Male offenders and convicted females – Sexual crimes and infanticide in Norway during the 17th and 18th century.

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Sexuality and reproduction have across time periods and cultures been subject to extensive social and legal regulation. This paper will discuss how the legal regulation of sexuality in Norway during the 17th and 18th century resulted in serious consequences for women in particular. The paper takes as its point of departure the 1687 Code of Christian V and studies of local Norwegian court records. The discussion is structured in two main sections. The first section provides a brief outline of the historical legal and cultural points of departure regarding regulation of sexuality. The second section addresses a severe issue connected to sexual regulations, namely secret births and infanticide. While the initial section discusses the legal position in 17th and 18th century Norway on a more general level, the discussion of infanticide will draw on a study of court records from three local jurisdictions in rural Western Norway.

Sexuality and reproduction are central aspects of human interaction and have across time periods and cultures been subject to extensive social and legal regulation.[1] Improper suitors, rapists, prostitutes, and sodomites have, each in their own ways, been regarded as threats to family, religion, society, and individuals, and they have been sanctioned accordingly. This paper addresses a type of penal provisions that were prevalent in the Dano-Norwegian Realm during the 17th and 18th century, but of which we hardly have any examples in modern Western legal cultures. These penal provisions presume consensual sexual relations between two adults. More specifically, this paper will discuss how the legal regulation of sexuality resulted in serious social and legal consequences for women in particular.

The examination of the regulation and legal practice of sexual regulation in this period is based in the 1687 Code of Christian V and local Norwegian court records. The discussion is structured in two main sections. The first section provides a brief overview of the legal and cultural points of departure. It outlines the system of government in the Dano-Norwegian Realm in the 17th and 18th centuries, and its sexual regulation in force,[2] and shows how the formulation of the sexual legislation, while apparently primarily targe-

1 The word and the concept of 'sexuality' were not introduced until later in time (See e.g., Foucault 1976). This modern concept is used here for reasons of brevity

2 The 18th century sexual regulation in Denmark has been thoroughly accounted for in e.g., Koefoed 2008.

ting men, in practice came to predominantly affect women. The second section addresses another severe issue connected to the sexual regulations, namely secret births and infanticide. The discussion of infanticide will draw on a study of District Court records from three local jurisdictions in rural Western Norway: Nordhordland, Sunnhordland, and Hardanger between 1642 and 1799.[3]

I. Male offenders and convicted females – legal and cultural context

1. Male offenders: Dano-Norwegian Law and sexual regulations after the 1687 Norwegian Code of Christian V

In order to understand how the penal regulations affected Norwegian women, a brief outline of the general legal position in 17th and 18th century Norway is necessary. In the period from 1380 to 1814, Norway was subject to Danish rule.[4] Notwithstanding, the ancient Norwegian Code of the Realm of 1274 was to a great extent respected and enforced on Norwegian territory. King Christian IV confirmed this by re-publishing this Code with only minor changes as late as in 1604.[5] In this new edition, the archaic legal Norse language in the original version was translated to Danish, and the printed edition replaced a range of unauthorized translations which had circulated in the 16th century. In addition to this Code – known as Christian IV's Norwegian Code of 1604 – Norwegian Law consisted of an array of legal acts issued by the central administration in Copenhagen.[6]

What had initially been an equal union between Norway and Denmark had over time developed into a situation where Norway increasingly lost sovereignty.[7] In 1661, Frederick III established absolute monarchy. In the wake of this reform, a new Danish Code of Law was put in place in 1683. Some years later, this new Code was issued in a Norwegian edition: Norwegian Code of Christian V of 1687.[8] The Norwegian and the Danish Codes of Law were virtually identical, with the exception of certain aspects of the property law. The preamble states that this Code was comprehensive, and that it was to replace all former law.[9] In spite of this assertion, it turned out that this Code too was in need of amendments, and in the period from 1687 until the dissolution of the Dano-Norwegian Realm

3 The section on infanticide builds on studies conducted in relation to the author's M.A. thesis, Bernssen 2017a, further addressed in the Norwegian historical journal Heimen, 2018.

4 See e.g., Bagge/Mykland 1987

5 Sunde 2005 p. 177

6 Inter alia ordinances, rescripts, open letters and placates.

7 The Norwegian Council of The Kingdom was abolished in 1536, and during the 17th century, the positions of power were gradually taken over by Danish nobility. See, Sunde 2005 p. 177.

8 The English translation of the Danish Code from 1756 – for the use of the English inhabitants of the Danish settlements in America – has been used as reference for translations of the Norwegian Code (NC). While there are some minor differences between these two documents, the content and phrasing largely correspond.

9 Preamble to NC p. 13

in 1814, more than 4500 legal acts were added.[10] The criminal law in this Code were largely in force until the passing of the Criminal Code of 1842, and it was only when the General Civil Penal Code of 1902 was passed that it was formally nullified.

The Norwegian Code of Christian V is structured thematically and divided into six Books which are in turn divided into Chapters. The rules on sexual violations are cited in Book 6 of criminal cases, under Chapter 13 of Lewdness. The punishable acts encompassed by The Norwegian Code of Christian V can be categorized as adultery (intercourse where one or both parties is/are married or engaged to someone else); incest (intercourse between persons related by blood or by law); sodomy (intercourse between same-sex person or between persons and animals); bigamy and rape.[11] The Dano-Norwegian legislation furthermore included the explicit criminalization of fornication, i.e., intercourse between two unmarried persons. While other European countries primarily viewed fornication as a sinful act to be handled by the Church, the Nordic State-Church model meant that these kinds of sexual violations were encompassed by the general legal system.[12]

Although the categorization of sexual violations may give the impression that the legislation was gender neutral, closer inspection reveals that this was not the case. Among the Articles in the Chapter of Lewdness, more than half of the rules exclusively targeted men, such as men who engaged in sexual intercourse with women under his guardianship; men who had sexual intercourse with several women; men who abducted a woman; and men who entered a brothel.[13] Additionally, the penal provision of rape presumed a male perpetrator, and the provision on sodomy in practice only applied to men.[14] In contrast, only four provisions applied exclusively to women: two provisions on false testimonies;[15] one rule on penalties for prostitution;[16] and a special law on "a daughter or widow of a person of rank" who "permits herself to be defiled."[17] Although the penalties for adultery, bigamy, and incest were equal for both genders, the general penalty was more severe for men than it was for women: Article 1 states that in cases of fornication, the fine for the man would be "24 lodges of silver," and "the woman half as much." In addition, the punishment included a public penance in Church, which will be addressed below. In the case that the couple married, the fine would be reduced to 9 lodges for the man and half of this for the woman, and no public penance would be required.

Based on the provisions of penalty in the Norwegian Code of Christian V, the man appears to be considered the primary perpetrator in sexual violations.[18] Legal scholar Chri-

10 See Sunde 2007 p. 66.

11 See e.g., the categorization in Telste 1993 p. 53

12 Sandvik 2006 p. 142

13 NC Book 6 Ch. 13 Art. 2, 8, 9, 22 and 31.

14 See Brorson 1797 p. 283-285.

15 NC Book 6 Ch. 13 Art. 6 and 27

16 NC Book 6 Ch. 13 Art. 31

17 NC Book 6. Ch. 13 Art. 10.

18 Note, however, that Koefoed argues that the legislator had an intention of equality. p. 102-103.

stian Brorson emphasised two main points as explanations for the gender difference in fines for fornication in his legal comments from 1797. The first point is based on the premise that "the woman's innate modesty must convince any and all that she is not the seducing party."[19] Second, he refers to the consequences of the misconduct itself: that the woman would lose her respectability and any hope of a happy marriage, and that the burden of bringing up the child would fall upon her.[20]

According to Brorson, the presumption that the man was the initiating party in combination with the social repercussions that sexual relations outside of wedlock would have on behalf of the woman, are the most important reasons why the legislator targeted men in particular.[21] However, as will become clear below, this intention was not realized in practice.

2. Female convicts: The displacement of responsibility in legislation and in practice

While we have seen in the above that men appeared to be the primary subject of sexual regulations, it is clear from both legislation and in legal practice through the 17th century and the beginning of the 18th century that women were increasingly held accountable for sexual relations. As for legislation, we find indications of this in an ordinance of fornication dated October 12th, 1617. Although provisions had also previously targeted women, it was only with this ordinance that a general fine was established for women who gave birth outside of wedlock.[22] Yet, a former rule that women who became pregnant under the promise of marriage could demand marriage or a form of compensation from the father was maintained and continued in the Norwegian Code of 1687.[23] Notwithstanding, the latter period of the 17th century saw a gradual decrease in the number of such cases in court, and the right to demand marriage was eventually revoked by a 1734 ordinance.[24] Moreover, soldiers were exempt from the penalty for fornication from 1671. This provision was, however, modified several times. An ordinance from 1696 stated that this exemption only applied for first time offences, and exclusively for soldiers who were already enrolled in the armed forces at the time of the offence.[25] At the start of the 18th century, approximately half of all Norwegian men at the ages between 20 and 30 are estimated to have been enrolled in the armed forces, meaning that quite a few fathers would have been able to avoid the legal consequences of fornication.[26]

19 Brorson 1797 p. 286 (my translation).

20 Brorson 1797 p. 286

21 Koefoed also emphasises the gender discrepancy in income as motivation for targeting men, see Koefoed 2008 p. 103.

22 Telste 1993 p. 63.

23 Telste 1993 p. 94-95. Whether this should be seen as a social or a legal duty can, however, be discussed. See

Koefoed 2008 p. 41

24 Ordinance of March 15th, 1734. See also Telste 1993 p. 139 and Hedegaard 1779.

25 Telste p. 92.

26 Sandvik 2006 p. 143.

Also in the legal practice there are signs of displacement of responsibility as women were to an increasing extent prosecuted. A study of court records from District Courts in the jurisdiction of Ringerike and Hallingdal shows that the convicted women in cases of lewdness outnumbered convicted men as early as in the 1670s, and that this discrepancy continued to expand in later years.[27] We recognize the same tendency in the numbers of public penances through the 18th century. Public penance was a clerical arrangement for those who had committed severe moral violations to earn back the right to go to Communion and receive sacrament, and it required the perpetrator to confess the crime to the priest and the congregation.[28] As mentioned above, this public confession was included in the legislation of fornication in the Norwegian Code. Although the relative distribution between genders varies in different geographical jurisdictions in Norway, several studies show that women performed the majority of such public penances throughout the 18th century.[29] An examination of the church registers in a Christiania church between the years 1731-1742, for instance, revealed that as few as 7% of fathers of baptised children born out of wedlock performed public penance, while virtually all of the mothers did. [30]

There are probably several reasons why women were increasingly held accountable for lewdness. One such reason pertains to societal attitude. For instance, it has been pointed out that changes in the legislation caused changes in fathers' attitudes; fathers were less likely to stand forth and take responsibility when the law opened for their extrication.[31] Another change in attitudes emerges from the first Danish publication on Natural Law: Ludvig Holberg's The Core of Morality or Introduction to Natural and International Law from 1716.[32] In this work, unmarried women were portrayed as potential seductresses who could cause harm for the State as well as for the societal stability.[33] The following paragraphs will turn the focus towards how not only the societal attitudes, but also the Law itself contributed to the gender discrepancy in the responsibility for sexual violations.

The first and most obvious aspect to be mentioned in this regard, is that the risk of exposure was far greater for women than it was for men. The main reason for this is that the misconduct itself was rarely sanctioned; penalties were rather directed towards the pregnancies resulting from sexual relations. An ordinance from November 30th, 1759, specifies that fornication was punishable solely in cases where it resulted in pregnancy.[34] As it was necessarily the women who carried the physical evidence of sexual relations, it followed that they were the most accessible for prosecution.

27 Telste 1993 p. 97.

28 Koefoed 2008 p.96.

29 Hoff 1996 p.97

30 Sogner 1990 p.116 citing. Hoff 1996 p. 97

31 Telste 1993 p. 139.

32 Also, this was the second legal work of significance published in Danish. Christen O. Veile published his Glossarium juridicum Danico-Norwegicum around 1650.

33 Aune 1994 p. 54

34 Brorson also states that 'lie with' [beligge] in the legislation should be equated with 'impregnate' [besvangre]. See e.g., Brorson 1997 p. 320.

Second, the woman would normally be the only person to know with any certainty who the father was, and she could have various motivations for withholding this information. As evidence in these cases most often relied on the accounts of the involved parties, the man had ample opportunities to avoid liability. As a result, women were often coerced into silence. Notwithstanding, it is not unthinkable that women might have stayed silent on their own accord in order to protect the father from legal and societal repercussions.[35]

Third, in cases of adultery or incest, the different penal provisions in themselves carried an incentive to conceal the identity of the father. If it were revealed that the father was related to the mother through blood or law, or that he was married, this would constitute an aggravating circumstance not only for the man, but also for the woman. Incest in close relations, e.g., between stepfather and stepdaughter, was punishable by death.[36] In such cases, it would doubtlessly be in the woman's best interest to conceal the identity of the father and conjure up a different explanation for her pregnancy. In a case from 1708, for example, Siri Andersdatter upon baptising her child, declared that the father was a soldier. Only in the subsequent trial was the explanation, for reasons unknown, changed, and the father identified as a married man.[37] It is likely that this story represents a failed attempt to reduce the severity of the repercussions for the illegal intercourse.

Court records from District Courts in Western Norway also illustrate how coercion from the father and others led to the fabrication of stories of procreation, and that the woman was the sole party to be punished. One rather extraordinary example of this may be found in a case of infanticide from 1705: The woman on trial had, upon two young girls discovering her new-born twins, proclaimed that they were 'imps'.[38] During the trial, it was revealed that the father was the son on the farm where the woman was hired help, and that his mother had coerced her into concealing the pregnancy and the birth.[39] In a 1730 case in Western Norway, the maid Borni Joensdatter had birthed a child outside of wedlock, and first explained that the father was a traveller whom she had met on only one occasion. After several interrogations, however, she finally admitted that the father of the child was her cousin, and that it was he who had conjured up, and demanded that she would stick to, the first version of the story. Upon being confronted in court, the cousin denied having any part in the procreation, and he was acquitted.[40] It is worth adding that this outcome not only benefited the cousin, but also Borni, as she thereby would not be punished for incest.[41]

35 It is worth mentioning that some fathers likely paid another man to claim paternity. See Koefoed 2008 p.41.

36 NC Book 6. Ch. 13 Art. 13-14

37 Bratland 2002 p. 62. (not peer reviewed)

38 I.e., mythical creatures [trollunger]

39 State Archive in Bergen (SAB): Court records Sunnhordland I.A. 27 (1705) fp. 53-57b, 76-78b,

40 State Archive in Bergen (SAB): Court records Nordhordland I.A. 38 (1728-31) fp.139-142

41 Yet, note that this example is taken from a case of infanticide, meaning that the sexual misconduct of Borni was not treated independently.

Silence tended to be in the interest of women also in cases of rape: The Norwegian Code stated specific rules of evidence for accusations of rape and attempted rape. For accusations of attempted rape, the law required testimonies that the women had been heard calling out, or that she could demonstrate "marks of violence on her body or clothes."[42] For accusations of rape, the law required that the woman, once safe, must report the incident to neighbours, congregations, and at the local court assembly. If she failed to do so immediately, and said nothing until she e.g., discovered that she was pregnant, one was not to believe that the intercourse had been involuntary. Women accusing a man of rape without providing sufficient proof, could be fined for defamation.[43] Additionally, false accusations of rape meant – until the law was revoked in 1734 – that the woman lost her right to demand marriage and/or compensation from the father. If a woman had been raped, but did not have external testimonies or physical evidence, she thus risked punishment herself by making such accusations. In cases where a rape had been committed under threats and coercion rather than with violence, the woman's position was a weak one. This issue may be illustrated by a case derived from the court records in Nordhordaland in Western Norway: In 1718, Ingeborg Pedersdatter was charged with birthing a child outside of wedlock. Upon being questioned about the identity of the father, she stated that he was a Swedish convict named Joseph. He had threatened her at knifepoint and raped her twice as she was working alone in the fields. When asked why she had not told anyone about the rapes immediately, she stated as the reason her own foolishness. In keeping with the law, the court disregarded the accusation, and assumed that the intercourse had been voluntary. Ingeborg was fined for fornication. Examination of retained District Court records from Western Norway between 1642 and 1799, shows that rape accusations such as the one reported by Ingeborg, were far from common. During this period, we find only a handful cases involving rape, and none of these accusations were taken into consideration. It thus appears that not a single man was convicted for rape in these jurisdictions in the scope of one and a half century. [44] It is not unlikely that any rape victim in this period would consider the likelihood of prevailing in court so slim that they refrained from reporting the incident at all.[45]

Despite the apparent intention in the penal property of the Norwegian Code of Christian V, that men and women should not merely be equal before the law, but that the men should be punished more severely than the women, legal practise shows that the opposite was most often the case; women were convicted; men were acquitted. This was, as shown above, not uncommonly due to the women themselves, who, either out of loyalty or out of self-interest, or under great pressure from the baby's father or from others, chose to remain silent about the identity of the father. Regardless of the motivation for shouldering the punishment alone, the fact is that it was mostly the women who were

42 NC Book. 6 Ch. 13 Art. 18.

43 See Brorson 1997 p. 351.

44 Note that due to the nature of the source material, the examination is not comprehensive. For an extensive account, see Bernssen 2017a pp. 104-105. (not peer reviewed)

45 Conversely, in Sweden, where men were still presumed to be the active party in sexual relations, we find a number trials and convictions for rape in the 17th and 18th century. See Jansson, 2002.

subjected to the most severe repercussions for illegal sexual relations. In addition to fines and public penance, they lost their social standing and were left with the responsibility for bringing up the child. Taken together, these consequences in all likelihood strongly contributed to another crime that primarily involved women, namely secret births and infanticide.

II. Infanticide in Western Norway

The discussion of infanticide in this section draws on a study of District Court records from three local jurisdictions in rural Western Norway: Nordhordland, Sunnhordland, and Hardanger, between 1642 and 1799.[46] The geographical limitation in combination with the broad time span of these court records make it possible to single out representative personal narratives while maintaining a contextualised historical perspective.

1. Sexual regulations as incentive to infanticide

Infanticide and secret births are not particular to the Norwegian context. Different studies from around Europe show that it was a widespread problem that unmarried women – often young and socially deprived – chose to conceal pregnancy and birth.[47] After giving birth, these women would hide the body of the naturally deceased or murdered child as well as they could. If discovered, many would claim that the child had been stillborn and that this was the reason why they had tried to hide it.

The social and economic consequences of birthing an illegitimate child was a strong incentive for 17th and 18th century European women to keep such pregnancies secret.[48] As mentioned above, the Dano-Norwegian Realm issued several new legal acts during the 17th century regulating sexual relations outside of marriage. It is safe to assume that the secular penal provisions for fornication presented yet another reason for hiding such relations, and for taking the life of illegitimate children.

When infanticide was acknowledged as an increasing problem in the Dano-Norwegian Realm, several measures were initiated. A new regulation which may be seen in direct relation to the 1619 gender-equal penal provisions for fornication, is an ordinance from 1635.[49] Not only did this ordinance make infanticide an independent penal category distinguished from homicide; it also equated secret childbirth with murder. If a "lewd" woman gave birth "remote from Help and Witness," and her child did not survive, then this was punishable in the same vein as if the woman had intentionally murdered the child.[50]

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46 The section on infanticide builds on studies conducted in relation to the author's M.A. thesis, Bernssen 2017a, further addressed in the Norwegian historical journal Heimen, 2018.

47 E.g., Wächtershäuser 1973; Gowing 1997; Langer 1974; Levin 1986; Rizzo 2004; and Nielsen 1980.

48 See e.g., Gowing 1997 p. 88

49 Ordinance of March 31st, 1635; see Nielsen 1980 p. 3–6

50 King Christian IV's recess of 1643 Articles 2-5-1, continued with slightly modified wording in NC Book 6 Ch. 13 Art. 8.

The punishment for "secret births" was in the Norwegian Code of 1687 decapitation, and the woman's severed head should be placed on a spike on the execution site.[51]

Secret pregnancy and birth could thus have fatal consequences for the woman. Yet, studies of court records from the 17th and 18th century show that many women chose to take the risk of death penalty rather than revealing to their surroundings that they were pregnant. Examination of District Court records from reveals 43 trials where women were suspected of infanticide in these jurisdictions between 1642 and 1799.[52]

With the exception of a few adjustments pertaining to the method of execution, the law on infanticide remained unchanged for the entirety of this period. In legal practice and theory, a softer approach to punishment can be noted, particularly from the 1770s. The turn towards a more humane criminal law occurred in parallel with changes in the conditions and treatment of women who gave birth outside of wedlock, through e.g., an ordinance of alimony on behalf of the father. [53] Yet, the law-centred methodology where legal acts from the king were the only legitimate source of law meant that the legal framework for cases of infanticide was the same during the examined period. [54] Considering the relatively broad time scope of the source material – more than 150 years – there is a striking resemblance between the cases of infanticide when it comes to motive, physical and social circumstances, and the course of events. Therefore, the material examined in this article does not only provide insight into the historical development of sexual regulation, but also documents infanticide as a social phenomenon in a coherent legal context across a broad timespan. The following section will address the social and legal factors that, based on these court records, can be said to have motivated infanticide, and discuss how the legal system dealt with women and men in the subsequent trials.

2. From mother to murderer – What made a woman commit infanticide?

In the 17th and 18th century, women's societal role was generally defined by her relation to a man – as father, husband, or as employer. The man of the household was the head of the household above wife, children, and servants, and he was the point of contact between the private household and public life.[55] The woman's social standing was thus tightly connected to her male guardian. In the court records, this is also visible in that while men were referred to by their occupation: farmer, soldier, or sailor, women were largely denoted on the basis of their social standing via a man: as daughter, wife, widow, or maid in their respective households.

51 NC Book. 6. Ch. 13 Art. 7.

52 Note that not all of these women were actually convicted for infanticide. Also note that due to the nature of the source material, the examination is not comprehensive. For an extensive account of the selection of source material, see Bernssen 2017a pp. 11-22. (not peer reviewed)

53 Ordinance October 18th, 1763

54 See Sunde 2005, s. 278.

55 Sogner 1990 p. 68.

As a first observation, out of the 43 defendants, 42 were unmarried.[56] This corresponds to the legislator's presumption that infanticide was generally committed as an attempt to avoid the consequences of disclosed sexual relations outside wedlock.[57] Although it is not unthinkable that in certain cases it was suspected that procreation had occurred through affairs and adultery, for married women, the presumption that the husband was the father of the child would limit the sanctions against the mother and the child. Hence, it was less crucial for the married woman to keep the pregnancy secret. The only married woman in the material was 26-year-old Elen Marie Olsdatter. Despite of her married status, her husband had been away for so long that it was clear that the child had to have been conceived through adultery.[58] Based on this material, central driving forces for infanticide were that the pregnancy lacked legitimate circumstances, and that the women risked legal penalties and social repercussions by revealing it.

The women on trial for infanticide thus did not have the protection of a marriage within which to go through with the pregnancy. Further to this point, there is reason to question whether other social frameworks and the woman's relationship to male guardians placed her in a more or less vulnerable position in cases of pregnancy outside of wedlock. Closer examination of the material in terms of the women's positions in the household strongly indicates that this was indeed the case. 29 of the women, i.e., close to 70%, are recorded as holding a position as maid. As will become clear below, these women seem to have less of a solid social network in their immediate surroundings, a circumstance which made them all the more exposed to social and legal repercussions in cases of pregnancy outside of wedlock. Out of the women who presumably held a stronger position within a household, we find five unmarried daughters living on their home farms, and two younger women denoted as foster children. In addition to the already mentioned married woman Elen Marie Olsdatter, we find two widows, two sisters-in-law of the man of the household at their respective farms, and finally, one woman whose position is unknown.[59] The number of maids among the suspects of infanticide can be connected to different aspects. First of all, the majority of maids in the numbers of women having a child out of wedlock may be explained based on the Norwegian societal organisation. As opposed to the feudal societies elsewhere in Europe, Norwegian servants were not a distinct social class. It was very common for young women and men from smaller farms to serve for a time until they had the opportunity to get married and set up a household for themselves.[60] For this reason, a great many of the women of childbearing age were in service. Secondly, it is not unlikely that daughters and other female family members were more thoroughly controlled than were servants who had been taken in. For instance, the family of the household slept in the main house, while both male and

56 This information is often only implicitly stated in court records.

57 See also Bernssen 2017a pp. 60-62. (not peer reviewed)

58 State Archive in Bergen (SAB): Court records Nordhordland I.A. 41(1743-48) fp. 173b-177.

59 See Bernssen 2018 p.66.

60 Sogner 2003 p. 42.

female servants often slept together in the barn loft.[61] Compared to maids, then, women who lived at home would typically have somewhat slighter possibilities for engaging in covert sexual relations.

The above-mentioned circumstances indicate that the likelihood of getting pregnant outside of wedlock were greater for maids than it was for women living at home. When it comes to cases of infanticide, it is also worth noting that maids to a lesser degree could expect support and aid from their immediate relations than could the women living at home. This first of all applied to the possibility of providing for themselves and the child, which was complicated insofar as the woman was financially dependent on her position as maid. Additionally, women from more affluent families were in a position to limit the consequences of unwanted pregnancy, e.g., through a shotgun wedding or by sending the woman away to give birth in secrecy. We find examples of this in a case of infanticide from 1705, where the woman, Sille Knudsdatter, who lived at home, had a father of high military rank. In this case, her parents knew that she was pregnant, and they assisted in hiding the pregnancy while concocting a plan for a wedding to take place between Sille and the Dutch sailor who was the child's father. However, the birth occurred sooner than expected, and Sille delivered before the marriage could be arranged.[62]

The women's social position thus seems to have been an important factor deciding whether they chose to hide pregnancy and birth. Their role in the household furthermore seems to have been connected to yet another factor influencing the proceedings, namely the risk that the infanticide would be revealed. While a maid would typically have to shoulder the burden of secrecy on their own, the trials involving women of a stronger position in the household indicate that they had far better conditions for hiding their pregnancy, as well as the birth and the body of the deceased child. We find clear examples of this in cases where the women gave birth at their home farm. In two cases from respectively Nordhordland in 1687 and Sunnhordland in 1789, it is evident that the women were assisted by their mothers.[63] Not only did the mothers help during the delivery itself – they also played an essential role in hiding the allegedly stillborn child. In the former example, the mother of the accused woman had placed the child in a sealed wooden box, and the body was only discovered by the Bailiff a month later, based on a rumour circulating in the local community. In the latter example, from 1789, the women's mother first hid the child in the kitchen bench, before the birthing woman's father hid it in a shed. Both of these cases seem to have been revealed due to rumours about the pregnancies circulating in the local communities, which in turn led to closer inspection. We may therefore assume that such cases, where the head of the household did not immediately report the birth but rather had a certain interest in concealing the crime, increased the probability that it would never be discovered.

61 See e.g., Sogner 2003 p.184.

62 State Archive in Bergen (SAB): Court records Sunnhordland I.A. 27 (1705) fp. 22b.

63 State Archive in Bergen (SAB): Court records Nordhordland I.A.22 (1685-87) fp. 70-72, 73-74b, court records Sunnhordland I.A. 43 (1787-92) 170-182.Note that in the latter case, the indicted woman was a maid who was only at home on a temporary visit.

Turning to the case of the married woman and the case involving a widow, we again note that it seems that these women had better possibilities for hiding the pregnancy and the birth than did most of the maids.[64] The widow gave birth in her private chamber and hid the child's body in the hay barn, while the married woman lived alone. As these two women were the heads of their own households, it is likely that they were relatively free to choose their own chores as well as their close companions. Hence, they had better preconditions for secrecy, and their behaviour was less likely to raise suspicion in the community. From the records, it is apparent that these two births were discovered more or less coincidentally: The widow was exposed because a group of children came upon the dead child as they were playing in the hay barn, while the married woman was so weakened after the birth that her neighbours became suspicious.

The maids convicted for infanticide had been exposed quite immediately, due to the sudden sickness and/or because they had not been in a condition to hide the child's body properly. In the above-mentioned cases, we saw that the women to a greater extent succeeded in concealing the births, and that it was apparently coincidences that led to their exposure. This observation gives cause for questioning whether the distribution of infanticide between maids and women living alone as it appears in the court records is really representative, or whether women living at home were more susceptible to get away with the crime.

3. The father – a distant figure or partner in crime?

The question to be addressed in this section is the issue of the role played by the child's father in the cases that resulted in infanticide. Out of the 43 accused women, 37 were proven to have given birth, which means that an equal number of men would in one way or another have been complicit in the suspected crime.[65] As noted above, a succeeding wedding would relieve some of the more severe repercussions for pregnancy outside of wedlock. To the extent that the father was aware of the pregnancy, and free to marry, a more active involvement on their part would likely have been able to forestall many of these hidden births. We have seen that the women were normally socially as well as economically dependent on a male guardian, and in the following, the discussion will revolve around how the child's father's position and conduct directly or indirectly affected the women's choice to keep pregnancy and birth hidden.

The court records from Western Norway show that the children's fathers had different occupations: Farmers, soldiers and officers, servants, sailors, and a craftsman are represented. Recalling that the man's social standing was largely determined by his occupation, and as will be elaborated upon below, there were great disparities between these men's social and economic preconditions for limiting the consequences of an unwanted pregnancy.

64 State Archive in Bergen (SAB): Court records Nordhordland I.A. 12 (1671) fp. 42b-43, Court records Nordhordland I.A. 41 (1743-48) fp. 173b-177.

65 The remaining cases were matters of false confessions and unproven accusations.

There is also variation in the relationships between the child's father and mother at the time of conception. Several of the sexual relations that precluded the infanticides appear to have been of a rather brief and casual nature. Only six of the cases show signs of the parents being engaged or otherwise romantically involved. There is also variation in the extent to which these romantic relations were public or based on a more private mutual understanding, and the court records are at times vague about these circumstances. Whatever the case may be, it is clear that for different reasons, a wedding had not been performed prior to the birth. As a first observation, this appears to have been largely rooted in practical circumstances, e.g., if the couple were both in service in different places and did not have the option to set up their own household at the time. Secondly, the records show that the women's conduct may have affected the men's opportunity to take responsibility, e.g., in cases where the mother never informed the father of the pregnancy at all.[66] In one particularly dramatic case where the child's mother upon being directly confronted by the father denied pregnancy and proceeded to cut the child's throat immediately after delivering, the father stated that he had by no means wanted the child to be kept a secret, but that he would have wanted it to live and to marry the mother.[67] Thirdly, the records show that several of the unmarried men who had impregnated women with or without the promise of a future marriage, remained more or less passive when informed about the pregnancy, or to a various degree coerced the women to hide the pregnancy. One example of this can be found in a case from 1712, where the boyfriend was the only person to know about the pregnancy. When the woman a few weeks before the expected delivery told him that she no longer felt signs of life, he asked her to keep the situation a secret as long as possible. Thus, she gave birth alone, and hid the child's body for 3-4 days before she was eventually exposed.[68]

Considering that relatively few of the pregnancies appear to have been a result of romantic relations and promises of marriage between the involved parties, one might speculate whether these pregnancies may have rather been a result of the opposite kind of sexual intercourse, namely rape or sexual abuse. A more general study of infanticide in Europe emphasises the sexual exploitation of servants and maids on behalf of the upper classes. Such sexual abuse from members of the upper classes was regarded as an "inevitable aspect of lower-class life," and in these cases, the women were often ostracised by their masters as well as by their families and left to fend for themselves.[69]

At first glance, it might appear as though this was the case in several of the Western Norway cases in the material studied in this paper. As many as 13 of the cases report as the father the head of the household in which the women worked, or his son. Any immediate assumption of abuse of power should, however, be checked and nuanced. The class divide in rural Western Norway was not pronounced. As already mentioned, it was qui-

66 E.g., State Archive in Bergen (SAB): Court records Nordhordland I.A. 27 (1699-1701) fp. 34-35b, 55-55b.

67 State Archive in Bergen (SAB): Court records Sunnhordland I.A. 43 (1787-92) fp. 35b-41.

68 State Archive in Bergen (SAB): Court records Hardanger, Voss and Lysekloster I.Ad. 7 (1711-13) fp. 76 – 79

69 Langer 1974 p. 357.

te common to spend some time in service before setting up a household of one's own. Hence, the class-divide between servants and masters in terms of background and social circumstances was far smaller than the equivalent situation in Europe at large. As the power balance was more equal, sexual exploitation in its purest sense seems to be less common.[70] This point is supported by the court records themselves, as they do not give the impression that the intercourse would have been involuntary. Two cases report on a married husband eloping with a maid.[71] In a third case, the woman disclosed the dead child to the father who was the head of the household, and it is cited that they, both crying, went into the living room to confess to the rest of the household what had occurred.[72] Although a few cases are to be found where the sexual intercourse appears as a matter of abuse of power, pregnancies involving the head of the household in the main appear to be a result of relatively equal romantic relationships. The decisive factor motivating infanticide in these cases appears to be connected to incest and/or adultery.

These factors also largely look to have been a concurrent factor for hiding the pregnancy: Records show that a total of 17 out of the 37 reported fathers were married to someone else than the woman charged with infanticide. We recall that the marital status could cause complications and more severe penalties for the involved parties – a circumstance which constituted a further incentive to hide pregnancy and birth. It is also worth noting that the father exercised more coercion, and also took a more active role in the secrecy itself, in the cases of adultery or incest where he had a higher risk of severe repercussions. A case from 1753 involves both: the woman was the sister of the husband's deceased wife, and in addition he had already married another woman. Records show that the father in this case took a very active role in concealing both the birth and the child. For instance, he instructed the woman on several occasions about how she should act in order to avoid suspicion of the pregnancy and birth among the household members. He was also the one who handled the dead child by hiding it in a sealed chest for 18 months before it was eventually discovered.[73] In a similar case where the child's father was married to the woman's cousin, he had at some point provided an abortion potion which the woman had both ingested and rubbed on her knees.[74] In a third case, where the child's father was a married subordinated officer, he himself went and got the child from the women and buried it at a cemetery in the vicinity.[75]

From this it is clear that there has been variation in the degree to which fathers were involved in the course of events that resulted in hidden pregnancy, secret births, and po-

70 This conclusion corresponds to the conclusion of Østebø 2005 pp. 45–46. (not peer reviewed)

71 State Archive in Bergen (SAB): Court records Sunnhordland I.A. 35 (1741-46) fp. 24b-26b, Court records Hardanger, Voss and Lysekloster I.Ad. 14 (1734-1737) fp. 200a-201b, 206-207. In the latter case, the couple were alone in the mountains for the birth, where they discussed the possibilities of eloping and even suicide before they eventually agreed to turn themselves in.

72 State Archive in Bergen (SAB): Court records Nordhordland I.A. 34 (1715-19): fp. 156b-157b, 162-163b.

73 State Archive in Bergen (SAB): Court records Nordhordland I.A. 42 1748-53) fp. 318b-321b.

74 State Archive in Bergen (SAB): Court records Sunnhordland I.A. 40 (1772-77) fp. 164b-166. However, the court based their decision on the ineffectiveness of this potion.

75 State Archive in Bergen (SAB): Court records Nordhordland I.A. 44 (1760-68) fs. 233-235, 236-236b.

tentially infanticide. The following sections will turn the focus towards how the father's knowledge, passivity, degree of coercion, and direct complicity affected the subsequent trials.

4. Men and women in court

What stance did the court take towards men and women who were involved in cases of infanticide? In the 17th and early 18th century, we find that the women who were found guilty of hiding pregnancy and birth almost without exception were sentenced to death in District Courts.[76] This sentence was passed regardless of whether the women had been coerced into hiding the pregnancy; whether the child had been stillborn or murdered; and whether close family members had been present at the birth. The objective rule that hidden pregnancy and births should be regarded as infanticide if the child did not survive, was thus strictly enforced until the 1770s. In cases tried in the latter decades of the 18th century, practise had changed, and the women received the death sentence only in the cases where they were proven to have murdered the child – the rest got away in workhouses. [77]

When it comes to the child's father, though, a slightly different picture emerges. As mentioned above, 37 of the women on trial were proven to have given birth.[78] In all of these cases, the woman was interrogated about the identity of the father, and out of the cases where it was possible to subject the identified father to official inquiry, only one man denied paternity.[79] Out of these 36 cases, six cases resulted in death sentences on behalf of the father. It is, however, worth noting that these six cases stand out: In two of these cases, although the pregnancy had been secret, several witnesses confirmed that the child had died of natural causes shortly after the birth, meaning that these two women were acquitted of secret birth and infanticide. Notwithstanding, the couple were both sentenced to death due to incestual relations. In three of the cases where the child's father was sentenced to death, he had taken an active role in hiding the birth and the body of the child. These cases, however, also involved adultery and incest, and from the court records, it appears that these factors were decisive for the verdicts. In the final case involving death sentence on behalf of the father, his role had not been limited to the murder and subsequent disposal of the child's body in the fjord; the couple had also murdered the father's wife.[80]

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76 It can still be noted that several of these sentences were reduced in appeal courts, or in a King's pardon. In 1705, two women were acquitted in the District Court, in spite of having hidden pregnancy and birth. One of these women were sentenced to death in the court of appeal, while the other case appears not to have been appealed at all, meaning that the woman avoided any punishment. See Bernssen 2017a p. 56 and pp.111-118.

77 See Bernssen 2017a p. 57 and pp.79-86.

78 The remaining cases were matters of false confessions and unproven accusations. See Bernssen 2017 p. 55.

79 Alleged fathers who were not interrogated were e.g., away on work related travel; deceased before the case was tried; or absconded. As mentioned, it is possible that some of these women intentionally identified fathers who were not eligible for interrogation in order to protect the true father.

80 State Archive in Bergen (SAB): Court records Hardanger I.Af. 4 (1767-72) fp. 27-28b, 38b-43; 65b-69,

In contrast to the treatment of the mothers, it appears that none of the child fathers were sentenced to death exclusively for their role in hiding the pregnancy and the birth. Moreover, it largely appears that the fathers faced relatively mild repercussions. In the additional 11 cases where District Courts sentenced the child's father, the repercussions for the sexual crime mostly took the shape of fines and public penance in addition to shorter periods of detention in the more serious cases, such as in cases involving adultery.[81] One exception is, however, to be found in the case where the child's father had provided the woman with an abortion potion. While it should be noted that the father in this case was also married to the woman's cousin, it appears from the court records that it was the complicity in secrecy that constituted the primary justification for the equal sentencing of the man and the woman: six years of imprisonment with hard labour.[82] The timing of this case is, however, significant: It is dated as late as 1774, and thus, the sentencing of both parties must be considered in the context of the late 18th century development towards a more humane criminal practice,

In more than half of the cases, however, the District Courts did not convict the father at all. There are several reasons for this. In addition to Borni Joensdatter's cousin who denied paternity, there are cases where the child's father was already dead before the case was prosecuted; the father belonged to a different jurisdiction; or the father had absconded. Additionally, we find that around one third of the fathers were in military service.[83] Most likely, these men were exempt from punishment due to the ordinance that made first time offences of fornication a non-punishable offence for this group.[84]

Thus, it is clear that the men were largely acquitted, and the woman carried the consequences alone also in cases of infanticide. As the nature of the crime made women the primary and obvious perpetrator, this is not in itself particularly surprising. There seems, however, to be a tendency in court practice that the child's father was largely exempt from responsibility, even in cases where passivity or coercion on his part clearly appear to have impacted the course of events leading up to the crime.

III. Conclusion

Examination of legislation and practice in sexual regulation and infanticide in the 17th and 18th century shows that the repercussions for such crimes were more severe for women than they were for men. Although the threat of punishment primarily targeted men, changes in the surrounding legislation and in general social attitudes meant that it was in practice women who faced the gravest social, financial, and legal consequences of sexual intercourse outside of wedlock. E.g., we find that from the turn of the century and through the 18th century, women held a clear majority when it came to both public pe-

78-79b,

81 Bernssen 2017a p. 125 (not peer reviewed)

82 State Archive in Bergen (SAB): Court records Sunnhordland I.A. 40 (1772-77) fp. 164b-166.

83 Bernssen 2017a p.125 (not peer reviewed)

84 See Koefoed 2008 p.125 on these ordinances.

nance and fines for lewdness. Whether this displacement of responsibility from man to the woman was coincidental or an intended result of policy, remains to be investigated through further research.

In order to escape the burden of the repercussions connected to birthing an illegitimate child, several women went so far as to murdering their new-born in an attempt to hide the sexual crime. Examination of cases of infanticide over a period of 150 years shows that some factors appear to have increased the risk that pregnancy outside of wedlock would end in infanticide. Particularly, the women's social status and relation to the male head of the household appears to have been central components. Furthermore, we find that the child father in many cases was absent but was more likely to be involved if the sexual relation exposed him to severe punishment. Direct or indirect coercion from the child father was a further incentive for the women to hide the pregnancy. At the same time, the men in these cases more often got away with relatively mild punishment, in stark contrast to the practice of sentencing the women to death.

Towards the end of the 18th century, some signs of change are observable. Both increased accountability of the child fathers through the duty of alimony, and a softer penal practice in cases of infanticide indicate a gradual shift towards a more gender-balanced practice. Closer examination of the background and consequences of legal and sociopolitical changes may further illuminate how the sexual regulation of the 17th and 18th century affected women in Norway.

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