

CHAPTER I

*Criminal women: on bodies, paradoxes,
 performances and tales*

A GAME IN THE DARK: THE PRINCIPLE OF PARADOX

In one of the earliest German journals of psychology, Karl Philipp Moritz's *Know Thyself or Journal of Psychology. A Reader for Scholars and Amateurs* (1783–93), an anonymous contributor describes how close he came to murdering his brother.¹ He bore his brother no grudge or ill will; he had no reason to kill him; he had not even, as emerges in the course of his tale, made a *decision* to kill him. All that was needed to arouse a bloodlust that he describes as virtually irresistible was a state of complete exhaustion, his letter opener just slightly out of reach on the desk, and his brother sleeping and defenceless in the same room. In the beginning, there was opportunity; from the opportunity arose his fear of availing himself of it, and 'from the fear of doing it, of having to do it, arose the sudden determination to do it'.²

Instead of committing fratricide, the narrator reflects on two questions that trouble him and undoubtedly also, at this point, his readers. The first is the question how the idea of murder even occurred to him and how it grew, apparently without any cognitive input from him, from vague fear to firm determination in a matter of seconds. In answer, he offers a suspicion:

Any idea of the present has an analogy that has always been there ... this energy of the soul was perhaps aroused by an old idea slumbering within me, or fashioned from several similar ones which raised it to this high degree of vividness. Without finding enjoyment in this I was often present when animals were slaughtered; perhaps I had even attended this act on that very evening ... My soul copied this image and played its game with it in the dark. Is a clear awareness truly necessary to form ideas, particularly when their main features are imprinted on our souls? Their

¹ 'Ueber meinen unwillkürlichen Mordentschluß', in *Gnothi sauton oder Magazin zur Erfahrungsseelenkunde als ein Lesebuch für Gelehrte und Ungelehrte herausgegeben von Carl Philipp Moritz*, III 3, 61–81. The contribution is credited to 'J. Gottfr. V..w.g. in Bschwg.' (81).

² 'So entsprang aus der Furcht es zu thun, es thun zu müssen, plötzlich der Entschluß' ('Ueber meinen unwillkürlichen Mordentschluß', 66).

building blocks are certainly already there; all that is missing is their proper assembly and order to form a whole.³

In a twenty-page contribution to a journal of psychology, this is the sole passage describing psychological processes. Everywhere else, the physical reigns supreme. The idea of murder, mediated in its analogous idea of slaughter, may well have been ‘already there’, but it is brought to the fore by the narrator’s physical condition at the time, his exhaustion, coupled with the physical arrangement of objects – the paper knife, the sleeping brother – in the room. Throughout his treatise, physical processes are the determining factor in life-and-death decisions, with the soul utterly dependent on the body and the mind nowhere in evidence:

Clearly, this decision to commit murder was the effect of many combined motivations; it most likely originated more from physical than moral causes. Precisely the involuntariness of these thoughts, the paradox of simultaneously wanting to and not wanting to, argue loudly enough in favour of the ... dependence of the soul, which is weakened and overpowered by the body.⁴

This argument also sums up his answer to the second question troubling his readers, namely, why he ultimately resisted the temptation. As he describes it, it was not a conscious decision that saved his brother’s life, but a simple sequence of events: he stood up to reach for the knife; the movement caused his blood to flow more regularly and his circulation to settle, and with increased blood flow to the brain rationality returned.⁵ Again, these are almost entirely physical processes; the broad spectrum of moral contemplation, emotional expression or rational reflection we might expect here – anguish, shock, horror, relief, gratitude and ultimately the reassertion of moral balance and rational thought – do not enter into the

³ ‘Von einer gegenwärtigen Idee ist immer schon ein Analogon da gewesen ... diese Energie der Seele erweckte vielleicht eine alte schlummernde Idee in mir, oder bildete aus mehreren ähnlichen eine, die sie zu den hohen Grade von Lebhaftigkeit erhob. Ohne ein Vergnügen daran zu finden, war ich oft zugegen, wenn geschlachtet wurde, vielleicht hatte ich dieser Handlung noch an demselben Abend, zu welcher Zeit sie gewöhnlich vorgenommen wurde, beigewohnt. Dieses Bild kopierte meine Seele und trieb ihr Spiel damit im Dunkeln. Sollte immer ein deutliches Bewußtseyn bey unsern Vorstellungen, insonderheit wenn sich ihre Grundzüge in unserer Seele mahlen, nöthig seyn? Die Materialien dazu sind freilich schon vorhanden, es fehlt nur an schicklicher Anordnung und Zusammenfügung, um das Ganze zu übersehen’ (‘Ueber meinen unwillkührlichen Mordentschluß’, 68–9).

⁴ ‘Augenscheinlich war dieser Mordentschluß eine Wirkung sehr zusammengesetzter Triebfedern, und muß ursprünglich wohl mehr aus physischen als aus moralischen Ursachen hergeleitet werden. Eben das Unwillkührliche bei diesen Gedanken, eben der gleichzeitige Widerspruch zwischen Wollen und Nichtwollen, reden laut genug für die enge Verbindung und Abhängigkeit der Seele, die von dem körperlichen geschwächt und übertäubt wurde’ (‘Ueber meinen unwillkührlichen Mordentschluß’, 74).

⁵ ‘Ueber meinen unwillkührlichen Mordentschluß’, 75.

equation. Cognitive powers, mental responses and moral decisions – in the narrator's view not merely his own, but those of humanity at large – are compelled by such coincidental and uncontrollable outside forces as, say, the weather. 'Without question', the narrator muses, 'the climate has a considerable influence on every murderer: he will act differently in a warmer or colder climate. The latter will proceed more slowly and deliberately; to the former, the thoughts 'I want to' and 'I have to' are one and the same: ... He thinks it and commits murder.'⁶ In his addendum on 'the power of involuntary thoughts', the narrator admits that he nearly committed suicide by jumping out of the window, a decision he relates not to emotional anguish or even the unbearable heat, but simply to the fact that his bedroom window was high off the ground: 'the height of my bedroom caused [!] my fear that I might take a fatal plunge out of the window in the heat'.⁷ And fear, as we know from the tale of his involuntary homicidal impulse, does not shield him against the urge but, paradoxically, increases his temptation to yield to it.

This story of irrational impulses, written at the end of the period we now call the 'Age of Reason', is, like this book, a study of paradoxes. Published in a well-known psychological journal, the anonymous author participates in the debate on the inner workings of humans that was one of the overriding concerns of the enlightened age. And yet, the text itself, with its matter-over-mind stance, seems to break with its own context. It also seems to invite interpretations indebted simultaneously to 'ancient' (for our purposes: pre-Enlightenment) and 'modern' (post-Enlightenment) ideas. We might be tempted, for example, to read this tale as an early expression of the modern cliché that every human being is a potential killer, or as a prefiguration of psychoanalytic insights, such as the discovery of the subconscious. Or we might read it just as easily in the context of the late Middle Ages. Both the author's designation of his compulsion as an 'energy of the soul' and his strict distinction between this and the mind evoke the theories of Paracelsus (1493–1541), who famously conceptualised humans as composed of body, soul and mind/spirit (*corpus, anima, spiritus*).⁸ Other aspects, too, raise doubts about the text's 'modernity', such as its assertion of

⁶ 'Ohne Zweifel hat das Klima auf jeden Mörder beträchtlichen [sic] Einfluß; anders handelt er unter einem wärmern, anders unter einem kältern. Der letztere geht langsamer und bedächtiger zu Werke, bey jenen ist der Gedanke: ich will, ich muß Eins, ein Ton, ein Ruf, von dem er sich auf- oder abgefordert glaubt. Er denkt's und morder' ('Ueber meinen unwillkührlichen Mordentschluß', 76).

⁷ '... die Höhe meines Schlafzimmers erzeugte die Furcht, in der Hitze einen tödtlichen Sprung aus dem Fenster zu thun' ('Anhang einiger Erfahrungen von der Gewalt unwillkührlicher Ideen', Moritz, *Gnothi Sauton*, III 3, 78–81, the quotation 78).

⁸ See Kaemmerer.

the supremacy of the physical during a period that propagated the power and autonomy of the human mind.

Taking this tale and the interpretive possibilities it offers as a parable for my own project, I would describe my interest in it – and in other murder cases analysed further on – as an interest in the principle of paradox, exemplified here in the text's puzzling inconsistencies and in the uncomfortable questions it raises. Puzzling inconsistencies and uncomfortable questions will recur throughout this book, which aims to examine rather than 'explain' them. A perfectly sensible explanation for the paradoxical tale by our not-quite-murderer might be, for example, to view it as the product of a 'transitional period'. Such a statement, however, would itself adopt an enlightened stance in its assumption that there are two distinct time periods, that they are not only distinct but hierarchically organised (one is considered more 'rational' than the other), and that for this reason, the transition from one to the next represents a form of progress (or, in this case, regression). This kind of implicit hierarchisation is a common approach to the time period under consideration, the period between about 1720 and about 1860, or – in epochal terms – from Enlightenment to Empire, with the Enlightenment – in hierarchical terms – occupying pride of place as the philosophical and intellectual foundation of Modernity. Positivist historians of social and political life, philosophy and literature have tended to interpret the Enlightenment as the era in which rationalism obtained its final victory over medieval and Baroque superstitions. Among the developments that are often cited as indicative of this victory are the end of the witch trials,⁹ the advance of new intellectual and philosophical thought systems such as Cartesianism¹⁰ and Pantheism,¹¹ the emancipation of the bourgeoisie and its replacement of the aristocracy as the culturally dominant class,¹² and a new concern with human rights (Kant's philosophy,¹³ the French and American revolutions¹⁴ and the reform of the penal system¹⁵). To this day, the 'long' eighteenth century is overwhelmingly interpreted as the period during which order is first established, and the ordering principles attributed to this time are commonly accepted as the basis for those of

⁹ See the following chapter. ¹⁰ See the contributions in Hans Wagner's anthology.

¹¹ See Christophe Bouton, Heinrich Scholz and Gérard Vallée's introduction to *Die Hauptschriften zum Pantheismustreit*, i–vi.

¹² See Blackburn and Evans; Vierhaus; and Kocka, *Bürger und Bürgerlichkeit*.

¹³ Among many others, Deligiorgi; Gerhardt, Horstmann and Schumacher; Kopper; Cassirer; and Durant.

¹⁴ See Dippel; Saine, *Black Bread, White Bread*; Rürup; and Mason.

¹⁵ See Ju; Ebel; Beirne; and Häntzschel, Ormrod and Renner.

the modern age.¹⁶ In Germany, these ordering principles have been variously imagined as an epoch (the ‘Age of Enlightenment’, the ‘Classical Age’, ‘Romanticism’), a philosophy (the ‘Age of Reason’), or even a mere individual (the ‘Age of Goethe’). Two further classifications that are relevant in this context are the establishment of a literary canon (a nineteenth- and twentieth-century construction that often refers back to Johann Christoph Gottsched’s literary reforms of the 1730s¹⁷), and the modern interpretation of the sexes as diametrically opposed rather than complementary, which also, or so twentieth-century philosophers have told us, developed in the course of the eighteenth century.¹⁸

Surely, these categories of high and low, male and female, elite and uncultured, balanced and absurd, have their uses; they enable us to classify, contextualise, rank and file. And surely, they have also limited our thinking. Since this book is concerned – invariably, given its subject matter, but also unapologetically – with the subordinate, the trivial, the uncanny, the irrational, the scandalous, the sensationalistic, the lowbrow, the unsubtle and the inexplicable, its investigations and conclusions will necessarily be at odds with a literary and social history that has privileged the highbrow, the sophisticated, the aesthetically valuable and the rational.¹⁹ This book investigates not only criminal cases, but also the ordering principles and hierarchies that we as readers so often impose upon texts and contexts, stories and histories. It takes as its subject not only the criminal women of the past, but also the gender codes, reading behaviours and aesthetic and moral judgments of the present.

THE GENDER OF CRIME: TESTIMONIES

The tale of near-fratricide published in Moritz’s journal prefigured later thinking about the nature of crime in significant ways. Particularly the idea that the body controls the mind became a staple of later writing on criminality in general and female criminality in particular. In writing about crime, whether criminal stories or criminological studies, it is indeed ‘bodies that matter’;²⁰ in writing about crime and women, what matters

¹⁶ See Saine, *The Problem of Being Modern*; Mah; and Kocka, *Geschichte und Aufklärung*.

¹⁷ For a broad history of reading and reading behaviours in Germany, see Jost Schneider.

¹⁸ See the Laqueur, *The Making of the Modern Body and Making Sex*; and Honegger, *Die Ordnung der Geschlechter*.

¹⁹ On literary and aesthetic hierarchies, see, among others, Goddard and the contributions in Kord and Whittle.

²⁰ See Judith Butler on the discursive limits of ‘sex’.

most is the body's gender. Moritz's contributor already assumed this when he wrote that 'the female imagination is more excitable and excessive than the male imagination',²¹ suggesting that a woman in his situation would not have been able to resist the murderous impulse that nearly consumed him. His twofold theory that crime originates 'more from physical than moral causes' and that women make likelier killers was taken up in grand style almost exactly one hundred years later, in Cesare Lombroso and Guglielmo Ferrero's seminal work *Criminal Woman, the Prostitute, and the Normal Woman* (*La donna delinquente, la prostituta, e la donna normale*, 1893).²² Lombroso and Ferrero proposed that the nature of female crime is fundamentally biological in origin, that female criminals are less evolved than both male criminals and law-abiding women, and that criminal women are more masculine than 'normal' women, a theory that resulted in countless studies, from the early 1900s on, attempting to prove that women's criminality was on the rise because women were becoming more 'like men'. Most perniciously, Lombroso and Ferrero claimed, based on physical evidence such as cranial measurements and other physiological experiments, that there was very little physical difference between criminal women and normal women, whereas male lawbreakers displayed a wealth of abnormalities that distinguished them from normal men. The physical evidence confirmed their view that both normal and criminal women were defined by the same characteristics, namely cruelty, immorality, vanity, dishonesty and affectability. From this they concluded that normal women, like criminal women, are inherently deviant, 'walking bundles of pathology, which can at any moment unravel into criminality'.²³ Far from letting statistical evidence (which showed then, as now, that women committed far fewer crimes than men) stand in the way of their theories, Lombroso and Ferrero argued that women's empirically low criminality was, in fact, further proof of their inferiority. In a word, 'women are less criminal than men because they are too weak and stupid to be bad'.²⁴

Like the tale of barely averted fratricide, *La donna delinquente* is a study in contradictions. On the one hand, its central claim is that criminality, for women, is normal; on the other, female criminals are described as anything but ordinary. 'The born female criminal is, so to speak, doubly exceptional,

²¹ '... daß weibliche Imagination reizbarer und ausschweifender als Männer-Imagination ist' ('Anhang einiger Erfahrungen von der Gewalt unwillkührlicher Ideen', 79).

²² On Lombroso and Ferrero's work, see Gibson; Hahn Rafter and Gibson's introduction to their translation of Lombroso's *La donna delinquente*, 3–33; Hart, particularly 12–13; and Weiler 84–91.

²³ Hahn Rafter and Gibson 29. ²⁴ Hahn Rafter and Gibson 14.

first as a woman and then as a criminal. This is because criminals are exceptions among civilized people, and women are exceptions among criminals ... As a double exception, then, the criminal woman is a true monster.²⁵ With the benefit of hindsight, we might consider this one of the most significant passages of the work. It formulates a paradox that has ever since been reiterated in writings on women and crime without being recognised as such: all women are natural criminals, but female criminals are no longer natural women. What, then, is the true gender of the female criminal? Lombroso and Ferrero's cranial measurements of normal women, criminal women and normal men answers the question, producing a conclusion that has haunted literature on female delinquency to the end of the twentieth century: 'Many abnormal characteristics in the skulls of female criminals are almost normal characteristics in men.'²⁶ Criminal women, then, are unlike women; they are like men, but not *quite* normal. They display what Lombroso and Ferrero termed man's 'virile' traits, but on a lower level of development. For this reason, 'female born criminals', although 'fewer in number than male born criminals ... are often much more savage'; their crimes 'are more intense and perverse even than those of their male counterparts'.²⁷

We might dismiss *La donna delinquente* as the ravings of eloquent bigots, or, more charitably, as an exercise in what its translators have termed 'tortured logic',²⁸ were it not for its unrivalled impact on later writers.²⁹ The book's central theories were reproduced *ad infinitum* by German criminologists in the early twentieth century.³⁰ Nor did its influence end there. Both the idea that women are biologically predestined for crime and the view that criminal women are really 'like' men have, apparently without violating each other's turf, enjoyed nearly undiminished popularity throughout the twentieth century. In 1969, Hildegard Damrow attributed violent crimes committed by women to hormonal causes, particularly menstruation and menopause. In the 1970s and 1980s, politicians and journalists routinely explained the high percentage of female members in terrorist groups like the Red Army Faction (*Rote Armee Fraktion*) by stating

²⁵ Lombroso and Ferrero 183, 185. ²⁶ Lombroso and Ferrero 115–16.

²⁷ Lombroso and Ferrero 183, 182 respectively; discussion in Naish 75–6.

²⁸ Hahn Rafter and Gibson 10.

²⁹ Hahn Rafter and Gibson 23: 'No other study can rival *La donna delinquente* in its influence on subsequent thinking about women and crime.'

³⁰ Some examples: Erich Wulffen, *Das Weib als Sexualverbrecherin* (orig. 1924); Hans Schneickert, *Das Weib als Erpresserin und Anstifterin* (1919); Otto Weininger, *Geschlecht und Charakter* (1903); Richard Krafft-Ebing, *Psychosis Menstrualis* (1902); and Wilhelm Gustav Liepmann, *Psychologie der Frau* (1920); discussion of many of these texts in Dornhof.

that terrorism was a logical outgrowth of women's emancipation.³¹ 'The concomitant features and aftereffects of women's emancipation', wrote *Der Spiegel* in 1977, 'are also discernible in traditional ... criminality, where women, more and more frequently, do men's work.'³² And as late as the year 2000, Christian Bolte and Klaus Dimmler have described what happens when 'Women Become Men and Seek Adventure': 'Either they became prostitutes, acting out their femininity in such a life but remaining passive ... Or they decided in favour of the asexual lifestyle of active masculinity. In this role it could happen very easily that they became criminal and brutal.'³³

Studies alleging women's biological predestination for crime are more than evenly matched by those asserting the exact opposite. 'Criminality is presumed to be the quintessential domain of men. Men are perpetrators, women victims ... When people speak of "criminal activity", they mean that of men.'³⁴ Seen from this perspective, femininity is the very antithesis of criminality: of all factors used to predict crime, from regional differences and religion to class or economic backgrounds, gender has been historically the most reliable.³⁵ This view does have the empirical evidence on its side. That the statistical average of women's criminal activities from the eighteenth century until today was, and is, considerably lower than that of men has never been disputed. For the period under discussion, various authors have offered estimates ranging from about 10 to

³¹ This is an argument that recurs near-obsessively in coverage of the terrorist movement in *Der Spiegel* and other print media (see Stehle). Günter Nollau, later President of the Bundesamt für Verfassungsschutz, is quoted as wondering out loud why so many 'girls' had joined the terrorist movement, and answering his own question: 'Perhaps this is an excess of women's emancipation' ('Vielleicht ist das ein Exzeß der Befreiung der Frau', cited in Aust 176). And Ingeborg Hauschildt, in an unpublished paper decrying the evils of feminist theology, stated in 1980: 'Unfortunately, women are somewhat fanciful. Otherwise I could not explain why ... there are so many women among terrorists. Here they achieve a complete perversion of femininity' ('Leider neigen Frauen etwas zum Schwärmertum. Anders kann ich es mir nicht erklären, daß ... es auch unter den Terroristen nicht wenige Frauen gibt. Hier kommen sie zu einer völligen Perversion fraulichen Wesens', 10).

³² 'Begleit- und Folgeerscheinungen der Emanzipation zeigen sich auch in der herkömmlichen ... Kriminalität, wo Frauen immer häufiger Männerarbeit verrichten' ('Frauen im Untergrund – Etwas Irrationales', 23).

³³ 'Entweder sie wurden Prostituierte, gaben sich mit einem solchen Leben zwar weiblich, blieben aber passiv ... Oder sie entschlossen sich für die asexuelle Lebensweise des Männlich-Aktiven. In dieser Rolle konnte es leicht geschehen, daß sie kriminell und brutal wurden' (Bolte and Dimmler, in a chapter segment entitled 'Frauen werden Männer und suchen das Abenteuer', 131).

³⁴ Ulbricht, 'Einleitung' to *Von Huren und Rabenmüttern*, 1–37: 'Kriminalität gilt als ureigenstes Gebiet des Mannes. Männer sind Täter, Frauen Opfer; diesen Eindruck vermittelten kriminologische Studien; dieser Eindruck herrscht auch in der Öffentlichkeit vor. Wenn von "Kriminalität" gesprochen wird, ist Männerkriminalität gemeint' (5).

³⁵ Ulbricht 281, citing Lutz Gero Leky's essay on female crime rates (1988).

42 per cent,³⁶ with the percentages over 25 invariably including crimes for which only women could be sentenced, such as infanticide,³⁷ abortion and prostitution. The only category in which women ever reached the 50 per cent mark was sex offences,³⁸ which may tell us more about contemporary moral codes and their legal consequences than about women's criminal behaviour. Violent crime, on the other hand, seemed antithetical to women, both statistically³⁹ and in the popular imagination. How antithetical is documented by a variety of anecdotes which do not have to be true to make the point, such as the one of the man who, ambushed by a highwaywoman in eighteenth-century England, did not understand that he was being held up.⁴⁰ Of course, the statistical fact that men far outnumber women as criminals added grist to the mill of those claiming that female criminals are masculinised women.

Yet another paradox permeating the writing about women and crime is the following: on the one hand, crime is nearly universally presumed to have a gender – in writing, it is either quintessentially male or archetypally female. On the other hand, the law judging crime is often described as gender-neutral. Schnabel-Schulte has pointed out that the *Carolina* (the Penal Code of Emperor Charles V of 1532, by which crimes were judged in eighteenth-century Germany) was couched in gender-neutral terms like 'the accused', 'perpetrators' and 'victims', adding that

[w]omen, like men, could be victims or perpetrators, they could, given the same advantageous conditions, expect as fair a treatment as men; under less favourable conditions, they could be sanctioned harshly in the course of the criminal procedure, just like men. The penal system treated both sexes equally, that is, equally capable of guilt.⁴¹

³⁶ Statistics on women's crimes are cited, among others, by the following authors: Ulbricht, 'Einleitung' to *Von Huren und Rabenmüttern*, 18 (10–20%); Behringer, 'Weibliche Kriminalität', 70 (13.5% of those executed in Munich for violent crimes between 1749 and 1759 were women); Ulbricht 281 (10%); Härter, *Policy*, II 539–70 (25–42% in the principality of Kurmainz).

³⁷ Infanticide was legally defined as a woman-specific offence; men killing children, including infants, would have been sentenced for murder, not infanticide (see chapter 5).

³⁸ Härter, *Policy*, II 540; Schwerhoff, 'Geschlechtsspezifische Kriminalität', 102 and 104; Ulbricht, 'Einleitung' to *Von Huren und Rabenmüttern*, 20; Wunder, 'Weibliche Kriminalität', 41.

³⁹ See Ulbricht, 'Einleitung' to *Von Huren und Rabenmüttern*, 21; Schwerhoff, 'Geschlechtsspezifische Kriminalität', 98–9.

⁴⁰ The story is cited by Ulbricht, 'Einleitung' to *Von Huren und Rabenmüttern*, 10.

⁴¹ Schnabel-Schulte 191 and 198: 'Frauen waren gleichermaßen Opfer wie Täterinnen, sie konnten bei gleich günstigen Rahmenbedingungen eine ebenso faire Behandlung erwarten wie Männer; sie konnten bei ungünstigen Voraussetzungen aber auch ebenso wie die Männer den Sanktionsdruck des Strafverfahrens mit aller Härte zu spüren bekommen. Das strafrechtliche Verfahren behandelte die Geschlechter als gleichwertig, d.h. auch im selben Maße als schuldfähig.' On the gender-neutrality of the law, see also Hull, *Sexuality* and 'Sexualstrafrecht'.

And yet, the ‘conditions’ governing this measure of equality before the law, which could include local differences in the way in which the law was applied, could translate into considerable differences in the legal treatment of men and women. The Bavarian Penal Code of 1751, for example, stated that since women were not legally responsible, they could not be charged with capital crimes.⁴² Women could serve as witnesses at a trial,⁴³ but in many cases not as accusers; as legal dependents, they had to rely on their fathers, brothers or husbands to initiate judicial proceedings on their behalf.⁴⁴ Just as there were crimes with which only women could be charged, such as infanticide and prostitution, there were gender-specific methods of execution: breaking on the wheel or impaling for men; drowning or live burial for women.⁴⁵ More women than men were accused of sex crimes; their sentences more frequently included an element of public humiliation; and some crimes, such as adultery, were punished more harshly if committed by a woman.⁴⁶ Some studies claim that women, even when guilty of the same crimes as men, were less often subject to the death penalty.⁴⁷

Even ignoring, for the moment, the absurdity of speaking of gender equality before the law at a time when women had no vote and thus no hand in choosing public officials, including the magistrates who then judged them at trial, it seems that the view of eighteenth- and nineteenth-century law as a gender-neutral space could do with some modifications. Both crimes and punishments, as we shall see in the course of this book, were often thought of in gender-specific terms. Ideas of crime and its gender – its quintessential masculinity or femininity – permeated philosophical, psychological, criminological and legal writings, reformist debates and literary works. Various convincing interpretations are possible about the interaction between these various writings and court decisions. To suppose, however, that legal rulings were immune to this discourse⁴⁸ is patently absurd.

To think about criminal women means to consider them empirically – their crimes and punishments – in the context of the ubiquitous discourse

⁴² Schnabel-Schulte 192. ⁴³ Schnabel-Schulte 191. ⁴⁴ Götsch 11.

⁴⁵ Schnabel-Schulte 192–3; Harms-Ziegler 326; Götsch 10. In the eighteenth century, many of these methods were still in use – with some gender-crossover, as we shall see –; in the legal practice of the nineteenth century, both women and men were usually executed either by hanging or beheading (see chapter 7 for a more extensive discussion of executions).

⁴⁶ Hull, *Sexuality*, 222–9; Götsch 10.

⁴⁷ For example Schwerhoff, ‘Geschlechtsspezifische Kriminalität’, 102.

⁴⁸ As does Baerlocher in his ‘Nachwort’ to Wahl’s edition, 396.