[74] In this sense, it clearly functioned as a place for conflict resolution and reconciliation, rather than having a solely disciplining role.

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 punishments that were imposed.[75] However

73 Eibach, 'Der Kampf um die Hosen', 117–78.

74 Ibid., 188.

75 Studies about prostitution in early modern Germany usually deal with the sixteenth century, when prostitution was criminalised, or with the late eighteenth and early nineteenth century: Schuster, *Das Frauenhaus*; Hemmie, *Ungeordnete Unzucht*; Schuster, *Die freien Frauen*; Dietlind Hüchtker, *'Elende Mütter' und 'liederliche Weibspersonen': Ge schlechterverhältnisse und Armenpolitik in Berlin (1770–1850)* (Münster: Westfälisches

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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.[76] 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*.[77]

Fourthly, the *Konsistorium* 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 *Konsistorium* often granted the wishes of the couple because financial considerations were involved. At the same time, there are also examples where the *Konsistorium* sanctioned couples who got married without the necessary parental consent and circumvented regulations by marrying

Dampfboot, 1999); Sabine Kienitz, *Sexualität, Macht und Moral: Prostitution und Geschlechterbeziehungen Anfang des 19. Jahrhunderts in Württemberg: ein Beitrag zur Mentalitätsgeschichte* (Berlin: Akademie Verlag, 1995); on prostitution in Amsterdam: Lotte Van de Pol, *The Burgher and the Whore: Prostitution in Early Modern Amsterdam* (Oxford: Oxford University Press, 2011); for Bristol and Nantes: Pluskota, *Prostitution*.

76 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.

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

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elsewhere. Only a handful of disputes about marriage contracts were issued by women with the aim of enforcing unfulfilled promises of marriage.[78]

Finally, the *Konsistorium* 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 *Konsistorium*. The relationship between the *Konsistorium* and the individual churches with regard to the regulation of such offences remains unclear.

The cases dealt with by the *Konsistorium* show that the urban authorities took over full control over the regulation of sexuality. The court, however, was not only a disciplinary institution but also offered room for conflict settlement and negotiation. In order to properly assess whether women in Frankfurt were primarily victims or accomplices of Frankfurt's moral regime, however, it is necessary to investigate to what extent they could have instrumentally used the equivalent role of criminal justice, supervised by the *Verhöramt*, and the moral's discipline of the *Konsistorium*. The relationship between these two courts, i.e. the extent to which they were complementary or competitive, is key in determining the possible scope of negotiation.

4 Sin versus Crime or Institutional Differentiation?

Normatively speaking, the differentiation of tasks between the *Verhöramt* and the moral courts were well defined in early modern Frankfurt. 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

78 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 complaints for broken marriage promises see: Silke Lesemann, *Arbeit, Ehre, Geschlechterbeziehungen: zur sozialen und wirtschaftlichen Stellung von Frauen im frühzeitlichen Hildesheim* (Hildesheim: Bernward, 1994), 110–14; Watt, *Modern Marriage*, 70–87; Burghartz, *Zeiten der Reinheit*, chap. 5; Susanna Burghartz, 'Rechte Jungfrauen oder unverschämte Töchter? Zur weiblichen Ehere im 16. Jahrhundert', in *Frauengeschichte—Geschlechtergeschichte*, ed. Karin Hausen and Heide Wunder (Frankfurt am Main: Campus, 1992), 173–83.

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keeping.[79] The *Konsistorium* functioned as a lower court for petty sexual offences and could only impose monetary fines and other minor punishments. Cases which demanded penal punishments, therefore, 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 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 .

Between 1600 and 1806 there were about 564 cases in the *Criminalia* dealing with moral and/or religious offences handled by the secular *Verhöramt*.[80] The majority of these cases concerned offences such as illegitimacy (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) were not listed separately, 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.[81] Similar to the cases prosecuted before the *Sendamt* and the *Konsistorium*, 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

79 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 hurenwirthschaft […]'.

80 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.

81 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.

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TABLE 13 Type of moral offences prosecuted by the *Verhöramt*, Frankfurt 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

seventeenth century alone—towards fornication and related offences such as illegitimacy and brothel-keeping in the eighteenth century.

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 moral courts (table 13). However, considering that the *Konsistorium* 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 percent 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 percent or less from the 1760s onwards. 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.[82]

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 percent 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 percent of all offences.[83] The numbers

82 Behringer, 'Weibliche Kriminalität'; Härter, *Policey und Strafjustiz*, 837, 884; Hull, *Sexuality*, 139–45.

83 Härter, *Policey und Strafjustiz*, 546; Behringer, 'Weibliche Kriminalität', 65–66.

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for Frankfurt are more comparable to those of the criminal courts in Cologne (11.7 percent between 1568 and 1612) or the Dutch cities of Leiden, Delft and Rotterdam which ranged from 13 percent (Delft) to 20 percent (Leiden) for the early modern period.[84] It is of course difficult to compare figures about the criminal prosecution of single cities with that of entire territories. 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.[85] 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 *Konsistorium*, which was in any event under direct control of the city council.

A closer look at the relationship between the moral courts 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'.[86] The *Criminalia* reveals that many sexual offences were not reported to the criminal investigation office directly.[87] The *Criminalia* contain written decisions either taken by the moral courts itself or by the city council along the lines of: 'these proceedings should be transferred to the *Officium Examinatorio* for further investigation'.[88]

84 Schwerhoff, *Köln im Kreuzverhör*, 91; Manon Van der Heijden, 'Criminaliteit en sexe in 18e-eeuws Rotterdam: de verschillen tussen vrouwen- en mannencriminaliteit tussen 1700 en 1750', *Tijdschrift voor Sociale Geschiedenis* 21, no. 1 (1995): 16; Kloek, *Wie hij zij*, 132; Dirk-Jaap Noordam, 'Strafrechtspleging en criminaliteit in Delft in de vroegmoderne tijd', *Tijdschrift voor Sociale Geschiedenis* 15, no. 3 (1989): 228.

85 Härter, *Policey und Strafjustiz*, 830–32; Hull, *Sexuality*, 60, 98.

86 Eibach, 'Violence and Masculinity', 188.

87 At least close to a third of the cases investigated by the *Verhöramt* in the sample years 1620–24; 1640–44; 1660–64; 1680–84; 1700–1704; 1720–24; 1740–44; 1760–64 and 1780–84 had actually been transferred by the moral courts for further investigation (28 out of 92). It is very likely that this number was much higher since particularly for the seventeenth century information about how cases were reported to the *Verhöramt* is mostly lacking.

88 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).

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There was a variety of reasons for the *Sendamt* or the *Konsistorium* to send the cases to the *Verhöramt*. 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 (*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 *Konsistorium* about their pupil who—according to their account—had fallen into a life of godlessness and sin ('*einem solchen liederlichen gottlosen hurengeist ergeben*'). Seduced by another woman, Anna Katharina had prostituted herself in the tavern *Zum Schwahnen* in Oberrad and reportedly had intercourse with two Italian men (who during the interrogations turned out to be Flemish).[89] 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.[90] Following this request, the *Konsistorium* themselves interrogated both Anna Katharina, as well as the woman who had reportedly seduced her. After hearing both suspects, the *Konsistorium* 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).[91] 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 *Konsistorium*, but

89 Criminalia 5146 (1740).

90 The original reads: 'durch ihre gerechte Verordnung, dahin zubringen, daß sie zur Arbeit und Christenthum angehlaten werden möge, ihres sündhafften bößen Gottesvergeßenene Leben entrißen, Gott aber die arme Seele erhalten werde'.

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

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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.[92]

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). Based on the imperial law code, the *Carolina*, many of the sexual crimes investigated by the *Verhöramt* were punishable by death. However, the Frankfurt's authorities were reluctant to impose the most severe sentences with regard to sexual offences, and usually sanctioned offenders with banishment, often in combination with shaming and/or corporal punishments.[93]

Besides the nature of the punishment, recidivism was another reason for cases to be handled by the criminal investigation office rather than the *Konsistorium*. 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 moral courts.[94] 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 moral courts 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

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

93 Van Dülmen, *Frauen vor Gericht*, 59. The entries of the Strafenbuch for the seventeenth century reveal that in practice capital punishment was only rarely imposed for sexual offences. According to a sample of the Strafenbuch containing every first six years of each decade in the seventeenth century, 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. 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).

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

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procedures whereby they preferred to hear cases through oral summary proceedings and urge people to settle conflicts amicably.[95] The *Verhöramt*, on the other hand, followed the inquisitorial procedure. In order to avoid lengthy investigations and procedures the *Verhöramt* usually did not function as a locus for settlement procedures.[96] Their procedure, therefore, was better equipped to reach a guilty verdict.[97]

The differentiation of tasks between the moral courts 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.[98] 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 midwifes, 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.[99] 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.[100]

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 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

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

96 Eibach, *Frankfurter Verhöre*, 62–64.

97 Also: Karl Härter, 'Kriminalität und Praxis im geistlichen Territorialstaat des Alten Reiches: Sexuelle Delinquenz und Justiznutzung im frühneuzeitlichen Kurmainz', in *Criminalit e giustizia in Germania e in Italia: pratiche giudiziarie e linguaggi giuridici tra tardo medioevo ed età moderna*, ed. Marco Bellabarba, Gerd Schwerhoff, and Andrea Zorzi (Bologna; Berlin: Il mulino; Duncker & Humblot, 2001), 101–34.

98 E.g. Criminalia 6934 (1754).

99 Rublack, *The Crimes of Women*, 163–64; Hull, *Sexuality*, 114–16.

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

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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 *Konsistorium* to receive a formal admonition for their loose and dishonourable lifestyle.[101]

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 *Konsistorium* 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*.[102] Both the *Konsistorium* 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?[103]

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

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

102 Eibach, 'Der Kampf um die Hosen', 173–74.

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

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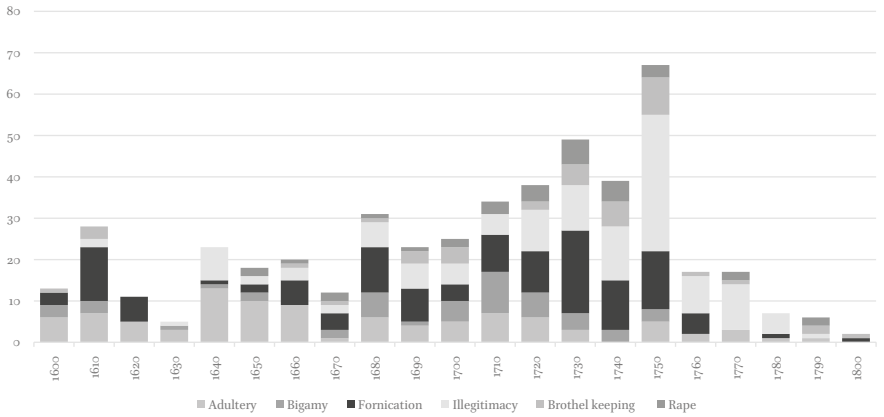

FIGURE 6 Number of sexual offences prosecuted per decade, Frankfurt 1600–1806
SOURCE: IFSG, CRIMINALIA 1600–1806

the criminal investigation office. As we will see below, this 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.

5 Changes in Time: from Adultery to Illegitimacy

The previous sections already indicated that there was a significant shift in prosecution policies concerning sexual offences during the early modern period. Since the *Criminalia* reflect cases that triggered the strongest responses, they are informative for the social and moral anxieties of the urban authorities that fostered prosecution efforts. In the seventeenth century, the types of sexual offences investigated were quite diverse (figure 6). 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.[104] However, 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).[105] As burghers and head of the households, adulterous men not only endangered

104 Johann, *Kontrolle mit Konsens*, 225–27; Criminalia 1556 (1682); Criminalia 1567 (1682); Criminalia 1608 (1684); Criminalia 1635 (1684)..

105 Ibid., 224–25.

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the union of husband and wife, but of the social and political order in general. Most illegitimacy cases during this century were also connected to adultery, and usually both the men and the women were sanctioned with banishment, even if the women had most likely been the victim of rape.[106]

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.[107] In Frankfurt, too, adultery was primarily sanctioned with monetary punishments.[108] Certain cases, in particular those involving relations between in-laws or distant relations, transgressed the level of petty penalties and left no room for repentance. Only public punishments could restore the social order towards God and the urban community. Overall, the criminal prosecution of sexual offences during the seventeenth century was linked to the efforts of 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. These changes were not characteristic for early modern Frankfurt, but were ubiquitous in the Holy Roman Empire.[109] This process was fostered by the eighteenth-century population growth and impoverishment of a significant part of the population. To regulate the collective welfare burden, authorities across early modern Germany restricted the access to marriage. Since marriage and the establishment of a new household were closely linked to (and sometimes a prerequisite 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.[110] This altered longstanding courtship practices, where young couples

106 E,g Criminalia 897 (1623); Criminalia 1641 (1049); Criminalia 1225 (1662).

107 Rublack, *The Crimes of Women*, 213–24; Jason P. Coy, *Strangers and Misfits: Banishment, Social Control, and Authority in Early Modern Germany* (Leiden: Brill, 2008), 68–69.

108 Johann, *Kontrolle mit Konsens*, 127128.

109 Peter Becker, '"Ich bin halt immer liederlich gewest und habe zuwenig gebetet" : Illegitimität und Herrschaft im Ancien Régime. St. Lambrecht 1600–1850', in *Frühe Neuzeit—frühe Moderne? Forschungen zur Vielschichtigkeit von Übergangsprozessen*, ed. Rudolf Vierhaus (Göttingen: Vandenhoeck & Ruprecht, 1992), 157–79; Härter, *Policey und Strafjustiz*, 833.

110 Ogilvie, *Bitter Living*, 50–53; Schmidt, *Dorf und Religion*, 198.

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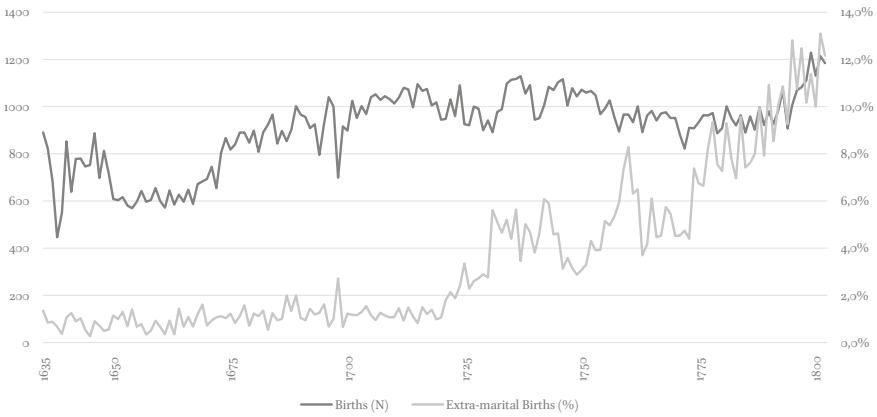

FIGURE 7 Extra-marital births, Frankfurt 1635–1800
SOURCE: HANAUER, 'UNEHELICHE GEBURTEN', 660–662

engaged in sexual intercourse with the expectation that marriage would follow, particularly in rural territories.[111] Inevitably, this increased the number of single people who might produce illegitimate offspring.

In early modern Frankfurt, as elsewhere in early modern Europe, the ratio of extra-marital births increased sharply towards the end of the eighteenth century (figure 7).[112] Following the example of other cities, the city council implemented regulations to prevent impoverished foreigners from marrying and settling in Frankfurt.[113] 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 opportunities.[114] Although the neighbouring

111 Beck, 'Illegitimität und voreheliche Sexualität'; Mitterauer, *Ledige Mütter*; Breit, *Leichtfertigkeit*.

112 W.R. Lee, 'Bastardy and the Socio-Economic Structure of South Germany', *The Journal of Interdisciplinary History* 7, no. 3 (1977): 403–25; Peter Laslett, Karla Oosterveen, and Richard 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: Edward Arnold, 1980); John E. Knodel, *Demographic Behavior in the Past: A Study of Fourteen German Village Populations in the Eighteenth and Nineteenth Centuries* (Cambridge: Cambridge University Press, 1988), 192–98; Härter, *Policey und Strafjustiz*, 925; Breit, *Leichtfertigkeit*, 317–18.

113 PO 3946 *Erneuerte Consistorial=Ordnung* 04.01.1774, 203.

114 Roth, *Stadt und Bürgertum*, 277–79.

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town of Offenbach developed new industries in the eighteenth century, in general the region was characterised by rather limited proto-industrial development.[115] 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.[116] 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.[117] This, in combination with the decreased legal options to legitimise children born out of wedlock through marriage, contributed to the rise of illegitimacy during this period.[118]

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 taken care of by their birth parish. For this reason, women who lacked local entitlement were particularly vulnerable to prosecution for vagrancy.[119] In seventeenth-century Holland similar financial motives played a role in the rise of prosecutions for fornication.[120] Overseers of the poor urged women to enforce the father's financial responsibility for the child's upbringing through legal action.[121]

This change of focus had an impact on the gender ratio of the suspects for sexual offences (figure 8). Whereas in the seventeenth century men constituted the majority of suspects, in the eighteenth century women clearly outnumbered men. Unlike adultery, which often targeted men, fornication was a crime for which women were more likely to be prosecuted.[122] In order to

115 Holger Gräf, 'Small Towns in Early Modern Germany: The Case of Hesse 1500–1800', in *Small Towns in Early Modern Europe*, ed. Peter Clark (Cambridge: Cambridge University Press, 1995), 203; Härter, *Policey und Strafjustiz*, 41.

116 Mitterauer, *Ledige Mütter*, 88–89.

117 Eibach, *Frankfurter Verhöre*, 55–57, 294.

118 Pfister, *Bevölkerungsgeschichte*, 31.

119 Lynn Hollen Lees, *The Solidarities of Strangers: The English Poor Laws and the People, 1700–1948* (Cambridge: Cambridge University Press, 1998), 58.

120 Van der Heijden, 'Punishment versus Reconciliation', 66; Kamp and Schmidt, 'Getting Justice', 677–78.

121 Griet 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* 50, no. 1 (2016): 51–73.

122 This also applied to the late sixteenth and early seventeenth centuries: Johann, *Kontrolle mit Konsens*, 224–25.

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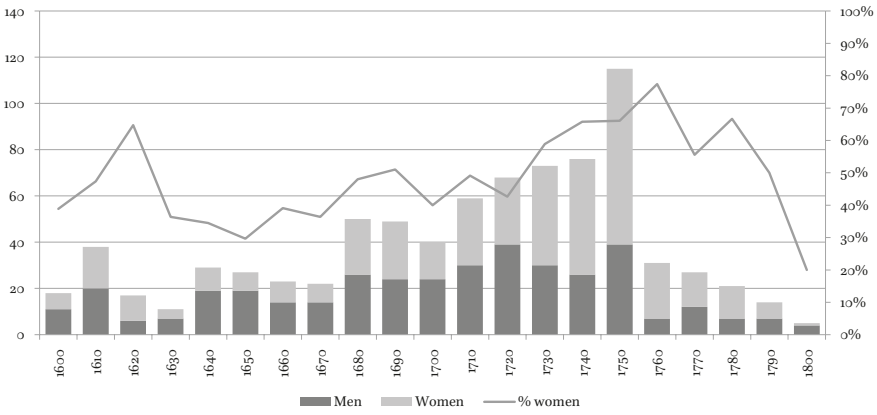

FIGURE 8 Proportion of women among sexual offences, Frankfurt 1600–1806
SOURCE: IFSG, CRIMINALIA 1600–1806

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.[123] 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 *Konsistorium* 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*.[124]

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,

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

124 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 schwehren lasten fallen durffte'*).

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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 before, 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. To prevent any conflict of interest, the *Konsistorium* was not allowed to report anything about the ongoing appeal cases to the city council, but had to wait before sending their documents until they were ordered to do so. In this case the *Konsistorium* 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.[125] 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.

6 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 recorded in the minutes of the *Konsistorium*

125 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 beijbehaltung 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 ohnfehlbahr 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'.

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TABLE 14 Number of prosecuted illegitimacy cases versus the number of baptisms of extramarital children

	1746	1759	1780
Konsistorium	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

exceeded the number of baptised children born out of wedlock in the respective year.

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 *Konsistorium* did have jurisdiction over cases of extramarital 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 *Konsistorium*. Also, the records only record children that were born alive and that were actually baptised, but the *Konsistorium* investigated cases of illegitimate pregnancy regardless of whether the child lived or not.

Second, apart from the information gap of the church records, the *Konsistorium* 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 records of 1759 several women had excused their deviance by stating that they could not be prosecuted for this in Frankfurt, because the act had happened elsewhere. However, the *Konsistorium* felt compelled to insist that 'all fallen women, should be punished with a ten-guilder fine, even if the act had

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taken place *extra territorium Francofurtemse*'.[126] 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 *Konsistorium* and Katharina was investigated and received a punishment for fornication, after which the case was transferred back to the *Verhöramt* again.[127] Finally, in some cases the investigation stretched over a longer period of time which meant that they were recorded in the *Konsistorium* 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 *Konsistorium* records.

Although it is not possible to determine exactly what percentage of the illegitimate pregnancies were actually investigated by the *Konsistorium*, the comparison between the number of baptised children that were born out of wedlock and the number of cases dealt with by the *Konsistorium* 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 percent and 77.8 percent of the mothers of baptised extramarital children were sentenced.[128]

Information on the social background of offenders is often limited, particularly for the cases that were only handled by the *Konsistorium*. 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 (table 15). For 1780 we are able to get more information about the social standing of the women, because the profession of the women's father 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

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

127 Criminalia 6934 (1755).

128 Frank, *Dörfliche Kriminalität*, 331.

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TABLE 15 Origin of women prosecuted for illegitimacy by the *Konsistorium*

	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

of the women's fathers was 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.[129] 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.[130]

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, 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.[131] In early modern Frankfurt, as elsewhere in early modern Germany, this was different. Both paternity suits and cases for broken marriage vows were handled by the same court that prosecuted extra-marital sexuality.

Frankfurt's secular authorities prohibited the regulation of sexuality by intermediary parties, including the church. This loss of control was contested repeatedly by the city's clergy. In 1759, Frankfurt preacher Dr. Fresenius

129 Pfister, *Bevölkerungsgeschichte*, 86–89; Dürr, *Mägde in der Stadt*, 256.
130 Lesemann, *Arbeit, Ehre, Geschlechterbeziehungen*, 164–65.
131 Kamp and Schmidt, 'Getting Justice', 680.

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requested permission for the church to interrogate 'fallen women' (*zu fall gekommene Weibspersonen*) on their own account, even if the case had not yet been reported to the *Konsistorium*. The church wished to exclude these women from confession and the Lord's Supper if they refused to name the father of the child. However, the *Konsistorium* 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.[132]

Moreover, the city council implemented policies to hinder the possibility of extra-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.[133] For similar reasons, women were not allowed to put their illegitimate children in (paid) foster care without notifying the authorities first.[134]

When it came to the control of illegitimate pregnancies, midwives, just as elsewhere in Europe, played an important role.[135] 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 women, she was obliged to ask the father's identity, and to subsequently report the birth to the authorities.[136] 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.[137] In the course of the eighteenth century their role in the prosecution of illegitimacy was increasingly institutionalised, and midwives had to use standardised forms in

132 IfSG Frankfurt am Main, Lutherisches Konsistorium, Protokolle 1759, folio 37–38.

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

134 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).

135 Ulinka Rublack, 'Pregnancy, Childbirth and the Female Body in the Early Modern Germany', *Past & Present* 150 (1996): 84–100; Merry E. Wiesner-Hanks, 'The Midwives of South Germany and the Public/Private Dichotomy', in *The Art of Midwifery: Early Modern Midwives in Europe*, ed. Hilary Marland (London: Routledge, 1993), 77–94; Manon Van der Heijden, *Huwelijk in Holland: stedelijke rechtspraak en kerkelijke tucht, 1550–1700* (Amsterdam: Bert Bakker, 1998), 122–23.

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

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

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order to report the illegitimate mothers.[138] 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.[139]

The developments in Frankfurt show that the level over control over extra-marital sexuality was quite high. Being convicted for illegitimacy had severe consequences for women. 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.[140] It is no surprise that for many, and women in particular, these fines could put offenders in serious financial difficulties. Moreover, the loss of honour and the sole responsibility for an illegitimate child made any hopes for a secure future virtually non-existent. Still, characterising the position of women before the court solely as victims of a repressing moral's regime neglects the dual function of the court.

7 Between Plaintiff and Defendant: Women and the Prosecution of Illegitimacy

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. 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.[141] Going to court to start a paternity suit almost always meant self-disclosure.[142] 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.[143] In many cases it is impossible to distinguish the criminal procedure from the civil one. This was considerably different in regions where secular

138 See Criminalia 8605 (1771) about the case of Maria Elisabetha Mauthöferin who was prosecuted for her sixth illegitimate child for an example of such a form.

139 E.g. Criminalia 6760 (1750); Konsistorium 1759, folio 90–91; folio 236; Rublack, *The Crimes of Women*, 178–80; Härter, *Policey und Strafjustiz*, 848–52, 857.

140 Habermas, 'Frauen und Männer', 113.

141 Rössing, *Versuch einer kurzen historischen Darstellung*, 153–54.

142 Schmidt, *Dorf und Religion*, 387; Breit, *Leichtfertigkeit*, 114; Burghartz, 'Ordering Discourse', 85; Hull, *Sexuality*, 58–61.

143 Also in Basel: Burghartz, *Zeiten der Reinheit*, 277–83.

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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.[144]

Despite these restrictions, women *could* and *did* take legal action and therefore, often appeared before the court as plaintiffs and offenders at the same time. 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 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.[145] 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.[146] 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 *Konsistorium* according to the wealth and standing of both the man and the woman.[147] 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 30 kreuzer for their illegitimate child until the age of seven, and 45 kreuzer till the child turned fourteen.[148] For Catharina Dorothea Kochin, the compensation was even greater. She was awarded a '*Aussteuerung*' of 200 guilders.[149] In both cases, the sum of the indemnity shows that it was worth for the women to go to the *Konsistorium* and report themselves: the sum they were awarded exceeded the fine that had to be pay for fornication.

144 Kamp and Schmidt, 'Getting Justice'; Burghartz, 'Ordering Discourse', 86.

145 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'.

146 Justinian Von Adlerflycht, *Das Privatrecht der freien Stadt Frankfurt: Erster und zweiter Theil* (Frankfurt am Main: Brönner, 1824), 22.

147 Ibid., 22–23.

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

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

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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.[150] They could enforce their 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 *Reiningungseid* did not exempt him from being punished.[151] 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.[152]

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

150 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 mehr zu gehalten)' Criminalia 7093 (1753) Peter Weijdt denied to be the father of Anna Margaretha Lutterin's illegitimate child by stating that 'she was a lewd woman, who already had an illegitimate child before, and had relations with anyone (seije ein liederliches mensch, die schon vorhero ein unehelich kind gehabt und mit jedermann zu gehalten)'. Also: Gleixner, *Das Mensch*, 59.

151 Criminalia 2395 (1703).

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

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time Anna had heard from him was when he had written to her from Mainz, without informing her about his future whereabouts.[153] 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.[154] 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* reveals 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.[155]

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.[156] 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

153 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*, 2003, 143–47.

154 Gleixner, *Das Mensch*, 103–7.

155 See e.g. Handwerker Akten 686 (1617–1618) where Dietrich Faulhaber is sanctioned by the Schneiderhandwerk for prenuptial 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 prenuptial 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'.

156 Kathy Stuart, *Defiled Trades and Social Outcasts: Honor and Ritual Pollution in Early Modern Germany*, (Cambridge: Cambridge University Press, 1999), 15; Lourens and Lucassen, 'Zunftlandschaften'; Hull, *Sexuality*, 41–44; Boes, ' "Dishonourable" Youth'.

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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*').[157] 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 *Konsistorium* 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.[158]

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 dieserwegen der geringsten Satisfaction nicht zugetrösten haben*').[159] 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.[160]

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 *Konsistorium*'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 transgressions would otherwise remain unknown; it also

157 Criminalia 2395 (1703).

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

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

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

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meant that they could force the father to take financial responsibility.[161] For this reason, women were also willing to report their case to the authorities.

Once the identity of the father was established in court, women could count on the *Konsistorium* as their ally when the fathers continued to deny paternity and refused to pay child support. Christina Röderin, a *Mitchnachbarstochter* 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 *Konsistorium* 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 *Konsistorium*, 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 *Konsistorium*.[162] There are also examples in which the *Konsistorium* seized the wages or property for women to be compensated when the men were unwilling to pay.[163]

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.[164]

161 Johann Heinrich Bender, *Handbuch des Frankfurter privatrechts* (Frankfurt am Main: Baer, 1848), 81: 'Wer sich als Vater eine unehelichen kindes bekennt, muß in Folge dessen das kind alimentiren'.

162 Konsisitorium 1780 folio 197.

163 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.

164 Härter, *Policey und Strafjustiz*, 898–901; Also: Schmidt, *Dorf und Religion*, 387.

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The extent to which the high 'prosecution' rates for illegitimacy by the *Konsistorium* were fostered by the use of justice by women is not possible to determine for Frankfurt. However, it is 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.[165] 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 *Konsistorium*. 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. Women repeatedly requested 'submissively to impose a merciful punishment, because of inability and poverty [to pay]'.[166] The *Konsistorium* 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 *Konsistorium* 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.[167] This may seem a risky move, particularly

165 Breit, *Leichtfertigkeit*, 144.

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

167 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 vermeijdung eines besorligchen kindermordt*').

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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 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.[168] 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.[169] A year earlier, Anna Sophia Ilsterin, a local burgher's daughter, suffered a similar fate. For her first three illegitimate children the *Konsistorium* sanctioned Anna Sophia with fines. After her fourth illegitimate child, however, she was banished.[170]

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.[171] This may also explain why women who were punished with banishment by the *Konsistorium* would still appeal to the very same institution that had expelled them as plaintiffs and start a paternity suit.[172] 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

168 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 Schmidtin 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.

169 Criminalia 6914 (1754).

170 Criminalia 6763 (1753).

171 Kamp and Schmidt, 'Getting Justice', 683; Gleixner, *Das Mensch*, 115–16.

172 Criminalia 9216 (1781).

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they could count on support to file a case against the child's father back in Frankfurt.[173]

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.[174] In 1780, Susanna Rebecca Eulerin, the daughter of a local burgher and day labourer, appealed to the *Konsistorium* 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 *Konsistorium* 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.[175] The *Konsistorium* 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'.[176] The *Konsistorium* additionally ordered that until Susanna and Wolfgang were formally married he was to pay a weekly sum of 30 kreuzer as alimony for their illegitimate child. It is unlikely that Wolfgang was forced to marry Susanna against his will, as man 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.

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173 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 illigitimate 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.

174 Härter, *Policey und Strafjustiz*, 895–97; Breit, *Leichtfertigkeit*, 175.

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

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

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Maria Magdalena went to the *Konsistorium* 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.[177] 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.[178]

Thus, we may assume that in Frankfurt the high number of cases of illegitimacy brought before the *Konsistorium* 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.[179] 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 *Konsistorium* 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 *Konsistorium* may have indeed served as an

177 Criminalia 7744 (1761).

178 Also: Criminalia 6064 (1748). Johann Tobias Justus a *nacbharhs sohn* (subject of Frankfurt's rural territory) requested to marry Anna Margretha with whom he had an illigitimate child. The consistory, however, denied his request because Anna Margretha was the widow of Johann Tobias' brother, and their relationship was therefore considered incestuous. Both JohannTobias and Anna Margretha were sanctioned with banishment; Criminalia 6986 (1753). Local soldier's daughter Susanna Elisabetha Geiderin and Johannes Lein, a local musketeer, had two illegitimate children together, but were repeatedly denied permission to get married by the *Kriegszeugamt*.

179 Kamp and Schmidt, 'Getting Justice'.

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'assistant in need', whereas for unmarried, foreign, pregnant women this may have been less the case.

8 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.[180] According to the legal definition infanticide was linked to single mothers attempting to hide their pregnancy in order to evade punishment for fornication.[181] 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.[182] However, historians have pointed out that even though motives of shame and escaping prosecution lay at the core of most infanticide cases, there was no simple causal relationship between the prosecution of fornication and infanticide cases.[183] 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.[184]

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

180 On Frankfurt: Antje Freyh, 'Angeklagt "in puncto infanticidii": Frankfurter Kindsmordprozesse im 18. Jahrhundert', in *Frauen in der Stadt: Frankfurt im 18. Jahrhundert*, ed. Gisela Engel, Ursula Kern, and Heide Wunder (Königstein/Taunus: Helmer, 2002); Rebekka Habermas and Tanja Hommen, *Das Frankfurter Gretchen: der Prozess gegen die Kindsmörderin Susanna Margaretha Brandt* (München: C.H. Beck, 1999); Boes, *Courts and Adjudicatory Practices*, 145–80.

181 Brannan Lewis, *Infanticide and Abortion*, 24–25.

182 Otto Ulbricht, *Kindsmord und Aufklärung in Deutschland* (München: Oldenbourg, 1990).

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

184 Beck, 'Illegitimität und voreheliche Sexualität', 128–30.

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TABLE 16 Number of penal sentences for infanticide, fornication and adultery, Frankfurt 1562–1696

Period	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

exist for this period.[185] 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'.[186] In total, during the entire seventeenth and eighteenth centuries there were 83 *Criminalia* with investigations for suspected infanticide and 18 cases of abortion, which was much harder to prove or investigate.[187]

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 (table 16). 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

185 Freyh, 'Frankfurter Kindsmordprozesse', 129.

186 IfSG Frankfurt am Main, Repertorium 249 Index über die Criminalia 1680–1732, 158.

187 On abortion see: Brannan Lewis, *Infanticide and Abortion*; Ulinka Rublack, 'The Public Body: Policing Abortion in Early Modern Germany', in *Gender Relations in German History: Power, Agency and Experience from the Sixteenth to the Twentieth Century*, ed. Lynn Abrams and Elizabeth Harvey (London: UCL Press, 1996), 57–79.

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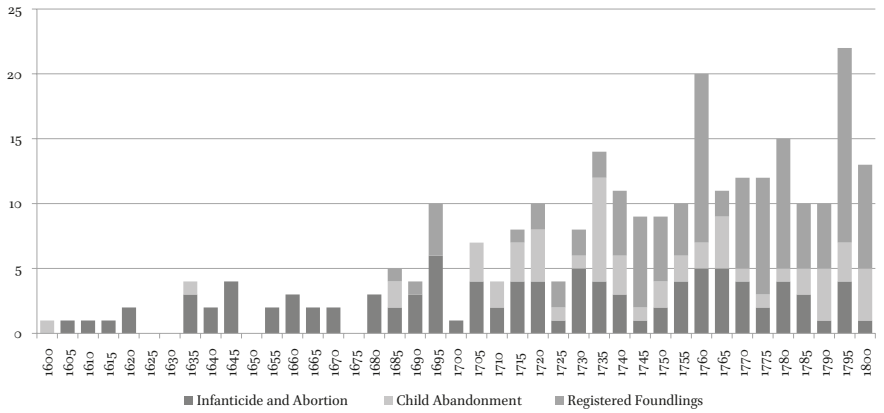

FIGURE 9 Number of infanticide, abortion, and child abandonment cases, Frankfurt 1600–1806
SOURCE: IFSG, CRIMINALIA 1600–1806

following decade.[188] 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 (figure 9).

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.[189] In the eighteenth century, however, the number of women prosecuted for child abandonment 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 (figure 9). 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

188 W. Hanauer, 'Historisch-statistische Untersuchungen über uneheliche Geburten', *Zeitschrift für Hygiene und Infektionskrankheiten* 108, no. 4 (1928): 660–62.

189 On foundlings and orphans, see: Markus Meumann, *Findelkinder, waisenhäuser, kindsmord: unversorgte kinder in der frühneuzeitlichen gesellschaft* (München: Oldenbourg, 1995); Joel F. Harrington, *The Unwanted Child: The Fate of Foundlings, Orphans, and Juvenile Criminals in Early Modern Germany* (Chicago: University of Chicago Press, 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. .

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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.[190]

The rising number of foundling cases in Frankfurt, coincided with the increase in illegitimate births, *and* increasing restrictions on women to put their illegitimate children in foster care. 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.[191] Deprived from the option to put their children in foster care, women were forced to seek different solutions. Most of the foundlings were not abandoned immediately after their birth, but they 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.

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 percent) were migrants.[192] This number is especially high considering that, as we have seen, 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.[193] Equally similar was the age of offenders, the majority of them being younger than 25.[194] 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

190 Freyh, 'Frankfurter Kindsmordprozesse', 117.

191 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.

192 Also: Freyh, 'Frankfurter Kindsmordprozesse', 121–22.

193 Van Dülmen, *Frauen vor Gericht*, 82–83; Anne-Marie Kilday, *A History of Infanticide in Britain, c. 1600 to the Present* (New York: Palgrave Macmillan, 2013), 24–25; Van der Heijden, *Women and Crime*, 2016, 55.

194 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.

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infanticide. Unlike local women, they were less able to find enough informal support or start a paternity suit.[195] 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.[196] 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.[197]

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.[198] Moreover, the infanticide cases reveal how single women were monitored closely by employers and the neighbourhood.[199] 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.[200] 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

195 Freyh, 'Frankfurter Kindsmordprozesse', 130; Kamp and Schmidt, 'Getting Justice', 688; Vermeesch, 'The Legal Agency of Single Mothers'.

196 Criminalia 9444 (1783).

197 Criminalia 7675 (1760).

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

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

200 Criminalia 1505 (1680); Strafenbuch,16.04.1681.

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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'.[201] During her 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.[202] 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.

Still, the actual number of prosecuted infanticide cases throughout early modern Germany in the early modern period was rather low.[203] 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 law imposed high standards for possible conviction of infanticide. It had to be proven

201 Criminalia 1505 (1680) folio 15.
202 Criminalia 7781 (1762).
203 Ulbricht, *Kindsmord und Aufklärung*, 176–88.

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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.[204] There are only a couple of examples where the woman was acquitted of any suspicion entirely and allowed to stay in the town. Usually these women were locals and were able to find trustworthy character witnesses who could vouch for them.[205]

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, shows that the early modern moral's regime cannot be understood simply in opposing terms of either oppression or leniency.

9 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 *Sendamt* and the *Konsistorium*, as well as the secular criminal court. Historians have previously perceived criminal and moral courts as contradicting or overlapping institutions, 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

204 Van Dülmen, *Frauen vor Gericht*, 63.

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

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the '*Christliche Zucht- und Ordnung*'. 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 *Konsistorium* or through the criminal court. The *Konsistorium* 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 *Konsistorium* 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 women's 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.

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CHAPTER 6

Transgressing Social Order: Mobile Men and Women

The previous chapters have shown that migrant women were among the most vulnerable to be prosecuted in early modern Frankfurt. Historians have shown how the relatively independent position of women in cities contributed to their likeliness of breaking the law. At the same time, as Andrew Lees and Lynn Hollen Lees reminded us, cities were not only places of relative independence, but of discipline and control as well.[1] It is precisely this tension between the city as a place of social mobility and relative freedom versus a place of regulation and surveillance that shaped the experiences of female offenders. There were considerable differences, however, in the level of control urban authorities imposed on their inhabitants. The highest levels of female offenders in the early modern period were found in large urban centres with relatively open migration regimes like London and Amsterdam. The urban authorities of these cities were reluctant to impose restrictions on the settlement of migrants because it might have prevented many from moving there, while the cities' economies depended on a continuous influx of labour.[2] A considerable proportion of the incoming migrants were female, many of whom were single, who were attracted to the possibilities of the diverse labour market and relatively generous relief provisions.[3] Historians like Peter King and Manon van der Heijden

1 Lees and Lees, *Cities*, 36–39.

2 Marco Van Leeuwen, 'Overrun by Hungry Hordes? Migration and Poor Relief in the Netherlands, Sixteenth to Twentieth Centuries', in *Migration, Settlement and Belonging in Europe, 1500–1930s: Comparative Perspectives*, ed. Steven King and Anne Winter (New York: Berghahn, 2013), 190; Joanna Innes, Steven King, and Anne Winter, 'Settlement and Belonging in Europe, 1500–1930s: Structures, Negotiations and Experiences', in *Migration, Settlement and Belonging in Europe, 1500–1930s: Comparative Perspectives*, ed. Steven King and Anne Winter (New York: Berghahn, 2013), 14; Kuijpers, *Migrantenstad*, 332–33; Moch, *Moving Europeans*, 2003, 54–55; Lees, *The Solidarities of Strangers*, 47–51.

3 Earle, 'The Female Labour Market'; Eleanor Hubbard, *City Women: Money, Sex, and the Social Order in Early Modern London* (Oxford: Oxford University Press, 2012), 17–23; Ariadne Schmidt, Isabelle Devos, and Bruno Blondé, 'Introduction: Single and the City: Men and Women Alone in North-Western European Towns since the Late Middle Ages', in *Single Life and the City, 1200–1900*, ed. Isabelle Devos, Julie De Groot, and Ariadne Schmidt (Basingstoke: Palgrave Macmillan, 2015), 4; Van de Pol and Kuijpers, 'Poor Women's Migration'.

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have argued that these migration patterns greatly contributed to the high level of female involvement in crime in these cities.[4]

Germany, on the other hand, was a region with relative strong institutional control of mobility. More than elsewhere, the right of permanent settlement in cities was connected to the institution of citizenship (*Bürgerschaft*). For others the right to stay and/or entitlement to community rights was limited or denied completely depending on their legal status.[5] At the same time, authorities often imposed moral and religious restrictions on access to citizenship, which was strongly associated with the establishment of a new household. The latter had become increasingly important from the sixteenth century onwards and was perceived by the authorities as the key institution to preserve the urban social order.[6] Jan Lucassen and Piet Lourens found that the dues and additional requirements (i.e. proof of legitimate birth) were much higher in German cities than in the Dutch provinces, particularly in Holland, for obtaining citizenship.[7] Moreover, Sheilagh Ogilvie found that, because of the stronger social and institutional restrictions, female mobility in early modern Germany was penalised more harshly than elsewhere in Europe. This was closely linked to attempts to regulate independent, unmarried women. Ogilvie stated that while such regulations were also found elsewhere in Europe in the sixteenth century, they were progressively abandoned in the following centuries in contrast to Germany where instead they intensified.[8]

Thus, to gain a better understanding of differences in women's involvement in recorded crime throughout early modern Europe, it is crucial to take a closer

4 King, 'Female Offenders'; Van der Heijden, *Women and Crime*, 2016, 160–63.

5 Hochstadt, 'Migration', 221–22; Andreas Gestrich, 'Trajectories of German Settlement Regulations: The Prussian Rhine Province, 1815–1914', in *Migration, Settlement and Belonging in Europe, 1500–1930s: Comparative Perspectives*, ed. Steven King and Anne Winter (New York: Berghahn, 2013), 252; Karl Härter, 'Recht und Migration in der frühneuzeitlichen Ständegesellschaft: Reglementierung—Diskriminierung—Verrechtlichung', in *Zuwanderungsland Deutschland: Migrationen 1500–2005*, ed. Rosemarie Beier-de Haan (Wolfratshausen: Edition Minerva, 2005), 50–71; Lees and Lees, *Cities*, 37.

6 Wunder, 'Gender Norms', 45–46; Lynch, *Individuals, Families, and Communities*, 154–55.

7 Lourens and Lucassen, 'Zunftlandschaften'; Maarten Prak et al., 'Access to Trade: Citizens, Craf Guilds and Social an Geographical Mobility in Early Modern Europe—a Survey of the Literature, with Addtional New Data', *BEUCITIZEN Working Paper* 1 (2014); Stuart, *Defiled Trades*, 2–3; Christopher R. Friedrichs, 'How German Was the German Home Town?', *Central European History* 47, no. 3 (2014): 488–95; Bernd Roeck, *Civic Culture and Everyday Life in Early Modern Germany* (Leiden: Brill, 2006).

8 Ogilvie, *Bitter Living*, 312; Dürr, 'Der Dienstbote', 116; Merry E. Wiesner-Hanks, 'Paternalism in Practice: The Control of Servants and Prostitutes in Early Modern German Cities', in *The Process of Change in Early Modern Europe*, ed. Phillip N. Bebb and Sherrin Marshall (Athens, OH: Ohio University Press, 1988), 179–200; Rublack, *The Crimes of Women*, 152–54.

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look at the way mobility was regulated. How did perceptions about gender influence the norms and control mechanisms that were implemented by the authorities to regulate migration over the course of the early modern period? And how did these influence the patterns of prosecuted crime of men and women in Frankfurt? In order to answer these questions, this chapter investigates the way that people who transgressed the mobility norms implemented by Frankfurt's authorities were prosecuted. The first part of this chapter focuses on the various police ordinances that were issued by the authorities against vagrancy and begging in Frankfurt, as well as on the regulation of migration to the city in general. The chapter then investigates how these attitudes influenced the policing efforts of the authorities, and how this affected the position of migrant men and women. Finally, the last section of this chapter is devoted to understanding how exclusion from communities was gendered by examining the breach of banishment as a case study. Studying this typical early modern crime is particularly suitable to investigate the position of mobile women. Were they more affected by this punishment than men because of the norms that discriminated against independent women?

1 Migration and the Importance of Settledness in Frankfurt

In order to answer these questions, it is necessary to study the framework within which the regulation of migration developed, and how this shaped distinctions between insiders and outsiders of the urban community. From the sixteenth century onwards, mobile poor and travelling groups were increasingly subjected to regulation and criminalisation as a result of growing public and official concern. The growing animosity towards impoverished outsiders was closely linked to major changes in the organisation of poor relief throughout early modern Europe.[9] The key aspects of these reforms rested on two principles: first, (centralised) care for the community's own deserving poor, and, second, the exclusion of (foreign) beggars.[10] Between 1522 and 1530 more than 25

9 Jütte, *Poverty and Deviance*; Andreas Gestrich and Lutz Raphael, eds., *Strangers and Poor People: Changing Patterns of Inclusion and Exclusion in Europe and the Mediterranean World from Classical Antiquity to the Present Day* (Frankfurt am Main: P. Lang, 2009); Helmut Bräuer, 'Armut in Mitteleuropa 1600 bis 1800', in *Armut in Europa, 1500–2000*, ed. Sylvia Hahn, Nadja. Lobner, and Clemens Sedmak (Innsbruck: Studien Verlag, 2010), 13–34.

10 Karl Härter, 'Recht und Armut', in *Aktuelle Tendenzen der historischen Armutsforschung*, ed. Christoph Kühberger and Clemens Sedmak (Münster: LIT, 2005), 91–128; Sebastian Schmidt, '"Pleasing to God and Beneficial to Man": On the Confessional Similarities and Differences of Early Modern Poor Relief', in *Strangers and Poor People: Changing Patterns*

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poor relief reforms were implemented in German cities, including Frankfurt.[11] Moreover, in 1530 an imperial police ordinance was implemented that stipulated that every parish was obliged to take care of the deserving poor within their own community and to allow only their own disabled and feeble members to beg for assistance.[12]

One of the logical consequences of organising poor relief based on these principles was the necessity to define 'belonging'. In other words: who had the right to relief and who did not? Joanna Innes, Steven King and Anne Winter differentiated between three different types of leading principles that authorities employed to define belonging in early modern Europe: work-based systems, where settlement was granted based on employment status (e.g. completed apprenticeships, guild membership and so on); residence-based systems, where settlement was granted after a period of continuous and uninterrupted residence; and finally, birth-based systems. In most places, hybrid systems evolved with multiple criteria for settlement and subsequently multiple levels of access to urban provisions, including poor relief.[13]

One of the characteristics of early modern Germany was that citizenship (*Bürgerschaft*) was more defining in regulating belonging than elsewhere, and that is was more strongly associated with notions of the well-ordered household.[14] German authorities placed increasing importance on belonging and settledness (*Sesshaftigkeit*). Settledness can be defined as having a fixed place of residency accompanied with legal incorporation into a community, either as a burgher or resident alien. This was closely linked to a model of social order in which everyone was incorporated within a household, preferably governed by a male head of the household, or at least subjected to a legal community in some shape or form.[15] Settledness not only meant obligations (paying taxes, etc.), but also that one could put a claim on the authority's

of Inclusion and Exclusion in Europe and the Mediterranean World from Classical Antiquity to the Present Day, ed. Andreas Gestrich and Lutz Raphael (Frankfurt am Main: P. Lang, 2009), 315–42.

11 Robert Jütte, *Arme, Bettler, Beutelschneider: eine Sozialgeschichte der Armut in der Frühen Neuzeit* (Köln: Böhlau, 2000), 141; Jütte, *Obrigkeitliche Armenfürsorge*.

12 Matthias Weber, *Die Reichspolizeiordnungen von 1530, 1548 und 1577: historische Einführung und Edition* (Frankfurt am Main: Klostermann, 2002); Gestrich, 'Trajectories of German Settlement Regulations', 252.

13 Innes, King, and Winter, 'Settlement and Belonging', 10–11.

14 Gestrich, 'Trajectories of German Settlement Regulations', 252; Härter, 'Recht und Migration', 51–52; Christopher R. Friedrichs, *The Early Modern City 1450–1750*, 2nd ed. (New York: Routledge, 2013), 143.

15 Härter, 'Recht und Migration'.

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responsibility to provide protection (*Schutz*) to their members. According to Heinz Schilling, this was one of the basic principles of the *Stadtrepublikanismus*, or urban republicanism, that existed in the Free Imperial Cities of the Holy Roman Empire.[16]

In Frankfurt, only citizens and resident aliens (*Beisassen*) were entitled to communal relief.[17] In order to prevent destitute people from being able to have access to the city's poor relief funds, the city council linked the admission of foreigners to citizenship and the obtaining of settlement as a resident alien to wealth. For new citizens (thus not locally born burgher sons), the required minimum asset varied between 50 Guilders and 100 Guilders in the early modern period. For resident aliens, the requirements were even stricter: they were obliged to have a minimum of 500 Guilders in assets.[18] In addition to this, foreigners that acquired citizenship had to guarantee that they would not claim relief for four years. The same applied for resident aliens, who only formed a minority of the city's inhabitants. According to the *Beisassenrecht* (law relating to resident aliens) of the late sixteenth century, they were not entitled to poor relief for the first couple of years.[19] Foreigners (*Fremde*) were not eligible to claim structural relief at all. Moreover, various police ordinances either explicitly or implicitly defined who the authorities of Frankfurt considered as deserving the protection (*Schutz*) of the city, and could therefore call on the city council to protect and defend their rights and personal security.[20] All burghers and their families, resident aliens and their families, Jews with citizenship and their families, the city's soldiers and their families, and, finally, foreigners who had received permission to stay in the city belonged to the city's protected community (*Schutzgemeinschaft*).[21] Domestic servants and journeymen, on the other hand, were not listed because they were considered to belong to the protection of either the household or

16 Schilling, *Die Stadt*, 89–90.

17 Jütte, *Obrigkeitliche Armenfürsorge*, 214–17; Faber, *Topographische, politische und historische Beschreibung*, 1788, 1:§ 21 and § 22.

18 Jütte, *Obrigkeitliche Armenfürsorge*, 214–17; Rainer Koch, *Grundlagen bürgerlicher Herrschaft: verfassungs- und sozialgeschichtliche Studien zur bürgerlichen Gesellschaft in Frankfurt am Main (1612–1866)* (Wiesbaden: Steiner, 1983), 76–90; Roth, *Stadt und Bürgertum*, 65–88.

19 Jütte, *Obrigkeitliche Armenfürsorge*, 216–17. The number of years resident aliens were barred from relief is not specified. Jütte simply states 'several years—'einige Jahre'. .

20 For the legal meaning of the *Schutz*-principle, see the description in: *Deutsches Rechtswörterbuch Online*, http://drw-www.adw.uni-heidelberg.de/drw/info/index.html (accessed 01-09-2017).

21 PO 3632 *alle und jede in hiesigem Schutz und Pflichten nicht stehende Personen binnen 14 Tagen aus der Stadt zu schaffen* 24.05.1763.

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the guild. Unless they belonged to one of the categories described above, they had no formal *Schutzverhältnis* to Frankfurt.[22]

Differentiating between various levels of belonging required an administrative framework to monitor the movement of people from and to the city, their (possible) settlement and a registration system to examine their legal status. Having employment was a necessary condition for foreigners to be allowed to stay in the city, as it guaranteed that they would be subjected to the authority of the head of the household or the guilds instead of wandering around begging. Foreigners that did not work as domestic servants or journeymen—and were therefore not incorporated in a household—were required to register and ask formal permission from the authorities, otherwise their stay was restricted to a period ranging from three to eight days.[23] In 1593, the city council established the *Inquisitionsamt*, presided by three council members, to oversee the admission of citizenship and residency for registered aliens, as well as reviewing requests of foreigners to stay in the city for a limited period of time. In the eighteenth century, the *Inquisitionsamt* was incorporated with the *Schatzungsamt*, the tax office.[24] Apart from this office, which was after all only meant to monitor those that settled in the city, the city council implemented a whole set of regulations aimed at controlling migration. These included efforts to control places of arrival (city gates, inns and taverns), requiring the neighbourhood burgher captains to monitor and register local population movements, and the increasing demanded for documentation (registration at the city gates and inns; issuing gate passes; requesting the possession of identification documents).[25]

These regulations were implemented from the middle of the sixteenth century onwards, but intensified from the late seventeenth century. To compare: cities in the province of Holland only started to experiment with the implementation of law to restrict settlement from the second half of the

22 Koch, *Grundlagen bürgerlicher Herrschaft*, 112, 116; Roth, *Stadt und Bürgertum*, 84–85.

23 As part of the extensive criminal investigations against city council member Johann Erasmus von Senckenberg, against whom (amongst other things) investigations were carried out for the rape of his cook Maria Katharina Agricola, many administrative records from his personal records ended up in the *Criminalia.* These included city council records dealing with the regulation of settlement and illegal foreigners. IfSG Frankfurt am Main, Criminalia 12880 (1756) e.g. folio 153, Ratsedikt, 22.08.1709 'Fremde sollen binnen acht tagen sich aus der Stadt und deren dorfschafften begeben'; PO 3356 *Fremde Handwerkspursche, die keinen Meister haben, sollen sich daher nicht über die gehörige Zeit aufhalten* 25.03.1749.

24 Johann, *Kontrolle mit Konsens*, 48–50; Soliday, *A Community in Conflict*, 54.

25 Kamp, 'Controlling Strangers'.

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seventeenth century onwards, during a period of economic decline. However, the urban authorities quickly abandoned the restrictions because they were unable to implement them. And in Amsterdam authorities refrained from implementing exclusionary settlement regulations because they feared this would put off migrant labourers from coming to the city.[26] Lynn Hollen Lees found that compared to early modern England, German towns employed more developed mechanisms to control and regulate the entry- and residence of strangers.[27]

Despite the desire to control and restrict the movement of newcomers, demographic necessity meant that early modern cities depended on incoming migration, as they could generally not reproduce themselves naturally before the nineteenth century.[28] Data on the geographical background of citizens in early modern Germany demonstrate that the majority were usually born elsewhere.[29] Reliable estimates about the size of the burgher population in Frankfurt are only available for the second half of the eighteenth century (table 17). In 1785, the entire citizenry, including female citizens, burgher sons and daughters accounted for approximately 50 percent of the inhabitants. Full citizens (i.e. those that could claim political rights based on their status because they were male) only accounted for close to 12 percent.[30] For the most part, burghers did not originate from the city itself: 56.3 percent of the admissions between 1600–1735 were immigrants.[31] The *Beisassen*, who were heavily restricted in their economic and political opportunities, formed only a minority in the city.[32] Only about 4.9 percent of the population in 1785 was registered as a resident alien. The third group that was legally incorporated in the city's community were the Jews with formal rights of residency (*Stättigkeit*) ca. 8.2 percent of the population.[33] Their movement in the city was restricted as they were only allowed to settle in the *Judengasse*, but they possessed a certain degree of autonomy and self-rule. Outside the walls of the Jewish Ghetto, however, they faced heavy political, economic, and social restrictions and discrimination.

26 Van Leeuwen, 'Overrun by Hungry Hordes', 186–87, 190.

27 Lees, *The Solidarities of Strangers*, 47–48.

28 Jan Lucassen and Leo Lucassen, 'The Mobility Transition Revisited, 1500–1900: What the Case of Europe Can Offer to Global History', *Journal of Global History* 4, no. 3 (2009): 359–63.

29 Moch, *Moving Europeans*, 2003, 44; MacIntosh, *Urban Decline*, 165–75; Prak et al., 'Access to Trade'; Hochstadt, 'Migration'.

30 Roth, 'Der blühende Handel', 362.

31 Soliday, *A Community in Conflict*, 45.

32 Roth, *Stadt und Bürgertum*, 81; Koch, *Grundlagen bürgerlicher Herrschaft*, 86–87.

33 Roth, 'Der blühende Handel', 362.

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TABLE 17 Composition of the population according to legal status, 1785–1810

Year	Inhabitants	Full Citizens		Resident Aliens		Jews	
1785	36,400	4,200	11.5%	1,800	4.9%	3,000	8,2%
1795	37,000	4,360	11.8%	1,500	4.1%	2,969	8%
1805	37,000	4,520	12.2%	1,200	3.2%	2,939	7,9%
1810	40,485	4,680	11.6%	994	2.5%	2,214	5,5%

SOURCE: ROTH, 'BLÜHENDE HANDEL', 362

Thus, a considerable proportion of the city's inhabitants was born elsewhere and had migrated to Frankfurt at some point in their lifetime. Unfortunately, there is little information about the geographical, economic, and socio-cultural background of migrants coming to Frankfurt. In the late sixteenth century, religious refugees from the Low Countries found their way to the city, and boosted the local economy. At the peak of the refugee migration, the Flemish-Walloon community counted approximately 3000 to 3500 people that settled in the city permanently on a total population of 20,000. Although they were initially granted to establish their own church within the city borders, this was later prohibited and they moved their church to Bockenheim, in the vicinity of the city.[34] In the seventeenth century, after the revocation of the Edict of Nantes, Frankfurt faced new crowds of religious refugees as approximately 70,000 Huguenots passed through the city on to other destinations. Due to the restrictions on the freedom of worship, Frankfurt was not attractive for permanent settlement, but it offered support and protection for the time being.[35] It is known for other cities in Europe, that (migrant) churches were important for migrants as support networks and enabled their integration into the city by providing assistance in times of need.[36] Johannes Müller found that in Frankfurt too, religious networks played an important role in the integration of refugees from the Low Countries in the urban community.[37]

34 Karpf, *Eine Stadt und ihre Einwanderer*, 41–66; Schindling, 'Wachstum und Wandel', 224–28.

35 Duchhardt, 'Frankfurt am Main im 18. Jahrhundert', 263.

36 Van de Pol and Kuijpers, 'Poor Women's Migration', 55.

37 Johannes Müller, *Exile Memories and the Dutch Revolt: The Narrated Diaspora, 1550–1750* (Leiden: Brill, 2016).

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The lion's share of migration directed towards Frankfurt during this period was life-cycle dependent labour migration: journeymen, day labourers and domestic servants.[38] We know even less about the integration patterns and sociocultural background of regular migrants to Frankfurt, than we know about the religious refugees. Studies have shown that women made up a considerable part of the migration to cities in early modern Germany, and could even exceed male migration.[39] According to Rainer Koch, the number of migrant women (excluding those that had acquired citizenship or become resident aliens) in eighteenth-century Frankfurt was about 9,000. This is equal to a quarter of the total population, and more than half of all the foreigners (*Fremde*) in the city. However, the reasoning on which he based this estimate is unclear.[40] More reliable data are available about the percentage of migrant women among new citizens. In Frankfurt, about 8.7 percent of the men born locally who acquired citizenship between 1600 and 1735 were married to a woman who had been born elsewhere, and consequently migrated to the city. The number of migrant men acquiring citizenship who married a non-native woman was slightly higher at 10.4 percent. In total, 31.5 percent of the non-natives that became burghers within this period were women, most of them through marriage but some on their own account.[41]

Frankfurt's city council was regularly caught between conflicting interests with regard to the regulation of migration. They needed to consider the majority of the burgher community, who demanded that the city council implement protectionist regulations to preserve the economic position of the guild. Throughout the early modern period, burghers demanded increasing economic restrictions for resident aliens, whereas the authorities at times opted for a more open migration policy to draw in wealthy migrants. This led to tensions between the burgher community and the city council on several occasions.[42]

38 Karpf, *Eine Stadt und ihre Einwanderer*, 67–77; Duchhardt, 'Frankfurt am Main im 18. Jahrhundert', 273–77.

39 Pfister, *Bevölkerungsgeschichte*, 116–19; MacIntosh, *Urban Decline*, 166.

40 Rainer Koch, 'Frankfurt am Main im 18. Jahrhundert: Topographie, Demographie, Verfassung, Lebens- und Rechtsgemeinschaften', in *Frauen in der Stadt: Frankfurt im 18. Jahrhundert*, ed. Gisela Engel, Ursula Kern, and Heide Wunder (Königstein/Taunus: Helmer, 2002), 71.

41 Soliday, *A Community in Conflict*, 44–52; for similar figures in other cities: MacIntosh, *Urban Decline*, 165–75.

42 Karpf, *Eine Stadt und ihre Einwanderer*, 42–78; Christiane Reves, *Vom Pomeranzengängler zum Großhändler? Netzwerke und Migrationsverhalten der Brentano-Familien im 17. und 18. Jahrhundert* (Paderborn: Schöningh, 2012), 231–92; Müller, 'Transmigrant Literature', 4.

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At the same time, implementing too many restrictions on entry to the city would also hinder its economy as Frankfurt depended on free access to the city in order to maintain its function as a centre for trade. In general, however, it appears that the city council was keen on implementing and enforcing regulations, although they often lacked the resources and institutional back up to do so.[43]

2 Vagrancy Laws and the Labelling of Unwanted Mobility

In addition to the establishment of settlement policies that regulated and enforced the differentiation between insiders and outsiders, the local authorities in Frankfurt—like elsewhere in early modern Europe—implemented further methods of control and repression aimed directly at wandering groups.[44] At the end of the fifteenth century, the city council of Frankfurt implemented legislation to ban foreign beggars from the city for the first time.[45] In order to be able to differentiate between local and non-local beggars, the city council implemented the use of special identification badges.[46] The city's beadles were

43 Kamp, 'Controlling Strangers'.

44 The study of vagrants, travelling groups and other 'unsettled' people has been important for the history of crime in early modern Germany since the 1970s and 1980s: Margo De Koster and Herbert Reinke, 'Policing Minorities', in *The Oxford Handbook of the History of Crime and Criminal Justice*, ed. Paul Knepper and Anja Johansen (Oxford: Oxford University Press, 2016), 268–84; Leo Lucassen, 'Eternal Vagrants? State Formation, Migration and Travelling Groups in Western Europe, 1350–1914', in *Gypsies and Other Itinerant Groups: A Socio-Historical Approach*, ed. Leo Lucassen, Wim Willems, and Annemarie Cottaar (New York: St. Martin's Press, 1998), 55–73; Härter, 'Cultural Diversity'; Küther, *Menschen auf der Straße*; Danker, *Räuberbanden*; Ernst Schubert, 'Mobilität ohne Chance: Die Ausgrenzung des fahrenden Volkes', in *Ständische Gesellschaft und soziale Mobilität*, ed. Winfried Schulze (München: Oldenbourg, 1988), 113–63; Norbert Finzsch, *Obrigkeit und Unterschichten: zur Geschichte der rheinischen Unterschichten gegen Ende des 18. und zu Beginn des 19. Jahrhunderts* (Stuttgart: Steiner, 1990); Rheinheimer, *Arme, Bettler und Vaganten*; Ammerer, *Heimat Strasse*; Fritz, *Öffentliche Sicherheit*; Von Hippel, *Armut, Unterschichten, Randgruppen*.

45 Jürgen Menzler, *Die Bettelgesetzgebung des 17. und 18. Jahrhunderts im Gebiet des heutigen Landes Hessen* (Marburg, 1967), 48–56; Jütte, *Obrigkeitliche Armenfürsorge*, 27–31, 203–8; Thomas Bauer, '"Es solt yhe niemand unter den Christen betteln gahn": Zur Geschichte der Bettler in Frankfurt am Main', *Archiv für Frankfurts Geschichte und Kunst* 62 (1993): 91–100.

46 Maria R. Boes, 'Unwanted Travellers: The Tightening of City Borders in Early Modern Germany'., in *Borders and Travellers in Early Modern Europe*, ed. Thomas Betteridge (Aldershot: Ashgate, 2007), 107–8.

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responsible for policing the streets and expelling foreign beggars from the city. These regulations formed the legal framework for the exclusion of foreigners considered to be undesirable to the urban community by the city council.[47] In the seventeenth century, begging regulations became even stricter and in 1679 the city's poorhouse was established.[48] According to the ordinance this was done with the aim of abolishing the shameful begging on the streets (*'umb das schändliche Gassenbettlen abzuschaffen'*). From now on, journeymen unable to find work, foreign beggars and other vagrants (*'Bettler und andere Vaganten'*) had to report to the poorhouse where—after careful examination of each person's individual character and circumstances—they would receive some travel money (*Viatico/Zehrpfennig*) in order to leave Frankfurt. Those that failed to do so were arrested and expelled from the city.[49] Throughout the eighteenth century, the city council (re-)issued ordinances against begging repeatedly, a sign that they failed to tackle the problem completely.[50]

Simultaneous to regulations that were specifically aimed at begging, there was a development in which the mobility of unsettled people in general, and of ethnic minorities (Jews and gypsies) in particular, became subjected to control, discrimination and subsequent criminalisation.[51] After the city council issued some general regulations in the early seventeenth century, in which innkeepers were strictly forbidden to house any wandering suspicious people or beggars under penalty of paying a significant fine and even risking the loss of citizenship, the ordinances became of a more repressive and discriminatory

47 For similar developments, see: Coy, *Strangers and Misfits*; Astrid Küntzel, *Fremde in Köln: Integration und Ausgrenzung zwischen 1750 und 1814* (Köln: Böhlau, 2008); Lutz Raphael, 'Grenzen von Inklusion und Exklusion: Sozialräumliche Regulierung von Fremdheit und Armut im Europa der Neuzeit', *Journal of Modern European History* 11, no. 2 (2013): 147–67.

48 E.g. PO 2032 *Betr. die abschaffung der Bettler und Colligirung einer Almosen Steuer* 25.08.1625. Original: 'Demnach ein Ehrenvester wolweijser Rath dieser Staat nun eine Zeit hero befunden, dass mit den jenigen personen, welche sich des Bettlen gebrauchen eine merckliche gross Unordtnung in dieser Statt eingerissen, in deme nit allein viele inländische des Bettlens sich befleissen, sondern auch noch ein mehrer Anzahl von frembden Bettler da Jahr Uber sich allhier uffhalten'.

49 PO 2429 *umb das schändliche Gassenbettlen abzuschaffen* 04.09.1679.

50 Jürgen Schlumbohm, 'Gesetze, die nicht durchgesetzt werden: ein Strukturmerkmal des frühneuzeitlichen Staates?', *Geschichte und Gesellschaft* 23, no. 4 (1997): 647–63; Härter, *Policey und Strafjustiz*, 1074–80.

51 Härter, 'Recht und Migration', 62–63; Boes, 'Unwanted Travellers', 96–98; Leo Lucassen, *Zigeuner: die Geschichte eines polizeilichen Ordnungsbegriffes in Deutschland 1700–1945* (Köln: Böhlau, 1996); Härter, 'Cultural Diversity', 73–83.

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nature in the late 1660s and the 1670s.[52] This first peak of repressive policing against wandering groups was directly related to the plague epidemic of 1666/67. 'Beggars, tramps, vagrants, itinerant artists, sick and in general all the loose and riff-raff' were seen as a massive threat for public health, as their uncontrollable movement meant they could easily have carried the disease from contaminated places to the city.[53] Throughout the period, unsettled Jews (*Betteljuden*) in particular (especially Eastern European Jews) were linked to the spread of diseases.[54] The link between controlling epidemics and intensified prosecution of wandering groups was common throughout the Holy Roman Empire. Similar developments, for example are visible in Frankfurt's neighbouring territory of Kurmainz, and continued throughout the eighteenth century.[55]

In the eighteenth century, the city council regularly implemented general ordinances that demanded the expulsion of vagrants. In 1706 they ordered the banishment of all 'useless and masterless scum, […] but in particular the so-called gypsies'.[56] Other general ordinances followed in 1708, 1709, 1714, 1717, 1723, 1729, 1738, 1742, 1749 and 1753.[57] None of these regulations formulated clear definitions as to who should be prosecuted and who should not. Some of the regulations aimed at a certain group in particular (e.g. gypsies in the

52 For early examples of ordinances against "*Fahrende Leute*", see: PO 1803 *Daß niemandt ohne unser deß Rahts, unserer Bürgermeister, oder deren darzu verordneten Rathspersonen Vorwissen und Bewilligung einige frembde anhero kommende Personen* […] *bei ihme einziehen lassen* 02.05.1613; PO 2157 *Daß niemand einige frembde Personen hohes oder nidriges Stands, ohne voher erlangte* […] *außtrückliche und sonderbare Vergünstigung beherbergen* 16.06.1635.

53 PO 2342 *Ordnung wornach sich unsere dess Raths der Statt Franckfurt an die Statt Pforten zur Inspection der Feden verordnete Rathsfreunde und zur Wacht bestellte kriegs Officirer, Soldaten und Schreiber in Einlaß- und Abweisung der Fremden zu halten* 26.09.1667; PO 2348 *eine gewisse Ordnung, wo nach man sich alhie im Einlaß- Uffnehm- oder Abweisung der Frembden zu verhalten habe* 04.08.1668.

54 E.g PO 2770 *Was massen die schädliche Seuche der Bestilentz in Bohlen und verschiedenen dahin gränzenden Orten und Landen, dergestallten wiederumb überhand niembt* 16.09.1710.

55 Härter, *Policey und Strafjustiz*, 951–53.

56 PO 2712 *Daß in denen zu allhiesiger Stadt Bottmässigkeit gehörigen Dorffschafften kein unnützes und herrnloses Gesindlein von Bettlern und andern ihres gleichen nicht geduldet* 10.08.1706. Original: 'kein unnützes und herrnloses Gesindlein von Bettlern und andern ihres gleichen nicht geduldet […] in specie aber so viel die so genannten Zigeuner betrifft noch in verwichenem Jahr den gemessen Befehl dahin ergehen lassen/ daß selbige/ wo sie in unserm Gebieth angetroffen werden mögten […] fortgetrieben werden sollen'.

57 Faber, *Topographische, politische und historische Beschreibung*, 1789, 2:57; Martin Hess, 'Die Geschichte des Frankfurter Armen-, Waisen- und Arbeitshaus (1679–1810)' (Göthe Universität, 1921), 66.

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beginning of the eighteenth century and Jews in the late seventeenth century). The majority of the ordinances, however, used a more general and all-inclusive terminology, such as *Gesindel* (scum), *Vaganten, Landstreicher* (vagrants) and *Bettler* (beggars). These terms were accompanied by adjectives like *leichtfertig* (frivolous); *liederliche* (loose), *verdächtig* (suspicious), *unzüchtig* (bawdy), *herrenloß* (masterless), *müssiggehend* (idle), *gottlos* (godless), and *verrucht* (wicked). What was criminalised, therefore, was not so much an act, but rather a state of being. During the eighteenth century this state of being became increasingly associated with and equated to criminal behaviour. Beggars were associated with property offences, while vagrants and (in particular) gypsies were accused of even more serious offences such as robbery, arson, and—in times of war—espionage.[58]

On top of the layer of local ordinances issued by Frankfurt's city council itself was a layer of supra-regional ordinances issued by the *Oberrheinischer Kreis*.[59] General ordinances against vagrancy (*Poenalordnungen*) were issued by the *Kreis* amongst others in 1709, 1711, 1722, 1726, 1728, 1748 and 1763.[60] They regulated cooperation between the members of the *Kreis*, and made the prosecution of vagrants a communal effort and obligation, through collective patrols, etc. The ordinances of the *Oberrheinischer Kreis* used a similar stigmatising semantic towards vagrants as Frankfurt's city council employed in their local legislation. However, the regulations were much more far-reaching. In contrast to Frankfurt, where expulsion and forced labour were the only punishments formulated in the ordinances, the *Poenalordnungen* of the *Oberrheinischer Kreis* stipulated branding and even hanging as punishments for incorrigible vagrants.

58 PO 2905 *Demnach die Zigeuner, Bettler und sonst allerhand Vagabunden und herrnloses unnützes Gesind* […] *in hiesiger Gegend und Nachbarschafft Trouppen weiß zusammen rottiret* […] 22.06.1723.

59 The Holy Roman Empire was divided into several Reichskreise, which were administrative bodies, established primarily to organise a common defence structure and collect imperial taxes. Since the seventeenth century, Frankfurt had been the site of assembly for both the Oberrheinischer Kreis, and the Kurrheinischer Kreis. See: Michael Müller, 'Die Reichsstadt Frankfurt am Main als Kur- und Oberrheinische "Kreishauptstadt" im 17. und 18. Jahrhundert', in *Die Reichsstadt Frankfurt als Rechts- und Gerichtslandschaft im Römisch-Deutschen Reich*, ed. Anja Amend et al. (München: Oldenbourg, 2008), 107–37; Michael Müller, *Die Entwicklung des Kurrheinischen Kreises in seiner Verbindung mit dem Oberrheinischen Kreis im 18. Jahrhundert* (Frankfurt am Main: P. Lang, 2008).

60 The *Poenalordnung des Ober- und Kurrheinischen Kreises* of 1748 is published in: B. Althammer and C. Gerstenmayer eds., *Bettler und Vaganten in der Neuzeit* (*1500–1933*). *Eine kommentierte Quellenedition* (Essen 2013) 164–171.

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In general, Frankfurt did not impose such severe punishments, and there are only a handful of references to offenders who were branded according to the *Poenalordnungen* of the *Oberrheinischer Kreis* in the criminal records.[61] Although it was rare for the magistrates in Frankfurt to brand offenders or impose the death penalty based on the ordinances of the *Oberrheinischer Kreis*, the ordinances *did* form the legal basis upon which Frankfurt expelled many offenders. It also led to increased cooperation between Frankfurt and other members of the *Oberrheinischer Kreis* in terms of policing. Because these patrols were mainly concerned with controlling the rural territories, they were of little influence on the policing in the city. Sometimes, however, vagrants arrested in the countryside were transported to Frankfurt for interrogation.[62] Overall, however, Frankfurt does not appear as an important actor in large-scale operations rounding up beggars and vagrants from the territory. Compared to some of the vagrancy removals known particularly from Southern Germany or Austria, the prosecution efforts of Frankfurt and the neighbouring territories appear to be less excessive.[63]

The strong institutional restrictions in early modern Germany did not necessarily lead to less mobility (as has been suggested in the past), but it did create a framework with a clearer legal and semi-legal differentiation between insiders and outsiders.[64] Due to the territorial fragmentation of the Holy Roman Empire and the restrictive settlement laws of urban and territorial authorities, it took very little for people to become 'unsettled' legally, compared with more centralised states like France or England. According to Leo Lucassen, itinerant

61 Criminalia 3783 (1729); Criminalia 3944 (1731); Criminalia 4210 (1734); Criminalia 4945 (1739); Criminalia 5875 (1747); Criminalia 6520 (1751); Criminalia 6353 (1750); Criminalia 6957 (1754).

62 E.g. Criminalia 3695 (1728); Criminalia 3845 (1730.); Criminalia 7429 (1788); Criminalia 9233 (1781). On the influence of controlling vagrancy on the development of early modern 'police forces' and policing practices: policing, see: Leo Lucassen, '"Harmful Tramps": Police Professionalization and Gypsies in Germany, 1700–1945', *Crime, History & Societies* 1, no. 1 (1997): 29–50; Karl Härter, 'Security and Cross-Border Political Crime: The Formation of Transnational Security Regimes in 18th and 19th Century Europe', *Historical Social Research* 38, no. 1 (2013): 96–106; Vincent Milliot, 'Urban Police and the Regulation of Migration in Eighteenth-Century France', in *Gated Communities? Regulating Migration in Early Modern Cities*, ed. Bert De Munck and Anne Winter (Farnham: Ashgate, 2012), 135–57; Clive Emsley, *Crime, Police, and Penal Policy: European Experiences 1750–1940* (Oxford: Oxford University Press, 2007), 63–73.

63 Robert Jütte, 'Bettelschübe in der frühen Neuzeit', in *Ausweisung und Deportation: Formen der Zwangsmigration in der Geschichte*, ed. Andreas Gestrich, Gerhard Hirschfeld, and Holger Sonnabend (Stuttgart: Steiner, 1995), 61–71; Lucassen, 'Eternal Vagrants', 63.

64 Härter, 'Recht und Migration', 66; Eibach, 'Versprochene Gleichheit', 526.

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groups were much more likely to be excluded as a result of these settlement regimes and much more vulnerable to criminalisation than elsewhere.[65]

3 Controlling Male and Female Mobility: Diverging Approaches

A closer look at the settlement regulations and vagrancy laws in early modern Frankfurt, reveals that they produced a gendered labelling of 'dangerous' mobility. Moreover, perceptions about gender influenced the way that authorities regulated migration. As a result of this, regulations to control mobility and supress vagrancy worked out differently for men and women. An analysis of the framing of unwanted mobility in the vagrancy laws, and the regulatory framework concerned with migration shows that men were both at the core of images about dangerous mobility, and that at the same time male (labour) migration was much more institutionalised and considered as the norm.

The language employed by the authorities in vagrancy laws (as well as regulations concerning mobility in general) was often written from the perspective that men were the main target that needed to be addressed. Most ordinances used masculine nouns: *Landstreicher, Bettler, Vaganten,* etc.[66] This does not mean that women were excluded from these regulations. On the contrary, authorities apparently felt the need to specifically mention that women were included as well: both in the local ordinances as well as in the ordinances of the *Oberrheinischer Kreis.* Frankfurt's begging ordinance of 1729 stated that: 'no person, young or old, foreign or local, sick or healthy, regardless of their constitution or sex, should be tempted to beg for alms'.[67] In the *Poenalordnung* of 1748, directed at *'das Land-verderbliche Ziegeuner- Jauner- und anderes Diebs- Raub- Mord- wie auch Herrnlose- liederliche Bettel-Gesindel und Landstreicher'*, it was not until the sixth article of the ordinance that it stated that all regulations should also apply to women.[68] Apparently the terminology and

65 Leo Lucassen, 'Between Hobbes and Locke: Gypsies and the Limits of the Modernization Paradigm', *Social History* 33, no. 4 (2008): 439.

66 The only ordinance specifically including the female noun, *Bettlerinnen*, was from 1708 and renewed in 1714. PO 2734 *Bettler und Vaganten sollen nicht geduldet werden* 02.02.1708.

67 PO 2984 *Gänzliches Verbot des Gassenbettelns* 12.04.1729.

68 *Poenalordnung des Ober- und Kurrheinischen Kreises* 1748, article VI: *'Allermassen nun in vorstehenden §§phis, nach unterscheid derer Fällen, gegen die Ziegeuner, Jauner und Vagabunden, männlichen Geschlechts, das nöthige Verordnet worden; also wird auch ein solches, in Ansehung der Weiber und deren Kinder, ohne unterscheid des Geschlechts, welche das 20te Jahr erfüllet haben, anhero wiederhohlet und erstrecket'.*

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stereotypes employed made it necessary to explicitly state that these regulations also included women.

Such differences may seem superficial, but were in practice influential. According to Karl Härter, authorities employed different labelling tactics for each gender. They were more likely to frame men who were wandering around in pairs or small groups as organised gangs of robbers, or to attribute labels as gypsy or 'beggar Jew' (*Betteljuden*) and prosecuted them criminally in turn. Women, on the other hand, were less likely to be framed as dangerous criminals, both by the authorities as well as the local population, and could count on support and generosity instead. This gender-specific labelling strategy of vagrancy as a sign of organised criminal activity for men vs. survival strategy for women influenced the age structure of vagrants. In Kurmainz hardly any men aged over 50 were arrested for vagrancy. Härter, argued that this was due to the fact that vagrant men were more likely to be sentenced to capital punishment because the authorities had labelled them as dangerous thieves and robbers, whereas women could count on more mercy.[69]

Perhaps even more important with regard to gender differences in the regulation of migration was the fact that all the ordinances associated the nomadic existence of journeymen with begging and vagrancy. Or, perhaps to put it more precisely, the ordinances considered the unregulated moving of young artisans in search of work to be a problem that was closely associated with their attempts to suppress begging. The tradition of journeymen moving as part of their apprenticeship and professional life was not only crucial for urban economies in Central Europe, but also shaped gendered perceptions of mobility. As Merry Wiesner stated, journeymen shared a self-identity and ideal of masculinity which was centred on independence and connected to mobility. For women, however, these qualities were not tolerated at all. A sixteenth-century author wrote that 'one thinks highly of journeymen who have wandered, but absolutely nothing of maids who have done so'.[70]

Over the course of the seventeenth and eighteenth centuries, authorities aimed to regulate journeymen's mobility, as they were increasingly seen as a potential risk for public order. More than any other group of labour migrants, the mobility of journeymen was highly institutionalised and controlled by

69 Härter, 'Prekäre Lebenswelten', 32–36.

70 Merry E. Wiesner-Hanks, 'Wandervogels and Women: Journeymen's Concepts of Masculinity in Early Modern Germany', *Journal of Social History* 24, no. 4 (1991): 777; also: Dürr, 'Die Migration von Mägden'.

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guilds.[71] In Frankfurt, every journeyman entering the city was required to go directly to his *Gesellenherberge* (a lodging house for his own particular guild) and report to the *Stubenvatter*. If there was no designated inn for his particular craft, the journeyman was not allowed to choose his lodging freely, but had to report to the senior master of the guild. This master would supervise his search for a new service and make sure the journeymen would not go around begging. In order to prevent unemployed journeymen from staying too long in town, they were only allowed to stay in the lodgings for a restricted period of time, usually—depending on the guild—to eight days.[72] In addition to carrying passports, which were increasingly required for everyone in the early modern period, journeymen had to carry written attestations from former employers, which served a twofold purpose.[73] First, they functioned as recommendations for future employers, and enabled them to examine the journeymen's past working experiences. Second, and perhaps more importantly, they served to distinguish journeymen on the road from vagrants. Guild masters were ordered not to employ journeymen if they could not present valid attestations.

Domestic service, the main form of female labour migration, is often compared to the practice of tramping. In older historiography, historians considered domestic service as a form of training for future marital life and household tasks. According to this view, a young girl serving in an alien household was no different from a young man learning a trade through being an apprentice working and living in the household of his master.[74] In contrast to the tramping of journeymen, however, contemporaries perceived the mobility of maids as undesirable. Leaving service and moving elsewhere on their own account was a sign of independence that was intolerable in a society with deep-rooted anxieties about women living independently outside patriarchal control. According to Renate Dürr, urban and household authorities treated the migration of domestic servants with much suspicion because their mobility threatened the domestic and social order.[75]

71 Reinhold Reith, 'Circulation of Skilled Labour in Late Medieval and Early Modern Central Europe', in *Guilds, Innovation, and the European Economy, 1400–1800*, ed. S.R. Epstein and Maarten Prak (Cambridge: Cambridge University Press, 2008), 114–42.

72 PO 2410 *Was massen einige handwercks Gesellen im Land herumb vagiren* 30.12.1675; PO 2429 *umb das schändliche Gassenbettlen abzuschaffen* 04.09.1679.

73 Brandt, 'Die Grenzen des Sagbaren und des Machbaren', 255; on the use of passports in the early modern period: Kamp, 'Controlling Strangers'; Boes, 'Unwanted Travellers', 110; Valentin Groebner, *Der Schein der Person: Steckbrief, Ausweis und Kontrolle im Europa des Mittelalters* (München: C.H. Beck, 2004); Cornelia Bohn, *Inklusion, Exklusion und die Person* (Konstanz: UVK Universitätsverlag Konstanz, 2006), 71–94.

74 Dürr, 'Die Migration von Mägden', 117–18.

75 Ibid., 120.

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In contrast to the migration of journeymen, maids received far less assistance in their quest for work and the control over their mobility was far less institutionalised. In contrast to some other cities, like Nuremberg, Strasbourg or Munich, where the authorities had set up systems of employment agents that were organised similarly to the control of journeymen, the domestic service market in Frankfurt was primarily organised by common law, and not institutionalised at all.[76] Maids looking for domestic service in Frankfurt depended on informal contacts of family, friends or acquaintances.[77] Often they only moved to the city after arrangements for service had already been made, because it was risky to move to the city without having a proper place to stay.

In order to prevent servants from leaving their service prematurely to find a better paid service elsewhere, Frankfurt signed a *Taxordnung*—which fixed the wages for servants and day labourers—together with the neighbouring territories Kurmainz, Kurpfalz, Hessen-Darmstadt, Nassau-Idstein, Isenburg, the county of Hanau and the Imperial City Worms in 1654.[78] Apart from regulating the wages, this ordinance also implemented measures to regulate the movement of labourers, including domestic servants. Masters were required to give their servants a document when they left their service temporarily or permanently, much like the recommendation letters used by journeymen. It was supposed to serve as proof of the servant's good conduct during service and the fact that the servant had left the service legitimately.[79] In contrast to journeymen, however, the use of reference letters was never implemented for domestic servants.

In the eighteenth century, the city council considered the implementation of a servant order (*Gesindeordnung*) similar to those that were in use in other cities. They argued that such an ordinance was necessary because the city was swamped with masterless people (*'eine menge schuzlose Leute'*) who pretended to be servants looking for a position, thereby circumventing the restrictions on foreigners. In order to prevent genuine domestic servants being evicted from the city together 'with the idle scum', the authorities considered a better regulated labour market for domestic servants to be indispensable.[80]

76 Kaltwasser, *Häusliches Gesinde*, 21–22; Koch, 'Zum Gesindewesen in Frankfurt'.

77 E.g.: Criminalia 5940 (1747) folio 3; Criminalia 6848 (1753) folio 5–6; Criminalia 8765 (1774) folio 6–9.

78 Kaltwasser, *Häusliches Gesinde*, 22.

79 PO 2265 *Mayntzischer Receß* [...] *allgemeiner Taxordnung* 01.05.1654.

80 Criminalia 12880 (1756) folio 11–13: *Des Schazungs Consulenten General-Plan zu Eintreibung der Schatzungsrestanten.,* 17.02.1756.

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The city council decided to order the *Konsistorium* to draft a *Gesindeordnung*. Overseeing the domestic service market, which was ultimately a predominantly female labour market, was apparently most fitting for an office that was in charge of policing morals. Throughout early modern Europe, there are many examples that show how urban authorities considered the regulation of female migration primarily as a matter of maintaining morality.[81] As Leslie Page Moch argued previously, this was partially related to women's reproductive capacities and the fear of becoming responsible for illegitimate children of migrant women.[82] Lynn Hollen Lees also considered that the reproductive functions of women were one of the decisive factors that the overseers of the poor took into consideration in the prosecution of female vagrants in early modern London.[83] As we have seen, financial considerations were also at the heart of the prosecution of illegitimacy in Frankfurt too. In 1755 the city council issued a decree that ordered that all single foreign mothers should be expelled.[84] And as we will see later on in this chapter, women migrating independently were likely to be associated with lewdness and immorality.

The gendered perceptions of authorities with regard to what they considered legitimate reasons for moving are also reflected in the provision of handing out casual assistance to travellers by the city's poorhouse. In an attempt to control begging and vagrancy, they offered travellers an opportunity for casual assistance (*ein Zehrpfennig*) in order to continue their journey.[85] The main aim of the city council for handing out such casual assistance, was to prevent impoverished travellers, subsistence migrants etc. from staying in town and relying on begging for their daily bread. Before the establishment of the poorhouse, foreigners could find assistance from the city council or the communal poor chest (*Almosenkasten*).[86] The poorhouse published annual reports, listing

81 Marlou. Schrover et al., 'Introduction: Illegal Migration and Gender in a Global and Historical Perspective', in *Illegal Migration and Gender in a Global and Historical Perspective*, ed. Marlou. Schrover et al. (Amsterdam: Amsterdam University Press, 2008), 13.

82 Moch, *Moving Europeans*, 2003, 15.

83 Lees, *The Solidarities of Strangers*, 58–59.

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

85 Similar examples also existed in other early modern cities: G.P.M. Pot, 'Het beleid ten aanzien van bedelaars, passanten en immigranten te Leiden, 1700–1795', *Leids Jaarboekje*, 1987, 89–92; Jeremy Boulton, 'Double Deterrence: Settlement and Practice in London's West End, 1725–1824', in *Migration, Settlement and Belonging in Europe, 1500–1930s: Comparative Perspectives*, ed. Steven King and Anne Winter (New York: Berghahn, 2013), 68; Kuijpers, *Migrantenstad*, 297–98.

86 Jütte, *Obrigkeitliche Armenfürsorge*, 144–145.

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the number of recipients of care, including the number of people that received a *Zehrpfennig*.[87]

Figure 10 shows the number of recipients since the establishment of the poorhouse. In 1680, its first full year in existence, the poorhouse had already provided 6,420 transients with a *Zehrpfennig*. By that time the city had a population of around 24,000 inhabitants, which means that a number of people as large as a quarter of the total urban population were granted a form of casual relief in order to make sure that they would continue their journey and not stay within the city. The number of recipients was at its highest in the 1710s, as a result of the increasing unsettledness due to the War of the Spanish Succession. In 1715, no fewer than 31,978 transients received assistance. The number of people granted a *viatico* that year even exceeded the total population of the city, which is estimated at about 26,400 inhabitants at that time.[88] By 1730 the total number of transients who had received assistance since the establishment of the poorhouse was 777,196.[89] These numbers clearly demonstrate the high level of mobility experienced by a city like Frankfurt.

After the 1730s, the number of recipients granted travel money decreased remarkably. This decline, however, did not affect all groups of recipients. Until the 1730s women and children formed a considerable share of all recipients, with women accounting for approximately one-third of all recipients (figure 11). Unfortunately, we know very little about the background of the many women and children that were assisted in this way by the city council, but many of them were connected to the military as wives and children of soldiers.[90] After the 1730s, however, assistance became almost exclusively reserved for wandering journeymen. So how come the authorities became increasingly restrictive regarding those to whom they granted assistance?

Martin Hess argued in his dissertation from 1921 that the data reflected a decline of people on the move and in need of assistance. The developing proto-industry and new manufactories provided new opportunities for women. Similarly, the rise of standing armies would have provided new employment opportunities for men without any trained skills.[91] Such an explanation,

87 The reports themselves were lost in WWII, but thanks to the numbers provided in the dissertation of Martin Hess on the poorhouse from 1921, it is still possible to gain an overview. Cross-references to various contemporary sources that also mentioned the number of *Passanten* for selected years made it possible to prove the reliability of the data provided by Hess.

88 Roth, *Stadt und Bürgertum*, 47; Mauersberg, *Wirtschafts- und Sozialgeschichte*, 54.

89 Hess, 'Frankfurter Armen-, Waisen- und Arbeitshaus', supplement 2 and 3.

90 Ibid., 93–94.

91 Ibid., 93.

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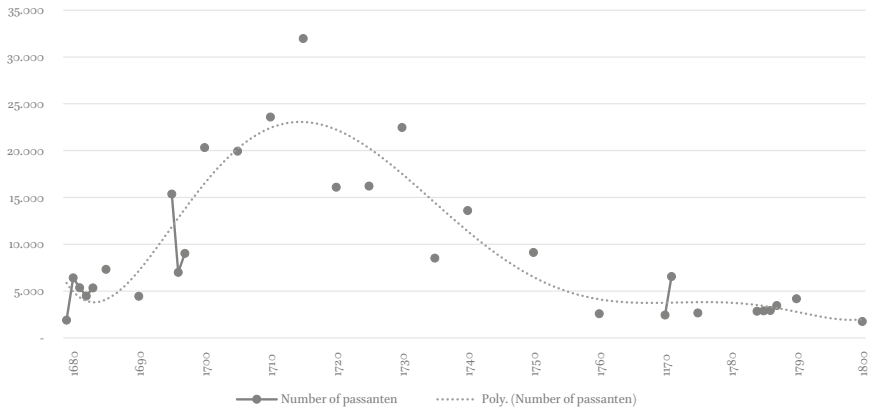

FIGURE 10 Number of passanten granted travel assistance (Zehrgeld), 1679–1806
SOURCES: HAASE, *ARMENHAUSORDNUNG* (1684); HESS, *FRANKFURTER ARMEN-, WAISEN-UND ARBEITSHAUS,* SUPPLEMENT 2 AND 3; P.J. SPENER, *BERLINER PREDIGTEN 1693–1701*. EDITED BY E. BEYREUTHER AND D. BLAUFUSS (HILDESHEIM 2015) 584; *MONATLICHE UNTERREDUNGEN EINIGER GUTEN FREUNDE VON ALLERHAND BÜCHERN UND ANDERN ANNEHMLICHEN GESCHICHTEN. ALLEN LIEBHABERN DER CURIOSTIÄTEN ZUR ERGETZLIGKEIT UND NACHSINNEN* (1689) 251; H.G. HÜSGEN, *GETREUER WEGWEISER VON FRANKFURT AM MAIN UND DESSEN GEBIETE FÜR EINHEIMISCHE UND FREMDE* (FRANKFURT AM MAIN 1802) 25; MORITZ, *VERSUCH EINER EINLEITUNG* II, 217; P. W. GERCKEN, *REISEN DURCH SCHWABEN, BAIERN, DIE ANGRÄNZEDE SCHWEIZ, FRANKEN, DIE RHEINISCHE PROVINZEN, UND AN DER MOSEL U.IN DEN JAHREN 1779–1787, NEBST NACHRICHTEN VON BIBLIOTHEKEN, HANDSCHRIFTEN, ARCHIVEN, RÖM. ALTERTHÜMERN, POLIT. VERFASSUNG, LANDWIRTHSCHAFT UND LANDESPRODUCTEN, FABRIKEN, MANUFACTUREN, SITTEN U.* (WORMS 1788) 51; FABER, *TOPOGRAPHISCHE BESCHREIBUNG* I, 146; F. SCHÄFER, *GESCHICHTE DES FRANKFURTER WAISENHAUSES VON SEINER ENTSTEHUNG IM JAHRE 1679 BIS ZUM BEZUG DES NEUEN WAISENHAUSES IM JAHRE 1829* (FRANKFURT AM MAIN 1842) 92

however, seems unlikely. First, we do not know whether or not the men and women granted assistance actually came from regions of developing proto-industry, and could thus benefit from the new employment opportunities. Data provided by Robert Jütte on the origin of recipients in the first half of the sixteenth century reveal that poor transients in Frankfurt came from a wide geographical range: more than half originated from places beyond a radius of 150km. Moreover, the majority were not rural migrants, but originated from other cities. Of course, migration patterns are always subjected to change, and it is not possible to draw conclusions for the eighteenth century based on the data of Jütte. Still, they are a good reminder of the fact that migration flows to

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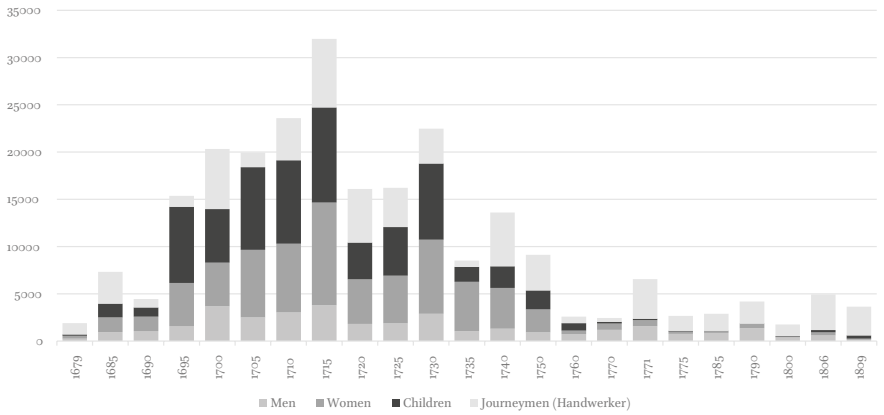

FIGURE 11 Types of passanten granted travel assistance (Zehrgeld), 1679–1806
SOURCE: HESS, *FRANKFURTER ARMEN-, WAISEN- UND ARBEITSHAUS*, SUPPLEMENT 3

large cities like Frankfurt were not only comprised of migrants from the surrounding countryside, but also from other cities.

Second, the relationship between declining mobility and expanding female labour opportunities due to proto-industrialisation are not straightforward. In some regions there are indeed indications that cities experienced less inward migration as rural industries developed.[92] Oher regions, for example south-west Germany, saw a more complex change in migration flows to the city, and actually witnessed a ruralisation of migration flows in the sense that more people from the countryside actually moved to the city than before.[93]

Third, there are no indications that the number of mobile poor decreased over the eighteenth century. Rather, as historians have established over the past decades, there was a growth in the 'army' of unsettled mobile poor during this period, to which unskilled labourers and impoverished journeymen contributed increasingly. Estimates about the share of mobile people among the population during this period varied from 2 to 10 percent or even 10 to 20 percent, although the latter is often dismissed as too high.[94] Moreover, women did not at all disappear from the streets, as their share among those arrested for vagrancy

92 Moch, *Moving Europeans*, 2003, 53.
93 MacIntosh, *Urban Decline*, 53.
94 Küther, *Menschen auf der Straße*, 20–28; Rheinheimer, *Arme, Bettler und Vaganten*, 16; Ammerer, *Heimat Strasse*, 15–21; Härter, *Policey und Strafjustiz*, 988–89.

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demonstrates: recent studies on German speaking territories have calculated that women accounted for 35 to 40 percent of prosecuted vagrants.[95]

Thus, the disappearing of people on the move cannot serve as a sufficient explanation as to why authorities no longer granted assistance to people other than journeymen. Rather, the developments should be considered as a reflection of changing attitudes on the part of the authorities. The mobility of women associated with the army, for example, became less tolerated throughout the period. The rise of standing armies during the early modern period had a massive impact on women with connections to the military. Traditionally, women had played an important role in the provisioning and care of armies, as sutlers, laundresses and seamstresses. As the early modern armies became more professionalised, these roles were taken over by the state, who increasingly restricted the role of women in the armies.[96] Soldier's wives and daughters following their husbands and fathers now faced the risk of being labelled as vagrants or prostitutes (see below). In addition to this, access to marriage for soldiers was restricted, as a result of which many women who had children with soldiers found themselves in the precarious position of having to take care of illegitimate children.[97] Frankfurt was known as a (European) recruitment centre, and attracted many men looking for employment with female family members and lovers following their tracks.[98]

The deeply rooted tradition of tramping, on the other hand, not only continued to be tolerated, but was also supported by the government. The practice

95 Beate Althammer, 'Roaming Men, Sedentary Women? The Gendering of Vagrancy Offenses in Nineteenth-Century Europe', *Journal of Social History* 51, no. 4 (2018): 741.

96 Beate Engelen, *Soldatenfrauen in Preussen: eine Strukturanalyse der Garnisongsgesellschaft im späten 17. und im 18. Jahrhundert und im 18. Jahrhundert* (Münster: LIT, 2005); Karen Hagemann and Ralf Pröve, *Landsknechte, Soldatenfrauen und Nationalkrieger: Militär, Krieg und Geschlechterordnung im historischen Wandel* (Frankfurt am Main: Campus, 1998); Jennine Hurl-Eamon, 'The Fiction of Female Dependence and the Makeshift Economy of Soldiers, Sailors, and Their Wives in Eighteenth-Century London', *Labor History* 49, no. 4 (2008): 481–501; Thomas Cardoza, ' "Habits Appropriate to Her Sex": The Female Military Experience in France during the Age of Revolution', in *Gender, War and Politics: Transatlantic Perspectives, 1775–1830*, ed. Karen Hagemann, Gisela Mettele, and Jane Rendall (Basingstoke: Palgrave Macmillan, 2010), 188–205.

97 PO 2978 *Weibspersonen soll vorzüglich mit Soldaten unzüchtiger Umgang verboten seyn* 01.02.1729. E.g.: Criminalia 2482 (1706); Criminalia 6131 (1748); Criminalia 6632 (1752); Criminalia 6986 (1753–54); Criminalia 7744 (1761); Criminalia 10036 (1791).

98 Kamp, 'Between Agency and Force'. For examples of soldier's wives, widows and daughters coming to Frankfurt following their husbands and fathers: Criminalia 2002 (1694); Criminalia 3290 (1723–1726); Criminalia 4227 (1734); Criminalia 4945 (1736–42); Criminalia 6094 (1748–1749); Criminalia 8504 (1770); Criminalia 8790 (1774–1776); Criminalia 10086 (1791); Criminalia 10392 (1795).

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of providing assistance to journeymen on the move existed throughout the Holy Roman Empire.[99] It was not until well into the late nineteenth century that the formal and informal infrastructures aiding this type of mobility were dismantled by the authorities.[100] The gendered perceptions of authorities created a complex paradox. Male mobility outside the parameters of legitimate labour migration was labelled as a massive danger to public order and increasingly associated with organised criminality. At the same time, the regulation of male labour migration was highly institutionalised and designed to facilitate (controlled) mobility, while women's mobility was perceived as a threat to the existing domestic and social order associated with immorality.

The decline in the number of people granted assistance, in particular people moving outside the framework of legitimate tramping traditions, coincided with the increasing criminalisation of mobility and ordinances issued both by Frankfurt's local urban authorities and the *Oberrheinischer Kreis* in the period between 1720 and 1760. As we will see below, this period also witnessed an increase in the prosecution of mobility offences by the criminal investigation office. Thus, the city council appears to have changed their tactics regarding the mobile poor. Rather than removing them from the city by sending them on their way with small sums of money, authorities increasingly chose a more repressive approach as the following paragraphs demonstrate.

4 Mobility as a Crime before the *Verhöramt*

The previous paragraphs have demonstrated how begging and vagrancy were increasingly criminalised through various police ordinances. But how were these ordinances enforced in practice? We know that even though the authorities aimed to strictly control migration into the city, many men and women defied the norms that restricted their mobility. Women *did* move to the city, and often did so independently or together with other women. Thus, they did so

99 Klaus J. Bade, 'Altes Handwerk, Wanderzwang und Gute Policey: Gesellenwanderung zwischen Zunftökonomie und Gewerberefom', *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte* 69, no. 1 (1982): 15; Stephan R. Epstein, 'Labour Mobility, Journeyman Organisations and Markets in Skilled Labour in Europe, 14th-18th Centuries', in *Le Technicien Dans La Cité En Europe Occidentale 1250–1650*, ed. Mathieu Arnoux and Pierre Monnet (Rome: École française de Rome, 2004), 252; Reith, 'Circulation of Skilled Labour', 129–30.

100 Beate Althammer, 'Vagabonds in the German Empire: Mobility, Unemployment and the Transformation of Social Policies (1870–1914)', in *Poverty and Welfare in Modern German History*, ed. Lutz Raphael (New York: Berghahn, 2016), 78–104.

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outside the parameters of what was considered legitimate for women. But to what extent were mobility offences prosecuted and sanctioned criminally, and how was this gendered? The following paragraph investigates the prosecution practices regarding begging and vagrancy in early modern Frankfurt.

For the most part, the prosecution and expulsion of foreign beggars and vagrants in the city was the responsibility of the overseers of the poor and other lower policing officials, such as the *Gemeine Weltliche Richter*. In 1498, the city council employed the first beadles (*Bettelvögte*) in order to police and oust foreign beggars from the city. They remained in charge throughout the early modern period (in the eighteenth century they were called *Armenknechte*). Their number increased from two at the beginning of the early modern period to five by the late seventeenth century and increased to a total of ten in the second half of the eighteenth century. They were increasingly accompanied in their task by soldiers of Frankfurt's army, who patrolled the streets.[101]

Unfortunately, lists of the number of arrested and expelled beggars have not been preserved in the archives or were lost together with the archives of the poorhouse as a result of the bombings in WWII. Nevertheless, scattered references in other sources allow us to gain an idea of the number of people that were involved. In 1786, 470 beggars were granted *Zehrgeld* and expelled from the city. A year later, a total of 677 beggars were arrested, while 551 were given *Zehrgeld*. Another year later, close to a thousand beggars were arrested (970) and 713 were given *Zehrgeld*.[102] During this time, the city had approximately 36,000 inhabitants, which means that the number of arrested/expelled beggars represented between 1.5 and 2.5 percent of the entire population. This corresponds with estimates for other regions during this period.

Despite the increasing intolerance towards unsettled individuals and mobile groups, begging and vagrancy did not belong to the jurisdiction of the high criminal court, but were treated as a petty offence. Neither crime was listed in the regulation of the criminal investigation office of 1788. It merely stated that the *Verhöramt* should monitor all 'suspicious' persons that arrived in the city, in order to prevent crime.[103] Although the regulations did not list begging or vagrancy as separate offences, they considered them a state of being that allowed for a differentiated legal treatment by the investigators of the *Verhöramt*. In cases of petty crimes, the investigators of the *Verhöramt* had the jurisdiction to impose punishments themselves, instead of having to transfer the case to

101 Hess, 'Frankfurter Armen-, Waisen- und Arbeitshaus', 91–92.

102 Ibid., figs 1, 2; Faber, *Topographische, politische und historische Beschreibung*, 1788, 1:146.

103 PO 4346 *Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt* 04.12.1788 § 6.

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the city council. If the suspect was a 'wandering vagrant without a place of residence', they had the authority to impose punishments of up to three months of imprisonment or hard labour, and to expel the offenders from the city and its territory. However, if the suspects were persons of good standing or citizens, the *Verhöramt* could only keep them in custody or impose fines.[104]

Cases concerning begging or vagrancy were usually only investigated by the *Verhöramt* when individuals were also suspected of other criminal offences like theft or fraud, or if the authorities suspected connections with larger groups of criminals. It may come as no surprise, therefore, that numerically speaking, begging, vagrancy, and other related mobility offences were of little importance amongst the prosecuted crime in early modern Frankfurt. Crimes against the authorities and public order, which included vagrancy and other related offences, made up just fewer than 16 percent of all investigated criminality before the *Verhöramt*.[105] Of the 1,898 public order offences, 431 investigations concerned vagrancy and other related offences, which means that they made up slightly less than a quarter (22.7 percent) of the offences in this category.[106] The intensity of prosecution varied considerably throughout the period. Most of the cases are from the period between the 1730s and the 1770s (figure 12). This coincides with a period of intensified prosecution efforts in general: more cases were handled by the *Verhöramt* in this period than at any other time in the early modern period. The same period was characterised by an intensified association of vagrancy and criminality in the police ordinances, both in Frankfurt as well as in the neighbouring territories.[107] Not all mobility crimes, however, were prosecuted with the same intensity at the same time. Collecting alms with false documents, for example, primarily occurred in times of war or other social crises, when it was common to go around and collect alms to rebuild burnt down churches.

When comparing this number to the total number of beggars expelled from the city in a single year, it becomes clear that the *Verhöramt* investigated only a fraction of all sanctioned mobility in Frankfurt during this period. Despite the fact that these cases only represent a minority, they allow us to trace the increased anxieties of the authorities. After all, they reflect when, why and how

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

105 IfSG, Criminalia 1600–1806, see figures 4 and 5 for the number of social order offences by gender.

106 Because some offenders were prosecuted for a combination of offences, the total number is lower than the accumulated number of offenders in table 12.

107 Härter, *Policey und Strafjustiz*, 889–90.

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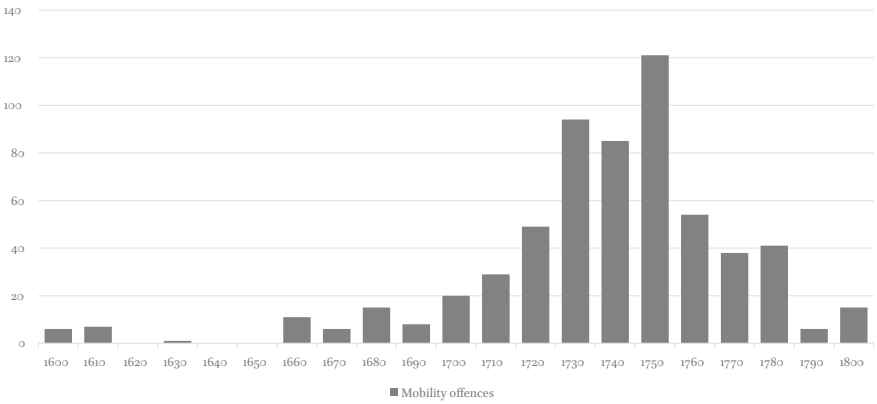

FIGURE 12 Number of prosecuted mobility offences per decade, Frankfurt 1600–1806
SOURCE: IFSG, CRIMINALIA 1600–1806

TABLE 18 Men and women prosecuted for 'mobility offences', Frankfurt 1600–1806

Offence	Men		Women	
Begging/vagrancy	119	75.8%	38	24.2%
'Acting suspiciously'	71	66.4%	36	33.6%
Illegal return/breaking banishment	100	48.8%	105	51.2%
Collecting alms with false documents	78	75.7%	25	24.3%
Gypsies*	12	26.1%	34	73.9%
Total	380	61.5%	238	38.5%

SOURCE: CRIMINALIA, 1600–1806

* Gypsies were not the only ethinc/religious minority that faced criminalisation during the early modern period. In many police ordinances published in the eighteenth century, poor Jews (*Betteljuden*), particularly from eastern Europe, were increasingly associated with criminality. They are not listed separately here, because, unlike with gypsies, being Jewish was not a criminal offence. The cases in this table only relate to cases in which individuals were prosecuted simply for being labelled as gypsies. There are other cases in which individuals who were prosecuted for theft, for example, were labelled as gypsies, but these are not listed here.

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authorities considered a case to be serious enough to be investigated by the criminal investigation office. They are therefore particularly suitable to trace gendered perceptions of unwanted mobility.

Table 18 shows that women had a relatively large share of 38.5 percent among mobility offences, but it varied considerably per type of crime. Close to a quarter of all prosecutions concerning begging, vagrancy and collecting alms with false documents involved women. Moreover one-third of the individuals arrested as 'suspicious foreigners' (*verdächtige Fremde*) were women, and more than half of the violators of banishment. The total number of prosecutions against gypsies was very low, and the cases were concentrated in time between the 1730s and 1760s, eventhough people labelled as gypsies faced intense criminalisation and were prohibited to stay in the entire *Oberrheinischer Kreis*, including Frankfurt. Leo Lucassen has argued that the intensified prosecution of vagrants and gypsies was connected to pressure on military recruitment markets and the need to match the demand for manpower.[108] Cities were considered too risky for men to enter, which is why families often sent the women to the city instead.[109] They were less likely to be arrested, and if they were, they were more likely to receive favourable treatment. The numbers therefore reflect a division of labour which was directly influenced by the security policies of the authorities.[110]

Among all mobility related offences, the share of women was the lowest for begging and vagrancy. Working on the issue of gender and vagrancy in the early modern period, scholars initially argued that women hardly played a role when it comes to vagrancy, arguing that the majority of vagrants were young and male.[111] According to Carsten Küther (and others), women were less likely to have to resort to a life on the streets out of economic need, because they were more likely to be considered as deserving poor, and therefore receive communal support.[112] Robert Jütte argued that as wives, daughters, and domestic servants women were more bound to the home and the settled community than men, both economically as well as legally. He stated that in times of need women therefore experienced more pressure and social control to remain settled.[113]

108 Lucassen, *Zigeuner*, 53; Härter, *Policey und Strafjustiz*, 951.

109 E.g. Criminalia 2299 (1701); Criminalia 3944 (1731); Criminalia 6291 (1750); Criminalia 7409 (1759).

110 Härter, *Policey und Strafjustiz*, 992–97.

111 Von Hippel, *Armut, Unterschichten, Randgruppen*, 90; Finzsch, *Obrigkeit und Unterschichten*, 242; Fritz, *Öffentliche Sicherheit*, 227–29.

112 Küther, *Menschen auf der Straße*, 28.

113 Robert Jütte, 'Dutzbetterinnen und Sündfegerinnen: Kriminelle Bettelpraktiken von Frauen in der Frühen Neuzeit', in *Von Huren und Rabenmüttern: weibliche Kriminalität in der frühen Neuzeit*, ed. Otto Ulbricht (Köln: Böhlau, 1995), 122.

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Both Robert Jütte and Helmut Bräuer considered this 'pressure' on settledness as a manifestation of existing moral norms, which put more pressure on women than it did on men. Illegitimacy was one of the main causes for women to be sentenced to a life on the road, while for men it had less of a discriminatory effect.[114] Otto Ulbricht argued against explanations based on a supposed 'moral pressure on settledness' for women. Sexual norms had only little validity among the lower classes, as the high illegitimacy rates during this period demonstrate. Instead, Ulbricht considered that a better, more general explanation was the traditional orientation of women on home and household, while men were more oriented towards the outside world.[115] As a result of this (supposed) rootedness in the home, women were less familiar with the world of the road and therefore may have encountered more difficulties in making the transition to life on the road in contrast to men who had experienced this as soldiers, journeymen or other labour migration.

More recent studies on early modern Germany, however, have estimated a female share of 35 to 40 percent, and accepted a ratio of 2 to 3.[116] Vagrancy was not a 'male' offence, as has long been assumed. Compared to these figures, the contribution of women to these offences in Frankfurt appears to be quite low. The data for early modern Germany is mostly based on a different type of source: *Gauner- and Diebslisten*. They contained information both of individuals that were actually prosecuted as well as individuals who were identified during the interrogations of others, but who were never formally prosecuted. *Gauner- and Diebslisten* served to facilitate the policing efforts of the authorities and were intended to function as a reference list.[117] Thus, these sources are

114 Ibid., 123; Helmut Bräuer, '"… weillen Sie nit alzeit arbeit haben khan": Über die Bettelweiber von Wien während der frühen Neuzeit', *L'Homme. Europäische Zeitschrift für Feministische Geschichtswissenschaft* 7, no. 1 (1996): 135–43.

115 Ulbricht, 'Bettelei von Frauen', 65–66.

116 Ammerer, *Heimat Strasse*, 131; Ulbricht, 'Bettelei von Frauen', 45; Fritz, *Öffentliche Sicherheit*, 228; Jütte, 'Dutzbetterinnen und Sündfegerinnen', 132–33; Härter, *Policey und Strafjustiz*, 992–93; Küther, *Menschen auf der Straße*, 29; Wolfgang Scheffknecht, '"Arme Weiber": Bemerkungen zur Rolle der Frau in den Unterschichten und vagierenden Gruppen der frühneuzeitlichen Gesellschaft', in *Hexe oder Hausfrau: das Bild der Frau in der Geschichte Vorarlbergs*, ed. Alois Niederstätter and Wolfgang Scheffknecht (Sigmaringendorf: Glock und Lutz, 1991), 94; Ernst Schubert, *Arme Leute, Bettler und Gauner im Franken des 18. Jahrhunderts* (Neustadt an der Aisch: Degener, 1983), 276; Andreas Blauert, 'Diebes- und Räuberbanden in Schwaben und in der Schweiz, am Bodensee und Rhein im 18. Jahrhundert', in *Schurke oder Held? Räuber und Räuberbanden*, ed. Harald Siebenmorgen (Sigmaringen: Thorbecke, 1995), 60.

117 Andreas Blauert and Eva Wiebel, *Gauner- und Diebslisten: Registrieren, Identifizieren und Fahnden im 18. Jahrhundert* (Frankfurt am Main: Klostermann, 2001), 12–31.

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significantly different from the investigation records of Frankfurt. In the latter case, property offenders who were labelled as vagrants are not considered in the calculation, while in the case of *Gauner- and Diebslisten* they were. In the eighteenth century, roughly 20 percent of the property offenders in Frankfurt were identified as beggars or vagrants.[118]

More importantly, however, the investigation office only examined a fraction of all mobility offences. It is likely that the share of women was higher before lower policing institutions because the authorities were less inclined to transfer their case to the *Verhöramt*. Women arrested as vagrants were considered as less of a threat to public security than men. These considerations are clearly demonstrated in a case from 1718. A group of vagrants, consisting of two families, including seven women, four men and seven children, was arrested just outside the city at the *Galluswarte* by a general patrol. The case was transferred to the *Verhöramt* because the authorities suspected that some of those arrested, in particular the men, might be connected to a wanted gang of robbers. But not all those arrested were investigated by the *Verhöramt*. Three of the seven women were released together with their children, given a warning not to enter the city's territory again and escorted across the border. The other four women and their husbands, however, were interrogated by the *Verhöramt*. After a first round of interrogations, the investigators proposed to the city council that the women and children should be released because they could no longer be held in custody without further 'inconvenience and costs'.[119] For the men, however, they sent out correspondence to neighbouring cities to see if they could be connected to other street robberies. Apparently, in the eyes of the authorities, the women did not require further investigation, even though they were married to men they suspected of robbery and other criminal activities.[120]

The sources of women arrested for vagrancy or other mobility-related offences demonstrate that a mobile (and unsettled) life was certainly not the prerogative of men. They show that early modern female mobility was much more diverse than the migration of domestic servants, and marriage or family migration.[121] Many women defied gender norms that dictated a settled life at

118 Eibach, *Frankfurter Verhöre*, 56.

119 Criminalia 9233 (1781) Folio 11. Original: '[…]ob es nicht rathsam seijn mögte, die arrestirte Weiber mit ihren Kindern los zu lassen, weil diese ohne vielen Unlust und Kosten nicht wohl länger in Arrest behalten werden könnten'.

120 Also see: Criminalia 1189 (1660). Original: 'die weiber mögten aber ohne fernerer straff erlassen und fortgeschafft werden'.

121 Sylvia Hahn, *Historische Migrationsforschung* (Frankfurt am Main: Campus, 2012), 138–51.

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home. The following biographies serve as an example to illustrate the diversity of women arrested for vagrancy. The road did not just belong to young single women: the sources include women of all ages, different marital status, and at all stages of their life. Women moved alone, together with casual acquaintances, and spouses or other family members. The first example is perhaps closest to the image of early modern female migration encountered in the literature: that of young single migrant women responding to the demand for domestic servants in the city.[122] In 1765, nineteen-year-old Margaretha Neubertin from Würzburg was arrested together with a woman called Anna Maria Seibelin, for sleeping in one of the garden sheds outside the city, on Frankfurt's rural territory close to Bockenheim. They had previously worked together as servants, taking care of the animals of the innkeeper of *In dem Grünen Baum*. After he had dismissed them because there was no further work for them, the two women agreed to spend the night in the garden shed, as the city gates were closed and they would not be able to enter the city without paying a fee. According to Margaretha's testimony, she had previously worked in Mainz for six months on a farm, helping out during the harvest season, after which she had come to the Frankfurt area in the hope of finding service. She knew the city well, as she had already served as a domestic servant for a year with a baker in Sachsenhausen.[123] Anna Maria's mobility patterns were largely concentrated within the same region and determined by the availability of labour. She depended on knowledge and acquaintances she had gathered along the way, and her mobile life was 'interrupted' by longer periods of settledness.

More examples of female mobility are revealed in a case from 1764, when several people were arrested as 'suspicious foreign vagrants' during the *Herbstmesse*, and interrogated by the investigation office.[124] Among the seventeen suspects were four women, each with a different profile and mobility background. Magdalena Müllerin, aged 26, was born in Berlin and according to her statements she earned a living sewing and knitting. She did not have a fixed residence, and had previously stayed in the region around Cologne. Magdalena also had an illegitimate child of a year and a half, whose father was a French soldier.[125] The second woman that was interrogated was Maria Kleeberin,

122 Moch, *Moving Europeans*, 2003, 15; Kok, 'The Family Factor', 225.

123 Criminalia 8144 (1765).

124 IfSG, Repertorium 251, 304; Criminalia 8055 (1764). Original: 'Protocllum Examinis die während der Herbstmesse als verdächtig in arrest gebrachte fremde Landstreicher und dergleichen Weibspersohnen'.

125 Criminalia 8055 (1764). Original: 'Sie habe keine sichere Wohnung, ihr Auffenthalt seije bisher in der gegend von Cölln gewesen […] Sie habe ein Kind von einem frantz. Soldaten welches 1 ½ Jahr alt seije'.

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aged 24 and born in Maastricht (Netherlands). She had been married to a *Nassauischer* soldier, who had passed away. Maria stated that she made a living knitting and washing and that she had come to the city to visit her sister.[126] The third woman, Dorothea Louisa, née Wieherkin, from Lubin (Poland), was arrested together with her husband Gottfried Henrich Castrop, 54. According to their statements Gottfried and Dorothea were settled in Emden, where they ran a business. The couple were able to show a passport from Emden, and declared that they had come to the city to purchase wine for their business.[127] Finally, the last woman was Anna Sophia, 28, a baptised Jewess from Mainz, who was arrested together with her husband Mattheus Schwaller from Trier, aged 36. The couple earned a living as pedlars, as a result of which they were often on the road, although they were domiciled in Ammerbach. They, too, had come to Frankfurt to purchase merchandise. In the end, all four women (and their husbands) were ordered to leave the city, and, with the exception of Anna Sophia and her husband, they were escorted out of the city gates by the city's militia, and warned not to return.

These examples are not exhaustive of the diversity of female mobility demonstrated in the sources. What they show is that women were on the move as singles, as breadwinners for their family, or together with their husbands as a working couple. A considerable number of females prosecuted as vagrants in Frankfurt were connected to the military.[128] Generally speaking, female mobility was more regional than that of men, although there are many examples of women travelling considerable distances, defying the formal restrictions imposed on their mobility (map 2).[129] Anna Margretha Metzgerin from Wormbs was arrested four days after her arrival in Frankfurt for begging with false papers. During her interrogation she declared that she had obtained the papers

126 Criminalia 8055 (1764). Original: 'Sie seije an einem Nassauischen Soldat verheurathet gewesen, welcher aber verstorben. Sie nähre sich mit Stricken und Waschen, seije erst in die Stadt gekommen um ihre Schwester aufzusuchen'.

127 Criminalia 8055 (1764). Original: 'seijen hierher gekommen um einen Weinhandel zu etabliren, und damit in Emden Wirthschafft zu treiben […] und wolten so balden sie nun ihren Wein hier eingekaufft sogl. wieder von hier wegreisen'.

128 E.g. Criminalia 2002 (1694); Criminalia 2040 (1695); Criminalia 5279 (1741); Criminalia 7216 (1755); Criminalia 7409 (1759); Criminalia 7691 (1761); Criminalia 7718 (1761); Criminalia 8055 (1764); Criminalia 9900 (1789).

129 On gender differences in geographic radius of migrants: Moch, *Moving Europeans*, 2003, 50; Hahn, *Historische Migrationsforschung*, 120–21; MacIntosh, *Urban Decline*, 171; Sabine Kienitz, *Unterwegs—Frauen zwischen Not und Norm: Lebensweise und Mentalität vagierender Frauen um 1800 in Württemberg* (Tübingen: Tübinger Vereinigung für Volkskunde, 1989), 30; Heide Wunder, *He Is the Sun, She Is the Moon: Women in Early Modern Germany* (Cambridge, MA: Harvard University Press, 1998), 133.

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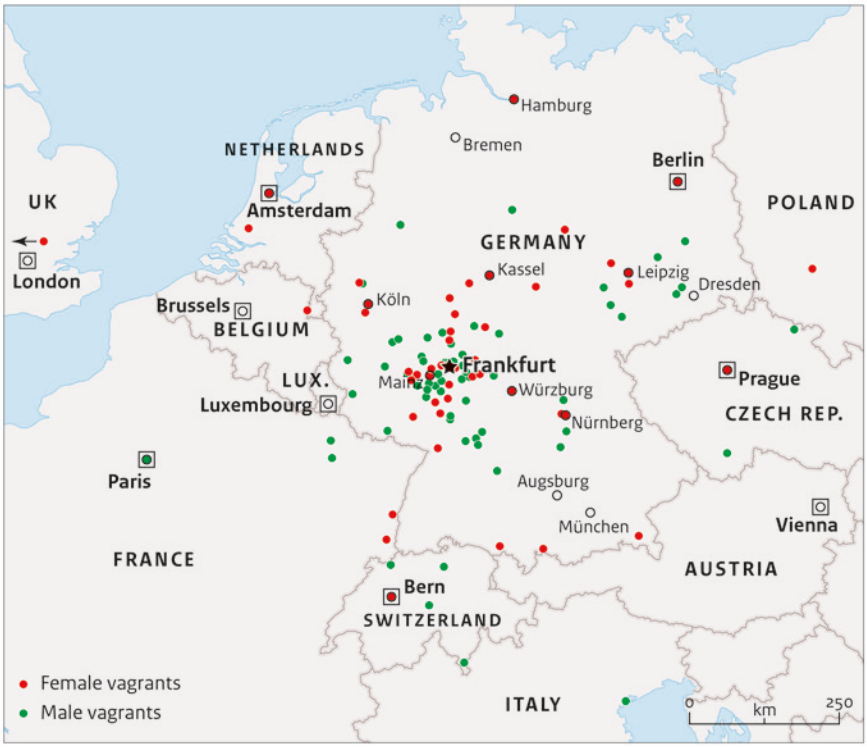

MAP 2 Origin of vagrants arrested, eighteenth century Frankfurt
SOURCES: CRIMINALIA BASED ON REFERENCES IN THIS CHAPTER, UVA-KAARTENMAKERS, CASTRICUM

from a woman called Rothe Liese or *die Maijnzerin* during an earlier stay in Frankfurt and that she had used them to go around begging in Hessen. Moreover, she had previously attempted to travel to Holland with another false document, but could not make it passed Bonn, where her documents were ripped into pieces by the authorities.[130]

Only few of the men and women prosecuted before the *Verhöramt* can be characterised as permanently homeless and truly unsettled. Many found temporary employment, which allowed them to stay in a place for a least a period of time or travelled as itinerant workers and artisans. In many cases, they also remained connected to their home community, to which they occasionally returned. Even families or groups that can be considered as wandering more

130 Criminalia 2080 (1696).

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or less permanently had connections within the settled community.[131] Often their mobility followed established routes driven by seasonal labour opportunities or the prospect of alms, through places where they were sure to find a place to stay.[132] During Jewish holidays, for example, alms were handed out to impoverished Jews in Frankfurt's ghetto, attracting many poor to the city.[133]

Certainly not everyone who could formally be considered as unsettled by the authorities was indeed prosecuted. Although anti-begging laws demanded strict enforcement and heavy punishments, they were not always carried out rigorously. Despite centralised regulations, local authorities tried to differentiate between 'harmless' and 'harmful' wandering. In certain cases, suspects arrested as suspicious foreigners were able to clear their name and continue their journey, sometimes even without having a formal place of residence.[134] The local population continued to assist illegal beggars and there are several examples of altercations between beadles and locals trying to free arrested beggars.[135] Nevertheless, the regulations created a legal framework that increased the precariousness for foreigners either visiting only for a couple of days, or looking for a position with the aim of staying for a longer time.

5 Precarious Independence

The consequences of the authority's attempts to control migration (in particular of the mobile poor and travelling groups) through vagrancy regulations, poor laws and the implementation of security policies went beyond the mere prosecution of vagrancy and begging.[136] Leading a mobile life, not (yet) having a permanent place of residence or being sufficiently incorporated in the urban community could be enough for authorities to consider an individual to be a potential criminal. Contrary to locals, who could not be punished based on a mere suspicion, migrants could be punished with the so-called *Verdachtstrafe*. This was a proceeding in which an offender who could not be found guilty,

131 E.g. Criminalia. 7718 (1761); Criminalia 8055 (1764); Criminalia 8361 (1763).

132 Gerhard Ammerer, 'Die "Betteltour": Aspekte der Zeit- und Raumökonomie nichtsesshafter Armer im 18. Jahrhunder', in *Armut auf dem Lande: Mitteleuropa vom Spätmittelalter bis zur Mitte des 19. Jahrhunderts*, ed. Gerhard Ammerer et al. (Köln: Böhlau, 2010), 37–62.

133 Criminalia 9079 (1778).

134 Härter, *Policey und Strafjustiz*, 1082–83.

135 Eibach, *Frankfurter Verhöre*, 153–54.

136 For a similar process in Cologne: Astrid Küntzel, '"Hermloses Gesindel" und "Unqualificirte": Fremde in der freien Reichsstadt Köln im 18. Jahrhundert', *Geschichte in Köln* 53, no. 1 (2006): 63–74.

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but whom the authorities highly suspected, could be expelled from the city without a formal conviction for a criminal act.[137] This increased the precarious position of migrants in early modern towns.

Historians have often highlighted the marginal and hazardous positions of migrant women in early modern towns, and have cited this as one of the explanations for the relatively high level of female involvement in criminality during this period.[138] In a city with strong formal control measures against outsiders, women had fewer opportunities to settle independently. This had a rather contradictory effect. On the one hand, it meant that more women were incorporated in social support networks. The strong regulations meant that cities like Frankfurt provided less relaxation of paternalistic, patriarchal control than women in more open cities might have enjoyed. At the same time, the position of women outside the controlling structures of the household was even more precarious because they could constantly face prosecution and expulsion from the city.

The story of Christina Drachin is exemplary for the way that early modern policies of exclusion could marginalise migrant women and made them susceptible to control by the authorities. Christina, born in Umstadt (some 37km from Frankfurt) and aged 26 or 27, was accused by a crowd that had gathered around her as she passed the *Römerberg*, of having stolen someone's watch and wallet.[139] In the middle of this consternation, the *Armenknecht* Mevius joined the scene, and arrested and imprisoned Christina in the poorhouse, after which she was brought to the *Verhöramt* for interrogation. Being asked for the reason of her arrest, it becomes clear that Mevius and Christina were no strangers to each other. She stated that she did not know why she had been arrested, but that the *Armenknecht* did not like her.[140]

So how had Christina and Mevius become acquainted with each other? During the interrogations, Christina was asked if she had been arrested before and had been 'escorted through the city's gates?'—to which she replied that

137 Brigitte Thäle, *Die Verdachtsstrafe in der kriminalwissenschaftlichen Literatur des 18. und 19. Jahrhunderts* (Frankfurt am Main: P. Lang, 1993); Härter, 'Prekäre Lebenswelten', 489–90.

138 Beattie, *Policing and Punishment*, 63–73; Schmidt and Van der Heijden, 'Women Alone'; Moch, *Moving Europeans*, 2003, 146; Schwerhoff, 'Kriminalität in der Reichsstadt Köln um 1700', 70–72; Kamp, 'Female Crime', 1 October 2016, 538–39; Rublack, *The Crimes of Women*, 66–69.

139 Criminalia 9196 (1780).

140 Criminalia 9196 (1780). Original: 'Die Ursache ihrer Arretirung wisse sie gar nicht. Der Armenknecht Mevius, der ihr nicht gut seije, habe sie am Freijtag Abend gegen 6 Uhr, als sie über den Römerberg gehen wollen ergriffen […]'.

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this had happened twice before.[141] The first time she was expelled on orders of the *Löbl. Schatzungsamt*—the office in charge of supervising the settlement of strangers. The second time she was arrested because she had returned to the city despite the orders of the *Schatzungsamt*, and lodged at a women's house on the *Breitengasse*. This time Christina was not escorted out of the city immediately but imprisoned in the poorhouse for a short period first. When the interrogators asked her for the reasons for her expulsions, Christina answered tellingly: 'because, as a stranger, she was not tolerated in the city'.[142] The *Examinator* of the *Verhöramt* also wanted to know if she had been investigated by the *Konsistorium* at any point, to which Christina answered in the negative. So, the reason the *Armenknecht* Mevius and Christina were already acquainted with each other was that he had whipped her in the poorhouse during her previous arrests, as well as escorted her through the city gates when she was told to leave town.

At the point when Christina was arrested by Mevius she had already been in the city again for over a year. During this period, she worked as a maid for a baker, who had let her go because he accused her of stealing and lewd behaviour, staying out every night until 11 or 12 and walking the streets. Finally, despite not being convicted for theft or lewdness, Christina was ordered to work in the poorhouse for more than two months, after which she had to walk through the *Wachtparade* for two days before she was expelled again.

The case of Christina is important because it highlights several of the key aspects in understanding the impact of mobility on early modern female crime in Frankfurt. It shows how the settlement regulations and attitudes to the foreign poor made it difficult for women like Christina to settle in Frankfurt and make a living. Several institutions, ranging from the taxation office and the *Konsistorium* to the criminal investigation office were either actually involved, or considered to be responsible. Despite these difficulties, Christina eventually managed to find employment, but due to her previous encounters with the authorities she was closely watched and monitored, which made it more likely for her to be arrested. Foreigners like Christina, who could not legitimate their stay in the city and provide evidence of some level of employment, were not allowed to stay in Frankfurt and could be expelled even without being convicted of committing any crime.

141 Criminalia 9196 (1780). Original: 'Ob sie nicht schon einmal im Arrest gewesen und dem Thor hinaus geführt worden?'.

142 Criminalia 9196 (1780). Original: 'Weil man sie als eine Fremde Person nicht in der Stadt leiden wolle'.

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6 The *Malefizbuch*, an Example of Gendered Framing of Unwanted Mobility

The example of Christina demonstrates how, compared to locals, foreigners were more likely to be subjected to formal social control by the authorities. They were often mistrusted and ran the risk of being associated with criminality. These associations were frequently based on gendered stereotypes, which are reflected in the prosecution practices. One source that allows us to study the way that unwanted foreigners were perceived and framed by the authorities is the so-called *Kleine Malefizbuch*, or as it was written on the title page: a register of suspicious people (*Verzeichnuß verschiedener verdächtig geschienener Personen*). This was a book in which the *Verhöramt* recorded offenders or other suspicious people who had been expelled from the city, mostly after only limited investigation. One of the purposes of this record was, as we can see from various cases, to check whether or not arrested offenders had been denied the city earlier.[143] Unfortunately the *Malefizbuch* has only survived for the years between 1751 and 1771.[144]

Despite its importance in the investigation process, the record was kept irregularly. In 1753, for example, the *Malefizbuch* contained only three entries, while there were 44 in 1755. The record did not only contain cases that were investigated by the *Verhöramt*, but by other institutions as well, in particular the *Konsistorium*. In slightly under two-thirds of the cases in the *Malefizbuch* (63 percent), the offenders can also be traced in the *Criminalia*. There was a total of 379 entries in the record, relating to 350 individuals. This relates to just over 16 percent of all the offenders investigated by the *Verhöramt* during this period, and (although it is not possible to determine the exact share) even a smaller share of all migrants that arrived in Frankfurt at some point during these years. Despite the incompleteness of the register, it offers the possibility of tracing the way authorities in Frankfurt framed 'unwantedness'. After all, they reflect cases in which, for one reason or another, it was considered necessary to make the effort and record the respective person in the registry.

143 E.g.: Criminalia 8574 (1771); Criminalia 8790 (1776); Criminalia 9079 (1778); Criminalia 10032 (1790); Criminalia 10161 (1792).

144 IfSG Frankfurt am Main, Das kleine Malefizbuch, 1751–1771. According to the first page of the *Malefizbuch,* the record was started 'pro Officio Examinatorio' in 1751 and continued until 1765. In the book, however, the entries continued for much longer until 1771. Presumably, more records were kept before the destruction caused by WWII. According to the late nineteenth century index, the city archive held *Malefizbücher* for the years 1751–1808: R. Jung, *Das Frankfurter Stadtarchiv. Seine Bestände undseine Geschichte* (Frankfurt am Main 1896).

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TABLE 19 Types of mobility offences registered in the *Malefizbuch* by gender, 1751–1771

Category	Men		Women	
Theft	85	65%	46	35%
Suspected person (*Verdacht*)	43	70%	18	30%
Lewdness (*Liederlichkeit*)	4	13%	27	87%
Vagrants	21	81%	5	19%
Stay (*Aufenthalt*)	15	60%	10	40%
Illegal return	15	62%	9	38%
Gambling	11	100%	0	0%
Begging	8	80%	2	20%
Violence	4	100%	0	0%
Suspected infanticide	0	0%	4	100%
Gipsy	2	67%	1	33%
Other	5	56%	4	44%
No reason	26	54%	22	46%
Total	234	62%	145	38%

SOURCE: IFSG, DAS KLEINE MALEFIZBUCH 1751–1771

As we can see in table 19, the majority of 'offenders' registered in the *Malefizbuch* had been suspected of committing theft. Often, however, there was no concrete evidence that the suspect had actually committed such an offence. Rather the fact that they were suspicious, known to the authorities from previous encounters, or simply fit the profile of criminal poor, had been enough to arrest them and oust them from the city. Others were arrested simply for being 'suspicious' (*als verdächtig eingezogen*). Distinctions between the various categories are not straightforward and perhaps even create a reality that in the eyes of the investigators of the *Verhöramt* did not exist as such. There is for example no clear indication why some were characterised as 'suspicious', others were characterised as vagrants, others as disorderly (*Liederlich*), or why in some cases the registers specifically referred to a person's stay in the city as suspicious, and not the person itself.

Women made up 38 percent of the offenders registered in the *Malefizbuch*, which is substantial considering that their share among all registered offences was much lower. The *Malefizbuch* highlights some important gender

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differences when it comes to the framing and policing of what was perceived as unwanted behaviour of strangers, which is also supported by a more qualitative assessment of the *Criminalia* and other sources. In both cases, unwanted migrants were primarily associated with property offences. This corresponds with other studies in early modern Germany, which have demonstrated that vagabonds and the mobile poor were often associated with theft, and other related property offences.[145] Similar to what we have seen in the paragraph above, female foreigners were less likely than men to be labelled as beggars or vagrants by Frankfurt's authorities. While women comprised 38 percent of the offenders registered in the *Malefizbuch*, their share among those specifically referred to as beggars or vagrants was much lower: 20 percent and 19 percent respectively. Instead, female mobility, it appears, was considered more of a moral problem. Among those arrested for lewdness (*Liederlichkeit*), women made up 87 percent of the registered persons.

In the *Deutsche Wörterbuch* by the brothers Grimm, *Liederlichkeit* is defined as carelessness with regard to the future, levity (*Leichtsinn*); neglect of duties (*Nachlässigkeit*); living disorderly (*ausschweifende art, unordentliches leben*).[146] The *Deutsches Rechtswörterbuch* defines it in general as a behaviour that does not correspond to the societal norms (*ein Verhalten, das den gesellschaftl. Erwartungen nicht entspricht*) and more specifically as squandering, extravagance and illicit sexual behaviour (*Verschwendung, Unzucht*).[147] In short, *liederlichkeit* referred to all kinds of unacceptable behaviour. Ordinances regulating the mobility of marginal groups framed them as all kinds of loose scum (*allerhandt liederliches Gesindel*).

If we look at the use of the term in the criminal records, it becomes clear that it much more gendered than one would assume based on entries in the dictionary. In the *Malefizbuch,* only four men were described with the adjective *Liederlich*, and mostly this was accompanied with another term. The notorious Blumenstock and Johann Jacob Dircks were both arrested in 1771 as 'vagrants and highly suspicious and wanton fellows'('*vagabunden und höchst verdächtige und liederliche Pursche*'), expelled from the city and handed over to recruiters for the imperial army.[148] A year before, Nicolaus Keßler was arrested

145 Härter, *Policey und Strafjustiz*, 1091–1100.

146 *Deutsches Wörterbuch von Jacob Grimm und Wilhelm Grimm* http://woerterbuchnetz.de/DWB/?sigle=DWB&mode=Vernetzung&hitlist=&patternlist=&lemid=GL05934#XGL05934–Liederlichkeit.

147 DRW—Online Edition: http://drw-www.adw.uni-heidelberg.de/drw-cgi/zeige?index=lemmata&term=liederlichkeit&firstterm=liederlich.

148 Malefizbuch, 180 (20.06.1771); Criminalia 8545 (1771).

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as a 'debauched fellow and a deceitful player'('*ein liederlicher pursch und betrüglicher Spieler*').[149] And finally, in 1756 Christoph Rheinwaldt was released after four months of hard labour in the trenches for his lewd lifestyle ('*liederlichen lebensart*').[150] In none of these cases did the term have the connotation of illicit sexual behaviour, but rather referred to disorderly and illicit conduct in general. A similar picture emerges from the criminal investigation records.[151]

The opposite, however, was true for women. Whenever authorities referred to arrested women as *liederliche Dirnen, Weibspersonen or Weibsmenschen*, they suspected them of immoral behaviour, extramarital sex and prostitution. Mobile women in particular ran the risk of being branded and prosecuted as such. These associations were based on more general attitudes towards women, which feared (and criminalised) women living independently outside the male patriarchal control.[152] Ulinka Rublack has demonstrated how in seventeenth-century Württemberg independent women (*Eigenbrödlerinnen*) were connected with lewdness and illegitimacy.[153] The mobility of domestic servants was contested in moral tracts, because it was considered as a sign of women seeking independence and placing them outside the sphere of male control.[154] In Frankfurt, too, control over the mobility of domestic servants was closely associated with moral issues and financial concerns, and the *Konsistorium* considered the institution to be primarily responsible for this. The connection of female mobility and immorality is also demonstrated in the way authorities described non-martial relationships among vagrants. As Gerhard Ammerer demonstrated for eighteenth-century Austria, in the case of women even longstanding and stable partnerships were described in pejorative terms, associating them with lewdness, promiscuity and immorality. The same relationships were described much more neutrally in the case of men. There authorities spoke of 'marriage-like' relationships.[155]

149 Malefizbuch, 171 (24.07.1770). Also: Criminalia 8579 (1771).

150 Malefizbuch, 50 (19.06.1756).

151 E.g. *Criminalia* 2435 (1705) about Bernd Johannsen, an apprentice from Copenhagen, who had "*ein sehr liederliches leben geführet*"; *Criminalia* 3328 (1723) about Philipp Jacob Guntermann, who was indicted by his father in law for "*einem* […] *liederlichen und verschwendersichen Leben, wie auch s.v. Fressen, Sauffen und Müssiggang*"; *Criminalia* 6193 (1749) about several *Bäckerknechte* who had been sentencend to the poorhouse for '*liederliche Aufführung*' and seducing others to engage in disorderly behaviour.

152 Beattie, *Policing and Punishment*, 64.

153 Rublack, *The Crimes of Women*, 139.

154 Dürr, 'Die Migration von Mägden'.

155 Gerhard Ammerer, 'Von "Gutschen", "fleischlichen Begierden", und "Ehefleppen": Partnerschaft, Sexualität und Nachkommen im Milieu der Landstraße', in *Die Gesellschaft der Nichtsesshaften: Zur Lebenswelt vagierender Schichten vom 16. bis zum*

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In the majority of cases, the women that were investigated and expelled from Frankfurt as suspected prostitutes were never formally convicted of this offence because of a lack of proof. Most of the women shared similar characteristics: they were young and independent, and often had only casual employment histories. In 1750, for example, a patrol arrested six women as *liederliche Dirne* (prostitutes) in the forest close to the city.[156] Their stories are exemplary of many of the women arrested as immoral or suspicious. The first woman who was interrogated was Catharina Franckin, a soldier's daughter of 24 years old. She was born in Rosenau in Austria (some 560 km from Frankfurt) and married to a soldier of the imperial army. Her husband deserted three years previously near Maastricht in the Netherlands, after which she had not seen him anymore. After his desertion Catharina had worked as a servant, but for the past year and a half she had stayed with relatives of her husband, and had just recently travelled to Frankfurt with the aim of finding an opportunity to travel to Ludenberg near Düsseldorf. When she was asked by the interrogators 'if she prostituted herself' ('*ob sie nicht auff hurerij sich zugelegt*'), she vehemently denied this.

The stories of the women who were arrested together with her are remarkably similar. Anna Maria Castin was 20 years old and was born in Hallgarten (approx. 83 km from Frankfurt). She had worked as a domestic servant in Mainz for about a year, but became sick and was forced to leave, after which she had travelled to Frankfurt and on to Hanau where she had worked for a gardener. She had only recently returned to Frankfurt together with one of the other arrested women, Anna Catharina Zahnin, with whom she had planned to go to the Pfalz. There they wanted to earn some money by cutting grain to buy new clothes, so that they could find a new service ('*da sie sich hernach mahl wieder Verdingen wollten*'). The latter originated from Gemünden am Main (85 km east from Frankfurt) and, just like Anna Maria Castin, she had worked in Mainz as a domestic servant and in Hanau with gardeners.

The fourth woman, Albertina Louisa Krebsin, 20, from Darmstadt (approx. 30 km south of Frankfurt) had already been disciplined for loose behaviour on an earlier occasion by the *Konsistorium* in Frankfurt. Next to her name in the criminal investigation record it was written that she had already been sanctioned to the donkey (shaming punishment) in front of the Hauptwache ('*diese bereits vor 4 wochen an den Esel gebunden worden*').[157] According to her

19. Jahrhundert, ed. Gerhard Ammerer and Gerhard Fritz (Affalterbach: Didymos-Verlag, 2013), 112–13.

156 Criminalia 6283 (1750).

157 Criminalia 6283 (1750). ' *An den Esel gebunden werden*' was a shaming punishment, usually meted out to disorderly soldiers or women who were punished for illicit sexual

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statements, she had tried to earn a living by knitting for the people on the Sandhof (a manorial estate just outside of Frankfurt). When she was asked if she lived her life as a prostitute (‘*ob sie nicht dem hurenleben nachgegangen*’) Albertina Louisa replied: ‘not much, just with one soldier—otherwise she’d rather go begging’.

The fifth woman, Anna Margaretha Wissnerin, aged 23, from Neustadt an der Aisch (170 km south-east from Frankfurt) had come to the region because she had a relative living in Offenbach, who had promised her to help her find a position as a servant. Finally, Maria Catharina Lampesin, aged 19 from Gießen (ca. 60 km north of Frankfurt) had previously worked in Frankfurt as a domestic servant for a year, and just returned to the city after a stay with her relatives in Darmstadt, hoping to find a new position. Only two of the six arrested women, Anna Margaretha Wissnerin and Maria Catharina Lampesin, managed to clear their name of any suspicions and were released without further punishment. The remaining four, however, were expelled from the territory and warned not to return again. Unfortunately, the records do not reveal why the authorities considered two of the women harmless and allowed them to stay, while the other four were expelled, particularly as their stories were very similar.

Just like the story above, women that were arrested on suspicion of prostitution were often arrested just outside of the city, close to the ramparts, walking on their own, together with casual acquaintances, or in small groups of women. The women often stated that they were travelling in search of work.[158] Whether or not this was an excuse or the truth, it reflects the double standards in relation to (labour) migration. Whereas the mobility of women was met with moralising disapproval, male labour migration in the form of tramping was institutionalised and assisted.[159] Young women travelling in the company of soldiers, in particular, ran the risk of being labelled as harlots.[160] Local women were certainly not spared from such associations. Unlike migrant women, however, they were not banished in the first instance, but only after repeated arrests.[161] In some cases, foreign girls managed to clear their name and were allowed to continue their stay in the city. However, this was always accompanied

behaviour. Offenders were bound on a wooden donkey for public shaming. In Frankfurt the wooden donkey was situated in front of the Hauptwache.

158 E.g. Criminalia 3698 (1728); Criminalia 4493 (1736); Criminalia 5731 (1744); Criminalia 7559 (1759).

159 Althammer, ‘Roaming Men, Sedentary Women?’; Dürr, ‘Migration der Mägde’.

160 Criminalia 5296 (1741); Criminalia 3698 (1728); Criminalia 5004 (1739); 5563 (1743).

161 Criminalia 5745 (1744); Criminalia 5731 (1744); Criminalia 5882 (1747).

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with the strict condition that they should find an honest household to stay in.[162] Independence, in other words, was not accepted.

Some historians have considered this moral pressure as one of the main causes of female vagrancy in the early modern period.[163] The cases in Frankfurt, however, portray a more complex picture. Although there are many examples of women in the sources who were expelled based on moral grounds, it is not always possible to discern from the criminal records if, in fact, lewdness and extra-marital sexuality were the root causes of female unsettledness. There are examples of women whose 'career' on the road started after they had been prosecuted and expelled for prostitution or illegitimacy, but these were usually not women that had been strongly rooted within a community to begin with.[164] It is very unlikely that illegitimacy alone drove women onto the streets. While Otto Ulbricht certainly had a point by stating that not all female mobility was equated with immorality by the authorities, it was a specific, gendered way of framing unsettledness that reflects the double standards concerning sexuality in this period.[165]

Men wandering around did not risk being prosecuted based on their mobility being associated with improper idependence and promiscuity. However, they faced other stereotypes which endangered their mobility in a different way. One of the most striking features of the men registered in the *Malefizbuch* was the high number of foreign Jewish offenders among them. 43 percent of the men listed as *verdächtig geschienener Personen* were labelled as Jews, compared to only 3 percent of the women. Frankfurt was home to one of the largest Jewish communities in early modern Europe, and as such it formed a major locus of attraction for Jewish migrants. The city was connected to other Jewish communities through family networks, ranging from Prague to Amsterdam.[166] To a certain extent, the lower number of Jewish women is a reflection of the fact that Jewish women faced even stricter patriarchal control than Christian women and were less likely to be on the move independently. Although this is reflected by the fact Jewish women had a much lower share among registered offenders than their Christian counterparts, there are examples of female

162 Criminalia 6501 (1751); Criminalia 5916 (1747).

163 Bräuer, 'Bettelweiber', 140; Jütte, 'Dutzbetterinnen und Sündfegerinnen', 123.

164 E.g. Criminalia 7256 (1756); Criminalia 6398 (1750); Criminalia 3960 (1732); Criminalia 4945 (1739).

165 Ulbricht, 'Bettelei von Frauen', 65.

166 Thorsten Burger, *Frankfurt am Main als jüdisches Migrationsziel zu Beginn der Frühen Neuzeit: rechtliche, wirtschaftliche und soziale Bedingungen für das Leben in der Judengasse* (Wiesbaden: Kommission für die Geschichte der Juden in Hessen, 2013); Karpf, *Eine Stadt und ihre Einwanderer*, 33–41.

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ENGRAVING 3 Punishment of prostitutes in early modern Bern
SOURCE: ENGRAVING PRINTED IN GEORGE ALEXANDER COOKE, *MODERN AND AUTHENTIC SYSTEM OF UNIVERSAL GEOGRAPHY* (LONDON 1802)

Jewish migrants committing offences in Frankfurt.[167] However, they were less affected by stereotypes of male Jewish criminals, which explains their low number among suspects in the Malefizbuch, compared to men.

Framing Jews as dangerous and criminal had a longstanding tradition. Older stereotypes of Jewish criminality were concerned with accusations of ritual murder, poisoning wells, eating Christian babies, or killing entire Christian communities.[168] However, these older stereotypes had mostly ceased to exist by 1700, and they no longer played a role in the framing of Jews as suspicious in the *Malefizbuch* and the *Criminalia* of the eighteenth century.[169] By this time, popular accounts firmly established the association of Jews roaming the

167 Kallenberg, 'Migration und "Intersektionalität" '.
168 Ulbricht, 'Criminality and Punishment of the Jews', 49; Joy Wiltenburg, *Crime and Culture in Early Modern Germany* (Charlottesville, VA: University of Virginia Press, 2013), 100.
169 On Jewish criminality in early modern Frankfurt: Maria R. Boes, 'Jews in the Criminal-Justice System of Early Modern Germany', *Journal of Interdisciplinary History* 30 (2000): 407–35; Kallenberg, *Jüdinnen und Juden*.

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countryside as organised bands of robbers. Earlier studies on banditry implicitly took over some of the eighteenth-century stereotypes regarding Jewish criminality, highlighting their role among criminalised gangs.[170] Most of the Jews registered in the *Malefizbuch* were suspected of theft, either individually or as part of a larger gang. In 1752 Meijer Salomon from Prague was expelled because he was suspected of stealing.[171] In 1762, Callmann Lazarus of Amsterdam experienced a similar fate and was expelled from the city after performing forced labour in the trenches.[172] According to Karl Härter, labelling Jewish strangers as suspicious based on their religious background was strategically used by the authorities so that they could associate them more easily as robbers or members of criminalised gangs, thereby reinforcing the existing stereotypes.[173]

Despite the dominant association of Jews and criminality, local *Stättigkeitsjuden* were not overrepresented among property and violent offenders in the eighteenth century.[174] In fact, in the latter case they were even underrepresented in relation to their overall share among the population, which was probably related to the high degree of autonomy that the Jewish community in Frankfurt had in terms of conflict regulation within their own community. Thus, it was particularly the combination of being male, foreign and Jewish which fostered the anxieties of Frankfurt's authorities.

7 Penal Exclusion and the Importance of Banishment in Early Modern Criminal Justice

The *Criminalia* and the *Malefizbuch* revealed that women featured prominently among those that returned illegally to the city after conviction. Banishment was one of the most commonly executed criminal punishments in the early modern period throughout the Holy Roman Empire.[175] Jason Coy defined penal

170 Egmond, *Underworlds*, 126.
171 Malefizbuch, 17 (20.10.1752).
172 Malefizbuch, 89 (05.04.1762).
173 Härter, 'Prekäre Lebenswelten', 36.
174 Eibach, *Frankfurter Verhöre*, 212, 299.
175 Coy, *Strangers and Misfits*, 52–56; Helga Schnabel-Schüle, 'Die Strafe des Landesverweises in der Frühen Neuzeit', in *Ausweisung und Deporation: Formen der Zwangsmigration in der Geschichte*, ed. Andreas Gestrich, Gerhard Hirschfeld, and Holger Sonnabend (Stuttgart: Steiner, 1995), 73–82; Andreas Blauert, *Das Urfehdewesen im deutschen Südwesten im Spätmittelalter und in der frühen Neuzeit* (Tübingen: Bibliotheca Academica, 2000); Gerd Schwerhoff, 'Vertreibung als Strafe: Der Stadt- und Landesverweis im Ancien Régime', in *Ausweisung-Abschiebung-Vertreibung in Europa, 16.-20. Jahrhundert*, ed. Sylvia Hahn, Andrea Komlosy, and Ilse Reiter (Innsbruck: Studien Verlag, 2006), 48–72.

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migration (mobility as the result of banishment) as an 'engine of mobility' that 'helped shape larger patterns of migration in early modern Germany'.[176] Penal migration certainly only affected a small percentage of people on the move during this period. Nevertheless, it is a clear example of the exclusionary regulations by authorities during the early modern period affecting foreigners in much greater numbers than locals. Studying banishment, therefore offers an opportunity to gain a deeper understanding of the way that the precariousness of mobility in the early modern period could be gendered.

Frankfurt was not the only city in the modern period where one can observe a marked female predominance among offenders who returned illegally after banishment.[177] Scholars have related this to the fact that women were more dependent on settledness and experienced more difficulties faced with a life on the road than men. Women, it is argued, were more compelled to defy their sentence, because they were less likely to make a living being isolated from their social support networks than men.[178] Carl A. Hoffmann, on the other hand, argued quite the contrary. He claimed that women would have found less difficulty making a living than men after expulsion. For them there was always the possibility of entering domestic service. He based his assumption on the fact that there was a strong emphasis on honour in early modern guilds, leaving expelled journeymen excluded from that segment of the labour market.[179] Such a view ignores the fact that there were more casual employment opportunities available for men, even with a tarnished reputation, for example in military service, than there were for women. Thus, the question remains: how can one explain the female predominance among violators of banishment? Were the reasons for men and women to return to the city different? Or are these differences a sign of gendered prosecution policies of the urban authorities?

176 Jason P. Coy, 'Penal Migration in Early Modern Germany', in *Migrations in the German Lands, 1500–2000*, ed. Jason P. Coy, Jared Poley, and Alexander Schunka, 2016, 51–52.

177 Schwerhoff, 'Kriminalität in der Reichsstadt Köln um 1700', 71; Blauert, *Das Urfehdewesen*, 139; Jütte, 'Geschlechtsspezifische Kriminalität', 113; Carl A. Hoffmann, 'Der Stadtverweis als Sanktionsmittel in der Reichsstadt Augsburg zur Beginn der Neuzeit', in *Neue Wege strafrechtsgeschichtlicher Forschung*, ed. Dietmar Willoweit and Hans Schlosser (Köln: Böhlau, 1999), 204, 217; Van der Heijden, *Women and Crime*, 2016, 134–35; Noordam, 'Criminaliteit van vrouwen', 41–42.

178 Jütte, 'Geschlechtsspezifische Kriminalität', 113; Gerhard Ammerer, '"durch Strafen [...] zu neuen Lastern gereizt": Schandstrafe, Brandmarkung und Landesverweisung—Überlegungen zur Korrelation und Kritik von kriminalisierenden Sanktionen und Armutskarrieren im späten 18. Jahrhundert', in *Arme und ihre Lebensperspektiven in der Frühen Neuzeit*, ed. Sebastian Schmidt (Frankfurt am Main: P. Lang, 2008), 328–29.

179 Hoffmann, 'Der Stadtverweis', 217.

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Before we can study the gender dynamics of violations of banishment, it is necessary to study how banishment was implemented by Frankfurt's authorities, and with what aims. In early modern Frankfurt various urban institutions possessed the authority to expel a person beyond the city borders and/or its territory. This stems from the fact that expulsion or banishment was both a petty police penalty as well as a penal sentence. Banishment fulfilled various functions within the early modern legal system: as a punishment on its own; as a possibility to mitigate sentences for crimes where the legal code demanded the death penalty; as *Verdachtsstrafe*; as a policing effort.[180] Only the city council, which functioned as a high court, was authorised to execute banishments as a penal sentence and object offenders to swearing an oath.[181] The *Peinliche Verhöramt*, could, as we have seen, expel people in case of minor offences without the consent of the city council. When it came to the policing of vagrancy and begging, the city's poorhouse and hospitals were authorised to apprehend any wandering and masterless person and escort them out of the city. Frankfurt's soldiers patrolled the city and its territory with the same purpose. Likewise, the institutions in charge of moral policing (the *Sendamt* in the seventeenth century and the *Konsistorium* from 1728 onwards) could expel any loose, idle and disorderly people. This particularly affected women who were suspected of prostitution or illegitimacy.

Providing an overview of how many people were indeed expelled from Frankfurt during the early modern period is not possible, as there are no sources available that allow for a calculation of the number of expelled persons per institution. In the late eighteenth century alone, more than 500 beggars were expelled on a yearly basis.[182] It remains unclear how many people requesting permission to stay in the city at the *Inquisitionsamt* were denied access and ordered to leave the city. An overview of the number of foreign, unmarried, pregnant women expelled by the *Konsistorium* is equally lacking. Fortunately, the criminal records offer the opportunity to study the prevalence of expulsion in early modern Frankfurt at least to a certain extent.

Of all recorded sentences in the *Strafenbuch*, banishment had a share of 68 percent, relating to 891 offenders banished between 1562 and 1696 (figure 13). The records also show that banishment became increasingly important

180 Ibid., 198.

181 Originally the *Urfehde* was an oath taken to forswear any vengeance after imprisonment and was designed to restore peace and re-integrate the offender into the community. Throughout the early modern period, however, it became a synonym for forswearing a city or a territory.

182 Faber, *Topographische, politische und historische Beschreibung*, 1788, 1:146.

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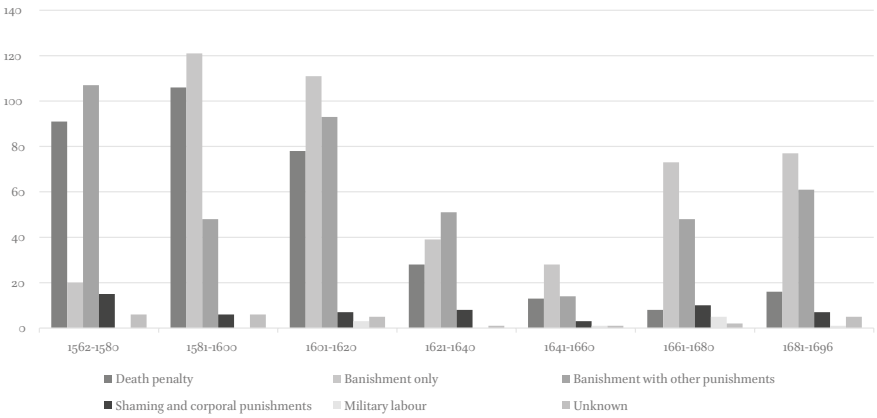

FIGURE 13 Share of banishment on penal punishments, Frankfurt 1562–1696
SOURCE: VAN DÜLMEN, *THEATER DES SCHRECKENS*, 187

throughout the seventeenth century: in the second half of the sixteenth century banishments 'only' made up 53 percent of all punishments recorded, but by the second half of the seventeenth century this had grown to 83 percent. The number of death penalties decreased simultaneously.[183] Banishments were not only exclusionary punishments, but also served a public function for the authorities to demonstrate the boundaries of accepted behaviour.[184] They were therefore often imposed in combination with other shaming rituals or corporal sanctions. The *Strafenbuch* only listed all the penal punishments (*peinliche Strafen*) but did not record cases that were sentenced with petty penalties such as fines, short imprisonment, verbal admonishments or simple expulsions. In the eighteenth century too, Frankfurt's authorities mainly imposed banishment sentences. The *Criminalia* show that banishment still made up a significant proportion of the sentences: in 62 percent of the records with a reference to a final outcome, offenders were expelled from the city.[185] Towards the end of the century 'modern' prison sentences became more common, but

183 Van Dülmen, *Theater des Schreckens*, 187.
184 Coy, *Strangers and Misfits*, 3.
185 These numbers are based on a sample of all investigation records in the *Criminalia* for the years 1700; 1720; 1740; 1760; 1780. Total no. of offenders: 369. Joachim Eibach calculated that in the eighteenth century, banishments accounted for 23.3% of all punishments (Eibach, *Frankfurter Verhöre*, 387). However, in his calculations Eibach did not account for the fact that offenders were often punished with a combination of sentences, for example: banishment and whipping or imprisonment in the poorhouse and chastisement. This accounts for the variation in the calculations of Eibach and myself.

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the authorities still relied heavily on expulsion. It was not uncommon that offenders were sentenced to perform forced labour either in the poorhouse or in the trenches first, and were expelled from the city after the completion of their sentence. Magdalena Fallerin from Elsass, for example, was sentenced to eight days of *Trassklopfen* in the poorhouse before being expelled for life (*für ewig*) for stealing three neckerchiefs from a shop (*Trass* is tuff which was used to make plaster—it was common for offenders to be sentenced to grind these rocks).[186] It is not always specified in the sources, however, whether the expulsion was part of the sentence or if they were ordered to leave town because their right to stay in the city was revoked. Either way, the result was the same.

Although it is always difficult to compare such numbers due to the heterogeneity of the legal systems and the sources, similar trends appear in other cities throughout the Holy Roman Empire. In every city banishment was either the most executed type of punishment or accounted for a significant share. In sixteenth-century Augsburg and Ulm, authorities sentenced offenders to banishment in more than 50 percent of the cases.[187] In Cologne, the city authorities expelled one out of five offenders at the turn from the sixteenth to the seventeenth century, making banishment the majority of all punishments. By the end of the seventeenth century, banishment had become even more significant: 58 percent of the offenders were now punished with exclusion.[188]

Authorities did not apply banishment sentences randomly. In his study of banishment in sixteenth-century Ulm, Jason P. Coy characterised banishment as an instrument to mark the socio-spatial boundaries of the urban community.[189] A central characteristic of banishment sentences throughout the cities of the Holy Roman Empire was that authorities were more likely to sentence foreigners to this type of punishment than citizens or settled resident aliens.[190] Depending on the local jurisdiction, efforts of authorities to purge the city from undesired individuals were particularly directed towards offenders who were prosecuted for property offences, vagrancy, and moral offences. Violent offences, on the other hand, were far less likely to be punished with banishment as authorities preferred to opt for fines and reconciliations. As Joachim Eibach

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Unfortunately, the picture remains incomplete, since there are fewer references to a final outcome in the investigation records concerned with violence or disturbing public order.

186 Criminalia 5122 (1740). Also e.g.: Criminalia 5076 (1740); Criminalia 5079 (1740); Criminalia 7587 (1760); Criminalia 7650 (1760); Criminalia 9169 (1780).

187 Hoffmann, 'Der Stadtverweis', 204–5; Coy, *Strangers and Misfits*, 25–26.

188 Schwerhoff, *Köln im Kreuzverhör*, 148; Schwerhoff, 'Vertreibung als Strafe', 52.

189 Coy, *Strangers and Misfits*, 52–56.

190 Hoffmann, 'Der Stadtverweis', 206–7; Coy, *Strangers and Misfits*, 29–30; Eibach, 'Versprochene Gleichheit', 526.

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pointed out, violence was apparently not considered as a type of behaviour that threatened the urban community in the eyes of the authorities, whereas immoral conduct and property offences were.[191]

Women often featured prominently among those excluded from the city. In the first half of the sixteenth century the share of women amongst banished offenders varied between 67 percent and 29 percent in Augsburg.[192] In Freiburg they accounted for 63 percent of all banishments between 1681 and 1780, and 47.7 percent of the offenders banished for theft between 1629 and 1762.[193] In Cologne the female share of those expelled was 52 percent (1698–1712),[194] and finally in Schwäbisch Hall (1760–69) it was 46 percent.[195] In Frankfurt too, women were represented disproportionately. Looking at the absolute numbers, the share of women amongst banished offenders in Frankfurt in the *Strafenbuch* and *Criminalia* was 36 percent, which was disproportionately high compared to their share among overall offenders.[196] The chance of female offenders being banished was higher than for men: in the *Strafenbuch,* 89 percent of the recorded sentences for women were banishments and in the *Criminalia* this was 68 percent. Men, on the other hand, were 'only' banished in 73 percent (*Strafenbuch*) and 59 percent (*Criminalia*) of the cases.

On the one hand this divergence is the result of the reluctance of authorities to impose the death penalty on women, and the fact that certain types of punishments, such as military service, were not given to female offenders.[197] Regardless of the severity of their recidivism, female thieves were hardly ever put to death. Men faced the risk of being branded as dangerous robbers and professional criminals, and were consequently hanged.[198] More importantly, the divergence is a result of gendered crime patterns. Unlike men, women were hardly ever prosecuted for violent offences, a crime which was often sentenced with monetary fines. But women were often in the majority when it came to the prosecution of moral offences, and they were more likely than men to be expelled for fornication, illegitimacy and other related crimes. The

191 Eibach, *Frankfurter Verhöre*, 388–90.
192 Hoffmann, 'Der Stadtverweis', 204.
193 Wettmann-Jungblut, *Eigentumskriminalität*, 71; Blauert, *Das Urfehdewesen*, 103.
194 Schwerhoff, 'Vertreibung als Strafe', 58.
195 Blauert, *Das Urfehdewesen*, 139.
196 Sample Strafenbuch every first six years of each decade; Sample *Criminalia* 1700; 1720; 1740; 1760; 1780.
197 Richard J. Evans, *Rituals of Retribution: Capital Punishment in Germany, 1600–1987* (Oxford: Oxford University Press, 1996), 29–32, 138–40.
198 An exception was the case of Maria Elisabeth Wagnerin, a notorius thief and part of a band of thieves, who was hanged in 1725. Criminalia 3416 (1724) and 12790–92 (1724).

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preoccupation of authorities with maintaining financial stability and preserving moral order within the urban community helps to explain why in some other Free Imperial cities the share of banished women was also disproportionally high (compared to their general proportion among offenders).

Although banishments are often perceived as relative mild sentences within the early modern criminal justice system, they were in fact quite severe and perceived as such by contemporaries. They excluded offenders from their social networks within the city and branded them dishonourable. In a society where honour and social standing were crucial for building op social networks and economic connections, this was a particularly devastating sentence, and often resulted in a life of unsettledness, precarious and crime. Johann Philipp Orth, a patrician and jurist in eighteenth-century Frankfurt, commentated that for this reason many offenders perceived banishment sentences as much crueller than a capital sentence. He considered banishment as a delayed death penalty, because offenders would inevitably end up before a criminal court again because they had been 'excluded of the community of honest people' and forced to resort to crime to survive.[199] Banishments, therefore, particularly impacted offenders that were settled and established in the community, both legally and socially.[200]

8 The Practice of Returning—a Reflection of Female Settledness?

Despite the efforts of the urban authorities to regulate mobility and exclude unwanted individuals from the community, many people defied their sentence and returned to the city illegally, and women featured prominently amongst those that did. About half of the prosecutions for infraction of banishment

199 Orth, *Nötig und nüzlich erachteter Anmerkungen*, 1751, 3:877. Original: Endlich ist, bei den alhier gemeldeten strafen der stadtverweisung, so auf ewig geschiehet, und der rutenaushauung überhaupt zu bemerken, daß diese und andere dahin gehörigen arten, mer als z.e. das fingerabhauen, augenausstechen und andere verstimlung der glieder, brandmarken und dergleichen von einigen für viel härter, als die lebensstrafen selbsten, geachtet werden, weil sie einen menschen, durch die ihm zugezogene unausleschliche verunerung oder erlosigkeit, in solchen zustand sezen, daß er aus der gemeinschaft aller erlichen leuten auf einmal ausgestosen, unstät und flüchtig sein, auch wann es ihm an rechter erkantnis des guten, nebst anderen hülfesmitteln, felet, notwendig mit anderen seines Gleichen allerhand verzweifelte mittel ergreifen müste, so lange, bis er doch zulezt dem Scharfrichter wieder in die hände fiele, fals er nemlich in andern ländern, dahin man ihn zu deren überlast, durch die verweisung, getrieben, wegen neuer übeltaten ergriefen worden ist.

200 Schwerhoff, 'Vertreibung als Strafe', 62–63.

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concerned women. These numbers of course only represent illegal returns that were investigated by the *Peinliche Verhöramt* and not those that were dealt with by other institutions. We must also consider that there were presumably many cases in which offenders were simply escorted out of the city, again without a proper investigation. And, of course, not every returnee was detected and some managed to return to the city and stay under the radar. There are multiple references in the interrogation records in which offenders recall earlier occasions that they had returned to the city without getting caught.[201]

Furthermore, a sample of half of all banishment prosecutions in the *Criminalia* reveals that if we take recidivism into account, the share of women is even more significant. 31 of the 96 offenders in this sample had ignored their expulsion more than once and of these 31 recidivists only 9 were men and 22 were women. Thus, women were more inclined to defy their sentence repeatedly than men. Data for other regions seem to confirm this image as well.[202] Not only did women return to the city more often, they also appear to have returned to the city sooner. The data in table 20 show that the majority of women were arrested within six months after their banishment, whereas men were more likely to return after a longer period of time. It must be noted that the time of arrest did not necessarily correspond with the time of return to the city. However, there are only a few examples of offenders who returned to the city almost immediately after their expulsion and managed to stay in Frankfurt for a couple of years before being detected.[203] More often, offenders were caught the same day or at least within a week after their return to the city. They were often apprehended by the *Gemeine Weltliche Richter*, beadles, or staff members of the poorhouse. In effect, the very people that knew that they had been expelled because they were part of the judicial system and recognised them from the time they were imprisoned in the poorhouse, or because they had escorted them out of the city personally.[204] The more notorious an offender was, the

201 E.g. Criminalia 4209 (1734); Criminalia 6257 (1750); Criminalia 8504 (1770).

202 Schwerhoff, 'Kriminalität in der Reichsstadt Köln um 1700', 71; Spierenburg, *The Spectacle of Suffering*, 166; Noordam, 'Criminaliteit van vrouwen', 41–42.

203 Criminalia 2656 (1711); Criminalia 8049 (1764).

204 E.g. Criminalia 2158 (1698); Criminalia 2656 (1711); Criminalia 2706 (1712); Criminalia 2709 (1712); Criminalia 2712 (1712); Criminalia 3245 (1722); Criminalia 3316 (1723); Criminalia 3375 (1724); Criminalia 3383 (1724); Criminalia 3385 (1724); Criminalia 3405 (1724); Criminalia 3887 (1731); Criminalia 3956 (1731); Criminalia 4081 (1732); Criminalia 4158 (1733); Criminalia 4209 (1734); Criminalia 5082 (1740); Criminalia 5098 (1740); Criminalia 5153 (1740); Criminalia 5231 (1741); Criminalia 5381 (1742); Criminalia 5456 (1742); Criminalia 5653 (1744); Criminalia 7725 (1761); Criminalia 8578 (1771); Criminalia 8651 (1770); Criminalia 8790 (1774).

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TABLE 20 Time between banishment and arrest for infraction of banishment (in months)

Time between banishment & arrest	Total	Men	Women
< Month	5	2	3
1–6 months	31	11	20
7–12 months	13	6	7
13–24 months	12	4	8
> 24 months	29	15	14

SOURCES: SAMPLE *CRIMINALIA* INFRACTION OF BANISHMENT CASES

more likely it was that he/she would be recognised by either of the disciplinary officials. One of the *Gemeine Weltliche Richter* even stated that he kept a personal administration of all the people he had escorted out of the city.[205]

In the eighteenth century, authorities repeatedly voiced their concern about the increasing numbers of offenders who ignored their banishment. In their minds, this was a problem with female offenders in particular. In 1790, the head of the *Verhöramt* recalled that during the year and a half that he had been in office, hardly a week passed by without a women being arrested for the violation of her banishment (‘*gebrochener landesverweisung*’), while he only remembered one man being arrested for the same offence during this period.[206] The women were framed by the *Kriminalrat* as headstrong and incorrigible, and having repeatedly insulted ‘God and the authorities’ (‘*Gott und die Obrigkeit*’) by ignoring their oath. These concerns were not new in the 1790s, but had been ongoing throughout the period. Between 1724 and 1731 Maria Margaretha Rücklerin from Herborn was arrested for infracting her banishment on three different occasions. In the legal advice, the syndics considered that Maria should be punished severely and made an example because the ‘violations of banishment were out of control’ (‘*die violirung der urphed gantz überhandt nehmen*’), particularly among such loose harlots (‘*dergl. ruchloosen dirnen*’), meaning women who were suspected of being prostitutes, fornicators or unwed mothers.[207]

205 Criminalia 5004 (1739).
206 Criminalia 10032 (1790).
207 Criminalia 3385 (1724).

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The high level of women among violations of banishment could therefore be related to gendered prosecution practices, instead of actual behaviour patterns. As we have seen earlier, the anxieties of the authorities towards loose women were not only fostered by moral considerations, but by financial concerns as well. They were unwilling to carry the burden of children and their (foreign) mothers who could not support themselves. It is unlikely, however, that the overrepresentation of women among infraction of banishment cases was only due to the fact that authorities were more likely to police and detect (future) unwed mothers out of financial concerns. Prosecutions for *fracta urpheda* peaked in the 1720s and 1740s, whereas concerns about illegitimacy and expelling unwed mothers based on financial grounds peaked in the 1750s. If anything, the former inspired the latter and not the other way around.

Men and women often provided similar excuses for their infraction. Some claimed to return to the city to care for family members or collect belongings they had to leave behind when they were sentenced, while others stated they needed to enter the city for services or supplies that were unavailable on the road such as medical experts.[208] A particularly devastating tale is that of locally born Anna Justina Heintzebergerin, 30 years old. Both her parents passed away when she was still young and Anna was raised in the poorhouse. Her life was characterised by encounters with the law for property offences and immoral behaviour before she was banished in 1740 for theft. After her expulsion, she moved to Mannheim where she found employment working as a day labourer in a tobacco factory. But Anna was no longer tolerated there after her 'whole body became unclean (*am ganzen Leib gantz unrein geworden*)' and was forced to leave. What followed subsequently was a life of begging and roaming the countryside. As her disease progressed and she became verminous ('*von dem ungezieffer fast aufgefressen worden*') Anna decided to return to Frankfurt only to buy a cap to cover her head so her physical appearance would not repel people too much. But before she was able to leave the city, Anna was apprehended by the *Gemeine Weltliche Richter* Winkler close to the *Affentor* and taken into arrest. Her pitiful situation did not move the magistrates to mercy and Anna was sentenced to the pillory and banished again.

208 Cases of returning to collect belongings: Criminalia 1672 (1685); Criminalia 2327 (1702); Criminalia 2656 (1711); Criminalia 3090 (1720); Criminalia 3129 (1721); Criminalia 3342 (1724); Criminalia 3850 (1730); Criminalia 3946 (1731); Criminalia 3956 (1731); Criminalia 5228 (1741); Criminalia 5456 (1742); Criminalia 6978 (1754). For the care of family members: Criminalia 2630 (1711); Criminalia 2760 (1714); Criminalia 3439 (1725); Criminalia 3932 (1731). For services: Criminalia 2118 (1697); 2630 (1711); 3323 (1723); 5592 (1743); 8046 (1764).

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Other simply stated that they were unaware of the precise conditions of their banishment or simply passed the city on their way elsewhere. These excuses were often accompanied by explicitly mentioning that they would not stay the night.[209] Moreover, the boundaries of Frankfurt's relatively small territory were quite complex (Map 3). This made it easy for offenders to stay close to the city. At the same time, it also increased their chances to be detected as they (supposedly) unknowingly entered the territory. In 1723, Johannetta Schrader from Mainz was arrested by a patrol on the high road close to the *Friedberger Warte*, one of the defence towers of Frankfurt's countryside. A year and a half before, Johannetta had been expelled for fornication and was now asked by the interrogators to justify her presence on the city's territory. She replied that, according to her own knowledge, she had stayed on the 'free and public roads (*offenen freijen Strassen*)' and had not entered the city's territory at any time.[210] The authorities decided to expel Johannetta again, with the explicit warning that she should keep a further distance from Frankfurt and its territory or else she would face the *Staupbesen* (the whip).

The profile of the offenders that violated their banishment reveals that we cannot consider the relative high proportion of women for this crime as a result of female settledness alone. Urban authorities were particularly inclined to expel foreigners without any formal residency and were very reluctant to banish citizens and, to a lesser extent, resident aliens.[211] In seventeenth-century Frankfurt 64 percent of the offenders punished with banishment were foreigners, and 78 percent in the eighteenth century.[212] The share of locals among offenders violating their conviction was more significant. More than 38 percent of the women and 43 percent of the men who returned to the city illegally originated from Frankfurt or one of the villages under the dominion of the city.[213] It is clear that the pull of the city was slightly greater for locals than for foreigners, and the proportion of locals among returnees was higher

209 E.g. Criminalia 1483 (1679); Criminalia 3090 (1720); Criminalia 3405 (1724); Criminalia 4158 (1733); Criminalia 5098 (1740); Criminalia 5592 (1743); Criminalia 8578 (1771); Criminalia 8790 (1774); Criminalia 9246 (1781); Criminalia 10161 (1792).

210 Criminalia 3304 (1723).

211 Coy, *Strangers and Misfits*, 30; Eibach, 'Versprochene Gleichheit', 526–27.

212 For the seventeenth-century this number is based on a sample of the *Strafenbuch* of every first six years of each decade; for the eighteenth-century the number is based on a sample from the *Criminalia* for the years 1700; 1720; 1740; 1760; 1780.

213 Out of the 48 male offenders for infraction of banishment 17 originated from Frankfurt; 2 from one of its villages; 19 were characterised as aliens and in 9 cases the place of origin is unknown. As for women: 15 originated from Frankfurt, 3 from one of its villages; 28 originated from elsewhere and only in 2 cases their place of origin is unknown.

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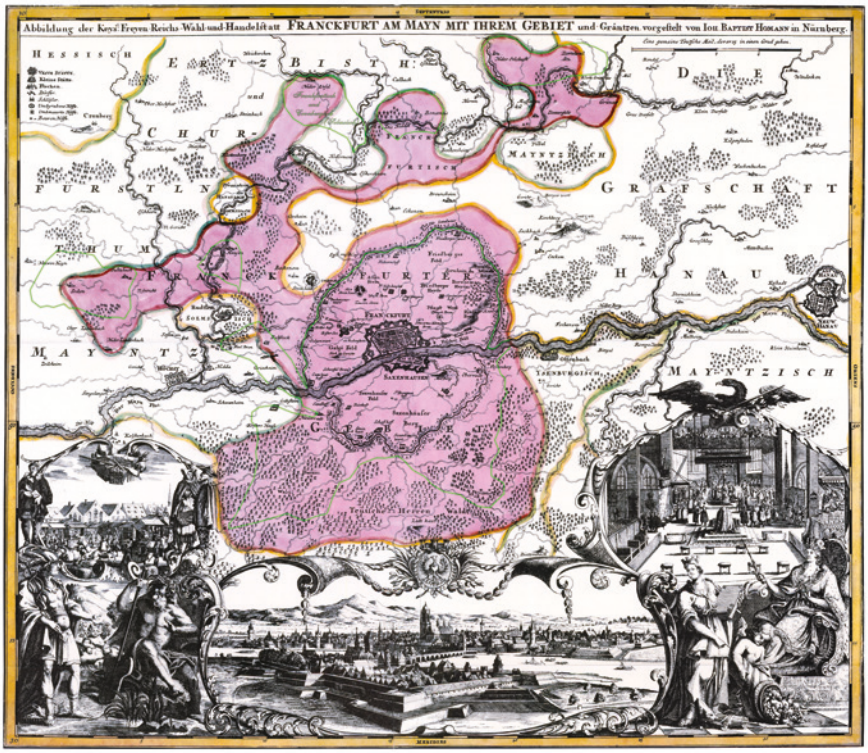

MAP 3 Sovereign territory of eighteenth-century Frankfurt am Main
SOURCE: ENGRAVING OF THE SOVEREIGN TERRITORY OF FRANKFURT BY JOHANN BAPTIST HOMANN, WITH A CORRECTION OF THE TERRITORIAL BOUNDARIES BY FRIEDRICH BOTHE, CIRCA 1712, WIKIMEDIA COMMONS

among men than among women. These mostly concerned (previously) well established citizens who mainly returned to the city once, or twice at the most, to settle some practicalities. Settledness, therefore, appears to have been more of a characteristic for male violators than for women.

On 15 March 1721, burgher Wilhelm Ohler was banished for ten years for stealing and handling stolen goods after the great fire in the Jewish Ghetto (*Judengasse*) of 1721.[214] It did not take long for Wilhelm to return to Frankfurt: in September of the same year he was arrested for infraction of banishment. Wilhelm stated that he would not have returned to the city if it were not for his old and sick father who had requested his help during the autumn fair. Both

214 Criminalia 3129 (1721).

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Wilhelm and his father had sent petitions to the city's magistrate for permission to return to the city prior to his return. But, since these requests were denied, Wilhelm saw no other option than to return to the city illegally. As a result, Wilhelm's banishment was extended to a total of twelve years by the city council. Considering his circumstances, the authorities refrained from any additional sentencing, such as condemning him to the pillory or whipping, which was the normal response to people who broke their banishment.

The situation was different, however, if children were involved. Johann Henrich Seiler, a local soldier, had been banished for 'suspicious housekeeping' (*verdächtiges Haushalten*—i.e. keeping a brothel or housing prostitutes), leaving behind his wife and children in Frankfurt. After his expulsion, Johann's wife fell ill and passed away with no one to take care of their children. To prevent these four small children from becoming a financial responsibility and burden to the city, the magistrate cancelled his banishment under very strict conditions in order for him to take care of them.[215] In this case, the possible negative financial consequences of Johann's banishment for the city's poor relief system outweighed the magistrates desire to purge the community of immoral individuals.

Moreover, there are indications in the sources that seem to suggest that men were more successful in settling permanently elsewhere. In 1702, Anton Dietrich was expelled from Frankfurt *cum reservation fama* for insulting the city's mayors. Within two weeks he managed to become a citizen in Hanau and he returned to Frankfurt to sell his 'Burgundy wines and other securities (*Burgunder Weine und andere Effecten*)' so he could set up a new shop in Hanau with the profit.[216] Forty years earlier, Philipp Jacob Knauss was banished for insulting the local clergymen and calling them '*Hurenmeister*'. Again, his banishment did not seem to have had any marginalising consequences for Knauss: he returned to the city on behalf of his new employer, the count of the neighbouring territory of Isenburg, who had employed him as a scribe.[217] And there are more occasions when male returnees carried written attestations of employers whom they had worked for after their banishment.[218] This must be related to the fact that the general population of male exiles was less uniform from the outset. Although the majority still belonged to the marginal poor, others were more established. It was this group that faced the least marginalisation after banishment.

215 Criminalia 3090 (1720).
216 Criminalia 2327 (1702).
217 Criminalia 1205 (1660).
218 E.g. Criminalia 2118 (1697); Criminalia 3291 (1723).

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Although the share of locals returning was higher among men than among women, there is still a dominant local and regional connection in case of female returnees as well. For most local people Frankfurt remained their primary economic and social lure. This was where they knew their way around and where there were family members that could provide shelter and a place to stay. Remaining close to the city, and only entering it on occasion, was a very common tactic employed by offenders after their banishment. In 1770 it was reported to the *Schatzungsamt* that Maria Catharina Dreherin, a local soldier's widow, had been seen in the city at her daughter's house, despite her expulsion eleven years before. During her interrogation it was revealed that she returned to the city repeatedly to collect wool to spin from the weaver Idstein, as she was unable to gather wool outside 'but still depended on it to make a living'.[219] But Maria never returned to the city with the objective of staying, knowing very well that she was forbidden to do so. Instead she remained very close and stayed in places like Offenbach (8 km from Frankfurt), Ginnheim (6 km from Frankfurt) and Rödelheim (7 km from Frankfurt). The map of Frankfurt shows that it was relatively easy to move around in the proximity of the city, without actually entering Frankfurt's territory.

Local connections were not only important for offenders who were once members of the legal community of Frankfurt, but als played a role among foreigners. Table 21 shows the distance from the places of origin of offenders in km to Frankfurt. The data in the table indicate two important things. First, both male and female returnees tended to originate from places closer to Frankfurt than the overall population of banished offenders. Second, women had a much smaller mobility radius than men and more often originated from cities and villages that were closely connected to Frankfurt's regional network, like Hanau, Mainz and Darmstadt. While women predominantly moved around in the broader region of Frankfurt, they were not restricted to it. Susanna Rothin who originated from Oberrad, one of the villages in Frankfurt's territory, excused her banishment by stating that she had gone to Holland in order to try to find an honest living. However, as she lacked the right connections, she was unable to find a position there and returned home.[220]

219 Criminalia 8504 (1770).

220 Criminalia 3932 (1731) and Criminalia 3946 (1731). Original: 'das sie sich ehrlich zu nehren gesucht und deswegen in Holland gereset, nirgend aber unterkommen, noch unterhalt finden können' […] 'Sie hätte auff alle weis und wege gesuchet sich ehrlich zu ernheren, hette aber nirgend unterhalt finden können, wie sie dann wercklich in Holland mit ihrer Schwester gewesen, allen weilen sie unbekandt nicht unter kommen können'.

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TABLE 21 Places of origin of banished offenders compared to violators, in km to Frankfurt

Distance to Frankfurt	Banished women (N=88)	Female returnees (N=27)	Banished men (N=98)	Male returnees (N=19)
> 25 km	20.5%	22.2%	9.2%	10.5%
25 > 50 km	18.2%	37.0%	8.2%	5.3%
50 > 100 km	22.7%	22.2%	13.3%	31.6%
100 > 150 km	13.6%	11.1%	16.3%	10.5%
150 > 200 km	4.5%	3.7%	11.2%	21.1%
200 > 250 km	4.5%	0.0%	13.3%	10.5%
250 km >	15.9%	3.7%	28.6%	10.5%

SOURCES: IFSG *STRAFENBUCH*; IFSG *CRIMINALIA*[a]

[a] The number of banished offenders is based on the *Strafenbuch* sample of every first six years of each decade and the *Criminalia* for the years 1700; 1720; 1740; 1760; 1780. The number of returnees is based on the sample of infractions of banishments.

Previous survival strategies and related mobility patterns seem to offer a better explanation for the relative high level of women that returned to the city illegally than a supposed female settledness. Earlier in this chapter, it was demonstrated that women were mostly prosecuted for their mobility because it was framed by the authorities as loose and immoral, and connected to prostitution and illegitimacy. It may not come as a surprise, therefore, that the majority of women who violated their banishment (32) had originally been banished for moral offences like prostitution, illegitimacy or leading a loose and immoral life in general (*ein liederliches leben führen*).[221] This is striking, considering the fact that moral offences were not normally dealt with by the *Verhöramt*. The image of the prostitute returning to the city after banishment because she depended on her local clientele is dominant in popular literature.[222] However, studies on prostitution in the early modern period have indicated that it was a highly mobile profession: women moved around from city to city both on their own, as well as in more organised networks of procurers, brothel-keepers

221 Sample Infraction of Banishment.

222 Schneider, *Mörder, Diebe und Betrüger*, 135–39.

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and prostitutes.[223] In the case of Frankfurt too, regional patterns of migration appear to have existed among women arrested for prostitution, though it is unclear to which extent these were organised via networks of brothels and procurers, or if the women simply followed other existing regional migration networks. A large number of women, for example, were connected to the military milieu and followed the armies.[224]

The example of Anna Maria Krammerin is illustrative for these patterns. Over the course of two years, Anna Maria Krammerin, a young girl from Steinheim (now part of Hanau), illegally returned to Frankfurt on at least four occasions. In between her returns she had worked as a servant in Hanau and Mainz and carried tobacco as a day labourer. But she also continued to supplement her income with prostitution. Throughout the entire period, Anna remained connected to a network of prostitutes and brothel keepers that appeared to operate primarily in Frankfurt. On three out of four occasions she was arrested with another woman, Anna Kleinköpffin from Darmstadt, with whom she had stayed in several brothels. Before her final infraction of banishment that can be traced in the sources, Anna was living in the countryside near Hanau with one of her former brothel-keepers who had also been banished.[225] The example of Anna indicates that the attraction to the city must have been at least partially related to the existing regional networks, whether these were the reflection of organised structures or not. The majority of the women, both local and foreign, caught for infractions of banishment had led a life in the margins that was characterised by deviance, mobility, an economy of makeshift and previous encounters with the law long before their expulsion. Thus, it appears to have been a particular group of women who were prosecuted for returning to the city illegally.

Moreover, another reason for the high level of female recidivists among violators of banishment is likely connected to a gendered division of labour among larger gangs. These gangs often operated regionally and were organised along the lines of family relations. Most of the time, they did not group together, but changed the composition continuously in order complicate their prosecution by the authorities, and prevent the risk of being labelled as an organised

223 Van de Pol, *The Burgher and the Whore*, 28, 146; Maja Mechant, 'Selling Sex in a Provincial Town: Prostitution in Bruges', in *Selling Sex in the City: A Global History of Prostitution, 1600s-2000s*, ed. Magaly Rodríguez García and Elise Van Nederveen Meerkerk (Leiden: Brill, 2017), 78–79; Kienitz, *Sexualität, Macht und Moral*, 81–84.

224 Criminalia 3698 (1728); Criminalia 3893 (1731); Criminalia 5985 (1747); Criminalia 7569 (1759); Engel, *Soldatenfrauen*, 438–444.

225 Criminalia 3090 (1720).

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criminal gang.[226] Historians have shown how they strategically used the gendered attitudes of the authorities towards poverty. Women were much more able to rely on excuse strategies that framed their actions as a result of poverty and destitution. Men, on the other hand, were more likely than women to be framed as dangerous criminals and consequently faced being hanged. In Kurmainz, two-thirds of the death penalties were imposed on offenders labelled as vagrants or on other marginal groups.[227] Repeatedly returning to a city from which they were previously banished was too risky for men.

One of the female recidivists was Anna Christina Müllerin, a converted Jewess from Gießen, who was investigated for the violation of her oath on at least five occasions during 1735 and 1741.[228] The first time Anna Christina was expelled from Frankfurt this was for prostitution and theft when she was approximately 18 years old. The first time she returned to the city was within two months, in order to visit some of her fellow townspeople from Gießen and collect some clothing. Between the period of her first return to the city and her last (as documented in the criminal records) in 1741, Anna Christina had given birth to three children, of which at least one was illegitimate, and had married a soldier, who had died in service in Holland. She had found casual employment as a maid, with sewing, knitting and washing. However, she was also arrested for theft and the violation of banishment in Frankfurt. But her criminal activities were not restricted to Frankfurt: in Würzburg she was banned and branded for illegally recruiting soldiers, and in Mainz she was banished for theft after being exposed at the pillory.

Another example is that of Anna Barbara Großin, who was arrested for theft and expelled from Frankfurt in 1748, but broke her banishment in 1750 when she was arrested again for suspected theft.[229] However, her criminal 'career' was not restricted to these two thefts. The criminal investigation records revealed that Anna Barbara's first encounter with the criminal justice system dated back 26 years, when she was arrested in Königstein for her connections with the *Breitfußischen* gang of thieves. Her body carried the proof of her past, as she had brandings both from Köngistein as well as from Darmstadt. Finally, Anna Barbara was branded in Frankfurt for a third time and expelled from the city, with the warning not to return again or she would receive the death penalty. Anna Barbara was connected to a much wider group of notorious thieves that operated regionally. Her husband was expelled from Frankfurt in 1726,

226 Härter, 'Prekäre Lebenswelten', 36–37.
227 Härter, *Policey und Strafjustiz*, 1107–17.
228 Criminalia 4945 (1739).
229 Criminalia 6353 (1750).

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while two other male members called Heß and Sonnewald were hanged in the same year. Another female member of this group, Anna Maria Wagner, was one of the few female thieves to be hanged in Frankfurt.[230]

The examples show that these women displayed considerable regional migration patterns. Their lives were not characterised by a moral pressure of female settledness at all. Although they continuously broke their banishment in Frankfurt, they also committed crimes elsewhere in the region. It is difficult to find evidence in these tales that women were more likely to defy their sentence because they were more dependent on the social support networks in the city than men. Rather, we may assume that their violations were the reflection of continuous regional migration and a gendered division of labour. Frankfurt was simply one of the many places in which they stayed from time to time.

Underneath all of the justifications given by offenders when they broke their banishment, one can read the more underlying causes for the return of offenders. Illegal returns to the city offered a (temporary) solution to hunger, poverty and marginalisation. During the interrogations, investigators often inquired after the whereabouts of offenders following their punishment and how they made a living in order to assess their character, whether or not they had improved their ways? In the majority of the cases the answers reveal a life that was characterised by mobility, odd jobs and occasional crime. For many, this was not a lifestyle created by banishment, but a continuation of their previous mobility patterns that were often regionally dominated. Because many offenders already lived a mobile life prior to their arrest, their networks extended beyond the borders of the city. The presence of family members back home or in other places often directed the movement of offenders.[231] Even family-like structures among vagrants or networks of prostitution could offer social support on the road and offer valuable connections in other cities or villages.[232] The problem was, however, that none of these connections offered long-lasting solutions to the precarious and deprived life of banished offenders. They could offer short-term support but no assistance to settle and escape a life that was characterised by moving from one place to another to find short-term employment.

230 Criminalia 3416 (1722–1724); Criminalia 12790–12792 (1725).
231 Criminalia 1672 (1685); Criminalia 4212 (1734).
232 Ammerer, 'Schandstrafe, Brandmarkung und Landesverweisung', 328–29.

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9 Conclusion

The aim of this chapter has been to map how the increasing criminalisation of the mobility of vagrants and other travelling groups since the sixteenth century was gendered in order to get a better understanding of the position of women in a city which aimed at strictly regulating mobility. As a result of changing attitudes towards poverty, authorities in the early modern period, including Frankfurt, put increasing pressure on the concept of settledness. This chapter has shown that the regulations on mobility not only increasingly associated the mobile poor with criminality, but also that they were based on specific gendered attitudes concerning mobility. Male mobility beyond the parameters of legitimate labour migration was labelled as a massive danger to public order and increasingly associated with organised crime. At the same time and in contrast to female labour migration, male labour migration was highly institutionalised and designed to facilitate (controlled) mobility. Perceptions about female mobility, on the other hand, hardly played a role in Frankfurt's vagrancy laws. Domestic service remained a labour market that was regulated informally, although attempts were taken to increase control in the second half of the eighteenth century. These attempts demonstrated how anxieties about female mobility were connected to moral issues and the possible disruptions this posed to social order

Authorities approached male and female mobility rather differently. This influenced the position of women in the city, and shows that a different type of city created a different 'urban factor' with regard to female criminality in the early modern period, from that which we know for open cities like Amsterdam or London. The position of migrants who were not formally connected in the city was precarious. The laws had created a legal framework in which foreigners risked being expelled on the mere suspicion of having committed a crime. What was considered unwanted behaviour of strangers, however, was different for men than for women. In the latter case, this was framed in terms of anxieties about female independence and sexuality, whereas for men it was about fears of organised criminal gangs. These differences produced an image of male criminal mobility that was more likely to be prosecuted by the criminal courts, whereas women's mobility featured more prominently before the *Konsistorium*.

Finally, the study of violations of banishment as revealed interesting patterns with regard to male and female criminality. Previously, many historians have seen the high level of female involvement in this type of crime as a result of the fact that women were more dependent on local connections than men. Although this may have been true in some cases, the profile of the women

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that returned to Frankfurt illegally suggests that the reality was more complex. Women displayed regional migration patterns which were not only focused on Frankfurt. Additionally, gendered perceptions of authorities about dangerous mobility help explain why women were more likely to return than men.

In early modern Germany, including Frankfurt, authorities imposed stronger control on mobility and settlement than they did for example in England or the Netherlands. The regulation of poor relief was strongly connected to citizenship and legal incorporation into the community. Transients were restricted in their opportunities to stay in the city: after eight days they had to acquire formal consent from the authorities whose primary interest was preventing impoverished people from settling in the city. These principles clearly impacted the opportunities of women (and men) to settle in the city independently without being incorporated in social support networks through the household.

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CHAPTER 7

Conclusions

In this book we have encountered many women whose life stories have been captured in the course of criminal investigations in early modern Frankfurt. Their tales are important for our understanding of the multitude of ways in which recorded criminality was impacted by both formal and informal means of social control, and the role of women's agency within this. Both bottom-up social control mechanisms as well as top-down social control exercised by the authorities determined the outcome of patterns of registered criminality. Heide Wunder formulated the task of crime historians as follows: it must be clear what remains in the dark, and for what reasons.[1] These reasons can only be understood by looking at the local context of crime and social control. What could have been a cause of under-registration for a type of offending or offender in one city might not have been the case in another.

Over the past two decades, historical studies on female crime in early modern Europe have significantly altered our image of gender and crime. Scholars no longer assume that the rate at which women contributed to recorded crimes was invariant over time and space. Yet, although these studies offered many important insights and contributions to historiography, they remained limited in their attempt to account for regional variations and the impact of local socio-cultural factors. On the contrary, despite the fact that the level of women's involvement in crime in early modern Europe varied considerably between 10 and 50 percent, it is often generalised as a period in which the female crime rate was rather high, especially in cities.

Scholars argued that during the early modern period female criminality was particularly an urban phenomenon. Early modern cities are presented as places that offered women a relatively high level of autonomy, fostered by urban demographic patterns that were characterised by relatively weak nuclear family structures and high levels of migration. At the same time, women in the city were also vulnerable in economic terms as they lacked social support networks. Theft, begging, prostitution and other petty offences were part of a wider range of survival strategies employed by these women in order to cope with their precarious situation. This independence and vulnerability in combination with highly institutionalised forms of formal control available in cities

1 Wunder, 'Weibliche Kriminalität', 56.

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increased women's chances of coming into conflict with the law and can explain the exceptionally high female crime rates in cities like London and Amsterdam (ranging from 30 percent to 50 percent).

However, as I argue in this book, the urban factor did not play out in the same way everywhere in early modern Europe. Although the explanatory model which stresses the distinct nature of urban life has offered very valuable clarifications for the different patterns of female offending in the city and in rural areas, it is too broad to understand the varieties in women's criminality between different urban centres in early modern Europe. The level of independence and relaxation of informal paternalistic community control that women experienced in cities differed widely across early modern Europe. Hitherto, our understanding of urban crime patterns has been modelled primarily by studies on large metropolitan cities like London or dense and highly urbanised regions like the Dutch province of Holland. However, these cities are generally perceived by historians as places in which women enjoyed a relatively high degree of independence. Furthermore, they have linked the high proportion of female crime to the lack of informal social control mechanisms in cities. The case of Frankfurt shows that strong informal control through the household was not absent in urban settings. Informal social control was not a specific feature of rural societies in which close-knit family structures prevailed and formal control in the form of criminal courts was less present (literally speaking). Rather, the household was considered by the authorities and the community alike as an integral part of governance and policing alongside the criminal prosecution office.

In early modern Germany the patriarchal household was central in perceptions of social order. Of course, similar ideologies existed in other European countries. More than in other countries, however, *das Haus* embodied a legal entity in Germany and a unit of strongly regulated social control. The impact and extended reach of the household was possible because it was incorporated on a practical level. Single women, for example, were prohibited from setting up their own households because their independence defied the main principles of social order centred on the household. Frankfurt was a city with strong institutional control of mobility in which the right of permanent settlement was strongly connected to the institution of citizenship (*Bürgerschaft*) and, in extension, to household membership. For example, transients were only allowed to stay in the city for eight days before they needed formal consent from the authorities. Permission to stay was only granted to individuals who could prove that they possessed sufficient means to support themselves. Historians have often interpreted such characteristics in cities as a sign of 'closure' and exclusion towards migrants in general. Frankfurt and similar cities demonstrate,

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however, that the presence of strong institutional mechanisms to regulate mobility did not *exclude* migrants and did not lead to reduced levels of mobility. Rather, it created a framework in which newcomers, including women, were more incorporated in traditional urban corporate networks. Compared to cities with more open structures, such as London and Amsterdam, women (and men, for that matter) in Frankfurt, even if they had migrated to the city, had limited opportunities to settle independently. Indeed, the number of female-headed households in early modern Frankfurt was low, and the overwhelming majority were headed by widows.

Considering the different levels of independence and subjection to the household experienced by women in early modern Frankfurt compared to cities like London and Amsterdam, this book therefore set out with the hypothesis that societies with stronger institutions exercising (informal) social control portray different and lower patterns of female criminality. The assumption was that the relative restrictions on women's independence in Frankfurt decreased their chances of becoming involved with formal criminal justice, and at the same time lessened their socio-economic vulnerability in times of hardship. An important difference with cities like Amsterdam and London and the case of Frankfurt is the share of women in crime: in seventeenth and eighteenth-century Frankfurt women accounted for 22 percent of all the suspects investigated by the criminal investigation office. This book shows that the authoritative social control structures significantly impacted the level of women's prosecuted crime in early modern Frankfurt in various ways, but not always as expected in the hypothesis. The evidence shows that Frankfurt both resembled the general urban European pattern, and differed from it.

1 The Case of Frankfurt and the European Pattern of Female Crime

There were several ways in which female crime in early modern Frankfurt *did* follow similar patterns to those found for other cities in this period. The types of offences committed by women and their socio-economic profile fit into the European urban crime pattern. The majority of men and women in early modern Frankfurt were prosecuted for property offences (40 and 50 percent respectively). Compared to their overall share among registered offences women were overrepresented among moral crimes, like prostitution and illegitimacy, and underrepresented among violent crimes. These differences partially derived from gendered discourses about what was considered to be threatening behaviour. Women were more active in fights and physical altercations than their prosecution patterns might suggest. The *Verhöramt*, however,

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only investigated violence in case of severe physical injuries or when the violence led to concerns about the maintenance of public order. In many cases, women's fighting did not reach such a level and was settled informally in the neighbourhood or through lower judicial bodies. Overall, male and female recorded crimes were more similar than different.

The profile of the Frankfurter female offender resembled the general characteristics of criminal women in European cities as well. The typical female offender in Frankfurt was young, poor, living a mobile lifestyle (often working as domestic servants) and lacked an extended social network in the city. Most of them were independent: they were either unmarried or lived a life independent of their husband (which was often the case, for example, for soldier's wives). In Frankfurt too, women's offences were particularly linked to the vulnerable stage in their life-cycle in their late teens and early twenties, which was generally a period of relatively high mobility and independence. Petty offences proved to be—at least for some—an occasional part of their survival strategies. Both for men and women, offences were often opportunistic and occasional. Like in other cities, the court records of Frankfurt demonstrated the precarious position of migrants. Independent migrant women, most of whom only stayed in Frankfurt temporarily, were the most vulnerable to becoming involved with the law. Over three-quarters of the women prosecuted for theft were foreigners. The position of foreign mothers of illegitimate children was even more vulnerable than that of local women who were pregnant out of wedlock, because the urban authorities expelled them, unwilling to carry the financial burden of extra-marital children. The profile of women suspected of committing infanticide equally highlights the precarious position faced by female migrants when they were cut off from social support networks. These patterns have been highlighted for other cities as well. In fact, migration was one of the central features of urban crime patterns in this period.

The social profile of female offenders strengthens the observation that women's crimes in early modern Frankfurt were to a large degree shaped by their precarious socio-economic position. Fluctuations in the share of women among recorded offenders were primarily related to an increase in property offending in the middle of the eighteenth century. During this period Frankfurt experienced a time of economic crisis (visible in the increasing expenditure of the various urban poor relief funds). Overall, the period was characterised by increasing prosecution efforts on the part of the authorities which were fostered by contemporary social developments. Economic decline and disruptions due to warfare fed the anxieties of the local authorities about masterless people as a disruption to the social order. Ordinances against begging and vagrancy accumulated during this period and authorities' concern about

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social order and crime went hand in hand with efforts to improve policing and exclude outsiders from the community. Short-term events like war and subsistence crises indeed influenced prosecuted crime patterns, but it is difficult to find clear correlations between women's crime and such factors. Women's offences during this period were the result of the endemic poverty of large sections of the population that characterised early modern society.

2 Impact of Authoritative Social Control Structures

The case of Frankfurt shows that there were also considerable differences as a result of strong formal and informal authoritative social control structures. These impacted the actual pattern of women's crime as well as the visibility of their criminality.

First, informal patriarchal household control played a significant role in the way female offenders were handled. An important feature of German legal thinking in the early modern period was that households played an important part in the control of deviant behaviour. Households, therefore, were not considered as 'private spaces' but served a public function, as did the disciplining role of the head of the household. In order to emphasise the public function of early modern households, Joachim Eibach introduced the concept of the 'open house' which has proven to be particularly valuable for the study of crime.

This book demonstrates that household dependency played an important role in connection to thefts of domestic servants, in particular women, because of the bonded nature of their labour contracts. By entering into service, servants were legally bound to the authority of their master for the agreed term and could not leave their position on their own account as they required their master's consent. The latter possessed a semi-judicial authority to discipline all members of the household. The cases of domestic theft, as studied in chapter 4, reveal that this authority played an important role in the regulation of deviance in early modern Frankfurt. Usually, crimes by domestics only appeared in court if other disciplinary measures within the household had failed. The role of the household thus had implications for quantification. I have argued that as a result of the different nature of male and female household dependency, the 'dark figure' caused by household discipline was more prominent among women than among men. The eighteenth century was characterised by a growing proletarianisation of the labour force, and this weakened mechanisms of incorporation in the household through guilds. This primarily affected male household members. Apprentices were increasingly boarding outside their master's household. Moreover, the apprentices

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and journeymen were not only subjected to control within the household but also by guilds. More research is needed to study how the changing nature of the household in the nineteenth century impacted the control of deviance of female domestic servants. The public function of the disciplinary authority of the head of the household was increasingly limited by the state. It is likely that these changing patterns led to tensions between household and state authorities.

Although household authority had a broader reach in German-speaking territories than it might have had in other urban centres in Europe, it would be taking it too far to state that households in Germany were fully autonomous legal spaces (*rechtsfreier Raum*) in which authorities did not meddle. Neither did households elsewhere in Europe refrain from settling matters within the domestic space informally without interference from the authorities. Rather, it was the relative strength of households in early modern Germany as the central legal, political, and social unit to ensure public order that needs to be considered. This is not to suggest that without the relative strength of household control female criminality in early modern Frankfurt would have reached similar levels as in such cities as London or Amsterdam. After all, the household also offered protection from the socio-economic insecurities women faced when living independently. Nevertheless, it has to be taken into account as a crucial selection mechanism that determined what kinds of cases ended up before the court and what did not.

Second, while informal household control played an important role in early modern Frankfurt, it was simultaneously characterised by strong formal control mechanisms. In the course of the seventeenth-century, the criminal justice system became firmly institutionalised and underwent a process of increased professionalisation. Throughout the entire Ancien Régime, the city council functioned as Frankfurt's high court, and possessed the sole authority to impose corporal and capital punishments. At the beginning of the period, criminal investigations were conducted by the junior burgomaster, but following the call of the burgher community for a less arbitrary prosecution process the city council installed two council members to assist the interrogations. The city's criminal investigation office developed from these two council members and there was an increasing differentiation of the legal system in which the boundaries between various tribunals became more clearly defined than before. As has previously been demonstrated by Joachim Eibach in his study on crime in eighteenth-century Frankfurt, the early modern period was characterised by a process of centralisation (*Verobrigkeitlichung*) and juridification. Frankfurt's inhabitants experienced a much stronger presence of the legal system in their everyday life than people living in towns and villages incorporated in larger

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territorial states. The *Verhöramt*, however, was not an institution of top-down repressive disciplinary force imposed upon the population by the authorities, but functioned in interaction with the city's inhabitants.[2]

The criminal investigation office was not the only institution of formal control in the city. Given the importance of the household as the location of social order, households were not only the site of discipline and informal control, but they themselves were subjected to the controlling eye of the authorities. After the Reformation, marriage was no longer considered a sacrament but a secular contract, and as such became a matter for regulation by the secular authorities. The sixteenth and seventeenth centuries witnessed an increase in the regulation of matters relating to marriage, leading to the criminalisation of all extramarital sexuality. Just as in many other cities, the city council established a new semi-ecclesiastical tribunal, the *Sendamt* (replaced by the *Konsistorium* in 1728), to enforce the new regulations. The sphere of control of the authorities on marriage and household formation widened in the eighteenth century, and marriage was increasingly tied to financial requirements and questions of citizenship.

The semi-ecclesiastical tribunals in early modern Frankfurt functioned closely together with the criminal justice system. They did so both through control as well as through conflict settlement. They were not, as has often been suggested, competing or overlapping tribunals. The majority of the sexual offences were prosecuted before the city's moral court and were in fact not registered among the offences of the criminal investigation office. The latter only prosecuted such offences if they exceeded a level of punishment that lay beyond the jurisdiction of the semi-ecclesiastical tribunals. Both the *Verhöramt* and the semi-ecclesiastical courts pursued the same aim of maintaining moral and social order.

Moreover, early modern Frankfurt was a city with strong institutional control over mobility. More than in England and the Netherlands, urban authorities in Germany (including Frankfurt) employed advanced mechanisms to control and regulate the entry and residence of strangers. The opportunity for foreign men and women to settle in the city independently was restricted. This strong control over mobility had a rather contradictory effect. On the one hand, it meant that more female newcomers were incorporated in social support networks. Due to the strong regulations, cities like Frankfurt provided less relaxation of paternalistic patriarchal control than women in more open cities might have enjoyed. At the same time, the position of women outside

2 Eibach, *Frankfurter Verhöre*, 426–31.

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the controlling structures of the household was even more precarious because they could face constant prosecution and expulsion from the city.

Throughout the early modern period, the city council imposed ordinances that marginalised the mobile poor. German authorities placed increasing importance on belonging and settledness, and criminalised vagrancy and begging. However, the exclusionary policies of Frankfurt's authorities affected men and women differently as a result of gendered labelling practices. Although mobility was perceived as a threat to social order that centred on the household, it was ubiquitous and a central aspect of early modern economies. While male mobility in the context of work and training (as journeymen or apprentices) was respected and even facilitated, women's mobility was associated with disobedience and a longing for independence. Women's mobility was mostly seen as a threat to the social order because it was—supposedly—connected to immorality. It was, therefore, primarily regulated through the city's moral court and not through the criminal court. Young, independent and mobile women in particular had often first been punished by the *Konsistorium* on multiple occasions before they were finally investigated by the *Verhöramt*. For men, on the other hand, the moral courts appeared to be much less of a 'gateway' to future encounters with the law and investigation by the *Verhöramt*. At the same time, men who moved beyond the controlled structures of tramping were perceived as a bigger threat and risked being framed as robbers and organised criminals.

3 Agency of Women

Considering long-standing assumptions that lower levels of female offending could be explained by the restricted nature of their public lives, it might be tempting to assume that relatively low female crime figures in early modern Frankfurt were the result of ideological and practical restrictions regarding women's independence and their subjection to the sphere of the household. Detailed qualitative analysis of different types of crimes, however, disproves the idea that low female crime rates always point to a restriction of women's public lives.

First, while this study has emphasised the importance of households as a social order mechanism which impacted the involvement of women among registered offences, it must be remembered that the household was part of the public sphere. Housewives played an important role in the exercise of household control and in the disciplining of their servants. In doing so, they by no means refrained from the use of violence and excessive force. Housewives were thus an *integral* part in the mechanism of control to maintain public order.

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Moreover, the qualitative analysis of the distribution of stolen goods revealed that women played an important part as buyers and resellers as a result of their economic roles within the household. There were no signs of organised criminal networks in the city. Rather, both male and female thieves made use of the importance of the informal second-hand market in the urban economy. Although women played an important role, the prosecution efforts of the authorities were focused elsewhere in terms of the prosecution of receivers. Negative stereotypes about Jews as deceitful, fraudulent and dishonest meant that local *Stättigkeitsjuden* were disproportionately investigated for fencing. Furthermore, as we have seen, women also instrumentally exploited gendered stereotypes. The majority of female thieves stole from the houses of people they were unacquainted with. The access to such household spaces was gendered in the sense that women were less likely than men to arouse suspicion when they entered houses, even if they were unknown in the neighbourhood.

Second, institutions of control, such as the *Konsistorium*, were shaped by the way women encountered them. Historians have amply demonstrated that the interest of authorities in the household as a locus of moral and social order offered women opportunities to indict abusive and profligate husbands because they disrupted this order. Such cases show that women found ways to accommodate the patriarchal ideologies and adapt them to their own needs, and instrumentally used the interest of the authorities that sought to maintain this order. At the same time, the study of women prosecuted for illegitimacy demonstrates that the experience of women before the moral court varied considerably. In the course of the eighteenth century, authorities increasingly focused on the regulation of illegitimacy. In this case too, the interests of unwed mothers could align with those of the authorities, as has been demonstrated for married women, enabling them to negotiate support. Because the authorities were interested in preventing mothers and their illegitimate children becoming a burden to the local poor relief institutions, they were keen on holding the fathers financially responsible by withholding their wages or even by imprisoning them.

The examples of women pursuing action in these cases have demonstrated the importance of incorporating a perspective of agency to gain a better understanding of social control mechanisms, even if the agency was limited. Because the authorities aimed at strict control over the regulation of moral conduct and prohibited extra-judicial settlement without the consent of the authorities, women's options for support in the case of extra-marital pregnancies were limited. As a result of the double-edged function of the semi-ecclesiastical court, for unmarried mothers, going to court to file for support always meant a self-disclosure of their crimes. Calling on the moral court did

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not release them from punishment, and thus represented both a place of support and conflict settlement *and* punishment and control. Women appeared as plaintiffs and offenders simultaneously. However, by doing so, they also shaped the judicial system since authorities had to respond to their claims. Moreover, for migrant women especially the situation was precarious as the city council imposed regulations to expel foreign pregnant women to prevent them from becoming a financial burden to the city. Again, the punishment was separated from the civil function of the tribunal, as women could (and did) still start paternity suits before the same institution that had expelled them.

Third, despite gender ideologies that assume women's immobility, they often defied these norms. One of the typical early modern offences in which women featured prominently was the infraction of banishment. Historians have often explained this by suggesting that women were more dependent than men on the social support structures from the urban community they were expelled from. As the cases in Frankfurt have shown, however, these women had often led mobile lifestyles prior to their expulsion. Their return to Frankfurt was often a continuation of pre-existing (regional) migration patterns, rather than evidence of a moral pressure on female settledness. Nevertheless, the difference in the rules and rights of residence, and the resulting different mobility patterns in early modern European trading cities such as Frankfurt, compared to booming metropoles such as London or Amsterdam, is certainly a relevant factor to explain the different level of female delinquency.

4 Future Perspectives

This book shows that a detailed case study of one city can contribute to our general understanding of the impact of local factors on female offending. Prosecution patterns of men and women were shaped by their different roles within the early modern social order, but in different ways than historians have previously assumed. The household was not a private space, nor were household relationships characterised as a dichotomy between men and women. Dependency within the household was a factor of age, marital status, gender and class. This research again shows that the effects of gender depended on the specific institutional (local) context and on men's and women's position within the societal order. In order to understand women's encounters with the criminal justice system in the early modern Frankfurt, and elsewhere, it is crucial to think about gender in connection with the social, citizenship and legal status of individual women. The position of the mistress of a burgher household was fundamentally different from that of her domestic servants, who in

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turn had a better position than a migrant woman who was not (yet) incorporated in a household. This book shows that the extent to which city life offered a relaxation of patriarchal pressures could vary according to time and place, and that we have to be cautious in generalising the urban experience of early modern women. Moreover, the seventeenth and eighteenth centuries should not just be considered as a period of high female involvement in crime. Such a conclusion neglects the regional differences that were present in the early modern period itself.

The detailed analysis of formal and informal social control mechanisms in this study shows that it is important to consider a more inclusive approach to questions about gendered perceptions of social order. The experiences of women were central in this study, but we cannot ignore the fact that the central role of household order in early modern Frankfurt and beyond also shaped the patterns of male offending. In the historiography, the dominant notion is still that what needs to be explained is the absence of women in the criminal record, rather than considering which factors contributed to men appearing in them so frequently. As historians previously stated, the patriarchal social order put pressure on men as well as on women. Men labelled as vagrants and prosecuted as dangerous robbers are just as much 'victims' of societal norms that centred around the traditional burgher patriarchal household as were women prosecuted for illegitimacy or lewdness.

Patterns of male delinquency are also the product of institutional and societal selection mechanisms that produced criminal statistics, and should therefore equally be studied in the context of institutions of social control other than solely the criminal justice system. By now it has firmly been established that the criminal justice system functioned alongside a whole range of institutions that regulated behaviour and settled conflicts. We have learned a great deal about the interactions between moral courts, neighbourhoods, lower courts, poor houses and other institutions when it comes to female criminality. Now it is time to have a better understanding how such institutions functioned in relation to men as well. We still know very little, for example, about the way that guilds regulated sexual or violent transgressions of their members and how this type of social control interacted with the criminal justice system. Unfortunately, the options for such an inclusive study for Frankfurt are limited due to the heavy archival losses during WWII, but other cities, in future comparative studies, could very well serve to pursue this.

Finally, for future comparisons about female offending in early modern Europe, it will be useful to think of different typologies of cities and how these created different mechanisms of control. Patriarchal ideals were universal in early modern Europe, but the extent to which they were implemented depended

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on the context. In cities like Frankfurt, whose economy was still dominated by crafts, and where guild-like corporations shaped social order policies, the position of women was different from that of women in industrial towns or maritime centres. Although such towns obviously had guilds as well, their labour markets were more diverse, and guilds tended to be more open. Consequently, the nature and importance of incorporation within the household was different in such urban centres from in a city like Frankfurt.

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Appendix

Appendix 1

Early Modern Criminal Records and Quantification: Problems and Opportunities

The crime patterns of men and women presented in this book are constructed based on a quantification of the *Criminalia*, the investigation records of the criminal investigation office (*Verhöramt*), and—to a lesser degree—the register of penal sentences of the seventeenth century (*Strafenbuch*). In addition to this, I have selected all criminal records for certain sample periods for each category of crime that is discussed in this book. There are several matters that need to be taken into account when reconstructing crime patterns from early modern sources. For one, early modern crime records were never intended for statistical purpose, which can cause difficulties when, for example, multiple crimes by one offender are not listed separately. The categorisation of type of crimes is another difficulty of its own. Because there were no extended legal statutes defining which offence belonged to which category of crime, scholars produced categorisations retro-actively. The following section provides an overview of the choices that were made for this research concerning the reconstruction of the seventeenth- and eighteenth-century crime patterns, and the selection of sample years for the chapters on property offending, sexual offences and mobility crimes.

First regarding the reconstruction of crime patterns based on the prosecution records, the *Criminalia*. One of the main issues that need to be confronted is the reliability of the documentation and the question of record survival. The archives hold more than 12,000 individual *Criminalia* for the period between 1508 and 1856, the majority of which (close to 11,000) belong to the period under research here (1600 and 1806). Of course, this sheer amount alone does not guarantee completeness, but there are enough indications to assume not only that the majority of records for this period survived, but also that they were preserved systematically by contemporaries. The need for safe record keeping was already felt in the early modern period. According to instructions for the investigation office from 1726, the *examinator ordinarius* was responsible for properly storing the proceedings during the investigations. After a case was closed, the scribe or *Actuarius* had to make sure that a note was made of the final decision/verdict, and that the release or punishment of prisoners was recorded in so-called *Urphed- und Malefizbücher*. In addition, the investigation records had to be transmitted to the municipal registration office.[1]

1 Orth, *Nötig und nüzlich erachteter Anmerkungen*, 1751, 3:828. Original: 'Weiter hat der examinator ordinarius auf genaue verwarung der protocollorum, in seinem zu dem ende in der

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The regulations of the *Verhöramt* contain several references that are important regarding the matter of completeness of the sources. For one, the instructions of 1726 reveal that while the previous scribe had kept the records accurately, record-keeping had become irregular after his death and different types of registrations had been mixed up. The new scribe was ordered to bring the old and incomplete records up to date and keep a complete registry from then on. He was ordered to clearly distinguish criminal offenders from individuals who were sanctioned as part of a civil process.[2] Moreover, the regulations of 1788 introduced even more compulsory administration by the *Kriminalrat* (head of the investigation office). He was ordered to provide the authorities with a quarterly report of all the ongoing investigations and a list of all the current inmates.[3]

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

Second, the instructions show that not only was it considered necessary to preserve the records of the criminal investigations, but also that irregularities in the record-keeping were noticed and that efforts were made to correct these. From the beginning of the eighteenth century onwards, the individual dossiers were numbered, listing the name of either (some of) the suspects and/or the victims involved

canzlei befindlichen schank, gute vorsorge zu tragen, und wann eine sache abgetan, muß der ratschreiber oder actuaries sich angelegen sein lassen, daß der ausgang derselben richtig nebst dießfals abgefaßten decretis ad acta notiret, auch die respective loslassung oder bestraffung der gefangenen in die urfried oder uhrphed- und malefizbücher eingetragen, so fort aber die protocolla auf die registratur zur verwarnung geben werden'. Also see: PO 4346 Verordnung und Unterricht für das peinliche Verhör=Amt der Reichs Stadt Frankfurt 04.12.1788, §8: 'Soll sich unser peinlich Verhör-Amt und Criminal-Rath insbesondere die ordentliche Registrirung und Verwahrung der Acten, Protocolle und Malefiz-Bücher solange bis jene geschlossen und auf das Stadt-Archiv der Ordnung gemäs abgegeben worden, als welches auch inskünftige genau befolgt warden soll, zur angelegene Sorge machen, und über den Actuarium vicarium des Amts desfalls die nöthige Auffsicht führen'. .

2 Ibid., 3:829. Original: 'und dabei die malefizpersonen vor andern, so nur wegen civilsachen die gemeine urphede geschworen, wohl unterscheide'.

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

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and recorded in a register. These inventories were (partially) intended to facilitate the process of finding past offenders and their corresponding criminal records. Moreover, all cases from 1680 until the point in time when the contemporary register was introduced were included retro-actively. No contemporary registers existed for the period before 1680.[4]

Occasionally one can find references in the sources that authorities were not able to trace suspects in the registry, even though they knew they had been investigated. However, these instances are rare and could also relate to misspelling of names, such as was the case of Margaretha Dorothea Hanshelmin. Margaretha Dorothea was a frequent recidivist whose criminal career spanned the period from 1735 until 1756. In her final encounter with Frankfurt's authorities in 1756, it was written in her files that her previous documents were not found in first instance because she had previously been registered as Helmin and Anshelmin.[5] Similarly, there are instances in which the corresponding investigation files of offenders recorded in the registry were lost or simply could not be found by the *examinatores*.[6] The scribes carefully noted such instances in the registry, which heightens the reliability of the documentation.

Apart from the *Criminalia*, the *Strafenbuch* is a second source of criminal registration for early modern Frankfurt. It contains all penal sentences (*Peinliche Strafen*) issued by the city council between 1562–1696. Joachim Eibach previously cross-referenced the quarterly reports of the *Kriminalrat* and the *Strafenbuch* with the contemporary index of the *Criminalia* that exists for the period from 1680 onwards. This showed that one can assume that the extant records are fairly complete, and that there is no substantial loss in the *Criminalia*.[7] My own investigation gave no reason to think differently. For the period before 1680, however, there are more issues. A contemporary register that allows for cross-referencing is not available. However, there is the possibility to compare the *Criminalia* with the entries of the *Strafenbuch*, thus covering the period before the contemporary indexation of the criminal investigation records. This comparison shows that for approximately one-third of the cases in the *Strafenbuch*, there is no corresponding criminal investigation record.[8]

This does not necessarily mean that one-third of the *Criminalia* for the period before 1680 are lost. After all, the criminal justice system in Frankfurt was multi-layered. Only the city council had the authority to impose penal punishments recorded in the

4 IfSG Frankfurt am Main, Repertorium 249 Index über die Criminalia 1680–1732, 1.

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

6 Criminalia 2254 (1700).

7 Eibach, *Frankfurter Verhöre*, 30, 91.

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

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Strafenbuch. It is not unlikely that particularly in the early stages of development of Frankfurt's criminal justice system (see chapter 2), penal sentences recorded in the *Strafenbuch* had been investigated by other judicial institutions than the *Verhöramt* and thus left no traces in the *Criminalia*.

Although surviving records before the 1680s are scattered, it is still valuable to apply a quantitative analysis for this period as well. The reconstructed crime patterns for this period based on both sources are very similar, and there is no reason to assume that the possible loss creates a distorted image of the general patterns for this period. Both with regard to the development of the types of crimes committed, as well as the percentage of male and female offenders there are no considerable differences between the two sources.

The second issue that needs to be discussed concerning the reconstruction of crime patterns is *what* is actually counted and based on what? The reconstruction of crime patterns presented in chapter 3 are not based on the 11,000 individual records but depend on the early modern registers and the modern index provided by the archive.[9] Based on these sources it was possible to collect information on the types of crimes as well as the number and gender of suspects for each case, and thus to reconstruct basic crime statistics for the entire period (1600–1806). More detailed information about individual offenders, such as their age, profession, marital status and origin, can only be collected from the individual prosecution records.

The contemporary early modern registers were not intended for statistical purposes but were more or less used as an archive register, composed to find the records when needed. In the majority of cases they list the names of the main persons involved and a short description of the case. However, it would not have been possible to reconstruct the share of men and women among recorded offenders based on the contemporary registers alone because they do not systematically differentiate between victims, offenders and/or witnesses. It often remains unclear who should be counted as an offender and who should not, especially in assault cases and fights.[10] Quantifications based on the early modern register therefore only allow for calculations relating to the number of *cases* rather than the number of *offenders*, which makes it impossible to calculate the gender ratio.

The modern index provided by the archive, on the other hand, does systematically distinguish the victims from the offenders and therefore allows for quantifications based on the number of offenders as well. At the time Joachim Eibach conducted his

9 The early modern registers: Repertorium 249–254; the modern catalogue is accessible through the website of the city archive http://www.stadtgeschichte-ffm.de/de/archivbesuch/datenbanken (27.02.2017). Konrad Schneider, 'Criminalia im Institut für Stadtgeschichte Frankfurt a. M'., *Archivnachrichten aus Hessen* 11, no. 2 (2011): 8–11.

10 Eibach, *Frankfurter Verhöre*, 92.

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research on criminality in eighteenth-century Frankfurt, the modern index was not yet complete. He therefore had to rely on the contemporary registers for the long-term analysis, and was therefore only able to trace developments in the type of crime and number of cases. In addition to this he also provided statistics about *offenders* who committed violent and property crimes, which he collected based on the consultation of the individual criminal records for selected sample years.[11]

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

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

11 The selected sample years are: 1741–43; 1771–75; 1801–1805. Ibid., 28; Eibach, 'Böse Weiber', 677, 683.

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TABLE 22 Types of offences by category of crime

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

Finally, the *Verhöramt* primarily dealt with serious offences, and only prosecuted property offences and violence from a certain level upwards (see chapter 2). All the offences investigated by the criminal investigation office have been categorised in five main categories of crime following the example of Joachim Eibach[12]: property offences; violent offences; offences against the authorities and public order; moral and religious offences; other records that could not be subjected to any of the previous categories. Table 22 provides an overview of the different types of crimes that were investigated by the *Verhöramt* according to each category.

12 Eibach, *Frankfurter Verhöre*, 101.

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

Selections per Chapter

Next to the reconstruction of general crime patterns based on the indexes, a selection of all investigation records was made for further quantitative and qualitative analysis per type of crime. The individual records provide more detailed information on the background of offenders (though not always complete), regarding their place of birth, age, marital status and profession. Moreover, approximately two-thirds of the cases contain references to the final outcome of the investigation.[13] The sample years differ according to each category of crime under investigation due to practical considerations. There were fewer sexual offences prosecuted per year than property offences. Using the same sample years for each category of crime would mean that the number of individual cases for sexual offences would be too low to make a meaningful analysis. Moreover, the total number of cases that could be consulted was restricted due to the archive regulations, that only allow for a maximum number of 12 records to be consulted per day.

1. Property offences: the sample covers the individual *Criminalia* of the following years: 1700(01); 1720(21); 1740(41); 1760(61); 1780(81). In order to have a similar amount of data for men and women, the sample of women contains an additional year. The sample of 1721 contains many cases which are related to thefts and plundering after the great fire in the Jewish Ghetto. These cases have been excluded from the calculations because they derived from an exceptional context: these were mostly committed by local (married) citizens and men and women participated roughly in equal numbers. While this is worth studying on its own, the cases have been excluded as it would skew any comparison, in particular because the men were not consulted for this additional sample year. In total, the sample contains 183 cases (some of which

13 Ibid., 387–88.

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contained several thefts prosecuted at the same time), 132 male offenders and 137 female offenders.

2. Sexual offences: 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. Moreover, a sample of all punishments for sexual offences recorded in the *Strafenbuch* was collected for every first six years of each decade from 1600 onwards (thus 1600–1605; 1610–1615; 1620–1625, etc.). The selection of cases prosecuted before the *Konsistorium* was limited due to the archival losses in WWII. 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.

3. Mobility offences: the quantitative analysis in the is chapter is based on cases investigating infractions of banishment. The sample includes all cases of violations of banishment in the *Criminalia* for the seventeenth-century as well as the following sample years for the eighteenth century:1700–04; 1710–14; 1720–24; 1730–34; 1740–44; 1750–54; 1760–64; 1770–74; 1780–84; 1790–94. The sample includes a total of 102 criminal investigation records, 96 individual offenders (48 male and 48 female) and at least 143 occurrences of infraction of banishment. In many cases, infraction of banishment was not filed in a separate record by the *Verhöramt*. Often, they included these cases with the previous investigation records, i.e. with the interrogation files for the crime for which they had received their banishment in the first place. This means that an infraction of banishment in 1755 could still end up in the sample. Quantifications about the weight of banishment as a punishment in early modern Frankfurt are based on the *Strafenbuch* and the *Criminalia*. For the first, the sample contains every first six years of each decade from 1600 onwards (thus 1600–1605; 1610–1615; 1620–1625, etc.). For the second, the sample contains all investigation records for the years 1700; 1720; 1740; 1760; 1780 with a total of 369 offenders.

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Appendix 2

High Court	**City Council:** jurisdiction to impose capital- and corporal punishments (*Peinliche Strafen*)				
	Verhöramt: Acts as a court of enquiry for the city council to investigate capital- and corporal offences → inquisitorial procedure.				
Lower Courts	**Verhöramt** 1616 appointment of first *examinatorio ordinario*	**Frevelgericht** Established in 1580s to unburden the *Schöffengericht* (until ca. 1650s).	**Sendamt/Konsistorium** Established 1530/1726	**Landamt** Established as a central lower court for all villages early eighteenth century.	**Ackergericht** Dating back to the middle ages
	Jurisdiction over: 1. Offences punishable up to 3 months in prison/ forced labour and/or simple expulsion for vagrants. 2. Offences punishable with monetary fines and private imprisonment (‘*bürgerliche Gefängnisstrafe*’) in case of citizens.	Jurisdiction over: Verbal and physical violence (that did not result in serious injury)	Jurisdiction over: Moral offences (fornication; adultery; lewdness etc.)	Jurisdiction over: 1. All petty offences in Frankfurt’s rural territories including the villages belonging to the city’s dominion (Bornheim; Bockenheim etc.). 2. Court of enquiry for penal offences in Frankfurt’s dominion.	Jurisdiction over: Regulatory & administrative offences concerning agricultural fields, vegetable gardens, and vineyards etc. in the city; conflicts among landowners; minor property offences incl. theft of natural resources; poaching etc.
Executive officials/ urban offices with quasi-criminal jurisdiction	**Oberster Richter:** Dating back to middle ages	**Bettelvögte/Armenknechte:** Dating back to middle ages; from 1679 part of the personnel of the poorhouse.		**Baumeister:** Semi-autonomous officials of the Jewish community	
	Jurisdiction over: minor quarrels and disputes (‘*Zänkereyen und geringe Streithändel*’) among common people (‘gemeinen Leuten’).	In charge of: policing begging and vagrancy.		Jurisdiction over: petty conflicts and crimes among Jews in the *Judengasse*.	

FIGURE 14 Schematic overview of the criminal justice system in early modern Frankfurt am Main.

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1 References to police ordinances in the text follow the numbering of the Repertorium der Policeyordnungen (PO). As the same ordinances are often located in multiple archives, including IfSG Edikte, IfSG Ratsverordnungen, IfSG Gesetzbürger, I have chosen not to refer to the archive, but to the Repertorium instead.

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