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**Crime and punishment in the city of Frankfurt am main from  
1562 to 1696**

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**City University of New York, 1989**

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A

CRIME AND PUNISHMENT IN THE CITY OF FRANKFURT AM  
MAIN FROM 1562 TO 1696

by

MARIA R. BOES

A dissertation submitted to the Graduate Faculty in  
History in partial fulfillment of the requirements  
for the degree of Doctor of Philosophy, The City  
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MARIA R. BOES

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This manuscript has been read and accepted for the Graduate Faculty in History in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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## PREFACE

Until the last decade, crime and punishment attracted few social historians in any country. Monographs on the subject were rare and the field was left to jurists and legal historians. While in various European countries, particularly in England and France, the emphasis has changed and many works have been published viewing the topic from a social perspective, such studies are rare for Germany. In Germany, the criminal system has been primarily the concern of legal historians. Although such legal studies deal with a wide range of criminal aspects, in addition to covering many time periods and various locations, including Frankfurt, they say little about social factors.<sup>1</sup> But three most recent social studies, namely Richard Egan's The German Underworld, Heinz Reif's Räuber, Volk und Obrigkeit and Richard van Dülmen's Theater des Schreckens point to a change of direction.

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1. Karl-Ernst Meinhardt, Das Peinliche Strafrecht der Freien Reichsstadt Frankfurt am Main im Spiegel der Strafpraxis des 16. und 17. Jahrhunderts (Frankfurt am Main: Privately printed, 1957); Ferdinand Rau, Beiträge zum Kriminalrecht der Freien Reichsstadt Frankfurt am Main im Mittelalter bis 1532 (Potsdam: Krämersche Buchdruckerei, 1916).

Most criminal studies conducted by European social historians approach the topic from specific angles. Selective aspects are emphasized such as crime rates, the criminals or the penal structure. The historian J.M. Beattie for example focuses on crime in his monograph "The Pattern of Crime in England 1660 to 1800" while Nicole Castan concentrates on the criminals in Les Criminels de Languedoc. Penological concepts are addressed by other historians such as Ruth Pike in her study of Penal Servitude in Early Modern Spain and Pieter Spierenburg in The Spectacle of Suffering. The historian van Dülmen also focuses on the penal system in Germany, in particular capital punishment, closely following Michel Foucault's model expounded in his book Discipline and Punish. Such selective approaches were in large measure dictated by the source material but also by the sheer size of the areas investigated.<sup>2</sup>

The goal of this study is to focus on all and not selective aspects of the administration of justice. In other words, this analysis incorporates and highlights the various branches and stages of Frankfurt's criminal

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2. Joanna Innes and John Styles, "The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth Century England," Journal of British Studies 25, no. 4 (Oct. 1985):380-435; J.A. Sharp, "The History of Crime in Late Medieval and Early Modern England: A Review of the Field," Social History 7, no.2 (May 1982): 187-203.

justices system. It begins with an assessment of Frankfurt's political, economic and religious developments during the sixteenth and seventeenth centuries followed, in chapter two, by an in depth analysis of local social structures and cultural changes. The third chapter will trace the historical development and expression of criminal laws and court procedures. Crime sentences and possible fluctuations over the 1562 to 1696 period form the core of chapter four, while chapter five deals with personal characteristics of the criminals viewed in conjunction with their respective crimes. The last chapter is an assessment of the penal structure both in relation to crimes and criminals and changes over time.

Most importantly, the political, economic, religious, and cultural changes discussed in the first two chapters will at all times be correlated to the various aspects of the administration of criminal justice. Such an all-encompassing approach will illustrate the relationship between the various stages of the criminal justice system. In addition, it will determine one of the most fundamental questions raised in this work, namely what sections had the most impact on the administration of criminal jurisdiction. Did changing politico-economic conditions affect the sentencing structure or were fluctuations subject to changing

cultural patterns or possibly both? Did the ruling elite operate the administration of criminal justice to the exclusion of the rest of the population or did the local populace play a role and, if so, to what degree? Who, for example, would initiate the formation of new criminal laws, in other words was it imposed from above or was it a shared venture? What were the means employed to render the criminal system effective or, to put it differently, who, in the absence of an independent institutionalized police force, did the reporting of crimes and criminals? Was society organized in a special fashion to combat crime?

This study will primarily advance an understanding of social aspects in the administration of justice in Germany. But it will at the same time illustrate differences and similarities in relation to other European countries in particular since throughout this analysis local findings will be supplemented by comparative data from other parts of Europe.

Two prerequisites are necessary for such in-depth analyses. First, the availability of the necessary archival documents and secondly an independent, relatively small urban center to facilitate testing and correlating of the various aspects of criminal jurisdiction. And both criteria are available in the case of Frankfurt which was a free imperial city with complete

autonomy in the political and legal field. At its height in the seventeenth century, the city's population consisted of approximately 20,000 people of various religious denominations such as Lutherans, Catholics, Calvinists and Jews. This religious heterogeneity makes Frankfurt an interesting community to study.

The source material consists primarily of a time series of crime sentences in the form of the Strafenbuch, the Book of Punishments, whose entries dictated the time frame of this study, namely from 1562 to 1696. This Book of Punishments contains personal characteristics of the culprits, a description of their offenses, and the presentation of the punishments in most cases accompanied by drawings showing them. It was the local Rathschreiber, the municipal clerk of the City Council, who diligently registered the pertinent criminal information.<sup>3</sup>

In addition, the Rathsprotokolle, the minutes of the City Council, were used. These records exist for the time period of 1562 to 1689, save for the years 1626 and 1628. Each set of Rathsprotokolle covered one municipal calendar year from May 1st to the end of April. These records are an extremely important source because they document how the City Council in its capacity as criminal

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3. Strafenbuch (hereafter referred to in its abbreviated version as St), 1594 Nota

court dispensed jurisdictional power. The various procedural aspects not included in the Book of Punishments such as the use of torture, the frequency of court sessions and private pleas are contained in the Rathsprotokolle.

These findings were supplemented by entries in the Bürgermeisterbücher, the mayors' protocols, or the Protocolla Senatus as they were called as of 1672, consisting of additional daily reports of the City Council meetings. These records exist, save for the years 1626 and 1628, throughout the entire time span from 1562 to 1696. They were kept in the same basic format as the Ratsprotokolle except that they did not include a register until the year 1689.

In addition, the Gerichtsbücher, or records of the civil court, were consulted in various instances. The Criminalia, and Criminalia Judaica consisting of folders covering individual cases proved of less value since they did not cover all the cases listed in the Book of Punishments, nor did they contain complete sets of records in addition to lacking references to the penalties imposed.

There exists an abundance of legislative sources in Frankfurt's municipal archives but, unfortunately, they are not codified. The sheer volume seems to have prevented the creation of any compact edition of

Frankfurt's laws. For this study, a series of unpublished and published laws and edicts were consulted. The most significant were the revised local law codes called Reformation from the years 1578 and 1611, respectively. In addition, six volumes of the Concepta Edictorum and five volumes of the Corpus Legum Francofurtensium were perused. The six volumes of the Sammlung der Verordnungen der Reichsstadt Frankfurt represented a further legislative source. The Rathsprotokolle also included many municipal edicts.

The records of the guilds, the Amts- und Zunfturkunden, were studied in conjunction with social aspects. And so were the instructions for the Armen-Waysen und Arbeits-Haus, the poor-orphanage and work house.

The basic methodology consists of a quantitative analysis supplemented by explicit and implicit qualitative references. In order to facilitate the quantitative assessment, the 134 year time span was divided into equal time periods of 33 years with the exception for the last period which covered 35 years.

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LIST OF ABBREVIATIONS

Archives:

Bb: Bürgermeisterbücher

Rp: Rathspokolle

St: Strafenbuch

Published Sources:

CCC: Constitutio Criminalis Carolina

## CHAPTER I

## FRANKFURT IN THE SIXTEENTH AND SEVENTEENTH CENTURIES

Governmental Structure

Frankfurt am Main is located on the navigable Main river, half-way between the cities of Hamburg in the North and Munich in the South. Frankfurt's central geographical location contributed greatly to its economic and political achievements. In the economic field, this development was most clearly reflected by the city's two annual trade fairs which had gained international reputation. Politically speaking, Frankfurt held a very prestigious position as the seat of the elections and coronations of the Holy Roman Emperors. Equally significant was the city's acquisition of political autonomy represented in the status of a free imperial city.

Before Frankfurt achieved political independence, it was under direct imperial administration in form of imperial appointees. As of 1219 the highest local imperial position was held by the Schultheiss who was in charge of administrative, governmental, and judicial

matters.<sup>1</sup> In the judicial sector, the Schultheiss' position was somewhat rivaled by the ecclesiastical court of the Catholic church, the local Sendegericht. This ecclesiastical court dealt with religious offenses and moral digressions such as adultery, incest, prostitution, usury and falsifications of weights and measures.<sup>2</sup> Frankfurt's population was thus subject to two judicial systems, an imperial and an ecclesiastical one.

In 1266, local administrative representatives, the so-called Ratsherren, or City Councillors, were documented in the archives for the first time. These Councillors reportedly participated in Frankfurt's administrative and legislative affairs.<sup>3</sup> From then on, local residents became increasingly involved in Frankfurt's civic administration. By 1366 the process of acquiring local autonomy had progressed considerably, for that year the Emperor appointed a Frankfurt patrician to the position of magistrate. Political autonomy was achieved in 1372, when the city of Frankfurt acquired

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1. Ludwig Heinrich Euler, "Rechtsgeschichte der Stadt Frankfurt am Main," Festschrift für den 10. Deutschen Juristentag in Frankfurt am Main (1872): 6.

2. Johann, G. Ch. Thomas, Der Oberhof zu Frankfurt am Main und das Fränkische Recht (Frankfurt am Main: Jäger'sche Buch- Papier-Landkarten-Handlung, 1841), 205.

3. Friedrich Bothe, Geschichte der Stadt Frankfurt am Main (Frankfurt am Main: Verlag von Moritz Diesterweg, 1913), 23.

this imperial privilege by purchase directly from the Emperor.<sup>4</sup> The city could now appoint its own magistrate and ceased to be administered by imperial appointees. Frankfurt became an autonomous polity.<sup>5</sup>

In the judicial field, the city also expanded its authority. An imperial privilege of 1387 entitled the city of Frankfurt to adjudicate in both civil and criminal matters.<sup>6</sup> Frankfurt's municipal jurisdiction covered any offender regardless of social status. It included the local Jewish population as well as military affairs, and it also extended over ecclesiastical prerogatives.<sup>7</sup> The court of the Catholic Church, the Sendegericht had ceased to exist in 1370.<sup>8</sup> Imperial and ecclesiastical authority was thus integrated into the local government.

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4. Ibid., 125.

5. Helmut Coing, Die Rezeption des römischen Rechts in Frankfurt am Main (Frankfurt am Main: Vittorio Klostermann, 1939), 23.

6. Johann Anton Moritz, Versuch einer Einleitung in die Stadtverfassung der Reichsstadt Frankfurt am Main (Frankfurt am Main: Andräischen Buchhandlung, 1786), 2:295; Bothe, Stadt Frankfurt, 226.

7. Sammlung der Verordnungen der Reichsstadt Frankfurt am Mayn, ed., Johann Con. Beyerbach (Frankfurt am Mayn: Herrmannische Buchhandlung, 1798), 6:1288; G.L. Kriegk, Frankfurter Bürgerzwiste und Zustände im Mittelalter (Frankfurt am Main: J.D. Sauerländer's Verlag, 1862), 420; Moritz, Stadtverfassung, 2:253; Meinhardt, 53.

8. Euler, 27; Thomas, 207.

A hundred years later, the city also began to absorb the administration of poor relief which had traditionally been handled through the agency of the Catholic Church, particularly the monasteries.<sup>9</sup> The city introduced a new poor relief system which was increasingly being administered by municipal laymen.

With the acquisition of such far-reaching responsibilities, the administration of the city changed. Frankfurt was governed by a City Council consisting of forty-two local burghers, the City Councillors, presided over by two mayors. The Council was subdivided into three benches composed of fourteen members each.<sup>10</sup> The first bench represented the Schöffengericht or civil court. In criminal matters, all three benches of the City Council had to convene. In other words, while for civil matters only the first bench and fourteen City Councillors were responsible, the entire City Council made up of forty-two members, was responsible for criminal offenses.<sup>11</sup>

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9. Werner Moritz, Die bürgerlichen Fürsorgeanstalten der Reichsstadt Frankfurt am Main im Späten Mittelalter. Studien zur Frankfurter Geschichte. Heft 14, (Frankfurt am Main: Verlag Waldemar Kramer, 1981), 103.

10. Johann Georg Rössing, Versuch einer kurzen historischen Darstellung der allmählichen Entwicklung der heutigen Gerichtsverfassung der Stadt Frankfurt am Main (Frankfurt am Main: J.E.B. Mohr, 1810), 39.

11. Johann Philip Orth, Anmerkungen über die Erneuerte Reformation der Stadt Frankfurt am Main (Frankfurt am Main: 1751), 3: 826.

In the complex task of governing, administering, and adjudicating the city, the City Council was assisted by various aides or municipal functionaries. They consisted of legally trained jurists, called advocates, in addition to town-clerks, toll and tax collectors, watchmen, Bettelvögte or beadles to supervise the beggars, even midwives and barbers. These city functionaries were appointed and paid by the municipality.

In contrast, City Councillors did not receive any pay for their services.<sup>12</sup> In addition, the offices of City Councillors and Mayors were elective ones. While the electoral procedure was maintained for the post of the two mayors who were regularly chosen from among the council members, the process of choosing City Councillors underwent decisive changes during the fourteenth century. It became to a large extent the prerogative of the local elite, the patricians. Despite a revolt by the local guilds who wanted to share the political power, the patricians were able to abrogate the right to proper electoral procedures by co-opting their own members into the first two benches of the City Council. The guilds had to be content with the third bench while wealthy patricians sat in the first and second benches.<sup>13</sup>

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12. Bothe, Stadt Frankfurt, 401.

13. *Ibid.*, 124.

Seemingly the guilds were confronted with an additional problem, namely the fact that City Councillors were not paid for their work. But, most interestingly, this adverse monetary ruling did not represent a major obstacle as evidenced by the exceptional continuity of guild members in the local government.<sup>14</sup> First, those guild members sent to the City Council were quite well-off themselves.<sup>15</sup> Second, and most importantly, the social status and prestige of being a City Councillor made the work very attractive, the more so since not every guild in Frankfurt had the right to send representatives to the City Council.<sup>16</sup> The guilds for the weavers, butchers, bakers, shoemakers, and blacksmith could send two representatives each, while gardeners, fishermen, furriers, and tanners were limited to one each.<sup>17</sup> The approximately thirty remaining guilds had no such privileges.

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14. Matthias Meyn, Die Reichsstadt Frankfurt vor dem Bürgeraufstand von 1612 bis 1614 Struktur und Krise, Studien zur Frankfurter Geschichte, Heft 15 (Frankfurt am Main: Verlag Waldemar Kramer, 1980), 178.

15. Ibid.

16. Ibid., 180.

17. Karl Bücher, Die Bevölkerung von Frankfurt am Main im XIV und XV Jahrhunderts (Tübingen: H. Laupp, 1886), 87.

The authority of the oligarchic patricians was not seriously endangered by the presence of the artisans in the Council.<sup>18</sup> For instance, throughout the entire sixteenth and seventeenth centuries no guild member ever reached the position of local mayor and no guild member ever entered the upper bench, the bench composing the civil court.<sup>19</sup> It is tempting to deduce from these statements that the local patricians held absolute power in the City Council. But this was not the case.<sup>20</sup> The following facts and historical developments speak against such a proposition.

First and foremost, the absence of any cohesive police or institutionalized military force prevented such power. Second, the City Council did not operate in a social vacuum as evidenced by the introduction of the Protest Reformation. When Frankfurt embraced Lutheranism for the first time in 1533, it was because of pressure from the population at large and not at the initiative of the City Council.<sup>21</sup> In other words, it was pressure from

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18. Meyn, 180.

19. Bothe, Stadt Frankfurt, 116.

20. Meyn, 171.

21. Sigrid Jahns, Frankfurter Reformation und Schmalkaldischer Bund, Studien zur Frankfurter Geschichte, Heft 9 (Frankfurt am Main: Verlag Waldemar Kramer, 1976), 411.

below, popular and civilian, and not magisterial initiative which led to the reception of Protestantism.<sup>22</sup> In addition, once Lutheranism had taken firm roots locally, both the guilds and the City Council excluded Catholics. Catholics were no longer allowed to join the guilds.<sup>23</sup> Catholics, with one exception, were also no longer tolerated in the City Council, a religious policy which lasted throughout the sixteenth and seventeenth centuries.<sup>24</sup>

Moreover, if the number of revolts on the part of the population are a guide to existing oppression or, conversely, the lack of revolts be interpreted as a sign of co-operation, it seems more likely that Frankfurt's City Council had established a modus vivendi, not to say a system of co-operation, with the local population.

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22. This situation was not unique to Frankfurt. Other places in Germany experienced similar developments as demonstrated by Marita A. Pantzer, Sozialer Protest in süddeutschen Reichsstädten 1485 bis 1525 (Munich: Miscellanea Bavaria Monacensia Civ, 1982), 259-260; A.G. Dickens, Reformation and Society (Norwich: Harcourt, Brace, & World, Inc., 1966); Bernd Moeller, Imperial Cities and the Reformation, trans. Erik Midelfort and Mark Edwards (Philadelphia: Fortress Press, 1972); Miriam Usher Chrisman, Strasbourg and the Reformation (New Haven: Yale University Press, 1967); Heinrich Richard Schmidt, Reichsstädte, Reich und Reformation (Stuttgart: Franz Steiner Verlag GmbH., 1980); Robert W. Scribner, The German Reformation (Atlantic Highlands, N.J.: Humanities Press International, Inc., 1986).

23. Bothe, Stadt Frankfurt, 381.

24. Ibid., 381; Meyn, 84, 172.

Throughout the 134 years investigated here, only one revolt broke out, the revolt of 1612-1614. True, it was a very serious upheaval, but it is debatable whether the revolt can be blamed entirely on misconduct on the part of the City Council. In fact, one might argue that religious and in particular economic jealousies of large segments of Frankfurt's population contributed to the events which led to the revolt. It was the population's concerted pressure upon the City Council which led the government to reverse its earlier and profitable economic decisions. It all started with the arrival of religious refugees in the mid-sixteenth century.

#### Economic and Political Developments

Economically speaking, the mid-sixteenth century represented a watershed for the city of Frankfurt.<sup>25</sup> It was then that Frankfurt began to change from a predominantly agricultural to a commercial and manufacturing town.<sup>26</sup> During the fifteenth century, the

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25. Alexander Dietz, Frankfurter Handelsgeschichte (Frankfurt am Main: Druck und Verlag von Hermann Minjon, 1910), 1:305.

26. Friedrich Bothe, Beiträge zur Wirtschafts- und Sozialgeschichte der Reichsstadt Frankfurt am Main (Altenburg: Druck der Piererschen Hofbuchdruckerei, Stephan Geibel & Co., 1906), 76.

city had experienced an economic slump, blamed, among other reasons, on heavy competition from English cloth manufacturers.<sup>27</sup> The decline was clearly evidenced by the decrease of local wool weavers. In 1400 a total of 200 master had been registered in Frankfurt; this number declined to 41 by 1495 and 31 by 1552.<sup>28</sup> True, Frankfurt continued hosting its two annual trade fairs and showed signs of industrial growth in the establishment of a local printing industry in 1530.<sup>29</sup> But the main impetus toward an economic and demographic boom came with the arrival of Calvinist religious refugees from the Netherlands. They revitalized the life of the city of Frankfurt.<sup>30</sup>

The earliest Calvinist refugees started to arrive by 1554. Thirty years later, they had made their presence felt in economic, demographic, and social terms. Flemish, Walloon, and Dutch refugees set up local industries in particular the silk industry which soon started to flourish. In addition, the newcomers had far-reaching trade connections, and the combination of these

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27. Dietz, 1:60; Bothe Stadt Frankfurt, 178.

28. Bücher, Die Bevölkerung, 89.

29. Bothe, Stadt Frankfurt, 340.

30. Ibid., 343.

two economic activities stimulated the export trade.<sup>31</sup> Various money transactions became routine and an extensive local banking system began to emerge.<sup>32</sup> The economic revival also affected the local building and metal industries, and had an impact on the paper industry.<sup>33</sup> Frankfurt's fairs also reached a peak during the last decades of the sixteenth century.<sup>34</sup> And, needless to say, the general revitalization of Frankfurt's economy raised the government's income as well.<sup>35</sup>

Frankfurt's economic boom was also reflected in a demographic gain and a changed occupational structure. The city's population increased from about 11,000 at the beginning of the sixteenth century to approximately 18,000 to 20,000 during the last three decades of the century.<sup>36</sup> Calvinist refugees made up approximately 4,000 new residents by 1595.<sup>37</sup> This immigration wave was

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31. Bothe, Beiträge, 38.

32. Ibid., 79.

33. Ibid., 156, 157.

34. Bothe, Stadt Frankfurt, 362.

35. Bothe, Beiträge, 28.

36. Meyn, 204; Hans Mauersberg, Wirtschafts- und Sozialgeschichte zentraleuropäischer Städte in neuerer Zeit (Göttingen: Vandenhoeck und Ruprecht, 1960), 54.

37. Meyn, 204.

paralleled by a large number of Jewish newcomers.<sup>38</sup> From 1556 to 1593 their total number, including new arrivals, grew to somewhere between 2,000 and 3,000.<sup>39</sup> True, compared to cities such as Cologne, Nuremberg, and Augsburg whose population amounted to 30,000 to 40,000, Frankfurt was still a relatively small town, but its population was more heterogeneous compared to these towns.<sup>40</sup> And with the arrival of new industries came a different labor force.

Both skilled and unskilled workers arrived in large numbers and found work primarily in the textile industry. Compared to 156 people employed in the textile industry in 1542, the number increased to 407 during the years 1586 to 1589.<sup>41</sup> In addition, the number of domestic servants and day laborers rose considerably.<sup>42</sup>

Despite this economic boom, Frankfurt could not escape the effects of the price revolution of the sixteenth and seventeenth centuries. This inflation

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38. Bothe, Beiträge, 69.

39. I. Kracauer, Geschichte der Juden in Frankfurt am Main, 1550-1824 (Frankfurt am Main: I. Kauffmann Verlag, 1925), 1:31

40. Dietz, 2:2; Martha Howell, Women, Production, and Patriarchy in Late Medieval Cities (Chicago: The University of Chicago Press, 1986), 156,157.

41. Bothe, Beiträge, 156, 157.

42. Meyn, 214.

manifested itself in Frankfurt in an increase in food prices for such items as meat, fish, and grain, and secondly in the arrival of bad, or debased coins.<sup>43</sup> Wage earners, in particular day laborers, were primarily affected by these price increases. Their salaries increased at a rate lower than the rate of food prices.<sup>44</sup> This data reveals a considerable disparity between food prices and wages, reflecting a decrease in purchasing power.<sup>45</sup>

The second factor mentioned in conjunction with the price revolution was the debasement of coinage. This procedure meant reducing and/or replacing the original gold or silver contents of the various coins with inferior metals. This practice became widespread though not necessarily always legal. It contributed greatly to an ever-increasing monetary instability. Frankfurt was particularly hard hit by such monetary procedures because of the city's bi-annual fairs. These fairs brought large amounts of money to Frankfurt but also many bad coins.<sup>46</sup> While the Reichsmünzordnung, the imperial coinage decree of 1559 had fixed the contents of the various coins for

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43. Bothe, Beiträge, 90; idem Stadt Frankfurt, 370.

44. Bothe, Beiträge, 95; Meyn, 211.

45. Ibid., 212.

46. Bothe, Stadt Frankfurt, 396.

the Holy Roman Empire and foreign coins were prohibited, such legislation proved ineffective.<sup>47</sup>

Hardships resulting from these inflationary trends were soon coupled in the minds of many local people with the influx of foreigners. Xenophobic feelings were expressed by workers who argued that newcomers flooded the local industries and thereby reduced the natives' wages.<sup>48</sup> Their complaints were backed by dissatisfactions from the local guilds, who resented the competition from Calvinist refugees and this despite the fact that many among the religious refugees had acquired local citizenship.<sup>49</sup> While these alleged foreign traders and industrialists were supposedly becoming richer, so the argument ran, selective local groups, namely guild members and wage earners became poorer.<sup>50</sup> It was also suggested that the local trade, with the exception of the wood trade, had contracted in the hands of the Calvinists which meant that a large part of the local population was dependent on the foreigners economically.<sup>51</sup> The chorus of complaints from these groups was intensified by local

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47. Ibid., 373.

48. Bothe, Beiträge, 95.

49. Dietz, 2:64; Bothe, Stadt Frankfurt, 378.

50. Ibid., 241.

51. Ibid., 382.

Lutheran preachers, who resented the Dutch for religious reasons.<sup>52</sup>

Frankfurt's City Council was thus faced with a double-sided problem, namely an economic boom on the one hand and inflation coupled with local resentment over the newcomers on the other. It was the concerted pressure from the population which made the City Council reverse its earlier flexible religious policy toward the Calvinists. In 1596, the City Council curtailed their religious freedom.<sup>53</sup>

True, the City Council also felt threatened by the increasing wealth and numbers of the foreigners.<sup>54</sup> But it was above all at the instigation of the guilds, the wage earners, and the Lutheran preachers that the City Council changed its earlier policy. This is yet another example of the Council being subject to pressure of interest groups. They reached a consensus with the local population and as a direct consequence, many Calvinists left Frankfurt.

Their departure dealt a blow to the local economy.<sup>55</sup> It triggered off an economic slump primarily affecting

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52. Ibid., 381-382.

53. Ibid., 384.

54. Meyn, 207.

55. Bothe, Stadt Frankfurt, 385.

the silk and other textile-related industries. True, Frankfurt's book fair was still internationally acclaimed in particular during the beginning of the seventeenth century, but from then on it also showed signs of decline.<sup>56</sup>

The City Council eventually realized that their policies toward the Calvinists were having a dramatic impact on Frankfurt's economy. In 1601 they reversed their earlier position and permitted the Calvinist to set up a small church just outside Frankfurt's city wall. Many returned and with them came a revival of the local economy.<sup>57</sup> Frankfurt experienced a second economic boom, which this time affected the luxury industries, especially diamond cutting and goldsmithing.<sup>58</sup> And as during the previous economic boom, Frankfurt attracted many newcomers, seeking employment locally, in particular daylaborers and tailors.<sup>59</sup>

Despite previous experiences, in 1608 the City Council again restricted the religious services of the

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56. Karl Bräuer, ed., Studien zur Geschichte der Lebenshaltung in Frankfurt am Main während des 17. und 18. Jahrhunderts (Frankfurt am Main: Joseph Baer & Co., 1915), 1:196.

57. Bothe, Stadt Frankfurt, 389.

58. Bothe, Beiträge, 88.

59. Ibid., 148.

Calivinists. Once more, many left Frankfurt with the same devastating results.<sup>60</sup> Not only were the city's revenues severely curtailed, but more importantly, this immigration had a detrimental effect on the earnings of the ordinary workers, especially those employed in silk or textile-related industries.<sup>61</sup> Their plight was further compounded by the continued existence of the inflation. Even those among them who were still employed saw their purchasing power further diminished.<sup>62</sup>

This unstable socio-economic situation when coupled with resentment over the social composition of the City Council and reported mismanagement of government finances led to the outbreak of the most serious revolt the City Council ever had to face. The cataclysmic event sparking this revolt was the occasion of the Emperor Mathias' election in Frankfurt in 1612. The imperial electoral procedure prescribed that the local burghers were to swear to uphold the imperial privileges. But prior to proceeding with the oath, the burghers insisted on being properly informed of these imperial privileges. Many burghers suspected corruption on the part of the City Council, and their demands soon escalated into a

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60. Bothe, Stadt Frankfurt, 395.

61. Bothe, Beiträge, 88-89.

62. Bothe, Stadt Frankfurt, 397.

veritable list of grievances. These grievances were compiled into a so-called Gravamina or grievance list and presented to the City Council by one of the ringleaders of the revolt, L.V. Fettmilch on August 25, 1612.<sup>63</sup> An analysis of the local grievances sheds some light on the complex issues and might be indicative of the complaints and aspirations of the local burghers.

Foremost among the burghers' complaints was the composition of the City Council; the close family ties of the various City Councillors were especially criticized.<sup>64</sup> The second highest ranking complaint, namely items 17 to 22 of the grievance list dealt with the mishandling of the local jurisdiction.<sup>65</sup> Among others, councillors were accused of absenteeism during important trial sessions.<sup>66</sup> In addition, City Councillors were accused of having embezzled city money.<sup>67</sup> Corruption charges were also brought against two city advocates, though neither of them was a member of the City

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63. Friedrich Bothe, Frankfurts Wirtschaftlich-Soziale Entwicklung vor dem Dreissigjährigen Kriege (Frankfurt am Main: Joseph Baer & Co., 1920), 2:381.

64. Ibid.

65. Ibid., 388.

66. Bothe, Beiträge, 47.

67. Ibid., 35.

Council.<sup>68</sup> Advocates, as explained previously, were legally trained jurists who assisted the City Council as legal and political advisors.

The burghers insisted that in future close relatives be prevented from sitting on the Council so that an impartial administration be guaranteed.<sup>69</sup> They also urged that the City Council be filled with efficient, well-qualified persons including legally trained jurists.<sup>70</sup> The latter request seemed somewhat paradoxical given the fact that Frankfurt's burghers had voiced corruption charges against two such legally trained advocates, yet were now suggesting similar professionals to enter the ranks of the City Council.

In the economic field, the burghers insisted, among other demands, on the creation of a bi-weekly grain market to guarantee the availability of cheaper grain.<sup>71</sup> The most flagrant of all requirements focussed on the local Jewish population. The Jews were held responsible for bleeding the local population through usury.<sup>72</sup> Consequently, the guilds demanded the expulsion of the

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68. Meyn, 181.

69. Bothe, Wirtschaftlich-Soziale Entwicklung, 382.

70. Ibid., 383, 384.

71. Meyn, 37.

72. Ibid.

Jews from the city.<sup>73</sup>

But the course of events precipitated the demands. The population took matters into their own hands. On August 22, 1614 the Jewish quarters were attacked. Rumors about an imminent attack had reached the Jews one day prior to the actual assault and several families were able to take refuge in houses of friendly Christians. One City Councillor protected more than sixty Jews, including ten young mothers.<sup>74</sup> Those Jews who had stayed behind tried to defend themselves but they were outnumbered. The attack by the local populace on Jewish life and property lasted thirteen hours. After the assaults abated, the Jews were ordered by the ringleader of the revolt, Fettmilch, and other participants to leave town.<sup>75</sup>

As for the City Council, they were unable to crush the burgher's revolt. In fact, many City Councillors abdicated; some were even imprisoned during the course of the revolt. In the end, the intervention of the Emperor was needed to surpress the revolt and restore local order. On January 4, 1614 the City Council officially reopened. An imperial investigation was launched to determine the causes of the revolt and possible crimes

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73. Ibid., 48.

74. Kracauer, 1:386.

75. Ibid., 389.

committed during its course. This was the only time, at least from 1562 to 1694, that an outside agency superseded local criminal jurisdictional authority.

The imperial court pronounced the following sentences. First, the patrician City Council was acquitted of any major wrong-doing, while two of its earlier members were quietly removed.<sup>76</sup> Second, seven persons, mostly popular ringleaders, were sentenced to death.<sup>77</sup> An additional nine conspirators were flogged and then banished for life, while twenty-three were banished without flogging.<sup>78</sup> Third, all local guild members were found guilty of conspiracy and an additional 224 persons fared the same fate.<sup>79</sup> A mass-verdict was pronounced in which all those found guilty of conspiracy were required to pay considerable monetary fines. As a direct consequence of the revolt, an imperial mandate dissolved all guilds and societies, except for the two leading patrician ones, the Alt-Limburg and Frauensteiner.<sup>80</sup>

As to the crimes committed against the Jews, the imperial authorities ordered that the Jews were to be

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76. Kracauer, 2:401.

77. Ibid., 398.

78. Ibid., 399.

79. Ibid., 404, 405.

80. Meyn, 58.

escorted back to Frankfurt and that the fiscal damage done to them had to be re-imbursed by the city of Frankfurt. Imperial commissioners accused the journeymen and their masters of having caused most of the damage, but they also accused the majority of local burghers of having contributed to the conspiracy.<sup>81</sup> Although one might argue that the imperial verdicts tended to side with the patricians, one cannot exonerate the population at large from either having participated or acquiesced in the face of brutal crimes against the Jews. If the City Council was guilty in the eyes of many burghers of Frankfurt for having committed various offenses, the local population was not free from committing its share of crimes either.

With the abolition of the guilds, the new City Council gained an enhanced standing and seemingly tighter control over the local artisans. But such a conclusion should not be overrated, the population could also register a partial success. They had sent an unmistakable message to the patricians. The patricians could ill afford a future similar upheaval of the population. A second intervention on the part of the Emperor might result in the loss of local autonomy, and

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81. Kracauer, 1:391.

the loss of their own power base.<sup>82</sup> Although the patricians appeared to have more control over the local population than before the revolt, they needed the co-operation of the local populace just as much or even more than before to avoid social tensions from building and erupting into popular revolts.

During the remainder of the seventeenth century no further revolts took place. It thus seemed as if a modus vivendi between the City Council and the population had been worked out. Such co-operation was needed to cope with the effects of the Thirty Years War and the French Wars.

Initially, the outbreak of the Thirty Years War in 1618 affected Frankfurt only peripherally because of the City Council's adroit handling of foreign affairs.<sup>83</sup> Frankfurt's worst problem consisted of an intensifying inflation because of the war. For example, the price for beef had risen from 12 pennies in 1601, to 24 pennies in 1622. Pork prices increased from 14 pennies in 1601 to 28 pennies in 1622.<sup>84</sup> A more visible sign of the effects of

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82. Mauersberg, 107; Christopher R. Friedrichs, "Urban Conflicts and the Imperial Constitution in Seventeenth Century Germany," The Journal of Modern History, 58 Supplement (December 1986): 100, 121.

83. K.P. Jaeck "Frankfurt und der westfälische Frieden," Archiv für Frankfurts Geschichte und Kunst, 4, Folge 1 (1925): 218.

84. Bothe, Stadt Frankfurt, 440.

the war was a steadily increasing number of local soldiers. In 1618, the city of Frankfurt had 160 soldiers at its disposal.<sup>85</sup> Two years later the number jumped to 750 soldiers, and reached a total of 1,200 in 1631.<sup>86</sup>

With the arrival of the Swedish King Gustavus Adolphus in 1631, Frankfurt was directly drawn into the events of the war. A total of 600 Swedish soldiers were stationed in a local garrison.<sup>87</sup> The Swedish King upheld Frankfurt's privileges and protected the city's trade in return for a special fee.<sup>88</sup> Despite these trade privileges, the stationing of Swedish troops had caused local hardship, especially during intense fighting in 1635 which led to their being ousted.

But Frankfurt suffered far more from the fact that during 1634 and 1635 more battles were fought in Frankfurt's vicinity and an endless stream of victims sought refuge in the town. In 1634 the City Council tried in vain to curb the influx of people by deporting foreigners. But in vain, both inside and outside the town walls, people set up huts for shelter.<sup>89</sup> During the same

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85. Moritz, Stadtverfassung, 419.

86. Ibid., 420.

87. Bothe, Stadt Frankfurt, 444.

88. Ibid., 447.

89. G.L. Kriegk, "Frankfurt um die Mitte des dreissigjährigen Krieges," Archiv für Frankfurts Geschichte und Kunst, N.F. 1 (1860):260.

year, the plague broke out locally and in 1635 the epidemic peaked.

Demographically speaking, the results of the plague were catastrophic. It was claimed that 6,943 people lost their lives during 1635.<sup>90</sup> But this figure is too low considering that only Protestant victims were registered. Neither Jews nor Catholics were included in this figure.<sup>91</sup> Although no figures are available for Catholics, some numerical indications exist with regard to the Jewish population. During the year 1635, a total of 222 died, the majority of whom were children.<sup>92</sup> Seen in relation to previous years, this meant an increase from a total of 163 deaths in 1632, and 174 in 1633. A very similar pattern can be observed for the death rate of Protestants. During the year 1631 a total of 2,900 died, followed by 3,512 in 1632 and 3,421 registered death in 1634. In 1635, the peak of the plague, this number doubled to 6,943.

But compared to other German towns, Frankfurt had not fared badly during the war.<sup>93</sup> Frankfurt was the only town in South Germany whose trade, especially its bi-

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90. Ibid., 268.

91. Ibid., 251.

92. Kracauer, 2:35.

93. Bothe, Stadt Frankfurt, 451.

annual local fairs, continued throughout the war and were just as prosperous immediately afterwards.<sup>94</sup> By 1658 at the latest, Frankfurt had fully recovered from the effects of the Thirty Years War.<sup>95</sup>

The outbreak of the French wars, and especially the fight over the Palatinate, once again exposed Frankfurt to the dangers of war. Despite the fact that the city had hired additional soldiers, Frankfurt could not prevent the French from setting two of its suburbs on fire in 1688.<sup>96</sup> In addition to the French wars, the city also had to support the Emperor who was fighting the Turkish wars. Although this generally bellicose situation entailed financial burdens for the city Frankfurt was spared from any major war-related catastrophe.<sup>97</sup>

The above historical synopsis illustrates that the City Council played a decisive role in Frankfurt's political and economic life. But it also demonstrates that the ruling elite did not govern by fiat from above but integrated many concerns of the population into municipal policies such as the Reformation or the

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94. Jaeck, 272.

95. Hermann Meinert, Frankfurts Geschichte (Frankfurt am Main: Verlag Dr. Waldemar Kramer, 1958), 47.

96. Bothe, Stadt Frankfurt, 472.

97. Ibid.

expulsion of the Calvinist refugees. And the same approach will be evidenced in the following analysis of Frankfurt's social structure.

## CHAPTER II

## SOCIETY

Social Identification System

Frankfurt's population can be divided into two legally distinct groups, namely burghers and non-burghers. A burgher was a person, male or female, who by virtue of swearing an oath of loyalty to the city and by paying a certain amount of money became a legal citizen of the town. Burgher status entitled one to a host of civic rights and privileges, as well as obligations. Among the privileges was the fact that no burgher could be put on trial in any place other than Frankfurt, and among the obligations the greatest was the requirement to military service. Sons and daughters of local burghers could easily acquire, if not inherit, this burgher status at age 25, the local age of maturity. Foreigners could also become burghers, but only under the terms of various preconditions. It was the City Council which set the standards and approved each application.

As for the non-burghers, they were persons who resided in Frankfurt either permanently or temporarily.

The permanent residents were so-called denizens who for one reason or another had not acquired the burgher status. Temporary residents consisted basically of a large number of what might also be called a floating population such as male and female servants, journeymen, apprentices, and, of course, various seasonal day laborers.<sup>1</sup> In other words, people who stayed in Frankfurt only temporarily did so because they wanted to find work.

Legal distinctions had an impact on the social status of the beholder. Although no passports or identification cards were in existence during this period, and identification of the legal status seemed very difficult, different systems of social and legal identification were used. One system consisted of adding a person's birth place to his or her first name. Another more elaborate and arguably more effective system of identification consisted of using visible and clearly discernible symbols.

The use of symbols to describe and designate a person's legal, professional, social, even emotional status seemed, in fact, to override all other identification aspects. Visual symbols, often expressed in specific dress or other insignia, permeated every aspect

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1. Bücher, Bevölkerung, 602.

of life. From birth to death the whole life span seemed to be mirrored if not regulated by the most outward of appearances. Each member of a specific profession wore a distinctive dress or colored uniform such as the carpenters, butchers, or bakers.<sup>2</sup> Professional distinctions could thus easily be made simply by looking at the person's clothes. Each type and colour of attire such as the black mourning dress conveyed a special message to the passers-by.<sup>3</sup> Regional diversifications added a special dimension to local uniforms.<sup>4</sup> The messages conveyed were not subtle by any means. They were obvious and colorful and easily understood by everyone.

Visual symbols fulfilled various practical functions. They gained such importance that it led to the institutionalization of dress codes, the Kleiderordnungen. The first reference to dress ordinances in Frankfurt dates back to the mid-fourteenth century but they were still rather general in outlook.<sup>5</sup> Starting with

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2. Ch. Williams-Mitchell, Dressed for the Job, illustrated by Jeffrey J. Burn (Poole-Dosset: Blandford Press, 1982).

3. P. Cunnington and C. Lucas, Costume for Birth, Marriages and Death (London: Adam and Charles Black, 1972).

4. Franz, J. Behnisch, Die Tracht Nürnbergs und seines Unterlandes vom 16. bis zur Mitte des 19. Jahrhunderts (Nuremberg: Verlag Lorenz Spindler, 1963).

5. Frankfurter Amts- und Zunfturkunden bis zum Jahre 1612, eds. Karl Bücher and Benno Schmidt (Frankfurt am Main: Joseph Baer & Co., 1914), 501.

the end of the fifteenth century, the dress codes became more stratified and their real nature crystallized. This phenomenon can also be observed on the imperial level. During the 1497 Diet of Lindau dress codes were prescribed for noble burghers, for regular burghers, for artisans and for peasants.<sup>6</sup> An even sharper delineation was introduced during the 1500 Diet of Augsburg when the kind of cloth to be used was specified.<sup>7</sup> Thus by the end of the fifteenth century one can observe through clothing visible expressions of social, and professional differentiation in an urban setting.

During the late sixteenth and seventeenth centuries, no less than ten dress codes were promulgated in the city of Frankfurt. The dress code of 1597 specified, for instance, that only outstanding local personalities such as city councillors or important tradesmen and merchants could wear clothing made of velvet, satin or silk.<sup>8</sup> The dress code of 1640, was much more socially stratified in that now five Stände or estates were clearly established, each estate wearing its own distinct dress made out of clearly prescribed material. First were the City

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6. Bräuer, 1:224.

7. Ibid., 225.

8. Corpus Legum Francofurtensis (Frankfurt am Main: 1748), 1:52.

Councillors, second distinguished and well-known burghers and tradesmen, third notaries, advocates, artists and distinguished retailers, fourth general retailers and all artisans, fifth those not really qualifying as artisans or retailers, such as carters, and day laborers, etc.<sup>9</sup> The dress code of 1672 was even more specific in outlining the various modes of dress according to social stratification.<sup>10</sup>

Apart from the Kleiderordnung, additional dress specifications existed for the poor. From 1476 on, the poor had to wear special insignia or badges for begging purposes.<sup>11</sup> And so did the Jews. They had to wear yellow rings on their clothes so that they could be easily distinguished from Christians. If they did not wear these yellow markers, they had to pay a fine.<sup>12</sup>

Traditionally, the dress codes have been interpreted as sumptuary laws since they regulated not only elaborate dressing but also excessive eating and drinking. While, in fact, these codes were to curb the various excesses, another dimension must be added to this traditional

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9. Ibid., 3:36.

10. Ibid., 4:25.

11. Moritz, bürgerliche Fürsorgeanstalten, 111.

12. Sammlung der Verordnungen der Reichsstadt Frankfurt am Mayn, ed. Johann Con. Beyerbach, (Frankfurt am Mayn: Hermannische Buchhandlung, 1798), 1:1261.

interpretation (if these codes were only to curb excesses one might indeed infer that Frankfurt's population indulged in wide-spread gluttony and excessive dressing only). The codes incorporated a mutual policing system for the simple reason that the dress ordinances did not only prohibit but also prescribed specific dress for certain people. The style of dress became a symbol with the aim of clearly identifying a person by simply looking at the clothing he or she wore.

The purpose of these dress ordinances was clearly spelled out in the codes themselves. They were needed so that everyone could be easily identified according to his status, honor, and wealth.<sup>13</sup> The various codes, thus, primarily served to enhance local social stratification by visibly setting the various groups apart.<sup>14</sup> But the rationale of ease of identification partly begs the question. Why did people have to be easily identified? The answer is contained in the full name of the dress codes, namely Policey-Ordnung or police ordinances. Thus a second and most important feature was that of policing, a supervisory function. By an increasing use of visual

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13. Corpus Legum, 1:52.

14. For an interesting comparison see Diane Owen Hughes, "Sumptuary Laws and Social Relations in Renaissance Italy," in Disputes and Settlements: Law and Human Relations in the West, ed. John Bossy, (Cambridge: Cambridge University Press, 1983), 98-99.

symbols, such as mode of dress for example, a visible ordering of society was attempted. There was no mistaking a patrician for a Jew or an artisan for a council member. In the absence of any institutionalized regulatory body such as a bureaucracy or police force, clearly discernible symbols were introduced.

This heightened visible identification procedure paralleled Frankfurt's urban growth. It was toward the end of the sixteenth century that Frankfurt expanded considerably both economically and demographically. It was precisely during the same time span that the dress codes, although introduced earlier, became more stratified. This parallel development was no historical accident. With the transition to a larger urban setting, Frankfurt became more complex to administer. Different administrative and policing means were needed, and the dress code served precisely these functions.

The codes played an increasingly important role in policing functions, especially mutual policing. This aspect of mutual policing becomes extremely important for an effective operation of the criminal procedure which operated without an institutionalized police force. The policing was done with visible signs and with the cooperation of the whole population. For this reason, the signs had to be clearly understood by everyone. The supervisory or policing nature of the dress codes thus

had a direct bearing on the accusation stage in criminal jurisdiction, as will become evident in the next chapter. It was one thing to accuse a beggar of a crime it was quite another to incriminate a patrician.

This system could only work if the public at large co-operated. And there are no indications that they did not. It appears that no complaints were voiced against this visible hierarchical stratification system. The only transgressions cited were those of local burghers imitating the first echelon by dressing in the same expensive clothe.

#### Patricians

According to the Kleiderordnung, the upper crust of Frankfurt's society consisted of the patricians. They were clad in the most expensive clothes. A contemporary commented on this aspect in his diary when he confirmed that it was the dress which most clearly demonstrated the difference between a patrician and a burgher.<sup>15</sup> The same commentator also cited a local proverb "wo die Herren seien, do klingeln die Schellen" (where the gentlemen are

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15. B. J. Römer-Bücher, "Wohlleben und Prachtliebe der Gesellschaft Limburg zu Frankfurt am Main," in Zeitschrift für deutsche Kulturgeschichte, eds. Johannes Müller and Johannes Falke (Nuremberg: Verlag von Bauer & Raspe, 1856), 76.

bells ring) which portrays the patricians as wearing little bells on their clothes.<sup>16</sup> Patricians could thus be identified by dress as well as by sound.

Visual symbols even conveyed the internal structure of the patricians with the use of flags, slogans and distinctive color clothing. Organized into various Gesellschaften (organizations), each of the participatory patrician families wore special color clothing. For example, by the seventeenth century the most prominent Gesellschaften were the Alt-Limburg and the Frauenstein. Members of the Frauenstein were dressed predominantly in white and yellow color clothes and the distinctive feature of the Alt-Limburg flag depicted a woman holding a monkey on her arm.<sup>17</sup>

The origins of the patricians, although a debated issue among historians in general, seems to be quite clear in the case of Frankfurt.<sup>18</sup> The local patriciate did not descend from nor did it belong to the titled

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16. Ibid., 81.

17. Flag on display in the Städtelsche Kunstinstitut in Frankfurt am Main.

18. J.W. Thompson, Economic and Social History of Europe in the Late Middle Ages (New York: The Century Co., 1931), 398; Henri Pirenne, Economic and Social History of Medieval Europe, trans. I.E. Clegg (New York: Harcourt, Brace and World, Inc. 1937), 93; Hans Planitz, Die deutsche Stadt im Mittelalter (Cologne: Böhlau-Verlag, 1954), 263.

nobility.<sup>19</sup> In fact, the titled nobility had ceased to play a role in local affairs, when most of them had left the city for nearby areas by the end of the thirteenth century.<sup>20</sup> A leading historian on Frankfurt's patriciate even claims that there existed irreconcilable differences existed between nobles and patricians.<sup>21</sup> The will of a renowned patrician seems to confirm this rift for it states that should his widow get married to a noble she would be dispossessed.<sup>22</sup> Marriages between nobles and patricians were thus not fostered. Frankfurt's patricians generally married among their own.<sup>23</sup>

Frankfurt's patricians owed their leading position to wealth. Originally, they had acquired their riches from long-distance trade, especially with Italy. Many local patricians owned chambers in the Fondaco dei tedeschi at the Canale Grande in Venice.<sup>24</sup> But by the fifteenth century, they increasingly withdrew from long-

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19. Dietz, 1:137; Franz Lerner, Die Frankfurter Patriziergesellschaft Alt-Limburg und ihre Stiftungen (Frankfurt am Main: Waldemar Kramer, 1902), 18.

20. Bothe, Stadt Frankfurt, 83.

21. Lerner, Patriziergesellschaft, 21.

22. Bothe, Stadt Frankfurt, 212.

23. Franz Lerner, Gestalten aus der Geschichte des Frankfurter Patriziergeschlechts von Holzhausen (Frankfurt am Main: Waldemar Kramer, 1902), 28.

24. Bothe, Stadt Frankfurt, 201.

distance trade and invested in landed property.<sup>25</sup> They owned many houses in Frankfurt especially in the fair district which they rented to foreign merchants during the bi-annual fairs. The local patricians thus lived increasingly off rents.<sup>26</sup>

By the sixteenth century a new professional category emerged among them, namely advocates.<sup>27</sup> These advocates were jurists trained in universities, especially in Italy. Although still few in numbers, their advice was increasingly sought for legal and political matters by Frankfurt's City Council.

Given the fact that, as explained earlier, two thirds of Frankfurt's City Council consisted of patricians, the arrival of jurists from their own ranks could only strengthen their position. But again this fact should not be overrated. Frankfurt's patricians were not politically intransigent. Had they been intolerable and abusive of their power, Frankfurt's population would surely have discarded any memorabilia associated with them. This was not the case, on the contrary, up to the present day the name of one of the leading patrician families, the Holzhausen, is found on many important

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25. Meyn, 246, 248.

26. Meinert, Frankfurts Geschichte, 177.

27. Lerner, Patriziergesellschaft, xII.

places. The Holzhausenpark, Holzhausenschule, and Holzhausenstrasse give ample proof of this contention.

### Guilds

Apart from the local patricians, the guilds played a prominent role in Frankfurt's city life. Despite an attempt on the part of the City Council to limit their numbers, they grew unhampered.<sup>28</sup> For example, between 1400-1511 twenty-eight guilds existed locally, whereas in 1612 a total of forty different guilds were registered in Frankfurt.<sup>29</sup> The numerical growth of the guilds also meant that more and more people were organized into corporate structures and subject to internal rules and regulations.

If in sheer numerical terms, the guilds influence was quite considerable, their power was even more impressive if one considers that the guilds not only regulated economic and professional matters of its members, but also aspects of personal comportment, and discipline. In other words, the guilds affected a large portion of the local society in ethical and cultural terms. Their influence was, in fact, one, if not the

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28. Bücher, Bevölkerung, 85-86.

29. Ibid., 82-83.

most, decisive factor leading to a change of moral attitudes and mores. An analysis of the local guild structure is, therefore, warranted.

One of the most striking elements of Frankfurt's guild ordinances for the sixteenth and seventeenth centuries was the growing insistence on the legitimate birth of the applicants desiring to join the guild. This status of legitimacy had to be proven either by a birth certificate or by witnesses. The guilds' insistence on the legitimate births of its members would have far-reaching consequences. Illegitimate children together with their mothers were gradually downgraded in the social and economic sector.

Originally, children of illegitimate birth had access to the guilds except for children of priests and prostitutes, and those born of adulterous acts. In Frankfurt's Statutes of 1297 a single or widowed parent's child was not considered dishonorable.<sup>30</sup> Such illegitimate children were even entitled to inherit the burgher's rights.<sup>31</sup> Illegitimate children carried the name of their fathers even if they were patricians. It was also the father, and not the mother, who had to take

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30. G.L. Kriegk, Deutsches Bürgertum im Mittelalter mit besonderer Beziehung auf Frankfurt (Frankfurt am Main: Literarische Anstalt, 1868), 2:277.

31. *Ibid.*, 278.

care of the child and look after its education.<sup>32</sup>  
 Cohabitation did not involve any secular punishment.<sup>33</sup> It  
 was only toward the end of the Middle Ages that  
 illegitimacy became increasingly regarded as  
 dishonorable. This trend was started by the guilds.<sup>34</sup>

In Frankfurt the first case in which illegitimacy  
 was seen as a disgrace by the guilds occurred in 1455;  
 even then it was a rather novel case. It involved a  
 member of the weaver's guild who had married a woman born  
 before her own parents were married. The City Council  
 took the side of the weaver by preventing the guild from  
 ousting him, but his wife was no longer allowed to  
 participate in official dances and festivities<sup>35</sup>.

The various guild ordinances allow one to trace the  
 change in outlook very clearly. The baker's guild  
 ordinances of 1355 with addenda up to 1490 do not insist  
 on proof of legitimacy through birth certificates.<sup>36</sup> In  
 1595, article 4 of this guild's ordinances, however,  
 clearly prescribed that no master should accept an

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32. Ibid.

33. Ibid., 282; James, A. Brundage, "Concubinage  
 and Marriage in Medieval Common Law," Journal of Medieval  
 History, 1, no.1 (April 1975): 2.

34. Kriegk, Bürgertum, 280.

35. Ibid., 281.

36. Amts- und Zunfturkunden, 1:19, 20.

apprentice until he had received proof of his legitimate birth.<sup>37</sup>

The barber's guild ordinance was even stricter. It prescribed in 1586 that anyone born outside of Frankfurt who was applying to become a master baker had not only to prove his own legitimate birth but also his wife's.<sup>38</sup> The beer brewer's guild followed in 1594 by stating that henceforth nobody was to be allowed to become a guild member unless his and his wife's legitimate birth was proven.<sup>39</sup> Increasingly, one thus finds an insistence on the legitimate birth of the wife as well. But the regulations became even stricter. They soon extended to the applicant's parents as well. One only has to read the rules of the hoopers' guild to see this increased strictness. This guild specified that an applicant had to prove that he was a descendent of proper parents and that he, himself, was pious.<sup>40</sup> The list of examples goes on as in the case of bookbinders' ordinance of 1580 specifying that both the applicant and his parents had to be of legitimate birth. Similar restrictions were set up by

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37. Ibid., 47.

38. Ibid., 73.

39. Ibid., 86.

40. Ibid., 108.

other guilds.<sup>41</sup> It is of the utmost importance to realize in this connection that while the City Council as final authority in guild matters published these regulations, the initiative for such changes came at the explicit request of the guilds.<sup>42</sup> By the end of the sixteenth century all of the guilds except three had taken up the issue of the applicants' and, in most cases, his parents' legitimacy.

The intensification of moral aspects had started with the applicant's own comportment, moved to his parents' decorum and extended to his wife's behavior in an ever enlarging circle. From the guilds, this system spread throughout society by the simple fact that in sheer numerical terms alone, the guilds exercised a commanding influence. Moreover, in order to learn and practice a profession one had to be a member of a guild and thus comply with their regulations. They held the professional monopoly.<sup>43</sup>

The guilds' influence transcended the local level because many were part and parcel of a general network of guilds organized throughout Germany. In the form of

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41. Ibid., 133, 140, 205.

42. Ibid., 318, 347, 419.

43. H. G. Koenigsberger, and G.L. Mosse, Europe in the Sixteenth Century (New York: Holt, Rinehart and Winston, Inc., 1968), 35.

Bundesbriefe, letters of guild confederations, the guilds mutually reinforced each others' standards and rules, a system which can be regarded as an early version of the old boys' network. Frankfurt's tailors, for instance, exchanged their 1565 guild ordinance barring those of illegitimate birth from entering their ranks, with sixteen other towns.<sup>44</sup> The bakers and ten additional guilds circulated in their 1604 Bundesbriefe that unless an applicant was of honest and legitimate parents, he would not be accepted.<sup>45</sup> In other words, an illegitimate child was not only excluded from entering the guilds in his home town, he became automatically restricted in various other towns as well.

The implications of the guilds' restrictions were far-reaching, both regionally and culturally. They primarily affected the illegitimate child and the mother. Innocent newborns were branded for the rest of their lives by the institutionalization of a veritable inherited sin, which, in fact, is the literal translation of the German word of original sin, Erbsünde. This negative concept of illegitimacy prevented the newborn from achieving any kind of professional and social mobility. He or she was increasingly being

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44. Amts- und Zunfturkunden, 2:411.

45. *Ibid.*, 418.

prevented from learning a honorable trade, by no fault of his or her own. Consequently, it produced a widening gap between honorable professions, namely those requiring legitimate birth and ancestry, and dishonourable ones.

But the ripple effects were much wider. Its direct repercussions were felt by the illegitimate mother who was increasingly being looked down upon. It entailed a loss of social status and self-esteem for both mother and child. It also affected the relationship between men and women.

Most significantly, these changes were not initiated by the City Council but by the guilds themselves, although the City Council had to give the final stamp of approval. In other words, the various marital clauses were not superimposed by fiat from above, but came from the guilds as evidenced by their own ordinances.<sup>46</sup>

What was the purpose of these restrictions? Religious reasons seemed to have played no decisive role in the guild's enforcement of the marital status. The time factor is most significant in this connection. The guilds started to introduce their marital regulations by the mid-fifteenth century that is well before the Catholic Church intensified its marital regulations. In fact, until the end of the Middle Ages the Catholic

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46. Amts- und Zunfturkunden, 1:47, 318, 347.

Church was relatively flexible in its interpretation of what constituted a legal marriage.<sup>47</sup> Secret marriages, that is marriages which occurred in private without public witness and parental consent were recognized by the Church.<sup>48</sup> It was only with the Council of Trent in 1563 that secret and informal marriages were prohibited.<sup>49</sup> Even the Protestants' emphasis on marriage followed rather than preceded guild measures. The guilds thus started their own marital concepts before the two leading religious denominations did so.

Purely secular interpretations have been advanced for the guilds' restrictions. The historians Maschke and Walker argue convincingly that such measures were taken to prevent an overstaffing of the guilds.<sup>50</sup> The same line of reasoning was also advanced in conjunction with other guild restrictions.<sup>51</sup> For instance, by the end of the

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47. Steven Ozment, When Fathers Ruled (Cambridge: Harvard University Press, 1983); Brundage, 4, 8.

48. Brundage, 8.

49. Ibid., 10.

50. Erich Maschke, Städte und Menschen. (Wiesbaden: Franz Steiner Verlag, 1980), 320; Mack Walker, German Home Towns (Ithaca: Cornell University Press, 1971), 105; Frank Göttman, Die Frankfurter Bäckerzunft im späten Mittelalter, Studie zur Frankfurter Geschichte, Heft 10 (Frankfurt am Main: Verlag Waldemar Kramer, 1975).

51. Such as comments extended by the editors of the Amts- und Zunfturkunden, 1:67.

fifteenth century one had to produce a masterpiece in order to become a master.<sup>52</sup> In addition, toward the end of the sixteenth century there was an increasing insistence on the so-called years of travel for those journeymen aspiring to become masters one day.<sup>53</sup> Many guilds made their restrictions even tougher by insisting that the masters' candidates had to reside in Frankfurt for two consecutive years, the so-called Mutsjahre (years of courage), replacing the earlier requirement of a one year residency.<sup>54</sup> To these professional qualifications, municipal and financial burdens were added. Before even being considered to work locally as a master, the applicant had to be a local citizen.<sup>55</sup> And in most cases, this legal status was connected with the payment of a fee. Masters' applicants had to pay a special application fee just to be considered a future candidate.<sup>56</sup> Once the candidate passed the test, he had to entertain and pay for a special feast.<sup>57</sup>

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52. Bothe, Stadt Frankfurt, 181.

53. Amts- und Zunfturkunden, 1:63.

54. Bothe, Stadt Frankfurt, 369.

55. Amts- und Zunfturkunden, 1:75, 2:112.

56. Bothe, Stadt Frankfurt, 369.

57. Erich Maschke, Die Familie in der deutschen Stadt des späten Mittelalters (Heidelberg: Carl Winter Universitätsverlag, 1980), 52.

Again, the effects of such measures were far-reaching. The most obvious result was an ever-widening gap between masters, journeymen, and apprentices. Very few journeymen actually had a chance of ever becoming masters. Curbing upward mobility also resulted in an increasing number of travelling journeymen with little or no chance for a better future. The plight of an aspiring master could somewhat be obliterated if he married either a master's widow or a master's daughter. But even here restrictions were soon imposed. Frankfurt's women had to obtain the government's consent before marrying a non-native.

Guild restrictions thus placed an increasing burden on its male aspirants. But the adverse effects were even worse for women.

#### Women

Before the sixteenth century, women were found in almost all occupational layers. They held various positions in the guild system as Frankfurt's guild ordinances evidence. The guild ordinances for tailors, silk embroiderers, and drapers of 1377 with additions up to 1520 specifically mentioned and included "such women who want to engage in this craft, who do not have a

husband.<sup>58</sup> The guild ordinances for tanners, parchment-, string-, and bag makers of 1499 with additions up to 1584 also clearly included women.<sup>59</sup> These examples are ample proof that women did learn contemporary trades and that they joined the local guilds. Frankfurt was not an exceptional case. Towns like Lübeck and Strasbourg included women in various local guilds even as masters.<sup>60</sup> There even existed purely female guilds, the Frauzünfte as they were called.<sup>61</sup> Although female guilds did not exist in Frankfurt, women were not restricted in the male guilds and were also received as masters.<sup>62</sup>

Women were not only visible in the guilds. They also practiced the various occupations outside the guild setting.<sup>63</sup> Frankfurt had fifteen female doctors from 1389 to 1497.<sup>64</sup> Women worked for the local government as grain

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58. Amts- und Zunfturkunden, 1:506.

59. Ibid., 2:157.

60. Maschke, Die Familie, 37.

61. Maschke, Städte, 279.

62. Karl Bücher, "Die soziale Gliederung der Frankfurter Bevölkerung im Mittelalter," Berichte des Freien Deutschen Hochstifts, N.F. 3 (1887): 152.

63. Merry, E. Wiesner, Working Women in Renaissance Germany (New Brunswick, New Jersey: Rutgers University Press, 1986), 147.

64. Bücher, "Soziale Gliederung," 157.

weighers and midwives.<sup>65</sup> In addition, there existed semi-skilled or unskilled female day laborers working in the fields or in vineyards. Many women worked as domestic servants filling various household roles such as cooks and washerwomen.<sup>66</sup> The historian K. Bucher listed no less than 65 occupations held by women during the fourteenth and fifteenth centuries in Frankfurt.<sup>67</sup>

In addition to being independent professionals, women helped their husbands and fathers be they tradesmen or master craftsmen, to run their affairs and shops and sell their products on the markets. The contributions of these women were of equal value, although they remained in the shadow of their men.

Women were thus very visible in almost all occupational settings. But by the mid-sixteenth century a trend began which severely reduced women's occupational status. This process is most clearly evidenced by the various guild ordinances. The guild ordinance for Frankfurt's haberdashers did not show any restrictions

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65. Wiesner, 77, and Mascke, Städte, 104.

66. Bothe, Wirtschaftlich-Soziale Entwicklung, 2:210.

67. Karl Bücher, Die Berufe der Stadt Frankfurt am Main im Mittelalter (Leipzig: B.G. Teubner, 1914), and Edith Ennen, Frauen im Mittelalter, 3d ed. (Munich: Verlag C.H. Beck, 1987), 181.

concerning women until 1596.<sup>68</sup> The following year, based on complaints from male journeymen, the City Council decreed that, in order to diffuse altercations and discord, masters were no longer to employ foreign women but only local burghers' daughters or their next-of-kin.<sup>69</sup> This ruling was further tightened in 1607. Again because of supplications from this time all local harberdashers, the City Council stipulated that only those local daughters be taught the art whose parents had previously been in the guild.<sup>70</sup> A more telling example was the ordinances of the trouser knitters and carpet- and cap- producers. Their rules for apprentices clearly stated that no master was to teach knitting or similar handicraft to a woman unless she was his wife or legitimate daughter.<sup>71</sup>

Women in general were thus excluded from learning a trade in addition to being denied membership in the guilds. Only women directly related to masters had the privilege of being taught the trade. But even they were implicitly affected by such rules because they became increasingly dependent upon their husbands and fathers.

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68. Amts- und Zunfturkunden, 1:417.

69. Ibid.

70. Ibid., 419.

71. Amts- und Zunfturkunden, 2:261.

Needless to say, these professional restrictions set in motion a general downgrading trend for women in general.

What were the reasons for such restrictions? Competition among male and female apprentices seems to have been one of the causes.<sup>72</sup> This argument is substantiated by the fact that the initiative for such exclusions came mostly from journeymen and coincided, moreover, with the economic fluctuations in the local silk industry, referred to earlier. Journeymen were thus partly responsible for women's exclusion from the guilds.<sup>73</sup> But since these restrictions also coincided with the general tightening of the guilds, elitist and self-perpetuating elements on the part of local guild masters cannot be ruled out the more so since female members of their own family were allowed to learn the trade. A pattern not unlike the one used by local patricians to ensure the continuation of members of their own family as City Councillors. Women were thus pressured from below by the journeymen and from above by guild masters and City Councillors.

But this trend was not a local phenomenon. It happened all over Germany. It was a development of European dimensions. Various reasons and hypotheses have

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72. Bothe, Stadt Frankfurt, 385.

73. Wiesner, 165.

been advanced to assess this trend. Two recent studies evidence the lively debate of this topic. The historian Martha C. Howell in her book Women, Production, and Patriarchy in Late Medieval Cities, while recognizing divergent economic interpretations, advances her own by attributing women's exclusion from the guilds to a changing market structure.<sup>74</sup> Merry E. Wiesner in Working Women in Renaissance Germany, relates women's occupational decline to several factors, among others, journeymen, increased male professionalization, changing public morality and suspicion of single women. Wiesner in tune with her more diversified approach, includes in her historiographical discussion political and intellectual hypotheses for the decline in women's status.<sup>75</sup>

The historian K. Bücher, one of the first to realize both women's high occupational profile during the Middle Ages and their consequent exclusion from the professional scene, relates this phenomenon to demographic factors. Women, so the argument runs, outnumbered men in the Middle Ages, which explains their high numerical representation in the professions. Conversely, once women's professional demise began, the sex ratio, according to Bücher, must have been balancing off by the

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74. Howell, 30-39, 168, 172.

75. Wiesner, 163, 165, 193.

beginning of the modern period. Despite reservations advanced recently by K. Wesoly concerning Bücher's sex ratio for the Middle Ages, no empirically convincing data has as yet been established to disprove Bücher's thesis at least as far as the Middle Ages are concerned.<sup>76</sup> In fact women seem to have outnumbered men even during the early modern period for Europe as a whole.<sup>77</sup> In Frankfurt, women continued to be more numerous than men well into the early modern period, if not beyond.<sup>78</sup>

The combination of both a high numerical representation and increased occupational restrictions meant that more than half of Frankfurt's population, namely women, were pushed down the ladder financially. The rationale that women would marry and be supported by their husbands was also a fallacy because most women outlived their husbands as evidenced by the large number of widows in Frankfurt.<sup>79</sup> Women became poorer.

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76. Kurt Wesoly, "Der weibliche Bevölkerungsanteil in spätmittelalterlichen und frühneuzeitlichen Städten und die Betätigung von Frauen im zünftigen Handwerk," Zeitschrift der Geschichte des Oberrheins, N.F. 89 (1980): 116; Howell, 4; Ennen, 145.

77. Carlo, M. Cipolla and K. Borchardt, Bevölkerungsgeschichte Europas (Munich: C.H. Beck, 1971), 88.

78. Bothe, Beiträge, 55.

79. Bothe, Stadt Frankfurt, 246, 379.

Wide-spread poverty among women was already evident by the fifteenth century. Based on tax records from 1410, the percentage of poor women amounted to 33.6% in comparison to 7.8% of men who were poor.<sup>80</sup> Special houses for poor women, the so-called Beginenhäuser, were set up.<sup>81</sup> The Beginen, as the inhabitants of such houses were called, often engaged in nursing the sick and wounded, but were held in low esteem by local citizens.<sup>82</sup> If thus during the fifteenth century women ranked among the poorest, the impact of the guild restrictions must have had a devastating effect on women's lives. It is true that women stayed in lower occupational positions such as agricultural day laborers and domestic servants. In the case of agricultural laborers, the income of female workers in Frankfurt was half that of male laborers, at least for the years 1614 through 1688.<sup>83</sup> Even as domestic servants, their income was considerably below those of their male counterparts.<sup>84</sup>

Female servants were subjected to an additional strain, namely possible sexual abuse at the hands of the

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80. Bücher, Frauenfrage, 52.

81. Bücher, "soziale Gliederung," 157.

82. Bothe, Stadt Frankfurt, 247.

83. Bräuer, 1:195.

84. Maschke, Städte, 235.

employer with whom they lived and on whom they depended for a livelihood.

Women's deteriorating status in the economic sector was paralleled by their decline in the social sphere. The key to a proper understanding of this change in mentality lies in the concept of sexual mores. With an increased insistence on legitimate birth, extra-marital sexual encounters and their possible results were increasingly viewed in a negative light. At one time, cohabitation was a common phenomenon in every layer of society; it was quietly ignored and it did not entail any secular punishment in most towns unless connected with adultery.<sup>85</sup> And the offspring were not discriminated against. In the sixteenth century the guilds began to debase the status of all children born out of wedlock. Implicitly, these restrictions affected sexual mores as well. It would be incorrect to ascribe the change of sexual mores solely to measures taken by the guilds, but they re-inforced a process which had started by the end of the fifteenth century.

The change in sexual mores can most clearly be demonstrated by the changed outlook on prostitution. Brothels, the so-called Frauenhäuser, existed throughout

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85. Kriegk, Bürgertum, 2:282; Brundage, 1-18.

Germany during the thirteenth century.<sup>86</sup> They were often the property of local municipal governments.<sup>87</sup> In the case of Nuremberg, the city council even issued special Frauenhausordnungen, ordinances for brothels.<sup>88</sup> In Frankfurt no such ordinances existed, but the city owned two municipal brothels. In addition to municipally owned brothels, there existed private ones.<sup>89</sup> All prostitutes whether in the official buildings or private lodgings were carefully supervised by a city functionary, the Stöcker.<sup>90</sup> As early as 1354, the government saw to it that prostitutes received regular medical check-ups.<sup>91</sup>

Prostitutes were assigned special social functions such as welcoming secular dignitaries to the city of Frankfurt with bouquets of flowers.<sup>92</sup> In Frankfurt local custom had it that during the annual Hirschessen, a deer feast, the local prostitutes presented the city

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86. Kriegk, Bürgertum, 291.

87. Ibid., 292.

88. Ibid.

89. Kriegk, Bürgertum, 1:300.

90. Kriegk, Bürgertum, 2:299.

91. Michael Bargon, "Prostitution und Zuhälterei," in Kriminalwissenschaftliche Abhandlungen, ed. Friedrich Geerds, Vol. 15 (Lübeck: Verlag Schmidt-Römheld, 1983), 56.

92. Kriegk, Bürgertum, 327.

councillors with bouquets of flowers and, in turn, participated in the festivities.<sup>93</sup> Frankfurt's prostitutes received the same poor support as other local needy persons; during festivities they were given money, drink and food.

From all this evidence one can deduce that the subject of prostitution was not treated clandestinely but rather openly and publicly before the sixteenth century. Prostitution was almost considered a profession, after all the women had to pay regular income taxes, although those in private lodgings tried to circumvent taxation.<sup>94</sup> The treatment of prostitutes was surely symptomatic of a different outlook on sex and shame. And similar findings can be cited for other European regions especially for France where two studies reveal that "public opinion did not view them (prostitutes) with disgust" and that prostitution became institutionalized during the fourteenth and fifteenth centuries.<sup>95</sup>

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93. Ibid.

94. Ibid., 296.

95. Jacques Rossiaud, "Prostitution, Youth, and Society in the Towns of Southeastern France in the Fifteenth Century," in Robert Forster and Orest Ranum, eds. Deviants and the Abandoned in French Society, trans. Elborg Forster and Patricia, M. Ranum (Baltimore: John Hopkins University Press, 1978), 21; Leal Lydia Otis, Prostitution in Medieval Society (Chicago: University of Chicago Press, 1985), 25-39.

In Frankfurt it was toward the end of the fifteenth century, that the first indications of a change were registered. Again this change manifested itself visibly, reminiscent of the dress codes introduced at that time. As of 1468, Frankfurt's prostitutes were no longer permitted to wear gold, gold-plated jewelry, or other conspicuous items. A city edict promulgated in 1488 prescribed that prostitutes were to wear special, easily recognizable dresses.<sup>96</sup> By 1493 prostitutes were no longer allowed to mingle with other women during dances; during church mass, they were not to stand with honorable people.<sup>97</sup> The guilds reinforced this downgrading trend by issuing a decree in 1521 prohibiting masters and journeymen to dance with prostitutes. Approximately ten years later, the City Council discussed the abolition of local municipal brothels but opted against such a measure for practical reasons, in particular because of Frankfurt's bi-annual trade fairs.<sup>98</sup> By 1546 prostitutes were no longer to be buried in the regular cemetery.<sup>99</sup> In 1570 the local brothels were closed and in 1576 prostitution itself was outlawed

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96. Kriegk, Bürgertum, 1:323.

97. Kriegk, Bürgertum, 2:325.

98. Ibid., 294.

99. Ibid., 329.

in Frankfurt.<sup>100</sup> Prostitution had become an illegal act in Frankfurt. In France similar legislation was enacted. The Ordinance of Orleans in 1561 and the Edict of Ambois of 1580 outlawed prostitution.<sup>101</sup> Most interestingly in the case of Frankfurt, it took over a hundred years to complete this downgrading process. Old traditions are hard to change. The efficacy of such legal measures will be analyzed in the chapters on criminals and punishments. Suffice it to say here that prior to the sixteenth century prostitutes were not subjected to flogging or similar corporal punishments in most German towns.<sup>102</sup> And men were only in the rarest of cases ever sentenced for visiting a prostitute.

Changing sexual mores thus also seemed to entail a double moral standard. And this development was most conspicuous in the case of unmarried mothers. The changes in sexual mores re-inforced the concept of legitimate birth and debased, if not actually outlawed extra-marital sex. The local city government thereby enlarged its jurisdiction at the expense of women, since it was women who were mainly affected by these changes. They bore the visible signs of pregnancy and in the case of extra-

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100. Ibid., 302.

101. Otis, 40; Rossiaud, 30.

102. Kriegk, Bürgertum, 326.

marital pregnancy the visible stigma. The fathers were in most cases not so easily identified.

Economic hardship and deprivation of an alternate life-style as a guild member was now compounded by social and emotional hardship. And it must be added in this connection that the Reformation did not ease the plight of women either. It deprived women of an alternative to marriage, the convents, and of a positive role model, the female saint; it eliminated a separate identity and "may have made them (women) a little more vulnerable to subjection in all spheres."<sup>103</sup> Women were downgraded in both Catholic and Protestant countries in the period from the late sixteenth to eighteenth centuries.<sup>104</sup>

By the end of the sixteenth century, women's status had thus declined in the economic and social spheres. They were cast into one role, the role of wife. The various archival records consulted for this study clearly attest to this development. Only in extremely rare cases does one come across a reference to a woman's profession or any other sign of independent modality. Women's names and identities consisted of "wife of" and "daughter of," signs of a highly advanced patriarchal society.

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103. Natalie, Z. Davis, Society and Culture in Early Modern France (Stanford, California: Stanford University Press, 1975), 94.

104. Ibid.

The only freedom women seemed to have kept was the freedom to choose their husbands. But even here they were being restricted. The City Council, in compliance with the local guilds, exercised an increasing pressure on single women with hereditary guild rights to prevent them from marrying foreigners. Marriages to masters' widows or daughters was, as will be recalled, one of the few channels for poor journeymen to achieve the status of a master. This loophole was being closed by requiring women, who wanted to marry foreigners, to obtain prior approval by the City Council. The relevant laws promulgated by the City Council will be discussed in detail in the next chapter.

#### The Jews

Frankfurt's Jewish population fared a similar fate of debasement although, arguably, they had never been universally accepted locally. The Judenschlacht of 1241, a serious assault on the Jews by the local population, gives ample proof of that contention. In fact, it resulted in the exodus of the local Jewish population despite that fact that the Jews had been residents of Frankfurt since 1150 and were under special imperial protection.<sup>105</sup>

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105. Bothe, Stadt Frankfurt, 63.

Exactly when the Jews returned to Frankfurt is unclear, but in 1281 they are again mentioned in the official records.<sup>106</sup>

During the fourteenth and fifteenth centuries Jews resided anywhere in Frankfurt. They had the right to acquire real estate.<sup>107</sup> Jews owned houses, vineyards and other landed property.<sup>108</sup> At least geographically speaking, they were intermixed with the local Christian population. But they were increasingly subjected to pressure from the Catholic Church and the local guilds. With the Fourth Lateran Council of 1215, the Catholic Church tried to introduce a special dress code for Jews.<sup>109</sup> And with the formation of the Christian guild system, Jews were increasingly excluded from practicing any kind of artisanal work.<sup>110</sup>

In 1349 Emperor Charles IV pawned his imperial jurisdiction over the Jews to the city of Frankfurt. Frankfurt's Jews now became subject to the local city

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106. Bücher, Bevölkerung, 532.

107. Ibid., 528.

108. Kriegk, Bürgerzwiste, 425.

109. Guido Kisch, The Jews in Medieval Germany. A Study of their Legal and Social Status, 2d ed. (New York: Ktav Publishing House, Inc. 1970), 295.

110. J. Friedrich Battenberg, "Des Kaisers Kammerknechte," Historische Zeitschrift 3 (December 1987): 561.

authorities. Four weeks after the transfer of imperial jurisdiction, the local Jewry was brutally attacked by the populace. Many Jews were killed and the survivors left Frankfurt for the second time.<sup>111</sup>

Twenty years later a few Jewish families seem to have resettled locally.<sup>112</sup> But their legal status was altered. As of 1360 they only obtained the legal burgher status for a specified length of time, mostly varying from one to five years instead of for life as before.<sup>113</sup> Starting 1386, Jews were no longer registered in the local Bürgerbuch, the burgher book, nor were they allowed to keep Christian servants.<sup>114</sup> By 1403 the Jews were required to pay a special annual city tax.<sup>115</sup> The introduction of this tax set the stage for the so-called Judenstätigkeit, municipal charters specifying their rights and obligations. Special taxation of the Jews ranked highest among the obligations. On the average, such Judenstätigkeiten lasted for three years. With each renewal, the obligations became more onerous.<sup>116</sup>

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111. Bücher, Bevölkerung, 534.

112. Ibid., 535

113. Ibid., 527.

114. Bothe, Stadt Frankfurt, 152.

115. Ibid., 186.

116. Kriegk, Bürgerzwiste, 432.

Restrictive measures from above were re-inforced by mistreatments from below. By the mid-fifteenth century, many local Jews complained about being harassed verbally and physically in the streets of Frankfurt.<sup>117</sup> This situation was not unique to Frankfurt. All over Europe, the years between 1450 and 1510, in particular, saw an almost floodlike increase in the accusations of ritual murder - Jews were accused of slaughtering Christian children.<sup>118</sup>

In addition, the Catholic Church continued to intensify its restrictive and downgrading trend. During the Synod of Basel of 1434 it was agreed that Jews were to live in special separate quarters.<sup>119</sup> At first, Frankfurt's City Council refused to comply.<sup>120</sup> But when the Emperor also insisted on having the Jewish population moved to separate quarters in 1458, Frankfurt complied.<sup>121</sup> The Jewish synagogue which was located opposite the main local church and which symbolized the co-existence of Jews and Christians, was removed to the special quarters along with the rest of the Jewish

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117. Bothe, Stadt Frankfurt, 186.

118. Koenigsberger, 89.

119. Kracauer, 1:177.

120. Ibid., 178.

121. Ibid., 199.

population. This, what one might call the third exodus of the Jews, was effected in 1462. Despite initial resistance toward segregation, the City Council succumbed to exogenous religio-political pressure.

During the same time span, Jews were also ordered to wear distinctive insignia on their clothes. Men had to wear a badge with a yellow ring and women a blue-striped veil.<sup>122</sup> True, the decision of the City Council to make Jews wear special insignia coincided with the general introduction of local dress codes and other visible signs of identification as discussed previously. But visible symbols for the purpose of social identification and mutual policing were most flagrantly used in the case of the Jews and was intensified by the physical removal of the Jews from the community.

This ostracism was compounded by considerable curtailment of their freedom of movement. Their new quarters, the Judengasse, the street of the Jews, was encircled by walls and thus cut off from the remaining population. Three doors, locked at night and guarded by watchmen served as the only means of inter-communication during the day. Jews were not even allowed to own the land on which their houses were built but had to pay an

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122. Ibid., 377.

annual fee for it.<sup>123</sup> Frankfurt's removal of the Jews from the community was not an isolated phenomenon. Similar steps were taken by many other European cities such as Venice where the term ghetto originated.<sup>124</sup>

Physical separation was followed by professional and economic restrictions. Excluded from the guilds and increasingly pushed out of long distance trading, the Jews were restricted to lending money and running pawn shops.<sup>125</sup> These restrictions did not cease nor ease during or after the Reformation. Protestants were as relentless as Catholics, perhaps even more so considering Luther's virulent attack on the Jews in his pamphlet "On the Shem Hamphoras" published in 1543.<sup>126</sup> Frankfurt, as a Protestant city continued the restrictive policies of its Catholic heritage. This policy is evidenced by the 1577 Judenstätigkeit which delineated the Jews' economic situation even further.<sup>127</sup> Local Protestant preachers

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123. Moritz, Versuch, 1:245.

124. Robert, M. Seltzer, Jewish People, Jewish Thought: The Jewish Experience in History (New York: Macmillan, 1980), 499.

125. Battenberg, 560; Kracauer, 1:452.

126. Marvin Lowenthal, The Jews of Germany (New York, Toronto: Longmans, Green and Co., 1936), 162; Bernd, C. Sucher, Luthers Stellung zu den Juden (Nieuwkoop: B.DeGraaf, 1977), 85.

127. Bücher, Bevölkerung, 587.

also contributed their share in this downgrading process as did popular attitudes.<sup>128</sup> In fact, with the monetary instability and frequent debasement of coins, the Jews faced new accusations of generally being in league with counterfeiters, in addition to older allegations of Jewish usury.<sup>129</sup> It all culminated in the 1614 sack of the Judengasse and the temporary ouster of the Jews from Frankfurt.

Compared to other European countries and cities, Frankfurt's Jews, one might argue, did not fare that badly. They were only temporarily ousted while cities like Cologne had permanently expelled the Jews in 1426, Agusburg in 1439, and Nuremberg and Ulm in 1499.<sup>130</sup> But this reprieve should not detract from the plight of Frankfurt's Jewish population. Their plight was two-fold. It came from above in the form of biased municipal legislation and grave religious intolerance. And it came from below in the form of continued hostility from the local population, especially the guilds. The status of the Jew was downgraded through the effects of both, the upper and the lower strata of society. And the

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128. Ludwig Geige, ed. Zeitschrift für die Geschichte der Juden in Deutschland (Nendeln, Lichtenstein: Krause-Thomson Organisation, 1975), 5:141.

129. Bothe, Beiträge, 97; Kracauer, 1:324.

130. Lowenthal, 136.

perjorative insignia furnished the visible proof of this debasement until their abolition in 1722 by Emperor Joseph II.<sup>131</sup>

### The Poor

The poor unlike all previously discussed social groups, elude proper quantification and identification because of the scarcity of archival material. It is very difficult to establish how many paupers or marginal cases existed in Frankfurt at any given time. In fact, it is impossible to establish with certainty how many were local poor and how many came from the outside. But it is a known fact that periodically the city of Frankfurt was literally swamped by beggars from the outside, especially during the bi-annual fairs, and times of imperial elections.<sup>132</sup> Periods of war and famine, like the Thirty Years War, also drastically increased the number of paupers.

The second major difficulty with regard to the poor consists of assessing who actually belonged to the category of poor people. What criteria is one to apply to

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131. Herman Pollack, Jewish Folkways in Germanic Lands, (1648-1806) (Cambridge, Massachusetts: M.I.T. Press, 1971), 85.

132. Kriegk, Bürgertum, 2:140.

classify people into poor or affluent groups? Based on the previously discussed social developments, one might argue that children of illegitimate birth increasingly fell into this category for the circumstances of their birth could not be erased.<sup>133</sup> With the closing of the guilds, journeymen might have increasingly fallen into the category of the poor, and depending on the economic conditions, so would day laborers.<sup>134</sup> Among the day laborers, those working in the agricultural sector ranked among the poorest because their salaries were among the lowest.<sup>135</sup> In addition, depending on the political situation, many ex-soldiers and mercenaries must be considered in this category.<sup>136</sup> Most significantly, a high percentage of women, in particular unmarried women, were found among the poor. Frankfurt's tax lists for 1587 and 1607 show that women were indeed very poor.<sup>137</sup> In contrast to men, women were paid considerably lower salaries. For example, female agricultural laborers earned only half of the salary of their male

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133. Carsten Küther, Menschen auf der Strasse (Göttingen: Vandenhoeck & Ruprecht, 1983), 37.

134. Ibid., 60.

135. Bothe, Stadt Frankfurt, 441.

136. Küther, 32.

137. Wiesner, 5.

counterparts.<sup>138</sup> With the increasing occupational restrictions for women, their economic conditions sank even further.

If quantification and proper identification of the poor poses serious problems, changes in their social status can easily be traced. Just as moral mores changed during the fifteenth century from an acceptance of many sexual behaviours to their criminalization, the concept of poverty underwent changes during the same time frame. This evolution began with the introduction of the municipal poor relief system.

Poor relief had traditionally been in the hands of the Catholic Church. The church indiscriminately took care of all the poor. It also gave the poor a status in society by interpreting poverty as religiously sanctioned. Yet by the end of the fifteenth century a gradual secularization process set in by which the local municipal authority increasingly abrogated this ecclesiastical priority and incorporated it into municipal policy. As a direct result the religiously sanctioned status of the poor was gradually eroded. It was the beginning of the transition from indiscriminate charity to the policing of the poor.<sup>139</sup>

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138. Bothe, Stadt Frankfurt, 397.

139. Michel Mollat, The Poor in the Middle Ages, trans. Arthur Goldhammer (New Haven: Yale University Press, 1986), 250.

This process is best exemplified by the various municipal ordinances. They reflect an increasing discrimination between deserving and undeserving poor and a segregation of local from foreign poor. For example, in 1476 gradations among the poor were set up dividing them into resident and non-resident poor. From then on, local poor were to wear special identification badges when collecting their alms.<sup>140</sup> By 1486 new guidelines as to who was considered a foreign and who was considered a local pauper were established. Local paupers were either those who had been burghers for eight years or who had served the city of Frankfurt for eight years. Only they were entitled to receive municipal support and were allowed to beg.<sup>141</sup> To re-inforce this decision, the city of Frankfurt hired two so-called Bettelvögte, beadles, who were to supervise the local poor and oust foreign beggars.<sup>142</sup> Two years later, in 1488, foreign beggars were deprived of the right to become local citizens.<sup>143</sup> Residence requirement for poor relief were thus introduced, and the foreign poor were increasingly excluded from receiving alms .

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140. Moritz, Bürgerliche Fürsorgeanstalten, 111.

141. Ibid.

142. Kriegk, Bürgertum, 1:144.

143. Bothe, Stadt Frankfurt, 245.

One might argue that these measures were of a purely financial nature and that no change in attitude had as yet occurred to differentiate between the deserving and the undeserving poor. In other words, the poor were not yet looked down upon. But the very fact that a separation into local and foreign poor was introduced adds a different dimension, namely an incipient gradation where the foreign poor were no longer seen as deserving Frankfurt's alms. When foreign poor were seen as the undeserving and the local the deserving poor, the concept of the universality of Christian charity was being eroded. In addition, Frankfurt's own poor were gradually classified into more deserving and less deserving poor. Lower city functionaries were given preference in the distribution of alms over other local poor.<sup>144</sup>

Most significantly, these municipal reforms were introduced prior to and not during the Reformation. They sprang from secular, not religious, authorities. Similar findings have been uncovered in Strasbourg.<sup>145</sup> While Frankfurt's municipal reform of the welfare system, thus predated the Reformation, the Reformation intensified the

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144. Moritz, Bürgerliche Fürsorgeanstalten, 110.

145. Miriam Usher Chrisman, Strasbourg and the Reformation (New Haven: Yale University Press, 1967), 44, 277; Robert Jütte, Obrikgkeitliche Armenfürsorge in Deutschen Reichsstädten der Frühen Neuzeit (Cologne: Böhlau, 1984).

discriminatory process. It deprived charity and alms-giving of its spiritual and salvatory dimension. Being charitable was no longer interpreted as wiping away ones sins.<sup>146</sup> Instead, the poor, became increasingly a bureaucratic phenomenon.

What one might call the institutionalization of the poor was thus accomplished with the use of pauper badges, easily identified symbols. And this fact corroborates the earlier proposition that in the absence of an efficient policing method and with an increase in administrative and more complex municipal functions, the city resorted to visible organizational methods. Unfortunately, as was the case with the Jews, easily identifiable symbols became easily identifiable stigmas. Visible symbols worked two ways. They enhanced the status of the upper and middle levels of society and they added insult to the already injured. Indeed, the pauper badges were so unpopular that even the City Council considered abandoning them at one point. Yet, the badges of infamy remained in use into the end of the seventeenth century.<sup>147</sup>

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146. Mollat, 259.

147. Ibid., 290; Hans-Otto Schembs, Der Allgemeine Almosenkasten in Frankfurt am Main, 1531 - 1981 (Frankfurt am Main: Verlag Waldemar Kramer 1981), 37.

While pauper badges served policing functions and visibly degraded the poor, the whole process of downgrading the poor culminated in 1679 with the opening of the local Armen-Waysen-und Arbeits-Haus, that is a poor, orphan, and work house. This poor house had a dual function, it housed the poor and punished lawbreakers. From the physical closeness of both groups, it would take only a small mental step to associate the poor with the deviants, after all they lived together. And the rules of the poor house published in 1681 evidence this mental association most clearly.<sup>148</sup> But the visible fact that both groups were put under one roof, reflected this mental association between poor and bad better than any contemporary rules or regulations. Beggars, who until 1488 had the right to become citizens of Frankfurt, were considered criminal elements by 1681.

Frankfurt's poor had thus undergone a downgrading process reminiscent of the one heaped on Jews and women. These attitudinal changes and the ever increasing use of visible symbols to reflect these changes, had far-reaching implications. They set in motion a process of intensified cultural segregation, easy social

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148. Des Heil Römischen Reichsstadt Franckfurt am Mayn neulich aufgerichtete Armen-Waysen und Arbeit-Haus Ordnungen und Gesetze (Franckfurt am Mayn: Johannes Haasen, 1681), 1.

identification and mutual policing. And by the late sixteenth century all these developments were reflected in Frankfurt's criminal justice system.

## CHAPTER III

## ADMINISTRATION OF JUSTICE

Historical Development

In view of the controversial nature of the origins of the legal practices in effect during the sixteenth and seventeenth centuries, a short historical analysis of the major developments is called for. The issues focus on the possible impact of three distinct legal traditions, namely the Germanische Recht or German Tribal Law, the Canon Law, and Roman Law. The discussion will encompass substantive law, dealing with the laws per se, the procedural law covering sentencing procedures, and the penal system, the kinds of punishments applied.

The Germanische Recht centered on the tribe or the clan. This legal practice reflected the fact that the clan was the basic social arrangement and as such was the protector of the welfare of its members. In the case of a criminal act, it was, therefore, the right and the duty of the clan or the victimized member to avenge the deed. This, what one might call personal revenge, was not done impetuously but through regulated procedural formalities.

The victim or his family had to open the accusatorial procedure by making an oral complaint. As this complaint was not voiced in court but solely to the opposing party, it was a private venture with the initiative to seek redress lying with the victim.<sup>1</sup>

In case the accused denied the charges, he then had to prove his innocence. The defendant had three options to prove his innocence. First, he could take recourse to so-called Eideshelfer or oath helpers. The oath helpers were not eye witnesses nor did they furnish the accused with an alibi. They consisted of persons who knew the accused and who were summoned by the accused to come to his defense by performing the so-called Reinigungseid, a cleansing oath or exculpation. This oath simply backed the credibility of the accused.<sup>2</sup> Additional Germanic defense features consisted of ordeals, such as trial by fire, and judicial duels. Both forms of legal proof implied divine interference in the legal process in that God would side with the innocent.

In the Germanic criminal procedure, the accusation and the defense was handled in a purely personal manner by the contesting individuals themselves. There was no

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1. Bernhard Schmidt, Einführung in die Geschichte der deutschen Strafrechtspflege, 3d ed. (Göttingen: Vandenhoeck & Ruprecht, 1965), 36.

2. *Ibid.*, 37.

official or governmental interference in criminal procedures. This personal criminal procedure stood, of course, in sharp contrast to later developments when the state abrogated the private and personal element and prosecuted criminal offenses ex officio. It also implied that in Germanic practices, the criminal offense was not considered an offense against the people as a whole but against the individual or his clan. The people or the state, therefore, were not involved.

As to the punishments, in case of an established homicide for instance, the death of the victim had to be avenged. Vengeance could be obtained through a blood feud carried out by the victim's family or through a material settlement to appease the victims in the form of cattle or weapons. The latter was a form of compensation of the injured party and was thus called compositio or most commonly the Wergeld.<sup>3</sup> The value of this Wergeld was based on the importance of the victim and partially on the status of the offender.<sup>4</sup> It was at this juncture that the community at large stepped in and helped to establish the proper amount. The only time the community assisted in the criminal process was thus to establish peace

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3. Ibid., 23.

4. Ludwig von Bar, Geschichte des Deutschen Strafrechts (Berlin: Weidmannsche Buchhandlung, 1882), 61.

between two opposing parties by arranging a fair price for settlement.<sup>5</sup> The individual offender or his family were liable for the Wergeld. If the culprit was not in a position to pay he was handed over to the family of the victim for private revenge.<sup>6</sup> The punishing of the culprit was not a state monopoly but belonged to the clan.<sup>7</sup> Hence even the punishment structure was geared toward the family and not the community at large. The family stood in place of the state.<sup>8</sup>

As to the execution of the punishment, this had to be carried out in public in order to be legal and to set it apart visibly from the criminal act.<sup>9</sup> In other words, the visible aspect was of prime importance in the execution of the sentence. For the remainder of this study it is thus important to remember that according to Germanic practices, the execution of the punishment was carried out in the open, that the criminal procedure was above all a personal matter between the victim and the

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5. Ibid., 54.

6. Ibid., 53.

7. Schmidt, Einführung, 23.

8. Christian, R. Köstlin, Geschichte des deutschen Strafrechts (Tübingen: H. Laupp'schen Buchhandlung, 1859), 65.

9. von Bar, Deutsche Strafrecht, 58 footnote 251, 69.

offender and that corporal punishments could be averted via the payment of a compositio. Although many of these practices were seemingly replaced during later years, they continued to exist often under the guise of different names. In Frankfurt, both the personal element and the concept of fines would play a major role in criminal sentencing even during the sixteenth and seventeenth centuries.

#### Emergence of Corporal Punishments

As to the precise origins of corporal punishment, legal historians have yet to reach a consensus. It has been claimed that corporal punishment existed already among the Germanic tribes as recorded by Tacitus in the form of public flogging of an adulterous woman by her husband and of physical punishment of servants by their masters.<sup>10</sup> By inference, physical punishments could have thus originated in the form of Germanic Knechtstrafen, that is punishments of servants.<sup>11</sup> But the notion of Knechtstrafe was also attributed to an ever increasing number of culprits unable to pay the compositio, the direct payment to the victims. This association between insolvency and physical punishment was further corroborated by the fact that in addition to the

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10. Schmidt, Einführung, 26.

11. Ibid.

compositio, the culprits had eventually also to pay a fee to the intermediary agencies regulating the amount of the compositio. This regulating fee was the so-called Friedensgeld or peace money. It has been argued that particularly during the Middle Ages unfree persons were increasingly subject to punishment by loss of life and limb since they did not own anything and thus could not pay the compositio.<sup>12</sup> And with large segments of society becoming unfree and impoverished, the system of physical punishment was extended over large sections of society. In other words, penal punishments seemed increasingly to have been applied to those who could not come up with the compositio and the peace money.<sup>13</sup> The seeds of the later penal code have been said to lie in the development of increased fines and peace money to the civic authorities.<sup>14</sup> Punishments originally applied to servants were gradually incorporated into the general legal code.<sup>15</sup>

But socio-economic factors were not considered the sole cause of the advance of corporal punishments. The

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12. von Bar, Deutsche Strafrecht, 102.

13. Schmidt, Einführung, 27.

14. Gustav Radbruch, Elegantiae Juris Criminalis, 2d ed. (Basel: Verlag für Recht & Gesellschaft, 1950), 3.

15. *Ibid.*, 5.

political setting played a decisive role as well, particularly during the highly unstable times of weak central authority. Knights under the pretext of self-help took up feuding to an ever increasing extent.<sup>16</sup> Many regions were subjected to constant private warfare and an increasing number of violent crimes. The sheer scope of such criminal offenses, it has been argued, rendered the personal approach to the administration of criminal justice obsolete and ineffective.<sup>17</sup> The concept of crime per se changed in that the individual was no longer considered as the sole victim but the community as a whole emerged to an ever increasing extent as being victimized as well. This change of attitude entailed a transfer of criminal matters from the individual to civic authorities.

This was most clearly expressed in the emergence of new legislation, both by the Emperors and the towns to curb excessive crimes. With Henry IV in 1103 through the end of the reign of Maximilian I in 1495, various Landesfrieden or Public Peace were promulgated to outlaw private feuds.<sup>18</sup> Under these proclamations, any transgression was now considered a breach of the public

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16. von Bar, Deutsche Strafrecht, 89.

17. Schmidt, Einführung, 43-48.

18. Schmidt, Einführung, 47-48.

peace and the offender considered a Reichsfeind, an enemy of the State. By and large, fines were replaced by corporal punishments.<sup>19</sup> By the thirteenth century, so the argument continues, corporal punishments were part and parcel of the established form of punishment.<sup>20</sup>

In addition, with Frederick I's Constitutio de Pace Tenanda of 1152, the distinction between free and unfree was dropped with regard to criminal punishment. Thus the concept of earlier Knechtstrafen was extended to all.<sup>21</sup> It introduced equal treatment of free and unfree with regard to criminal punishments, nobody could pay their way out of it anymore. In principle this procedure acknowledged the legal equality of all in the criminal justice system.<sup>22</sup> By eliminating personal elements, it seemingly implied that the punishment was now geared directly toward the crime and not the offender. This proposition will be challenged in the course of this paper based on data from the city of Frankfurt.

It has, furthermore, been argued that the notion of public as opposed to the private nature of criminal procedures and punishment emerged most notably in the

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19. Ibid., 53.

20. Ibid., 56.

21. Radbruch, 11.

22. von Bar, Deutsche Strafrecht, 95.

towns.<sup>23</sup> The towns, in their effort to curb crime, reportedly brought about a change of the administration of criminal justice. They transformed the accusatorial procedure, the procedure of proof and even the punishment structures from a personal and private system into a system operated by municipal or civic authorities. It has even been argued that the towns introduced the inquisitorial procedure.<sup>24</sup> The transition from private to civic criminal administration, however, was also assisted by the advent of two additional developments namely the increase of ecclesiastical authority and the reception of Roman Law.

#### Ecclesiastical Administration of Justice

The impact of the Catholic church was felt both in substantive law, that is the criminalization process, and the procedural law in form of ecclesiastical courts. In substantive law, the Church's jurisdiction gradually expanded to encompass eventually not only church matters, such as heresy, schism, and apostacy, but also moral issues. Deeds which had previously not been considered criminal changed their character.<sup>25</sup> Offenses

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23. Hans Fehr, Deutsche Rechtsgeschichte, 5th ed. (Berlin: Walter de Gruyter & Co., 1952), 146.

24. K. Kroeschell, Deutsche Rechtsgeschichte (Reinbek bei Hamburg: Rowohlt Taschenbuch Verlag, 1973), 2:208.

25. von Bar, Einführung, 75.

such as adultery, sodomy, blasphemy, usury, sorcery, and perjury were among the criminal offenses adjudicated by the courts of the Church, the so-called Sendegericht. Such ecclesiastical courts were found in many towns and also existed in the city of Frankfurt until 1370. They wielded great influence and stood in competition to the local civic courts.

The Church also played a role in the procedural law, in particular the law of proof. It was during the Lateran Council of 1215 that the Germanic system of proof through ordeals was condemned. Proof was progressively centering on the confession of guilt by the accused. If a confession was not forthcoming, torture was used to elicit one by ecclesiastical courts especially in heresy cases. Pope Innocent IV advocated the use of torture to arrive at guilty confessions by institutionalizing it with his Bull Ad Exstirpanda of 1252. Torture was thus officially established in ecclesiastical courts.<sup>26</sup> But this is not to say that the Catholic Church initiated the use of judicial torture nor that ecclesiastical courts were the only court using it. Torture was in fact used in secular courts all over the Holy Roman Empire. Its origin is a highly debated topic among legal historians and the

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26. John, H. Langbein, Torture and the Law of Proof (Chicago: University of Chicago Press, 1977), 7.

debate has to be seen in conjunction with the reception of Roman Law.

Roman Law

The reception of Roman Law is as controversial an issue as the origin of judicial torture. The causes for its reception have been ascribed to socio-economic, religious and political motives. It has been argued that the German towns fostered its success for socio-economic and more importantly, for political reasons in their striving for independence.<sup>27</sup> Its reception has also been ascribed to the struggle of rulers to establish full sovereignty.<sup>28</sup> Humanism is cited in conjunction with the emergence of Roman Law. Supposedly, Humanism, with its emphasis on studies pertaining to classical antiquity, encouraged the study of Roman Laws and led to the appearance of jurists trained in Roman Law. These jurists, so the argument runs, became the agents for the introduction of Roman Law.<sup>29</sup> The latter argument seems to be particularly cogent if one considers that half of the members of the Reichskammergericht, the imperial court established in 1495, consisted of jurists trained in

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27. Hermann Conrad, Deutsche Rechtsgeschichte (Karlsruhe: C.F. Müller, 1966), 368.

28. Hans, J. Wolff, Roman Law (Norman: University of Oklahoma Press, 1964), 195.

29. Conrad, 340; Coing, Rezeption, 189-190.

Roman Law.<sup>30</sup> The emergence of Roman Law has also been seen in conjunction with ecclesiastical procedures. In other words, the Church contributed to its reception.<sup>31</sup>

More controversial even than its reception were the effects of the Roman Law on both the substantive and procedural criminal laws. The very existence of such a debate attests to the fact that it is extremely difficult to delineate the changes brought about by the Roman Law. The only aspect legal historians tend to agree on is that its reception was completed by the end of the fifteenth century. In fact, it became an integral part of the first unified criminal law code for the Holy Roman Empire, the imperial Constitutio Criminalis Carolina promulgated in 1532. Even this code, which will hereafter be referred to as the CCC, is not excluded from the historical debate. In one view, it is considered an adroit blending of German and Roman Law with the latter predominating.<sup>32</sup> Another view sees that the CCC merged Germanic customs with Roman law, but suggests that local laws were accorded a wide lee-way.<sup>33</sup> An analysis of the origins of

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30. Wolfgang Kunkel, Römische Rechtsgeschichte, 4th ed. (Cologne and Graz: Böhlau Verlag, 1964), 163.

31. Georg Dahm, Deutsches Recht (Cologne and Stuttgart: W. Kohlhammer Verlag, 1951), 127.

32. Fehr, 206.

33. Dahm, 118.

the CCC might explain certain aspects of the historical debate.

#### The Constitutio Criminalis Carolina

The concept of establishing such a unified criminal code had originated in the towns. Confused by the co-existence of oral Germanic traditions, Church laws, and the appearance of Roman Law, communities set out to reform their laws. Such new law codes called Reformation, appeared all over Germany, the first being published by the city of Nuremberg in 1495, followed by the Reformation of the town of Worms of 1499. The latter was particularly significant in so far as it was the first to separate civil from criminal topics.<sup>34</sup> This point has to be stressed since civil judgments entailed predominantly monetary fines, while criminal sentences consisted of physical punishment. Any overlapping of the two systems or imprecise delineation might lead to a double standard in the sentencing procedure. This double standard was, in fact, the case in the city of Frankfurt as will be discussed at greater length when dealing with Frankfurt's substantive law.

Most such Reformation were the works of jurists trained in Roman Law which, according to some historians,

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34. Dietrich Oehler, Wurzel, Wandel und Wert der Strafrechtlichen Legalordnung (Berlin: Walter de Gruyter & Co., 1950), 41.

resulted in a separation between the Volksrecht, or oral tradition of the population, and a Juristenrecht, or a lawyer's law code.<sup>35</sup> According to some, this transition from oral to written procedures had the most profound impact.<sup>36</sup> It has been argued that this change favored the legal profession and the universities as advisory or interpretative bodies.<sup>37</sup>

These local Reformation could not decisively counteract the confusion caused by the various local and regional laws, nor more importantly could they control the increasing number of feuds and crimes. It was, therefore, agreed during the Diet of Worms of 1495 not only to renew the imperial Peace of the Land but also to make it into a permanent peace prohibiting once and for all the duel as a judicial mode of proof.<sup>38</sup> In addition, a central and unified court, the Reichskammergericht, was created. In spite of numerous ensuing constitutional controversies over the Reichskammergericht, this court was soon flooded with complaints from all over the Empire reporting on corrupt criminal sentencing.<sup>39</sup> These

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35. Dahm, 121.

36. Wolff, 205.

37. Dahm, 114.

38. Schmidt, Einführung, 47-48; Bothe, Stadt Frankfurt, 231.

39. Schmidt, Einführung, 101.

complaints in turn stimulated the need for a unified imperial law code. It took years before such a code was approved and adopted. And when the CCC was finally promulgated in 1532 it was done so only after a concession had been inserted guaranteeing the continuation of local prerogatives. Many cities had opposed the CCC because they feared an infringement upon their local autonomy and a restriction of their independent criminal justice system.<sup>40</sup> To appease all the various regional concerns the Salvatorische Klausel, or so-called Saving Clause, was inserted into the CCC. It specified and guaranteed the continuation of old local legal usages. In other words, though the CCC was generally adhered to and served as a guideline for the administration of criminal justice until 1806, it was by no means universally applicable. Instead, it fostered the continuation of particularistic tendencies.

A second imperial concession with regard to local autonomy was introduced during Diet of Augsburg of 1530. It pertained to the sentencing procedure and in article 95 prohibited appeals to the Reichskammergericht in criminal matters.<sup>41</sup> In other words, the right to appeal a criminal sentence to a higher court was abandoned. In

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40. von Bar, Deutsche Strafrecht, 125.

41. Schmidt, Einführung, 195.

criminal matters there was no appellate jurisdiction. The local authorities had the final say in the administration of criminal jurisdiction and their sentences could not be overruled by any other court. This, of course, also applied to Frankfurt.

In view of the fact that in spite of the Saving Clause, the CCC became the guiding principle for the city of Frankfurt, a closer look at its contents is warranted. Surprisingly, the majority of the articles covered in the CCC do not deal with substantive but with procedural law. In fact, criminal procedures were covered to such an extent that the CCC was credited with the establishment of the inquisitorial procedure. Inquisitorial proceedings reversed and replaced the victims' and suspects' rights to private and personal accusation and defense by official, secretive, and written procedures. This new procedure was thus diametrically opposed to the earlier oral and private procedure where the accusatorial initiative and proof of guilt lay with the victim and suspect, respectively. Now the official and written procedure prevailed. As to the accusatorial procedure, private accusations were still possible and covered in the CCC, but they were discouraged.<sup>42</sup> For instance, both the accuser and the accused were put in detention. In

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42. Ibid., 120.

case of acquittal, the accuser had to pay for any damages suffered by the accused as well as for the expenses of the court procedures.<sup>43</sup> The initiative in criminal proceedings shifted in favor of the official authorities and were increasingly handled ex officio.

The second most conspicuous procedural feature related to the system of proof. The earlier form with its oath helpers, ordeals, and the judicial feud was completely abandoned. According to the CCC, sentencing could now be based on the account of two eyewitnesses.<sup>44</sup> The testimonies of eyewitnesses, however, were given neither during court sessions nor in the presence of the accused, but separately and behind closed doors. They were written down by a clerk to be read to the court at a later date. Were no such eye-witnesses available, sentencing was only possible based on the accused's own confession. Circumstantial evidence, so-called indicia, was not considered an adequate basis for conviction.<sup>45</sup> Thus the pivot of the law of proof shifted to the confession of the suspect.<sup>46</sup> If such a guilt confession was not forthcoming, yet the court had sufficient indicia

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43. Fehr, 214.

44. Schmidt, Einführung, 121.

45. Langbein, 4.

46. Fehr, 212.

to doubt the suspect's innocence, the use of torture was allowed. Mere suspicion on the part of the court was not enough reason to apply torture.

The use of torture was very carefully defined in the CCC. Out of the total of 219 articles, 57 regulated its use in an effort to prevent its indiscriminate application. Also, no status-based exemptions were to be made. Anyone could be subjected to torture.<sup>47</sup>

Torture could be inflicted in two ways, psychologically by displaying the torture instruments or physically by applying them. Confessions made during the application of torture were only valid if they were ratified by the suspect a day or two after such an application. If the confession was not ratified, in other words, if the suspect refused to sign the confession at a later date, torture could be re-applied.

In spite of the clearly defined rules and regulations, nothing could, of course, guarantee or prevent any misuse. And no wonder that the origins of such a cruel system of proof remain as adamantly debated as the origin of corporal punishments. In fact, some historians see a parallel development, tracing the roots to servant punishments and servant tortures. But while

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47. Constitutio Criminalis Carolina, eds. J. Kohler and Willy Scheel (Halle a.S.: Verlag der Buchhandlung des Waisenhauses, 1900).

servant punishments existed in Germanic practices, torture, so it has been argued by some, was taken from Roman law and originally only applicable to slaves.<sup>48</sup> It has also been advanced that it was only toward the fifteenth century that burghers and other freemen were increasingly subjected to torture. The argument about the foreign origin of torture has been challenged by citing the use of torture prior to the completion of the introduction of Roman Law.<sup>49</sup>

The historical debates among historians should not distract from the quintessential effects the inquisitorial procedure was to have on the criminal justice system. Instead of an earlier oral, personal, and public tradition, a written, official, and secret procedure was introduced.<sup>50</sup> The written procedure, one might argue, led to better record-keeping on criminals and facilitated the flow and exchange of data among the various courts in the Empire whose policing ability was thus enhanced. It must also have had an intimidating effect especially on the illiterate suspect who found himself having his words written down without any proof on his part that what he said was properly recorded.

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48. Fehr, 152.

49. Schmidt, Einführung, 87-88.

50. Fehr, 152.

In essence, the emphasis of the whole trial procedure had shifted to a secretive pre-sentencing procedure. Instead of open oral proceedings, the court proceedings were now performed secretly. Instead of the accused proving his innocence, the accuser, the state, stepped in. The accused was excluded from any direct confrontation with the sentencing body and it was only during the final session, the endliche Rechtstag as it was called, that the sentence was read to the suspect.<sup>51</sup> Even the concept of punishments had changed from compensation to the victim to corporal punishments of the offender by-passing the individual victim but regarding the community as a whole as having been victimized. The detailed operations of such a system will be analysed below.

#### Frankfurt's Administration of Justice from 1562 to 1696

By the time of this study Frankfurt possessed full jurisdictional autonomy. In criminal matters, the three benches of the City Council were in charge. It held extensive powers the more so since appeals to a higher court were not possible. There was no appellate system. It had been abandoned during the Diet of Augsburg in 1530.

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51. Schmidt, Einführung, 95.

Once sentenced, an offender had no further legal recourse quite in contrast to other European legal practices. In France, locally convicted criminals could appeal their sentences and as a consequence receive milder punishments.<sup>52</sup>

Frankfurt's extensive criminal jurisdictional power extended over all local residents including the Jewish population and military personnel. Frankfurt could also sentence foreigners regardless of whether they had committed their crimes locally or elsewhere unless an extradition request was submitted to have the foreign suspect tried in his or her home town.

In substantive law, that is legislation proper, Frankfurt could also initiate and promulgate its own laws despite the introduction of the CCC, the criminal code of the Empire, in 1532. The salvatory clause allowed for local deviations.

#### Substantive Law

Even before the promulgation of the CCC in 1532, Frankfurt had published a codified city law in 1509. This code had been compiled by city councillors, with the aide of city advocates, jurists trained in Roman Law.<sup>53</sup> This

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52. Julius R. Ruff, Crime, Justice, and Public Order in Old Regime France (Dover, N.H.: Croom Helm, 1984), 62.

53. Ulrich Trimpold, Heinrich Kellner, 1536-1589, Studien zur Frankfurter Geschichte, Heft 11 (Frankfurt am Main: Waldemar Kramer, 1975), 59.

Reformation of 1509 was later superseded by various revised versions. In addition, Frankfurt issued many more decrees and edicts pertaining to criminal behavior which were not contained in these Reformation. In fact, the sheer number of laws promulgated by the city of Frankfurt between 1562 and 1696 seems to have prevented its codification down to the present day, even though many historians, lawyers, and archivists have tried to tackle the problem, including the local lawyer Goethe, father of the author Johann Wolfgang.

The task of analyzing Frankfurt's laws was thus greatly impeded by the lack of a codified body of law. A total of twenty-one legal sources were consulted for this study.<sup>54</sup> In addition, while perusing the various Rathsbücher (Minutes of the City Council), additional municipal decrees were discovered. While it can by no means be claimed that the consulted sources permit one to draw conclusive inferences, they, nevertheless, seem to point to five major themes. First, the continuation of

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54. Armen-Waisen-und Arbeit-Haus Ordnungen und Gesetze; Concepta Edictorum Francofurtensium, 6. Vols.; Corpus Legum, 5 Vols.; Der Statt Franckenfurt am Mayn erneuerte Reformation 1578, ed. Johann Fichard (Franckfurt am Mayn: Druck Sigmund Feyerabend and Georg Rab, 1578); Der Statt Franckenfurt am Mayn erneuerte Reformation 1611 (Franckfurt am Mayn: Druck J. Bringer, Verlag J. Rosen, 1611; Verordnungen, 6 Vols.; Die Gesetze der Stadt Frankfurt am Main im Mittelalter ed. Armin Wolf (Frankfurt am Main: Waldemar Kramer, 1969).

finances for criminal offenses; second, the importance of personal factors; third, existence of religious components; fourth, an abundance of moral legislation; and last the question of poverty and begging.

The continuation of monetary fines for criminal offenses was surprising, because various legal historians have asserted that the punishments had changed from fines to capital or corporal punishments. But Frankfurt's sources reveal a different trend. In many instances, both forms of legal sanctions co-existed throughout the period under investigation here.

Legislative acts often stipulated both forms of punishments depending on certain criteria such as the frequency with which an offender committed a certain crime. For instance a 1530 law prohibiting adultery stipulated 10 gulden for a first offense, 20 gulden for a second, but imprisonment or banishment in case of a third transgression.<sup>55</sup> This example evidences carefully scaled monetary fines leading to physical punishment depending on the frequency of the offense.

Not in all instances did the law clearly stipulate when fines or corporal punishment were to be applied. For instance article XVI of the revised 1578 Reformation stated that if someone prevented municipal functionaries

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55. Verordnungen, 1:551.

from executing their duties the offender was to be punished with fines or corporal punishments depending on the circumstances.<sup>56</sup> An edict of 1613 concerning adulteration of saffron was equally ambiguous in that it indicated stiff monetary fines or corporal punishments, without, however, specifying when one was to be applied over the other.<sup>57</sup> Article XI of the revised 1578 Reformation stated that if a person was physically injured in ambush or out of revenge, the offender had to pay 50 Gulden.<sup>58</sup> But in the chapter on punishment it will be shown that several offenders were sentenced to corporal punishment for having committed such assaults.

This duality or ambiguity in sanctions might partially be explained by those laws which clearly described when either fines or corporal punishments were to be applied. An edict passed in 1530 on excessive drinking listed carefully scaled monetary fines for the number of offenses but added that if the offender were not in a position to pay the fine, he was to be imprisoned, 8 days for each gulden of fine.<sup>59</sup> This example testifies to a close correlation between poverty

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56. Reformation 1578, 280.

57. Corpus Legum, 1:85.

58. Reformation 1578, 280.

59. Verordnungen, 1:552.

and imprisonment. Personal wealth thus seems to have had an effect on the punishment structure. This correlation was further evidenced by an edict on prostitution and fornication dated November 14, 1629. It stated that the delinquents be put into a transparent prison and subjected to public mockery for several hours. If the culprits were children of wealthy and honorable parents they could avoid such public treatment by the payment of certain fines.<sup>60</sup>

A similar loophole existed with regard to the payment of the so-called Schmähgulden, or money of shame. This fine had to be remitted in public in one of Frankfurt's major squares announced by the beating of drums. In other words, the payment of this particular fine was associated with considerable exposure to public ridicule. But, again such public exposure could be avoided based on, among other factors, the wealth and the status of the offender.<sup>61</sup>

In addition to the frequency of an offense, personal factors thus greatly affected the punishment structure. In most cases the criteria for a more lenient sentence were the wealth and social status of the offender. Personal wealth and high social status could avert

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60. Ibid., 553-555.

61. Ibid., 554; Orth, 885.

corporal or dishonorable punishments. And the existence of such personal elements seems to throw into question the universality of corporal punishments for criminal offenses as outlined in the historical debate and in the imperial criminal code, the CCC. It also sheds some light on the origins of corporal punishment, namely the concept of Knechtstrafen, derived from the punishment of serfs and the insolvency of the offender. The very continuation of such personal factors as wealth and social status seemed to corroborate such theses.

The third theme, religious aspects, also continued to have a direct impact on Frankfurt's legislation. It will be recalled that as of 1370 the City Council of Frankfurt had taken over the local Sendegericht, or ecclesiastical court, thus expanding its jurisdiction into religious spheres. But Frankfurt had also embraced Lutheranism. Religious legislation pertained predominantly to religious issues such as blasphemous cursing. But also various pieces of moral legislation refer to God in particular to God's anger. For instance, an edict of 1608 prohibits lodging of prostitutes, because it would arouse God's anger which in turn might result in God's punishment of the whole community.<sup>62</sup>

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62. Concepta Edictorum, 4:208-209, 5:no.10.

An edict of 1629 prohibiting cursing, adultery, prostitution, and fornication again expressly refers to God. It specifies that in order to prevent God's anger, which could manifest itself in the plague and other communal punishments, the City Council had to increase its penalties. It exhorts the population to comply with the law in order to prevent temporal and eternal punishments.<sup>63</sup> A decree of 1673 links cursing, blasphemous speech, adultery, fornication, excessive eating and drinking, and immoderate clothing to God's wrath and the imminent dangers of war.<sup>64</sup> The offenses entailing the direct wrath of God were thus predominantly of a religious or moral nature. Not a single entry was found which says that fiscal matters or usury would incur the wrath of God.

This kind of moral legislation did not always exist in the city of Frankfurt. In fact, although Frankfurt incorporated the ecclesiastical court in 1370, it by no means criminalized moral features. If one looks at adultery for instance, Frankfurt passed its first secular legislation only in 1441, followed by the introduction of monetary fines in 1452.<sup>65</sup> But even after the promulgation

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63. Corpus Legum, 2:26.

64. Ibid., 4:27.

65. Kriegk, Bürgertum, 2:287.

of the 1452 law, it was not closely followed by the authorities.<sup>66</sup> By the end of the sixteenth century, the picture had changed. An entry in the Bb (Bürgermeisterbücher or the mayors' protocols) of 1593, testifies to a concerned City Council which together with the help of the advocates, tried to introduce measures to reduce the increase of adultery.<sup>67</sup> This concern continued to exist throughout the sixteenth and seventeenth centuries as evidenced by frequent legislative acts.<sup>68</sup>

Two aspects are worth while noting here. First, the intensification of moral legislation started at the end of the sixteenth century and secondly, it seems to have focused on adultery and prostitution. In regard to prostitution, the emerging legislative trend of the late sixteenth century was quite interesting to observe, as prostitution had for centuries been an accepted, if not integral, aspect of Frankfurt's city life. As has been noted in Chapter II, the city of Frankfurt had maintained its own municipal brothels. Prostitutes even had to pay an income tax. By the end of the fifteenth century the

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66. Ibid., 189.

67. Bürgermeisterbücher (hereafter listed in abbreviated form as Bb) 1593, 209.

68. Rathspokolle (hereafter listed in abbreviated form as Rp) 1618, 72; Rp 1620, 12, 27, 29; Bb 1693, 184.

social status of prostitutes began to change gradually. This process was initiated by a dress code for prostitutes promulgated in 1488 and culminated in outlawing prostitution in 1574. Prostitution had turned into an illegal act.<sup>69</sup> From now on the City Council issued repeated decrees and edicts against prostitution.<sup>70</sup>

One can thus clearly trace Frankfurt's transition from a protector to a prosecutor of prostitution. When seen in conjunction with the earlier described process of mentality changes, it is a clear example of a progressive criminalization process intertwining with changing social values and the concept of crime.

From the before-mentioned legislative acts one can, moreover, deduce that Frankfurt became progressively concerned with moral issues. This process had started well before the Protestant Reformation, though the latter surely reinforced it. The fact that Frankfurt's moral concern started well before the Reformation is interesting for it suggests that it was above all secular factors which greatly influenced moral legislation, and not religious ones as cited by the historian Ozment.<sup>71</sup>

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69. Kriegk, Bürgertum, 2:336.

70. Concepta Edictorum, 4:208; Corpus Legum, 2:26; Sammlung, 1:553.

71. Steven Ozment, When Fathers Ruled (Cambridge: Harvard University Press, 1983), 29-30.

It will be recalled that it was toward the end of the sixteenth century that the process of closing the guilds in order to prevent overstaffing had gained considerable momentum. One way to limit the number of masters was through increased financial demands. Another method to decrease the number of guild members was by intensifying moral requirements for its applicants. For example, entrance to the guilds was blocked if the applicant failed to prove his, his parents, and his grandparents legitimate birth. The trend set by guild ordinances found its repercussions in Frankfurt's civic legislation. Frankfurt's law code of 1578, the revised Reformation, for instance excluded illegitimate children from inheriting their father's property.<sup>72</sup> In criminal legislation, single people were increasingly co-erced to marry. If single people committed fornication they had to pay a fine provided they got married. If they did not get married, they could be punished by imprisonment, flogging and banishments.<sup>73</sup> In other words, as a direct repercussion of the closing of the guilds, the concept of marriage was raised and enforced considerably.

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72. Helmut Coing, Die Frankfurter Reformation von 1578 und das gemeine Recht ihrer Zeit (Weimar: Verlag Herman Böhlhaus Nachfolger, 1935), 80.

73. Sammlung, 1:554.

While on the one hand the notion of marriage was enhanced by legislative acts, two groups of people were increasingly restricted from doing so without the government's consent. The first group consisted of local single women with burgher rights, the second of foreign journeymen. In 1604 and again in 1611 the City Council promulgated edicts prohibiting burghers' widows or burghers' daughters, that is women with burgher rights, to marry foreigners unless the future husband had either received or applied for citizenship.<sup>74</sup> In 1614 the City Council, repeating its earlier legislation, stated that through such marriages suspicious and poor foreigners would settle in Frankfurt and subsequently become a burden on the local alms chest. The punishment for such clandestine marriages was the loss of citizenship and banishment.<sup>75</sup>

At first glance it appears as if the City Council promulgated these marriage restrictions to protect the whole community from troubles and unnecessary expenses. But, first of all it seemed rather doubtful that widows or daughters of Frankfurt's burghers would marry suspicious men. One ought to give these single women a bit more credit in their choice of either first or second

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74. Concepta Edictorum, 4:283.

75. Corpus Legum, 1:93.

husbands. Would not a widowed shoemaker's wife or daughter remarry someone familiar with her deceased husband's or father's trade, especially so since women were increasingly excluded from learning the profession themselves? Might she, therefore, not chose a journeyman familiar with the trade?

One can view the problem from the opposite end that is from the perspective of a foreign journeyman. With the closing of the guilds to prevent expansion, these men had to cope with an increasing variety of restrictions and difficulties in particular the extensive costs associated with becoming a master and a citizen. Unless, of course, they could marry a burgher's daughter or widow in which case they would automatically obtain entrance to the guild and the burgher's right. Marriage represented a financially feasible way in which to reach an expensive goal.<sup>76</sup>

Continuing the policy of the guilds, the City Council tried to prevent such an overstaffing by issuing strict marriage rules for women and thereby turned the wrong marriage into a criminal offense punishable by banishment. With this marriage legislation, Frankfurt's City Council not only greatly reduced women's freedom in choosing their partners, which in itself was a biased and

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76. Maschke, Städte, 346.

status-diminishing act, but also considerably curtailed social mobility for many journeymen. This law is another example of a criminalization process degrading both women and journeymen. Even the fact that in 1623 the City Council tried to extend this legislation to Frankfurt's male population, does not diminish this contention. Demographic aspects especially the disproportionate sex-ratio speak against such a proposition.

The last observation pertaining to Frankfurt's criminal laws deals with begging. The concept of begging, as was discussed previously, had also undergone considerable changes beginning with the end of the fifteenth century. Begging had progressively been curtailed, and in the process begging and poverty had lost its universal character. Frankfurt had taken longer than other towns to pass laws prohibiting begging. In Lyons "all begging was prohibited under pain of whipping and banishment" by the early sixteenth century.<sup>77</sup> The city of Strasbourg also outlawed begging during the same time span.<sup>78</sup> Imperial legislation also tried to control begging by prohibiting the practice of migrating beggars. In Frankfurt, references to begging were found in the general legislation on foreigners. In 1599 for instance

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77. Davis, 39.

78. Kriegk, Bürgertum, 1:139.

the City Council announced heavy corporal punishment for the lodging of foreigners without prior approval.<sup>79</sup> The reasons cited for such stringent measures were infectious diseases, but above all begging. A 1603 edict stipulates that many beggars collected alms illegally and warned the local population not to lodge them under threat of imprisonment.<sup>80</sup>

The first indication of Frankfurt's legal actions against street begging dates from the year 1627.<sup>81</sup> Despite the various legal measures, street begging continued, as evidenced by an ordinance of 1658. It stated that unemployed tramps, beggars, licentious women, and unknown sturdy beggars, with contagious and hereditary diseases were to leave Frankfurt immediately.<sup>82</sup> This expulsion was a form of banishment. The city of Frankfurt most rigorously prohibited street begging in 1679. This time, the law also included journeymen. Journeymen unable to find work, had to contact the local poor house where they would obtain a viatico, a form of travel money, which would assist them on their travel. In other words, they were to leave town.

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79. Concepta Edictorum, 3:99.

80. Corpus Legum, 1:59.

81. Kriegk, Bürgertum, 1:146.

82. Corpus Legum, 3:80.

All other beggars were to be transferred to the poor house. In case they did not comply, they were to be escorted out of town by the beadles. Should they return, they either had to sweep the street or be subjected to other punishments.<sup>83</sup>

The 1679 legislative act was not just another act against street begging. It turned begging into a criminal offense. The medieval universalistic concept of begging had not only splintered, as discussed in the Chapter II, it had turned upside down. The positive and religious notion of begging, most vividly exemplified by the mendicant orders, ceased to exist.

What conclusions can be drawn from the above laws? They revealed that Frankfurt's legislation was flexible in adjusting old laws and incorporating novel edicts such as the law against street begging or the decrees against prostitution, both of which had earlier been considered perfectly legal. Secondly, Frankfurt's laws seemed to mirror changes initiated by the guilds. In other words, though Frankfurt's City Council consisted mainly of patricians they were receptive to initiatives from other sources. This receptive attitude on the part of the City Council does not imply, however, that the laws promulgated were non-selective or unbiased. In fact, one

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83. Ibid., 4:52.

of the most striking legislative features was Frankfurt's selective and biased legislation favoring wealth and social status. This was most clearly expressed in moral laws where sanctions could consist of either fines or corporal punishments depending on the wealth and social status of the offender. But it was also evidenced in biased legislation toward women and journeymen. And in laws concerning its Jewish inhabitants. A law in effect since 1386 pertaining to fornication between Jews and Christians, entailed much more severe sanctions than fornication between Christians.<sup>84</sup>

The underlying concept of what constituted a crime was thus not a universal one. It was the personal element which had a great impact on the kind of sanction applied by the City Council. This selective legislative trend should not come as a great surprise considering the intensifying social stratification which began at the end of the fifteenth century. What was surprising was the fact that it took a hundred years in many instances for such changes to solidify and be incorporated into the criminal body of law.

#### Publication of Laws

How, one might wonder, was Frankfurt's population informed of the various decrees and edicts? They were

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84. Vogt, 277.

communicated orally, announced by the sound of drums and read to the community by a municipal clerk. This procedure was still in effect in 1688.<sup>85</sup> In addition to the oral one, there was a written procedure. The foreword to the 1578 Reformation clearly states that it was printed in the German language so that the burghers and common man could learn about its contents.<sup>86</sup> Written edicts were also posted in public places.<sup>87</sup>

A third means consisted of announcing new laws in church, that is from the pulpit. This was done for instance in the case of marriage restrictions for burgher's widows and daughters in 1611.<sup>88</sup> It was also used in regard to cursing, blasphemous remarks, prostitution, adultery, excessive eating and drinking, and elaborate dressing.<sup>89</sup> Frankfurt's City Council thus used various ways to inform its citizenry of new laws. But the sheer process of informing had implicit repercussions. One could argue that there was quite a difference between a law being announced in the streets and one being announced from the pulpit, the latter

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85. Corpus Legum, 5:19.

86. Orth, 61.

87. Corpus Legum, 80.

88. Concepta Edictorum, 4:283.

89. Corpus Legum, 4:27.

automatically entailing God's sanction and thus carried additional religious weight. Religious institutions, though deprived of their independent court, continued to be of importance here as conveyors of laws.

Whether the laws promulgated reflected popular consent is difficult to measure. One might take the frequency with which the City Council had to repeat certain laws as a barometer measuring the degrees of the laws unpopularity. Obviously, laws regulating sexual conduct, in particular adultery, were not appreciated in light of the repeated re-issuing of such legislation. But in one instance, the sources show explicit popular interference. In 1686 the City Council complained that the beadles, or beggars' police was not able to execute their duties properly because of interference from the local population. While these beadles tried to prevent street begging by apprehending the street beggars and escorting them either out of town or into the local poor house, Frankfurt's citizens protected the beggars by hiding them in their own houses until the beadles passed.<sup>90</sup> Similar resistance was shown by the population of Amsterdam.<sup>91</sup> Neither the poor laws nor the poor house

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90. Ibid., 85.

91. Pieter Spierenburg, The Spectacle of Suffering (Cambridge: Cambridge University Press, 1984), 128, 129.

had popular approval and, therefore, legislation pertaining to both was circumvented.

These examples also demonstrate most clearly that the co-operation of the population was needed for an effective handling of the criminal justice system. The population had an important role to play. One can thus not speak of an absolute domination of the criminal justice system by the ruling elite. Selective groups of the population such as the guilds had an impact on the criminalization process while the population at large did boycott unpopular laws. The people's influence was also evident in court procedures, especially at the accusatorial stage.

#### Law of Procedure

The actual authority in criminal matters resided with the three benches of the City Council. It has been suggested that the local Schöffengericht or civil court also held criminal jurisdiction, in manslaughter cases committed in self-defense which possibly entailed lengthy and complicated negotiations.<sup>92</sup> In other words, this civil court might infringe upon the City Council's jurisdictional authority. Although a conclusive answer to

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92. Meinhardt, 104; Rössing, 57.

the question of final competency cannot be furnished because the sentencing books of the civil court were destroyed during World War II, one might deduce some answers from other sources. One such source is the Gerichtsbücher, the record books of the civil court. A comparison of entries in the books of the civil court to statements in the Bb and Rp reveal that those manslaughter cases dealt with by the civil court were also discussed during the various sessions of the City Council. For example, in 1566 the same five manslaughter cases being heard by the civil court were also discussed during City Council meetings.<sup>93</sup> Additional similar case entries were found for 1570, 1571, 1632 and 1675.<sup>94</sup> It ought to be beyond any doubt, therefore, that the City Council carefully monitored each of the civil court's manslaughter cases. Moreover, the City Council exercised considerable influence over the civil court's jurisdiction. For instance, on June 13, 1564 a sentence suggested by the civil court was read to the City Council which consequently agreed with their decision and

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93. Rp 1565, 63-65, 80; Rp 1566, 17, 20, 26, 54, 57, 90; Rp 1566, 10, 22, 23, 27, 56; Rp 1566, 27, 28; Bb 1566, 130.

94. Rp 1570, 3, 10, 43; Rp 1570, 22, 24, 26, 31, 74; Rp 1570 7, 29, 32, 53, 98; Rp 1571, 41; Rp 1632, 6-8; Rp 1675, 12, 17, 38.

acquitted the suspect.<sup>95</sup> A more telling example, occurred on January 30, 1571 when the City Council ordered the civil court in no uncertain terms ("mit bevelch") to comply with their instructions.<sup>96</sup>

In addition, the sheer fact that the fifteen members of the civil court constituted the first bench of the City Council and thus were members of the City Council, renders the question of the final say in such manslaughter cases devoid of any real practical significance. The City Council was the final authority.

#### Accusatorial Procedure

Criminal proceedings against a suspect started with an official accusation initiated by a city functionary. But although the accusation was made ex-officio, the crucial question is how was the municipal representative informed of the crime and the suspect in the first place?

This question is of the utmost importance considering that during the time span covered in this study no police force in the present sense of the term existed. There was no uniformed police force. True, a few municipal functionaries such as the beadles exercised policing functions, but a separate crime investigating or

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95. Bb 1564, 34; another example from the year 1566 Bb, 130.

96. Bb 1570, 144.

reporting agency did not exist then. There was no independent agency to collect and assemble evidence to indict a person officially. An official criminal accusation had thus to rely heavily on outside sources, namely the population at large. Or, to put it differently, the very lack of an independent agency made the co-operation of the local population imperative. And this was the case in most European areas.

The importance of the people as crime reporting agents is evidenced by municipal decrees, as well as data derived from criminal records. A decree of 1580 concerning manslaughter demonstrates this very clearly. It exhorts the local population to intercede and stop brawls, while offering a certain amount of money to all those who arrested law-breakers.<sup>97</sup> Money was even offered to persons who devised plans to catch transgressors.<sup>98</sup> Monetary incentives were promised to those who would turn in a Jew who had had sexual relations with a Christian.<sup>99</sup> In cases of a manhunt, the government asked the population at large to assist by announcing the search publicly after the beating of the drums.<sup>100</sup> In a

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97. Corpus Legum, 1:26; Kriegk, Bürgertum, 1:212.

98. *Ibid.*

99. Vogt, 277.

100. Meinhardt, 64.

relatively small community such as Frankfurt everyone was a potential policeman.

The arrest records attest to this contention. Although the entries in the Strafenbuch (Book of Punishments hereafter referred in the abbreviated version of St), the Rathsprotokolle, (hereafter referred to in their abbreviated version of Rp) and the Bürgermeisterbücher (hereafter also referred to in their abbreviated version of Bb) listed only a total of 261 verifiable cases which amounts to 19.5% of the total sentences during the 1562 to 1696 period, this small sample, nevertheless, offers a glimpse at the initial causes for arrest. Out of the 261 cases, 46.74% were brought to trial based on suspicions ranging from rumors to hearsay. Captured in the act ranked second with 26.82%. The latter percentage seems to attest to the efficiency of the local population in apprehending a delinquent in the act. The former and considerably higher percentage testifies to the extreme vagueness of the crime reporting system by turning sheer suspicion into a viable reason for starting criminal proceedings. Legally, this was in accordance with the CCC, the imperial criminal code.<sup>101</sup> And such practices existed in other European areas as well such as in France where

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101. Ibid., 62.

"constables responded to public outcry."<sup>102</sup>

These findings also corroborate the importance of personal factors in crime accusations. For who other than local inhabitants would decide who was to be suspected of a crime? And the indirect method of reporting rumors and other suspicions encouraged crime reporting by the population at large, because it became less dangerous for the individual. Through indirect accusations such as rumors private vengeance on the part of the suspect or his or her family members was precluded.

The inquisitorial process also added an impetus to crime reporting because court proceedings were handled by officials. It was financially advantageous for the individual since court expenses were no longer borne by the accuser but by the authorities. The personal liability of the accuser had been reduced considerably.

Theoretically, both aspects point to a very effective crime reporting system, but it did have built-in biases. Personal factors could greatly influence crime reporting by either overexposing or sheltering individuals. It left the door open for misuse on the part of the population at large through selective crime reporting. This problem was in turn compounded by

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102. Steven G. Reinhardt, "The Selective Prosecution of Crime in Ancien Régime France," European History Quarterly 16 (January 1986): 8.

selective and discriminate arrests by the authorities who did not have any crime scrutinizing agency.

This selective crime reporting system was facilitated and even encouraged by Frankfurt's increasing insistence on the dress codes. It will be recalled from the previous chapter that the dress code mandated clearly discernible signs of social status through specific dress. The population at large could easily discern a patrician from an artisan, an artisan from a Jew, a Jew from a Christian, a prostitute from another women. These visible signs not only helped in mutual policing, but made selective crime reporting all the more easier. One does not need much imagination to figure out that a burgher would think twice before reporting a patrician, whereas no such discretion was the case when it came to reporting those of inferior status. Visible social symbols work both ways. They encourage or deter crime reporting. Further evidence pertaining to the selective crime reporting system will be furnished in the chapter on criminals when the personal data of those actually sentenced will be analyzed. Suffice it to say that due to the selectivity of crime reporting, crime sentences do not provide an accurate measure of criminality.<sup>103</sup>

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103. Ibid., 3.

Once reported to the authorities, the suspect was arrested and jailed until the completion of the trial. In fact, all those sentenced during the 134 year span under investigation here had been arrested prior to the start of criminal procedures regardless of age, gender, disease or pregnancy. The actual arrest was made by a municipal official at the instruction of one the mayors.<sup>104</sup> Once arrested, the suspects had no means at their disposal to affect the course of events other than plead to guilty or not guilty.<sup>105</sup> The most important element of the criminal process thus pivoted around the question of guilt. To prove or to elicit it was left to the authorities.

#### Law of Evidence

Frankfurt's City Council employed four different methods to establish the truth or obtain a guilty plea from the accused. They consisted of the use of eyewitnesses, consultation of experts, use of data obtained from other towns, and application of torture.

#### Use of Eyewitnesses

In Frankfurt, the first reference pertaining to the

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104. Moritz, Versuch, 30.

105. Meinhardt, 59.

use of eyewitnesses dates from the fourteenth century.<sup>106</sup> By the mid-fifteenth century eyewitnesses were interrogated under oath although it cannot be established with certitude whether they were then used for all criminal offenses or only for select crimes.<sup>107</sup>

For the 1562 to 1696 period, entries in the Rp reveal that eyewitnesses were used but by no means for the majority of cases nor for all crime categories. In fact, the infrequent use of eyewitnesses was quite striking. The data extracted from the Rp show that out of a total of 1,338 convicted criminals, eyewitnesses were used for a total of 137 cases, or 10.24%. In addition, this was a pattern without significant changes throughout the 134 year period. For instance between 1562 and 1594, out of 462 sentences in only 48 cases were eyewitnesses interrogated. From 1595 to 1627, in 40 cases out of 415 sentences eyewitnesses were used, followed by 22 eyewitness out of 121 sentences during 1628 to 1660, and 27 out of 340 during the period from 1661 to 1696. (Re enclosed Table A1).

The use of eyewitnesses depended on the kind of crimes committed. Crimes like burglaries or thefts, were less likely to be observed by eyewitnesses. A numerical

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106. Vogt, 291.

107. Ibid., 293.

correlation between crimes and the use of eyewitnesses corroborates this statement. For a total of 814 property crimes only 40 witnesses were interrogated which represents 4.9%.

Manslaughter sentences disclose the opposite trend. Out of a total of 70 such sentences, 46 cases employed an eyewitness, amounting to 65.71%. This high percentage rate is attributable to the public nature of most manslaughter which often started with a public brawl. The fact that more witnesses were interrogated for manslaughter cases also reflects Frankfurt's peculiar manslaughter legislation. Accordingly, only the person who carried out the final or deadly blow was charged for manslaughter, while additional participants were charged with assault only. It became very important to identify the person doing the final or fatal stabbing. Eyewitnesses were thus predominantly interrogated in manslaughter cases, though occasionally also in conjunction with other crime categories.

According to the CCC, the evidence of two eyewitnesses was sufficient proof to sentence a suspect provided the accused confessed. In the case of overlapping or contradictory testimonies Frankfurt's City Council seemed to refrain from sentencing, such as in a manslaughter case of 1680 based on conflicting eyewitnesses' testimonies as to who had done the fatal

stabbing.<sup>108</sup> Where, despite concurring testimonies of the eyewitnesses, the suspect refused to plead guilty, the City Council could resort to the use of torture to obtain a confession. During the 1562 to 1696 period, out of the total of 137 cases in which eyewitnesses were used, 64 suspects were subjected to torture, (see enclosed Table A1). In other words, in 46.71% of the cases, torture was applied in addition to the calling of eyewitnesses. Most significantly, this data reveals that 73 suspects were sentenced without the use of torture.

Witnesses were interrogated in the local chancellery prior to the actual court sessions. Testimonies given under oath were written down by municipal clerks and later read to the City Council once it convened on this particular matter. The witnesses thus never appeared directly before the assembled court nor for that matter were they ever cross-examined. In isolated cases, namely in 14 instances during the 134 year span, the witnesses were confronted with the suspect. But this leaves 123 cases where such a confrontation did not take place. In other words, in most instances the eyewitness did not even have to confront the suspect. Who or what could prevent such a witness from making a false statement? They were neither

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108. St June 10, 1680.

subjected to cross-examination nor did they have to confront the court in sessions. This pattern is yet another example of how beset the criminal system was of personal factors influencing the sentencing structure.

#### Consultation of Experts

As early as the fourteenth century Frankfurt's court sought the advice of experts in dubious criminal matters. Experts were persons who because of their special training were deemed qualified to give such advice.<sup>109</sup> Basically, there were three kinds of experts. First, midwives who were consulted primarily for infanticides and sexual crimes such as incest. Second, barbers and barber-surgeons who were used in corporal offenses. Third, school teachers were consulted for handwriting analyses in cases of libel.<sup>110</sup> Even preachers assisted the court such as in 1624 when a local preacher was sent to a woman, suspect of infanticide, and exhorted her to tell the truth.<sup>111</sup>

One of the essential functions of an expert was to establish whether a crime had occurred in the first place. In alleged infanticides for instance, the midwives had to prove that a pregnancy had actually existed. In

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109. Vogt, 295.

110. St Sept. 20, 1688.

111. Bb 1624, 40.

cases of manslaughter, barbers or barber-surgeons had to certify the cause of death. As a corollary, the experts also had to decide in many instances whether or not the suspect was guilty.

During the period from 1562 to 1696, the City Council consulted experts in 26 out of a total of 1,338 convicted criminals (re enclosed Table A2). Given the low statistics one can conclude that such expert advice was only considered in rare instances and played thus a subordinate role in the law of evidence.

Statements made by expert were given under oath. They were written down by a municipal clerk and read to the City Council at a later date. In other words, the procedure was similar to the one used for eyewitnesses. All consultations took place prior to the court sessions removed from either the assembled court and the accused.

#### Inquiries to other Towns

Bearing in mind Frankfurt's far reaching jurisdictional powers, the City Council could and did sentence foreign suspects regardless of whether the crime was committed locally or elsewhere. In order to obtain a clear picture with regard to the kind and frequency of the offense and the character of the suspect, Frankfurt contacted either the place of origin of the suspect or other places where the accused had sojourned for any length of time. In some instances several places were

contacted. In other words, Frankfurt and other cities for that matter could tap quite an extensive data bank and were not necessarily self-reliant. The exchange of such information was taken very seriously and could lead to considerably harsher punishments.<sup>112</sup>

As to the frequency of such inquiries, a quantification of the relevant data (contained in the attached Table A3), reveals that out of 1,338 sentences, a total of 154 out-of-town inquiries were made. Numerically speaking then, inquiries to other towns exceeded the use of eyewitnesses and the consultation of experts. Most such inquiries were made during the years 1562 to 1627. After that time, a conspicuous decline set in. One might be tempted to attribute this decrease to impeded communications during the Thirty Years War were it not for the fact that the low rate continued even after the war. Internal changes, such as greater reliance on local legal advice as opposed to outside assistance were more likely causes for the change.

#### Application of Torture

In contrast to other methods utilized to obtain evidence, the use of torture was by far the most common method to elicit a confession during the early modern period. As was pointed out previously, in historical

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112. St Oct. 19, 1694.

terms, torture had not always been part and parcel of the law of proof. One only has to think of the Germanic Tribal Law using ordeals or judicial duels. In fact, in Frankfurt the last indication of such judicial ordeals came as late as 1451.<sup>113</sup> But torture had already been established locally by the second half of the fourteenth century.<sup>114</sup>

The right to administer torture resided with the City Council. It was based on the CCC. Torture was thus an institutionalized legal concept to establish the truth in criminal cases. Its use was to be confined to those cases where the authorities had incriminating evidence or serious suspicion of the culpability of the suspect, but the suspect refused to confess. Theoretically, the use of torture depended on each individual case and was not to be applied automatically to every suspect. The City Council decided on an individual basis when to resort to torture.

The municipal Council was also responsible for the proper application and administration of torture. Usually one of the mayors, using prepared questionnaires, conducted the interrogation of the suspect in the

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113. Bothe, Stadt Frankfurt, 231.

114. Vogt, 301; Kriegk, Bürgertum, 1:215.

presence of several observers.<sup>115</sup> The actual physical torture was inflicted by, the so-called Oberstrichter, an executioner. Statements and confessions made under torture were carefully written down. For a confession made under torture to be legal, it had to be re-confirmed by the suspect the following day or two, while not under the influence of torture as set forth in article 56 of the Carolina. In case of the suspect's subsequent denial of an earlier confession, additional torture could be applied, and then re-applied (re enclosed Table A4). Should the suspect persist in pleading innocent, charges might be dropped and the accused acquitted. Acquittal did not necessarily mean exoneration without punishment. For if the City Council persisted in harboring doubts about the suspect's innocence, a so-called Verdachtstrafe, a punishment of suspicion could be imposed. It was a milder punishment, but it was a punishment nevertheless. In other words, resistance to torture did not automatically absolve or redeem the accused. Similar legal practices existed in France where it was referred to as mise hors cours, put out of court.<sup>116</sup>

In the application of torture, there were two kinds. First, torture applied "mit Güte" literally (and not

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115. Meinhardt, 17.

116. Ruff, 58.

ironically) meaning with kindness, and secondly, "mit Wehe" meaning with pain. In the first instance, that is "with kindness" the suspect was exposed to the various torture instruments including the very scary sight of the actual torturer. This psychological procedure could be repeated several times, depending on the recalcitrance of the accused.

If no guilty plea was forthcoming, physical torture was applied. As to the torture instruments, few such references were contained in the records for the initial years of this study. One case from the year 1569 is clearly described.<sup>117</sup> Live mice were put in a bowl, and the bowl tightened over the suspect's stomach so the mice could not escape. This procedure was a particularly cruel way to elicit a confession. For the later period of this study, the City Council seemed to have mainly used the boot and the thumb-screw.

Physical torture could also be repeatedly applied. Repeated or intensified torture was applied in cases where no confession was forthcoming or where more than one person seemed to have been involved in the crime. In the latter case it obviously served to locate any possible accomplices. Torture could also be extended to other family members even though only one of them was

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117. Rp 1569, 70.

suspect of a crime. One such case occurred in 1603 when an accused, his wife, and his daughter were all tortured.<sup>118</sup>

This example also demonstrates that torture was applied to women. In fact, the records demonstrate that every suspected criminal regardless of gender, age (both young and old), profession, religion, or place of origin could be subjected to torture. Only in cases of sickness do the records specify exceptions to the rule.<sup>119</sup> In addition, pregnant women seemed to have been treated sparingly. In only two instances were pregnant women tortured, but only "with kindness" and one partially "with pain".<sup>120</sup>

But these qualitative findings should not be interpreted as a universal application of torture throughout the 1562 to 1696 period. A quantification of its use reveals a different picture. This quantification was based on pertinent entries in the Rp and BB. Due to the loss of both sets of records for the year 1628 two cases are unaccounted for while an additional 52 cases have only a fragmentary coverage due to the discontinuation of the Rp as of 1688. But the remaining sample of 1,284 out

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118. Rp 1603, 46, 49.

119. St Febr. 28, 1618.

120. Rp 1573, 52; Rp 1573, 78.

of a total of 1,338 cases is large enough to uncover certain trends.

The analysis reveals that out of these 1,284 cases, 636 persons were tortured during the 134 year span under investigation here (re enclosed Table A4). In other words 49,53% or almost half of those sentenced to corporal punishment were also tortured. Out of the total of 636 tortured, 138 persons confessed at the sheer sight of the torture instruments, while 75 persons did so only after repeated application of torture, (re enclosed Table A4).

But how is one to explain the high numerical discrepancy between tortured and persons spared such pain given the fact that no personal allowances were to be made? And prompt confessions on the part of the accused cannot account for such a wide disparity. Changes over time might furnish the answer since the application of torture was by no means a static one. If one consults the enclosed Table A4, one finds that during the first thirty-three years of this study, that is from 1562 to 1594, a total of 337 were tortured out of 462 sentenced, representing 72.94%. During the following thirty-three years torture was used in 200 out of 415 cases, representing a sharp drop to 48.19%. This decrease continued for the next thirty-three years when from 1627 to 1660 only 24.37% were tortured, or 29 out of 119. This trend was maintained for the last period in that during a

36-year period, that is from 1661 to 1696 only 70 persons out of 284 sentenced (that is total of 340 minus 56 case entries missing) were tortured. In other words, what can be observed here is a continuous decline of the application of torture to elicit confessions.

This time element makes the decline of torture so very intriguing for the laws regulating its application, in particular the CCC, did not change during the same period of time. One could, of course, ascribe the decline of torture to increasing negligence in archival recordings. But this assumption, though never to be ruled out completely, is off-set by the very fact that archival entries pertaining to the use of torture became more descriptive and lengthy in the early 1630s just when torture was on the wane. This trend points to a more diligent recording method for the crucial time period, and suggests qualitatively speaking, a possibly changed awareness of the use of physical torture. Why else was it described in such detail? Any changes with regard to the use of torture must thus be sought in more subtle changes, possibly changes of attitude toward the use of physical pain in general. And, most interestingly, it was during the same time span that the penal structure also underwent significant changes as will be demonstrated in Chapter VI.

### Use of Advocates

Frankfurt's City Council consulted university-trained jurists, called advocates, for a variety of legal matters from the end of the fifteenth century forward.<sup>121</sup> Advocates had to clarify criminal acts, such as to delineate manslaughter from murder charges.<sup>122</sup> But predominantly, their advice was sought for the penal structure. Advocates assisted the City Council in establishing what kind of punishment the law prescribed for a particular crime.

Most significantly, advocates rendered advice to the City Council only. During the time period of this study the advocates did not assist, defend, or plead the case for an accused. The accused was left without legal aid. It was only in 1679 that a vague reference was found with regard to a defense lawyer followed by a more explicit entry in 1688.<sup>123</sup> By 1727 the accused was guaranteed a legally trained defender in Frankfurt.<sup>124</sup>

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121. Coing, Rezeption, 175; Vogt, 152-159.

122. Bb 1569, 82.

123. Rp 1679, 13; St Feb. 17, 1688.

124. Meinhardt, 30.

Policies on legal advice for the arraigned varied from area to area. In the town of Seville, the municipal council appointed lawyers to represent poor prisoners, while in England, similar to Frankfurt, "defense council began to make very rare appearance in ordinary criminal trials" during the 1730s only.<sup>125</sup>

Initially, Frankfurt's City Council consulted advocates sporadically only. Even by the beginning of this study, that is by 1562, few such consultations were registered in the records. One occurred in 1564, followed by two in 1568, one case each in 1569 and 1570, and two cases in 1571. The City Council consulted trained jurists in only 7 criminal cases although they sentenced 75 persons for criminal offenses during that same time span. Advocates were thus only consulted in 9.33% of all cases.

As can be seen from the statistics in Table 1, this pattern began to change at the beginning of the seventeenth century. A brief word of caution, it has to be borne in mind that these figures apply to sentences only. The actual figures might have been considerably higher, if cases which did not result in sentences were included.

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125. Mary E. Perry, Crime and Society in Early Modern Seville (Hanover: University Press of New England, 1980), 78; Clive Emsley, Crime and Society in England, 1750-1900 (London and New York: Longman, 1987), 152.

Table 1.-- Consultation of Advocates during the  
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	Advocates	Sentences	Percentage
1562-1594	46	462	9.95
1595-1627	108	415	26.02
1628-1660	66	121	54.54
1661-1696	188	340	55.29
Total	408	1,338	30.49

Source: Rps

Advocates were consulted at an ever increasing rate reaching 55.29% of all sentences during the period between 1661 and 1696. But despite this numerical increase, advocates were not consulted on a regular basis as suggested by Meinhardt and Meyn.<sup>126</sup>

The time frame of the increased use of advocates immediately reminds one of the inverse pattern exhibited by the use of torture as shown on the attached Table A4. While torture seemed to decline by the early 1620, advocates were increasingly consulted for assistance. And it is indeed very tempting to draw a correlation between the two. In other words, might not the advocates have influenced the decline of the use of torture as was suggested by Langbein?<sup>127</sup>

But before attempting to analyze this correlation at greater length, a more immediate question has to be

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126. Meinhardt, 88; Meyn, 184.

127. Langbein, 56-57.

answered. What reasons did exist in the first place for an increasing use of advocates? Part of the explanation might be attributable to the fact that the city of Frankfurt had embraced Protestantism and that secular jurist got a strong backing from the Reformation movement in Germany despite Luther's aversion to jurists.<sup>128</sup> This rationale seems particularly plausible considering the high rate of legal advice sought for moral transgressions (re attached Table A5) and the advocates' repeated referrals to göttlichem und gemeinen Recht, that is divine or Biblical law and common law, in their deliberations on such cases.<sup>129</sup>

Another factor contributing to the increased use of advocates might have been Frankfurt's growth and transition from a small, mainly agrarian town to a commercial center by the end of the sixteenth century. This growth resulted in an increased work-load for City Council members, who had to face more complex issues. The advice of trained jurists might have helped clarify many difficult situations. This proposition is backed by the fact that advocates began to be consulted in cases other

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128. Adolf Stölzel, Die Entwicklung der gelehrten Rechtssprechung (Berlin: Verlag von Franz Vahlen, 1901), 16; Gerald Strauss, Law, Resistance, and the State (Princeton: Princeton University Press, 1986), 215.

129. Bb 1581, 163; Rp 1590, 91.

than sexual offenses. Their advice was increasingly sought in cases involving property offenses. Consultations for such crimes jumped from 10 cases between 1562 to 1594 to 104 during the last period of 1661 to 1696 (see enclosed Table A5).

The city's growing need for legal advice was most clearly demonstrated by the fact that these advocates also had to serve as political advisors to the City Council, especially in foreign affairs.<sup>130</sup> Dr. Heinrich Keller, for instance, was appointed city advocate in 1574. His letter of appointment stipulated that he must reside in Frankfurt, and that he must be present during the various sessions of the City Council.<sup>131</sup> He had to be kept abreast of political as well as legal matters. An advocate's function thus exceeded purely criminal matters.

This double function plus the fact that the advocates were municipal employees acting in the interest of the City Council, had its repercussions in the punishments suggested by the advocates. In 1595 for example Dr. Keller, in a manslaughter case, suggested that the offender be sent to Hungary for several years because of the immanent Turkish threat. This punishment

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130. Trumpold, 51.

131. Ibid., 47.

was a politically expedient one. In other words, the advocates were not totally independent or objective and their suggested sentences reflected the interests of the City Council.

This trend is further corroborated by the fact that many of the advocates came from the same social background as members of the City Council.<sup>132</sup> This was the case because the costs for their education were so high that only sons of wealthy parents could afford it.<sup>133</sup> Moreover, some advocates even had close family ties to members of the City Council. In the case of Heinrich Keller for instance, it was not only his professional qualifications but perhaps even more so his familial connections which had played the decisive role in his appointment. The Kellers belonged to the local patriciate and two of his brothers were sitting in the City Council.<sup>134</sup> Another advocate, Dr. Rasor, was the son-in-law of a City Councillor.<sup>135</sup>

Based on the advocates familial ties coupled with their political functions, their suggested sentences

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132. Bothe, Stadt Frankfurt, 231.

133. Mascke, Städte, 80.

134. Trumpold, 45; Bothe, Wirtschaftlich-Soziale Entwicklung, 386.

135. Bothe, Wirtschaftlich-Soziale Entwicklung, 386.

were, if anything, reflections of the attitudes of the City Council. And it was, therefore, not surprising to realize that out of 92 verifiable sentences suggested by the advocates, the City Council heeded a total of 76. Admittedly, this numerical sampling is rather small and while quantitatively speaking it represents only 22.55% of the total of 408 consultations, its qualitative aspects are worthwhile noticing. True, in sixteen instances the City Council rejected the advocates suggested punishments, but in one case only did they impose a harsher sentence. In other words, in fifteen overruled sentences the City Council opted for milder punishments than the ones suggested by their legal advisors.

Therefore, the argument that advocates had an impact on the reduction of corporal punishments or the use of torture for that matter lacks its basic premise, namely the prerequisite of being an independent and unbiased advisory body.<sup>136</sup> The advocates were neither independent nor unbiased. If anything, these findings suggest that the decrease in the use of torture and the emergence of more lenient punishments, must be viewed as a cooperative venture of jurists and members of the City Council.

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<sup>136</sup>. As suggested by Meinhardt, 31 and Langbein, 56-57.

But even this proposition is an incomplete assessment since neither the advocates nor the City Council operated in a social vacuum. In fact, they could not afford to do so since the co-operation of the local population was of the utmost importance. The approval or disapproval of Frankfurt's population was crucial whether dealing with religious or economic factors as outlined in the first chapter or crime reporting as outlined in the section on the accusatorial procedure. Any trend toward a more human approach in criminal affairs or for that matter in other social areas, cannot solely be attributed to the ruling elite or the jurists of Frankfurt. If anything, this trend was a mutually supported one, the high and the low contributed.

#### Inquiries to Faculties of Law

As mentioned earlier, appeals to a higher court were not possible in criminal matters. But in 1600 a concession was introduced on the imperial level allowing for revisions of sentences by faculties of law.<sup>137</sup> These, what one might call quasi-appeals, could be sought at the request of the suspect or of the City Council.<sup>138</sup> The fees accrued in such a Aktenversendung or "sending of the

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137. Gerhard Pätzold, "Die Marburger Juristenfakultät als Spruchkollegium," Beiträge zur Hessischen Geschichte 5 (1966): 20.

138. *Ibid.*, 26.

dossier", as it was called, had to be borne by the proposing party.<sup>139</sup> The earliest reference to such a quasi-appeal dates from the year 1607, followed by another case in 1625 and a third in 1659. In other words, a total of three appeals was registered for half of the entire seventeenth century. For the remainder of the period, such inquiries increased to an additional six cases. Once again, one has to bear in mind that the actual number might have been higher since this paper is based on actual sentences only and not any possible acquittals. But despite this reservation, the low number of 9 cases during an entire century is striking. It is possibly related to the financial aspect considering that the cost occurred had to be borne by the proposing party. Might not a poor suspect have been excluded from taking recourse to such a procedure? But the transmission of files also seems to have depended on the seriousness of the crime for revisions were primarily requested in manslaughter and infanticide cases.

As to the actual procedure, a dossier containing pertinent information gathered by the local authorities was sent to the law faculties. The law faculty thus received data procured by the city of Frankfurt and not from an independent outside investigation. And this

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139. Trumpold, 94.

factor is of the utmost importance for if biased material was submitted to the respective law faculties, a biased sentence might very well be the outcome. The law faculty might have been impartial, but not necessarily the file. Prosecutorial misconduct was thus not necessarily excluded.

Frankfurt consulted various law faculties such as the Universities of Heidelberg, Marburg and Jena. Their sentences were not necessarily milder as has been suggested by Dülmen.<sup>140</sup> Law faculties proposed death sentences until the end of the seventeenth century. In a 1694 incest case for which the University of Jena was consulted, the law faculty proposed the death penalty which was duly carried out by Frankfurt's City Council.<sup>141</sup>

The final sentence was always pronounced by the City Council. It was based on the various written reports pertaining to the suspects such as testimonies of the eyewitnesses, the reports of experts, letters from other towns, and most importantly, the confession of the suspect or his or her refusal, plus the advice from the advocates and law faculties. The submission of these various reports did not happen all at once nor for that

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140. Dülmen, 116.

141. Bb 1694, 38.

matter were all of them requested in each case. They were presented and discussed individually at the City Council meetings.

Two facts are important here. First and most importantly, the majority, if not all of the trial proceedings unfolded not in front of the actual court in session but prior to its meetings, a practice so alien to the present system. Secondly, as a direct corollary fewer actual court sessions were needed to arrive at a verdict.

While reading the various entries in the RPs, it was quite striking to see how infrequently the City Council met in matters pertaining to corporal and even capital punishments. This very fact prompted a closer look at the actual court sessions per sentenced criminal to obtain an insight into the time element of contemporary trials. The findings might after all corroborate the old German saying jemanden einen kurzen Prozess machen, to give someone a short trial, an axiom which suggests being given a short shrift trial.

#### Court Sessions

The data pertaining to the number of court sessions was extracted from the Rp, the protocols of the City Council. Unfortunately, as mentioned earlier, these protocols do not exist beyond the year 1688. The

evaluation of the court sessions covers the years 1562 to 1688 lacking 7 years (1689-1696). In addition to these missing eight years, a total of 102 case entries could not be accounted for out of the total of 1,276 sentenced during the 1562 to 1688 period. Despite this shortcoming, which only represents a 7.99% error margin, a representative picture emerges (re enclosed Table A6).

Based on these statistics, one can group the sessions per sentence into three major categories, namely sentences preceded by 1 to 2 sessions, 3 to 6 sessions, and 7 to 19 sessions. Table 2 shows that in 562 instances out of a total of 1,174 verifiable sentences the City Council based its verdict on only one to two court sessions.

Table 2.-- Sentences Based on 1 to 2, 3 to 6, and 7 to 19 Sessions

	1-2	%	3-6	%	7-19	%	Total
1562-1594	220	51	195	45	16	4	431
1595-1627	179	46	200	51	10	3	389
1628-1660	49	45	51	47	8	7	108
1661-1688	114	46	111	45	21	9	246
<u>Total</u>	<u>562</u>	<u>48</u>	<u>557</u>	<u>47</u>	<u>55</u>	<u>5</u>	<u>1,174</u>

Source: Rps

Most surprisingly, in 562 instances out of a total of 1,174 verifiable sentences the City Council based its verdict on only one to two court sessions. This represents 48% of all those sentenced to corporal punishment. The next highest category, namely 47% of all

those sentenced, consisted of three to six sessions. The second outstanding element revealed by this data was the overall consistency of this trend throughout the 128 years investigated here. In other words, sentencing based on few court sessions remained basically unchanged till 1688.

The City Council of Frankfurt acted very quickly in sentencing suspected criminals and obviously had no qualms about passing the harshest physical punishments including the death sentence after only one to two court sessions. In fact, a total of 29 people were sentenced to death based on one to two court sessions.

One explanation for these speedy court procedures lies in the essence of the inquisitorial criminal procedure in that the emphasis of the trial was not the actual court session but pre-trial procedures. It will be recalled that all data such as statements made by witnesses, experts, and town inquiries were obtained separately and not during the court sessions. Once obtained, the statements were read to the City Council. The minutes of the City Council, the Rps, testified to this procedure through the various entries such as "zu Rat verlesen", meaning read to the council. Not a single entry was found where the suspect or the witness was asked to appear before the court. The city councillors never questioned the suspect nor the witnesses; nor did a

cross-examination ever take place. The City Council saw neither the suspects nor the witnesses and based their sentences on written reports from outside sources. The only people to appear before the Council were the advocates. Even the advocates based their judgements on written reports from third parties, as they, in turn, did not cross-examine the suspect nor the witnesses. The most prominent feature affecting the court sessions was thus the timely availability of the criminal record.

But one should not overlook the fact that the number of sessions might also have been affected by the way the City Council perceived a particular case or a particular suspect. After all the City Council was the initiator for all criminal investigations. Preconceived ideas about a suspect might have led to careless pre-trial investigations. In addition, the City Council was not accountable to an outside agency. Defense lawyers did not exist, there was no court of appeal. Who was to guarantee that the City Council had done everything possible to establish the truth? Who was to judge whether the suspect had received a fair trial?

One can thus conclude based on the data above that in the proverbial sense many sentenced criminals were given a very short trial, not to mention short shrift.

Detention Pending Sentencing

Few court sessions should not automatically be equated with short periods of detention. Two court sessions did not necessarily mean two days spent in prison waiting for the sentence to be pronounced. One could argue that the detention period depended on the timely presentation of the written documents to the City Council. And, indeed, a correlation between the two can be established especially with regard to foreign suspects and prolonged prison duration. In the case of foreign suspects, inquiries were sent to their previous place of residence. As in 1602, for example, when a suspect was arrested on April 27 but sentenced on June 16. An entry in the Rp on May 27 furnished the explanation by stating that the City Council was waiting for an answer to their inquiry to another town.<sup>142</sup>

While the argument of a correlation between the availability of legal documents and prison detention is a valid one, it does, not fully account for the fact that in several cases suspects were detained for periods ranging from 9 to 18 months. Under these circumstances it is puzzling why some suspects were incarcerated for extended periods of time, yet sentenced after only a few council hearings. This seemingly ambiguous relationship

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142. Rp 1602, 6.

between the number of court sessions and the detention period warranted a closer examination of the detention periods in both quantitative and qualitatively terms.

The Rp again served as the basis to determine the detention period by comparing the dates of arrest to the dates of sentencing. In cases where the dates of arrest were missing, the date of the first Council session was taken as a base. The first debates took place shortly after an arrest since one of the mayors supervising criminal arrests had to promptly inform the City Council. Again, statistics could only be computed through the year 1688 because of the discontinuation of the council protocols. After that year, arrest and sentencing dates were missing in 55 cases between 1562 and 1594, representing a 88.1% accuracy rate for the first period. For the second period, only 27 entries were missing representing 93.4%, followed by accuracy rates of 97.5% for the third and 93.2% for the last period. But the lack of such data should not deter one from analyzing the remaining figures the more so since the overall rates of accuracy are very high.

The statistics (re enclosed Table A7), reveal that the vast majority of culprits were sentenced within a one month period, namely 948 persons out of 1,172 verifiable sentences. This figure equals 80.9% of all sentences. Considerably fewer culprits were detained for a two-month

period. They amounted to a total of 163 offenders only. The number of culprits detained for three months dropped to 37 persons, followed by 11 persons detained for four months, and 5 persons detained for five months. All in all, a total of 224 offenders were detained from 2 to 18 months. In other words, considerably fewer suspects were detained for a 2 to 18 months period as compared to those sentenced within one month.

But here the surprising element is not the low number of persons detained for an extended period of time, but the fact that suspects were imprisoned for such lengthy periods of time in the first place. Considering the dreadful contemporary prison conditions, and Frankfurt was no exception to the rule, three, four even eighteen months in prison pending sentence was a very long time. One wonders how some of the suspects even survived such lengthy detention periods, especially those who were arraigned during the winter months. Every day spent in prison waiting for the sentence to be pronounced added considerable pain to the inmate.

The element of physical suffering pending sentencing reminds one of the use of torture. And, in fact, there exists a direct correlation between the two. It will be recalled that the core of the criminal proceedings focused on the confession of the accused. If such a confession was not forthcoming, torture could be used,

and re-used. A prolonged prison stay was visited upon those who refused to make a "timely" confession. For the years 1562 to 1594 out of 63 cases of prolonged prison stay, 38 were tortured repeatedly. From 1595 to 1627, out of 76 with long detention, 30 were subjected to repeated torture. For the remaining period, that is from 1628 to 1688, only 6 out of 61 with prolonged prison stay were tortured. While the use of torture declined, extensive detention period continued to exist.

It seems most likely that in such recalcitrant cases where torture and even the repeated use of torture did not elicit a guilty plea, an intentionally prolonged prison stay was used in order to break the suspect and to extract confessions. Harsh deprivations suffered in prison might help produce a confession. A pertinent reference from 1585 describes that the suspect spent the whole winter in prison and finally confessed.<sup>143</sup>

Another similar example from 1598 states that the culprit had been imprisoned for five weeks before pleading guilty.<sup>144</sup> Further evidence comes from a 1633 case when two suspects spent 55 days in prison because initially they did not plead guilty.<sup>145</sup> An additional

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143. St April 30, 1585.

144. St June 8, 1598.

145. St Dec. 7, 1633; this case is also covered in Rp 1633, 12, 13, 18, 23.

three such cases can be cited from the years 1635, 1674, and 1675 all bearing the remark that the arraigned person "finally confessed."<sup>146</sup> Detention pending investigation was thus more than a judicial device to keep the suspect from absconding.

The most flagrant of all detention cases occurred in 1571 when two Jews were arrested on October 9.<sup>147</sup> Despite daily pleas by their wives for speedy procedure and mild punishments, the suspects wer still in prison the following year. On May 18, 1572, four Council Sessions later, it was remarked that they had been detained now for quite a while. This almost casual remark was repeated on July 8, eight months after the initial arrest. On October 1, one of the suspects tried to escape but got stuck in the prison wall and died.<sup>148</sup> The second suspect was finally sentenced on March 3, 1573 following a one and one-half year of imprisonment. True, the City Council had been waiting for an answer to an inquiry from another town, but surely not for 18 months. One cannot help but wonder whether in this particular case the fact that the suspects were Jewish influenced the extremely long

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146. St Oct. 14, 1635; St Nov. 7, 1674; St July 9, 1675.

147. Rp 1571, 47.

148. Rp 1571, 82; Rp 1572, 51.

detention period. Theirs was indeed the longest detention period of any suspect during the entire period under investigation here. The next closest detention consisted of two instances of nine months each. Personal biases on the part of the City Council might thus have influenced the detention period.

The bias existed before any arrest was made. One only has to think of Frankfurt's legislation allowing for some to pay a monetary fine and others to be subjected to physical punishment for the same offense, depending on the status and the financial situation of the offender. In case of physical punishment a prior detention period was almost automatic, for monetary fines not necessarily so. In other words, not everyone was subjected to imprisonment in the first place.

A case in point comes from the year 1618 when an unmarried servant woman who had been impregnated by her master was detained in prison for 32 days prior to the sentencing and later punished by flogging and banishment.<sup>149</sup> The master, a local citizen, was not even listed in the St and thus was not considered to have committed a crime. He was only fined with a certain amount of money.<sup>150</sup> Frankfurt's biased legislation

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149. Rp 1617, 52, 55, 56.

150. Bb 1617, 168.

entailed unfair imprisonment in addition to unfair punishments.

In this connection it should be recalled that the population at large, the crime reporting agents par excellence, also had a direct bearing on who was and was not subjected to imprisonment. They did not hand over every suspect indiscriminately as pointed out previously. Thus a pre-selecting system was in effect even before the initial arrest was made.

Every prison stay whether short or long caused severe physical suffering. Numerically speaking, short periods of detention occurred as frequently as extremely long periods of detention as Table 3 demonstrates:

	<u>1-2 Days</u>	<u>2-9 Months</u>
1562-1594	73	63
1595-1627	87	76
1628-1660	20	24
<u>1661-1688</u>	<u>67</u>	<u>61</u>
<u>Total</u>	<u>247</u>	<u>224</u>

Source: Rps

The numerical closeness is surprising. In other words, throughout the entire time span under investigation, almost as many suspects were sentenced within a 1 to 2 day period as suspects sentenced within a 2 to 9 months period. Most interestingly, both patterns persisted at the same numerical level throughout the entire period investigated in this study. In other words,

no procedural change took place from 1562 to 1688, and this in spite of the increased use of advocates. Their advice seems not to have altered the tardiness with which some suspects were sentenced nor the haste with which other were sentenced.

One might argue that juxtaposing extremes might lead to misleading interpretations the more so since the majority of criminals, namely 942 were sentenced within a one month period. True, yet this figure should not distract from the fact that out of these 942 sentenced a total of 168 suspects were sentenced within one day, and 79 within two days. The haste or one might even call it the rashness with which some suspects were sentenced was indeed quite phenomenal. It is imperative to remember in this connection that the suspects were accused of criminal acts which would entail severe corporal or even capital punishments. It is the qualitative aspect which makes the haste of the sentencing procedure appear in such a frightful light. In fact, it becomes even more accentuated when one considers that a total of 29 death sentences were pronounced within a one-to-two day detention period as Table 4 evidences.

Table 4.-- Correlation between Death Sentence  
and Detention Time

	Sentenced within 1-2 Days	Death Sentence within 1-2 Days	Total
1562-1594	73	17	173
1595-1627	87	6	111
1628-1660	20	4	29
1661-1688	67	2	24
<u>Total</u>	<u>247</u>	<u>29</u>	<u>337</u>

Source: Rps 1562 to 1688

This speed meant that the authorities spent only one to two days investigating the legal circumstances of each case. And bearing in mind that these death sentences were not necessarily based upon the testimonies of eyewitness, one cannot help but reflect on how many of those sentenced to death might actually have fallen victim of judicial errors. True, rapid death sentencing seems to have declined over the period, but this trend has to be seen in conjunction with the general decline in the number of death sentences and not a change in sentencing procedure.

The concept of speedy sentencing becomes even more striking when one considers that there was no court of appeal. Sentencing could be followed by an almost immediate execution of the punishment. A suspect could thus be arrested, sentenced, and executed within one-to-two days.

Time Elapsing between Sentence and Execution.

It should be clarified that the term execution does not only refer to the death penalty but all punishments. The time span between the sentence and its execution was based on data contained in the Rp. For this particular study, the margin of error was the lowest for out of 1,276 sentenced during 1562 to 1688, only 48 cases were missing. This amounts to a 3,76% error margin which is, indeed, minimal.

When analyzing the data one is again struck by the speed with which sentences were carried out. Out of 1,276 sentences a total of 1,000 punishments were executed within a one to two day period (see enclosed Table A8). An additional 87 were executed within a three day period, 76 within four days. This sentencing rate persisted at almost the same level throughout the entire period under investigation, that is from 1562 to 1688.

Possible explanations of the speed of execution must be sought in the general legal system, in particular the absence of a court of appeal. Once sentenced, the suspect seems to have had no recourse to any outside agency, and thus no hope of a change of the punishment. Once the City Council determined the punishment, speedy execution of the sentence could only be advantageous for the City Council. After all, they had to pay for the upkeep of the prisoner. But delays in executing the punishment did

occur as evidenced by the enclosed data in Table A8. A total of 8 suspects were punished only after 5 days, 13 after 6 days, 6 after 7 and 19 after 8 days. In 10 cases the punishment took place after two weeks. Although only 65 cases had the sentencing and punishment separated by five days or more, these cases, nevertheless, attest to the fact that speedy executions of sentences could be delayed under special circumstance.

Reasons for such delays could be of a practical or religious nature. The City Council could delay immediate executions of death sentences when they planned mass executions such as in 1572 and 1579 when 9 and 7 were hung simulatenously.<sup>151</sup> In these instances special gallows had to be erected and it was more economical to build them all at the same time. In addition, the authorities might have argued that nine and seven hung bodies were more of a deterrent than one at a time. Also ongoing fairs in Frankfurt were reasons for delay.<sup>152</sup>

Religious reasons caused delays such as in 1676 when four offenders were to be executed after holidays.<sup>153</sup> But most importantly the City Council was deeply concerned

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151. Rp 1571, 100, 101, 103, 105 and St April 22, 1572; St Oct. 9, 1579 and Rp 1579 42, 44, 45.

152. Bb 1683, 126.

153. Bb 1676, 149.

lest they execute without the blessing of rudimentary Protestant teachings. Such as in 1597 when in the case of a Jew, the preachers asked for a delay of the execution in order to give him better instructions in the Christian faith.<sup>154</sup> Such proselytizing efforts did not only apply to Jews. A case from the year 1671 illustrates that the offender was to remain an additional three to four weeks in prison since he was deeply lacking in the rudiments of Christianity.<sup>155</sup>

Legal difficulties could also entail additional detention after sentencing. Such occurred in 1633 when, the culprit retracted his earlier guilt confession whereupon two preachers and a council member had to re-examine the suspect. The suspect later re-admitted his guilt.<sup>156</sup>

A last and most important factor for postponing the execution of the sentence could be derived from a 1582 statement made in conjunction with the punishment.<sup>157</sup> It stipulated that the offender be banished from Frankfurt, but the date of the banishment was postponed so that the culprit could stay in prison for a bit longer. In other

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154. Rp 1597, 40.

155. Bb 1671, 15.

156. St Oct. 25, 1633.

157. Bb 1581, 163.

words, the offender was not only punished in the form of a banishment but also with a prolonged prison stay, after the sentence had been pronounced. A similar entry was found for the year 1611 entailing an additional four days in prison.<sup>158</sup> In 1618, extra prison detention seemed to have increased to a whole month.<sup>159</sup> Ten years later, references pertaining to extended prison stays as form of punishment increased. And by the year 1695 Frankfurt clearly made use of imprisonment as punishment proper. A statement in the Bb read that along with two sentenced to corporal punishment, a third suspect was sentenced to a four week imprisonment with bread and water.<sup>160</sup> Most interestingly, this culprit was not sentenced to the local poor house but to a traditional prison. More will be discussed on this topic in the chapter on punishment.

Whatever the cause for a suspect's release from prison, be it acquittal or corporal punishment, he or she had to swear a special oath, the so-called Urphede. This oath stipulated that neither the released person nor his or her children or friends were to take any retaliatory actions against the local mayors, members of the City Council, city functionaries and citizens of

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158. Bb 1611, 33.

159. Bb 1618, 90.

160. Bb 1694, 167.

Frankfurt.<sup>161</sup> How seriously this oath was taken by the City Council was demonstrated by a case in 1686, when the suspect refused to take the oath. He was detained in prison until he was ready to do so. It took him three months to comply.<sup>162</sup>

In summary it can be said that Frankfurt's criminal justice system was an inquisitorial one. Inquisitorial procedures were in use at the time over most of Europe with the exception of England. But such procedures varied from place to place as demonstrated on hand of appeal courts in France and defense lawyers in Seville. In Frankfurt, there was no appellate system, nor did the suspect have the benefit of legal counsel. The core of the trial lay in the period before the actual court sessions, in secluded interrogations of the witnesses, experts, and torture. Even the advocates' suggestions were kept from the accused and read to the City Council alone together with the remaining data. This system, as was demonstrated above, contained a host of personal factors and biases. It started with a biased legislation, fostered a selective crime reporting on the part of the population, and allowed for various personal factors influencing almost every aspect of the criminal

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161. Orth, 879.

162. St May 6, 1686.

procedure.

In addition to the biases and the secrecy of the procedure, the physical and mental anguish of the suspect must be mentioned. The physical suffering came in the form of the use of torture and extended imprisonment. The mental anguish was exacerbated by very short court proceedings where in most cases one to two court sessions were deemed sufficient to proceed with the sentencing. And this could and did in many instances take place within a one to two day period. If the secrecy of the inquisitorial procedure was frightening, the speed with which the suspects were sentenced must have added another dimension to the suspects' anxieties. Not to speak of the almost immediate execution of the punishment after sentencing. The element of speed contributed greatly to the suspects' sufferings, a point generally overlooked by legal historians.

Summarizing one can thus say that Frankfurt's criminal justice system, while favoring the ruling elite and wealthy, did not leave the population without any influence. On the contrary, the people were instrumental in the criminalization process, they had an effect on court procedures, and, most importantly they played an important role in crime reporting. The patterns of crime sentences will corroborate these findings further.

## CHAPTER IV

## CRIMES

The question as to what constituted a crime defies a clear answer. Traditionally, the concept of crime has been interpreted in changing politico-economic terms. But as the previous analysis of changing mores and their effect on legislation has shown, it must be put into a much wider context including social and moral changes over time as well. Moreover, criminal legislation often overlapped with civil legislation so that the deed itself did not exclusively characterize it as a criminal act; the act was open to personal, religious, political, and social interpretations. At best, the definition of crime has thus to be seen as a concept subject to personal and social changes over time. It was not a universal objective truth.

In addition, for a criminal concept to take root it had to be accepted by large segments of the population for it was the population who made the judiciary function effectively. They had to concur with what constituted a crime and who was perceived as a criminal, for the people did most of the crime reporting. If they perceived a

certain act or person as non-criminal, they would refrain from reporting the crime or the person. In this connection, one only has to remember that Frankfurt's population seems to have voiced their disagreement with the outlawing of begging by refraining from handing the beggars over to the authorities.

These various considerations also preclude the somewhat simplistic outlook that the punishment defined the act as either criminal or civil. Capital or corporal punishments are no sure guide to arriving at a definition of crime or proper crime assessment. They only point to a certain propensity on the part of the City Council and Frankfurt's population of what, and more importantly, whom they considered criminal. It is of the utmost importance to keep these reservations in mind when analyzing the crimes for which people were actually sentenced to capital or corporal punishments. An indefinite number of crimes were treated as civil offenses or went unreported and consequently an indefinite number of criminals were sentenced to monetary fines or were not sentenced at all.

#### Crime Categories

The crimes dealt with in this study are based on descriptions contained in the Strafenbuch, the Book of

Punishments. It covers only those crimes for which people were actually sentenced during the 1562 to 1696 period. Possible omissions of offenses traditionally considered criminal have thus to be seen in light of Frankfurt's sentencing structure.

Basically, six major crime categories can be established. They, in turn, consisted of various subcategories. Property-related crimes were composed of nine clearly distinguishable sub-categories namely robbery, burglary, theft of various kinds such as theft of horses or agricultural products and church thefts. Additional property crimes were pickpocketing, poaching, sale of stolen goods, abetting, concealment, and participation in a property crime. For the most part these categories are self-explanatory. In the case of church thefts, the poor boxes were broken into and the money stolen.<sup>1</sup> The most common item stolen during thefts, burglaries, and robberies consisted of money. Luxury items such as jewelry, silver plates, and silk cloth ranked second in popularity followed by dresses, spices, and hides from such animals as sheep and cows. Food such as butter, lard, and wine were only in sixth place among the most valued objects. The variety of the remaining

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1. St Dec. 5, 1607; St Jan. 2, 1608; St June 16, 1656.

stolen goods was impressive ranging from linen stolen from the local bleaching ground to metal pieces torn off the roofs to bee-hives.<sup>2</sup> Based on this assessment it is safe to conclude that most items stolen were intended for resale.

The second highest ranking crime category surprisingly consisted of sentences for sexual offenses. They included bestiality, sodomy, incest, rape, child molesting, adultery, bigamy, prostitution, fornication, sexual realtions between a Christian and a Jew, indecent exposure, broken marriage promise, abduction of a woman against her father's or her husband's will, pondering and concealment of any of these crimes.

The category crimes against persons ranked third and was composed of robbery and murder, murder, manslaughter, infanticide, child exposure, abortion, assault, kidnapping, suicide, attempted murder and participation in any of the above. A clear distinction was made between murder and manslaughter. Murder clearly referred to deliberate and premeditated killing, whereas manslaughter referred to killing without planning and often on sudden impulse. In manslaughter cases the records listed the exact number of hours and days from the time of the infliction of the wound to the death of the victim. It

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2. St Nov. 11, 1607; Dec. 8, 1592.

ranged from 2 hours up to 21 days.<sup>3</sup> This particular procedure was a reflection of Frankfurt's laws which stipulated that if the victim died within a 30 day period after the wound was inflicted, the offender was subject to the death penalty.<sup>4</sup> After that period of time, considerably milder punishments were handed down since the death was no longer solely related to the infliction of the wound.

The most striking element of the infanticide cases was the vagueness of the case descriptions. For example, in one case the mother was accused of having let the baby die on purpose during birth.<sup>5</sup> In another the baby suffocated in bed during child birth.<sup>6</sup> When reading these case descriptions one cannot help but wonder whether the authorities experienced difficulties in establishing the true cause of the babies' deaths, especially since all infanticides were committed either during or immediately after birth. If one considers that many babies were born without the assistance of a doctor or a midwife, the distinction between an accidental

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3. St Feb. 26, 1658; St Jan. 28, 1648; St Aug. 11, 1570; Oct. 10, 1638.

4. Meinhardt, 215.

5. St June 25, 1641.

6. St Jan. 19, 1659.

death and a premeditated one was difficult to establish. The line between a still-born baby and a strangled one was very fine and hard to prove since many babies actually died during childbirth. The following case attests to this most clearly. A single mother, who secretly gave birth to her illegitimate child, allegedly so neglected the baby during childbirth that the baby was stillborn. The mother steadfastly refused to confess to infanticide despite the fact that the City Council sent a local preacher urging her to admit her guilt.<sup>7</sup>

The concept of suicide also posed some interpretative difficulties. Suicides were listed in the Book of Punishment entailing physical punishment similar to other crimes. But the suicide cases listed in the Book of Punishments had one common denominator, in that they all referred to alleged criminals and that, with the exception of four, all were committed in prison either pending torture or execution of the sentence. Suicides committed by non-suspects were not included in the Strafenbuch and, therefore, not considered criminal offenses.

The fourth ranking crime category were offenses disturbing public peace. It comprised arson, breach of municipal civic oath, public disturbances, slander,

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7. Bb 1624, 40.

libel, lese-majesty, that is insulting members of the City Council, lewd behaviour, treason and the Verdachtstrafe, or sentence of suspicion, the most controversial of all crime sentences. It will be recalled from the previous chapter that if a suspect refused to admit his or her guilt despite the application of torture, he or she had to be acquitted. Acquittal did not necessarily mean exoneration nor did it imply that the suspect would not be punished. In fact, if the City Council believed a suspect to be guilty though falling short of proof, they could and did proceed to impose a punishment. True, in such instances the punishment was less severe than if the accused had pleaded guilty, but it was a punishment nevertheless and referred to as Verdachtstrafe. In most cases the alleged crime was cited but there were also instances where such specifics were lacking. This lack of precisions left the door wide open for possible biases and it will, indeed, be interesting to see how many and, above all, who were actually sentenced on the basis of being suspicious.

The fifth ranking crime category consisted of crimes which fall under the generic term of falsi crimen hereafter referred to as crimes of forgeries. They comprised counterfeiting, forging of seals and begging papers, cheating while gambling, embezzlement, swindle, and participation and concealment of any such crimes.

Gambling itself was legal in Frankfurt, in fact the City Council even delivered the dice, but cheating was quite another matter. It not only hurt the individual but also the city government.

Religious crimes ranked sixth and included blasphemy, heresy, conjuration, and violation of the banishment oath. The latter crime applied to those culprits who had previously been banished from Frankfurt either temporarily or permanently but who, despite the banishment oath, returned to the city of Frankfurt. Strict enforcement of broken banishment oaths was more than a religious necessity, it also meant that the city wanted to keep criminal elements out of town.

Judged by the variety of sub-categories for which people were actually sentenced to capital or corporal punishments one might argue that, in fact, many an offense fell into the criminal category. Particularly noticeable were the many sub-categories for property, sexual, and corporal offenses a fact which might be indicative of Frankfurt's value system. A correlation of the crime categories to the actual number of sentences during the 134 year period substantiates this proposition.

### Quantitative Crime Assessment

At the outset of the quantitative analysis it has to be re-emphasized that the statistics are based on actual crime sentences contained in the Book of Punishments. The data thus consists solely of crime sentences and not crimes committed. In addition, it has to be borne in mind that the sentences passed in Frankfurt from 1562 to 1696 do not only pertain to crimes committed locally but include crimes committed elsewhere. It will be recalled that Frankfurt's City Council had far-reaching jurisdictional powers which surpassed the city limits. Frankfurt had the right to sentence offenders from other regions including foreign countries as long as the suspects were apprehended locally. Unfortunately, the records pertaining to the location of the various crimes lack the details necessary to produce a precise account of local versus foreign crimes.

A third problem relates to the exact amount of crimes per sentenced criminal. The sources were often unclear about the exact amount of crimes committed by an offender. For example, in many instances the entries in the book of punishment noted that a certain culprit had committed such and such a crime either "often" or "several times" or "here and there." These entries were sometimes complicated by remarks that the culprit

committed many thefts locally and elsewhere.<sup>8</sup> Vague numerical entries such as "often" or "many" were counted as two crimes, although it has to be borne in mind that the actual number of crimes for which people were sentenced was in all likelihood higher. Due to contemporary crime reporting methods an absolute correlation between the number of crimes and the criminal thus could not be established. Although this is regrettable, a certain sentencing trend can, nevertheless, be established.

One last comment is necessary with regard to the number of crimes. In instances where the suspect was accused of several offenses, each one was counted as a separate crime. Conversely, when the same crime was committed either by two or more suspects, it was taken as a single offense although committed by two or more offenders.

During the 134 year period, a total of approximately 1,587 crimes were sentenced in the city of Frankfurt. As is to be expected, this figure fluctuated considerably during the course of the 134 year time span as evidenced by Table 5.

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8. St May 18, 1625.

Table 5.-- Periodical Distribution of Sentences

<u>Years</u>	<u># of Crimes</u>	<u>%</u>
1562-1594	536	33.77
1595-1627	525	33.08
1628-1660	138	8.70
1661-1696	388	24.45
<u>Total</u>	<u>1,587</u>	<u>100.00</u>

Source: Book of Punishments

Most crime sentencing occurred during the first two periods that is from 1562 to 1594, and 1595 to 1627, while most suprisingly, the years from 1628 to 1660 evidence a dramatic break with the preceding sentencing pattern. During that time frame a conspicuous decline took place. Compared to a rate of over 500 cases during the first two periods, convictions dropped to a mere 138 cases during the years from 1628 to 1660. That is approximately 400 cases less than during the corresponding previous time spans. After that period crime sentencing increased again. The years 1628 to 1660 thus are an abnormality in an otherwise fairly consistent sentencing pattern.

What caused this decline? In historical terms, the years with the lowest sentencing rate correspond to the Thirty Years War and its aftermath. It was a time when Frankfurt suffered from considerable political, economic, social and demographic set-backs. During these the arguably most catastrophic years of the 134 year period

under investigation, the average annual crime sentencing rate dropped from 16.2% and 15.9%, respectively, to 4.2%. And this despite the fact that the city was swamped with soldiers and paupers. Even during the worst years of the war, namely 1634 and 1635, only 16 and 9 crimes were sentenced in each respective year (re enclosed Table A9). One can thus infer that extreme hardship did not drive up the sentencing rate but, paradoxically, decreased it. Sentencing plunged to an all time low during a period of political and economic stress and adversity.

Conversely, does this pattern imply that during times of relative political stability and economic prosperity crime sentencing was higher? An analysis of the years prior to the Thirty Years War proves this contention. It will be recalled that in the middle of the sixteenth century, Frankfurt experienced an economic recovery, which by the mid 1580s and 1590s had turned into an economic boom. Correlating the economic recovery to the crime sentencing rate it appears that during the initial stages of recovery, that is from 1562 to 1572 a total of 137 crimes were sentenced, while during the years of economic boom the sentencing rate soared to 228. A similar trend was observed during the second economic recovery which took place from 1602 to 1608. During this seven year period 104 sentences were handed down while during the preceding seven years of economic decline,

only 85 sentences had been pronounced. Frankfurt tended to sentence more crimes during times of stability and fewer crimes during times of adversity.

Does this most startling discovery imply that fewer crimes were being committed during the Thirty Years War? Does this mean that despite the stationing of an increased number of soldiers and despite the influx of many poor people fewer crimes were being committed? Conversely, would this line of argumentation not imply that more crimes were committed during times of economic and political stability? The answer to this seeming discrepancy might lie in the fact that this study is based on crime sentences and not crimes committed. It might very well have been the case that more crimes were committed during times of adversity such as the Thirty Years War but, if so, the numerical increase was not reflected in Frankfurt's crime sentencing. This discovery in turn implies that, although it cannot be ruled out that the number of crimes committed had an impact on the number of crime sentences, a direct correlation between the two cannot be established. It would, therefore, be erroneous to draw too close a correlation between crimes committed and crimes sentenced. Many other factors influenced the crime sentencing structure such as selective crime reporting on the part of the population or lax law enforcement on the part of the authorities.

The above findings that Frankfurt sentenced fewer crimes during times of adversity have thus to be interpreted either as a tendency on the part of the local population to report fewer crimes or a tendency on the part of the City Council to sentence fewer crimes during times of adversity, or a combination of both. Conversely it is safe to say that during times of relative stability the law enforcement agencies consisting of both the population and the City Council, seemed to have operated more effectively evidenced by a higher sentencing rate.

A third explanation as to why crime sentences decreased might have been a change of the very concept of what constituted a crime. Fewer crime categories might have existed during the Thirty Years War than during the preceding periods which would have an impact on the conviction rate.

#### Crime Categories Sentenced during 1562 to 1696

The data in Table 6 demonstrates, however, that all six basic major crime categories continued to exist throughout the 134 year period. Qualitatively speaking there was no apparent change. But quantitatively speaking the pattern fluctuated. True, all crime categories were affected by the Thirty Years War in that they all decreased. Yet, most interestingly, the rate of decline

varied. While property crime sentences showed the most drastic drop, convictions for crimes against persons decreased only slightly.

Table 6.-- Crime Categories Sentenced

Nature of Offense	1562	1594	1628	1661	
	-	-	-	-	
	1594	1627	1660	1696	Total
Property Crimes	309	266	54	185	814
Sexual Offenses	61	99	23	56	239
Crimes against Persons	63	52	33	32	180
Dist. Public Peace	36	43	18	44	141
Forgeries	51	26	5	44	126
Religious Offenses	16	39	5	27	87

Source: Book of Punishments

The sentencing pattern of the respective crime sub-categories elucidates this pattern most clearly.

Property Crime Sentences

Numerically speaking, property crimes by far outranked any other crime category throughout the entire 134 year span. This category totalled 814 sentences which were primarily composed of thefts. Thefts sentences amounted to 561 sentences representing 69% of all property crimes. Thefts, although persistently ranking highest, also underwent a decisive decrease during the Thirty Years War, as Table 7 demonstrates.

Table 7.-- Comparison Theft Sentences  
versus other Property Offenses

Nature of Offense	1562	1595	1628	1661	
	-	-	-	-	
	1594	1627	1660	1696	Total
Thefts	231	163	35	132	561
Burglaries	35	34	8	14	91
Sale of Stolen Gds.	6	19	4	2	31
Robberies	9	12	2	7	30
Pickpocket	14	3	0	8	25
Abetting	3	6	1	10	20
Concealment	5	12	2	1	20
Poaching	0	0	0	2	2
Participation	6	17	2	9	34
<b>Total</b>	<b>309</b>	<b>266</b>	<b>54</b>	<b>185</b>	<b>814</b>

Source: Book of Punishments

In fact, the decline of theft sentences represented the most dramatic of all, falling from 231 and 163, respectively, during the two pre-war periods to a mere 35 cases during the war and its aftermath. One can thus speak of a definite causal link between economic deprivation and war on the one hand and property crime sentencing on the other, the more so since theft sentencing increased again in the 1660s. Such correlations, in particular the link between economic deprivation and property crimes, have been amply discussed by historians. It has been suggested that economic crises gave rise to increased property crimes, while opposite arguments have also been advanced.<sup>9</sup> In

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9. W.A. Bonger, Criminality and Economic Conditions (Bloomington: Indiana University Press, 1969) and J.M. Beattie, "The Pattern of Crime in England, 1600-1800," Past and Present 62 (February 1974): 47-95 speak of such a connection while the following historians could not

Frankfurt's case it was an inverse relation in that the conviction rate for property crimes, particularly theft sentences, declined during times of war and economic adversity.

#### Sexual Crime Sentences

Frankfurt's sentencing pattern for sexual offenses revealed three interesting facts. First, numerically speaking, it ranked second after property convictions. And, comparatively speaking, more sexual transgressions were sentenced in Frankfurt compared to Amsterdam and other European regions such as in France or Italy.<sup>10</sup> Second, such crime sentencing peaked during the 1595 to 1627 period; third, it consisted primarily of fornication and adultery crimes as evidenced Table 8.

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establish such a link: J.A. Sharp, Crime in Seventeenth Century England (Cambridge: Cambridge University Press, 1983), 170-171; Werner Gundersheim, "Crime and Punishment in Ferrara, 1440-1500," in Violence and Disorder in Italian Cities, ed. Lauro Martinez (Berkeley: University of California Press, 1972), 122; an excellent discussion of the topic for England is presented by Joanna Innes and John Styles, 391-394.

10. Spierenburg, Table 10 on page 218; Gundersheim, 115; Ruff, 167.

Table 8.-- Sexual Offenses Sentenced

	1562	1595	1628	1661	
Nature of	-	-	-	-	
Offense:	1594	1627	1660	1694	Total
Fornication	15	26	9	14	64
Adultery	15	27	8	11	61
Prostitution	11	14	1	9	35
Incest	7	9	0	8	24
Bigamy	3	6	1	4	14
Christians and Jews	1	7	1	0	9
Pandering	1	3	1	4	9
Concealment	1	3	0	3	7
Abduction of Women	4	0	1	0	5
Broken Marriage Prom.	2	0	1	1	4
Bestiality	0	2	0	0	2
Rape	0	2	0	0	2
Child Molesting	0	0	0	2	2
Indecent Exposure	1	0	0	0	1
<u>Total</u>	<u>61</u>	<u>99</u>	<u>23</u>	<u>56</u>	<u>239</u>

Source: Book of Punishment

How is one to account for such a veritable outburst of sexual convictions? This question becomes even more pressing if one considers that Frankfurt experienced a very sudden jump in sentences for sexual crimes right after 1572. While from 1562 to 1572 there were 7 such sentences, the number rose to 25 during the 1573 to 1583 time span. This means that such sentences quintupled from one decade to the next( re enclosed Table A10). What accounts for such sudden changes? Was increased sexual license or sexual permissiveness on the part of the population the cause or were historical developments responsible for this change? In historical terms, Frankfurt underwent a transition from a basically agricultural to commercial town beginning with the early

1560s. One might argue that such a change in the city's economic make-up might have contributed to a sudden shift in the sexual habits of its population. But this contention is tempered by the fact that the main thrust of this economic transition took place during the 1580s, while sexual crime sentencing jumped precipitously in the early 1570s.

The sudden numerical increase of sexual crime sentencing in the early 1570s is more a reflection of cultural changes because it coincides with the introduction of new sexual legislation such as outlawing prostitution, and the intensified enforcement of guild restrictions on illegitimacy. It will be recalled from Chapter II that it was toward the end of the fifteenth century that a gradual change toward sexual mores was taking place. This trend was most clearly demonstrated on hand of changing attitudes toward prostitution which, by a series of degrading steps, was turned from a well-established and well-integrated social function at the end of the fifteenth century to an illegal act by 1574. The concept of illegitimacy underwent a similar transition during the same time frame. It was closely intertwined with the local guilds' efforts to avoid overstaffing by tightening their conditions for admission first by excluding individuals of illegitimate birth, and then by excluding even those whose parents and grand-

parents had been illegitimate. This ever widening circle of proof of legitimacy of one's family members eventually resulted in a heightened awareness of the issue of legitimacy and the importance of a legal marriage as opposed to simply living together. By regulating and monitoring the sexual behavior of its members and potential applicants, the guilds laid the foundation for a general ethical policing in the city of Frankfurt. The concept of the risk of pre- or extra-marital sexual relations as highly damaging not only for oneself but for one's family and society at large developed.

This transvaluation and criminalization of sexual mores affected both the quantitative and qualitative aspects of sexual crime sentences. As Table 8 demonstrates, the increase was primarily affected by fornication and adultery cases. These two crime categories refer to extra-marital and pre-marital sexual relations and thus relate directly to the concept of marriage. One can thus infer that the increased sentencing of these transgressions reveals Frankfurt's overt concern with the integrity of the family structure. Adultery and fornication were interpreted as undermining or jeopardizing the family structure and, therefore, had to be curtailed. This change in turn means that the concept of the legal family as opposed to cohabitation had taken final root and permeated almost all of

Frankfurt's society. At least so it seems, because before arriving at a final conclusion two aspects have to be considered.

First, special consideration has to be given to the reporting of sexual transgressions. How many eyewitnesses could possibly exist to a matter as personal as a sexual relationship? Would a family member expose one of its own members to a charge of a sexual transgression which might bring a harsh corporal punishment and public shame? The matter might be solved en famille and not in public. The personal element in reporting sexual transgressions played a crucial role. Many sexual transgressions must have gone either unnoticed or deliberately unreported, unless the result of the sexual encounter became highly visible in the form of a pregnancy. The notion of sexual crime reporting being primarily based on visible signs is corroborated by the fact that the various case descriptions in the Strafenbuch (Book of Punishments) cite either pregnancies or the birth of a child in conjunction with the crime sentence.<sup>11</sup> If there were no visible results, chances for proper crime reporting dimmed. But one has to bear in mind that pregnancy in a

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11. St Aug. 25, 1565; St Feb. 28., 1582; St July 26, 1587; St Oct. 4, 1587; St. Nov. 8, 1588; St Jan. 9, 1589; St Oct. 10, 1589; St Dec. 15, 1593; see also Chapter III on female criminals.

family was less likely to arouse suspicion than pregnancy of a single person.

In second place, the numerical and qualitative increase of sexual crime sentences is of particular interest if one considers that Frankfurt's sexual legislation provided certain loopholes. Wealthy offenders, as well as culprits of high social status were allowed to pay a fine instead of being subjected to corporal punishments. This provision implies that the actual number of sexual transgressions was much higher than the number of criminal convictions, and that the transvaluation and criminalization of sexual mores mainly pertained to those of low wealth and social status.

The difficulty of uncovering sexual crimes and the loopholes in sexual laws suggest that the above crime sentencing figures do not correlate to the actual crimes committed. Consequently, the sexual crime sentencing pattern exhibits more the propensity on the part of the population and the City Council to have certain persons punished for certain sexual transgressions. It, therefore, seems that the rich, those of high social status, and family members in general were less likely to fall into the category of sexual criminals. This contention will be further corroborated in the next chapter. As to the kind of crimes for which offenders were sentenced, it is safe to argue that they mirrored

the consensus of the population and the City Council. The heightened law enforcement was more than a reflection of societal changes, it was also aimed at selectively monitoring and enforcing the newly established family concept. It served constructive and formative societal purposes as well.

Frankfurt's criminal sentencing pattern regarding sexual offenses was thus primarily guided by a pragmatic outlook. Had the City Council and the local population shown a deep religious concern over sexual sins they would have enforced sexual sentencing either immediately after 1370 when the ecclesiastical court was integrated into the City Council, or immediately with the advent of the Reformation. Instead, it was only by early 1570s that intensified legislation and sentencing occurred. This time frame attests to the fact that the Reformation did not precipitate this sentencing trend. Actual sexual crime sentencing started after the Reformation while the incipient changes toward sexual behaviour started well before the Reformation, namely by the end of fifteenth century.

In addition, the fact that Frankfurt only sentenced a total of 35 prostitution crimes compared to 64 fornications and 61 adulteries attest to this attitude. Frankfurt, a town with many popular fairs and imperial elections, attracted many merchants, visitors and

prostitutes. The relatively infrequent sentencing of prostitution must, therefore, be seen as a reflection of a more lenient interpretation of this particular sexual sin despite the fact that the City Council in its legal deliberations often referred to the wrath of God in case of prostitution. Frankfurt exhibited a pragmatic approach when it came to prostitution. Prostitution also did not seem to pose any direct threat to the family structure and was thus dealt with in a more cavalier fashion.

A selective sentencing approach was also demonstrated by the low number of rape sentences. There were only two rape cases for the entire 134 year period. Without trying to incriminate Frankfurt's male population too much, it is yet hard to believe that only two such crimes occurred. Even if Frankfurt's men refrained from such assaults one has to consider that Frankfurt hired foreign soldiers in particular during the Thirty Years War. Moreover, Swedish soldiers were stationed locally for four years. It thus appears that rape, like prostitution, was considered a less serious sexual offense by local authorities or that rapes were not reported by the victims and possible witnesses. In either case it demonstrates a subjective approach to such offenses for rape was clearly listed in the CCC as a crime.

If the reasons for the low rape sentencing lay with the authorities, than Frankfurt's City Council did exhibit a biased approach, patronizing its male and particularly soldier population. This contention is supported by the fact that first, no soldier was ever sentenced for rape and second, that during the stressful times of the Thirty Years War, criminal soldiers were actually treated more leniently as will be demonstrated below.

That rape might have been regarded by contemporaries as a relatively trivial matter is also documented by findings from other European locations. For England, a study covering the county of Essex, disclosed 44 recorded rape indictments from 1559 to 1603.<sup>12</sup> For Amsterdam, there were only 2 cases in the seventeenth century and 6 in the eighteenth century.<sup>13</sup> And similar findings apply to France where in two regions only 4 cases were registered from 1696 to 1789.<sup>14</sup> Venice during the Early Renaissance concurs with this general European pattern.<sup>15</sup>

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12. Joel Samaha, Law and Order in Historical Perspective: The Case of Elizabethan Essex (New York: Academic Press, 1974), Table 2 page 20.

13. Spierenburg, 121.

14. Ruff, 171.

15. Guido Ruggiero, Violence in Early Renaissance Venice (New Brunswick: Rutgers University Press, 1980), 46.

If, in Frankfurt, the low rate of rape sentencing is attributable to underreporting on the part of the population and in particular the rape victims, then a variety of factors might account for it such as shame, fear, or the understanding that such crime reporting was senseless in the first place. Although no data is available for Frankfurt, a study done on Venice in this period demonstrates that the most likely rape victims were poor, unmarried women of low social standing.<sup>16</sup> And these findings are corroborated by records from southwestern towns of France during the fifteenth century.<sup>17</sup> It is, therefore, conceivable that the same trend existed in Frankfurt, the more so for one has to bear in mind that any woman of high social standing or married to a local artisan was easily recognizable by the clothes she wore. She was set apart from the lower classes by Frankfurt's dress code. Her clothing might in this connection have acted as a deterrent for possible rape assaults, for it was one thing to rape a woman of lower standing it was quite another to rape a patrician's wife. In the latter case, the likelihood of proper law enforcement was higher than if a single servant girl were raped. The latter woman might not even report the rape .

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16. Ibid., 86.

17. Rossiaud, 16.

Shame acted as an important crime reporting deterrent. Beginning in the end of the fifteenth century the concept of sexual shame grew with the gradual downgrading of sexual behavior. The idea of sexual shame was enhanced by the guilds who downgraded extra-marital sexual activities by placing more value on legitimacy of its members. In a society which places more and more emphasis on the concept of the legal family, the notion of intra-marital sex was increasingly regarded as the only approved norm, while extra-marital sex was increasingly downgraded. By downgrading extra-marital sex, the concept of virginity grew. Both concepts were slowly internalized by society and particularly by women. It thus became increasingly important that a woman be a virgin at the time of her marriage. If not, she stood to lose dramatically both in emotional and economical terms.

Emotional loss came through the sense of feeling shame especially if an extra-marital relationship ended in pregnancy. Economic loss came because extra-marital sex greatly jeopardized her chances of getting married and gaining the financial security of that state. At this time single women were losing their opportunities of self-support as they were increasingly excluded from the guilds and thus prevented from learning a proper profession. Marriage was one of the few alternatives left for attaining a comfortable life-style. Rape victims had

thus much to lose by reporting a sexual assault, and thus openly admitting the loss of their virginity and reputation. Rape victims who reported their assault endanger their chances of getting married.

Both Frankfurt's possible rape victims and Frankfurt's City Council exhibited a pragmatic approach with regard to rape crime sentences. The female victims tried to avert further affliction of pain by possibly underreporting such transgressions, the City Council by demonstrating a chauvinistic and not necessarily a religious attitude. One might conclude that an emerging patriarchal society implicitly prevented women from even reporting their own victimization. Shame and economic hardship thus possibly caused rape victims to remain silent.

Sexual legislation and its selective law enforcement reflected more than any other crime category the changes of societal mores. In Frankfurt, it fostered the family by predominantly sentencing offenses endangering the family structure such as adultery and fornication in addition to bigamy and incest while non-family-related sexual crimes such as prostitution and rape were underrepresented. This pattern persisted throughout the 1562 to 1696 time span and thus indicates that no social changes with regard to sexual mores had taken place.

Crimes against Persons

Numerically speaking, sentences of crimes against persons ranked third among all crime categories amounting to a total of 180 sentences. This sentencing pattern reflected thus 59 fewer sentences than sexual and 634 fewer sentences than property crimes during the same 134 year time span. Apart from this considerable numerical gap, sentences for crimes against persons exhibited a divergent trend in that it declined gradually but consistently throughout the period. This gradual but persistent decline was unique among all the crime categories.

Manslaughter sentences had the greatest effect on this trend for they were the most frequently sentenced corporal crime category, as Table 9 demonstrates.

Table 9.-- Distribution of Crimes against Persons

	1562	1595	1628	1661	
	-	-	-	-	
<u>Nature of Offense:</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1694</u>	<u>Total</u>
Manslaughter	24	22	11	13	70
Assault/Injuries	19	7	4	6	36
Murder	7	9	2	2	20
Infanticide	1	4	8	3	16
Suicide	3	3	2	4	12
Murder/Robbery	6	3	1	1	11
Abortion	0	0	2	1	3
Child Exposure	0	1	1	0	2
Attempt Poisoning	1	1	0	0	2
Participation	2	1	2	2	7
Kidnapping	0	1	0	0	1
<u>Total</u>	<u>63</u>	<u>52</u>	<u>33</u>	<u>32</u>	<u>180</u>

Source: Book of Punishments

While manslaughter sentences ranked highest throughout the entire period, they also consistently declined. The most decisive drop in manslaughter convictions occurred during the Thirty Years War period and its aftermath. In other words, it happened at a time when Frankfurt increased its own mercenary troops in addition to having foreign troops stationed in town between the 1631 and 1634 period. In addition to the considerable increase in local soldiers, many refugees flooded the city. Under the circumstances one has to question whether the number of violent crimes committed actually declined or whether the low sentencing reflects a break-down in corporal crime law enforcement, after all it was a bellicose period when death and wounds were an everyday occurrence.

Passion and passions released under the influence of alcohol seemed to have been a leading if not the prime cause for the 70 manslaughter case sentences. Although the data available does not cover all 70 manslaughter convictions, it could be clearly established that in 21 cases the deed was committed under the influence of alcohol while 13 were committed in anger. This pattern is not unique for Frankfurt; similar findings were cited for Amsterdam for example.<sup>18</sup>

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18. Spierenburg, 116.

The identity of 32 victims of the 70 sentenced manslaughter cases could be established. In 20 cases they consisted of friends or companions, while 5 were relatives, 3 were work acquaintances, 2 were neighbours, and 2 were Jews. In other words, except for the two Jewish victims, most indentifiable crime victims consisted of close associates. And if one considers that many occurred either under the influence of alcohol or in anger, a sad picture of senseless killing emerges.

Murder exhibited a similar pattern. Out of 20 crime sentences, 9 victims were relatives, 3 were work acquaintances, 2 were friends, and 1 was a neighbor. In these 15 cases the basis for the murderous act was emotional and not profit-oriented. One father killed his two small children, one husband stabbed his wife sixteen times while another killed his very pregnant wife.<sup>19</sup> A local artisan killed his female servant after he found out he had impregnated her.<sup>20</sup> Emotional motivations also apply to the 16 infanticides as will be clearly demonstrated in the next chapter.

With the exception of 11 murder and robbery sentences where a clear profit motive could be

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19. St Aug. 1, 1600; St Jan. 25, 1583; St Nov. 14, 1589.

20. St Oct. 3, 1617.

established, most crimes against persons sentenced in Frankfurt thus seem to have a common denominator, in that most were emotionally charged. It almost goes without saying that the 12 suicide cases were of an emotional nature. Nine suicides occurred in prison either awaiting torture or the final sentence. Fear of extreme physical suffering was the obvious cause. The remaining three suicides were committed outside the prison walls. One man committed suicide immediately after having murdered his wife.<sup>21</sup> Two unmarried mothers committed suicide.<sup>22</sup> Summarizing one can thus state that emotions played an important role in causing, reporting, and sentencing of corporal crimes. The Chapter on Criminals will deal with this phenomenon at greater length.

#### Sentences of Disturbing Public Peace

A total of 141 crimes for disturbing public peace were handed down. The majority, namely 95 or 67.38%, consisted of sentences based on the legal principle of the Verdachtstrafe, when the City Council despite lack of evidence proceeded with a punishment. A second and equally interesting trend was exhibited by the low sentencing of crimes of lese-majesty, namely 8 or 5.67%, which considering the 134 year span under investigation

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21. St Sept. 23, 1685.

22. St Sept. 17, 1690; St June 6, 1695.

here amounts to a tiny fraction of Frankfurt's crime sentences, as shown in Table 10.

Table 10.-- Distribution of Sentences for  
Disturbing the Public Peace

	1562	1595	1628	1661	
	-	-	-	-	
<u>Nature of Offense</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Crimes of Suspicion	28	23	14	30	95
Disorderly Conduct	3	2	2	11	18
Slander	3	9	1	0	13
Lese-majesty	2	4	0	2	8
Libel	0	4	0	0	4
Treason	0	0	1	1	2
Arson	0	1	0	0	1
<u>Total</u>	<u>36</u>	<u>43</u>	<u>18</u>	<u>44</u>	<u>141</u>

Source: Book of Punishments

Historiographically speaking, the high number of 95 sentences in cases of the application of the Verdachtstrafe, contradicts Georg Rusche and Otto Kirchheimer's claim that although in theory the punishments should be milder in case of doubt, in practice such "humanizing tendencies" did not occur.<sup>23</sup> Frankfurt's frequent sentencing based on suspicion qualifies their assertions because in each case the punishment was milder.

One might, therefore, argue that the high number of such Verdachtstrafen testified to the fact that Frankfurt's City Council exhibited a certain prudence and

<sup>23</sup>. Georg Rusche and Otto Kirchheimer, Punishment and Social Structure (New York: Columbia University Press, 1939), 18.

refrained from applying harsh punishments in case of doubt. But conversely, such an argument is immediately called into question by the highly subjective nature of the Verdachtstrafe for it allowed the judiciary leeway in sentencing suspects who appeared to them more suspicious than others. Personal dislike or other personal biases could influence the sentencing. This contention is substantiated by the fact that several such sentences covered no specified crime category but only referred to personal characteristics of the suspect. For instance, three such sentences were given to wives of earlier convicts seemingly for no other reason than that they had been married to criminals.<sup>24</sup> Such sentences clearly demonstrate the subjective and personal aspect of the legal device of sentencing based on suspicion.

As to the crimes covered by such sentencing, the enclosed Table A 11 furnishes precise details. Not surprisingly, property-related offenses head the list with 43 sentences, followed by 20 corporal crimes. Among the corporal crimes, manslaughter cases were the most conspicuous with 11 Verdachtstrafen, followed by 7 infanticides. Among sexual crimes, the two homosexuality cases were the most significant since they represent the

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24. St May 7, 1585; St May 5, 1585; St April 26, 1588.

only homosexuality sentences throughout the 134 year span. A similar observation could be made in the category of religious crimes. Three witchcraft sentences were handed down in Frankfurt, a startling fact which will be discussed shortly.

In contrast to the prodigious use of the Verdachtstrafe, Frankfurt's sentenced conspicuously few lese majesty offenses. Only 8 such crime sentences took place. This pattern might be interpreted as a sign of a peaceful co-existence between the City Council and Frankfurt's population and the possible absence of any deep-seated antagonism between the two, except for the 1612 to 1614 revolt. But conversely and just in light of this revolt, low sentencing of lese majesty offenses could also be seen as prudence on the part of the City Council. Why arouse the anger of the population by precipitous sentencing of those who aired their discontent?

Sentencing of slander and libel cases were far higher than lese majesty amounting to 13 and 4 cases. Slander, that is oral, defamatory statements or remarks were aimed at dishonoring a person's reputation. Slander was a powerful weapon in a small society where still relatively few people could read and write and where rumor and gossip bloomed and was considered a vital means of communication and reason for arrest. Most

interestingly, many slander cases focused on sexual defamations such as when the honor of a young woman was jeopardized often by a rebuffed suitor.<sup>25</sup> But in one case, the mother of five illegitimate children sought redress in a similar method by publicly announcing the wrong father of her fifth child.<sup>26</sup> These cases demonstrate that the concept of sexual honor, discussed previously, was taken very seriously. Most interestingly, while verbal sexual defamation was a frequently punished offense rape lagged considerably behind it.

Sentences for Crimes of Forgeries

This crime category ranked fifth with 126 sentences. Table 11 illustrates the various categories.

Table 11.-- Categories of Crimes of Forgeries

	1562	1595	1628	1661	
	-	-	-	-	
<u>Nature of Offense:</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1694</u>	<u>Total</u>
Forged Begging Pap.	4	4	2	19	29
Cheating Gambling	16	8	0	3	27
Swindle	5	4	3	12	24
Embezzlem	12	4	0	1	17
Forgeries	6	4	0	5	15
Counterfeiting	4	2	0	4	10
Participation Fraud	2	0	0	0	2
Concealment Fraud	2	0	0	0	2
<u>Total</u>	<u>51</u>	<u>26</u>	<u>5</u>	<u>44</u>	<u>126</u>

Source: Book of Punishments

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25. St April 19, 1585; St April 20, 1596; St June 29, 1607; St May 7, 1603; St Oct. 2, 1611; St June 16, 1603.

26. St June 8, 1616.

Considering the rise of prices particularly during the first half of the seventeenth Century and the debasement of coins, the conviction rate for counterfeiting with only 10 sentences is surprisingly low. As a center for banking and monetary exchange and the host of two annual fairs, Frankfurt was more likely to be swamped with falsified coins than many other cities. Judged by the sheer number of Münzedikte, the coinage decrees, promulgated by the local government, the problem of coin debasement was a very acute one.<sup>27</sup> Even the Jewish community issued special coinage edicts for its members.<sup>28</sup> Yet, very few people were sentenced for counterfeiting.

If counterfeiting sentencing was low, so were sentences for forged begging papers or illegal begging. Numerically speaking, a total of 29 sentences was very small compared to the number of paupers and beggars periodically flooding the city. Apart from the local poor, many outsiders flocked to Frankfurt especially during the imperial elections and times of the bi-annual fairs. During times of famine in particular during the

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27. Corpus Legum, 1:90, 122 and throughout the 2. Volume.

28. Kracauer, 1:325.

acute war years of 1634 and 1635 their number increased dramatically. Despite this increase and despite the need for their supervision by a special beggar's guard, only 2 sentences were handed down during the war years. It seems highly unlikely that fewer such crimes were committed when one considers the numerical influx of poor people whose livelihood depended on street begging. The reason for the low sentencing rate must, therefore, be sought elsewhere, possibly in trends of crime reporting.

This contention is substantiated by a municipal decree exhorting the local population not to interfere with the beadles by protecting street beggars. While the authorities tried to punish illegal street begging, the local population resisted such restrictions. In fact out of the total of 29 sentences only 2 apply to illegal street begging while the remaining 27 involve the forging of begging papers.

The qualitative difference between these offenses is also quite interesting. The 27 cases of forged begging papers demonstrate that the bearer was either literate enough to compose the documents or wealthy enough to pay a third party to produce them.<sup>29</sup> In either case, one is dealing here with a sophisticated approach to begging.

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29. St. Nov. 7, 1674 testifies to the purchase of begging papers.

Unfortunately, the exact contents of the falsified begging papers were only recorded in 11 of these cases. But these 11 cases do reveal a certain trend in that in eight instances the alleged cause of poverty was blamed on fire, or disease.<sup>30</sup> Fire implied that the cause of the bearer's impoverishment was undeserved. The use of fire is quite remarkable since fire was one of the very few instances for which the City Council made special allowances.<sup>31</sup> If approved, such begging papers were called Brandbriefe, literally meaning fire letters.

Forging such Brandbriefe thus exhibited again a high degree of sophistication on the part of the culprit. Knowledge of the City Council's predisposition was needed, in addition to literacy to compose the begging papers. And nothing backs this contention more than the case of three theology students. All three begged with falsified begging papers stating that they had relinquished the Popish religion in favor of Lutheranism, a fact which seemingly entitled them to beg in a Lutheran town such as Frankfurt.<sup>32</sup> These incidences show a high degree of education which the majority of the beggars did not

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30. St Aug 12, 1564; St April 30, 1585; St March 5, 1634; St July 11, 1660; St Nov. 7, 1668; St Jan. 16, 1686; Rp 1584, 81.

31. Bothe, Stadt Frankfurt, 244.

32. St Dec. 8 and 11, 1668.

possess. They had to resort to simple street begging. And the simple street beggars were the ones not reported to the authorities.

These findings have some important ramifications. First, they demonstrated that interpreting the laws by themselves as a reflection of societal attitudes can be quite misleading. Second, and more importantly, one has to be careful to ascribe to the law itself formative powers. Although Frankfurt's City Council started at the end of the fifteenth century to introduce policing measures for the poor which resulted in a criminalization process, such steps did not penetrate the population at large. A two hundred year period could not erase the earlier idea of the universal concept of poverty.<sup>33</sup> Even the Reformation which re-inforced the concept of deserving and undeserving poor seemed not to have achieved this goal unequivocally. Had that been the case, the local population would surely not have come to the aid of persecuted beggars in the street by hiding them in their own houses. In fact, one might argue the opposite namely that the population resented and obstructed the official method of handling the poor.

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33. Similar findings were discovered by Sheila D. Muller, Charity in the Dutch Republic: Pictures of Rich and Poor for Charitable Contributions (Ann Arbor, Mich.,: UMI Research Press, 1985)

Municipal decrees could not deter Frankfurt's population and neither could the Reformation. This resistance does not reflect a high degree of social control by the local elite.<sup>34</sup> It is one thing to promulgate laws it is quite another to enforce them. The pivot upon which this transition hinged was the co-operation of the population at large. This example is yet another piece of substantiating evidence that in order for the judiciary to function it needed the co-operation of the population. Conversely, if the authorities and the population were at odds and did not subscribe to the same mental attitude, the authorities had far greater difficulties in introducing stringent measures. There was no independent police force to assist the authorities. The local population had to do the policing.

The same trend can be observed in the sentencing of religious offenses.

#### Sentences for Religious Offenses

Religious offenses ranked last among the six major crime categories with 87 crime sentences. Quantitatively speaking, 87 sentences for the 1562 to 1696 period

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34. These findings are in contrast to arguments advanced by the following authors: Michel Foucault, Discipline and Punish: The Birth of the Prison, trans. Alan Sheridan (New York: A Division of Random House, 1979) and Richard van Dülmen, Theater des Schreckens (Munich: C.H. Beck, 1985).

represent a low conviction rate especially if one considers that at least up to the end of the Thirty Years War in 1648 religious elements played a decisive role in every-day life. If the quantitative aspect for religious sentencing is thus surprising the qualitative aspect is even more as illustrated in table 12.

Table 12.-- Types of Religious Offenses

	1562	1595	1628	1661	
	-	-	-	-	
<u>Nature of Offense:</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Broken Ban. Oaths	15	33	4	18	70
Breach of Municipal Oath	0	3	1	3	7
Blasphemy	1	2	0	3	6
Heresy	0	1	0	1	2
Conjuration	0	0	0	2	2
<u>Total</u>	<u>16</u>	<u>39</u>	<u>5</u>	<u>27</u>	<u>87</u>

Source: Book of Punishments

Surely the most startling feature of Frankfurt's religious crime sentencing was the absence of any witchcraft sentences. This fact is the more surprising for during the time span under investigation here Europe experienced the height of its witch hunt. The absence of any witchcraft sentences in Frankfurt is even more surprising if one considers that in many parts of Germany frequent witchcraft sentencing and executions occurred.<sup>35</sup> A recent study even suggests that the number of

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35. Erik H.C. Midelfort, Witch Hunting in Southwestern Germany (Stanford, California: Stanford University Press, 1972).

witchcraft prosecutions was significantly higher in Germany than in other European countries.<sup>36</sup> The author attributes this, among others, to the "prevailing pattern of jurisdictional particularism" where witch-hunting could go unchecked.<sup>37</sup> A point can be made for this interpretation considering that areas bordering Frankfurt experienced frequent witchcraft sentencing.<sup>38</sup> In the nearby episcopal dukedom of Fulda a total of 250 witches were reportedly burnt at stake from 1603 to 1605 and in Bamberg's bishopric 285 were executed during the 1628 to 1630 period.<sup>39</sup>

But the population also had a decisive role to play in the witch-hunts. The historian Midelfort points to the mood of villagers and townspeople as one of the reasons for the extreme dimensions of the witch-craze.<sup>40</sup> Such local pressure could be initiated by local guilds as happened in the imperial city of Offenburg.<sup>41</sup> But it

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36. Brian P. Levack, The Witch Hunt in Early Modern Europe (London: Longman, 1987), 177.

37. Ibid., 178.

38. Walter Eschenröder, Hexenwahn und Hexenprozess in Frankfurt am Main (Gelnhausen: F.W. Kalbfleisch, 1932), 15-22.

39. Ibid., 16.

40. Midelfort, 124.

41. Ibid., 159.

could also emanate from local rumors. Often, such trials started at the initiative taken by neighbors.<sup>42</sup> The historian Schormann concurs with these findings stressing that pressure to prosecute came from the population at large.<sup>43</sup> Given these findings, Frankfurt's population exercised considerable restraint. From the 1562 to 1696 only fifteen suspects were put on trial in Frankfurt, and none was executed.<sup>44</sup>

Most of these 15 suspects were arrested on reports made by neighbors or on the basis of rumors.<sup>45</sup> These findings corroborate the statements of the aforementioned historians, and combined they attest to the importance of the input of the population. It further attests to the fact that the City Council proceeded with criminal arrests based on mere rumors from the population, a fact obviously well known by the people. They did not have to launch private and official accusations, rumor or gossip were just as, if not more, effective judiciary weapons. The local authorities were also aware of the power of rumor. While none of the accused were ever punished for

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42. Ibid., 160.

43. Gerhard Schormann, Hexenprozess in Deutschland (Göttingen: Vandenhoeck & Ruprecht, 1981), 109-110.

44. Eschenröder, 32-58.

45. Ibid., 32, 36, 37, 41, 45, 47.

witchcraft, three suspects were sentenced to the infamous Verdachtstrafe, and one such sentence was based on the rationale that the rumor of witchcraft would cause substantial trouble and, therefore, the suspect better be banish.<sup>46</sup>

If Frankfurt's population thus demonstrated a constraint concerning witches, so did the City Council as evidenced by the absence of any serious sentencing. What were the reasons for such a benign attitude? Was it attributable to humanitarian influences on the part of the advocates? Eschenröder demonstrates in his analysis of the 15 trials, that Frankfurt's advocates, like the City Council and rest of the local population, were firm believers in the destructive powers of witches. As such advocates even suggested banishment sentences for suspects who did not plead guilty despite the repeated application of torture.<sup>47</sup> The advocate Dr. Rasor was particularly adamant about punishing an accused witch in a 1670 trial.<sup>48</sup> It was not until 1694 that the first change of attitude among advocates can be observed.<sup>49</sup> Yet Eschenröder concedes that compared to advocates in other

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46. Ibid., 46.

47. Ibid., 39.

48. Ibid., 57.

49. Ibid., 84.

cities, Frankfurt's legal advisors were quite reasonable in that none of them ever suggested the death penalty.<sup>50</sup>

Eschenröder accredits the City Councils' lenient sentencing of witches to local preachers. In all such trials preachers were consulted as religious experts. Their reports and evaluations exhibit a temperate approach preventing any suspect from ever being executed in Frankfurt.<sup>51</sup> The historians Midelfort and Levack concur with Eschenröder's findings for other regions stressing the role of both Protestant and Catholic clergy in the spread of witch-craze.<sup>52</sup>

In contrast to the low sentencing of witches is the large number of sentences for the breach of the banishment oath. Out of a total of 87 religious crime sentences, 70 convictions pertained to breaking the banishment oaths. Frankfurt's high level of banishment oath sentencing was closely related to the criminal punishment structure. Banishment was considered a criminal punishment but was predominantly applied in conjunction with additional corporal punishments. Most criminals sentenced to corporal punishment were thus also compelled to leave Frankfurt, in most cases for life.

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50. Ibid., 80.

51. Ibid., 40, 65, 79.

52. Midelfort, 33, 193; Levack, 149.

Prior to leaving town, the culprit had to swear the banishment oath. A violation of this oath by illegally returning to Frankfurt, was considered a criminal offense resulting in further criminal sentencing.

Any increase or decrease of banishment oath sentences could thus be attributed to a change in the punishment structure. If more people were sentenced to banishment, more might be tempted to return illegally to Frankfurt resulting in an increase of sentences for breach of banishment oath. But deteriorating living conditions outside the city walls could also have compelled many to return to Frankfurt illegally. While the latter explanation can never be ruled out, it was curious to note that when the living conditions in Frankfurt's vicinity deteriorated, relatively few such banishment oath sentences took place. During the ravages of the Thirty Years War particularly during the 1630s when more fighting took place in Frankfurt's vicinity, and Frankfurt actually experienced a dramatic influx of people, only 4 sentences for broken banishment oaths were pronounced. And conversely, when the general political and economic situation improved, the number of such sentences increased again.

This trend corroborates the previous contention that crime sentencing reflects the attitudes of the law enforcement agencies, that is the City Council and the

population, more than it reflects the actual crimes committed. During times of adversity neither the City Council nor the population seem to have been interested in sentencing or reporting on banishment oath transgressors. When one considers the considerable influx of people during this period, it seems highly unlikely that fewer such offenses occurred.

But the most striking feature in connection with the sentencing for breach of banishment oath is the method of apprehending the violators. Violators of the banishment oath did not leave any direct victims and as such no direct traces of any crime. One might call it a crime without victims, unless the community at large perceived itself as being victimized by the offenders' illegal return.

But even if this perception was operative, how would the community report on such an offender? How would the population know who was a violator of the banishment oath and report him or her as such to the authorities? The answer lies in the structure of contemporary criminal punishments.

First, almost all those sentenced to corporal punishment were also banished from Frankfurt. Banishments were part and parcel of criminal corporal punishments, designed to rid the community of criminal elements. In addition and most importantly, almost all criminal

punishments were carried out in public either in the local market place or by parading the culprits through the streets. The decisive point is that the corporal punishments were performed in the presence of many people. While the cruelty of such a system has been amply discussed by many historians and interpreted primarily in conjunction with state building and the concept of power, none has ever pointed out that it served more general societal functions. Public penal procedures served the purpose of communicating to the largest number of people, the physical characteristics or physiognomy of the person who had committed a crime. By exhibiting and even parading the criminal to the local population, the personal traits of the offender were exposed so that they could be absorbed by the people for future recognition.

The efficacy of such a system greatly depended on the capacity of contemporaries to memorize the physiognomy of an offender. Two factors greatly contributed to that end, namely the often disfigured appearance of contemporaries allowing for easy retention supplemented by a highly developed memorizing capacity of contemporaries. Rampant and wide-spread diseases in addition to the wanting state of contemporary medicine often left physical if not crippling marks on a person, from goiter to the loss of teeth and limbs. For example, it was asserted that syphilis "maimed far more victims

than it killed."<sup>53</sup> Disfigurements were so common they even served as personal identifications in the form of nicknames.<sup>54</sup>

Contemporaries thus made deliberate use of visible physical deformations. Visible aspects were also used to enhance one's retention or memorizing capacities. Francis Yates in her study The Art of Memory cogently describes the visible aspects of memorizing methods used by contemporaries.<sup>55</sup> Yates states that in a predominantly illiterate society where storage of knowledge was still primarily achieved by memorization and consequent oral transmission, the memorizing capacities of the people were highly trained and "remarkable feats of memory were achieved."<sup>56</sup>

Books on the memory arts multiplied despite the advent of the printing press which "as an agent of change" according to Eisenstein, "altered the system of data collection and data storage."<sup>57</sup> One might thus argue

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53. J.R. Hale, Renaissance Europe (Berkeley: University of California Press, 1977), 25.

54. St Oct. 9, 1579; St Oct. 22, 1579; St April 19, 1586; St April 7, 1592.

55. Francis Yates, The Art of Memory (Chicago: University of Chicago Press, 1974).

56. Ibid., 126.

57. Elizabeth L. Eisenstein, The Printing Press as an Agent of Change (Cambridge: Cambridge University Press, 1979), 1:125.

that the "immense consequences of the preservative powers of print" were felt only at a much later date and that the functional concept of imagery continued to be used by contemporaries.<sup>58</sup> And nothing corroborates this contention better than its functional application in the religious field. Catholics, per the historian Burke, "continued to have a religion of images rather than a religion of texts."<sup>59</sup> It was in particular Baroque art which served a religious function for the Counter-Reformation.<sup>60</sup> Baroque art was even used for political goals, namely the consolidation of the Habsburg Empire.<sup>61</sup>

But Protestants also realized the functional importance of visual aspects. The historian Scribner in his study For the Sake of Simple Folk clearly demonstrates Martin Luther's use of pictorial means to advance the cause of the Reformation.<sup>62</sup> Scribner cites Luther as saying "without images we can neither think nor

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58. Ibid., 182.

59. Peter Burke, Popular Culture in Early Modern Europe (New York: New York University Press, 1978), 231.

60. Werner Weisbach, Der Barock als Kunst der Gegenreformation (Berlin: P. Cassirer, 1921).

61. Robert J.W. Evans, The Making of the Habsburg Monarchy, 1550-1700: An Interpretation (Oxford: Clarendon Press, 1979).

62. Robert W. Scribner, For the Sake of Simple Folk: Popular Propaganda for the German Reformation (Cambridge: Cambridge University Press, 1981).

understand."<sup>63</sup>

And the same functional aspect, namely to impress with the hope of future retention, was used in the administration of criminal justice. Visible exposure of the culprit served to impress his or her physical characteristics on the minds of contemporaries with the hope for future recognition. Visible images, in this particular case physical characteristics of the offender, were easily absorbed, stored, retained and contributed to easy apprehension of a recidivist. Should a publicly exposed offender return to Frankfurt, chances were that he or she would easily be recognized by someone who had watched the earlier public punishment and would report the illegal return. In the absence of any organized police force and in a society where the majority of people were illiterate, visible signs and images were of the greatest importance. In this particular setting, public that is visible punishments served as visible aids for future criminal policing. They served as a visible data bank. Who, if not the people, would recognize a past offender when he or she returned to Frankfurt? Proof of the effectiveness of this system is furnished by the statistics for sentences related to the breach of banishment oaths.

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63. Ibid., 249.

The local population did recognize many previous criminals. The visible aspects of the punishment structure were thus extremely important in a general societal setting especially as few criminals, as will be demonstrated later, were brandmarked, a practice which would have made recognition easier.

If the population had been excluded from the punishment procedure, they would have felt deprived of the theater or spectacle of punishments as the historian Spierenburg and van Dülmen describe it. But, more importantly, the community would have deprived itself of an important public policing function. Broken banishment oath sentences prove more than any other crime category the importance and existence of a close cooperation between the City Council and the population at large. No other crime category relied so heavily on on the people's capacity to recognize the offender.

Bearing in mind this functional and essential societal measure, it is difficult to ascertain that the state's authority overawed the people for without the cooperation of the people, the judiciary and the state could not have functioned.

In summary, crime sentencing in Frankfurt exhibited several patterns. First, during times of severe economic adversity and war years, such as the Thirty Years War, fewer crimes were sentenced. This trend was particularly

pronounced with regard to property crimes. Second, Frankfurt had a high percentage of sentences for sexual offenses against the state of marriage, such as adultery and fornication. Third, in religious crime sentencing a temperate mood prevailed evidenced by the low sentencing for witches. Fourth and most importantly, the population played an active policing role as shown in examples from the sentencing of beggars and breach of banishment sentences. Fifth, the pervasive use of visual symbols to carry out effective crime controls. Sixth, the active participation of the population did not preclude any selectivity on their part as evidenced by the example of beggars. In fact, the overriding theme of all crime sentences seems to have been its selective aspect, regardless of whether it was exercised by the population or the City Council. The low sentencing of rape was the most vivid expression of this tendency. This mutual selectivity also means that a direct correlation between crime sentences and crimes committed cannot be established.

One can thus conclude that both the City Council and the population at large actively participated in the conceptualization of crime and the apprehension and sentencing of the culprits. An examination of the offenders will elucidate this linkage further for the sentenced person exhibits over and above his or her own

personal characteristics and possible propensities toward criminal behavior, society's criteria for their arrest and the government's propensity toward actual sentencing.

## CHAPTER V

## CRIMINALS

The principal objective of this particular chapter is to assess in quantitative and qualitative terms those persons subjected to physical punishment for the crimes specified in the previous chapter.

The quantitative aspect, that is the statistical assessment of the number of sentenced criminals represents no problem. The culprits were clearly listed in the Strafenbuch while, as discussed previously, the number of crimes was often obscured by vague entries in the records. Also, the number of criminals was far less than the number of crimes committed, because many offenders were sentenced for several crimes. The result is a total of 1,338 sentenced criminals who committed approximately 1,578 crimes.

Qualitatively, Frankfurt's sources show a surprising diligence in recording at least the most fundamental personal data on criminals. In all cases, they listed the name of the offender and often even nicknames. This precision seemingly contradicts findings made by the historian Küther who stated that people of lower status

were not accorded such personal entries in criminal registers.<sup>1</sup> His comments are somewhat surprising considering that criminal records such as the Strafenbuch served as data storage on an offender. One has to bear in mind that the majority of the criminals were sentenced to corporal and not capital punishment which implies that they might become repeat offenders and not necessarily only in Frankfurt but in other locations. Whatever information could be stored on an offender might serve future arrest purposes at home or abroad. As has been mentioned earlier, Frankfurt sent many inquiries to other towns pertaining to locally arrested suspects. In turn, Frankfurt received similar inquiries. Without adequate data storage such an exchange of information could not function.

Moreover, criminal data storage affected the punishment structure. A recidivist received a harsher sentence than a first offender. Diligent entries of personal data thus had an important functional purpose. The authorities were aware of its usefulness, and so were the accused who frequently gave misleading statements about their names. But any indication of a changed name made an arraigned person even more suspect in the eyes of

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1. Carsten Küther, Menschen auf der Strasse (Göttingen: Vandenhoeck & Ruprecht, 1983), 27.

the authorities.<sup>2</sup>

In many cases the name of the criminal was listed in conjunction with the additive "von" meaning from, followed by the name of a town, such as Otto Meyer von Hanau. While this place descriptor seems to be specific it is actually deceptive for the person may not actually have resided in the town indicated. The town listed could depict the birthplace of the offender, a previous residence or the offender's actual place of domicile.

The reason for adding such local descriptions to a suspect's name was primarily for identification purposes in order to prevent a possible confusion between persons of the same name.<sup>3</sup> Such confusions could easily occur given the fact that contemporaries frequently had identical names. The indices of the various archival records consulted for this study attest to this repetition. Location was not the only means of better identification, but it was frequently used.

It would thus be misleading to infer from the frequent use of such locality descriptions that most suspects were non residents of Frankfurt as suggested by Meinhardt.<sup>4</sup> The records do not lend themselves to draw

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2. St Nov. 25, 1609.

3. Bücher, Bevölkerung, 74.

4. Meinhardt, 167.

such conclusions. True, such delinquents were not burghers of Frankfurt since this civic status was clearly indicated in the records. But they could be anything from permanent to temporary residents, to those waiting for their citizenship to be approved, or, in fact, outsiders. In mere numerical terms, it would mean that Frankfurt would have been a crime-free town with a total of only 167 burghers (including women) sentenced during a 134 year period, representing 12.48% of the total of 1,338 sentenced criminals; with all due respect, it is highly unlikely that Frankfurt produced so few criminals.

While names and place descriptions were diligently recorded and served a contemporary identification purpose, they were of little use to establish a criminal typology for this study.

Religious denominations were explored as a possible organizing principle to classify criminals. The religious intensity of the age and Frankfurt's heterogeneous population, consisting of Lutherans, Calvinists, Catholics, and Jews would warrant such an approach. Yet surprisingly, it was only in isolated cases and only in the context of the punishment structure that the religion of an offender was mentioned. Only when a Jewish offender was described, did the entries in the Strafenbuch clearly refer to the criminal as a Jew. Such selective religious entries demonstrate that Jews according to contemporary

assesment, were in a category by themselves. This finding also shows that religion itself proved an unreliable source indicator for this study's criminal typology.

A third option for arriving at a categorization of the criminals consisted of analyzing the offenders according to social groupings or class structures based on such criteria as wealth, poverty, and occupational patterns. While occupational groups could be established, it was impossible to assess from the archival entries whether the sentenced criminal was rich or poor. Such distinctions might be arrived at by inference from the occupation of the offender but even this approach is full of pitfalls. No across the board occupational pattern existed to equate certain professions with poverty and others with wealth.

An additional difficulty existed in incorporating women into any classification since female offenders were described in completely different social settings than their male counter parts. For instance, while male criminals in many instances had their occupations listed, only rarely did women. Only in very isolated cases was the marital status of male offenders indicated whereas all female criminals clearly had such descriptions. The marital status of male offenders was obviously considered of little or no importance in contrast to women where it

represented the most outstanding identifying characteristic.

Closely following contemporary archival entries, these gender differences became the two basic groups for investigation. Male and female criminals will be treated separately but comparatively whenever the data on hand lends itself for such an analysis.

#### Male Criminal Sentences

A few words concerning the methodology used in assessing male criminals is in order. As was pointed out previously, the marital status of male offenders was only recorded in the rarest cases. Whenever the male offender was still a youth, this was regularly reported in contrast to women where age and occupation seemed to have mattered very little, evidenced by the sporadic recording of it. The occupation of male offenders was usually recorded. In three distinctive areas, that is marital status, age and profession the recording of male criminal differed thus from that of female archival recordings.

The records clearly show if an offender was Jewish and if he was a burgher of Frankfurt. Occasionally, the data also contains references to professional criminals. Based on these various criteria, five distinctive male criminal typologies were established namely juveniles,

Jews, burghers, criminals identified by their occupations, and professional criminals. These categories are based solely on contemporary perception of male offenders.

Numerically, out of the total of 1,023 male offenders 733 could be categorized. The total of 733 or 71.65% clearly identifiable male criminals represents a fairly large sampling and permits the establishment of certain male sentencing patterns, as shown in Table 13.

Table 13.--: Distribution of Male Criminals

	1562	1595	1628	1661	
	-	-	-	-	
	1594	1627	1660	1696	Total
Juveniles	36	18	4	11	69
Jews	13	12	9	60	94
Burghers	22	43	8	30	103
Occupational Groups	165	100	39	78	382
Prof. Criminals	24	31	0	30	85
<u>Total</u>	<u>260</u>	<u>204</u>	<u>60</u>	<u>209</u>	<u>733</u>
Unidentifiable	123	98	18	51	290
<u>Total</u>	<u>383</u>	<u>302</u>	<u>78</u>	<u>260</u>	<u>1,023</u>

Source: Book of Punishments

#### Juvenile Crime Sentencing

In relative and absolute terms, the sentencing rate of juveniles was surprisingly low with 69 conviction in a 134 year period. Compared to the total of 1,023 male sentences, it represented only 6.7%. These findings become even more spectacular if one considers that the contemporary period of adolescence was much longer as compared to the present time. Juvenile delinquents

encompassed transgressors up to the age of 25 when, according to Frankfurt's laws, a man came of age.<sup>5</sup>

Most convictions involving juveniles were handed down during the end of the sixteenth century. Throughout the seventeenth century the number of sentences declined steadily until 1661, when it increased again. This low conviction rate is the more surprising since, at least according to present-day statistics, young men are the most likely to commit crimes.

The limited number of youth crime sentences might possibly be attributable to a small demographic representation of youngsters. For instance in 1440 out of 1,000 male resident over 14 years old, only 14 were within the 14 to 15 year old range.<sup>6</sup> Evidence of small families averaging 2 children are documented for other regions in Germany as well.<sup>7</sup> Given the fact that the population increased during the eighteenth century, a demographic explanation of the conviction rate for juveniles is plausible. This contention is corroborated by findings from other European areas. The historian Spierenberg offers the most cogent numerical representation for he documents that during the

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5. Coing, Reformation von 1578, 8, 12.

6. Bücher, "Soziale Gliederung," 155.

7. Ennen, 236; Howell, 12, 14.

seventeenth century 58 thieves under the age of 20 were sentenced while this rate increased to 123 during the eighteenth century.<sup>8</sup> In Languedoc, France, juvenile delinquents averaged 30% during the eighteenth century. And there as in Frankfurt, maturity began at the age of 25.<sup>9</sup> A study of Paris during the same period reveals that 26.3% consisted of juvenile delinquents, and this figure only includes youngsters up to the age of 20.<sup>10</sup>

The crimes juveniles were actually sentenced for might furnish an additional clue about Frankfurt's low sentencing rate.

Table 14.-- Distribution of Juvenile Crimes

	1562	1595	1628	1661	
	-	-	-	-	
<u>Nature of Offense</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Property Crimes	39	19	4	10	72
Crimes v. Persons	1	2	0	1	4
Public Disturbance	2	0	0	0	2
Sexual Offenses	0	1	0	0	1
<u>Total</u>	<u>42</u>	<u>22</u>	<u>4</u>	<u>11</u>	<u>79</u>

Source: Book of Punishments

As Table 14 demonstrates, juveniles were primarily convicted for property-related crimes, namely 72 out of

8. Spierenburg, Table 24 on page 232.

9. Nicole Castan, Les Criminels de Languedoc (Le Mirail: Association des Publications de l'Université de Toulouse, 1980), 38-39.

10. Arlette Farge, La Vie Fragile: Violence, Pouvoirs et Solidarités à Paris au XVIII Siècle (Paris: Hachette, 1986), 167.

79 representing 91.4%. Most conspicuous among them were the 36 thefts, followed by 11 burglaries and 5 robberies. The rest spread among the various property-crimes. Crimes against persons referred to 3 manslaughter cases and 1 assault. The sentencing against public disturbance represents 2 instances of illegal return to Frankfurt. The small number of sexual sentences is interesting to note, particularly the absence of fornication sentences. The only sexual sentence went to a young apprentice who had entertained an adulterous relationship with his master's wife. The lack of fornication sentences might be explained by Frankfurt's laws specifying that if single people were reported on fornication offenses they might be spared corporal punishment if they got married. Or it might be attributed to the gender gap, favoring male juveniles over single women when it came to fornication sentences.

Based on this conviction record one might conclude that juvenile delinquents were on the whole a relatively non-violent group. They were only sentenced for three manslaughter cases out of the total of 70 such cases. In addition, the property crimes they committed were of the least aggressive nature, namely thefts. Most conspicuously, only one youngster was sentenced for assault. The lack of additional sentences for brawls or rowdy behavior is conspicuous, unless the City Council

was lenient during the initial sentencing of young people, a point which will be discussed in the chapter on punishments. Alternate sanctions were used by the City Council and society at large to deal with rowdy youngsters. Schoolmasters beat unruly youngsters.<sup>11</sup> Within the guilds the masters often treated the apprentices "inhumanly" so that occasionally even the City Council had to intervene.<sup>12</sup> And by the end of the seventeenth century, particularly difficult youngsters could be sent to the poor house where they were subjected to hard work and physical beating at the request of their parents or guardians.<sup>13</sup> Apart from such stringent measures, contemporary societies offered different outlets for exuberant youngsters as was shown by N.Z. Davies in her studies on Lyons.<sup>14</sup>

#### Jewish Crime Sentencing

The data show that out of 1,023 male convicts, 94 were Jews equalling 9.19%. The 9.19% might be interpreted as an inconspicuous criminal record, were it not for the uneven distribution of the sentences. While during the 99

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11. Rau, 169.

12. Bothe, Stadt Frankfurt, 393.

13. According to the Armen-Waysen-und Arbeit-Haus Ordnungen und Gesetze.

14. Davies, 97-123.

year period from 1562 to 1660 a total of only 34 Jews were sentenced, the number increased dramatically to 60 during the 35-year period from 1661 to 1696. This jump represents the most drastic deviation observed in any of the aforementioned five criminal groups. And it is difficult to explain.

A possible explanation might be derived from the nature of the offenses.

Table 15.-- Jewish Crime Sentences

	1562	1595	1628	1661	
Nature of	-	-	-	-	
Offenses	1594	1627	1660	1696	Total
Property Crimes	12	7	6	43	68
Public Disturbanc	2	2	1	14	19
Sex Offenses	2	3	1	1	7
Religion	0	2	0	5	7
Forgeries	2	2	0	2	6
Crimes v. Persons	1	1	0	3	5
<u>Total</u>	<u>19</u>	<u>17</u>	<u>8</u>	<u>68</u>	<u>112</u>

Source: Book of Punishments

The data contained in Table 15 demonstrates that Jews were primarily sentenced for property crimes, a pattern exhibited by almost all other criminal groups from juveniles to burghers to professionals. And similar to these groups, Jews were also primarily sentenced for thefts, namely 41 out of 68 property crimes. A Jew was also sentenced for having robbed the local synagogue which sentence confirms that in criminal matters, even when the crime occurred in the Jewish ghettto, it was the City Council that had final jurisdiction.<sup>15</sup>

Crimes of a religious nature and falsification sentences also followed the more general sentencing pattern. As for crimes against religion, it was particularly in the areas of blasphemy and heresy that sentences against Jews were handed down. It was given to Jews who had converted to Christianity but reconverted back to Judaism. Among the crimes of falsification, the two counterfeiting and one forgery of begging papers should be mentioned.

As regards sexual offenses, Jews had a conspicuously lower conviction rate, namely a total of 7 during a 134 year period. Most interestingly, 6 were given for illegal sex with Christians and 1 for prostitution. One might wonder why so few sexual crime sentences went to Jews and why no other sexual crime categories were included such as adultery for instance.

Bearing in mind the very private and secretive nature of sexual offenses, and the difficulties involved in discovering and reporting such offenses, the immediate environment played a crucial role in apprehending a sexual offender. The fact that Jews lived in segregated and closed-in quarters must have played a decisive role both for the discovery and reporting of such secret offenses as sexual transgressions. Sexual offenses

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15. St March 7, 1683.

committed by Jews in the Jewish ghetto would elude the non-Jewish population and thus would be less likely to be reported. In addition one might argue that their physical and psychological segregation caused deep resentment among the Jews and thus stimulated a greater inner cohesiveness in the Jewish community and thereby prevented the reporting of such offenses to the City Council by the Jews. Even if adultery and other sexual offenses had occurred within the community, they would surely not have reported them to the very officials who had created their segregation. Instead, they would have settled possible disputes among themselves.

The number of violent crime sentences was also conspicuously low. This phenomenon is much more difficult, if not impossible, to explain, especially if one considers that the aforementioned five violent crimes consisted of assaults only and that not a single Jewish man was sentenced for murder or manslaughter. Did Jews commit fewer violent crimes or were fewer such crimes reported to the authorities? It is highly unlikely that a low reporting rate is the answer given the nature of the offense. In addition, the prevalent prejudice against Jews certainly acted as a stimulant to crime reporting. Such crime reporting was greatly facilitated by the fact that Jews were easily singled out by the special clothes they had to wear. Based on these factors, one is inclined

to attribute the infrequent sentencing of Jews for crimes against persons to fewer such offenses being committed by them.

This lower sentencing rate does not mean that Jews were not suspect of crimes. Taking the Verdachtstrafe, that is sentencing despite proof of guilt, as an indicator, Jews were among the most likely crime suspects in the eyes of the population and the City Council, at least during the 1661 to 1696 period. Out of a total of 26 such crime sentences, 13 were handed down to Jews. It might suggest that by prosecuting rather than persecuting them as was done in earlier times such as the sack of the Jewish ghetto in 1614, the population resorted to a more "refined" way of venting their biases.

#### Burgher Crime Sentencing

The sentencing pattern for burghers does not exhibit such biases as was to be expected. On the contrary, during the 1661 to 1696 period only 5 burghers were handed the Verdachtstrafe in contrast to 13 Jews. Bearing in mind the demographic gap between burghers and Jews, the disparity becomes even more significant. Burghers were definitely perceived as less suspicious than Jews. This is a paradoxical mental perception for two reasons. First, in the sense that it was the local population who attacked the Jews and not vice-versa. Yet the aggressors were perceived as less suspicious than the victims.

Second, if the conviction rate for crimes against persons is any indication, then burghers should definitely rank above Jews as possible suspects, as the data in Table 16 demonstrates.

Table 16.-- Comparison of Sentences for Burghers and Jews

Nature of Offense	1562		1595		1628		1661		Total	
	B	J	B	J	B	J	B	J	B	J
Propert	14	12	2	7	3	6	16	43	58	68
Sexual	12	2	11	3	4	1	8	1	35	7
Crimes v. Persons	5	1	7	1	2	0	4	3	18	5
Religious	0	0	4	2	0	0	6	5	10	7
Public Disturb.	1	2	5	2	0	1	1	14	7	19
Forgeries	3	2	0	2	0	0	4	2	7	6
Total	33	19	52	17	9	8	39	68	135	112

Source: Book of Punishments

A total of 18 burghers was sentenced for crimes against persons while only 5 Jews got this sentence. Qualitatively speaking, the difference is even more flagrant in that 8 burghers received manslaughter and 2 murder sentences while no Jew was ever sentenced for such crimes.

But burghers, in contrast to Jews received more sentences for sexual crimes. Marriage-related offenses ranked highest with 17 adultery cases, 5 bigamy convictions, and 4 incest sentences. This sentencing pattern reconfirms the previously advanced contention that sexual offenses which in any way impeded the marriage or family pattern, were more strictly enforced

than any other sexual offense. The fact that even burghers were sentenced for such transgressions mirrors how the public at large perceived such offenses. Had these transgressions been considered minor offenses, Frankfurt's burghers would not have been reported. The concept of the sanctity of the family had been widely accepted by the people, and burghers were not excluded from this by the now generally accepted norm.

One further aspect related to the sentencing pattern of burghers should be analyzed, namely the offenders' professions. Out of the total of 103 sentenced burghers, 88 could be identified by either occupation or profession which amounts to 85.4% and thus represents a fair sampling. Most suprisingly, a wide variety of occupations were found namely 48 different occupational categories. This fact means that there was no clear-cut preponderance of one trade over another with regard to crime. For example, 21 different occupations received one crime sentence each, 14 were handed 2 crimes each, and 6 got 3 crimes each. The crimes they were sentenced for were as diversified as their occupations.

Even the four occupational categories with the highest sentencing rate exhibited no clear cut crime preponderance. Six tailors were sentenced for burglary, pickpocketing, concealment of theft and sale of stolen goods, broken banishment oath, adultery and fornication

(with his servant), manslaughter and assault. Five weavers were sentenced for pickpocketing and theft and church robbery in addition to adultery, slander, assault and broken city oath. The four coopers were sentenced for adultery, theft, manslaughter and broken banishment oath. And the four daylaborers were sentenced for manslaughter (of a fellow cooper), bigamy and theft.

In some instances the crimes were committed in the offender's immediate vicinity, when for example two gardeners stole garden products, and a bell-ringer robbed a church. Most ironically, three beadles, the supervisors of the beggars, were convicted of stealing the poor money from the church. These crimes might today be called work-related offenses.

But most remarkably, with the exception of one merchant sentenced for a work-related offense, namely embezzlement and fraud, no additional merchant, trader, advocate, banker or even patrician was ever sentenced for any work-related crime or for that matter for any crime in Frankfurt. The omission of members of the local elite can be interpreted in various ways. First, that this group of people simply did not commit any punishable offense. This proposition is highly unlikely considering that during the revolt of 1612 many patricians and, particularly members of the City Council were cited in connection with very serious corruption and

disappropriation charges, what one would nowadays call white collar crimes. One must return to the original question then, why was this particular group of people not sentenced for any crimes? First, as members of the City Council which served both the legislature and judiciary, it was highly unlikely that they themselves would initiate charges against their fellow members. In many instances the council members were interrelated or had familial ties to the various local patrician families as demonstrated previously. It, therefore, simply does not make sense that they would prosecute themselves, other than for crimes committed in public and as such observed by local witnesses.

But even if the offense was witnessed in public, the local population most likely refrained from reporting it unless a very serious crime such as manslaughter had been committed. How could the local people possibly report on the very same people who sat in judgement over them on a daily basis? One has to bear in mind that there did not exist an independent judiciary or legislative body, nor was there an independent police force or an independent prosecutor like a district attorney. It was not out of fear that such reporting did not take place. It was more out of functional reasons.

How, one might argue, could possible eyewitnesses have known that a patrician committed the act? How could

the local population differentiate between an artisan and a patrician? The very same way they could identify a beggar, a Jew, or a prostitute, namely simply by looking at a person's clothing. Local residents could immediately identify each person according to his or her rank and profession. Inaugurated at the end of the fifteenth century, Frankfurt's dress codes, with their increasingly detailed gradations, permitted each individual to be put into a specific category. In addition to the municipal dress code each guild had its special professional clothing which facilitated differentiating between the various professions. Clothing served as an indicator of the wearer's position in society.<sup>16</sup> Everyone walking Frankfurt's streets from the prostitute to the person clad in mourner's black, to the Jews with their special badges, up to the highest patrician could immediately be identified as a member of a particular social or professional group. Frankfurt's dress codes played a crucial role in visibly placing each person. It played an even more important role in policing aspects.

#### Crime Sentences and Occupational Typology

This section covers all those criminals for whom an occupational identification could be established. This

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16. Bernard Barber, Social Stratification (New York: Harcourt, Brace & World, Inc., 1957), 146.

category does not include burghers, Jews, or juveniles. Occasionally, the compilation of the data was complicated by double occupational entries of one and the same offender. But since this happened only in isolated cases, and mainly in conjunction with the occupation group of soldiers, these instances were incorporated into the soldier category.

Given the variety of occupations and the need to arrive at a workable categorization, a numerical frequency of at least three sentences in a trade had to occur before that profession was accorded a separate occupational identification. Table 17 gives the breakdown per individual occupations.

Table 17.-- Occupational Distribution of Sentenced Criminals

	1562	1595	1628	1661	
	-	-	-	-	
Category	1594	1627	1660	1696	Total
Soldiers	28	16	23	47	114
Servants	21	11	3	2	37
Retailers	14	3	0	0	17
Tailors	8	4	2	1	15
Journeyman	4	9	0	0	13
Bakers	5	5	3	0	13
Daylaborers	5	4	0	2	11
Butchers	5	6	0	0	11
Weavers	7	0	0	0	7
Shoemakers	5	1	0	1	7
Peasants	5	0	0	0	5
Millers	0	4	0	1	5
Hangmen	4	1	0	0	5
Beggars	1	0	3	0	4
Beadles	0	3	0	0	3
Students	0	0	0	3	3
Total	112	67	34	57	270

Source: Book of Punishments

Three basic trends can be observed from this data. First, the largest number of sentences occurred during Frankfurt's economic boom of the 1562 to 1594 period. It drastically declined with the beginning of the seventeenth century and remained at a low level throughout most of the century. Second, soldiers exhibited a disproportionately high number of sentences throughout the 134 year span. They outdistanced servants as the second ranking category by a 77 person margin. Third, with 4 instances, beggars ranked among the least frequently sentenced persons in Frankfurt.

This numerical representation becomes even more surprising if one analyzes the changes over the course of the period. Soldiers had the persistently highest sentencing rate compared to all other individual occupations throughout the 134 years under investigation. Their transgressions were clustered in the area of property crimes. They had this pattern in common with most of the other occupational categories. But soldiers were in the absolute lead in crimes against persons as the Table 18 evidences.

Table 18.-- Crime Pattern per Occupation

<u>Occupation</u>	<u>Prop.</u>	<u>Corp.</u>	<u>Sex</u>	<u>Public</u>	<u>Forg.</u>	<u>Rel.</u>
Soldiers	66	40	12	13	5	2
Servants	31	9	2	1	0	1
Retailers	15	2	0	3	1	1
Tailors	13	3	2	0	1	1
Journeyman	6	6	2	2	2	0
Bakers	11	4	2	0	1	1
Daylaborers	9	3	5	0	0	0
Butchers	7	4	4	1	2	0
Weavers	7	0	0	0	1	1
Shoemakers	4	3	1	1	0	1
Peasants	10	0	0	0	0	0
Hangmen	3	2	0	0	1	0
Millers	2	1	0	2	0	1
Beggars	0	3	0	2	0	0
Beadles	3	3	0	0	0	0
Students	0	0	0	0	3	0
<u>Total</u>	<u>187</u>	<u>83</u>	<u>30</u>	<u>25</u>	<u>17</u>	<u>9</u>

Source: Book of Punishments

Soldiers received 40 sentences for crimes against persons representing a share of 22.22% of all such sentences during the entire 134 year span. This figure becomes even more ominous when one considers that 22 of them were instances of manslaughter, 4 of murders and 4 of robberies and murders, that is 30 out of the 40 violent crimes resulted in a victim's death. In 11 of the 22 manslaughter cases, fellow soldiers were the victims in incidents unrelated to the battle field. And this pattern reminds one of Erasmus stating that how "can someone be even minutely sensitive about killing one person when mass murder is his profession."<sup>17</sup> His

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17. Quoted by J.R. Hale, "Sixteenth Century Explanations of War and Violence," Past and Present 51 (May 1971): 10.

suspicion should have been shared by the local population and the City Council and possibly be reflected in a high number of soldiers receiving the Verdachtstrafe. But during the 134 years investigated in this study, soldiers were handed down only 8 out of a total of 95 such sentences which represents a mere 8.42%.

If one compares this figure to the sentencing of Jews, the picture becomes even more flagrant. Jews were sentenced for 5 violent crimes, but 18 crimes of suspicion. A paradoxical conviction pattern considering that Jews were the prime victims of cumulative assaults, such as the sack of the ghetto in 1614 and other individual attacks. Yet they were perceived as more suspicious than soldiers who were sentenced for most corporal crimes. Soldiers who had a far more serious crime sentencing record than Jews were perceived as less dangerous than Jews.

From this conviction pattern it can also be inferred that the Verdachtstrafe was handed down selectively for were it based on actual crime sentencing, soldiers should have received more such sentences. These findings further question Langebein's assertions that the Verdachtstafe was used to alter and reduce the severity of the punishment over the years. In the case of Frankfurt, it was a selective, group-oriented form of punishment not geared toward altering the general penal

structure.

And such selectivity is further evidenced by the condemnation rate of soldiers for sexual offenses. Compared to the 66 property crime sentences and the 40 violent crime sentences, their share of 12 sexual offenses is very low, suspiciously low considering that a 134 year period is covered. Soldiers were sentenced for 3 adulteries, 3 fornications, 2 bigamies and 1 instance each of pandering, prostitution, incest, wife abduction, and child molesting. Rape sentences are conspicuously absent and prostitution offenses amazingly low.

Is this an exceptionally moral group of soldiers? Quite obviously one is facing here a selective omission of sexual crimes for it is hard to believe that soldiers who were sentenced to almost half of all violent crimes would refrain from aggressive behavior in the sexual field. The fact that the sentencing pattern changed over time provides additional corroboration.

It was interesting to note that during the last decades of the sixteenth century when Frankfurt experienced a period of economic and political stability, the general sentencing of soldiers was high. It decreased between 1595 and 1627 at a time, when the local economy weakened, the dangers of the Thirty Years War approached, and the number of locally stationed soldiers increased considerably, namely from 160 to 750. During the

following period when the ravages of the Thirty Years War hit Frankfurt and the number of local soldiers jumped to more than 1,200, sentencing of soldiers increased only slightly. But most conspicuously, there was only one sexual crime sentence during this particular period; not a single rape was registered. After the war, this pattern reversed itself when soldiers received 11 sexual crime sentences.

It seems to be highly unlikely that during war times soldiers refrained from sexual assaults. Therefore, it is safe to conclude that political expediency affected the sentencing pattern for soldiers. In times when they were needed, crimes such as sexual offenses were treated very leniently.

This contention is backed by the fact that soldiers received milder punishments especially when compared to women, as will be demonstrated in the next chapter. Suffice it to cite one example here.<sup>18</sup> In 1645 a soldier committed adultery and impregnated his unmarried mistress. He was charged with adultery and banished from Frankfurt. His own wife helped to abort the child and was sentenced to public flogging and then life banishment from Frankfurt. The soldier's mistress who committed infanticide with the help of her sister was sentenced to

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18. St March 11 and April 29, 1646.

death by sword and her sister fared the same punishment. It is hard to believe that the soldier did not know about the pregnancy of his mistress nor what was being done about it, the more so since his own wife was involved in the abortion procedure. Yet he received an extremely mild sentence even if compared to general adultery punishments.

Intriguing sentencing problems also surfaced with regard to the remaining occupation categories. How is one to explain that textile-related professionals and servants were sentenced for most property crimes while journeymen and daylaborers had a considerably lower sentencing rate, not to speak of beggars who had none? The question becomes even more puzzling if translated into historical terms.

It will be recalled that by the year 1570 Frankfurt started to experience an economic boom which lasted until 1595. Instead of a hitherto quiet town of crafts and agriculture, Frankfurt developed into an industrial town concentrating on the production of silk and other textiles, and experienced a boom in the luxury and building industries. Even the local book fairs took a turn for the better, and by the beginning of the seventeenth century Frankfurt was the center of the German book trade.

This economic boom in turn attracted many professionals, especially in the textile industries. In addition, an increasing number of journeymen, unskilled workers and servants flocked to Frankfurt not to mention the many beggars who tried to survive in an economically flourishing town. Yet, paradoxically, it was precisely during this economically prosperous period that textile-related professionals experienced their highest conviction rate for property offenses. Why should more property crime sentences be given during a time of economic boom particularly to professionals closely connected to the boom? One might argue that this sentencing pattern was a reflection of their numerical increase during this particular period, were it not for the fact that daylaborers and journeymen also increased demographically, yet they were sentenced to very few property crimes. While textile-related professionals received twenty sentences daylaborers had three, journeymen two and beggars no property crime sentences.

This seemingly paradoxical sentencing trend is further complicated by the conviction rate for the period of economic decline between 1595 and 1627, with a brief recovery between 1601 and 1608. Many people especially in the textile industry became unemployed. Local hardship was aggravated by the price revolution, which drove up the food prices as outlined in the first chapter. This

inflation most seriously affected daylaborers and unskilled persons, but journeymen also suffered from a pauperization process. Yet it was precisely during this period that crime sentencing for all afflicted groups either declined drastically or remained at a low level. Property crime sentences for textile-related professionals dropped by half, while daylaborers and journeymen were sentenced for two and three property offenses, respectively.

Thus periods of economic deprivation had an across the board negative effect on the conviction rate while those from society's lower echelon experienced infrequent sentencing overall. Those at the level of subsistence like daylaborers, journeymen on the verge of being displaced, were sentenced for considerably fewer crimes during both favorable and unfavorable economic times. For these groups the correlation between the economic situation and the crime sentencing seems to have been altogether unrelated. Therefore, to say that the poor and vagrants were the most likely candidates to be sentenced for property offenses is not substantiated by the archival findings for Frankfurt.<sup>19</sup>

And the sentencing trend for the most destitute of all, the beggars, substantiates this contention further.

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19. In contrast to Dülmen's assertions 11, 80.

It was quite amazing to find out that only three beggars were sentenced during the Thirty Years War, a time when Frankfurt experienced a veritable flood of beggars. Logically, this flood of desperate people should have led to more crime sentencing. Oddly enough, the 3 sentences were not even property crimes but referred to crimes against persons and sentences entailing the Verdachtstrafe. No beggar was ever sentenced for having broken into or stolen out of the alms-chest and no beggar was ever sentenced for falsifying begging papers. Ironically, three local beadles, those in charge of the beggars, were sentenced for having pried open and looted the alms-chest, while three Catholic theology students were sentenced for falsifying begging papers.

Beggars, as pointed out previously, were protected by the local population. They were hidden from the beadles. While the City Council tried to enforce a more systematic institutionalized poor relief system, the local population did not co-operate with the official government decrees. They protected the beggars. Had the local population acted differently and co-operated with the City Council, one would surely see a higher crime sentencing for beggars.

And a similar argument can be advanced for the treatment of journeymen in light of the fact this was by no means a peaceful group of young men. The actual number

of offenders in this group was much higher than the sentencing rate would indicate. One only has to recall the sack of the Jewish ghetto carried out by 3,000 to 4,000 journeymen and industrial workers.<sup>20</sup> In addition, assaults on Jews persisted and so did fights among the journeymen themselves.<sup>21</sup> The most likely explanation for the small conviction rate of journeymen is that their acts were underreported, the more so since they seemed to vent or act out the prejudices of the community at large as in the sack of the Jewish ghetto. Journeymen were the agents of popular feelings.

Selective crime reporting by the population at large was thus one, if not the most crucial factor of early modern crime sentencing, especially when in the absence of any police force reporting was left to the people. But their selective approach worked two ways, namely in overreporting and underreporting. Underrepresentation of certain individuals or groups, or even omissions of major segments do bespeak this point as was demonstrated on the hand of beggars and journeymen. But one finds the same attitude toward the rich and powerful. It was quite surprising to see that not one local patrician was ever sentenced during the entire 134

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20. Bothe, Beiträge, 98.

21. Bothe, Stadt Frankfurt, 381; Bb 1683, 45.

year time span. Both extremes, the poor and the rich, were underrepresented in criminal sentencing, unless one believes that neither group committed any serious crimes. Jews, on the other hand were conspicuously overreported.

One of the fundamental ingredients enhancing such a selective crime reporting pattern was furnished by the pervasive use of visible symbols which made recognition of any offender so much easier. And this point also affected the crime sentencing of the last group of male offenders analyzed in this paper, namely professional criminals.

#### Professional Criminals.

This category of delinquents consists of individuals or groups of people who made a profession out of crime. But the identification of these professional criminals poses several problems. One difficulty consists of disentangling professional criminals from repeat offenders. A repeat offender did not necessarily have to be a professional at crime. One of the clues to differentiating between the two groups was the use of special additives such as describing the offender as a horse thief or a well-known thief.<sup>22</sup> In another case the records clearly stated that the offender had made ein Handwerk aus dem Stehlen gemacht, or he made a trade out

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22. St May 9, 1595; St June 12, 1590.

of stealing.<sup>23</sup> Another means to identify professional criminals was the use of nicknames. But special caution has to be applied since nicknames by themselves are no sure sign of professional thievery. In those cases where the nicknames were used in conjunction with further clarifying statements such as under den Dieben der Türk genannt, which described the offender as being called the Turk among thieves, the entry was taken to refer to a professional thief.<sup>24</sup>

Identifying bands or gangs of tightly organized professional groups was the second problem. Although the records list mass sentences and mass executions, such group executions are no definite sign that the criminals had acted in concert and does not furnish proof of the existence of organized bands. Mass sentences and punishments occurred for practical reasons such the economy of multiple, rather than single executions as explained in the previous chapter. Even when an offender was sentenced to participation in or concealment of property crimes, one cannot assume that the offender was a member of an organized gang or band.

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23. St March 8, 1661.

24. St March 28, 1617; St April 12, 1594; St April 23, 1596.

Numerically speaking, a total of 85 sentences for property crimes involving professional thieves, were found. Among these 85, roughly half of those sentenced could be identified as members of an organized band of thieves. Unfortunately, the actual number of bands cannot be deduced from the number of gang member sentences.

The difficulty in establishing the existence of organized bands in Frankfurt might mirror the actual absence of local gangs and indicate that contemporary bands were not an urban phenomenon. Gang members might come to the city to commit their crimes or sell their stolen products. They might not take up local residency. This line of argument is corroborated by one case where the members of a band spread their domiciles over several villages.<sup>25</sup> They obviously preferred roaming around in the country-side.

The reason for such behavior might have been that a contemporary city of the size of Frankfurt was not a good hiding place for gangs. Although Frankfurt's population increased from 15,000 to maximum 20,000 by mid-seventeenth century, it was still a relatively small town. In addition, one has to consider that the people lived in very close quarters which facilitated easy communication and mutual supervision. And an organized

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25. St March 8, 1661.

gang must have been perceived as a far greater threat to the local population than individual criminals and thus enhanced the people's alertness. It was a form of local self-defense.

If local gangs thus faced difficulties in remaining undiscovered, outsiders faced an even greater obstacle given the xenophobic disposition of many locals as discussed in Chapter II. In addition, outsiders were easily identified as such both by their dress and in particular by their speech pattern. Frankfurt's population used (and still does) a distinctive dialect and so did every other location in Germany. From the largest town to the smallest village every location had its distinct local linguistic intonations or word usage. A person from Hamburg or any other area for that matter was easily identified as such. Language differences made it more difficult for outsiders to hide locally.

The contemporary city was not a good hiding place especially not for organized professional criminals. Contemporary gangs and organized banditry might have been more symptomatic of the country-side. It was possibly only with the swelling of the cities and especially with the Industrial Revolution and the gradual disappearance of the dress codes for this pattern changed.

And this contention is substantiated by similar findings from other European areas. The historian Tobias

demonstrates this process most clearly in the experience of English towns. He argues that at the beginning of the eighteenth century only London was large enough "to have developed a full-scale criminal society."<sup>26</sup> Only when towns such as Manchester and Birmingham increased in size by the end of the eighteenth century did they experience a similar process.<sup>27</sup> The historian McMullen argues on similar lines doubting that a "criminal underworld" flourished elsewhere than London during the 1550 to 1700 period.<sup>28</sup> He cites London's growth as the determinant factor, namely from approximately 60,000 inhabitants in 1550 to anywhere from 320,000 to 340,000 in 1634.<sup>29</sup> A similar contention is advanced by Sharp who documents that there was "little by the way of organized crime" in seventeenth century England with the possible exception of London.<sup>30</sup> Sharp alludes to popular literature as a possible factor in "creating" organized bands.<sup>31</sup> The historian Beier also speaks of a literary myth of an

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26. J.J. Tobias, Crime and Police in England, 1700-1900 (Dublin: Gill and Macmillan, 1979), 8.

27. Ibid., 17.

28. John L. McMullen, The Canting Crew, (New Brunswick: Rutgers University, 1984), 2.

29. Ibid., 8, 20, 23, 157.

30. Sharp, 102, 118.

31. Ibid., 118-119.

organized underworld.<sup>32</sup>

Data for the eighteenth century seem to point toward the proliferation of bands. For France, regional studies of Normandy and Bordeaux corroborate this trend.<sup>33</sup> In Amsterdam, no archival sources are available to demonstrate the existence of local gangs during the seventeenth century, while during the eighteenth century a "network of bands was rounded up."<sup>34</sup>

These findings thus substantiate the hypothesis that a town the size of Frankfurt was not a good hiding place for organized bands, at least not during the sixteenth and seventeenth centuries.

#### Female Crime Sentences

A numerical assesement of female offenders sentenced during the 134 year period under investigation reveals that their conviction rate was considerably below those of men. Out of the total of 1,338 criminals, 315 were women which represents 23.54% of all crime sentences as is evidenced by the statistics in Table 19.

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32. A.L. Beier, Masterless Men: The Vagrancy Problem in England, 1560-1640 (London-New York: Methuen, 1986).

33. Ruff in his footnote 27 on page 141.

34. Spierenburg, 138.

Table 19.-- Female Versus Male Sentences

	1562	1595	1628	1661						
	-	-	-	-						
	1594	%	1627	%	1660	%	1696	%	Total	%
Female	79	17	113	27	43	35	80	24	315	24
Male	383	83	302	73	78	65	260	76	1,023	76
Total	462		415		121		340		1,338	

Source: Book of Punishments

Throughout the period studied, women had a considerably lower sentencing rate than men, except during the period of the Thirty Years War when the disparity shrinks somewhat. This divergent female-male sentencing ratio is even more striking bearing in mind that demographically speaking women outnumbered men. And if one considers that women had been pushed out of the guilds and consequently suffered a decline in their economic and social status, and might have turned to crime, one is faced with an interpretive dilemma over the low number of sentences. How could an economically and socially disadvantaged numerical majority of the population be sentenced for less than a quarter of all crime sentences and this consistently throughout the entire 134 year span?

Although this conviction rate is surprising it is not unique to Frankfurt. Similar findings can be cited for France and for eighteenth-century women in England.<sup>35</sup>

35. Ruff, 85; Castan, *Languedoc*, Table 8 on page 26; J.M. Beattie, "The Criminality of Women in Eighteenth

As in the structure of female crimes sentences found in England and France, most women in Frankfurt were convicted for considerably fewer aggressive crimes than men as Table 20 demonstrates.<sup>36</sup>

Table 20.-- Distribution of Female Versus Male Offenses

Crime Category	Female	Male	% Female
Property Offenses	127	687	15.6
Sexual Offenses	134	105	56.1
Disturbing Public Peace	36	105	25.5
Crimes against Persons	32	148	17.8
Religious Offenses	22	65	25.3
Forgeries	14	112	11.1

Source: Book of Punishments

Women were sentenced for 32 crimes against persons while men reached 148 such sentences. But the largest numerical discrepancy occurs in the sentences for property crimes. Women were sentenced for 127 property crimes whereas men received 687 such sentences. But while only 15.6% women were sentenced for property offenses, the reverse sentencing pattern occurred for sexual crimes where women exceeded men by 134 to 105.

Crime sentencing trends changed only slightly during the 134 years under investigation. Property crimes thus represent the biggest female-male sentencing disparity throughout as evidenced by Table 21.

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Century England," The Journal of Social History 8 (Summer 1975): 80.

36. Beattie, "Criminality of Women," 96; Castan, Languedoc, 34.

Table 21.-- Nature of Offenses from 1562 to 1696

	1562		1595		1628		1661	
	-		-		-		-	
<u>Nature of Offenses</u>	<u>1594</u>		<u>1627</u>		<u>1660</u>		<u>1696</u>	
	F	M	F	M	F	M	F	M
Property Offense	33	276	41	225	19	35	34	151
Sexual Offenses	28	33	63	36	12	11	31	25
Dist. Publ. Peace	10	26	11	32	6	12	9	35
Crimes v. Persons	5	58	6	46	15	18	6	26
Religious Offenses	5	11	12	27	0	5	5	22
Forgeries	7	44	2	26	0	3	5	39
Total	88	448	135	392	52	84	90	298

Source: Book of Punishments

In absolute numbers, most women were sentenced for theft, namely 100 out of the total of 127 female sentences, a pattern which continued throughout as demonstrated on the enclose Table A12. Male culprits were also primarily sentenced for thefts, namely 461 out of 687 male property crimes. But here the similarities end. The second highest ranking male offense was burglary consisting of 85, while women were only sentenced for 6 such crimes. No women was ever sentenced for poaching, church robbery, or pickpocketing. It thus seems that women were sentenced for less aggressive property crimes, a trend most clearly evidenced by the 28 male versus 2 female robbery sentences.

The reasons for the quantitative and qualitative discrepancies are difficult to explain. Did women actually commit fewer and less aggressive property crimes than men? Due to the lack of precise archival material,

the answer has to remain conjectural. Women might have committed fewer property crimes, but fewer women might have been reported and sentenced for such crimes. Yet it should be borne in mind that women numerically speaking outnumbered men, that their income was considerably below men's, (even female domestic servants received less pay), that women had been pushed out of the guilds, and that women had a disproportionately high representation among the poor. Also, women had gradually lost their social status. Although women had the odds against them, they were sentenced for considerably fewer property crimes. The least one should derive from these statistics is a doubt with regard to the traditional equation of poverty and property crime sentences.

Women were thus sentenced for considerably fewer and for less aggressive property crimes. The opposite was the case for sexual crime sentencing. Here women outnumbered men by 134 to 105. This numerical discrepancy, although considerably smaller than property crime sentences, is surprising given the special nature of sexual offenses.

Sexual offenses are in a category by themselves in that sex unlike any other crime needs the voluntary cooperation of two partners with the exception of rape, child molesting, and bestiality. Hence, the number of crime sentences should be spread more equally among female and male offenders since it required the

participation of both sexes. Yet the above picture does not confirm this hypothesis. First, more women were convicted and second, women's sentences diverged qualitatively from men's sentencing.

The divergent sentencing pattern occurred during the 1595 to 1627 period. A complete female-male sexual sentencing reversal took place. During the previous period 33 sentences fell to men and 28 to women, while in the period in question 63 fell to women and 36 to men (re enclosed Table A 13.) Did Frankfurt's women become more licentious?. The crime categories may furnish the clue to answer this query. The numerical reversal was most prominent in three crime categories, namely prostitution, fornication, and incest. Women were sentenced for 14 prostitution crimes while not a single men was sentenced for such an offense during this particular period. Women also outranked men in fornication sentences by 21 to 5, and in incest sentences with 6 to 3.

This sentencing trend continued until 1696, the end of the period under investigation. All in all, women were sentenced for 32 cases of prostitution as against 3 for men. Fornication sentences were split between 43 for women and 21 for men, and incest sentences broke down 13 to 11. In contrast, men led in adultery sentencing, but only by 33 to 28, while for bigamy men had a clear lead with 11 to 3.

The nature of the sexual offenses furnishes thus the underlying reason for the disparity in female-male sexual crime sentences. Men were primarily sentenced for adultery and bigamy, both of which are sexual crimes directly related to marriage. Women, in addition to adultery, were most often convicted for fornication and prostitution.

The disproportionately high number of female prostitution sentences resulted from the crime reporting system. It will be recalled that the city of Frankfurt owned and managed municipal brothels until 1560, that is two years prior to the beginning of this study. After 1560, the housing of prostitutes was legally abolished. It seems likely that many of its former residents literally took to the streets. In order to recruit customers these women had to make special advances or visible signs and signals. It might also be recalled in this connection that Frankfurt's government had introduced a special dress code for prostitutes. Bearing in mind these visible insignia, it was relatively easy to report on and apprehend a soliciting prostitute. It was (and still is) quite a different matter to report on the male culprit.

A similar argument could be made for fornication sentences. It should be re-iterated at this point that the term fornication implied that the culprits were not

married. The discovery of such an offense could be greatly facilitated by the visible fact of pregnancy in a single woman. In many fornication crime sentences the women had become pregnant and the fruits of her crime were highly visible. To state the obvious, men were not subjected to such visible scrutiny. In addition, men were favored by the contemporary legal system with its various loopholes allowing for the payment of monetary fines. Offenders of high social and financial status could pay a fine instead of suffering corporal punishments. Because men generally held higher social status and were wealthier than women, they could take advantage of these legal provisions more often than women could.

In 1618 for example, an unmarried female servant had sexual relations with her master, a local burgher, and became impregnated. She gave birth to a stillborn child which she disposed of secretly. She was charged with fornication and punished by flogging and banishment, whereas her master was not even listed in the Strafenbuch as a culprit. But another set of documents showed that he was charged with the payment of the Schmachgulden, the shame money.<sup>37</sup> Or in 1668 when two men asserted as witnesses that they had had sexual relation with an unmarried woman. While they were not punished at all, the

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37. St Feb. 28,1618; Bb 1617, 168.

woman was sentenced to flogging.<sup>38</sup>

Women culprits suffered a double burden, heightened visible exposure and corporal punishment for the deed. This female-male dichotomy started at the end of the sixteenth century. It was surely no historical accident that the emerging gender gap coincided with the movement by the guilds to bar women and illegitimate individuals from joining their ranks. The sentencing pattern thus re-confirms the previously advanced contention that the City Council of Frankfurt used sexual legislation and sentencing to re-inforce the marital norm. But it should be remembered that the City Council did not initiate the original movement but listened to suggestions from the guilds. It is of equal importance to bear in mind that in addition to the guilds and the City Council, the population at large co-operated with selective crime reporting.

Women's sexual freedom was increasingly curtailed as exhibited by the fornication sentencing trend, a pattern not so readily observable in male fornication convictions. It also demonstrates that pre-marital sex became more dangerous for women than for men for not all cases of pre-marital sex ended in marriage. Women were not always rewarded with a wedding.

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38. St April 2, 1668; Bb 1668, 212.

This development might partially explain why women were sentenced for an increasing number of infanticides. True, in comparison to male sentences for crimes against persons, women trailed far behind with 32 sentences as compared to 148 for men (re the enclosed Table A 14), but 16 of the 32 crime sentences consisted of infanticides. Not a single man was sentenced for infanticide. In addition, women were sentenced for two child exposures and three abortion cases.

The remaining crimes against persons for which women were sentenced consisted of 2 murders in contrast to 18 such sentences for men. Not a single woman was sentenced for robbery and murder. Only one woman was sentenced for manslaughter as compared to 69 sentences for men, and only 2 bodily injury sentences went to women while 34 fell to men. Women's sentencing pattern for crimes against persons thus differed quantitatively and qualitatively from men's. They were convicted for considerably fewer and less violent crimes than men. But did they actually commit fewer corporal crimes?

Two facts point in this direction. First, comparatively speaking similar findings were made in other European areas such as for France where a regional study evidences that 84.5% of the crimes against persons was attributed to men.<sup>39</sup> Figures from Amsterdam also show

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39. Ruff, 85.

that men were charged for the most aggressive crimes.<sup>40</sup> Second, in the case of Frankfurt, the infrequent sentencing of women for aggressive property crimes substantiates the general notion that women seem to be less aggressive perpetrators.

The remaining three crime categories, namely religious crimes, forgeries, crimes against disturbing public peace were also crimes for which women received infrequent sentences, as the enclosed Tables A 15, A 16, and A 17 demonstrate.

#### Personal Data on Female Offenders

Numerically speaking, out of the total of 315 female offenders, the records listed 285 women with personal descriptions. This represents a wide sampling which should give a fairly representative cross-section of those women sentenced for crimes.

As pointed out previously women were in a category all by themselves based on different personal descriptions in the Strafenbuch. A woman's marital status was almost always listed in contrast to male offenders where such entries were mentioned in isolated cases only. In addition, women were in most instances recorded in conjunction with a man. Only 30 out of 315 female delinquents were registered without reference to a man.

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40. Spierenburg, 165.

The archives listed her father, if single, or her husband, if married or even a deceased father or husband. A woman's identity was non-existent without male reference.

It should thus not come as a surprise that hardly any entries were found pertaining to a woman's occupation or profession in sharp contrast to male offenders. Only a few female domestic servants, one cook, one peasant, and two tobacco processors could be identified. But prostitutes were clearly described. The omissions of female professional and occupational descriptions could have occurred for a variety of reasons. First, such women might not have committed any crimes or were not reported and sentenced for any. Second, women's professional and occupational data was not included in the criminal records simply because women had ceased to be of any importance in these fields and, therefore, such references were superfluous. Bearing in mind the previously described forced exodus of women from the guilds, one is more inclined to argue for the latter interpretation, namely that very few women were left as independent professionals or artisans.

#### Single Women

On the basis of the marital status, two female criminal groups were established, namely married and unmarried women. One group of women posed some problems,

namely those identified as Zuheltherin. It is very difficult to give this term its proper English translation. Most crudely, it could be translated as concubine, but without the negative connotation. Such women were living with men, in some cases for many years, without being officially married. Most interesting, until the beginning of the seventeenth century the crimes these Zuheltherinnen were sentenced for had little, in most cases nothing to do with this extra-marital status, such as crimes of fornication.<sup>41</sup> In this study, Zuheltherin were incorporated into the category of single women together with burghers' daughters, stepdaughters, domestic servants, widows, prostitutes, and those whose sole identity seems to have been related to the non-marital status.

Numerically speaking, more single than married women were sentenced, a pattern also found in other areas.<sup>42</sup> In Frankfurt, it amounted to 175 single in contrast to 110 married women. An additional 30 women could not be identified.

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41. St Oct. 13, 1571; Oct. 31, 1601.

42. Castan, Languedoc, 29.

Table 22.-- Sentence Distribution among  
Single Women

	1562	1595	1628	1661	
	-	-	-	-	
	1594	1627	1660	1696	Total
Domestic Servants	6	11	6	9	33
Widows	7	9	8	6	30
Prostitutes	9	18	0	1	28
<u>Zuheltherin</u>	7	8	0	0	15
Burgher's Daughters	0	7	2	4	13
Stepdaughters	4	3	0	1	8
<u>Singles General</u>	12	21	12	3	48
<u>Total</u>	45	77	28	24	174

Source: Book of Punishments

The data in Table 22 evidences two major trends. First, sentencing of almost all groups increased considerably during the 1595 to 1627 time span. Second, domestic servants ranked first among single women, closely followed by widows, while prostitutes were in third place.

Single women were primarily sentenced for sexual and property crimes. Corporal offenses, crimes against public order and religion fell considerably short compared to the first two categories as illustrated in Table 23.

Table 23.-- Distribution of Offenses for Single Women

<u>Offenders</u>	<u>Sex.</u>	<u>Prop.</u>	<u>Corp.</u>	<u>Rel.</u>	<u>Publ.</u>	<u>For.</u>	<u>Total</u>
Domestic Ser.	8	18	6	1	5	1	39
Widows	16	12	7	1	0	0	36
Prostitutes	20	7	0	3	3	0	33
<u>Zuheltherin</u>	7	11	0	0	2	0	20
Burgher's D.	5	3	3	2	2	0	15
Stepdaughter	7	1	0	0	0	0	8
<u>Singles Gen.</u>	19	21	7	2	4	3	56
<u>Total</u>	82	73	23	9	16	4	207

Source: Book of Punishments

But this conviction pattern was not shared equally by all single women. It comes as no surprise that prostitutes head the list of sexual crime sentences. In some instances mass arrest and mass sentences took place such as in 1575 when a total of 7 prostitutes were sentenced.<sup>43</sup> Most of the remaining single women were sentenced for fornication which in many instances ended in pregnancy. Stepdaughters had a divergent sexual sentencing pattern. They were primarily sentenced for incest. Out of a total of 24 incest sentences altogether during the 134 year period, 7 fell to stepdaughters. In all 7 instances the incest occurred with the stepfather and in all 7 instances it ended in pregnancy. But not in all 7 instances did the stepfathers find a ready co-operation on the part of their stepdaughters as two cases

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43. St March 9, 1575.

demonstrate. The records clearly state, that the stepfathers had forced their stepdaughter to comply.<sup>44</sup> In a third case the stepdaughter was only 14 years old.<sup>45</sup>

The second most frequently sentenced crime consisted of property offenses and here domestic servants ranked highest. They were mainly convicted for thefts committed in their employer's home. The relatively large number of domestic servants sentenced for property crimes might be attributed to the fact that they were considerably underpaid, especially when compared to their male-counterparts. But such a correlation should not be overstated since the fear of becoming unemployed if caught stealing might have worked as a deterrent. Another explanation of the high sentencing rate might be found in the reporting of such felonies. The population at large kept a careful watch over female servants since they were not particularly appreciated in Frankfurt, as is evidenced by the Gravamina of Frankfurt's burghers presented to the City Council in 1612. Item 15 accused and reproached the City Council for allowing too many masterless maids to settle in Frankfurt, as these women in turn would work at low wages and bring dishonor and

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44. St Nov. 22, 1604; St Dec. 31, 1623.

45. St Oct. 23, 1589.

vice to Frankfurt.<sup>46</sup> The population surely did not refrain from reporting on servants.

Widows and Zuhelsterin while also sentenced for a considerable number of property offenses, had a more diversified property crime pattern. Approximately half of the widows sentenced for such crimes had committed them in close cooperation with other offenders, while many Zuhelsterin did so with their male companions.<sup>47</sup>

The third most frequently recorded crime sentence consisted of crimes against persons. Single mothers were sentenced for a total of 22 such crimes consisting of two murders, one attempt at poison, one suicide and one concealment, in addition to two abortions, and two child exposures. But the majority of such cases were infanticides. Out of the grand total of 16 infanticide sentences for the 134 year period 15 went to single mothers. Both the quantitative and qualitative aspects are interesting to analyze.

Quantitatively speaking, studies covering considerably larger areas than Frankfurt document a lower infanticide rate. The historian Ruff covering two major regions in France, documented only 3 infanticides during

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46. Bothe, Wirtschaftlich-Soziale Entwicklung, 388.

47. St Oct. 8, 1569; St Oct. 13, 1571; St Oct. 8, 1575; St Sept. 2, 1586; St May 2, 1605.

the 1696 to 1789 period.<sup>48</sup> In Amsterdam, 9 servant girls were put on trial during the 1651 to 1750 time span.<sup>49</sup>

In Frankfurt, the number is almost twice as big. Unfortunately, the identity of the offenders could only be clearly established in 8 cases. They pertain to 4 female servants, followed by widows who were sentenced for 2 infanticides and 1 child exposure and so were single burghers' daughters, that is 2 infanticides and 1 child exposure. The remaining 7 infanticide sentences were given to a somewhat amorphous grouping of single women without further identification who were also sentenced for the 2 abortions.

Out of a total of 16 infanticide sentences, 15 thus went to single women. Notable exceptions were prostitutes, Zuhelsterin, and stepdaughters. None of them was ever sentenced for infanticide or abortion. Only one married woman was sentenced for infanticide and in this particular case it was the grandmother who killed the illegitimate child of her daughter. The almost exclusive sentencing of single women for infanticides is startling and gives cause for further analysis, especially if one considers that an additional four domestic servants and one single women were suspected of infanticide and

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48. Ruff, 70.

49. Spierenburg, 120.

received the Verdachtstrafe, while only one married woman was suspected of infanticide and no man ever.

Marital status thus seems to be of prime importance in the sentencing structure of infanticides. And this phenomenon can be explained in historical terms. During the fourteenth century not a single infanticide sentence was registered in Frankfurt's archives and the first such entry dated from the year 1444.<sup>50</sup> During the sixteenth century a total of 7 were registered the first dating from the year 1512, while the number increased to 16 during the seventeenth century. In other words, the change in the sentencing pattern occurred at the beginning of the sixteenth century and intensified during the seventeenth'.

Most curiously, it was also at the beginning of the sixteenth century that in many German areas an increasing number of ordinances for midwives included clauses requiring them to report illegitimate children.<sup>51</sup> In France a royal edict of 1556 initiated similar steps.<sup>52</sup>

This apparent concern and increased sentencing of infanticides is no historical accident, at least not in the case of Frankfurt. It runs an almost parallel course

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50. Kriegk, Bürgertum, 202-203.

51. Wiesner, 61.

52. Ruff, 70.

to the sentencing of sexual offenses. While infanticide convictions increased during the sixteenth century, so did sentencing for sexual offenses. Both sentencing trends are too close in time to be accidental and generically too closely linked to be attributable to extraneous events. And both sex and infanticide sentences primarily affected single women, a pattern corroborating the previously discussed societal changes with regard to sexual mores.

From the late fifteenth century on, extra-marital sex, as analyzed in the previous chapters, was increasingly viewed in negative terms. The guilds greatly influenced the changing sexual norms by increasingly insisting on the legitimate birth of the applicant, the applicant's parents and even grandparents. This ever-widening circle of proof of legitimacy necessitated not only a legitimate marriage and the disappearance of the Zuheltherin status, but greatly affected everyone outside the realm of legitimate marriage. Extra-marital sex became increasingly risky and illegitimate birth became increasingly stigmatizing for the mother and the child who was deprived of a fair social and economic status in society.

Under the circumstances and bearing in mind the rudimentary birth-control methods of the times, one is surprised to find extra-marital sex at all. It became a

risky enterprise, especially for single women. The argument that pregnancy would require a man to marry the woman, was not always the case. And this fact was true in spite of Frankfurt's laws stating that those who had committed fornication and married would not be subject to any punishment, either fines or corporal penalty. The sentences for sex crimes show a different story. And single women had a disproportionately high sentencing rate for such transgressions amounting to 35% of the total sentences.

Single women were sentenced for almost all infanticides. Women's marital status thus seems to have been of prime importance in the sentencing pattern for both crimes, for men's marital status was not even entered in the records. Intensified guild restrictions re-inforced by the Reformation had led over the years to a heightened fear and anxiety of conceiving an illegitimate child lest it be excluded from ever entering a honorable profession and thus become an outcast for the rest of her or his life. Illegitimate pregnancy and birth also cast a shadow on a single women's chances of ever achieving the all-important state of marriage. What "honorable" person would ever consider marrying a single mother, especially since her past would lead to the future exclusion of their children from learning a honorable trade. A case in point was mentioned earlier

when an artisan's wife who had been of illegitimate birth, was excluded from local dances. She would have been subjected to further sufferings had the City Council not intervened. Thus future concern for their children in addition to their own shame are to be taken as prime motives for single women who committed infanticide. And in the case of female servants, fear of losing their employment must be added.

But single women were not necessarily the only ones committing infanticides. Infanticides could also occur in a family setting. One might even argue that such crimes were far easier to hide if committed within the family.<sup>53</sup> The death of a baby born to a married mother was less suspicious than the death of an illegitimate baby. Pregnancy of a single women was much more conspicuous in a society which paid increasing attention to extra-marital sexual norms.

How seriously it affected single women can be deduced from the fact that not even the punishment of death by sword seemed to deter them from killing their newborns. It is also demonstrated by the various case descriptions such as when the grandmother killed her grandchild to spare her own daughter from public

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53. R.W. England, "Investigating Homicide in Northern England," in Criminal Justice History, Vol. VI (Westport, Ct.: Meckler Publishing Co., 1985), 119.

exposure.<sup>54</sup> But the most moving of all was when a Jewish servant stabbed herself several times with a knife but tried to cover up her suicide by pretending she had been attacked. When interrogated shortly before her death about the reason for this false attack, she indicated shame at having given birth to an illegitimate stillborn baby.<sup>55</sup> Another case turned a future illegitimate mother into a murder victim herself. A female servant's master impregnated her and then assassinated her with the help of a soldier.<sup>56</sup>

A society which put an ever-increasing stress on conformity in the marital field created innocent victims in the form of murdered babies and unfairly burdened unmarried women. Single women suffered most heavily for they lost social status. It is surely no coincidence that at a time when infanticides rose namely the beginning of the 1620s, the term Zuhelsterin and with it the concept of co-habitation without formal marriage gradually disappeared. It was also at this time that women were increasingly coerced by the City Council to get approval for their marriage partners from the government lest they marry some unwanted outsiders, as was clearly

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54. St June 18, 1613.

55. St June 6, 1695.

56. St Oct. 3, 1617.

demonstrated in an earlier chapter. This change further curtailed the freedom of single women. These inroads against the status of single women, the forced exodus of women from the local guilds and the Protestant abolition of single monastic life, confined a woman's place to "remain at home, sit still, keep house, and bear and bring up children" as suggested by Martin Luther in his Table Talks.<sup>57</sup>

It is thus not surprising that these restricting attitudes should have had repercussions in the criminal field. Not every woman was strong enough to resist sexual advances, particularly when they were made by her employer, and not every woman was strong enough to stand up for the "shameful" results. And it seems that the German term for original sin added its share to the emotional burden by labelling it Erbsünde which translated literally means an inherited sin, inherited like an illegitimate birth.

Considering these various developments which degraded women particularly single women in the economic field placing them among the poorest, in the religious sector depriving them of an alternative to marriage, and in the emotional realm by increasing their shame of

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57. Martin Luther, Table Talk, trans. and ed. William Hazlitt (London: H.G. Bohn, 1857), 299.

sexual relations, it is indeed very surprising that single women were sentenced for as few crimes as they were. They ranked among the most disadvantaged yet their proportion of crime participation was 175 out of 1,338. And this low number cannot be attributed to a deliberate under-reporting of their offenses by the population. On the contrary, focus on marital status literally singled out the single woman as potentially strange.

One also has to bear in mind at all times that Frankfurt's contemporary society was a face-to-face society, where most people either knew each other or at least were able through the various dress codes to distinguish the various social strata. The visible aspects greatly facilitated crime reporting and they were particularly relevant with regard to prostitutes and single, pregnant women. A swollen belly on an unmarried woman ignited local gossip and intensified supervision.<sup>58</sup> But the status of the single women played a most important role in crime reporting and sentencing. The conspicuous absence of any single women of patrician decent or from a wealthy merchant family from the groups sentenced is indicative of the role of status. Perhaps, they did not succumb to any pre-marital sexual advances. If they did, they were not exposed to corporal and

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58. St June 25, 1641.

publicly shaming punishments. They were not subjected to the Knechtstrafen, the punishment for servants.

#### Married Women

Married women who were sentenced to crimes were composed of three basic groups, namely 16 soldiers' wives, 15 burghers' wives, and 70 women whose sole identity was their married status. In addition, four gypsies, three domestic servants, and one stepmother could be identified. But again no patrician women were among them.

The crime sentencing pattern for married women resembles that of single women for two crime categories while the rest is different. Married women, like single women, were primarily sentenced for sexual offenses closely followed by property crime sentences. But unlike single women, crimes of disturbing public peace ranked higher, while crimes against persons fell to fourth place followed by religious and falsification crime sentences, as shown in Table 24.

Table 24.-- Distribution of Crimes for Married Women

	1562	1595	1628	1661	
Nature of	-	-	-	-	
Offense	1594	1627	1660	1696	Total
Sexual Offenses	7	20	1	18	46
Property Offenses	13	13	7	15	48
Dist. Public Peac	6	4	2	0	12
Crimes v. Persons	1	2	3	3	9
Religious Offense	0	4	0	2	6
Forgeries	4	0	0	4	8
<b>Total</b>	<b>31</b>	<b>43</b>	<b>13</b>	<b>42</b>	<b>129</b>

Source: Book of Punishments

As was to be expected, adultery was the most common sexual crime sentence for women, but with 6 sentences, pandering was surprisingly prevalent. In one unusual case, the woman procured a young girl for her husband.<sup>59</sup> Equally surprising was the fact that 5 forgery sentences consisted of forged begging papers. In one instance the woman was married to a forger, and in two cases she committed the deed together with her husband.

But it was property crime sentences which exhibited a conspicuous sentencing pattern. With 22 out of the total of 44 sentences, thefts headed the list. The 8 sentences for property crime concealments was very high both compared to the low sentencing rate for the remaining property crimes and seen in relation to the almost non-existent property crime concealment sentences for single women.

In addition, married women were sentenced for seven property crimes which were handed down together with sentences against their husbands. An additional six women sentenced for property crimes were married to thieves. If one adds the eight concealments to these 13, one arrives at a total of 21 out of the 46 property crimes which one

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59. St Oct. 12, 1588.

way or another involved the husband of the offender. One might interpret this sentencing pattern as a husband-oriented one.

This contention is further corroborated by the fact that six women received the Verdachtstrafe for property-related offenses simply because they were married to thieves. One might argue that married women were more readily perceived as suspicious or even guilty by mere familial association with criminal husbands. The familial ties cast such a wide shadow that it fell on the wife of an offender. This pattern demonstrates that married women were losing their independent identity to a point that they were increasingly seen as an appendage to men and even shared their reputations and criminal punishments. If single women were singled out for extra-marital sexual offenses and hereby pressured into marriage, married women were increasingly subjugated to their husbands, a contention further corroborated in the chapter on punishments.

In summary, crime sentencing was related to changing societal attitudes toward a certain act and most importantly to the person who performed the deed. Thus a sentenced criminal exhibited society's criteria for his or her arrest and the government's propensity to sentence the suspect. Sexual crime convictions and the Verdachtstrafe attest to this as clearly evidenced by the

divergent sexual sentencing patterns for single and married women as compared to burghers and soldiers, and the obvious bias expressed in an oversentencing of Jews to the Verdachtstafe.

The divergent sentencing patterns reflected definite biases on the part of the City Council, the sentencing body, but also on the part of the population. In fact, one can state that one of the most outstanding characteristics of Frankfurt's contemporary justice system was the important role played by the local population. They had to turn in the culprits. And Frankfurt's population did not report crimes objectively but selectively. This pattern became very apparent in the way single women were treated, how patricians were conspicuously absent, and conversely, how beggars were protected. Crime reporting and sentencing were to a large extent influenced by what and particularly whom the population at large conceived as offensive. It was more often a question of who committed the offense than the nature of the offense itself. Criminal sentencing was not entirely crime-related but to a large extent person-oriented based on underlying biases on the part of the authorities and the people. If crime reporting and the actual sentencing were selective, so was the application of the actual punishments.

## CHAPTER VI

## PUNISHMENTS

As has been seen, even before sentencing, considerable biases existed in Frankfurt's criminal jurisdiction. This chapter will show that such disparities were carried over into the actual deployment of criminal punishments. In an effort to determine the main sources of divergencies, the various kinds of punishments will be analyzed in addition to the frequency of their employment and relative changes over time. But a correlation of the punishments to the crimes and to the personal characteristics of the offenders will yield the most significant insights.

The Strafenbuch clearly describes the various penal methods. Remarkably, in most instances such case descriptions are supplemented by drawings depicting the penalties. These penal sketches further attest to the significance contemporaries attached to communicating by visual symbols.

Three different kinds of criminal penalties were in use in Frankfurt from 1562 to 1696: capital punishments, corporal penalties, and banishments from the city. Such

afflictions of physical pain in penology were first recorded in Frankfurt's Stadtrecht, municipal law code, of 1297.<sup>1</sup> Prior to that date offenders were given monetary fines, carefully scaled according to the perceived severity of the criminal act. Despite the introduction of corporal punishment at the end of the thirteenth century, pecuniary retributions did not completely cease to exist. Both modes of punishment co-existed throughout the period under investigation. While this chapter evaluates the physical nature of the punishments, it should at all times be borne in mind that a parallel system of monetary fines existed. This co-existence was a sign of biased criminal jurisdiction, as clearly demonstrated previously.

#### Death Penalties

There were seven methods of capital punishment. They consisted of burning, drowning, burying a person alive, breaking on the wheel, death by hanging, decapitation by sword, and death by harquebus. Some of these penalties could be mitigated as when the culprit was strangled prior to burning. Likewise, punishments could be intensified by corporal pain or shaming procedures.

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1. Rau, 1.

Additional sufferings or humiliations could consist of pinching a culprit's arms or legs with red-hot tongs prior to the execution or hanging the victim by his feet. Shaming procedures consisted primarily of the use of symbolic features depicting the crime such as when the culprit had to wear either a replica of the stolen goods or a hat with the description of the deed. In addition, since the executioner was considered a dishonorable person in Frankfurt, as in other parts of Western Europe, it was perceived as a form of leniency if the convict was spared physical contact during the execution.<sup>2</sup>

In fact, the honor system did not stop at death as is most vividly demonstrated by the importance contemporaries attached to a honorable burial after execution. Most executions especially death by hanging did not automatically entail the speedy removal of the body from the execution site. The corpse could remain hanging for days, weeks, even months. Even a decapitated victim might have his corpus exposed for an indeterminate length of time with the body placed on a wheel, and, in some instances, the head put on a pike. Immediate burial after the execution was thus considered a special privilege granted by the City Council on various

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2. This particular aspect of the capital punishment has gained a lot of attention among historians: re Spierenburg, 13-42; von Dülmen, 91-97.

occasions and for various reasons.

But even the place of burial varied in importance. One could be interred underneath the gallows, which was the most degrading but still better than hanging for an indeterminate length of time. A more decent resting place was called Guten Leuten, which was adjacent to a local hospital. Most offenders who were granted the special privilege of burial were put to rest in this cemetery. Very few victims were actually buried in the church yard.

The concern contemporaries expressed over proper burial is significant for two reasons. First, exposure of the corpse was a visible symbol of a criminal past and served as a shaming aspect. Equally or even more importantly, the display of an executed criminal greatly affected the living family members of the executed. It was a daily reminder indirectly punishing the family of the offender, especially in a town of the size of Frankfurt. Secondly, the transcendental and eschatological character of such a punishment should be given strong credence. It added an additional punitive aspect considering the Christian emphasis on the resurrection of the body after death. How could his body be resurrected if it were not buried? Therefore, a criminal should not be buried among good Christians. The 1546 Frankfurt statute prohibiting prostitutes from being buried in the regular church yard corroborates this

idea.<sup>3</sup> Protestants and Catholics both seem to have agreed with this concept for Pope Pius V suggested having prostitutes buried in dungheaps.<sup>4</sup>

Death Penalties - Changes over Time

The application of the death penalty varied both in number and kind over the period investigated here. During the 1562 to 1696 period, a total of 337 death sentences were given. But their distribution over time exhibited a most surprising pattern. While during the last three decades of the sixteenth century a total of 173 capital penalties were handed down, the number decreased to 24 during an equivalent time span at the end of the seventeenth century. A decisive drop in numbers occurred already by the beginning of the seventeenth century as the statistics in Table 25 evidence.<sup>5</sup> Similar trends can be observed for other German towns such as Augsburg and Nuremberg.<sup>6</sup> In England, the level of executions declined as well by the 1630.<sup>7</sup>

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3. Kriegk, Bürgertum, 2:329.

4. Ibid.

5. van Dülmen's figures are slightly different: on page 114 he lists 339 death sentences, on page 117 a total of 366, on page 187 a total of 362, and on page 190 a total of 343.

6. van Dülmen, 113-114.

7. Sharp, 63-64.

Equally striking was the qualitative change over time. The most cruel execution methods ceased to be practiced by the beginning of the seventeenth century.

Table 25.-- Distribution of Capital Punishment

	1562	1595	1628	1661	
	-	-	-	-	
<u>Capital Punishments</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Hanging	114	63	7	13	197
Decapitation	42	34	20	11	107
Wheel	5	7	0	0	12
Drowning	9	2	0	0	11
Burning	2	5	0	0	7
Death by Harquebus	0	0	2	0	2
Buried Alive	1	0	0	0	1
<u>Total</u>	<u>173</u>	<u>111</u>	<u>29</u>	<u>24</u>	<u>337</u>

Source: Book of Punishments

Hanging, although the most common of capital punishments throughout the period of this study, decreased by almost half from the late sixteenth to the early seventeenth century. By the end of the seventeenth century it had dropped to 13 compared to 114 at the end of the previous century. Decapitation, the second most frequently used death sentence, exhibited a more gradual decline. The wheel, a far more cruel punishment ranked third but at a considerable numerical gap with 12 compared to the 197 hangings, and the 107 decapitations. Death by breaking on the wheel completely ceased to exist in Frankfurt with the last such sentence in 1621 while other European cities continued with such penal practices. In Amsterdam the wheel was used even after 1680 and in Nuremberg until the eighteenth century.<sup>8</sup>

Frankfurt's milder punitive trend is most conspicuously seen in the discontinuation of the most cruel penological methods such as executions by drowning, fire, or live burrial. The last person to be drowned was in 1613 and the last burning sentence was pronounced in 1627. The discontinuation of the use of these punishments is quite remarkable if one considers that death by burning existed in England until the mid-eighteenth century and drowning was practiced in Amsterdam until 1730.<sup>9</sup>

For Frankfurt, a milder trend for death penalties seems to have started in the early 1600s. But caution must be applied to such an interpretation because the sixteenth century had already exhibited similar tendencies. For example, as of 1597 persons sentenced to death by fire were strangled prior to being burned; thus they were spared the more horrible pain of burning alive. And while during the fifteenth century 25 persons were drowned, this number dropped to 11 during the during the 1500s.<sup>10</sup> Frankfurt's punitive system thus changed considerably prior to the Thirty Years War.

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8. Spierenburg, 150; van Dülmen, 117.

9. Thorsten Sellin and Marvin E. Wolfgang, The Measurement of Delinquency (New York: Wiley, 1964), 5, 145.

10. Rau, 57; Kriegk, Bürgertum, 1:240-241.

In comparison, corporal penalties exhibited fewer fluctuations over time while banishment sentences showed a reverse trend.

#### Corporal and Banishment Penalties

Despite the clear delineation in the Strafenbuch (book of punishments) of corporal and banishment penalties, the data analyzed revealed a far more complex pattern. Basically four penal categories were established, namely mutilating punishments, corporal punishments, shaming punishments, and banishments. In addition, these four basic categories were applied in various combinations which gave the contemporary penal structure a highly complex nature. In fact, the complexity of the punishments was one of its outstanding features.

Penalties entailing body mutilations consisted of brandmarking and cutting off the ears of the victim. No other mutilating punishments were in use for the period in question. Branding could be applied either to the forehead or the back of the offender. Specific symbols were used such as Frankfurt's municipal emblem, the eagle, or the letter "F" standing for furti which means theft. The former clearly described the place of punishment, the latter the crime. Apart from terrible

shaming effects, these two mutilating punishments also had a distinctive functional purpose, namely to distinguish the offender visibly from his fellow men and mark him as a criminal for the rest of his life.

Regular corporal punishments consisted of public flogging which in many instances was performed by whipping the culprit through the streets of Frankfurt. In contrast to public flogging, victims could also be whipped in private. This procedure was described as im Gefängnis gestrichen, meaning that the person was whipped in prison. The difference between public and private whipping is quite obvious, in that the latter spared the culprit from public exposure and future recognition.

Frankfurt used five different shaming punishment, namely the ducking stool, the pillory, riding on a donkey, running the gauntlet, and having one's rapier broken in public. But in most instances they were used on conjunction with corporal or mutilating penalties. In addition, shaming punishments could be intensified by psychological effects such as when the victim was orally informed of death by hanging and actually led to the gallows where he was pardoned at the last minute.<sup>11</sup> In a similar instance from the year 1690, a culprit was told that his two fingers would be cut off and his hand was

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11. St Nov 16., 1688.

actually placed on the cutting block, before he was pardoned.<sup>12</sup> Meinhardt correctly states that such cases do not represent special clemency on the part of the City Council but seelische Quälerei as he puts it, psychological torment.<sup>13</sup>

As to the banishment sentences, they have to be understood as a means of ostracizing the offender from the community. The principle of exclusion from a community was not unique to penology but was widely used by contemporaries in other fields. The Catholic church practiced it (and still does) and so did contemporary guilds. As criminal sentences, banishments were often further qualified in terms of distance and/or time such as five miles from the city for a specified number of years or life. In addition, they were often accompanied with the threat of harsh corporal punishment such as drowning, should the offender return illegally.

Two additional and generically related punishments have to be analyzed in conjunction with the contemporary concept of banishment, namely military service and imprisonment. The first sentence depended on the time frame. Some victims had to fight the Turks others the French. As to imprisonments, the earliest local reference

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12. St June 20, 1690.

13. Meinhardt, 48.

dates from the year 1297.<sup>14</sup> Initially, imprisonment was primarily used in cases of monetary debt.<sup>15</sup> The duration of such imprisonment was not to exceed four weeks and took place in one of the municipal prisons. If the victim insisted on a protracted prison stay, the debtor could consequently be transferred to a private prison. Private prisons were located in the houses of local citizens and could be rented from the building owners for a certain amount of time and money.<sup>16</sup> Though private, they fell under the general supervision of municipal authorities.<sup>17</sup> Imprisonment was also used for correctional purposes especially in the case of disobedient children. Parents or guardians took recourse to such methods such as in 1476 when a father had his son imprisoned and similarly a case from 1495 or 1488 when a father explicitly wanted to have his son "züchtigen" which could either mean disciplined or flogged or most likely both.<sup>18</sup> Parents had a choice of renting either municipal or private prisons to deter their offspring.<sup>19</sup> A third kind of prison

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14. Kriegk, Bürgertum, 2:37.

15. Kriegk, Bürgerzwiste, 458.

16. Ibid., 459.

17. Kriegk, Bürgertum, 2:43.

18. Ibid., 350; Moritz, Bürgerliche Fürsorgeanstalten, 59.

19. Kriegk, Bürgertum, 2:42.

existed in the form of a Narrenhaus, a fool's house. This place of detention had nothing to do whatsoever with the detention of the insane but derived its name from making a fool of someone. It was an open-air place of detention which allowed the offenders to be subjected to the general ridicule of passers-by such as drunkards and rowdy youngsters.<sup>20</sup> The fool's house would also be used for short-term imprisonment of beggars especially during times of the fairs.<sup>21</sup> This Narrenhaus was in use until 1697 with a brief interruption in 1687 when it burned down.<sup>22</sup>

In 1679 a local poor-orphan-and-work-house added a new dimension to the concept of imprisonment. While its main purpose was to lodge the poor, it also served to detain and "correct" disruptive youngsters and other disorderly persons.<sup>23</sup> While the former were interned at the request of their parents or guardians, the latter group consisted of persons sentenced by the City Council for various offenses such as major and minor thefts, prostitution, and breaking the begging ordinances. In

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20. Ibid., 57.

21. Ibid.

22. Ibid., 58.

23. Armen-Waisen-und Arbeit-Haus Ordnungen und Gesetze, 2.

both cases the subjects were put to hard labor and given bread and water for their nourishment.<sup>24</sup> In addition, they were physically punished either by flogging or being enclosed in an underground prison or being put in a box with sharp edges where sitting, standing, and lying down were not comfortable.<sup>25</sup>

Imprisonment was thus used for a variety of punitive reasons, but most importantly imprisonment was also used for criminal offenses. In 1406 a prison sentence was given in a manslaughter case and in 1512 a woman was sentenced to lifelong imprisonment for infanticide.<sup>26</sup> But it also happened that culprits were unintentionally subjected to prolonged prison stays or received an unintended life imprisonment, simply because the authorities had forgotten about them.<sup>27</sup> Imprisonment for criminal behavior thus was in existence well before the year 1562, the beginning of this study, and continued to exist throughout the period under investigation. It is interesting to note in this connection that detention for correctional, preventative, and punitive purposes had existed well before the seventeenth century workhouses;

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24. Ibid., 53.

25. Ibid., 54.

26. Kriegk, Bürgertum, 2:347.

27. Ibid., 346.

and similar observations were made by the historian Ruggiero for Venice where imprisonment played an important penal role during the fourteenth century.<sup>28</sup>

Quantitative and Qualitative Changes over Time

Out of a total of 1,338 sentences handed down from 1562 to 1696, 986 victims received non-capital punishments (and 15 had either died or committed suicide).<sup>29</sup> This represents a clear majority of 73.7% But in contrast to death sentences, non-capital punishments did not exhibit a very decisive numerical decline as shown in Table 26.

Table 26.-- Distribution of Capital and Corporal Penalties

	1562	1595	1628	1661	
	-	-	-	-	
<u>Categories</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Death Penalties	173	111	29	24	337
Non-Capital Pen.	285	300	89	312	986

Source: Book of Punishments

Qualitatively speaking, corporal penalties like capital punishments eased starting by the mid-sixteenth century. Arguably the most cruel punishment, namely

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28. Ruggiero, 45, 124; for England re Ralph B. Pugh, Imprisonment in Medieval England (Cambridge: Cambridge University Press, 1968).

29. van Dülmen's figures are again somewhat divergent: on page 62 he cites 972, on page 191 926, and on page 187 917 cases.

blinding had been discontinued by 1558.<sup>30</sup> And cutting off one's ears, first used in 1379, was employed for the last time in 1532.<sup>31</sup> This trend makes the interrupted use of branding all the more conspicuous. Six branding cases were noted during the latter part of the sixteenth century, when this form of punishment disappeared for almost a hundred years to reappear with seven cases during the latter part of the seventeenth century. In contrast flogging, the most frequently registered corporal penalty in Frankfurt, declined gradually but constantly throughout as Table 27 demonstrates.

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30. Kriegk, Bürgertum, 1:253.

31. Rau, 146.

Table 27.-- Distribution of Corporal Punishments

	1562	1595	1628	1661	
	-	-	-	-	
Categories	1594	1627	1660	1696	Total
Ears Cut off:	1	0	0	0	1
+Flogging+Life Ban.	1	0	0	0	1
<u>Total:</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>
Branding:					
+Life Ban.	2	0	0	5	7*
+Pillory+Life Ban.	2	0	0	1	3
+Flogging+Life Ban.	2	0	0	0	2
+Flog.+Pil.+Life Ban.	0	0	0	1	1
<u>Total:</u>	<u>6</u>	<u>0</u>	<u>0</u>	<u>7</u>	<u>13</u>
Flogging:	2	6	0	5	13
+Life Ban.	104	74	13	11	202
+Symbol+Life Ban.	1	0	0	1	2
+Pillory	0	0	0	8	8
+Pillory+Life Ban.	0	9	12	38	59
+Pill.+Symb.+Life Ban	0	0	0	3	3
<u>Total</u>	<u>107</u>	<u>89</u>	<u>25</u>	<u>66</u>	<u>287</u>
Whipped in Prison:	6	2	0	1	9
+Life Banishment	5	2	0	0	7
+5/6 Years Banishment	0	1	1	0	2
<u>Total</u>	<u>11</u>	<u>5</u>	<u>1</u>	<u>1</u>	<u>18</u>

\*Addenda: 7 delinquents received additional imprisonment ranging from 4 days to 4 weeks.

Source: Book of Punishments and Bb

The most conspicuous aspect of corporal punishments was the fact that out of the total of 320 such sentences, 299 were accompanied by a banishment sentence. That means that in 93.% of all cases of corporal punishment the culprits were ousted from the community as well.

Shaming punishments exhibit a similar trend in that out of the total of 204 such sentences, 171 entailed the banishment as illustrated in Table 28.

Table 28.-- Distribution of Shaming Sentence

	1562	1595	1628	1661	
	-	-	-	-	
<u>Categories:</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Pillory	7	6	1	6	20
+Life Ban.	31	47	17	36	131
+Symbol	5	3	0	1	9
+Symbol+Life Ban.	4	5	4	16	29
<u>Total</u>	<u>47</u>	<u>61</u>	<u>22</u>	<u>59</u>	<u>189</u>
Riding a Donkey+Ban.	0	1	0	0	1
Running the ganlet+Ban	0	0	0	2	2
<u>Total</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>2</u>	<u>3</u>
Ducking Stool	2	0	0	2	4
+Banishment	0	4	4	0	8
<u>Total</u>	<u>2</u>	<u>4</u>	<u>4</u>	<u>2</u>	<u>12</u>

Source: Book of Punishments

This predilection for removing a culprit from society was most clearly demonstrated in the increasing use of the banishment sentences. As Table 29 evidences, Frankfurt sentenced a total of 462 culprits to leave town. If one adds the 171 banished in conjunction with their shaming punishments, and the 299 banished in conjunction with corporal penalties, the number of banished criminals climbs to 932 out of 986 who received non-capital sentences. It was the most frequently used form of punishment.

Table 29.-- Distribution of Banishment Sentences

	1562	1595	1628	1661	
	-	-	-	-	
<u>Categories</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Banishments for Life	30	66	34	135	265
+Threat Corp. Pun.	68	50	0	2	120
+Miles	3	7	1	17	28
+Number of years	0	1	1	8	10
<u>Total</u>	<u>101</u>	<u>124</u>	<u>36</u>	<u>160</u>	<u>421</u>
<u>Imprisonment+ Bar.</u>	<u>1</u>	<u>3</u>	<u>5</u>	<u>13</u>	<u>22</u>
Galleys	0	0	0	1	1
Fight the Turks+Life Ban.	2	4	1	7	14
Fight the French	0	0	0	2	2
<u>Total</u>	<u>2</u>	<u>4</u>	<u>1</u>	<u>10</u>	<u>17</u>

Source: Book of Punishments and Bb

This penological trend is indicative of several factors. First, it qualifies Rusche and Kirchheimer's argument that by the end of the sixteenth century the possibility of exploiting the labor of prisoners received increasing attention.<sup>32</sup> Frankfurt consistently preferred to oust criminals, a considerable "waste" of usable work force! True, 17 offenders were sentenced to military service, but 17 out of 932 is an insignificant amount. While countries like Spain made ample use of penal servitude such as galley service, Frankfurt persistently preferred to oust the offenders from the community.<sup>33</sup> And Frankfurt was by no means an isolated phenomenon. In

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32. Rusche and Kirchheimer, 24.

33. Ruth Pike, Penal Servitude in Early Modern Spain (Madison, Wisconsin: University of Wisconsin Press, 1983), 4, 6, 27, 148.

France, during the eighteenth century, banishment or "some form of confinement" was the most frequently used form of penalty.<sup>34</sup>

Yet, despite its wide-spread application, the concept of banishment has gained little attention among historians. This lack of interest is even more surprising, if one considers that the principle of banishment is closely related to the concept of imprisonment in the sense that both devices ostracise and remove culprits from the community. And both systems use similar scaling methods ranging from temporary to life terms. While the emergence and spread of the prison system has been dealt with by many historians, it has never been clearly associated with banishments.<sup>35</sup> But such an argument can be advanced. Early modern Frankfurt used a reverse prison concept, in that the community then was within walls, while nowadays it is the criminal. Considering that contemporary safety and freedom were primarily achieved within walled towns, a banished person might well be regarded a prisoner, a prisoner of the dangerous

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34. Ruff, 60, 63.

35. Thorsten Sellin, Pioneering in Penology (Philadelphia: University of Philadelphia Press, 1944); also Foucault's work previously cited, and Peter Spierenburg, "From Amsterdam to Auburn: An Explanation for the Rise of the Prison in Seventeenth Century Holland and Nineteenth Century America," Journal of Social History (Spring 1987): 439-461.

countryside.

Two historical developments seem to have rendered banishment sentences obsolete entailing a reversal of this penological practice, namely the advance of military technology and the demographic expansion starting by the mid-eighteenth century. The former made walled cities eventually obsolete and led to open towns, while the latter resulted in more densely populated areas where, to use an analagous modern concept, "dumping" of culprits could no longer be practiced. And nothing corroborates this better than the changed meaning of the French word banlieu. Instead of its former legal definition of a banned area, it changed into suburb.

Even the generally accepted argument of the work houses as the forerunners of punitive incarceration is not entirely convincing. First, as discussed earlier, prisons were used for penal sanctions prior to 1596, the date of the first such work house in Amsterdam, the Rasphuis. In addition, financial aspects have to be considered. Frankfurt's work house, was for example not a self-sustaining enterprise but had to rely on private funds and collections for its maintenance.<sup>36</sup> In other words, the work of its inmates did not cover its

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36. Armen-Waysen-und Arbeit-Haus Ordnungen und Gesetze, 8.

expenses. And it seems likely that the financial status of other European workhouses was similar for why should Amsterdam, the cradle of the work-house system, widely use banishment sentences throughout the sixteenth and seventeenth centuries?<sup>37</sup> Had Amsterdam's work-house been more profitable, such a labor force would surely not have been turned away. As it turned out, banishment was still the cheapest form of ostracising, at least until the eighteenth century.

In contrast to the obvious neglect of the significance of banishment sentences, the physical and public nature of contemporary punishments has gained a lot of attention. But, unfortunately, all too often these two aspects are treated in historical and social isolation. In other words, the affliction of pain and the public notion of penological practices are discussed without placing them into the framework of contemporary society. True, the historians Spierenberg and Dülmen correctly stress the participatory element of the population at large during executions and both stress the public aspect of staged executions as the Theater des Schreckens or "the spectacle of suffering."<sup>38</sup> Yet there are no references to the general contemporary concept of

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37. Spierenburg, 215-219, 225, 228, 231.

38. Spierenburg, 81-109; van Dülmen, 145-160.

pain and the contemporary notion of the public nature of many aspects of life. Any analysis of the predominantly physical nature of punishment has to include the fact that contemporaries resorted far more readily and more frequently to physical expressions of emotions.<sup>39</sup> One only has to think of the frequent and often harsh beatings of apprentices by their masters.<sup>40</sup> Schoolmasters beat their pupils, a practice relinquished only in this century. The historian Stone states that by early sixteenth century "flogging became the standard routine method of punishment for academic lapses for all schoolchildren regardless of rank or age."<sup>41</sup> And he concludes that the late sixteenth and seventeenth centuries "were for England the great flogging age."<sup>42</sup> On the Continent, prominent contemporaries like Martin Luther and Louis XIII were frequently beaten by their parents.<sup>43</sup> Even the pastimes of contemporaries whether

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39. Norbert Elias, The Civilizing Process, trans. Edmund Jephcott (New York: Urizen Books, 1978) ; J. Huizinga, The Waning of the Middle Ages (London: Edward Arnold, Ltd., 1963), 11.

40. Bothe, Stadt Frankfurt, 393.

41. Lawrence Stone, The Family, Sex and Marriage in England (New York: Harper & Row, Publishers, 1977), 163.

42. *Ibid.*, 171.

43. Erik H. Erikson, Young Man Luther (New York: W.W. Norton & Co., Inc., 1962); Elizabeth W. Marvick, Louis XIII: The Making of a King (New Haven: Yale University Press, 1986), 45, 46, 85.

poor or rich were violent.<sup>44</sup>

These citations are by no means intended to minimize the cruelty of the contemporary penal structure, but it should be noted that the criminal justice system followed general contemporary practices and as such was imbedded in contemporary traditions. The physical punishments have to be seen in their societal setting if one is to avoid an anachronistic interpretation. And the same holds true for the public nature of the penal structure.

Historians have to varying degrees interpreted public executions primarily in relation to the increasing power of the state.<sup>45</sup> While these interpretations are very interesting, it should be remembered that the Germanic tribes had in a much earlier period used public executions. In fact, as stated previously, according to Germanic law punishments had to be carried out in public in order to be legal and thereby differentiate them from the illegal, clandestine acts. Public executions were

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44. J.R. Hale, "Violence in the Late Middle Ages: A Background," in Violence and Disorder in Italian Cities, ed. Lauro Martinez (Berkeley: University of California Press, 1972), 24; re in this connection Vovelle's interesting correlation between drawings of violent deaths in the religious context such as Christ's execution as well as those of many martyrs and the contemporary concept of violence: Michel Vovelle, La Mort et L'Occident (Paris: Gallimard, 1983), 30, 33, 249. .

45. In particular Foucault and van Dülmen, but also Spierenburg.

thus, to a large degree, part of a continuum of experience and not so much a novelty of Early Modern state formation.

Just as public executions were a reflection of Germanic tribal society, so were public executions of the Early Modern period a reflection of their societal setting. They mirrored the contemporary public nature of almost every aspect of life. From life to death, the whole life circle unfolded in the open or as Huizinga puts it "all things in life were of a proud or cruel publicity."<sup>46</sup> Even dying was a "public ceremony" as Philipp Ariès put it, where the "bedchamber of the dying man became a public place to be entered freely."<sup>47</sup> And "death" so he continues "was both familiar and near, evoking no great fear or awe" and he rightly concludes that this attitude is "often too marked a contrast to ours."<sup>48</sup> And the same can be said about the public nature of the executions. As awful as they appear to a twentieth century observer, they have to be evaluated within the contemporary societal setting and viewed in historical

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46. Huizinga, 1.

47. Philipp Ariès, Western Attitudes toward Death: From the Middle Ages to the Present, trans. Patricial M. Ranum (Baltimore and London: The John Hopkins University Press, 1974), 12.

48. Ibid., 13, 25.

perspective. Even Spierenburg's and van Dülmen's argument that executions were staged spectacles has to be seen within this contemporary setting. The public spectacle of capital punishments was comensurate with "the art of dying" as John McManners described it.<sup>49</sup> And the vast literature on death bed rites produced recently will confirm that regular contemporary deaths were not only public but staged with skill.<sup>50</sup> If a man's natural death unfolded in public and often in pomp, why should the executions be any different, that is private and plain? The "ceremony and the staging of executions" did not so much reflect a "particular phase in state formation" but were part and parcel of contemporary mores to which all segments of society subscribed.<sup>51</sup> In a society which organized itself on public principles, public executions were but one of the many facets of public life and death. The executions mirrored traditional mores and theirs was a different world view.

The same applies to public corporal punishments. But in their case, public exposure of the criminal had an

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49. John McManners, Death and the Enlightenment, (Oxford: Oxford University Press, 1985), 198-220.

50. An excellent survey of contemporary literature is given by Robert Darnton, "The Art of Dying," The New York Review of Books 29, No. 8 (May 13, 1982): 8-12.

51. Spierenburg, 80.

additional function. It was designed to facilitate policing of the culprit and the community. Two facts bespeak this point namely the sentence structure and the absence of any large scale police force. The punishments handed down revealed that the welfare of the community was the central motive for out of 986 non-capital convictions, 932 or 94.5% of the culprits were banished from Frankfurt. In order to control and possibly prevent their illegal return, public exposure of the culprits was crucial for who other than the population at large would recognize them? There was no police force. Thus, as long as contemporaries subscribed to banishing offenders from the community, public punishments were a necessary ingredient of the penal structure as was in fact explicitly stated in a case of exposure in the pillory, damit ihn jedermann kennen lernte, so that everyone got to know him.<sup>52</sup>

Public exposure of a culprit could even take the form of pictorial representations such as in the Schandbilder or defaming pictures. In Germany they mainly served to depict debtors while in Florence during the Renaissance such pictures of infamy exposed various kinds of law-breakers who had escaped the authorities.<sup>53</sup> Even

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52. Kriegk, Bürgertum, 1:258.

53. Wolfgang Brückner, Bildnis und Brauch (Berlin: Erich Schmidt Verlag, 1966; Guido Kisch, "Ehrenscheite und Schandgemälde," Zeitschrift der Savigny-Stiftung für

the famous painter Boticelli was commissioned to draw such defaming paintings.<sup>54</sup> In most cases such pictures of infamy appeared on public buildings such as city gates and church doors.<sup>55</sup> The art-historian Edgerton suggests that this particular art form served as a punishment and should not be confused with "wanted" persons.<sup>56</sup> But despite his assertion, defaming pictures had an implicit policing function in that they clearly exposed an absent culprit to a large audience. Should such a defamed person return he would be recognized by the people and possibly handed over to the authorities.

By exposing the culprit, contemporaries protected their community. Thus even in the penal process of corporal punishments the participation of the people was imperative. And this functional concept did not undergo any changes throughout the 1562 to 1696 period quite in contrast to variations in the punishments in particular capital sentences.

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Rechtsgeschichte 51 (1913): 514-520; Samuel Y. Edgerton Pictures and Punishment: Art and Criminal Prosecution during the Florentine Renaissance (Ithaca: Cornell University Press, 1985).

54. Edgerton, 72, 106.

55. Ibid., 72; Kisch, 519.

56. Edgerton, 76.

Punishments versus Crimes Sentenced

The previous analysis of Frankfurt's penal system during the 1562 to 1696 period showed that a considerable quantitative decrease in capital punishments had occurred and was paralleled by a decline in the most cruel forms of capital and corporal punishments. But how is one to explain these changes? Demographic factors such as the decrease in the local population during the seventeenth century can be ruled out. In Frankfurt's case the size of the community is at best peripheral to the argument because the city of Frankfurt had a far reaching jurisdiction encompassing any outsider coming to town. Much depended on the number of outsiders coming to town and their criminal dispositions or prior records.

The historian Dülmen, closely following Foucault's contention, argues that the reduction in capital punishment is, among other factors, attributable to a prior decrease in the number of heinous crimes committed.<sup>57</sup> And he tries to demonstrate this by basing his argument on crime sentences. But his data base, that is criminal sentences, is methodologically unsound for such a deduction. An equation between crime sentences and the actual crime rate is scarcely justifiable, if one

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57. Dülmen, 114, 115.

bears in mind the previously discussed loopholes in the laws and the selectivity of crime reporting. And similar findings were made for other European areas, such as Reinhardt's assesement of "the selective prosecution of crime in Ancien Regime France" and Beattie's analysis of England during the 1660 to 1800 period.<sup>58</sup> To give an indication of the possible error margin, a study for Berlin covering the decade from 1873 to 1884 showed that for each 12 reported crimes only 4 led to a conviction, and during the following ten years the ratio changed from 16 to 5.<sup>59</sup> One cannot prove the decrease in certain crimes based on sentences and hence one cannot deduce the reduction of capital sentences on such grounds.

In order to arrive at a more reliable indicator for changes in the penal structure, a periodical correlation between the punishments and the crimes has to be established. Such a correlation would fix the period when the changes set in while at the same time revealing the pattern as to which crime category was mostly affected by these changes.

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58. Reinhardt, 4-23; Beattie, Pattern of Crime: 54, 55, 58; Spierenburg, 11.

59. Eric A. Johnson, "Women as Victims and Criminals," in Criminal Justice History, Vo. VI (Westport, Ct.: Meckler Publishing Co., 1985), 159.

But one is immediately faced with methodological difficulties considering that 54 different crime categories have to be matched with 47 different punishment combinations and this for a 134 year period. To make matters worse, in many cases offenders were sentenced on different counts that is for crimes of various kinds. And the crime combinations were as diversified as the punishments. To give an indication of the problem, during the 1562 to 1594 period, 74 persons were sentenced on more than one count for 48 different crime combinations. During the following thirty-three period, matters got even more complex in that 124 persons were sentenced for more than one offense for a total of 75 different crime combinations; and this pattern continued for the rest of the seventeenth century.

Correlating these highly diversified crimes with the equally diversified punishments would be a painstaking task. True, one might argue, that the various crime combinations necessitated such diversified punishment combinations in order for the punishment to mirror the crime. But even simple, straight-forward crimes led to punishment combinations. Therefore, as will be shown below, the results of this correlation reveal considerable disparities and inconsistencies in the application of penalties. The discovery of such disparities should not come as a surprise considering the

previously discussed existence of biased laws and the selectivity of crime reporting. Why should the actual punishments exhibit a consistent pattern if pre-trial judicial aspects were so selective?

The most frequently sentenced crimes were property-related, and as such a correlation to the respective punishments should exhibit the most telling trend. One of the first and most interesting discovery with regard to property sentencing was the existence of wide disparities in the application of punishments. They ranged from hanging to decapitation by sword to corporal punishments of the most varied combinations as demonstrated in Table 30.

Table 30.-- Punishments for Simple Property Crimes

	1562	1595	1628	1661	
	-	-	-	-	
<u>Penal Categories</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Drowning	2	0	0	0	2
Sword	4	4	2	3	13
<u>Hanging</u>	<u>101</u>	<u>58</u>	<u>3</u>	<u>11</u>	<u>173</u>
<u>Total Capital Pun.</u>	<u>107</u>	<u>62</u>	<u>5</u>	<u>14</u>	<u>188</u>
Branding+Ban.	2	0		1	3
+Flogging+Pillory+Ban.	0	0	0	3	3
+Pillory+Ban.	3	0	0	0	3
Ears Cut off	1	0	0	0	1
Galley	0	0	0	1	1
Flogged+Ban.	83	46	16	14	159
+Pillory +Ban.	0	3	7	30	40
Flogged in Private+Ban.	9	4	1	1	15
Pillory+ Ban.	30	29	12	32	103
Ducking Stool	1	2	3	1	7
Gantlet/breaking Rapier	0	0	1	2	3
<u>Banishment</u>	<u>45</u>	<u>35</u>	<u>7</u>	<u>52</u>	<u>139</u>
<u>Total Non-capital Pen.</u>	<u>174</u>	<u>119</u>	<u>47</u>	<u>137</u>	<u>477</u>

Source: Book of Punishments

Several factors are worth while noting here. First, by far the greatest number of criminals were sentenced to corporal rather than capital punishments. Second, among capital punishments for property offenses, hanging seems to have been the most frequently used. Third, and by far the most interesting factor, is the drastic decline in capital punishments from 107 death sentences during the last three decades of the sixteenth century to 11 during an equivalent period a hundred years later. This decrease in the use of physical retribution can also be noticed for corporal punishments, in particular flogging.

Since in absolute terms, the death penalty was most frequently used for property crimes, namely 188 out of the total of 337 death sentences, it is safe to conclude that the decline in capital punishment was directly related to a change in perception of property crimes.

An analysis of thefts, the most frequently sentenced property crime, substantiates these findings even further. The correlations shown in Table 31 apply to simple theft only, disregarding any crime combinations so as not to obscure the pattern.

Table 31.-- Punishments for Thefts

	1562	1595	1628	1661
	-	-	-	-
<u>Penal Categories</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>
Drowning	2	0	0	0
Sword	3	0	0	0
Hanging	63	27	1	2
<u>Hanging by feet</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>
<u>Total Capital Pun.</u>	<u>68</u>	<u>27</u>	<u>2</u>	<u>3</u>
Branding+ Ban.	2	0	0	1
+Pillory+Ban.	3	0	0	3
+Flogging+Pillory+Ban.	0	0	0	3
Ears cut off	1	0	0	0
Flogged+Banished	43	24	7	8
+Pillory+Banished	0	0	4	18
Flogged in Private	6	2	0	1
Ducking Stole+Ban.	0	0	0	1
Pillory+Banished	19	13	5	15
Imprisonment+Ban.	0	1	3	4
<u>Banishment</u>	<u>31</u>	<u>18</u>	<u>5</u>	<u>31</u>
<u>Total Non-capital Pun.</u>	<u>93</u>	<u>55</u>	<u>24</u>	<u>85</u>

Source: Book of Punishments

The decline of capital punishments for theft must be considered the most drastic penal change in Frankfurt's punishment structure. During the 1562 to 1594 period a total 63 offenders were hanged for theft alone while during an equivalent time span a hundred years later only 2 were subjected to that kind of punishment. Such a drastic change so closely related to one crime category must be attributable to a changed view of the nature of that particular offense. True, many factors influenced the sentencing structure as will be discussed below, such as the value of the stolen goods, but numerically speaking, the sharp drop in the use of capital punishment for one and the same crime category is quite telling. And

the argument that the severity of such thefts dropped cannot hold for it would imply that only valueless articles were stolen by the end of the seventeenth century a useless contention.

In contrast, the penal structure for crimes against persons does not exhibit such flagrant reductions of the death sentence. Yet there exist fluctuations as well. While murder sentences exhibit a relatively constant sentencing pattern, manslaughter sentences reveal a more varied picture as demonstrated in Table 32.

Table 32.-- Penalties for Murder

	1562	1595	1628	1661	
	-	-	-	-	
<u>Category</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Wheel	0	2	0	0	2
+Hot Tongs	0	2	0	0	2
Buried Alive	1	0	0	0	1
Sword	2	0	0	1	3
+Corpse Exposed	4	1	0	0	5
+Burried	0	2	0	0	2
<u>Total</u>	<u>7</u>	<u>7</u>	<u>0</u>	<u>1</u>	<u>15</u>

Source: Book of Punishments

The preponderance of murderers, namely ten, were executed by sword while four were broken on the wheel, and one was buried alive. It has often been argued that the wheel was the most common death sentence for murders and thus would mirror the crime. But the above data does not confirm this contention.

The discretionary application of punishments is even more evident in the case of manslaughter sentences.

Manslaughter entailed the most varied punishments ranging from drowning to decapitation by the sword to fighting the enemy to flogging and banishment. Table 33 clearly demonstrates the vascillations in simple manslaughter sentences.

Table 33.-- Punishments for Manslaughter

	1562	1595	1628	1661	
	-	-	-	-	
<u>Punishment Category</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Drowned	1	0	0	0	1
Sword	5	1	0	1	7
+Exposed on Wheel	3	0	0	0	3
+Burried	8	13	3	3	27
<u>Total Capital Pun.</u>	<u>17</u>	<u>14</u>	<u>3</u>	<u>4</u>	<u>38</u>
Ducking Stool	0	0	1	0	1
Fight Turks	2	1	1	5	9
Fight French	0	0	0	2	2
Banished	3	4	1	3	11
<u>Total Non Capital Pen.</u>	<u>5</u>	<u>5</u>	<u>2</u>	<u>10</u>	<u>23</u>

Source: Book of Punishments

Death sentences dropped from 17 at the end of the sixteenth century to 4 by the end of the seventeenth while military service increased as an alternate punishment. This decrease in the use of capital punishments for manslaughter is most surprising because manslaughter was an inherently evil deed. But obviously communal and financial concerns could override death sentences.

Frankfurt's population was very unhappy about the high war taxes they had to pay, in particular the tax to

fight the Turks aroused local tempers.<sup>60</sup> Such discontent was evident all over Germany.<sup>61</sup> In Frankfurt's case it helps to explain the shift in the punishment structure for manslaughter. Instead of subjecting the offenders to capital punishments, the community sent them to fight the Turks to relieve some of their financial burdens. It was considered an almost mandatory community service, a functional punishment geared more toward helping the community than toward mirroring the crime. This sentencing pattern also punctures the notion that "crimes became less violent long before punishments became less severe."<sup>62</sup> In Frankfurt's case, manslaughter sentences continued to be passed but they were more lenient, community-serving, punishments.

While manslaughter sentences fluctuated according to communal needs, the opposite was the case for infanticides. They all entailed the death penalty. The difference in punishment between manslaughter and infanticides might be explained by the nature of the crime but possibly even more so by the person of the offender. As will be shown below, many soldiers committed

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60. Bothe, Stadt Frankfurt, 4672-473.

61. Winfried Schulze, Reich und Türkengefahr (Munich: Beck, 1979), 276, 290.

62. Foucault, 76; van Dülmen, 114.

manslaughter while all infanticides were committed by women, and women were considered highly unsuited to fight the Turks.

Changing perceptions toward certain deeds also affected the penal structure as was most clearly noted with regard to sexual crime sentencing. It will be recalled that the criminalization of sexual mores, a process which started in the late fifteenth century, came to full fruition by the end of the sixteenth century and developed numerical sentencing repercussions at the beginning of the seventeenth century.

Frankfurt did not spare sexual delinquents from public punishments as Table 34 evidences. But it has to be borne in mind that not everyone was equally subject to that kind of sentencing. Biased laws and a pre-selection system prevented its universal application.

Table 34.-- Punishments for Simple Sexual Crimes

	1562	1595	1628	1661	
	-	-	-	-	
<u>Category</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Drowned	1	0	0	0	1
Burned	0	1	0	0	1
Sword	4	3	0	2	9
<u>Total Death</u>	<u>5</u>	<u>4</u>	<u>0</u>	<u>2</u>	<u>11</u>
Ducking Stool	1	2	0	0	3
Flogged+Ban.	10	13	2	4	29
Pillory+Ban.	13	14	4	7	38
Banishment	21	25	10	25	81
<u>Total</u>	<u>45</u>	<u>54</u>	<u>16</u>	<u>36</u>	<u>151</u>

Source: Book of Punishments

Death punishments given for simple sex crimes consisted of 1 adultery, 1 bestiality, and 9 incests. But the majority of sentences consisted of banishments, followed by shaming penalties and flogging. They covered a wide range of sexual transgressions including adultery and incest.

Most interestingly and in sharp contrast to Frankfurt, the city of Amsterdam rarely punished sexual transgressions in public.<sup>63</sup> Adultery for instance was never publicly punished whereas in Frankfurt it could entail even the death sentence. Seville on the other hand had "a high proportion of people executed for sex crimes."<sup>64</sup>

In Frankfurt, death sentences for sexual crimes decreased after the early 1630s. Incest constituted the only death sentence still applied in sex crimes at the end of the seventeenth century.<sup>65</sup> But although incest ranked highest and lasted longest among death sentences for sexual offenses, such punishments were not uniformly applied to all incests as evidenced in Table 35.

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63. Spierenburg, 121.

64. Perry, 71.

65. St May 24 and July 10, 1694.

Table 35.-- Punishments for Incest

	1562	1595	1628	1661	
	-	-	-	-	
Category	1594	1627	1660	1696	Total
Drowning	1	0	0	0	1
Sword	3	3	0	2	8
Total Death	4	3	0	2	9
Flogged+Banished	1	1	0	2	4
+Pillory+Banished	0	2	0	1	3
Pillory+Banished	1	0	0	1	2
Banishment	1	3	0	2	6
Total Non-capital Pen.	3	6	0	6	15

Source: Book of Punishments

Thus in 15 out of 24 incest convictions, the delinquents received non-capital punishments. The severity of sentencing in incest cases depended on the closeness of the blood relation between the individuals. Sexual relations of first degree relatives such as brother and sister and father and daughter entailed the death penalty.<sup>66</sup> Sexual relations between stepfather and stepdaughter could also entail capital punishment such as in 1588 when the stepfather was decapitated and his stepdaughter drowned.<sup>67</sup> But a case from the year 1565 shows that this was not always the case for the stepfather was flogged while his stepdaughter was punished with the pillory and both were allowed to remain in Frankfurt.<sup>68</sup>

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66. St Jan. 2, 1618; St May 24 and July 10, 1694.

67. St Nov. 8 and 15, 1588.

68. St Aug. 25, 1565.

These findings should caution against all too general conclusions that the punishment mirrored the crimes. Even the contemporary usage of symbols to depict certain offenses cannot camouflage the underlying disparities. In fact, it might even heighten them for symbols were not uniformly applied. Thus, both in substantive and symbolic ways the punishment did not always fit the crime.

Apart from such factors as attitudinal changes with regard to property crimes and sexual offenses and communal considerations in the case of manslaughter sentences, legal aspects could in select cases also influence the penal structure. The penalty could be mitigated in instances where due to the fact that a long period of time had elapsed between the occurrence of the offense and the trial, the case itself had become vague. But as a general rule, the passage of time including up to thirty years after the deed, was not considered grounds for dismissal of the case.<sup>69</sup>

Self-defense as a reason for more lenient punishment or even acquittal was more difficult to establish. According to the Book of Punishments, no suspect was ever released on the basis of self-defense, but in one instance a suspect was granted a more lenient

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69. Meinhardt, 182.

punishment.<sup>70</sup> But the Gerichtsbücher, the records of the civil court, demonstrate that self-defense was considered grounds for acquittal such as in a case from 1572.<sup>71</sup> The dismissal of the suspect was reconfirmed by the City Council as the ultimate arbiter in criminal matters.<sup>72</sup>

Drunkenness as reason for clemency was also advanced in conjunction with manslaughter cases with the rationale that while the deed happened the culprit was incoherent.<sup>73</sup> But it is difficult to establish whether drunkenness had an impact on the penal concept because in most cases where leniency was applied in conjunction with drunkenness, additional extenuating factors were listed in the case descriptions.<sup>74</sup>

Extensive prison detention could lead to a more lenient punishment. Although such a policy existed throughout the 1562 to 1696 period, it was applied only selectively.<sup>75</sup> In 1589 a suspect had spent five months in

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70. St Febr. 17, 1688.

71. Gerichtsbücher 1570, 1571, and 1572 covering the case of Caspar Weber.

72. Bb 1572, 60.

73. St Aug. 11, 1570.

74. St June 8, 1671; St Jan. 3, 1672.

75. Bb 1562, 201; Bb 1629, 113; St May 17, 1673.

prison but she did not receive a more lenient sentence.<sup>76</sup> And in the most flagrant of all prison detentions, where the suspect had endured 19 months of imprisonment, the sentence was not reduced either despite the fact that his wife pleaded almost daily with the City Council. The suspect was Jewish.<sup>77</sup>

In the case of property crimes, the punishment could be mitigated if the stolen merchandise was returned to its owner or its value either completely or partially restored. Such grounds for leniency were explicitly stated in the records. In an incidence from 1625 the culprit was sentenced to banishment only because the stolen merchandise had been recovered by the owner.<sup>78</sup> In another instance the offender was released on the mere promise of restoring the money.<sup>79</sup> In contrast, one culprit was hanged because, as it was explicitly stated, he could not re-imburse the money.<sup>80</sup> Most curiously, the victims themselves, after having taken repossession of

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76. St March 7, 1589 and Rp 1588, 46 in the case of Margaretha Hansen who was arrested on Oct. 29, 1588 and sentenced on March 7, 1589.

77. The suspect was arrested on Oct. 9, 1571 - Rp 1571, 47 - and sentenced on March 4, 1573.

78. Bb 1635, 104.

79. St April 30, 1672.

80. St Dec. 17, 1574.

their goods, would plea for more lenient punishments for the culprit.<sup>81</sup> The Germanic principle of appeasing the victim thus survived until the seventeenth century.

But again, such leniency was not universally granted. As a matter of fact in those cases where it was rejected the records explicitly state that despite the return of the goods no clemency was granted.<sup>82</sup> Both the appeasement of the victim and the selectivity of its application corroborate further the importance of personal factors in the penal structure. And this point is most clearly evidenced by a correlation of the offender to the respective punishments.

#### Personal Characteristics and the Penal Structure

The personal characteristics of the offender had a decisive effect on the punishment. The past lifestyle of a suspect was seriously taken into consideration, in addition to a suspect's age, religion, social status and gender. In some cases even the condition of a criminal's health could determine punitive aspects.

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81. Bb 1678, 22.

82. St May 20, 1597; St Jan. 27, 1613; St Oct. 4, 1695.

Personal Record of the Criminal

The offender's past was checked with scrutiny. When detailed information was lacking, the City Council even contacted a suspect's previous place of residency as explained in Chapter III. Local authorities kept meticulous records on every offender for future sentencing purposes and as a source of information for other locations. But it was the sentences themselves which attest most clearly to the importance of an offender's past. The key issue centered on whether or not the suspect was a first or a repeat offender for, with the exception of crimes against persons and sexual offenses, recidivists received a far greater share of death sentences than first offenders as the data in Table 36 evidences.

Table 36.-- Distribution of Death Sentences of  
Recidivists versus First Offenders

	1562		1595		1628		1661			
	-		-		-		-			
Crime	1594		1627		1660		1696		Total	
Category	R	F	R	F	R	F	R	F	R	F
Property	75	34	50	10	5	4	12	2	142	50
Corporal	1	31	2	30	0	17	0	8	3	86
Sex	1	4	0	4	0	0	0	2	1	10
Forgeries	3	3	3	1	0	0	0	0	6	4
Public	0	0	1	0	0	1	0	0	1	1
Multi	14	7	5	5	1	1	0	0	20	13
<b>Total</b>	<b>94</b>	<b>79</b>	<b>61</b>	<b>50</b>	<b>6</b>	<b>23</b>	<b>12</b>	<b>12</b>	<b>173</b>	<b>164</b>

Source: Book of Punishments

That corporal crimes had the highest death rate for first offenders is explained by the violent nature of

this kind of crime often resulting in the death of the victim. But the sentencing pattern for property crimes testifies to the fact that first offenders were treated more leniently, for 74% of all capital punishments for such offenses were handed down to recidivists and this throughout the 134 years investigated. Frankfurt was not an isolated phenomenon in this regard for similar findings were demonstrated for France.<sup>83</sup> In Frankfurt's case, this milder sentencing for first offenders trend was explicitly outlined in various case descriptions.<sup>84</sup> And, conversely, it was often stated in cases of recidivism that the offender had not improved or that the offender had not taken the first and milder punishment as a warning.<sup>85</sup> Obviously, the underlying motivation seems to have been to give a first offender a chance to improve. And this notion of future betterment was most clearly demonstrated by the way in which the City Council punished young offenders.

#### Age

It was only in the rarest cases that a juvenile was subjected to harsh punishment if he was a first offender.

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83. Reinhardt, 18-19.

84. St May 11, 1569; St June 23, 1681.

85. St July 2, 1573; St March 23, 1582; St May 4, 1616.

Out of the nine juveniles sentenced to capital punishment, eight had committed serious and repeated property crimes, and as the records state clearly in one case, the offender had not take his previous more lenient punishment to heart but had continued his life of crime.<sup>86</sup> The ninth juvenile sentenced to death had committed manslaughter. But even this sentence was more an exception than the rule, for in another manslaughter case the juvenile delinquent was granted leniency because of his youth. He was handed a one month imprisonment with bread and water and five-year banishment.<sup>87</sup> Capital punishments were thus commuted to corporal punishments based purely on the youth of the offenders. In fact, in two cases the records clearly state that the culprits deserved to be hung but were spared because of their age.<sup>88</sup> While there was no general ban on the death penalty for juveniles, Frankfurt's City Council seemed to have used it reluctantly.

A similar restraint was exercised with regard to corporal punishments. While 24 juvenile offenders were flogged publicly, an additional 14 were whipped in

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86. St Nov. 19, 1563.

87. ST Oct. 1, 1618.

88. St Febr. 27, 1613; St Oct. 14, 1615.

prison, that is privately.<sup>89</sup> In fact, floggingg in prison was only listed in conjunction with juvenile offenders and as such constitutes a typical juvenile punishment. Only in one case did the records indicate the opposite namely that "despite his 17 or 18 years of age" the culprit was flogged and put in the pillory.<sup>90</sup> But this statement only reconfirms the special nature of the contemporary juvenile penal structure, by stressing the exceptional character of the punishments, namely its public nature. Thus neither capital nor corporal punishments were imposed lightly on youthful offenders. The reason for this kind of punishments for youthful offenders was twofold. First, juvenile delinquents were spared harsh punishments by shielding them from public exposure and public shame. Second, they were not stigmatized publicly as a criminal since nobody observed the punishment and nobody would, therefore, recognize a juvenile delinquent in future. A young offender was thus given a chance for the future. This separate penal structure for the young qualifies Dülmen's assertions that the idea of future improvement of culprits did not exist during this time period.<sup>91</sup> It also seems to

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89. Bb 1569, 5; Bb 1581, 201; two cases in Bb 1586, 174; Bb 1593, 229; Bb 1595, 248.

90. St March 7, 1694.

91. van Dülmen, 179.

contradict contentions advanced by Philipp Ariès who argues that children were treated as adults at a much earlier date.<sup>92</sup> In Frankfurt, young people were treated differently. And similar trends were observed for Amsterdam and France.<sup>93</sup>

While youth played a crucial role in determining punishments, references to old age are rare amounting to a total of five.<sup>94</sup> One might thus conclude that it seems to have been less significant in determining the punishment. But out of the five cases, three received milder punishments while the fourth delinquent, a 70 year old offender was decapitated for manslaughter and the fifth was hanged.<sup>95</sup>

#### Religious Denominations and the Penal Structure

The religious affiliation of offenders had a decisive effect on their punishment. It will be recalled that the majority of Frankfurt's population had embraced Lutheranism and that the City Council and the members of

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92. Philippe Ariès, Centuries of Childhood, trans. Robert Baldick (New York: Vintage Books, 1962), 329.

93. Spierenburg, 158-164; Yvonne Bongert, "Délinquance Juvenile et Responsabilité Pénale du Mineur au XVIIIe Siècle," in Crimes et Criminalité en France sous l'Ancien Régime eds. A Abbiateci et al. (Paris: A Colin, 1971), 49-90.

94. St Dec. 23, 1573; St Febr. 20. 1624; St Aug. 13, 1624; St Dec. 29, 1692; St Oct. 18, 1695.

95. St Febr. 20, 1624; St Oct. 18, 1695.

the local guilds consisted only of Lutherans to the exclusion of Catholics, Calvinists and Jews. The religious outlook of the majority of Frankfurt's population and its City Council affected a wide variety of politico-economic and social decisions. It also had a decisive effect on the penal structure.

Suspects of divergent religious denominations were subjected to proselytizing efforts upon whose success the severity of the punishment depended. For instance, a Catholic woman sentenced to death for infanticide was given the choice of an honorable funeral if she converted to Lutheranism, or beneath the gallows if she refused.<sup>96</sup> Another Catholic woman imprisoned for fornication was transferred to the hospital since she "prayed a lot in prison and converted to Lutheranism."<sup>97</sup> In a case from 1606 involving two offenders, one culprit was sentenced to death the other to the pillory.<sup>98</sup> The criminal on death row indicated that he had never been baptized and, according to local preachers, was very eager to embrace Protestantism.<sup>99</sup> Eventually both offenders were baptized,

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96. Bb 1649, 132 the case of Agnes Faltnerin.

97. St June 16, 1659.

98. Bb 1606, 2 the case of Leinim Adrians and Abraham Peters

99. Bb 1606, 6 and Rp 1606, 2, 6, 7.

and because of their conversion, both were acquitted.<sup>100</sup>

In another case the City Council even seemed to respect a Catholic's refusal to convert. In 1626 a Spanish offender sentenced to death for murder was permitted to receive Holy Communion. The Catholic priest even used the Italian language in the hopes that the Spanish offender would understand it.<sup>101</sup>

On the other hand, a line was drawn between Christians although of different denominations and Jews. When it came to the latter, no moderation was shown. Even if a Jew converted, the milder sentence consisted of being punished "like a Christian", as explicitly stated in various cases.<sup>102</sup> This moderation of being punished like a Christians meant that the Jewish offender would be hanged by his neck instead of by his feet or being drowned. Out of a total of 11 Jews sentenced to death, the records document that 10 were subjected to rigorous proselytizing efforts on the part of the City Council. In three instances, Jews converted and the sentences were commuted to hanging on the regular gallows.<sup>103</sup> The

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100. Bb 1606, 18.

101. St Aug. 11, 1626.

102. Bb 1598, 190 the case of Joseph, Jud von Lintheim; Bb 1660, 169 the case of Gerson Fonda.

103. Bb 1598, 190; Rp 1588, 105; Rp 1597, 43.

remaining Jews died with their religious faith intact but suffered a more painful death. In three cases Jews were hanged by their feet, although strangulated immediately after hanging.<sup>104</sup> In all three instances special gallows had to be built. No expense was thus spared to submit Jews to extra harsh punishments.

The harshness of these death sentences cannot be ascribed to the nature of the crimes. Jews, as previously demonstrated, were never sentenced for murder, manslaughter, or robbery and murder, the worst of all crimes. They were primarily executed for property crimes. While the severity of the offenses for which Jews were executed might have entailed the death sentence for Christian offenders as well, no Christian was ever punished beyond their respective crimes.

Jewish offenders were not in all instances informed of possible leniencies, or to put it more appropriately, the regular capital punishment, in case of conversion. In a 1598 conversion, the Jewish culprit was told the death penalty but not of the City Council's decision to change it from drowning to hanging in case of conversion.<sup>105</sup> The reasoning behind such secrecy was to make sure that the conversion was a real one.

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104. St April 15, 1615; St March 8, 1661; St Oct. 19, 1694.

105. Bb 1598, 190.

Yet some Jews must have been aware of the possibility of mitigation if they converted for a Jew suggested to the City Council that if his life were spared he would be baptized.<sup>106</sup> But if a Jew, who had shown inclinations toward Christianity, wavered after hearing the final sentence, he could expect an extra harsh punishment. Such was the case in 1615 when a Jewish offender changed his mind and was consequently charged with heresy and blasphemy in addition to his earlier property crime.<sup>107</sup>

Jews were even marked after death as is demonstrated by a case from the year 1640 when a Jewish criminal died in the hospital and was punished afterwards by being hung on the gallows and burned.<sup>108</sup> This symbolic execution was used for Christian criminals as well if they died before being punished, but what makes this case special is the fact that on the way to the gallows the corpse of the Jew was flanked with "a portrait of a Jew" and an inscription in big letters reading "Joseph, Jew and forgerer." His religious denomination was listed first and his crime came only in second place. The offender was labelled after death primarily as a Jew. No

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106. Bb 1588, 226.

107. Bb 1615, 284.

108. St June 21, 1572.

such religious labelling was ever indicated in the records in any other case.

In image and substance Jews were thus singled out. Lutherans proved to be unrelenting in their pursuit of Jews, at least in Frankfurt's penal structure. This behavior may have been a reflection of Martin Luther's own predilection for he wrote "the most vituperative denunciation ever of Jewish perfidy."<sup>109</sup> And he did so after his own effort to proselytise the Jews had failed.<sup>110</sup> No wonder then that Frankfurt's records reflect this frustration for one can read in those cases where the Jewish offender had refused to convert that "he died a stubborn Jew."<sup>111</sup>

Corporal punishments add their own dimension to this concept of anti-Jewish sentiment particularly during the period from 1661 to 1696. The harshest punishment, branding, was almost exclusively applied to Jews. The time frame is interesting for branding as a punishment had ceased to exist as of 1586 and when it was re-introduced in 1664 it was almost exclusively applied to

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109. Robert Seltzer, Jewish People, Jewish Thought: The Jewish Experience in History (New York: Macmillan, 1980), 501.

110. Sucher, 73-84.

111. St March 18, 1661; St Oct. 19, 1694; St Oct. 18, 1695.

Jewish offenders. Out of the seven persons branded, six were Jews.<sup>112</sup> But while the one non-Jewish offender was branded on the back, all six Jews were branded in their faces either on their foreheads or the cheeks. No other offenders were visibly stigmatized the way Jews were.

While Jews thus received the harshest sentences, burghers and soldiers received far more lenient treatments. In their cases, social status and the political situation had an effect on the penal structure.

#### Social Factors

The way capital punishment was imposed on burghers reflects this trend very clearly. True, out of the total of 26 such sentences, 13 burghers were executed by sword, 12 were hung and 1 was broken on the wheel but not a single burgher was ever drowned, hung by his feet or burned. The lack of any sentencing for death by burning is noteworthy, for two burghers were sentenced for counterfeiting, a crime for which other offenders were burned.<sup>113</sup> In the case of the counterfeiting burghers, the first was hung and the second received a life banishment stating his six months imprisonment and intercession as the rationale for leniency.<sup>114</sup>

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112. St Nov. 19, 1664; St June 9, 1676; St May 4, 1681; St Oct. 13, 1686; St Febr. 2, 1687.

113. St Dec. 23, 1597; St Nov. 6, 1573; St Nov. 30, 1627.

114. St Jan. 4, 1605; St July 2, 1695.

Sentences for manslaughter exhibited a similar pattern. Out of the total of eight such crimes committed by burghers, four were decapitated while another four were handed corporal sentences. One was sentenced to fight the Turks for three years while the remaining three were handed banishment sentences only. In one case clemency was simply based on the remark "out of mercy", although the advocates had suggested the death sentence.<sup>115</sup> The second banishment sentence was based on the rationale that the suspect had spent 19 weeks in prison pending investigation. While other offenders also spent extended periods of time in prison and for less serious crimes, this burgher was released "ohne ferner Straf" that is without further punishment as the records have it.<sup>116</sup>

For marriage-related sexual crimes, however, Frankfurt's burghers received stiffer sentences. One offender was even sentenced to death for frequent adultery.<sup>117</sup> An additional six burghers were given corporal punishments for a combination of sex crimes and another twenty burghers sentenced for sex crimes were banished. On the other hand, leniency was shown in the

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115. St Oct. 25, 1603 and Bb 1603, 142.

116. St April 17, 1634.

117. St Febr. 6, 1582.

application of capital punishment for incest. Only in one instance was a burgher sentenced to death for a combination of incest and adultery, while the remaining four were handed corporal punishments only including one banishment sentence.<sup>118</sup> Successful intercessions were the main causes for mitigation of the penalty.

Similar clemency was shown in four church thefts committed by local beadles, the officials in charge of the beggars. One received a banishment sentence, three were flogged but not banished from Frankfurt "because of special mercy."<sup>119</sup>

The sentencing pattern for soldiers is reminiscent of that for burghers. Special consideration was applied in many instances such as in a manslaughter conviction where the soldier was sentenced to banishment only simply based on his previous good behavior.<sup>120</sup> In 1634 two soldiers convicted for street robbery were executed by sword instead of by hanging because of intercessions from other soldiers.<sup>121</sup> In a burglary case from the year 1669, the soldier was punished only to the pillory with no

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118. St Oct. 4, 1587; St Sept. 3, 1623; St Oct. 18, 1662; St Jan. 30, 1685; St Febr. 20, 1685.

119. St Nov. 22, 1670; St Dec. 5, 1607; St Jan. 2, 1608.

120. St June 23, 1681.

121. Bb 1634, 100.

explanation other than "special leniency," and this despite the fact that the advocates had suggested a harsher sentence.<sup>122</sup> Frankfurt's City Council even considered mitigating a death sentence for a soldier who had committed repeated robberies.<sup>123</sup> And in 1678 a soldier who had committed possibly the worst of all crimes, robbery and murder, was sentenced to death by sword instead of being broken on the wheel. This moderation was based on intercessions voiced by all of the locally stationed soldiers.<sup>124</sup> In some cases soldiers were even allowed to choose between execution by sword or harquebus.<sup>125</sup>

Soldiers also received far more elaborate burial ceremonies. In fact, their interments are the only detailed funeral descriptions in the records. Soldiers often carried the corpse of their executed fellow soldier to his grave.<sup>126</sup> In a case from 1634, the corpse of an executed soldier was wrapped in a winding sheet by his comrades who then buried him.<sup>127</sup> But the most telling of

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122. St Dec. 21, 1669.

123. Bb 1623, 43.

124. Bb 1678, 24 and St June 18, 1678.

125. St Nov. 28, 1659.

126. Bb 1620, 161 and St April 13, 1621.

127. St June 6, 1634.

all examples is based on an incident from the year 1659.<sup>128</sup> One soldier, executed by harquebus, was wrapped in a winding sheet and carried by eight fellow soldiers "under the sign of the cross" to the churchyard of St. Peter where he was accorded an "honorable" funeral. Another soldier executed during the same day was also buried in the regular church yard. These two were the only criminals registered in the archives as having received a burial in the churchyard of St. Peter's instead of in the cemetery generally used for criminals.

Because of the threat of the Turks, the Thirty Years War, and the French wars, soldiers were needed in Frankfurt and harsh sentences might adversely affect their fighting spirit and reduce the sense of loyalty that this mostly mercenary force felt for the city of Frankfurt. As long as soldiers had a direct impact on the punishment structure for fellow soldiers either by granted intercessions or active involvement in the punishment, their loyalty could be assured.

This policy is also reflected in the kind of punishments reserved for them, such as death by harquebus. In one instance, the culprit was even allowed to select the musketeers to carry out the sentences.<sup>129</sup>

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128. St Nov. 28, 1659.

129. St Nov. 28, 1659.

Corporal punishments also mirror the special status of soldiers. Penalties such as running the gauntlet "in soldiers' fashion", for a robbery case reflect this very clearly.<sup>130</sup> And punishments such as riding a donkey or having one's rapier broken were punishments used solely for soldiers. Compared to all other offenders, soldiers thus received special treatment.

#### Gender and Criminal Punishments

Women as demonstrated earlier were subjected to a highly selective crime reporting system and the penal practices reflect this partial trend as well. For instance, until 1618, women's capital punishments differed from those of men.

Table 37.-- Capital Punishments for Women

	1562	1595	1628	1661
	-	-	-	-
<u>Crimes</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>
Infanticide		2 Drowned		
Murder	1 Drowned	1 Sword	9 Sword	2 Sword
Manslaughter	1 Drowned	1 Life Burial		1 Sword
Incest	1 Drowned	1 Sword		1 Sword
Embezzlement	1 Drowned			
Theft			1 Sword	
Arson		1 Burnt		
Source: Book of Punishments				

Out of the total of 24 women who received the death sentence, 6 were drowned as per Table 37. In comparison,

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130. St March 24, 1696.

out of a total of 313 men executed, only five were handed a similar penalty. These five male culprits were not even representative because two were Jews, who were generally handed harsher punishments than other males. The other two men had been banished from Frankfurt under the threat of drowning if they returned and the fifth was a notorious horse thief.<sup>131</sup> Drowning thus seems to have been predominantly applied to women as is most clearly demonstrated by an incest case of 1588. The stepfather was decapitated while his stepdaughter was drowned.<sup>132</sup> But women were drowned for a variety of crimes as shown in Table 37.

Live burial also seems to have been a typical female death sentence. The only two cases of such a punishment in Frankfurt, one in 1498 and the other in 1585 were given to women.<sup>133</sup> The latter had murdered her former employer and as a punishment was pinched on her arms with hot tongues in front of the house where she had committed the crime; she was then led to and placed into an open grave, covered with wooden branches, and had a wooden pole rammed through her heart. True, no woman was ever

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131. St April 23, 1585; St April 26, 1588, St March 23, 1582.

132. St Nov. 8 and Nov. 15, 1588.

133. Rau, 86; St June 11, 1585.

broken on the wheel in Frankfurt, but it is an academic question which punishment was more cruel.

The harshness of the death penalties imposed on women changed in 1618 when the first woman was decapitated in Frankfurt. She had committed incest. Hereafter and in keeping with Frankfurt's general trend toward less cruel punishments, decapitation by the sword became the norm. Compared to other European locations, Frankfurt's women received milder punishments as of 1618. In Amsterdam women were hanged until the mid-eighteenth century and a woman was even broken on the wheel in 1746.<sup>134</sup> Burning continued to be practiced there until 1696 while in England, female offenders were burned until the mid-eighteenth century.<sup>135</sup>

In the case of corporal punishments, women were not spared harsh physical punishments. Women, like men, were flogged in public, put in the pillory, and banished. But again unlike Amsterdam none lost an ear, and none was ever branded.<sup>136</sup> Spierenberg even states that during the 1730 to 1750 period "a greater proportion of women than men were branded" in Amsterdam.<sup>137</sup>

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134. Sellin and Wolfgang, 5; Spierenburg, 74.

135. Spierenburg, 71; Tobias, 145.

136. Spierenburg, 75, 167.

137. Ibid., 167.

In Frankfurt, women were flogged for property offenses. Out of a total of 76 women sentenced for simple theft, 30 were flogged, 25 put in the pillory and 21 were banished. Women were not spared the whip. On the contrary, they were sentenced to physical punishments for which their male counterparts were either not sentenced at all or received monetary fines only<sup>138</sup>. As shown previously, prostitution and fornication were primarily women-oriented punishments in that only 3 men were sentenced for prostitution in contrast to 32 women. In case of fornication sentences, the pattern changes slightly from 21 male versus 43 female sentences. But there exists a considerable qualitative difference between these numbers. Only 3 men were sentenced for simple fornication while the rest received corporal punishments only in conjunction with other crimes. Women had a far higher rate of sentencing based on simple fornication and prostitution as illustrated in Table 38.

Table 38.-- Women's Punishments for Simple Prostitution and Fornication

<u>Penal Category</u>	<u>Prostitution</u>	<u>Fornication</u>
Ducking Stool+Ban.	3	0
Flogged+Banished	2	3
Flogged+Pillory+Ban.	0	3
Pillory+Ban.d	6	5
<u>Banished</u>	<u>14</u>	<u>11</u>
<u>Total</u>	<u>25</u>	<u>22</u>

Source: Book of Punishments

138. Bb 1607, 23; Bb 1618, 168.

Women were thus handed stiff corporal sentences. But pregnancy could have a mitigating effect on the punishments. Out of 14 verifiable case entries, the earliest in 1573 and the latest in 1662, a total of 12 pregnant women were handed a milder sentence, while in two instances the sentences were not changed but carried out after the child was born.<sup>139</sup> The mitigated sentences consisted in 7 instances of life banishment and in 5 cases of the pillory.<sup>140</sup> No pregnant woman was flogged in Frankfurt. Yet one cannot help but wonder about the so-called leniency in these cases. Although the sentences were mitigated, the punishments were still harsh when one realizes that in almost all cases the woman was single and would have to care for her baby outside the protection of the city walls.

Disease could bring about more lenient punishments, for both men and women. In 1585 a man who was "so full of the French disease that he dirtied the prison" was

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139. Bb 1662, 87; BB 1636, 148; re also James C. Oldham's article, "On Pleading the Belly: A History of the Jury of Matrons," in Criminal Justice History Vol. VI (Westport, Ct.,: Meckler Publishing Co., 1985), 1-64.

140. St Dec. 23, 1573; St Febr. 11, 1574; St Febr. 28, 1582; St Oct. 14, 1607; St May 19, 1609; St Oct. 26, 1615; St April 9, 1618; St Oct. 24, 1618; St Jan. 10, 1618; St Dec. 8, 1619; St May 17, 1625; St Dec. 7, 1633.

speedily released.<sup>141</sup> Another male culprit got a milder sentence in 1648 because he was very weak.<sup>142</sup> In select cases, retardation was taken into account. While in a case from 1578 a retarded man was sentenced to death for manslaughter, a hundred years later a horse thief was banished only. This change over a hundred year span might possibly be attributable to a different perception of retardation.<sup>143</sup>

In contrast to the equitable sentencing approach between the sexes with regard to disease, the same cannot be said for the following types of cases. The unfairest gender-related punishment consisted of sentencing women who had committed no crime whatsoever but whose husbands had been convicted of criminal offenses. In six cases women were banished simply because they were perceived as suspicious for no apparent reason other than being married to a sentenced criminal. An additional 18 women, some with their children, were ousted from Frankfurt when their husbands received the banishment sentence.<sup>144</sup> In

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141. Rp 1583, 69.

142. St May 20, 1648.

143. Bb 1578, 116; St Oct. 22, 1686.

144. Bb 1568, 89; Bb 1586, 134; Bb 1587, 201; Bb 1588, 25; Bb 1588, 130; Bb 1595, 248; Bb 1606, 35; Bb 1634, 157; Bb 1664, 129; Bb 1674, 40; Bb 1696, 13; St Nov. 4, 1616.

such cases, often omitted from the Book of Punishments, but included in the Bb, it was simply noted that the offender was "to have his wife" or "his wife and children to follow him." This was the harshest form of reinforcing the concept of marriage by depriving innocent women and sometimes their children of the security of the town. It saw the wife as a mere appendage of the man and left her no freedom whatsoever.

This trend is in sharp contrast to Beattie's assertion on eighteenth century English female criminals who "were not held responsible for illegal acts done in the company of their husbands."<sup>145</sup> It also is in clear distinction to Castan's statement for Languedoc that married women were better protected.<sup>146</sup> For Frankfurt no such assertions can be maintained and this might partially explain why Frankfurt's women were among the most ardent plea bargainers for their husbands, they were pleading for themselves.

The goal of private pleas or intercessions, was to achieve a mitigation of the sentence. If successful, it could entail the acquittal of a culprit as demonstrated by various case entries. On April 7, 1575 an entry in the Bb read that a criminal was released based on private

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145. Beattie, "Criminality of Women," :95-96.

146. Castan, Languedoc, 29.

intercession, while his two companions were punished.<sup>147</sup> Another case citing the release of the offender dates from July 20, 1566 and a third and similar example from the year 1593.<sup>148</sup> But commutations of sentences could take various other forms such as changing death by hanging to the milder version of decapitation in addition to an honorable burial.<sup>149</sup>

Such pleas were thus primarily aimed at reducing the suffering of the culprit. But this is only part of the picture. Another aspect must be added to the system of intercessions, namely the element of reducing the implicit punishment of relatives or friends of the criminal. This contention has to be seen in conjunction with the public nature of most penalties. Public exposure of the criminal, be it capital or corporal, meant public exposure of the culprit's family members, friends, and other close associates especially in a community of the size of Frankfurt where word of mouth would spread very rapidly and where gossip flourished.

A swift execution by the sword with an honorable burial afterwards was the least shaming and dishonoring for the surviving relatives or friends as explicitly

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147. Bb 1574, 188.

148. Bb 1566, 281; Bb 1593, 117.

149. Bb 1575, 25.

stated in several cases.<sup>150</sup> It is this particular fact, namely the implicit punishment of the survivors, which partially explains the intensity of some of the pleas and the high number of intercessions petitioned on behalf of burghers. Burghers and their families suffered more from public exposure than unknown outsiders. Out of a total of 83 pleas for male offenders, 32 were addressed to burghers as demonstrated in Table 39.

Table 39.-- Distribution of Intercessions  
per Criminal Group

<u>Criminals</u>	<u>Requests Granted</u>	<u>Requests Ignored</u>	<u>Unclear Outcome</u>	<u>Total</u>
Juveniles	4	0	1	5
Jews	0	2	3	5
Burghers	19	9	4	32
Soldiers	10	0	3	13
Male General	12	12	4	28
Women	13	4	2	19
Total	58	27	17	102

Source: Rps and Bbs

These statistics also demonstrate that women received the lowest rate of intercessions namely 19 only compared to 83 for men. This disproportionate pattern might be attributable to their infrequent crime sentencing were it not for the fact that considerably fewer burghers than women were sentenced yet they show a high rate of pleas. Therefore, a numerical correlation between crime sentences and intercessions cannot be

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150. Rp 1571, 31; Bb 1641, 16.

maintained. The answer to this discrepancy lies in the qualitative field, namely who were the initiators of such pleas.

While traditional historiography has it that in the majority of cases intercessions were voiced by persons of high social or political standing this was not the case in Frankfurt. Here, the vast majority of supplications originated with family members of the accused. Broken down into individual pleas, the majority namely a total of 97 came from close relatives of the culprit, followed by 13 supplications from friends and 8 from colleagues. Entreaties from noblemen amounted to a total of 6 only. There existed thus a close connection between the culprit and those who initiated the supplications.

Most remarkably, it was Frankfurt's women who played the decisive role in entering intercessions throughout the 1562 to 1696 period. They constituted the largest group of plea bargainers with 43 intercessions. Wives of suspects led this list with 33 pleas followed by 10 mothers. Fathers petitioned for a milder sentence in 17 instances, relatives in general in 16, children of suspects in 12, and friends in 13 cases.

The high representation of women and their obvious success in bringing about more lenient punishments seems paradoxical, because it is inversely related to the punishments they received. While women were able to

reduce the severity of penalties handed to men, they themselves did not receive such leniency. They were subjected to a far more rigorous and selective penal procedure than men with the exception of Jews. And, as stated before, very few female criminals had intercessions entered for them. Who, for example, would plead for a prostitute? In addition, women often had to share the punishment of their husbands, in particular banishment sentences, despite the fact that they themselves were innocent.

Why then would so many women initiate intercessions especially for their husbands? The answer lies in the fact that criminal punishments often affected members of the family. In the case of wives, they suffered most since they were implicitly and explicitly affected by their husbands' penalties. In addition, contemporary women could not just leave the scene nor their husbands nor the community, especially since with their ouster from the guilds, they had become increasingly depended on their husbands in economic terms. Therefore, while emotional reasons surely played a role in petitioning for milder sentences, women also interceded out of practical concerns. They were pleading for themselves.

The effectiveness of such private supplications is demonstrated by the large number of granted requests shown in Table 38. Considering that a suspect had no

recourse to a court of appeal the system of intercessions was of prime significance. It offered an accused access to indirect channels of appeals provided her or she could muster strong familial support. Intercessions constituted thus an important extra-judicial means of reducing the penalty throughout the 1562 to 1696 period.

It had an even more decisive influence on the punishments than the sentences suggested by the City Council's own legal advisors, the advocates. Private pleas entailed milder penalties in 58 out of the total of 102 supplications while advocates only suggested milder punishments in 36 out of total of 92 penal proposals (re also Chapter III). Advocates proposed the death penalty all the way up to the end of the seventeenth century. During the 1661 to 1696 period, 11 out of the 13 death sentences were carried out at the explicit suggestion of the advocates, and 7 of the 11 were hung because the advocates had proposed such a sentence.<sup>151</sup> Thus, in the case of Frankfurt, there is enough evidence to state that the temperate influence of advocates on capital punishments was more limited than suggested by Meinhardt and Langbein.<sup>152</sup> Even the legal advice given by

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151. Bb 1683,86; St April 26, 1684; St May 23, 1684.

152. Meinhardt, 19.

independent law faculties of the universities continued with harsh sentences. They, too, suggested capital punishments all the way up to the end of seventeenth century as demonstrated by a capital sentence for incest from the year 1694.<sup>153</sup>

The people in the form of private intercessions thus had a more decisive impact on Frankfurt's penal structure. Individuals and groups from outside the courts had a better chance of reducing the severity of an offender's punishment than did people directly involved with the courts and the laws. And this pattern attests to the willingness on the part of the City Council to listen to requests of the population. It evidences a modus vivendi.

Frankfurt's penal structure was thus a complex, personally and socially interrelated phenomenon where a direct causal connection between crime and punishment cannot be ascertained. The scale of the severity of the punishment depended to a large degree on personal aspects. The contemporary punishment structure thus had wide social aspects and repercussions. Most importantly, it mirrored the authority's and the community's values and both used it selectively to enforce them.

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153. St July 10, 1694.

## CONCLUSION

In Frankfurt, the handling of religious, economic, political and criminal matters was to a considerable degree, a joint venture between the ruling elite and the people at large. Frankfurt's population successfully exercised direct and indirect pressure on the City Council and their concerns were often integrated into municipal policies and laws. The introduction of Lutheranism at the behest of the people or the expulsion of the Calvinist religious refugees as a result of communal pressure serve as examples of how the people imposed their will in the religious sector. Religious exclusiveness was practiced by both the City Council and the guilds, for both allowed only Lutherans to join their ranks. The pressure on the Jews is an even more telling example. While the City Council moved them into a ghetto at the end of the fifteenth century, the population at large attacked them there a hundred years later.

In the economic field, the concerns of the guilds were taken up by the City Council. The gradual removal of women from the guilds was initiated by members of the guilds and journeymen and did not come by fiat from above. In addition, the guilds' increased insistence on

the legitimacy of an applicant, his parents and even grand-parents in order to prevent overstaffing was sanctioned by the City Council. These measures had far-reaching repercussions in that the traditional concept of sexual mores changed. The previous flexible attitudes toward sex became rigid centering on legal marriage as the norm while downgrading extra-marital sexual relations. This what one might call inverse sexual revolution was eventually incorporated into local legislation by the City Council, re-inforcing the guilds' restrictive methods. The criminalization of sexual behavior was incipient in guild regulations.

Such changes were in turn reflected in the crime sentencing pattern, where sexual transgressions were increasingly punished. Yet, surprisingly the sentences were not evenly distributed as would befit a crime of such a mutual nature. The shared responsibility of the City Council and large segments of the population did thus not preclude subjective and partial crime sentencing. Conspicuously absent were patricians who could take advantage of loop-holes in the laws sheltering members of their rank or other wealthy people and their children from corporal punishments in the form of alternate sanctions such as monetary fines. Elitist prerogatives could thus spare a culprit from public pain and shame.

But if biased legislation protected the upper ranks, the local population exercised similar discretionary means by biased crime reporting which protected some and exposed others depending on the people's views of who was a suspect and what constituted an offense. While beggars were sheltered by the local population, women, particularly single women, were singled out for sexual transgressions. This trend was facilitated by the fact that almost all those sentenced were pregnant and as such were highly visible targets. In addition, single women were increasingly viewed with suspicion, a phenomenon closely related to their being ousted from the guilds. But prostitution furnished the most illustrative of all examples of selective crime enforcement, for it became an almost exclusively female crime in contrast to earlier times when prostitution had constituted an integral part of Frankfurt's municipal institutions.

If women were over-represented among sex criminals, Jews were the most likely general crime suspects both in the eyes of the City Council and the population. This trend occurred despite the fact that Jews had the lowest sentencing rate for crimes against persons and that no Jew was sentenced for murder or manslaughter during the entire 134 year time span. This paradoxical sentencing trend is further accentuated if compared to the treatment of soldiers. While soldiers had the highest rate of

manslaughter sentences, they received special treatment in the form of milder punishments in contrast to Jews who were subjected to the harshest penal procedures of all.

In the case of soldiers, communal concerns led to the special treatment. They were needed to defend Frankfurt during the various wars. In addition, the population resented the high Turkish war tax and the City Council complied by substituting military service for the death sentences. Similar socially and politically expedient penal features were exhibited by the conviction pattern of property-related offenses. Fewer such crimes were sentenced during times of adverse economic conditions and general hardship than during times of relative stability.

The penal structure also reflected the impact of the community. Intercessions serve as the prime example of the voice of the people for almost all private pleas originated with relatives of the suspect. Their effectiveness was demonstrated by the fact that most entreaties for milder punishments were granted by the City Council. In fact, the entire contemporary penological approach was based on the people and their participation, for, with the exception of a few private floggings for juveniles, all other punishments were performed in public that is before large segments of the population. This public performance served a crucial

purpose, namely to involve the people in future crime control. In order to understand this concept fully one has to bear in mind that, except for a tiny fraction of them, all offenders were banished from the community as well. By publicly exposing the culprit the people could absorb any physical traits and recognize the offender should he or she ever return. As long as banishment sentences formed the core of the penal structure, the culprits had to be publicly paraded to make the system work, for who, but members of the community, could enforce such a system? In the absence of an independent and institutionalized police force, the entire community was involved in crime control.

The public aspect of punishment was of crucial importance. It helped the community to recognize and control recidivists. The people were the law-enforcement agents par excellence. In order to facilitate their supervisory and policing task, clearly visually discernible symbols were used be it in form of physical traits or various dress codes, professional clothing or badges. The public nature of punishments corroborates more than any other contention the functional aspect of visual symbols in the administration of criminal justice during the sixteenth and seventeenth centuries. And this should not come as a surprise in a society which organized so many of its social, religious, and civic

functions on visual principles. The same methods were used for law enforcement purposes the more so since other means of crime control were scant. Even later centuries took recourse to such methods one only has to think of the striped prison uniform and the special hair cut of inmates. Hiding was extremely difficult in a contemporary community the size of Frankfurt. One could not just blend into a crowd as nowadays. It was only with the swelling of the cities and the gradual disappearance of the dress codes that the concept of the anonymous mass emerged and with it a changing pattern of law enforcement.

Frankfurt's crime sentencing trends thus reveal communal and elitist concerns. They exhibit aspects of the power of the ruling elite, but they also evidence the impact of the population at large. Personal discretion was exercised by both. And this highly selective criminal approach was greatly facilitated if not encouraged by the pervasive use of visual criteria. Visual symbols served as an effective albeit selective agent of the criminal justice system.

## APPENDIX

Table A1.-- Use of Eye Witnesses per Crime Categories

	1562	1595	1628	1661	
	-	-	-	-	
<u>Crimes</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Manslaughter	19 (9)*	15 (2)	8	4	46(11)
Property	16(15)	8 (6)	2	14(3)	40(24)
Sex	2 (2)	7 (1)	3	4(1)	16 (4)
<u>Verdachtstrafe</u>	4 (4)	4 (4)	5(5)	2(1)	15(14)
Murder	3 (2)	5 (5)	2	1(1)	11 (8)
Public Peace	2 (1)	1 (1)	0	2	5 (2)
Assault	2 (1)	0	2	0	4 (1)
<u>Total</u>	<u>48(34)</u>	<u>40(19)</u>	<u>22(5)</u>	<u>27(6)</u>	<u>137(64)</u>
Total Sentenced	462	415	121	340	1,338

\*Figures in paranthesis reflect the use of torture in addition to eye witnesses.

Source: Rp and Bb

Table A2.-- Use of Experts per Crime Category

	1562	1595	1628	1661	
	-	-	-	-	
<u>Crimes</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
<u>Verdacht</u>	2	1	0	5	8
Manslaughter	0	1	3	3	7
Sex	1	2	1	2	6
Murder	0	0	1	2	3
<u>Abortion</u>	0	0	1	1	2
<u>Total</u>	<u>3</u>	<u>4</u>	<u>6</u>	<u>13</u>	<u>26</u>
Total Sentenced	462	415	121	340	1,338

Source: Rp and Bb

Table A3.--Inquiries to other Towns

	1562	1595	1628	1661	
	-	-	-	-	
<u>Crimes</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Property	50 (8)*	35(7)	3	11(2)	99(17)
Verdacht	12 (3)	0	0	2	14 (3)
Murder	7 (2)	4(2)	0	0	11 (4)
Sex	7 (2)	4	0	0	11 (2)
Manslaughter	6 (1)	1	0	0	8
Forgeries	1	4	0	4	9
Assault	1	2	0	0	3
<u>Total</u>	<u>84(16)</u>	<u>50(9)</u>	<u>3</u>	<u>17(2)</u>	<u>154(27)</u>
Total Sentences	462	415	121	340	1,338

\* Figures in paranthesis represent cases of several inquiries.

Source: Bb and Rp

Table A4.-- Persons Tortured

	1561	1595	1628	1661	
	-	-	-	-	
<u>Category</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
"With Kindness"	63	49	7	19	138
"With Kindness" and Pain	144	112	8	25	289
Often	49	26	0	0	75
With Pain only	81	13	14	26	134
<u>Total</u>	<u>337</u>	<u>200</u>	<u>29</u>	<u>70</u>	<u>636</u>
Total Sentenced	462	415	121	340	1,338

Source: Bb and Rp

Table A5.-- Use of Advocates

	1562	1595	1628	1661
	-	-	-	-
<u>Crime Category</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>
Property	10	34	28	104
Sex	15	23	9	16
Public Peace	0	10	2	8
Religion	0	3	0	5
Forgery	1	1	1	12
Manslaughter	11	13	8	8
Murder	0	7	6	3
Assault	2	1	4	4
Verdacht	2	4	6	13
Multi	5	12	2	15
<u>Total</u>	<u>46</u>	<u>108</u>	<u>66</u>	<u>188</u>

Source: St, Bb, Rp

Table A6.--Council Sessions per Case Sentence

Period	Number of Sessions Including Sentencing:										
	1	2	3	4	5	6	7	8	9	10-14	15-19
1.	68	152	101	59	22	13	6	2	6	1	1
2.	62	117	94	67	29	10	3	1	4	0	2
3.	16	33	26	18	5	2	1	3	1	3	0
4.	59	55	45	36	20	10	9	5	1	6	0
Total	205	357	266	180	76	35	19	11	12	10	3

Source: Rp

Table A7.-- Time of Detention

Period	Days:							Weeks:			Months:			
	1	2	3	4	5	6	7	2	3	4	2	3-6	7-19	18
1.	47	26	6	9	10	7	33	82	56	68	48	13	1	1
2.	53	34	4	4	12	5	29	80	39	52	59	13	4	0
3.	17	3	1	1	2	4	13	23	15	15	18	6	0	0
4.	51	16	5	2	3	1	12	45	31	32	38	22	1	0
Tot.	168	79	16	16	27	17	87	230	141	167	163	54	6	1

Source: Rp

Table A8.-- Days from Sentencing to Execution

Period	1-2	3	4	5	6	7	8	9	11	12-14	20-30
1.	346	37	31	1	3	2	7	3	1	4	0
2.	332	34	28	2	5	0	3	0	0	0	0
3.	98	9	3	1	2	1	0	0	3	0	1
4.	224	7	14	4	3	3	9	0	0	6	1
Total	1,000	87	76	8	13	6	19	3	4	10	2

Source: Rp

Table A9.-- Annual Crime Sentences from 1562 to 1608

Years	Number of Crimes	Years	Number of Crimes	Years	Number of Crimes
1562	14	1573	16	1584	13
1563	9	1574	24	1585	28
1564	12	1575	28	1586	33
1565	13	1576	7	1587	22
1566	10	1577	15	1588	17
1567	9	1578	18	1589	20
1568	7	1579	19	1590	17
1569	12	1580	8	1591	12
1570	17	1581	16	1592	29
1571	12	1582	13	1593	12
1572	22	1583	7	1594	25
Total	137		171		228

Years	Number of Crimes	Years	Number of Crimes
1595	8	1602	18
1596	14	1603	12
1597	10	1604	20
1598	10	1605	20
1599	12	1606	11
1600	16	1606	17
1601	15	1608	6
Total	85		104

Source: St

Table A10.-- Sex Crime Sentences from 1562 to 1583

Years	Number of Sentences	Years	Number of Sentences
1562	0	1573	0
1563	0	1574	3
1564	1	1575	9
1565	2	1576	2
1566	1	1577	4
1567	0	1578	0
1568	0	1579	2
1569	0	1580	2
1570	0	1581	0
1571	1	1582	3
1572	0	1583	0
Total	5		25

Source: St

Table A11.-- Verdachtstrafen

	1562	1595	1628	1661	
	-	-	-	-	
<u>Suspected Crimes</u>	<u>1594</u>	<u>1627</u>	<u>1660</u>	<u>1696</u>	<u>Total</u>
Property	9	14	6	14	43
Against Persons:					
Murder	1	1	0	0	2
Infanticide	2	2	0	3	7
Manslaughter	3	1	4	3	11
Sexual:					
Homosexuality	0	1	1	0	2
Adultery	0	0	1	2	3
Incest	0	0	0	1	1
Child Molesting	0	0	0	1	1
Prostitution	0	1	0	0	1
Religious:					
Witchcraft	2	0	0	1	3
Blasphemy	0	1	0	0	1
Public Peace	0	1	1	1	3
Forgeries:					
Begging Papers	2	0	0	1	3
Counterfeiting	1	1	0	3	5
Gambling	1	0	0	0	1
Unknown	7	0	1	0	8
<u>Total</u>	<u>23</u>	<u>23</u>	<u>14</u>	<u>30</u>	<u>95</u>

Source: St

Table A12.-- Property Crime Sentences per Gender

	1562		1595		1628		1661			
	-		-		-		-			
	1594		1627		1660		1696		Total	
<u>Category</u>	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>
Theft	207	24	133	30	20	15	101	31	461	100
Robbery	9	0	10	2	2	0	7	0	28	2
Burglary	34	1	31	3	7	1	13	1	85	6
Pickpocket	14	0	3	0	0	0	8	0	25	0
Poaching	0	0	0	0	0	0	2	0	2	0
Sale Stolen Mer.	4	2	16	3	2	2	2	0	24	7
Participation	5	1	16	1	2	0	9	0	32	2
Concealment	1	4	11	1	1	1	1	0	14	6
Abetting	2	1	5	1	1	0	8	2	16	4
<u>Total</u>	<u>276</u>	<u>33</u>	<u>225</u>	<u>41</u>	<u>35</u>	<u>19</u>	<u>151</u>	<u>34</u>	<u>687</u>	<u>127</u>

Source :St

Table A13.-- Sex Crime Sentences per Gender

Category	1562		1595		1628		1661		Total	
	-		-		-		-			
	1594		1627		1660		1696		M	F
	M	F	M	F	M	F	M	F	M	F
Bestiality	0	0	2	0	0	0	0	0	2	0
Incest	4	3	3	6	0	0	4	4	11	13
Abduction	4	0	0	0	1	0	0	0	5	0
Jew/Christian	1	0	4	3	0	1	0	0	5	4
Rape	0	0	2	0	0	0	0	0	2	0
Child Molesting	0	0	0	0	0	0	2	0	2	0
Adultery	10	5	13	14	5	3	5	6	33	28
Bigamy	3	0	4	2	1	0	3	1	11	3
Pandering	0	1	0	3	0	1	1	3	1	8
Prostitution	2	9	0	14	0	1	1	8	3	32
Fornication	6	9	5	21	3	6	7	7	21	43
Indecent Exp.	1	0	0	0	0	0	0	0	1	0
Breach of										
Marriage Promise	1	1	0	0	1	0	1	0	3	1
Concealment	1	0	3	0	0	0	1	2	5	2
Total	33	28	36	63	11	12	25	31	105	134

Source: St

Table A14.-- Sentences per Gender of Crimes against Persons

Category	1562		1595		1628		1661		Total	
	-		-		-		-			
	1594		1627		1660		1696		M	F
	M	F	M	F	M	F	M	F	M	F
Infanticide	0	1	0	4	0	8	0	3	0	16
Child Exposure	0	0	0	1	0	1	0	0	0	2
Abortion	0	0	0	0	0	2	0	1	0	3
Murder	6	1	9	0	1	1	2	0	18	2
Manslaughter	23	1	22	0	11	0	13	0	69	1
Robbery+Murder	6	0	3	0	1	0	1	0	11	0
Attempt Poison	0	1	0	1	0	0	0	0	0	2
Suicide	3	0	3	0	0	2	2	2	8	4
Assaults	18	1	7	0	3	1	6	0	34	2
Kidnapping	0	0	1	0	0	0	0	0	1	0
Participation	2	0	1	0	2	0	2	0	7	0
Total	58	5	46	6	18	15	26	6	148	32

Source: St

Table A15.-- Religious Crime Sentences per Gender

Category	1562		1595		1628		1661		Total	
	-		-		-		-			
	1594		1627		1660		1696		M	F
	M	F	M	F	M	F	M	F	M	F
Blasphemy	1	0	1	1	0	0	2	1	4	2
Breach of Ban.	10	5	22	11	4	0	15	3	51	19
" of City Oath	0	0	3	0	1	0	3	0	7	0
Heresy	0	0	1	0	0	0	0	1	1	1
Conjuration	0	0	0	0	0	0	2	0	2	0
Total	11	5	27	12	5	0	22	5	65	22

Source: St

Table A16.-- Sentences per Gender of Disturbing Public Peace

Category	1562		1595		1628		1661		Total	
	-		-		-		-			
	1594		1627		1660		1696		M	F
	M	F	M	F	M	F	M	F	M	F
Arson	0	0	0	1	0	0	0	0	0	1
Public Dist.	3	0	1	0	1	0	1	0	6	0
Verdachtstrafe	18	10	17	6	9	5	26	4	70	25
Slander	3	0	6	3	1	0	0	0	10	3
Libel	0	0	4	0	0	0	0	0	4	0
Lese-majesty	2	0	4	0	0	0	2	0	8	0
Lewd	0	0	0	1	0	1	5	5	5	7
Treason	0	0	0	0	1	0	1	0	2	0
Total	26	10	32	11	12	6	35	9	105	36

Source: St

Table A17.-- Forgery Sentences per Gender

Category	1562		1595		1628		1661		Total	
	-		-		-		-			
	1594		1627		1660		1696		M	F
	M	F	M	F	M	F	M	F	M	F
Counterfeiting	4	0	2	0	0	0	4	0	10	0
Forgeries	6	0	4	0	0	0	5	0	15	0
Begging Papers	3	1	4	0	2	0	15	4	24	5
Gambling	16	0	8	0	0	0	3	0	27	0
Embezzlement	8	4	2	2	0	0	1	0	11	6
Swindle	5	0	6	0	1	0	11	1	23	1
Total	44	7	26	2	3	0	39	5	112	14

Source: St

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