Keeping Order – Theft, Sex, and Vagrancy[1]

Gendered Prosecution Patterns in Seventeenth-Century Bern

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Abstract

In recent decades, historians working on crime and gender have been focusing on the interplay between female crime and the urban setting. Subsequently, migration has become increasingly important within the research field. While this development has led to new findings regarding women's participation in crime in early modern metropolises, in contrast, little is known about prosecuting patterns in smaller urban centers in predominantly rural regions. This situation is particularly true for less urbanized territories, such as the geographical area of the Swiss Confederation. It is often assumed that women in big cities led more mobile and independent lives than their counterparts in smaller towns. This socio-economic difference in female profiles is used as the main explanation for the disparities in gendered patterns in the registration of criminality. By analyzing the records of the criminal court of seventeenth-century Protestant Bern, this article aims to contribute to the understanding of women's crime in early modern urban territories. The findings demonstrate that smaller towns could also show high levels of female defendants. However, the city of Bern was not a place of relative freedom for women. Rather, the opposite is true: the authorities' control, focusing on an ordered society and household, led to strong formal control of mobility and (im)morality, which had a lasting impact on the prosecution of women. This policy, the article argues, is the main explanation for the high percentage of recorded female delinquency.

Introduction

In March 1644, while the Thirty Years' War released waves of refugees from South Germany to the Swiss Confederation, Hans Ziegler, Salome Müller, and Verena Bigler – labelled in the court sources as a 'lazy and suspicious group', all from the region of Alsace – were captured within the jurisdiction of Bern.[2] They were brought to Bern during an organized raid to track down vagrants in the territory. During the interrogation, Hans Ziegler, born in Orschwil, a town close to Colmar, explained that he had served in Basel the previous year. Since then, he had found some work on an irregular basis. On his way back to Alsace together with his wife and child, he was arrested in a farmhouse close to Bern in which they had stayed overnight together with the two other women. Ziegler emphasized that there were no grounds for taking him into custody. While his wife was released quickly, for unknown reasons, Ziegler confessed under torture that after the death of his parents and the destruction of his home by soldiers during the war, starvation had led him to steal bread back in his home country. In addition, he had stolen two loaves of bread in the Bernese territory. Salome Müller's narrative is similar. She originated from Bendorf, Alsace, and had worked as a domestic servant for one and a half years in Solothurn, Switzerland. After that, she could no longer find work and decided to return to Alsace. In captivity, she was also tortured and admitted to fornication with a servant during her stay in the region of Aargau; however, she then clarified that they had a marriage arrangement. Ultimately, she emphasized that she had never stolen anything. The third defendant, Verena Bigler, from Altkirch, an Alsatian town between Mulhouse and Basel, also explained that she was on her way back to Alsace. She had been living and working in the Swiss Confederation for the past two years, recently in the Bernese territory, when she was arrested as a vagrant. Even under torture she asserted that she had never committed any crimes. The three suspects were released three days after their imprisonment and were banished to their homeland.[3]

This case provides an exemplary representation of the Protestant Bernese authorities' eagerness to maintain public order as well as their repressive policy towards strangers, especially people on the move. It furthermore reveals the city authorities' interest in controlling sexual

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2   The scribe noted that the group was arrested as 'müßiggehende und argwonige Persohnen', *Turmbuch*, State Archive of the Canton of Bern (hereafter StABE), B IX 469, fol. 221, 2 March 1644.

3   *Turmbuch*, StABE B IX 469, fol. 221-222, 2 March 1644.

behaviour – primarily that of females. Their negative preconceptions about women and, in particular, their potential for sexual transgression were ubiquitous. For example, in many cases mainly concerning other, 'non-sexual' crimes, women's relationship status was still part of the interrogation. The scepticism was especially acute towards unattached women, who were often labelled and prosecuted as vagrants. Nevertheless, migration was an important part of life in early modern Europe, and migrants formed a substantial share of the urban population, especially in highly urbanized regions.[4] Thus, as Manon van der Heijden has clearly stated recently, migration deserves more attention in research on crime and gender.[5] So far, historians working on these issues in early modern Europe have pointed out that an urban setting had a substantial influence on women's involvement in crime. John M. Beattie was the first to declare female crime an urban phenomenon. He argues that women's relatively high level of autonomy and public life in cities contributed to their likeliness to break the law.[6] Economically flourishing urban centers attracted migrants not only due to work opportunities, but also because their relatively open migration policy guaranteed a certain freedom. Consequently, large cities were especially interesting for women, who accounted for a significant proportion of the demographic structure. More recent studies on Dutch and English cities have stressed the combination of independence and economic precariousness that went along with the lack of incorporation into traditional social support networks, such as family, neighbourhood, and guilds, as an important factor in shaping female crime patterns. Due to the vulnerable situation of migrant women, in particular, crime could have become an important means of survival. Scholars like Van der Heijden and Peter King identify the socio-economic vulnerability and independence of women in combination with highly institutionalized formal control mechanisms as an explanation for the high proportion of women prosecuted for crime, 30 up to 50 percent, for example, in such booming metropolises as London or Amsterdam.[7]

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4   Sylvia Hahn, *Historische Migrationsforschung* (Frankfurt am Main/ New York 2012) 16.

5   Manon van der Heijden, 'Future research on women and crime', *Crime, History & Society* 21:2 (2017) 123-133, 123-124, see an overview in Sanne Muurling, Marion Pluskota, and Manon van der Heijden, 'Introduction', in: *Idem* (eds), *Women's criminality in Europe: 1600-1914* (Cambridge 2020) 1-25.

6   John M. Beattie, 'The criminality of women in eighteenth-century England', *Journal of Social History* 8:4 (1975) 80-116, 82, 97.

7   Peter King, 'Female offenders, work and life-cycle change in late-eighteenth century London', *Continuity and Change* 11:1 (1996) 61-90; Manon van der Heijden, *Women and crime in early modern*

In contrast, Jeannette Kamp's recent work on Frankfurt demonstrates that early modern cities were also places of strong informal discipline and control.[8] In German territories, where social control mechanisms were dominant, the numbers of registered female offenders in criminal records were low – compared to large and urbanized Dutch cities, such as Amsterdam or Leiden.[9] As historians have stated, the patriarchal household was the core of social order and determined the economic and social scope of action in the hierarchical society.[10] The preservation of urban stability and peace resulted in the strong institutional control of mobility, which limited the economic possibilities for newcomers, especially women.[11] In Frankfurt, a large city by German standards, 22 percent of all offenders were female. In explaining these low figures of recorded female crime, Kamp hypothesizes that because of this relative restriction on women's independence, they were less likely to become involved with formal criminal justice. Rather, the strong informal control within the household increased the chance that their transgressions would be handled informally.[12]

As outlined above, research in early modern urban crime history has focused primarily on economically important cities, such as commercial metropolises or important capitals, while rather smaller, less influential cities have barely been considered. Research has thus failed to address the most widespread form of early modern urban

Holland (Leiden/ Boston 2016) 161; on the attractiveness of Amsterdam, see Lotte van de Pol and Erika Kuijpers, 'Poor women's migration to the city. The attraction of Amsterdam healthcare and social assistance in early modern times', *Journal of Urban History* 32:1 (2005) 44-60.

8   Jeannette Kamp, *Crime, gender and social control in early modern Frankfurt am Main* (Leiden/ Boston 2020) 64-66, 280-281; also Joachim Eibach, *Frankfurter Verhöre. Städtische Lebenswelten und Kriminalität im 18. Jahrhundert* (Paderborn 2003).

9   Gerd Schwerhoff, 'Geschlechtsspezifische Kriminalität im frühneuzeitlichen Köln: Fakten und Fiktionen', in: Otto Ulbricht (ed.), *Von Huren und Rabenmüttern: weibliche Kriminalität in der Frühen Neuzeit* (Cologne 1995) 83-115, 87-88; for Holland see Ariadne Schmidt, *Prosecuting women. A comparative perspective on crime and gender before the Dutch criminal courts, c. 1600-1810* (Leiden/ Boston 2020) 67-68. Regarding the coexistence of different forms of social control by the household see Joachim Eibach, 'Das offene Haus', *Zeitschrift für Historische Forschung* 38:4 (2011) 621-664.

10   For Cologne see Gerd Schwerhoff, *Köln im Kreuzverhör: Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt* (Bonn 1991) 178; for an urban history perspective see Johanna Innes, Steven King, and Anne Winter, 'Settlement and belonging in Europe, 1500-1930s. Structures, negotiations and experiences', in: Steven King and Anne Winter (eds), *Migration, settlement and belonging in Europe, 1500-1930: Comparative perspectives* (New York 2013) 1-28.

11   Clare Crowston, 'Women, gender and guilds in early modern Europe. An overview of recent research', *International Review of Social History* 53 (2008) 19-44; Ulinka Rublack, *The crimes of women in early modern Germany* (Oxford 1999) 257.

12   Kamp, *Crime, gender and social control*, 275-286.

experience. Most people living in an urban context resided in small cities and towns.[13] This setting applies, in particular, to the region of the Holy Roman Empire, where the most common city type was instead what Mack Walker considers a *home-town*: a face-to-face community with political interaction between leadership and the people within a population of fewer than 15,000 inhabitants.[14]

Bern – with some divergence from the ideal type – belonged to this latter category. Although it was considered a powerful city-state with a large dominion, the center, the city itself, was small and characterized by rather rural features (*Illustration 1*). On the one hand, its society was marked by the significance of social order, including belonging to a patriarchal household and being regulated by strong institutional control – particularly visible regarding mobility and settlement. On the other hand, the city and its territory were characterized by the everyday migration of journeymen, day labourers, and domestic servants, mainly from the countryside of the dominion. Considering what research has determined so far, one might expect very low figures of registered female offenders.

This article proposes, however, that structures of strong formal control could result in different prosecution patterns. To outline the example of Bern, I first show how the specific political and governmental developments, socio-economic conditions, and perceptions of norms and values determined the conception of criminal behaviour and its prosecution. This section demonstrates that migration and sexuality were a clear focus of the authorities' control. Secondly, I address the question of how this general framework then influenced court practice, and, with it, prosecution patterns. First, I will discuss registered crime in early modern Bern. In analyzing court sources through a combination of qualitative and quantitative methods, I examine the connection between the authorities' policies and their effects on jurisdiction. Next, I focus on gendered prosecution patterns. The aim is to demonstrate how the intended regulation of mobility and that of moral behaviour

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13   Following the suggestion of Katherine Lynch, I set the threshold to distinguish a small town from rural areas at 2,000 inhabitants; and 'city' to places with approximately 10,000 or more inhabitants, see Katherine A. Lynch, *Individuals, families and communities in Europe, 1200-1800. The urban foundations of western society* (Cambridge 2003) 26-27.

14   Mack Walker, *German home towns. Community, state and general estate, 1648-1871* (Ithaca 1971); further discussed by Christopher R. Friedrichs, 'How German is the German home town?', *Central European History* 47:3 (2014) 488-495; Heinz Schilling and Stefan Ehrenpreis, *Die Stadt in der Frühen Neuzeit* (Göttingen 2015) 4-7; see an overview in Jan de Vries, *European urbanization: 1500-1800* (London 1984) 32-40.
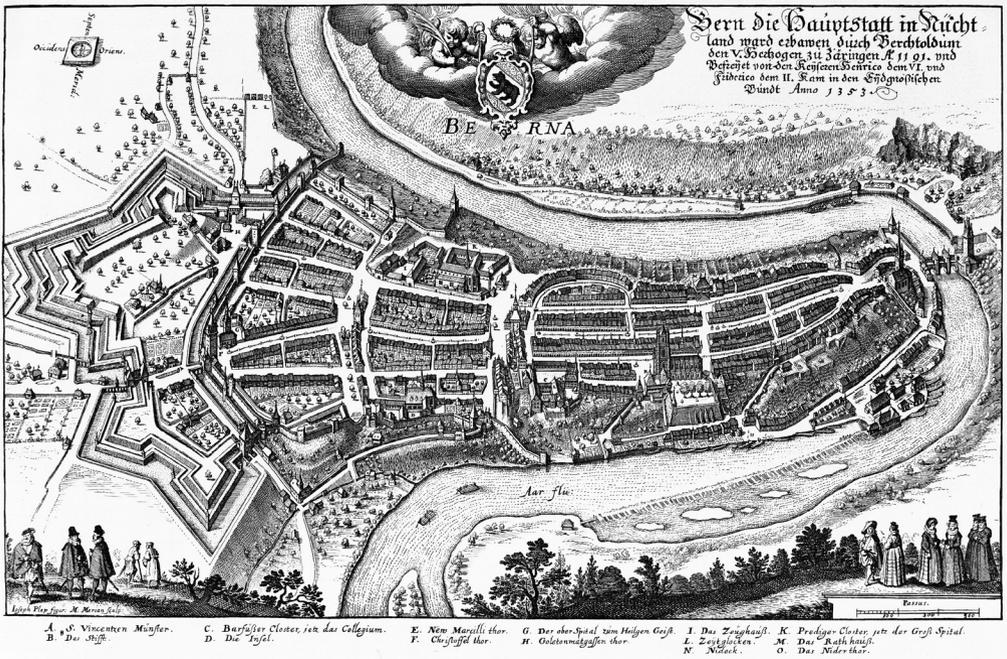
Illustration 1 The city of Bern in the seventeenth century. Map of the city of Bern with its city walls; copperplate by Matthäus Merian (1593-1650) after a template from Joseph Plepp, c. 1638 (source: https://de.wikipedia.org/wiki/Datei:MerianBern.jpg.)

were intertwined and how this policy affected the prosecution of women. One third of Bern's registered offenders were female – a comparatively high number.[15] I argue that the specific context of Bern – namely, strong control by the authorities in a face-to-face society and, with it, the drastically limited freedom and opportunities for women – increased their risk of coming into conflict with the criminal court. In addition, the government's pursuit of strong control and enforcement of moral and sexual laws, I argue, also weakened the position of women. This condition applies especially to unsettled and mobile females. In analyzing the local factors shaping Bernese prosecution patterns, this article contributes to the understanding of the variations of female involvement in crime in early modern urban settings.

15   Tina Adam, *Verhört im Turm. Weibliche Kriminalität in Bern im 17. Jahrhundert* (University of Bern 2018) 51.

Early modern Bern. Social and economic conditions

From the Middle Ages onward, the city of Bern constantly enlarged its dominion. In the seventeenth century, Bern was the biggest city-state north of the Alps and the most powerful of the old Swiss cantons.[16] Its extensive dominion, including the modern cantons of Aargau and Vaud, was divided into 50 administrative districts, which were controlled by urban officials. Thus, the city governed a territory with an estimated 180,000 subjects.[17] Nevertheless, the city district itself most likely did not reach the threshold of 10,000 inhabitants until the eighteenth century.[18] In comparison with large German cities and with the flourishing Dutch metropolises, the degree of urbanization of Swiss cities was comparatively low. Bern's state economy was based on agriculture and hiring out subjects as mercenaries to Europe's major powers. Proto-industry and significant changes in agricultural production did not take place until the eighteenth century.[19] Trade and craft played a less important role in state finances, but they were substantial sectors in the city. Craftspeople formed the largest population group within the city walls – often supplementing their incomes through self-sufficiency. Access to the guilds was reserved for citizens.[20] Most people arriving in Bern originated from the countryside and stayed in the city temporarily. It is reasonable to assume that because of higher rates of male mortality, there was a surplus of women in the city's demography.[21] Men could find work as craftsmen or traders, join the military, or find a position as a servant, whereas work opportunities for women were mainly restricted to domestic service. In the latter half of the eighteenth century, we estimate that around 20 percent of the

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16 Andreas Würgler, '"The league of the discordant members" or how the old Swiss confederation operated and how it managed to survive for so long', in: André Holenstein, Thomas Maissen, and Maarten Prak (eds), *The republican alternative. The Netherlands and Switzerland compared* (Amsterdam 2003) 29-50.

17 Christian Pfister, 'Bevölkerung', in: André Holenstein (ed.), *Berns mächtige Zeit. Das 16. und 17. Jahrhundert neu entdeckt* (Bern 2006) 384-388, 387; *idem*, 'Demographische Entwicklung', 384-388, 384-385.

18 Wilhelm Bickel, *Bevölkerungsgeschichte und Bevölkerungspolitik der Schweiz seit dem Ausgang des Mittelalters* (Zürich 1947) 62-63; De Vries, *European urbanization*, 29, 284.

19 Stefan Altorder-Ong, *Staatsbildung ohne Steuern. Politische Ökonomie und Staatsfinanzen im Bern des 18. Jahrhunderts* (Baden 2010) 98; Christian Pfister, 'Protoindustrie und Manufakturen', in: Holenstein (ed.), *Berns mächtige Zeit*, 403-405, 404.

20 Anne-Marie Dubler, 'Das Handwerk in der Stadt und auf dem Land und seine Zünfte', in: Holenstein (ed.), *Berns mächtige Zeit*, 424-429, 425-426.

21 Lynch, *Individuals, families and communities*, 39-40.

total city population were domestic staff – over 80 percent of whom were female and working as maids.[22] Although the labour market must have been rather limited for newcomers, Bern, compared to other parts of Europe, was relatively safe. In contrast to neighbouring countries, for the most part it was spared major confessional war activities. Nevertheless, the Bernese dominion was confronted by two major waves of refugees during the seventeenth century. The first consisted of people from Alsace migrating due to the Thirty Years' War and the second of Huguenots driven out of France because of the revocation of the Edict of Nantes (1685). The latter migration in particular strained the city's resources, and, after an initially welcoming attitude, the authorities began to reject and even expel them from Bern's territory.[23]

As a free imperial city, Bern was autonomous and almost entirely independent in its regulation of criminal justice. With the Peace of Westphalia in 1648, Bern attained the formal recognition of sovereignty and created a self-image as a powerful aristocratic republic. Moreover, the authorities strengthened their power and dominance through the institutionalization and implementation of legal norms, with some exceptions, in the whole territory.[24] Urban officials were appointed in the dominion to control and implement the state's sovereignty in the bailiwicks. This state-building process resulted in the enhancement of authority, reflected in a new understanding of the government's responsibility to ensure order and security through norms and discipline.[25] An abundance of mandates, ordinances, and decrees were imposed to create a denominationally homogeneous and disciplined

22 Rudolf Braun, *Das ausgehende Ancien Régime in der Schweiz: Aufriss einer Sozial- und Wirtschaftsgeschichte des 18. Jahrhunderts* (Göttingen/ Zürich 1984) 150-151.

23 André Holenstein, 'Transnationale Politik. Eidgenössische Machteliten und der Dreissigjährige Krieg', in: André Holenstein, Georg von Erlach, and Sarah Rindlisbacher (eds), *Im Auge des Hurrikans. Eidgenössische Machteliten und der Dreissigjährige Krieg, Berner Zeitschrift für Geschichte* 77:3 (2015) Special issue, 51-64; Christian Pfister, 'Teuerungspolitik', in: Holenstein (ed.), *Berns mächtige Zeit*, 456-458, 458; Marc Vuillemier, 'Switzerland', in: Klaus J. Bade *et al.* (eds), *The encyclopedia of migration and minorities in Europe. From the seventeenth century to the present* (Cambridge 2011) 94-104, 95; on refugees see: Vivienne Larminie, 'Exile, integration and European perspectives. Huguenots in the Pays de Vaud', in: David B. Trim (ed.), *The Huguenots. History and memory in transnational context. Essays in honour and memory of Walter C. Utt* (Leiden 2011) 241-262, 242.

24 Claudia Schott-Volm (ed.), *Orte der Schweizer Eidgenossenschaft: Bern und Zürich, Vol. 1* (Frankfurt am Main 2006) 10-12.

25 On the concept of social disciplining, see Gerhard Oestreich, 'Strukturprobleme des europäischen Absolutismus', *Vierteljahrschrift für Sozial und Wirtschaftsgeschichte* 55 (1969) 329-347, more recent, Heinz Schilling, 'Discipline: the state and the churches in early modern Europe', in: Herman Roodenburg and Pieter Spierenburg (eds), *Social control in Europ.: Volume 1, 1500-1800* (Columbus 2004) 25-36.

subjecthood.[26] In order to control and enforce the mandates, the city council established various chambers, each responsible for a specific division, such as, for instance, admission to citizenship or sumptuary concerns.[27] These chambers sometimes had judicial functions and acted alongside the court system. Besides the lower courts, which handled civil matters, and the criminal court, which will be discussed later in the article, the choir court was a formative institution. The choir courts were established in every parish of the territory; the city's choir court, which also functioned as supreme court of the rural institutions, was required to transfer more severe cases to the criminal court. Its remit included marital matters, violations of moral and religious norms, and neighbourhood conflicts.[28] In doing so, the choir courts were responsible for ensuring compliance with the Protestant moral conventions within the framework of the matrimonial court statutes and moral mandates. As Susanna Burghartz has already noted for Basel, the marriage and moral courts had an important symbolic function in their performance of domination and, in practice, in the enforcing of fundamental behavioural discipline in the context of the increasingly intensified fornication discourse.[29] As a Protestant state, the enforcement and implementation of Protestant moral values and norms was a major concern. These codes not only demanded modesty, especially in moderate drinking, dressing, and gambling, but also in sexuality.[30] The Protestant understanding of sexuality, considered a subject of public control, affected all areas of society. Mostly, though, it effected a profound change in the definition of legitimate and illegitimate relationships between men and women. Marriage, with its close connection to the establishment of a household, was valorized

26 A list of the *Policeyordnungen* has been published by Schott-Volm, *Orte der Schweizer Eidgenossenschaft.*

27   Vinzenz Bartlome, 'Das Räderwerk der Herrschaft', in: Holenstein (ed.), *Berns mächtige Zeit*, 44-45; *Manual der Reformationskammer 1676-1682*, Burgerbibliothek Bern, BBB Mss. Hist. Helv. III, 261, Introduction; *Instruktionen der Burgerkammer*, StABE B XIII, fol. 1-12; André Holenstein, 'Regulating sumptuousness. Changing configurations of morals, politics and economics in Swiss cities in the seventeenth and eighteenth centuries', in: Giorgio Riello and Ulinka Rublack (eds), *The right to dress. Sumptuary laws in a global perspective* (Cambridge 2019) 121-142, 126.

28   Schott-Volm, *Orte der Schweizer Eidgenossenschaft*, 6-7.

29   Susanna Burghartz, *Zeiten der Reinheit – Orte der Unzucht. Ehe und Sexualität in Basel während der Frühen Neuzeit,* (Paderborn *et al.* 1999) 130-131; *Idem*, 'Competing logics of public order. Matrimony and the fight against illicit sexuality in Germany and Switzerland from the sixteenth to the eighteenth century', in: Silvana Seidel Menchi (ed.), *Marriage in Europe: 1400-1800* (Toronto [etc.] 2016) 176-200.

30   Rudolf Steck and Gustav Tobler (eds), *Aktensammlung zur Geschichte der Berner Reformation 1521-1532,* 2 (Bern 1923) No. 2219, 30 March 1529, 1000-1002.

as the key element of society. In contrast, all extramarital sexuality was criminalized and rigorously prosecuted as fornication, which in practice mainly affected women.[31]

In the same way, strong formal control was visible in the regulation of migration, more precisely in prosecuting poor migrants and beggars – a group seen as a threat to urban stability, as they were not part of the informal social control of a household. The Swiss Confederation – with its geographical position between the Holy Roman Empire, Italy, France, and Austria – was an important transit area and therefore shaped by strong migration during the early modern period.[32] Generally, migration and mobility played a key role in early modern everyday life, and a significant part of the population moved either temporarily or permanently for work or security reasons. As the center of a huge territory, Bern attracted migration, even if the radius was rather regional.[33] According to Rudolf Braun, the social profile of newcomers was mainly young, female, and with a rural background.[34] Studies have already proven that the size and economic focus of a city shaped migration patterns: the larger the city, the longer the migration distance.[35] Bern, characterized by rather rural features, seemed to have a low share of people from further than outside the Confederation. Most of those entering the city were from the subject territory, and this case is especially true for women. Thus, Bern confirms the already known gendered mobility patterns, where female migration was more regional than that of men, whose geographical radius was larger.[36] While foreigners – a 'category' that applied to basically everyone outside the legal hierarchy of the city – made up a large proportion of the urban population, they clashed with the concept of a well-ordered society.

31 Susanna Burghartz, 'Ordering discourse and society. Moral politics, marriage and fornication during the Reformation and the confessionalization process in Germany and Switzerland', in: Roodenburg and Spierenburg (eds), *Social control*, 78-98; Ulrike Gleixner *'Das Mensch' und 'der Kerl'. Die Konstruktion von Geschlecht in Unzuchtsverfahren der Frühen Neuzeit (1700-1760)* (Frankfurt am Main/ New York 1994) 216-219; Isabel Hull, *Sexuality, state, and civil society in Germany 1700-1815* (Ithaca/ London 1996) 100-103.

32 For an overview, see André Holenstein (ed.), *Mitten in Europa. Verflechtung und Abgrenzung der Schweizer Geschichte* (Baden 2014); also Thomas Maissen, *Geschichte der Schweiz* (Baden 2010).

33 Braun, *Ancien Régime,* 148-150; André Holenstein, Patrick Kury, and Kristina Schulz (eds), *Schweizer Migrationsgeschichte. Von den Anfängen bis zur Gegenwart* (Baden 2018) 124; Raoul Richner, *Sich niederlassen in der Eidgenossenschaft. Der Berner Unteraargau als Fallstudie (16.-18. Jahrhundert)* (Doctoral thesis in history, University of Basel 2017), Vuillemier, 'Switzerland', 94.

34 Braun, *Ancién Regime*, 154.

35 Schmidt, *Prosecuting women*, 98; Lynch, *Individuals, families and communities*, 37.

36 Adam, *Verhört im Turm*, 108; Schmidt, *Prosecuting women*, 98.

Thus, non-settled people, or more precisely people without official residency permission, were increasingly perceived as potential threats to public order and, therefore, often stigmatized and criminalized.[37]

In dealing with strangers, the authorities clearly differentiated between three categories of foreignness: people originating not from the city itself but from the dominion of Bern (*Anheimische* or *Untertanen*), people from outside the territory but part of the Confederation (*Äussere Fremde* or also *Eydgenossen*), and people from outside the Confederation (*Gantz ausländische*).[38] These distinctions also shaped the conditions for residency applications. According to the settlement orders, confederates paid double, and petitioners from abroad even triple the entry fee of a Bernese subject.[39] To secure approval, the petitioners needed to prove their legitimate birth and good reputation – demands that were especially challenging for foreigners to satisfy.[40] Bern's citizen admission book rarely listed someone originating from outside the Confederation even applying for citizenship status during the seventeenth century.[41] This status correlates with findings regarding Zurich, which indicate that the authorities' restrictive policy led to a narrowed migration pattern of newcomers: while a high number of new citizens in the late Middle Ages originated from further away, in the early modern period most new citizens were from the subject territory.[42] Without legal status, newcomers were excluded from most economic options, and not being allowed to run their own households, their scope for action was limited. This condition may be a reason why Bern was characterized by rather small-scale mobility, with movements primarily within the state.

Bern's society relied on a clear distinction between the social and legal positions of its inhabitants, which defined their opportunities and scope for action. The city was characterized by patrician governance, in which a small group of noble families determined state policy and thus

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37   For an overview, see Margo De Koster and Herbert Reinke, 'Policing minorities', in: Paul Knepper and Anja Johansen (eds), *The Oxford handbook of the history of crime and criminal justice* (Oxford 2016) 268-284.

38   *Newe Ordnung wider den gassenbättel, und wie man sich insgemein gegen den bättleren in und umb die statt Bern verhalten solle*, Sammlung Schweizerischer Rechtsquellen (hereafter SSRQ) BE 1.10, 510, 13 May 1643.

39   *Aufnahme Fremder ins Burgerrecht. Nüwe ordnung, was gestalt die ussren und frömbden ins künfftig alhie inn der statt Bern inn das burgrecht uffzenemmen*, SSRQ BE 1.5, 216-218, 6 April 1643.

40   Richner, *Sich niederlassen*, 126.

41   *Burgerannahme-Rodel*, StABE B XIII 2.

42   Holenstein, Kury, Schulz, *Schweizer Migrationsgeschichte*, 142.

occupied the most influential and lucrative position within the state, including membership in the city council and judiciary. Commoners and, in particular, those with temporally limited settlement permission were politically and economically disadvantaged.[43] In the course of the establishment of the poor relief system, citizenship became highly relevant.[44] The seventeenth century deserves special attention: in order to protect local privileges and resources, the authorities heavily restricted settlement, and in the middle of the century even closed applications for new citizenship.[45] With this exclusionary policy, integration in the community must have been challenging for foreigners, and the social support system was therefore very weak. It made unattached people especially vulnerable. At the same time, the city council was eager to control and regulate migration. For example, it prohibited residents from renting accommodation to foreigners (*Fremde*).[46] Additionally, innkeepers and officials were required to check for foreign people in inns, taverns, and at the city gates by asking them their name, place of birth, route, and current residence.[47] Also, marriages with people without permanent residency were controlled by the authorities.[48] Moreover, economic opportunities for foreigners were limited: besides at the regular open fairs, they were prohibited from selling their products at the city's markets. In the region of Vaud, the authorities even prohibited foreigners from work on the vines picking grapes and in domestic service.[49]

As demonstrated here, Bern's authorities implemented formal control structures not only within the city walls but also over an extensive domain. How did this strong formal and Protestant policy shape prosecution patterns?

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43   Braun, *Ancien Régime*, 150; Schott-Volm, *Orte der Schweizer Eidgenossenschaft*, 3.

44   On poor relief, see Erika Flückiger Strebel, *Zwischen Wohlfahrt und Staatsökonomie. Armenfürsorge auf der bernischen Landschaft im 18. Jahrhundert* (Zürich 2002); Anne-Lise Head-König, 'Citizens but not belonging. Migrants' difficulties in obtaining entitlement to relief in Switzerland from the 1550s to the early twentieth century', in: King and Winter (eds), *Migration, settlement and belonging*, 153-172.

45   *Burgerannahme-Rodel*, StABE B XIII 2, 35.

46   *Ausweisung Auswärtiger aus der Stadt und ihrem Bezirk*, SSRQ BE 1.10, 504-505, 12 June 1624; Holenstein, Kury, Schulz, *Schweizer Migrationsgeschichte*, 147.

47   *Fremdenkontrolle in der Stadt Bern*, SSRQ BE 1.8, 208-209, 6 June 1627; *Newe Ordnung wider den gassenbättel, und wie man sich insgemein gegen den bättleren in und umb die statt Bern verhalten solle*, SSRQ BE 1.10, 508, 13 May 1643; *Fremdenüberwachung*, SSRQ BE 1.8, 226-227, 23 June 1690.

48   *Instruktionen der Burgerkammer*, StABE B XIII, fol. 1-12.

49   *Verpott von frömden hantiereren und dergleichen unnützen gesindes*, SSRQ BE 1.8, 293, 2 March 1676; first announced in 1666.

Registered criminality

This article is based on a sample of 389 cases from the Bernese criminal court, which were recorded in the tower books (*Turmbücher*). These are the main documents for studying urban criminal court practice because other sources – such as lists of prisoners, documents on criminal investigations, or lists of wanted suspects (*Signalemente*) – are only known for the eighteenth century onward. First and foremost, the handwritten criminal records in the *Turmbücher* contain a summary of the interrogation process with information about the defendant's offense(s), testimony, and social profile. In addition, the clerks retroactively noted the sentence imposed. Generally speaking, criminal sources always represent only recorded criminality. Furthermore, they were shaped by the formal judicial framework, which includes self-defending strategies in testimonies and filtering through clerks. Nevertheless, despite possible biases, these criminal files offer the possibility to analyze social norms, value systems, and practices of everyday life in the early modern period.

The analysis of Bernese interrogation protocols includes the sample years 1618–1621, 1641–1644, 1664–1667, and 1687–1690. Firstly, I chose these years based on formal considerations. Each sample takes a span of four years from every twenty, thereby ensuring equidistance and covering a whole century. In addition, the *Turmbücher* for these periods have survived completely. Secondly, the content of these sampling periods provides an overview of general delinquency statistics in seventeenth-century Bern. Furthermore, they allow an examination of a long-term perspective in recorded criminality. Methodologically the examination focuses on the quantitative and qualitative analysis of how social features – namely, the gender and origin of a defendant – influenced prosecution, the court proceedings, and the sentence in a criminal case.[50] Besides offenders who had committed a crime within the city district, the criminal court also handled cases from across the dominion.

The evaluation of registered criminality brings to light that the prosecution patterns clearly reflect the effort of the Protestant authorities to maintain urban stability and peace. The criminal court, held by varying combinations of council members, mostly handled cases of property offenses (32 percent) and offenses against authority and order, including vagrancy (27 percent) and sexual offenses

50 The *Turmbücher* have been preserved as a series from 1545 to 1747 with hardly any missing documents and are now stored in the state archive of Bern (StABE B IX 422 – StABE B IX 492).

(24 percent), while violent offenses (6 percent) and religious offenses (4 percent) were underrepresented.[51] In a society of scarcity, property offenses were a prevalent crime in most territories in the early modern period. The strikingly high proportion of offenses against authority and order, on the other hand, is rather unique for a German-speaking city in the seventeenth century. Although the increasing discrimination and regulation of mobile people were pan-European phenomena, Bern was comparatively early in imposing strong control on mobility in prosecuting vagrancy. In the years of crisis, while the poverty problem was also a major concern, the prosecution of vagrancy and beggary became especially intense. During the seventeenth century, the legislation against beggary became stricter and more hostile, and mobile people were increasingly criminalized and prosecuted as vagrants.[52] In practice, 10 percent of all recorded crimes involved begging or vagrancy. Compared to other seventeenth-century German territories, these figures are relatively high, although the registered cases may only be the tip of the iceberg. The intensity of prosecution can be traced back to the authorities' understanding of their responsibility to ensure order. Lower city officials had to enforce the beggar laws and to report suspicious people to the city council. Foreign beggars had to be prevented from entering the city and expelled, whereas local poor who were capable of work, 'either male or female', had to be assigned to public labour.[53] Although people from the dominion were also frequently arrested for vagrancy and begging, foreigners from abroad were considered more suspicious and therefore were more likely to end up in criminal court for this offense. As the case of the three people from Alsace presented at the beginning of this article indicates, foreign people on the move were even preventatively captured and expelled.[54] The criminal sources further reveal the association of vagrancy and property offenses. Mobile people were targets of the stereotype of lazy thieves and idlers, which was mirrored in court. In total, 67.5 percent

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51   Adam, *Verhört im Turm*, 52 , 66, 83, 109; to compare with other German territories, see, for example, for Cologne, Schwerhoff, *Köln im Kreuzverhör,* 178; for the Electorate of Mainz, see Karl Härter, *Policey und Strafjustiz in Kurmainz, Gesetzgebung, Normdurchsetzung und Sozialkontrolle im frühneuzeitlichen Territorialstaat* (Frankfurt a. M. 2005), 546; for Frankfurt, see Kamp, *Crime, gender and social control*, 68.

52   Flückiger Strebel, 'Armenfürsorge', in: Holenstein (ed.), *Berns mächtige Zeit* 491-493, 491.

53   *Usschrybung dess starcken bättelvolcks halb, die frömden uss dem Land ze schaffen und die Heimischen zur arbeit ze halten,* SSRQ BE 1.10, 490-492, 14 September 1614.

54   *Turmbuch* StABE B IX 469, fol. 221-222, 2 March 1644.

of suspects in cases of begging or vagrancy were further interrogated about property delinquency.[55]

Another characteristic of Bernese prosecution patterns was the punishment of sexual transgression. The control of morality must be understood in the context of the confessional discourse of this time.[56] The Protestant authorities prosecuted sexual offenses not only through the choir court but also the criminal court. For instance, the criminal court passed sentence in cases of repeated fornication and adultery that demanded banishment or even corporal punishment. It also investigated more serious cases, resolving instances like illegitimate childbearing or sodomy (including homosexuality and bestiality).[57] Susanna Christen, for example, was delivered from the choir court to the criminal court in October 1687, because the choir court judges were unable to identify the father of her illegitimate twins.[58] The specific patterns of criminalization and prosecution clearly had a gendered aspect. In the next section, I will discuss the gender difference in recorded crime as well as the factors shaping different outcomes of recorded male and female criminality.

A closer look: Crime, prosecution, and gender

One third of all offenders registered in the *Turmbücher* were female, and two thirds were male, but who were these people coming up against the judicial system? Men recorded in the *Turmbücher* worked as craftsmen, soldiers, or servants. The typical female defendant was socially deprived, was working in domestic service, and was accused of property offenses (namely petty theft and fencing) or of transgression of moral norms, such as repeated fornication, adultery, illegitimate children, and vagrancy. Often, women appearing in the criminal interrogation records were not in a secure position within a household

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55   The ratio is 19:168 for subjects and 18:58 for foreigners, while in 90 out of 389 cases, the origin is not clear; source: sample years *Turmbücher* StABE B IX 461; StABE B IX 466; StABE B IX 468; StABE B IX 469; StABE B IX 470; StABE B IX 479; StABE B IX 480; StABE B IX 485.

56   An intensified prosecution of sexual offenses is also found in other territories, for example, in Basel (see Burghartz, *Zeiten der Reinheit*, 105), as well as in Catholic regions: for the Electorate of Mainz, see Härter, *Policey und Strafjustiz*, 539-540; for the Electorate of Bavaria, see Wolfgang Behringer, 'Weibliche Kriminalität in Kurbayern in der Frühen Neuzeit', in: Otto Ulbricht (ed.), *Weibliche Kriminalität in der Frühen Neuzeit* (Cologne [etc.]1995) 63-82, 76.

57   Adam, *Verhört im Turm*, 53-60.

58   *Turmbuch* StABE B IX 485, fol. 207, October 1687.

at the time of arrest. Spouses were generally detained together: Hans Binder, a former soldier, and his wife, Jacobe Balley, then selling herbs to survive, were interrogated by the criminal court because they were accused of stealing chickens.[59] However, every case was unique. Anna Brunner, for instance, who was living in the dominion of Bern, spent five months in the workhouse in Bern for petty theft. She and her illegitimate son Peter were released and sent home 'out of mercy and in the hope of improving her lifestyle'. Yet already on their way back home, they were arrested under suspicion of stealing garden tools, pans, linen textiles, and food. They confessed under torture and were sent back to the workhouse.[60] What these cases share is that the vast majority of suspects – men and women – belonged to the lower social strata.

From all the cases analyzed, we know the origin of 299 registered persons: the highest share of interrogated people came from the dominion of Bern (56 percent), 15 percent were confederates, and 9 percent were residents. All in all, the proportion of people from abroad is rather low (20 percent): 49 men and just nine women were prosecuted by the criminal court in Bern. Moreover, with one exception, all female defendants from abroad originated from the region of Alsace and were arrested in the sample years 1641–1644.[61] It can be assumed that they had reached the territory of Bern because of the war. Moreover, there is no indication that Bern attracted long-distance work migration. On the contrary, the criminal court mainly handled cases involving their subjects and consequently people under the authorities' indirect rule.[62]

With one-third of all offenders registered in the *Turmbücher* being female, the level of women involved in registered crime is rather high: while metropolises like London and Amsterdam show high levels of female offenders, up to 50 percent, bigger and economically more important German territories, such as Cologne and Frankfurt, display much lower figures (16 and 22 percent, respectively).[63] How can gendered prosecution patterns explain these findings?

As other studies on urban settings have already shown, the patterns of female and male criminal offenses in Bern are rather similar.[64] As shown in Figure 1, for both genders property offenses, sexual offenses,

59   *Turmbuch* StABE B IX 461, fol. 57-58b, 61b, October 1618.

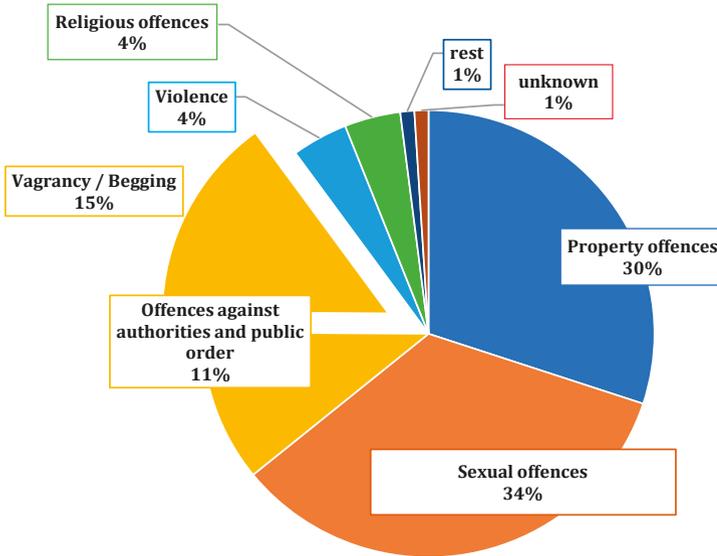60   *Turmbuch* StABE B IX 469, fol. 137, October 1642.

61   Sample years *Turmbücher* StABE B IX 461; StABE B IX 466; StABE B IX 468; StABE B IX 469; StABE B IX 470; StABE B IX 479, StABE B IX 480; StABE B IX 485.

62   Adam, *Verhört im Turm*, 138.

63   For an overview, see Kamp, *Crime, gender and social control*, 61.

64   For an overview, see Muurling, Pluskota, Van der Heijden, *Women's criminality in Europe*, 3.

Main offences of women (n=128)

Religious offences
4%

rest
1%

unknown
1%

Violence
4%

Property offences
30%

Vagrancy / Begging
15%

Offences against
authorities and public
order
11%

Sexual offences
34%

Main offences of men (n=261)

Religious offences
3%

rest
6%

unknown
2%

Violence
8%

Property offences
33%

Vagrancy / Begging
8%

Offences against
authorities and public
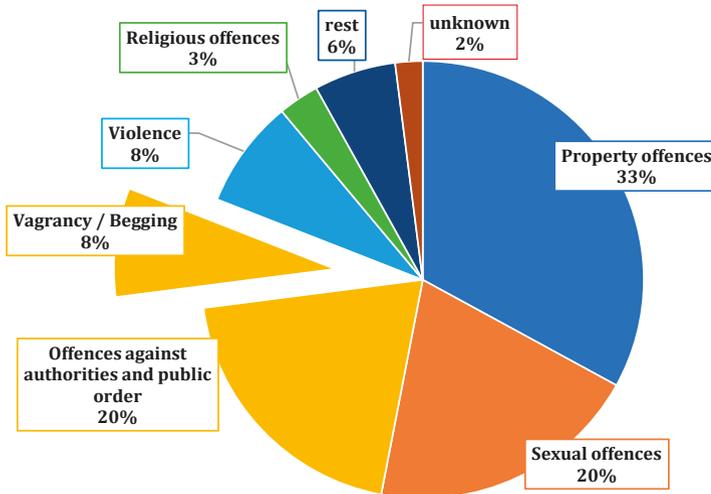order
20%

Sexual offences
20%

Figure 1 Distribution of offences by gender

*Sources: Turmbuch StABE B IX 461 Turmbuch 1617-1622; StABE B IX 466; Turmbuch 1631-1632;
StABE B IX 468 Turmbuch 1638-1641; StABE B IX 469 Turmbuch 1641-1644; StABE B IX 470
Turmbuch 1644-1646; StABE B IX 479, Turmbuch 1664-1663; StABE B IX 480 Turmbuch 1664-1665;
StABE B IX 485 Turmbuch 1684-1690*

and offenses against authority and public order constituted the largest categories of crime. There are two striking features worth highlighting, though, regarding the effects of institutional control on gendered prosecution patterns. Firstly, the level of women's involvement in sexual offenses is remarkable. Most of the women, in total 34 percent, were registered due to transgression of moral and sexual norms, compared to just 20 percent of recorded male defendants in this delinquency category; furthermore, in this offense category women made up 45 percent of all cases.[65]

The numbers demonstrate that although urban officials were also eager to prosecute male sexual misbehaviour, women were more often targets. Prevailing gender norms were reflected not only in court practice but also in the marriage and morality laws. Repeated fornication among women could be classified as prostitution, an offense considered a threat to the concept of marriage and the social order associated with it.[66] Therefore, in contrast to men, women were punished more harshly when it came to repeated sexual transgressions. Secondly, the graphic demonstrates that women, in percentage terms, were more frequently prosecuted for vagrancy and begging, compared to men.

To understand these results, we must look at the underlying social and cultural conditions of seventeenth-century Bern, particularly the gendered honour perceptions of the Protestant and patriarchal society. Joachim Eibach has already pointed out for violent offenses in Frankfurt that the interplay between social perception – including the construction of gender – and different social control mechanisms applying to men and women determined the practice of crime reporting.[67] He assumes that early modern authorities were less inclined to prosecute female defendants because women's transgressions were considered less disruptive of the social order than men's.[68] In fact, gender-specific honour perception played an important role in gendered prosecution patterns. While men's honour was based on their financial accountability, female

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65 *Ibid.*, 52-54.

66 *Der statt Bern Chorgerichts satzung umb ehsachen, hurey und ehebruchs-straff, anstell- und erhaltung christlicher zucht und ehrbarkeit, und was zur selbigen gehörig. Zu statt und zu land zugebrauchen, III: Offene und umbschweiffende tirnen*, SSRQ BE 1.6:2, 732, 1667, first announced in 1634.

67 Joachim Eibach, 'Violence and masculinity', in: Anja Johansen and Paul Knepper (eds), *The Oxford handbook of the history of crime and criminal justice* (New York 2016) 229-249, 232-239.

68 *Idem*, 'Männer vor Gericht – Frauen vor Gericht', in: Christine Roll, Frank Pohle, and Matthias Mytczek (eds), *Grenzen und Grenzüberschreitung*en. *Bilanz und Perspektiven der Frühneuzeitforschung* (Cologne 2010) 559-572, 556-558; also Manon van der Heijden, 'Women, violence and urban justice in Holland 1650-1839', *Crime, history & society* 17:2 (2013) 71-100.

honour was strongly connected to the body and, in particular, to sexual integrity. This association made women especially vulnerable when it came to transgressions of moral behaviour.[69] Gender-specific role assignment also defined how authorities approached male and female mobility. So far, studies on German territories have argued that male mobility, although more institutionalized in the context of work, was associated with a major threat to public safety. In contrast, women's mobility was seen as the pursuit of independence and lewdness – thus strongly connected to immorality and thus linked to a moral offence. Therefore, they conclude that mobile men were handled by the criminal court, while female mobility was persecuted by lower courts.[70] The prevailing gender conceptions also played an important role in the registration of crime in Bern, but they resulted in different prosecution patterns. The comparatively high numbers of mobile females who were recorded as vagrants in the *Turmbücher* indicate that the authorities considered female independence as a suspicious lifestyle that needed to be punished by the high court. In other words, not being settled and not belonging to a household were strongly disapproved of, thus making unattached women vulnerable to prosecution by the criminal court as licentious vagrants.

To explain the high proportion of female offenders in Bern, it is also essential to look at a strikingly underrepresented delinquency category: violent offenses. Generally, violence was a dominant crime in the statistics of the sixteenth and seventeenth centuries. Although current debates challenge such rigid stereotyping, it was considered a male offense and strongly connected to male honour perception.[71] Therefore,

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69   Susanna Burghartz, 'Geschlecht-Körper-Ehre. Überlegungen zur weiblichen Ehre in der frühen Neuzeit am Beispiel der Basler Ehegerichtsprotokolle', in: Klaus Schreiner and Gerd Schwerhoff (eds), *Verletzte Ehre. Ehrkonflikte in Gesellschaften des Mittelalters und der Frühen Neuzeit* (Cologne [etc.] 1995) 214-234; Gleixner, *'Das Mensch' und 'der Kerl'*, 217.

70   Kamp argued for Frankfurt that in vagrancy offenses men were considered a threat to public order and security and therefore handled by the criminal courts, while women were prosecuted by the Konsistorium; see Kamp, *Crime, gender and social control*, 273-274; also Eibach, *Frankfurter Verhöre,* 294. Härter comes to a similar conclusion for the Electorate of Mainz, in stating that male vagrants were punished more seriously than women; see Karl Härter, 'Prekäre Lebenswelten vagierender Randgruppen im frühneuzeitlichen Alten Reich. Überlebenspraktiken, obrigkeitliche Sicherheitspolitik und strafrechtliche Verfolgung', in: Gerhard Ammerer and Gerhard Fritz (eds), *Die Gesellschaft der Nichtsesshaften. Zur Lebenswelt der vagierenden Schichten vom 16. bis zum 19. Jahrhundert* (Affalterbach 2013) 21-38, 32-36.

71   Van der Heijden, 'Women, violence and urban justice', 71; for new insights on violence and gender see the study from Sanne Muurling, *Every crime, criminal justice and gender in early modern Bologna* (Leiden/ Boston 2021).

the largest share of those brought into criminal court for violent offenses were men. However, in contrast to other German-speaking territories, Bern's criminal court shows low figures of severe violence, and it barely prosecuted milder forms, such as quarrels.[72] All in all, just 6.4 percent – 25 cases – of the registered offenses concerned violence. And only ten defendants of all 389 were convicted for homicide.[73] While there is an indication that lower courts or the guilds were responsible for sanctioning milder violence, further research is needed to clarify the handling of violent offenses.[74] However, violence was definitely not a main concern of the criminal court. Instead, property offenses, vagrancy, and immoral behaviour – of which women usually formed a notable proportion of defendants – dominated the criminal prosecution. The specific priorities, shaped through strong control of mobility and sexuality, brought women into the focus of prosecution.

Gender played an important role not only in prosecution patterns but also in the court proceedings and the punishment practices of the criminal court. The criminal proceedings started with the pre-trial, in which the defendants were questioned by the investigative body, the so-called *Examinatoren*, a committee of three council members. During the interrogation, at least 29 percent of all the defendants were tortured due to the absence of a satisfactory confession.[75] The number is drastically higher when migration status is taken into account: almost 40 percent of all defendants from abroad have a notation of torture. Although men were confronted with the stretching rope more often and more intensely, the city council also gave the order to torture women (21 percent).[76]

While the authorities' prosecution policies were repressive, during the negotiation process in court the defendants certainly knew what to say to appease the judges and to get the most lenient sentence possible. In the case of the three people arrested on suspicion of vagrancy, for instance, they all expressed their willingness to work while at the same time emphasizing that they were on the way to their home country.[77] In

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72 For Frankfurt, see Kamp, *Crime, gender and social control*, 66-67; for Cologne see Schwerhoff, 'Geschlechtsspezifische Kriminalität', 91.

73 Adam, *Verhört im Turm*, 84.

74 *Ordnung des Gerichtsverfahrens und der Gerichtskosten* (1648), SSRQ BE 1.7.1, 598; *Gerichtsmanual der Stadt Bern* (1528-1798), StABE B IX 3-StABE B IX 256.

75 The number could be higher, as there is no information about torture in 60 percent of the cases, Adam, *Verhört im Turm*, 42.

76 Sample years *Turmbücher* StABE B IX 461; StABE B IX 466; StABE B IX 468; StABE B IX 469; StABE B IX 470; StABE B IX 479; StABE B IX 480; StABE B IX 485.

77 *Turmbuch* StABE B IX 469, fol. 221-222, 2 March 1644.

Illustration 2 Female defendant under torture. Sketch of Madlen Meyer from Remigen,
interrogated and punished for repeated fornication and having children out of wedlock; on the
left in clothes, on the right half-naked while tortured, drawing by Hans Jacob Dünz (1575-1649),
c. 1631, Lochrödel (source: State Archive of the Canton of Bern, StABE B IX 593 fol. 134.)

doing so, they were not only showing their industriousness, which was an important attribute of the prescribed Protestant lifestyle, but they further emphasized their intention not to remain in Bernese territory, thereby not becoming a burden. In another case, Maria Hartmeyer, a maid from the bailiff of Lenzburg, was arrested in the city district by officials in 1643. She was accused of breaking into her former master's house, a stocking knitter, and stealing textiles and kitchenware. During interrogation she attributed her actions to her precarious situation.[78] While youth and hardship – recognized mitigating circumstances – were used as an explanation for committing petty theft, marriage arrangements were brought up by female defendants to explain sexual transgressions.[79] Nonetheless, gender could be a disadvantage in the negotiation process, and it is especially striking in the context of sexual offenses. Although the *Examinatoren* were interested in the sexual lives and partnerships of both genders, women were more often questioned about their moral behaviour. Furthermore, women were not only more often prosecuted for sexual offenses due to the prevailing moral standards, but they were also treated as less credible when it came to direct face-to-face confrontation in cases of procreation outside marriage, illegitimacy, or of what today would be known as sexual violence. Very few women could prevail in these cases.[80] Madlen Meyer from Remigen, a village in Bernese Aargau, appeared several times in choir court between 1624 and 1631 accused of fornication – in her case, what today would be called sex work. Ultimately, due to the unexplained paternity of her children, the city council referred her case to the criminal court. The *Examinatoren* interrogated Meyer and several potential child fathers – including well-known names from the Bernese elite. Over three weeks and several examination sessions, in which Meyer was tortured, the list of sexual partners grew longer (*Illustration 2*). While the suitors did not deny sexual intercourse, they strongly rejected responsibility for the offspring. Eventually, the men were fined by the choir court, whereas the criminal court sentenced Meyer to death.[81] This example illustrates the double moral standard for men and women. In the negotiation process in sexual offenses, the

78 *Idem,* fol. 186, July 1643.

79 Eibach, 'Männer vor Gericht – Frauen vor Gericht', 562-572.

80 Adam, *Verhört im Turm,* 57-62, 88-90, 93-95.

81 *Chorgerichtsmanual* StABE B III 543, fol. 166-168, 171, 202, March 1631, StABE B III 544, fol. 13, November 1631; *Lochrodel* StABE B IX 591, fol. 161, December 1624 and January 1624, fol. 168, February 1625, StABE B IX 592, fol. 59-60; January 1627, StABE B IX 593, fol. 60, November 1629, fol. 134, March 1631, *Turmbuch* StABE B IX 466, fol. 28-30, 36, 43-45, April 1631.

aspect of foreignness recedes into the background and the question of female virtue determines the outcome of the trial.

The recorded confessions were presented to the city council, which would pass and pronounce the sentence. Sentencing practices were generally milder than the legal framework demanded: in two thirds of all court cases, the proceedings ended with banishment or even release. The punishment depended on the offense, but the court also took previous (mis)behaviour into account. Therefore, several factors could influence the court ruling – for example, recidivists were punished more severely. However, banishment, for instance, was a popular means of expelling unwanted people – women and men – and could differ geographically and temporally. It was a very flexible punishment because it could also be imposed as a *Verdachtsstrafe*, a sentence without the need for a confession. Therefore, it was often rendered in cases of vagrancy and begging. In this delinquency category, the court reproduced the layers of foreignness mentioned above: a sentence for a group of vagrants declared the expulsion of foreigners, while those from the Swiss Confederation were warned to find work and were sent home.[82] Furthermore, theft, especially non-violent theft, which was more frequently committed by women, was sentenced with a banishment. By contrast, burglary or repeated serious theft – often in groups – was instead considered more as a male offense and was punished with a corporal sentence.[83] As men were highly represented in serious offenses, such as murder, sodomy, and insurrection against the authorities, they were more likely to receive a harsh punishment. Nevertheless, only a minority of defendants was convicted with a severe sentence. During the period studied, 9 percent of all verdicts were death penalties, 33 of which involved men, and three women.[84] While both genders were punished similarly for the same offense in most delinquency categories, the aspect of gender came into play in sanctioning transgression of sexual norms. In the court practice, in contrast to men, women who were accused of repeated fornication or extramarital pregnancies, as seen in the case of Madlen Meyer, were mostly sanctioned as 'tirnen', prostitutes.[85] While men did not receive any corporal punishment for fornication in practice, women were

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82 *Turmbuch* StABE B IX 469, fol. 45, 4 January 1642.

83 Adam, *Verhört im Turm*, 76.

84 *Turmbuch* StABE B IX 469, fol. 44, 4 January 1642.

85 *Turmbuch* StABE B IX 466, fol. 43-45, April 1631.

punished with whipping in addition to banishment.[86] The analysis of the Bernese criminal court demonstrates that although male offenders were more prevalent in the recorded crimes, the jurisdiction also took women's norm transgressions seriously.

Conclusion

This article has provided a better understanding of variations in gendered prosecution patterns in early modern urban settings. Bern shared many characteristics with German urban territories in terms of state formation, social control, and social inequality. Nevertheless, with one third of its defendants being female, the case of Bern demonstrates that a small city can also display comparably high shares of women in criminal court. The Protestant authorities focused strongly on social order, including incorporation into a patriarchal household and maintaining morality. This attention drastically restricted women's independence and socio-economic opportunities. Therefore, it is reasonable to conclude that being outside of the informal control structures made foreigners, especially women, more likely to be prosecuted and sanctioned by the criminal court. Moreover, the strong institutional control of mobility not only restricted and regulated migration, but it also severely limited the economic opportunities for newcomers as well as their chances of being granted residency status – the main prerequisite for running their own household and settling permanently in the community.

The authorities' determination to maintain public order and morality is visible in the enactment of orders and the establishment of control bodies as well as in the prosecution patterns of the criminal court. The criminal records reveal that next to property offenses, the punishment of vagrancy and transgressions of sexual norms were the main concerns. Here, legal and gendered sexual norms and role assignments as well as honour perceptions increased the potential for women to become the focus of criminal prosecution. In connection with the repressive attitude towards migration, including the sexual connotations of female mobility, unattached women were more at risk of colliding with the judicial system. This article points precisely to the importance of the authorities' prosecution priorities. In Bern, the

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86   Adam, *Verhört im Turm*, 112-114.

strong control of mobility and sexual behaviour, based on a double standard in moral norms for women and men, not only shifted the focus onto offenses for which women constituted a large proportion of cases but also brought more attention to female crime.

About the author

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