

## The Crimes of Women in Early Modern Germany

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Robin Briggs

The small states and independent cities of the old German Reich have left many archival treasure-troves behind; traditionally these had been studied in a curiously restrictive fashion, with the emphasis on institutional and legal history. More recently a new generation of social historians has been exploiting this material in a more imaginative and exciting style, of which Ulinka Rublack's innovative study is a fine example. She has used the criminal trials of several thousand women from south-western Germany as the basis for her book. Most of them come from Protestant territories - Württemberg and the three Imperial cities Memmlingen, Esslingen, and Schwäbisch Hall - but she also includes the Catholic city of Constance. One major crime is missing, because witchcraft has been excluded. This apparently surprising authorial decision is in truth a wholly reasonable one, and not just on account of the large amount of work already done on the subject. Witchcraft was a *crimen exceptum*, handled under rather different legal rules; it also possessed a peculiar dynamic all its own. While the persecution of supposed witches clearly does have a close relationship with the use of legal systems to impose greater social discipline and discourage sin, it cannot be readily equated with that wider trend. One vital difference is that witchcraft was ultimately a fantasy, however close its links to social problems, whereas the other offences for which women were prosecuted emerge from this account as all too grimly real, however 'constructed' we may think moral deviance to have been.

In essentials these crimes fell into two categories, theft and sexual immorality, although the latter included the special case of infanticide and the much rarer one of killing husbands. The court records provide a great deal of information, both qualitative and quantitative, for analysis on several fronts. Ulinka Rublack is much too shrewd to fall into any of the obvious traps which they also present. She recognises from the start that simply counting trials is meaningless without a recognition that (quite apart from gaps in the record) rates of persecution tell us very little about the 'real' level of criminality, which is itself a highly questionable concept. Nor can either the statements of witnesses or the confessions of the accused be taken as wholly

reliable evidence. These worries are acknowledged through a series of subtle discussions about the various communal filters which prevented many cases from coming to court at all, and of the procedures which awaited those unlucky enough to face the judges. The reader comes to appreciate very clearly how early modern societies functioned in complex ways which often run counter to modern expectations.

When the majority of the population eked out a living at subsistence level there were very real difficulties in finding appropriate punishments for delinquency. Not only were prisons insecure death-traps, but keeping a poor person incarcerated would probably lead to a situation where they could not pay off the fees to the gaoler, so became a longer-term problem for the authorities; fines quickly ran into analogous difficulties. The mobile poor who committed many offences were hardly much deterred by banishment, the easy option to which hard-pressed local authorities still resorted in most cases. The settled poor had partners and dependants, whose precarious position would worsen sharply if an adult member of the household was banished or executed, another potential expense for poor relief systems. Such dilemmas are vividly illustrated at many points through the book. Since the typical local officials were neither fools nor heartless bigots, they generally preferred pragmatic solutions, and were responsive to communal opinion. These attitudes were perfectly compatible with an element of random savagery, in such forms as whippings, severed ears, and death sentences. Although the book does not attempt a statistical approach (a perfectly defensible choice in view of the enormous problems it would create), there is a plausible suggestion that strangers and those without family support suffered disproportionately from these displays of rigour. The instruments of repression were so fragile that they positively required great flexibility in the enforcement of rules, reflecting various balances between central authority and local feeling.

In fact death sentences for women appear to have been remarkably rare, an average of one every twenty years for the towns studied here. If there were significantly more executions in the duchy of Württemberg, this appears to have resulted from a much harsher seventeenth-century policy over infanticide. There was some slight echo in Hall, but the other towns must have ignored many suspicious cases, the kind of discrepancy familiar to any student of early modern justice. These variations will probably continue to defy precise explanation, above all because we so rarely know anything significant about cases which did not go to court; they remind us of just how finely balanced the choice between toleration and persecution might be. If women were less likely to suffer the death penalty than men, this was simply because most crimes of violence were committed by the latter. What this study does suggest, however, is that in other respects women were harshly treated in comparison to men, with the authorities repeatedly failing to admit obvious mitigating factors. This was especially true of sexual offences, where no-one seemed able to admit that women were regularly forced to comply with the desires of masters or family members, which they had done nothing to provoke. The extreme case was perhaps that of women who became pregnant by soldiers, when the ducal government of Württemberg refused to allow the latter to marry, while apparently blaming the women for tempting them away from virtue.

Social factors also bulked very large in the background to theft, which is plausibly portrayed here as a natural extension to the 'economy of makeshifts' within which many of the population had to exist. There were some aspects, such as the taking of fodder, forest products, or fruits, which had become so general that they usually figured only as minor offences; servants and children were often told to steal such items, regarded almost as a natural right. The authorities were effectively trying to implement a new and much stricter set of rules about ownership, which the poor naturally saw as oppressive and discriminatory. On the other hand, the gangs of professional thieves, and even habitual local offenders, tended to prey on people who were hardly better off than themselves. Maidservants were a special category, widely distrusted and badly treated by their employers; this paradoxically helped to reduce the supply, so that it was relatively easy for them to move to another position. When they were caught stealing it was usually much quicker and cheaper to recover as much as possible from them, then get rid of them, rather than reporting them to the courts. They embodied a fundamental contradiction within a society which wanted the benefits of cheap migrant labour, yet had exaggerated fears of the threat such groups posed to social order, and was committed to a quite unrealistic ideal of a settled and immobile world. Here *The Crimes of Women* can be fruitfully compared with the brilliant set of essays by Norbert Schindler, *Widerspenstige Leute* (1992), which provides

many other insights into the processes by which the poor (largely masculine in this case) were marginalized.

If one is to find a general fault with this book, it might be that Ulinka Rublack does not appear quite confident enough in her own analytical and explanatory powers. The casual reader will carry away a whole range of striking images and stories, skilfully drawn vignettes of blighted lives, defiant self-assertion, and desperate misery. These are balanced by some thoughtful passages on the limitations of law enforcement, and by the internal evidence from the cases themselves, which often show how long a career of deviance could be sustained. The material is presented in a clear and unfussy style, whose tendency to slight understatement is beautifully calculated to bring out the inherent pathos of these cases; there is a welcome absence of jargon or of superfluous theoretical padding. The scrupulous handling of difficult archival sources will make the book a wonderful quarry for other historians, who will surely feel that they are able to rely implicitly on the author's judgements. They will also pick up a great deal of superb detail about everyday life and social relations in south-western Germany. Others may be fascinated to see how a German historian now based in England has brought together two historiographical traditions in a most fruitful way. My reservation is simply that within what appears at first sight to be an outstanding regional study in social history there is another book lurking, one which raises issues of the greatest significance for our understanding of the period. Although the blame may lie primarily with my own bad habits of fast reading and selective attention, it has taken me several attempts to get beyond the more obvious merits of this work, then to think about its broader implications.

The introduction and conclusion do in fact contain some highly nuanced and insightful comments; they are however rather brief, and their tone risks downplaying them too far. This very economy means that they would make excellent texts for seminar discussions, inviting expansion and comparison. Here Ulinka Rublack invokes the context for the individual cases and the moralistic campaigns which occupy the bulk of her book. She explains how the early modern period saw secular authorities extend their ambitions to control everyday behaviour, moving into several areas previously left mostly to the church, and combining statebuilding with an emphasis on household discipline. The outcome appears to have been an unprecedented drive towards the legal enforcement of norms, which themselves became more demanding and arguably less realistic. Social problems were never envisaged as proceeding from defective structures or élite behaviour; instead they were routinely blamed on the stupidity and disobedience of the lower orders. Rationality and self-control were identified as masculine and élite virtues, opposed to the animality, lust and unreason of which women were the ultimate embodiment. The female sex, lacking an adequate moral sense and incapable of sexual restraint, became the cause of immorality. Any sign of independence from single women might attract reprobation, while many facets of everyday feminine behaviour could be used to confirm the stereotype. At the very end attention is drawn to the major transformation which marked the later eighteenth century, when women were recast in a passive role and male sexuality was identified as the prime disruptive factor in society. In Württemberg, however, this changed view of female nature did not extend to poor women in the textile industry, who were forbidden to marry and subjected to savage penalties for sexual misconduct until 1871; here class seems to have replaced gender as the identifier.

While this framework is established with elegance and economy, one could still wish for a more extended discussion of these themes, and for them to be more fully integrated with the bulk of the book. There are numerous points at which change over time is demonstrated and explained, but these analyses tend to concentrate on rather immediate and pragmatic factors. One can only sympathize with a proper scholarly reluctance to venture beyond the evidence; perhaps nothing more could have safely been done with the court records for the region. It is also a tribute to a book to recognise that it raises even more issues than it claims to solve, so it is not really a criticism to say that *The Crimes of Women* leaves me both admiring and slightly frustrated. I would like to hear much more about how the negative view of women's social role was built up during the late medieval and early modern period, which is of course a question for intellectual, legal and religious history as well as for social history. As Ulinka Rublack shrewdly illustrates on numerous occasions, this was some way short of being a true consensus in any case, so the apparent inability to move beyond it raises some complex issues. Another question is that of how far the drive for moral reform was ultimately self-defeating; did the search for a social order based on the repression of natural instinct and

individual deviance collapse into a discredited mess because of its own inner contradictions? If that was not the case, how did these apparently self-confirming beliefs lose their appeal, when the evils they were supposed to remedy had not obviously declined? Then there is the elusive issue of how far the moral codes were ever internalised, and by whom.

Elements of possible answers to such questions may be found in more general books by such historians as Merry Wiesner and Isobel Hull, although both adopt a cautious tone and recognise the need for more research. Another very proper response might be that these large issues can only be sensibly discussed on a comparative basis. This study does make a contribution in that direction, because the Catholic city of Constance is shown to have followed a very similar trajectory to that taken by her Protestant neighbours. Reference is also made to James Farr's admirable study of similar processes in Burgundy, although understandably there is no attempt to pursue this comparison in detail. What we now need is for others to follow the admirable example set by Ulinka Rublack, and to consider these difficult issues in a similarly thoughtful manner. Perhaps one slightly more cheerful aspect of her generally dark picture is that the dismal misogyny exuded by official decisions and theoretical statements alike does not seem to have truly undermined older local solidarities. One has the sense that repression was usually deflected towards fringe groups, which could do symbolic duty for the wider sins of a whole society. In this way moral reform was transmuted into a rather unattractive style of scapegoating, whose inadequacies became steadily more obvious, but whose luckless victims were treated with disproportionate cruelty. Some at least of them seem to have felt the shame even more acutely than the physical pain, so it is some belated compensation that their experiences have been movingly reconstructed in this excellent book.

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