Waste Not: Criminalizing Wastefulness in Early Modern Germany

by

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Dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Department of History in the Graduate School of Duke University

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ABSTRACT

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Abstract

This dissertation analyzes the development of legal strategies to restrict “wastefulness” or “prodigality” during the economic crises of the long sixteenth century in Southwest Germany, as the state, community and small town families struggled to preserve family and household resources. Using local, state, and imperial court trials of “spendthrifts” from early modern Württemberg, the thesis shows that prodigality laws provided litigants with a flexible, multifaceted tool to prevent reckless financial mismanagement. Once laws began to criminalize wastefulness in the mid-sixteenth century, lawmakers, litigants, and judges used this concept to intervene in family affairs and brand heads of households as legally incompetent. Although litigants largely applied spendthrift laws against male heads of households, family members and the authorities also challenged women with property, accusing them of squandering precious family resources and transgressing gender- and class specific standards of proper household management. The new legal and social culture of thrift and wastefulness not only had profound consequences for gender- and class-based norms of economic behavior but also transformed those economic norms into prerequisites for legal personhood. Finally, the thesis suggests ways in which early modern guardianship and spendthrift laws shaped wider concepts of citizenship, rationality, disability, and
deviance, pointing to long-lasting influences that shaped state policies in Germany into the twentieth century.
Dedication

To my family, both at home and at Duke
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1. Introduction

This dissertation traces part of the story of a legal concept, wastefulness or prodigality (Verschwundung, Prodigalität), within the context of the territorial state of Württemberg and its neighbors in southwestern Germany between 1400 and 1700. At its most basic definition, a Verschwender was someone, usually a male householder, who mismanaged his finances. Verschwendung was a criminal offense and a justification for the intervention of concerned relatives, neighbors, and state officials. In the mid-sixteenth century, when Württemberg and its neighbors revived the Roman practice of declaring Verschwender legally incompetent, Verschwendung came to entail not just a sin or a crime, but also a loss of legal personhood, social status, and access to commercial networks.

The total history of prodigality in the German lands stretches from the first appearance of its Latin root, prodigus, in the Roman Twelve Tables in 450 BCE to its eventual abolition from the German Civil Code (Bürgerliches Gesetzbuch, BGB) in 1992.1 Historical studies on wastefulness reflect its wide-ranging history. Research on this subject largely diverges into the classical and medieval periods or the nineteenth and

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twentieth centuries.² The single scholarly work that examines Verschwendung in early modern German legislation, during that dynamic period when Renaissance magistrates breathed new life into Roman policies, reveals that Verschwendung was an extremely flexible—even vague—legal concept that lawmakers largely delegated to local courts to define.³ In other words, we know very little about how early modern German judges and litigants actually determined deeply moral economic standards of “good” and “bad” household management. It is unclear how court trials set about categorizing certain financial decisions, work patterns, business practices, social activities, and family and community interactions into established proof of Verschwendung.

This dissertation examines local, state, and imperial court trials of Verschwender from early modern Württemberg. It restores this abstract legal concept to its concrete social contexts in order to recover its historically specific implications for the individuals who played significant roles in Verschwendung trials, namely families, members of the trading community, local officials, court judges, and state lawmakers. It asks how the enforcement of Verschwendung laws influenced gender- and class-based norms of economic behavior. It investigates how the practice of declaring spendthrifts incompetent then transformed those economic norms into prerequisites for legal

² See notes 32-36 below.
personhood. Finally, it asks how these legal and social processes affected how judges and litigants defined citizenship, rationality, and deviance.

1.1. Terminology

A significant part of the history of wastefulness in early modern Württemberg is a history of language and legal terms. Since the Twelve Tables, the Latin term for a wasteful person, *prodigus*, usually designated a man who managed money and other forms of property so recklessly that he required state intervention and familial oversight. The regions of the southwestern German lands under consideration in this dissertation adopted the term *prodigus* and its synonyms at varying points between the early fifteenth and late sixteenth centuries.

In Württemberg, for example, before the 1550s, statewide legal codes bear no mention of *prodigus* or even a German vernacular synonym that captured the same meaning. Between 1500 and 1550, some trial records occasionally used the Latin terms *Prodigus* and *Prodigalität* (prodigality), but largely preferred the German synonyms *Verschwender, Vertuner, (Ver)Geuder*, and even the less specific böse or unnütze Haushälter.

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5 The closest approximation was “men who lie around in taverns day and night while their wives and children live on charity” (*denen so inn den würtzheüsern ligen, und daneben wyb und kinder nach dem almusen geen lassen*). August Ludwig Reyscher, *Vollständige, historisch und kritisch bearbeitete Sammlung der württembergischen Gesetze*, Vol. 12, (Stuttgart: Cotta, 1841), 22.
(bad or useless householder). After 1552, Württemberg’s central administration regularly used all of these terms in legislation, court trials, and communication with its districts. The terms largely retained the gender-specific meaning of *prodigus*, for reasons analyzed at greater length in the chapters that follow (see Ch. 2 and 5).

This dissertation prefers the gender-neutral English terms “spendthrift,” “prodigality,” and “wastefulness” to refer broadly to the classical Roman and the early modern German legal terms. I use the phrases “spendthrift laws” and “prodigality laws” to refer to any provision in classical Roman, late medieval, or early modern legislation that employed these terms with the goal of preventing subjects from mismanaging their financial assets.

### 1.2. Historiography

#### 1.2.1. Confessionalization and Social Discipline

The early modern concept of wastefulness is a moral and religious one that is deeply rooted in modern European history. In 1905, Max Weber proposed that the distinctly Protestant ethics of industriousness, thrift, and the accumulation of wealth were responsible for the development of modern capitalist systems.⁶ Although scholarship has since revised Weber’s thesis, some scholars continue to view thrift as a

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value specific to Protestant regions of early modern Europe. Does this mean that its antithesis, wastefulness or prodigality (*Verschwendung*), was primarily a Protestant concern? Peter Hersche has argued recently that Protestant and Catholic European states adopted divergent mentalities towards thrift and waste. What Protestant societies deemed negatively as *Verschwendung* (wastefulness), Catholic European states instead interpreted as the positive virtues of generosity and ostentation, embracing them as a central part of Catholic cultural identity. Hersche maintains that the celebration of thrift and condemnation of wastefulness were unique to Protestant lands and did not form a part of “the Catholic Baroque mentality.”

The very idea of a distinctly Protestant or Catholic ethic rooted, in part, in a culture of “thrift” or “wastefulness” is at the heart of the historical processes that Heinz Schilling and Wolfgang Reinhard originally described as “confessionalization” in the 1970s. They argue that in the wake of the German reformations, the Lutheran, Reformed (Calvinist), and Catholic religious communities all pursued programs to consolidate

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their distinct religious identities (or “confessions”). Throughout the sixteenth and seventeenth centuries, the three major Christian confessions strove to enforce internal confessional uniformity, encourage religiosity, and regulate the behavior and morality of the laity. Church efforts to build distinct religious identities mutually reinforced the process of state building. As church and state officials worked in tandem to develop confessional identities among their respective populations, church and state officials also took the opportunity to simultaneously cultivate “more orderly, disciplined, and obedient subjects” by enacting new regulations that criminalized unwanted behaviors.

This type of state-sponsored “social discipline” inspired an entire subfield of historical


11 Marc Forster, Catholic Germany from the Reformation to the Enlightenment (New York: Palgrave MacMillan, 2007), 74. As critiques of the confessionalization thesis have demonstrated, prescriptive and top-down models of historical change fail to consider the dynamic interactions of villagers and townspeople with their local and state officials. My approach to these interactions draws inspiration, in part, from Marc Forster, a notable critic of the confessionalization model, who has shown that church- and state-initiated reforms could founder at the local level depending on the reaction of the populace. Only erratically, inconsistently, and sometimes unintentionally did social discipline programs serve the interests of modern state building. Marc R. Forster, The Counter-Reformation in the Villages: Religion and Reform in the Bishopric of Speyer, 1560-1720 (Ithaca, N.Y.: Cornell University Press, 1992).
studies dedicated to the new legal codes, morals courts, church visitations, and other forms of policing that emerged within early modern state churches.\textsuperscript{12}

While work on confessionalization focused on the distinctive qualities that distinguished Protestant and Catholic societies, as Weber and Hersche did, notable works in the 1980s and 1990s, such as Ronnie Po-Chia Hsia’s \textit{Social Discipline in the Reformation}, emphasized the similarities in the structural development of the Lutheran, Calvinist, and Catholic confessions in early modern Germany.\textsuperscript{13} Summarizing the state of the field, Trevor Johnston commented in 2000 that “the creation and maintenance of an orderly, disciplined, thrifty population of obedient subjects, workers and taxpayers was a ubiquitous aim of the increasingly centralized municipal and dynastic regimes of late medieval and early modern Europe.”\textsuperscript{14} Paul Münch has similarly argued that thrift (\textit{Sparsamkeit}) was an integral part of early modern mentalities in Catholic, Lutheran, and Calvinist confessions alike.\textsuperscript{15}

This dissertation focuses primarily on Lutheran territories in the German southwest and thus cannot provide systematic comparisons about the role of thrift and

\begin{flushleft}
\textsuperscript{12} For an overview of this literature, see R. Po-chia Hsia, \textit{Social Discipline in the Reformation: Central Europe, 1550-1750} (London; New York: Routledge, 1989).
\textsuperscript{13} Hsia, \textit{Social Discipline in the Reformation}.
\end{flushleft}
prodigality in Lutheran, Calvinist, and Catholic regions of early modern Germany. However, some suggestive evidence of prodigality laws in Catholic regions has led me to the working hypothesis that confessional identity alone cannot fully account for the rapid popularity of prodigality laws. Catholic magistrates produced legislation to coerce thrift and discipline prodigality before the Reformation era in Hamburg, Magdeburg, Esslingen, Nuremberg, and Baden, and after the Reformation in Catholic strongholds like Bavaria. Lower Austria, which returned to the Catholic fold after a vigorous counterreformation campaign under the Habsburgs, also retained its spendthrift laws beyond the decline of Protestant influence in the region. The emergence of similar laws in Catholic regions suggests that state concerns about thrift and prodigality were by no means limited to Protestant rulers. Prescriptive legislation, however, doesn’t provide adequate proof of legal practice. Further research on court trials will be needed to determine the precise character of Catholic spendthrift policies and household economic

17 See Carl Chorinsky’s analysis of the Wiener Freiheiten 1526, Polizeiordnung 1552, and Gerhabschaftsordnung 1669 in *Das Vormundschaftsrecht Niederösterreichs vom sechzehnten Jahrhundert bis zum Erscheinen des Josefinischen Gesezbuches* (Wien: Alfred Hölder, 1878). A similar pattern occurred in Würzburg and Franconia in late sixteenth century, but its Land-Gerichts-Ordnung of 1618 contained policies against spendthrifts that closely matched legislation from Protestant territories like Württemberg and Basel.
norms. Until a systematic comparison can be completed, I have charted a middle road that explores religious values as well as other structural and individual factors. In the chapters that follow, I consider the influence of Lutheran theology in shaping social values centered on the household economy or gendered marital labor roles, but I also cast a wide net in search of other factors that made thrift and prodigality such an urgent subject to fifteenth- and sixteenth-century German legislators.

1.2.2. Marriage, Gender, and the Household

The second literature that has greatly influenced this dissertation concerns the reform of marriage and household gender roles in early modern Germany. This field is robust and interdisciplinary, so I will focus on a few works from the two most relevant subjects: the Protestant reform of marriage and gendered labor roles in the household economy. Literature on these topics has grappled with an enduring problem: How did demographic, economic, and religious changes affect men and women’s power (whether measured by legal rights, property and economic access, social influence, etc.) within the estate of marriage and within society at large?

The last thirty years of scholarship has produced an ambiguous picture of how the religious, legal, and economic developments of the early modern period influenced the standing of women within marriage and within German society. In the 1980s, Lyndal Roper’s and Merry Wiesner’s examination of urban court records indicated that urban
women’s economic and legal standing shrank in the sixteenth and seventeenth centuries, as ideological and economic pressures narrowed women’s opportunities outside of the married household. Reformed ideals of marriage subjected women to tighter patriarchal control within the household and its economy.\textsuperscript{18} In contrast, scholars such as Steven Ozment and Heide Wunder maintain that marriage nonetheless allowed relative parity for men and women.\textsuperscript{19} Wunder’s survey of German women from the late fifteenth through the eighteenth centuries, \textit{He is the Sun, She is the Moon} (1998), has argued that, as the larger German economy became more dependent on household workshops maintained by the joint labor of spouses, women’s work contributions accorded them a form of functional equality with their male partners.\textsuperscript{20} Other scholars have drawn on testaments and other contract records to highlight the influence that European married


\textsuperscript{20} Wunder, \textit{He Is the Sun, She Is the Moon}, 205.
women and widows exerted over their household property and the transmission of family property to heirs.\textsuperscript{21} Summing up this literature, Mack Holt has noted that “all the recent scholarly attention on marriage has underlined just how much we still don't know about the ways in which the prescriptive ideals of socialized behavior were actually experienced.”\textsuperscript{22}

My methodology takes its inspiration from the scholars who conducted local level studies of court records to address this research problem. Trial records shed light on the creative and contentious ways that married couples rearranged gendered work roles, financial resources, and marital authority in response to economic pressures.\textsuperscript{23} Studies based on lower court records, such as Lyndal Roper’s \textit{Holy Household} and Bruce Tolley’s \textit{Pastors and Parishioners}, brought to light similar types of disputes over household (mis)management.\textsuperscript{24} The source content of this dissertation, which features

\begin{align*}
\text{(21) See, for example, Stanley Chojnacki, } & \textit{Women and Men in Renaissance Venice: Twelve Essays on Patrician Society} \text{ (Baltimore, Md.: Johns Hopkins University Press, 2000).} \\
\text{(22) See Mack P. Holt on the “decidedly mixed” conclusions of historians in this field in } & \textit{“The Social History of the Reformation: Recent Trends and Future Agendas,”} \textit{Journal of Social History} \text{ 37, no. 1 (2003): 133-144, 138.} \\
\text{(23) Thomas Max Safley, } & \textit{Children of the laboring poor: expectation and experience among the orphans of early modern Augsburg} \text{ (Leiden; Boston: Brill, 2005), 43, 55.} \\
\text{See also B. Ann Tlusty, } & \textit{Bacchus and Civic Order: The Culture of Drink in Early Modern Germany} \text{ (Charlottesville: University Press of Virginia, 2001), 115-122; Joel F. Harrington, } \textit{Reordering Marriage and Society in Reformation Germany} \text{ (Cambridge; New York: Cambridge University Press, 1995), 263-265; David Sabean, } \textit{Property, Production, and}
marital quarrels over drunkenness, domestic violence, marital struggles for dominance, and arguments over how best to dispose of the household’s limited resources, will thus be familiar to scholars of marriage, gender, and the household.

However, instead of framing this material primarily through the lens of religious ideology, I focus on legal questions related to personhood, rights, and access to property. Prodigality laws attempted to resolve domestic disputes by restricting men and women from exercising certain legal and property rights. While they used familiar tropes such as “drunken husbands” and “shrewish wives,” these sources injected new factors into the gendered power balance—for example, by declaring husbands legally incompetent, assigning guardians to manage the family estate, and permitting wives to monitor and reverse their husbands’ financial decisions.

Further, since prodigality rules originated in classical Roman law, it is possible to track the origins of policies on household relations to the era before the Reformation, when many German territories adopted major Roman legal codes in the fifteenth and sixteenth centuries. Prodigality laws, while certainly influenced by the ideological priorities of the magistrates who enforced them, also fit into a broad legal framework with wide-ranging temporal and geographical continuities. To be sure, my approach to

this material does sacrifice a deeper examination of the theological and ecclesiastical factors that influenced gender relations in the household economy. This dissertation’s focus on legal frameworks, rather than pastors and theologians, is intended not as repudiation of the scholarship that has influenced this study, but to represent an understudied piece of the complex historical problem of gender and power in the early modern household. A full synthesis of the religious, social, and legal perspectives has yet to be written.

1.2.3. Guardianship Law

The third body of historical literature that has influenced this dissertation is that of legal history, with a particular focus on guardianship law. Historical studies of guardianship in the early modern period generally focus on the guardianship of individual social groups, such as women, widows, minors, or people with mental illness, all of whom were denied full legal rights based on the premise that they lacked sufficient reason. Very few contemporary studies provide significant analysis of the guardianship of spendthrifts, despite the common legal restrictions that united these groups in regions as diverse as Flanders, Lower Austria, Bern, Italy, and parts of France.
between the mid-sixteenth and early seventeenth centuries. Most scholarly activity on this topic focuses on the revival of gender guardianship in northwestern and central Europe. Other works examine guardianship of minors and orphans, royal


custodianship, or guardianship of people with mental illnesses or intellectual disabilities.

Scholarly interest in the problem of spendthrift guardianship largely peaked between the eighteenth and early twentieth centuries. In the eighteenth century, guardianship of spendthrifts (cura prodigi) was a popular subject for Latin-language university dissertations in legal studies. Nineteenth century legal scholars also published extensive commentaries on guardianship and prodigality law in German,


27 Joel Harrington, The Unwanted Child the Fate of Foundlings, Orphans, and Juvenile Criminals in Early Modern Germany (Chicago: University of Chicago Press, 2009); Safley, Children of the Laboring Poor; Grace E. Coolidge, Guardianship, Gender and the Nobility in Early Modern Spain (Farnham, Surrey, England; Boston: Ashgate, 2011).


30 E.g., Christian Hanack and Johann Abraham Frenzel, Disp. iur. qua ius testandi prodigo contra communem sententiam assertum (Wittenberg: Creusig, 1724); Nicolaus Dierken, Disputatio Juridica Inauguralis de Prodigis (Trajecti ad Rhenum: van Megen, 1729); Franz Christoph Härtel, Disputatio iuridica de iure circa prodigos (PhD diss., Erfurt, 1737); Carl Friedrich Walch, Commentatio de testamento prodigi iure Germanico invalido disoutationibus iuris civilibus (Jena: Schill, 1754); C. Schultz, De jure circa prodigos (Franequerae: Gulielmum Coulon, 1778).
French, and English, both in the context of classical Roman law as well as its application in early modern and modern Germany, France, and dozens of other modern nations.\textsuperscript{31} By the twentieth century, however, scholars of the early modern period turned away from spendthrifts and guardianship as a subject of historical study. Notable exceptions include works that largely focus on guardianship of adults with mental disabilities in the medieval or modern eras, with some reference to the fact that the laws under consideration also applied to spendthrifts. In a dissertation from 2010, for example, Brandon T. Parlopiano acknowledges that “\textit{furiosi} and \textit{prodigi} are often

mentioned in the same breath” in Roman law and medieval jurisprudence on insanity, but significant analysis of that connection extends beyond the scope of his study.\(^{32}\) For the modern period, historians have investigated guardianship law in nineteenth- and twentieth-century Hamburg\(^{33}\), adult guardianship in nineteenth- and twentieth-century Thurgau and twentieth-century Bern\(^{34}\) (both cantons in Switzerland), and guardianship for alcohol addiction in twentieth-century Zürich.\(^{35}\) Finally, Thierry Nootens has conducted a comparative study of mental illness, disability, and prodigality in nineteenth-century Montreal.\(^{36}\)

The sixteenth and seventeenth centuries, by contrast, typically yield far less informative court records than in later centuries. In his study of early modern Neckarshausen, a village in southern Württemberg, David Sabean has concluded that wives’ attempts to have their husbands declared incompetent (\textit{mundtot}) for prodigality

\[^{32}\] Brandon T. Parlopiano, “Madmen and Lawyers: The Development and Practice of the Jurisprudence of Insanity in the Middle Ages” (PhD diss., Catholic University of America, 2013), 270. See also Aleksandra Nicole Pfau, \textit{Madness in the Realm: Narratives of Mental Illness in Late Medieval France} (PhD diss., University of Michigan, 2008), 125.


were “a distinctly eighteenth-century phenomenon,” followed by a shift towards petitioning for divorce on grounds of prodigality, after women gained the right to independently manage property in 1828. However, Sabean’s study begins with the year 1700, leaving unanswered the question of how spendthrift policies influenced marital relations and women’s household roles during the 150-year period after Württemberg’s new spendthrift rules appeared in the 1550s.

Only two contemporary works, to my knowledge, devote significant analysis to the legal incapacitation and guardianship of spendthrifts in early modern Europe. Elizabeth Mellyn dedicates a chapter of her study of late medieval and early modern Tuscany, Mad Tuscans and Their Families, to court trials for prodigality (prodighi). Mellyn’s study situates spendthrift trials within the context of state and family collaborations to provide guardians for people with mental illness (furiosi, demens, mentecapti). Mellyn’s research, and particularly her concept of “patrimonial rationality,” has significantly influenced this dissertation. Patrimonial rationality, according to Mellyn, “describes the belief held by families and governments that the prudent preservation, management, and devolution of patrimony were of supreme importance. It suggests that economic decisions could not be made outside the context of

37 Sabean, Property, Production, and Family in Neckarhausen, 111, 114, 215.
38 Elizabeth W. Mellyn, Mad Tuscans and Their Families: A History of Mental Disorder in Early Modern Italy (Philadelphia: University of Pennsylvania Press, 2014).
the family or independent of social concerns.”39 Rather than protecting the family or obeying local magistrates’ orders, spendthrifts appeared to plunge heedlessly down a road of willful self-destruction that likewise imperiled their dependents, heirs, neighbors, and creditors. Failure to meet family-centered norms constituted an act of sabotage so contrary to general expectations that magistrates described it as a form of “moral madness.”

Mellyn developed her conclusions about patrimonial rationality and sabotage within the specific context of early modern Tuscany, a region with significant differences from the German southwest. However, I have greatly benefited from the questions she brings to her sources, which ask what we can learn about a society when we view its conception of “good management” as a constructed cultural norm, rather than a self-evident, rational standard. Mellyn’s method has inspired this dissertation’s extensive attention to multifaceted definitions, contested meanings, and constructed categories of normality and disability.

Ludwig Griebl, the only scholar who has devoted a full-length monograph to early modern spendthrift laws, devoted his 2010 dissertation to the legal treatment of spendthrifts and people with mental illness between 1495 and 1806. His study traces the influence of Roman, criminal, common, private, and civil legal traditions upon prodigality and insanity laws in the territorial states of Württemberg and Electoral

39 Mellyn, Mad Tuscans and Their Families, 103-4.
Mainz. While this dissertation is indebted to Griebl’s excellent analysis of legal traditions, I aim to build on the methodological weakness of his study, which limited its focus almost exclusively to legislative sources. As a result, Griebl’s study cannot address deeper questions about practical enforcement, offender demographics, or the reactions of the populace to invasive inquiries into their household finances. Without access to trial records, Griebl also seriously underestimates the impact of legal incapacitation upon convicted spendthrifts’ social relations and reputation.

The methodological constraints of the early modern source record have clearly shaped the development of the field, drawing most scholars either towards medieval and early modern legislation and legal commentaries or towards the far more accessible sources of the nineteenth and twentieth centuries. As a result, we do not know how prodigality trials operated in the German lands before 1700 at the very earliest, with most works on German spendthrifts beginning after the late nineteenth century. Verschwendung was a constructed, flexible legal category without self-evident or static definition. It thus needs to be studied in practical application to concrete contexts.

40 Griebl, *Die Behandlung von Verschwendern und Geisteskranken.*
1.2.4. Disability Studies

The fourth and final literature to which this dissertation is deeply indebted is Disability Studies. An interdisciplinary field that emerged in the mid-1980s, Disability Studies examines how societies create standards of normalcy that privilege certain physical bodies and minds, thereby marginalizing individuals with undesirable impairments, appearances, or behaviors. Scholars thus define “disability” not as an individual biological defect (termed the medical model of disability), but as a system of environments, laws, and cultural attitudes that reinforce the idea of what is normal or abnormal (termed the social model of disability). While Disability Studies initially drew scholars from anthropology and literature, after the mid-1990s, the field of disability history developed in its own right. Early works of disability history favored the modern United States and Western Europe, but more recent works have focused on premodern societies. The field of medieval European history has been especially fruitful for histories of mental illness, blindness, and forms of physical disability.


43 Early works on mental illness paved the road for this field, such as Michel Foucault, Madness and Civilization: A History of Insanity in the Age of Reason, (New York: Vintage, 1988) and Michael MacDonald, Mystical Bedlam: Madness, Anxiety, and Healing in Seventeenth-Century England (Cambridge, 1981). See Kudlick, “Why We Need Another Other,” for an overview of the field before 2002.

44 Livio Pestilli, “Blindness Lameness and Mendicancy in Italy from the 14th to the 18th Centuries,” Others and Outcasts in Early Modern Europe: Picturing the Social Margins, ed.
the early modern European period, works of disability history continue to grapple with premodern concepts of madness, mental disability, and intellectual disability.⁴⁵

Although my historical subjects would not have recognized the concept of “disability” in its modern formulation, the field of Disability Studies nonetheless offers

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early modern scholars useful questions and insights. It encourages scholars to interrogate social constructions like “competency” and “incompetency,” “reason” and “irrationality,” and “normal” and “deviant” actions. The concept of disability is also central to questions of power, hierarchy, and the social order. It challenges historians to ask what constitutes a human being or citizen, and influences how a society determines who requires protection and who deserves the full rights of citizenship.

This dissertation draws on the theoretical insights of Disability Studies to examine how early modern Württemberg’s hierarchical system of legal rights reconstructed cultural definitions of normality and deviance. Württemberg’s initial approach to household mismanagement between 1500 and 1552 characterized wastefulness in terms of sin and crime. Lawmakers privileged specific standards of acceptable economic behavior, demanding that subjects conserve their resources and leave an adequate estate behind to support heirs and other dependents. They also expected subjects to keep their debts low, their incomes steady, and their expenditures


confined to class-, age-, and gender-based standards of acceptable spending. Through prescriptive legislation, lawmakers sought to reinforce economic norms, categorizing economic decisions through a moral framework based on virtue/vice and good/bad household management.

However, when, in 1552, Württemberg’s lawmakers called for legal incapacitation of wasteful subjects, they also categorized economic decisions through languages of (in)competency, (ir)rationality, and (dis)ability. From a legal standpoint, incapacitation and guardianship of spendthrifts transformed compliance with economic norms (in this case, thrift and moderation) into a prerequisite for access to full legal rights. The following chapters break down this process to ask what changing standards of economic behavior reveal about this region’s moral and social codes and its conceptions of normality and reason.

1.3. Sources and Methods

This dissertation focuses primarily on the Lutheran territory of Württemberg and some of its Lutheran neighbors in the southwestern German lands of the Holy Roman Empire. The unusual archival legacies from this region have provided the rich evidentiary material needed for many pioneering historical studies of early modern society, religion, politics and culture. Still, identifying suitable records for the period before 1800 posed many challenges. In the end, the fragmentary and unpredictable
nature of the early modern source record in Württemberg has shaped the form that this study could take.

This study draws primarily on court trial records, in addition to legislative and literary sources. It focuses on the territorial state of Württemberg and its immediate neighbors in the German southwest between 1400 and 1700. I have selected a combination of sources that bring both micro-level depth and geographical breadth to the analysis. Legislation and trial records in this study provide a multilevel cross-sectional view of local villages and districts, cities and territorial states, and high-ranking appeals courts and imperial courts.

1.3.1. Prescriptive Literature and Legislation

Early modern theologians and pastors developed an extensive body of literature, termed *Hausvaterliteratur*, to advise parishioners how to manage their households with piety, moderation, and discipline. When Erika Kartschoke and her fellow editors set about compiling a catalogue of early modern German teachings on marriage, they discovered over a thousand sermons, tracts, songs, and poems just for the period between 1400 and 1620. This rich source base alone could have sustained a dissertation

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48 Erika Kartschoke, ed., *Repertorium deutschsprachiger Ehelehren der Frühen Neuzeit* Bd I/1 (Berlin: Akademie Verlag, 1996), VIII.
on early modern household norms.\textsuperscript{49} Because my primary research goal was to study practical enforcement in social, rather than literary contexts, my engagement with prescriptive literature is limited. While conducting research, I examined didactic treatises on drinking, gambling, and other common vices\textsuperscript{50}; sermons about luxury, moderation, and debt\textsuperscript{51}; and literary works and sermons on the figure of the Prodigal Son, a common stereotype of reckless financial management.\textsuperscript{52} I also examined legal

\textsuperscript{49} For an overview of Lutheran sources in this genre, see Marjorie Elizabeth Plummer, “Reforming the Family: Marriage, Gender and the Lutheran Household in Early Modern Germany, 1500-1620” (PhD diss., University of Virginia, 1996).

\textsuperscript{50} Joachim Westphal, \textit{Faul Teuffel: Wider das Laster des Müßiggange} (Frankfurt am Main: Martin Lechler, Sigmund Feyerabend, Simon Hüter, 1564); Eustachius Schildo, \textit{Spilteufel: Ein gemein Ausschreiben von der Spiler Brüderschaft und Orden}, (Frankfurt an der Oder: Johann Eichorn, 1557); Matthäus Friederich, \textit{Wider den Saufteufel} (Frankfurt am Main, 1567). For an introduction to the \textit{Teufelbücher} literature, see Max Osborn, \textit{Die Teufelliteratur Des XVI. Jahrhunderts} (Hildesheim: G. Olms, 1965).

\textsuperscript{51} E.g., Johannes Gigas, \textit{Von Rechtem und falschem Fasten, und warumb wir Schwelgery meiden sollen: Zwo kurte Predigten} (Frankfurt an der Oder: Johann Eichorn, 1568); Heinrich Knaust, Hüt dich für Auffborgen und Schulden : Hochnötige und getrewe Warnung, an alle Stände (Frankfurt: Christian Egenolff, 1567).

commentaries on guardianship to gain insight into how contemporary jurists interpreted Roman, regional, and imperial spendthrift laws.\textsuperscript{53}

Legislation is one of the most accessible source types, particularly for the region of Württemberg. August Ludwig Reyscher, a jurist and professor of law at Tübingen University, left behind an invaluable research tool for historians in the form of a nineteen-volume compilation of Württemberg’s laws between 1495 and 1848, published from 1828 to 1851 (totaling approximately 29,000 pages).\textsuperscript{54} Reyscher’s collection not only permits the study of the gradual development of Württemberg’s major statewide legal codes, judicial procedures, church ordinances, tax codes, and public welfare laws, but also the smaller ordinances and decrees published at frequent intervals to regulate an extremely diverse array of daily life between in the early modern period.

It was likely the richness of Reyscher’s compilation that drew Ludwig Griebl to choose Württemberg as the subject of his 2010 dissertation on the legal treatment of

\begin{notes}
\item[54] August Ludwig Reyscher, \textit{Vollstaendige, historisch und kritisch bearbeitete Sammlung der wuerttembergischen Gesetze}, Bd. I-XIX.3 (Stuttgart: Cotta, 1828-1851).
\end{notes}
spendthrifts and people with mental illness between 1495 and 1806. Griebl’s study traces the influence of Roman, criminal, common, private, and civil legal traditions upon prodigality and insanity laws in the territorial states of Württemberg and Electoral Mainz. Griebl discovered that Württemberg’s legislative innovations of the mid-sixteenth century created a remarkably flexible disciplinary instrument that permitted local authorities to adapt the law to the individual circumstances of each case, a finding that this dissertation confirms. However, Griebl limited his analysis primarily to legislative sources, due to the methodological constraints of the early modern source record. As a result, Griebl’s analysis provides a comprehensive survey of legislative developments, but cannot address deeper questions about practical enforcement, offender demographics, or the reactions of the populace to invasive inquiries into their household finances.

This dissertation builds on Griebl’s foundations by comparing legislation to actual law enforcement in court trials. I examine four levels of legislation. First, like Griebl, I have traced the development of spendthrift policies in Württemberg’s statewide legal codes (Landesordnungen) after 1495 and its private, family, and inheritance law (Landrecht) after 1555, as well as through smaller ordinances related to public welfare, the regulation of luxury items, related criminal offenses like drinking and gambling, and

55 Griebl, Die Behandlung von Verschwendern und Geisteskranken.
56 Griebl, Die Behandlung von Verschwendern und Geisteskranken 41.
property laws related to guardianship, competency, inheritance, contracts, and bankruptcy. Second, I also compared Württemberg’s statewide legislation to local customary laws in Bietigheim, one of Württemberg’s administrative districts. Third, I compared Württemberg’s state codes to legislation released by the Holy Roman Empire, such as Charles V’s Peinliche Gerichtsordnung of 1532 (Constitutio Criminalis Carolina) and police ordinances and guardianship ordinances of 1548 and 1577. Finally, I also cast a wide net in search of regional similarities between Württemberg and its neighbors, including free imperial cities like Esslingen and Nuremberg, territorial states like Baden and Bavaria, and smaller lordships like the territory of Weisensteig to the south of Württemberg. Chapter 2 provides an overview of the development of spendthrift legislation in these four areas, laying the groundwork for investigation of law enforcement in the subsequent chapters.

1.3.2. Local, State, and Imperial Court Records

Trial records let one study the applications of norms and laws, and draw out the key conflicts between institutions, groups, and individuals. Like Ulinka Rublack’s study of female criminals, I account for the limitations and distortions of court records, but I, too, believe that “it is nevertheless necessary to trust court records and to respond to
them empathically, if we are to engage with the experiences” of people who otherwise left few historical traces.57

I also drew on the approaches of Natalie Davis and Joanne Ferraro, whose studies of court records in early modern France and Italy deal in narratives, rather than social realities.58 Instead of sifting for truths, I looked for what court testimonies revealed about the legal culture and social codes that supplied storytellers with their material. The manner in which each litigant told their story during court trials reveals how early modern people publicly used common scripts and stereotypes to negotiate social roles. The tales that they constructed portrayed themselves and their opponents in calculated ways, using recognizable tropes from legal culture, literature, and moral and social codes. Lawyers, notaries, neighbors, and relatives helped to write the scripts, while court officials directed the drama. As a historian drawn most towards social and cultural meanings, I value court records for their potential to bring to light conflicts of language and social relations.

I used five types of trial records in this study: (1) Urfehde (sworn oaths); (2) Stadtgericht minutes from one of Württemberg’s lower courts; (3) Kriminalakten, lower court cases that required the oversight of the central Oberrat (ducal council) of

Württemberg; (4) lower court cases from Württemberg and the surrounding region that one party appealed to higher territorial courts and/or to the Reichskammergericht (Imperial Chamber Court of the Holy Roman Empire); and (5) nineteenth-century court petitions to Württemberg district courts to declare an individual legally incompetent for prodigality, alcoholism, mental illness, and intellectual disability. Introductions to each chapter of the dissertation provide deeper analysis of my methodological approach to each source type.

At its core, this dissertation is about the meaning of language and social relations within particular contexts. It focuses primarily on court records, rather than legislation, to assess how individuals defined broad legal concepts in concrete circumstances. It employs polyphonic trial documents with competing narratives to explore how individuals tried to affect their social realities through storytelling. Following David Sabean’s local study of Neckarhausen, I have chosen to relate these histories on the scale of meticulously contextualized local case studies, rather than through a generalizing or comparative framework. “The local is interesting,” Sabean argues, “precisely because it offers a locus for observing relations.” This dissertation shows that the flexible legal category of prodigality only took on precise meaning within the points of friction between spouses, relatives, neighbors, and the governed and governing. To chase the

59 Sabean, Property, Production, and Family in Neckarhausen, 10.
meaning of language and relationships requires a local scale of analysis, but, as Sabean
points out, scale does not determine the importance of a study’s questions.

It is by a combination of methodological preference and necessity that this
dissertation favors multiple local-scale case studies as its analytical model. Chapters 2
and 3 and the Epilogue provide quantitative data analysis where possible, but the
incomplete state of extant records made it difficult to rely on quantitative evidence. For
example, a whole book of Bietigheim’s court minutes from 1560 to 1575 is missing; an
unknown number of Urfehde were lost; and my analysis of the RKG records inevitably
depends on the categorical accuracy and consistency of nineteenth-century archivists.
The extant source record was unable to support a single concentrated local study or a
comprehensive comparative study. The Bietigheim dataset provided too little
information about each spendthrift to support all the research questions of this
dissertation. The chapters of this dissertation thus exploit the strengths of each dataset at
the local, state, and imperial levels to conduct multiple case studies of individual trial
narratives.

Focusing on individual narratives by no means concedes that my findings should
be viewed as exceptional or unique.60 Chapters 3, 4, and 5 examine cases that are, in
significant respects, representative of the larger data sample or substantial proportions
of it. These cases represent types of conflict or concerns that appeared frequently in the

60 Sabean, Property, Production, and Family in Neckarshausen, 8-10.
overall sample, such as how to determine legal competency or the extent of women’s property rights. Chapter 5, for example, investigates disputes between married women and their husbands’ creditors, a theme that appeared in nearly one-fifth of all southwestern spendthrift cases examined by the Imperial Chamber Court. The chapters highlight types of conflicts, narratives, relationships, and uses of language that appeared in prosecutions for prodigality in this region of the German southwest.

1.4. Dissertation Structure

Chapter 2 lays the groundwork for examining how litigants and courts utilized spendthrift laws in court trials. I draw on Württemberg’s major legal codes between 1495 and 1620 and early trial documents to highlight a significant transition in Württemberg’s legal policies that regulated personal spending and household finance. Like other southwestern states and cities, Württemberg adopted the Roman practice of declaring wasteful subjects legally incompetent and appointing guardians to manage their estate. In doing so, Württemberg attempted to enforce the specific cultural values of thrift and moderation as statewide, institutionalized prerequisites for unconstrained legal and economic participation. Chapter 2 positions this important shift within the context of religious reform, state building, and demographic and economic shifts. I argue that Verschwendung laws were designed to serve the interdependent interests of three structures of society—family, community, and state. This constellation of interests
expanded the legal category of Verschwendung to encompass multiple layers of meaning. Spendthrift legislation largely targeted three primary specters of early modern society: the reckless Hausvater (male head of household), the untrustworthy neighbor, and the disobedient Christian subject.

Chapter 3 turns from statewide legislation to practical enforcement in one of Württemberg’s district courts. I examine a particularly controversial Verschwendung trial within the context of a local case study in Bietigheim, an administrative district in northern Württemberg, between 1535 and 1600. Between 1545 and 1591, Bietigheim’s local officials prosecuted fifty-six offenses of prodigality. However, between 1571 and 1589, Bietigheim’s officials encountered four prodigal subjects who defied all attempts at discipline or rehabilitation. Overwhelmed by these incorrigible cases, the local government appealed to the ducal council and the University of Tübingen legal faculty for advice and for permission to employ more extreme forms of punishment. The ensuing legal conflict reveals a thirty-year period of struggles between villagers and their village, district, and state officials between 1570 and 1600, as Bietigheim’s officials discovered the limits of Württemberg’s legal solution for wastefulness. This conflict also provides a rare opportunity to investigate how courts established proof of prodigality, since Württemberg’s flexible definition of Verschwendung provided no guidelines for its district judges.
Chapters 4 and 5 draw on the records of the RKG to investigate how litigants used the imperial appeals system to redefine their legal status and protect their property.

Chapter 4 examines the intersections between prodigality and three other categories of legal incompetency: minority, disability, and femininity. It positions Verschwendung policies within the broader framework of legal competency to highlight how property and guardianship laws constructed a hierarchy of legal status based not only on age, gender, and (dis)ability norms, but also socially constructed ideas of what constituted proper household management. Through a process of categorizing individuals as competent and incompetent, these laws defined the prerequisites for legal personhood and regulated access to spaces of legal, economic, and social exchange. The chapter analyzes RKG trials of two wasteful widows, two prodigal sons, and one spendthrift with mental and physical disabilities from the southwestern German lands between 1528 and 1611. I argue that the legal concept of competency functioned less as an officially sanctioned right, and more as a processual and communal evaluation of a person’s conformity to social roles based on his or her age, gender, marital status, ability, and rationality.

Chapter 5 examines a theme of conflict that appeared nine times in appeals to the RKG between 1504 and 1702: the rights of married women vis-à-vis their husband’s creditors. Through these court suits, litigating parties debated how much influence a
married woman wielded over the financial decisions of her household, and what degree of legal liability she should bear to reflect the extent of her power. These court battles reveal a broad spectrum of opinions about how much power women did—and should—exert within the estate of marriage. I argue that judicial recognition of women’s property rights hinged on gender- and class-specific expectations of proper use and management. Judicial procedures pressured female litigants to provide public confirmation of their reputation for thrift, moderation, and industry as a legal strategy to repudiate creditors’ attempts to seize their property. Although wives and creditors disagreed about which party’s interests should receive priority, all participants in the judicial process based their arguments on the presumption that property claims depended on compliance with prescribed household roles. Court storytelling methods thus served as a critical forum to remake a woman’s public image and renegotiate her legal and property rights accordingly.

In a final Epilogue (Chapter 6), I draw out the modern implications of German prodigality laws in the nineteenth and twentieth centuries. The Roman practice of incapacitating spendthrifts made its way from regional policies like Württemberg’s Landesordnung into the Prussian Civil Code (Allgemeines Landrecht) of 1794, the imperial Civil Code (Zivilprozessordnung) of 1879, and the German Civil Code (Bürgerliches Gesetzbuch, or BGB) of 1900, remaining in effect until January 1, 1992. While prodigality trials in Württemberg spiked in unprecedented numbers at the end of the nineteenth
century, this type of court investigation seemed to virtually disappear by the 1980s.

Chapter 6 asks how the shifting legal and medical categories of “insanity,” “moral insanity,” and “prodigality” may have influenced the place of prodigality and disability in nineteenth- and twentieth-century German law.
2. The Criminalization of Wastefulness

2.1. Introduction

This chapter examines a significant transition in Württemberg legal policies that regulated personal spending and household finance between 1495 and 1620. It positions Württemberg’s shift in policy within the context of its neighboring states and cities in the southwestern German lands as well as legal developments in the Holy Roman Empire on the imperial level.

Part one (2.1) provides an overview of Württemberg and some of its southwestern neighbors, as well as an introduction to my sources and methods. The second part of this chapter (2.2) investigates legal definitions and practical application of Verschwendung, starting with a brief overview of Roman law and focusing on early modern adaptations of the concept. Part three (2.3) then turns to the purpose and social context of Verschwendung policies to examine how these rules operated in theory and practice. Who did Verschwendung policies intend to protect, and against whom?

This chapter argues that sixteenth-century legal developments produced a broad and flexible legal category, Verschwendung, which borrowed from criminal and civil law. Like other southwestern states and cities, Württemberg adopted the Roman practice of declaring wasteful subjects legally incompetent and appointing guardians to manage their estate. In doing so, Württemberg attempted to enforce the specific cultural values of thrift and moderation as statewide, institutionalized prerequisites for unconstrained
legal and economic participation. *Verschwendung* laws were designed to serve the interdependent interests of three structures of society—family, community, and state—within the specific historical context of religious reform, state building, and demographic and economic shifts. This constellation of interests also imbued the legal category of *Verschwendung* with multiple layers of meaning when contemporaries applied the term in court trials. Spendthrift legislation largely targeted three primary specters of early modern society: the reckless *Hausvater* (male head of household), the untrustworthy neighbor, and the disobedient Christian subject.

### 2.1.1. Württemberg in the German Southwest

This study focuses primarily on the Lutheran territory of Württemberg and some of its neighbors in the southwestern German lands of the Holy Roman Empire. While impressions from other neighboring territories suggest comparable developments, the rich cache of local, state, and imperial court records from these territories left behind a body of evidence capable of supporting such a study.

The territorial state of Württemberg was the largest political entity in the southwestern corner of the German lands of the Holy Roman Empire, bordered by a mosaic of smaller lordships, ecclesiastical lands, and autonomous cities. The duchy had between 300,000 to 400,000 inhabitants during the sixteenth century, with about seventy percent of residents living in the countryside. Most towns in the territory sheltered
under 2,000 inhabitants, with Württemberg’s prestigious university town of Tübingen reaching approximately 3,000 inhabitants by 1574. Stuttgart, the residence town of the dukes of Württemberg accommodated as many as 9,000 residents. ¹

Under the dukes of Württemberg, the state embarked on a period of administrative and territorial consolidation during the sixteenth century that was punctuated with social and political crises. In 1495, Emperor Maximilian I had elevated the county of Württemberg to a duchy (Herzogtum) of the Holy Roman Empire. The nobles or Ehrbarkeit, an oligarchic elite in Württemberg’s approximately fifty districts (a number which expanded and contracted over the early modern period), put pressure on Duke Ulrich to agree to limits on his powers to stabilize his rule. In the 1514 Tübingen Vertrag (treaty), the Duke agreed to solicit approval from district representatives for decisions regarding taxes, the military, or the sale of territorial lands.² The duchy also faced conflicts within other princes and nobles in the region, particularly with those of the Swabian League, an alliance that also included autonomous southern cities. Quarrels with the Swabian League led Duke Ulrich to flee his lands in 1520, at which point the

Emperor appointed his own younger brother, Ferdinant, to rule Württemberg until 1534.³

Württemberg’s political conflicts became a matter of greater concern in the 1530s, as territorial princes in the Schmalkaldic League sought to prop up Protestant rulers who could support the spread of the Reformation in opposition to the Emperor. Philipp of Hesse and other Protestant princes helped Duke Ulrich to retake Württemberg from Ferdinant, a staunch Catholic, in 1534. In issuing the Kleine Kirchenordnung (Small Church Ordinance) of 1536, Ulrich institutionalized the Lutheran reforms. Württemberg’s state-church administration then expanded under the direction of the ducal church council (Kirchenrat) to oversee doctrinal matters, church lands, poor relief, and regular parish visitations, especially after 1601.⁴

Württemberg also expanded its legal administration significantly between the 1530s and 1550s. Württemberg had issued its first statewide Landesordnung, or codification of regional law, in 1495, with subsequent revisions in 1515, 1521, and 1536.⁵ By 1552, the ducal government laid down the most extensive revisions, not least by greatly expanding the scope and length of Württemberg’s legal code.⁶ It also released its Landrecht, a comprehensive code of private, family, and inheritance law that

³ Bietigheim 789-1989, 245-246.
⁶ Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 193-240.
consolidated and replaced local customs, and a revised church ordinance, the *Großen Kirchenordnung*, in 1559. While these major legal reforms of the 1550s formed the most important of Württemberg’s legislation, the duchy released subsequent ordinances and decrees on a regular basis to regulate topics as diverse as standardized measures and sumptuary laws.

Governance and justice in Württemberg therefore operated on multiple scales, from the influence of imperial institutions down to ducal administrative agencies and the town and village-level jurisdictions. Shared or overlapping authorities formed the day-to-day reality of governance in the duchy. (Chapter 3 offers a more in-depth view of these operations.) As of 1544, Württemberg was divided into approximately fifty administrative districts, but this number changed depending on territorial acquisitions and losses. The duke appointed *Vögte*, or sheriffs, to govern the districts. District governments also consisted of two governing bodies, the *Rat* (council) and *Gericht* (court), two *Bürgermeister* (mayors), and a *Schultheiß* (village mayor) as the head official of each village in the district. Village and district courts dispensed justice for non-capital crimes. By the late sixteenth and early seventeenth centuries, however, the central

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Württemberg administration laid claim to greater supervision over the lower courts in the Württemberg districts. District sheriffs were required to inform the central government in Stuttgart whenever the local court initiated a criminal trial, solicit permission to use torture, and request legal advice from the law faculty at Tübingen University. These measures sought to tighten the ducal council’s oversight of territorial justice and offset local judges’ lack of legal training.¹⁰

This chapter considers Württemberg’s transitions over the long sixteenth century within the context of its immediate neighborhood in the German southwest. The chapters that follow make regional comparisons with the Margravate of Baden, a territorial state to the northwest of Württemberg, as well as the smaller nearby lordships of Öffingen, Hofen, and Wiesensteig and the free imperial city of Esslingen.¹¹

at about approximately 5,000 inhabitants, enjoyed the distinction of a free imperial city, a privileged arrangement that allowed the city council to remain directly under the sovereignty of the Holy Roman Emperor, rather than answering to an intermediary lordship.\textsuperscript{12} I have chosen these states and towns not only for their immediate geographic proximity, but also for their similar policies towards spendthrifts, which allow a broader view of spendthrift laws at work within these diverse political structures.

\textbf{2.2. Verschwendung in Criminal and Civil Law}

Württemberg’s legal strategies to control personal spending fall into two analytical categories, based on how the central administration sought to prevent future infractions. While historical contemporaries would not have recognized these terms, these categories, drawn from two different bodies of law, nonetheless help to pinpoint precisely when and why Württemberg’s officials sought to develop new strategies of criminal justice.

What I broadly classify as “retroactive policies” sought to deter repeated offenses through punishments like imprisonment, fines, public shaming, and even banishment. These policies resembled the state’s disciplinary approach to criminal offenses more

\textsuperscript{12} Rublack, \textit{The Crimes of Women}, 5.
broadly, such as drunkenness, blasphemy or breaking the peace. In its Landesordnung of 1552, Württemberg introduced a second set of policies, which I categorize as a “preemptive,” which sought to prevent financial mismanagement (and, indirectly, poverty) by blocking the offenders’ access to public spaces, legal rights, or resources “before the property [was] squandered” (ehe Haab und Güter verschwendet). These policies seem to be derived from Württemberg’s body of private and family law, especially the provisions concerning the control of property and persons with restricted legal standing, such as orphans and people with disabilities.

However, even as the Landesordnung promoted civil law solutions after 1552, court judges retained their repertoire of retroactive criminal punishments to coerce subjects to conserve their wealth, such as brief imprisonment, fines, public shaming, forced labor, banishment, and, in the eighteenth century, incarceration in the workhouse. Judges had access to a diverse and flexible toolkit of disciplinary strategies that allowed them to adapt to a range of different scenarios. The analysis that follows investigates legal definitions and practical application of Verschwwendung, starting with a

13 Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 783.
14 Ludwig Griebl, the only scholar who has devoted a full study to the development of prodigality laws in the early modern period, provides an excellent investigation of the legal traditions that combined to produce Württemberg’s new approach to Verschwwendung. Ludwig Griebl, Die Behandlung von Verschwendern Und Geisteskranken Im Frühneuerzeitlichen Territorialstaat (1495-1806): Eine Darstellung Der Privatrechtlichen Und Policeylichen Massnahmen Im Kurfürstentum Mainz Und Herzogtum Württemberg (Hamburg: Verlag Dr. Kovač, 2010).
brief overview of Roman law and then focusing on early modern adaptations of the concept.

2.2.1. Roman Origins and Renaissance Revivals

The origins of the term *prodigus* date back to the property systems of Roman antiquity. Roman law promoted the ultimate authority of male heads of households over the family estate by limiting the rights of dependents to pledge or alienate property without the approval of the *paterfamilias*. Within this gender- and age-based hierarchy of property rights, male citizens over the age of twenty-five possessed unconstrained mental and legal capacity, while women, minors, and other dependents were labeled as partially or completely impaired. Roman legislators also sought to limit possible liabilities caused by frivolous or mentally impaired individuals who might diminish the family estate through reckless property contracts.\(^{15}\) In one of the earliest accounts of Roman law, the Twelve Tables (ca. 450 BC) targeted two categories in particular, *prodigi* (spendthrifts) and *furiosi* (madmen), and entrusted both types of individuals to the

\(^{15}\) Brandon T. Parlopiano, “Madmen and Lawyers: The Development and Practice of the Jurisprudence of Insanity in the Middle Ages,” (PhD diss., Catholic University of America, 2013), 251-8, 270.
authority of a guardian, usually a male relative. Justinian’s *Corpus Juris Civilis* (529-534 CE) affirmed the restricted legal standing of both *prodigi* and *furiosi*, stating that neither group was capable of giving legal consent to make contracts or alienate their property without a guardian’s permission.

Although Roman policies on spendthrifts largely fell out of common practice after the ninth century, several developments in late medieval legal culture, administration, and religion contributed to a revival of these policies in the fifteenth and sixteenth centuries. In the eleventh through fourteenth centuries, flourishing university-based intellectual centers in Pavia and Bologna fostered renewed interest in Roman and canon law, producing a robust body of commentaries on Roman law that would guide subsequent generations of university students throughout Europe. German students studying abroad at Italian universities facilitated the spread of Roman law throughout the German lands, where jurists also compiled comprehensive codes of local law in their own territories, such as the *Sachsenspiegel* of 1235 and the *Schwabenspiegel* of 1275.

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The founding of new German universities and legal faculties in the late Middle Ages facilitated the adoption of Roman legal traditions and invigorated codification efforts throughout the German lands. The most significant university for Württemberg was that of Tübingen (located twenty miles from Stuttgart), which was established in 1477 with four faculties in law, medicine, theology, and philosophy. The availability of legal training facilitated the development of a professional class of university-trained jurists, who served as advisers, judges, lawyers, and scribes within Württemberg’s expanding administrative bureaucracy.

In 1495, with the founding of the Empire’s highest court (the Reichskammergericht, or RKG), the Reichskammergerichtsordnung (RKGO) directed the Imperial Chamber Court to use Roman law in its jurisprudence. Emperor Charles V issued his Peinliche Gerichtsordnung (Constitutio Criminalis Carolina) in 1532, a unified body of Roman-based criminal law that applied throughout the empire. The Empire also published Reichspolizeiordnungen (imperial police ordinances, RPO) in 1530, 1548, and 1577, which addressed a wide range of issues related to the public order.

The introduction of Roman law on the imperial level and within the Empire’s member states initiated a period of reconciliation with local legal customs that stretched well into the sixteenth century. The Holy Roman Empire permitted its member states to

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supplement or clarify Roman-based imperial law (gemein Recht) by issuing their own local legal codes (Partikularrecht), such as judicial procedures, criminal law, policing ordinances, and statewide Landesordnungen.\textsuperscript{20} Württemberg, for instance, introduced its most comprehensive codes of law in 1552 (Landesordnung) and 1555 (Landrecht), both of which adopted the Roman practice of establishing guardianships for spendthrifts.

Some regions within the Empire adopted Roman prodigality and guardianship in the fifteenth century, long before momentum from imperial legislation spread Roman law in the early to mid-sixteenth century. One of the earliest examples appeared in the northeastern German lands circa 1400. Nikolaus Wurm’s comprehensive summary of Magdeburg law drew directly on the language of Justinian’s Institutes, stating that, “Prodigus means a person who gives away his property without honest purpose or good sense. And for this reason, the insane person and the prodigus are forbidden by law to administer their property because they do not have authority over their property without a guardian.”\textsuperscript{21} Similarly, an ordinance in Esslingen in 1438 echoed Roman law provisions that spendthrifts “were not capable [mächtig] of selling, trading, or giving away property” without a guardian’s approval, due to their unreasonable [unvernunft

\textsuperscript{20} Hermann Conrad, Deutsche Rechtsgeschichte, Vol. 2 (Karlsruhe: Verlag C. F. Müller, 1966), 364.

\textsuperscript{21} “Prodigus heist eyner, der das seyne vorgebit ane redelichen vorsacz und guter vernumfft. Und dorumme ist dem furioso und dem prodigo in dem rechten vorboten yres gutes eygene vorwesunge und dorumme das sie yres gutis nicht gewaldig sein ane vormunden.” Leuchte, Das Liegnitzer Stadtrechtsbuch des Nikolaus Wurm, 256.
oder unsinn] spending habits.\textsuperscript{22} Nuremberg also called for guardianships for spendthrifts (\textit{verschwentter}) in its Reformation (revised legal code) of 1479.\textsuperscript{23}

The early reception of Roman spendthrift policies in Esslingen, which lay only eight miles from Stuttgart, suggests that some of Württemberg’s local districts may have begun using Roman guardianship for spendthrifts before Württemberg formally institutionalized the practice in 1552. The next section offers an in-depth look at how Württemberg adapted the Roman practice of appointing guardians for spendthrifts between the early to mid-sixteenth century.

\textbf{2.2.2. A Case Study of Württemberg}

Understanding the flexible meaning of \textit{Verschwendung} requires a closer examination of not only its classical roots, but also the way that a state like Württemberg applied the legal category in practice. This section investigates how \textit{Verschwendung} was identified and punished between 1495 and 1620 in Württemberg and in some of its individual districts.

\textsuperscript{22} “Weret nicht mächtig sÿy sins gutes jehtzit zuverkauffen zuversetzen noch hinzugeben noch dahaims wegs zuverendern noch anzuwarden,” SA ES, Bestand RSU Nr. 80, 24. Jan. 1438.

\textsuperscript{23} SA ES, Bestand RSU Nr. 80, 24. Jan. 1438; Nuremberg \textit{Reformacion der Statut und Gesetzte} (Nuremberg, 1484).
Between 1495 and 1552, the Württemberg Landesordnung, a centralized, statewide legal code, gradually articulated a stricter and more explicit stance against financial mismanagement. The earliest iteration of Württemberg’s Landesordnung from 1495 limited its oversight of personal finance to restrictions on drinking and gambling. In revised editions from 1515, 1521, and 1536, the law code specifically targeted “men who lie around in taverns and let their wives and children accept charity.” The Landesordnung condemned neglectful Hausväter (patriarchs) for deceiving creditors “as if they hadn’t a penny to give them, and they lie in the taverns feasting, gambling, or other such luxuries.” The Landesordnung directed village and town courts in the districts to punish offenders through brief periods of imprisonment in the local Turm (tower), payment of their own prison costs, and in more extreme cases, referring the case to the central administration for more severe punishment.

Württemberg, like some of its immediate neighbors in the southwestern region, defined Verschwendung through moralizing language that emphasized sinfulness (bößlich/übel, or bad), disobedience (ungehorsamb), and defiance (mutwillig, or willful).

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24 Württemberg’s Landesordnung of 1495 restricted gambling by income level and banned the pledging of health (Zutrinken, a competitive drinking ritual). Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 6-8.
26 “Die iren schuldneren nit hetten zugeben pfand oder pfening und sie inn wirtzheusern ligen prassen, spilen, oder ander üppigkait tryben.” Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 22.
27 Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 22.
framing the behavior as both a religious and criminal offense. Other common terms that appeared in Württemberg’s subsequent legislation emphasized the offender’s transgression of socioeconomic and familial obligations, such as through extravagant (üppiglich) spending that misdirected precious resources or idle, useless (unnütz) neglect of work obligations.

2.2.2.1. Wastefulness in the Württemberg Urfehde, ca. 1500-1550

Local court records rarely survived for this early period of Württemberg’s history, but one collection of legal documents, the Urfehde, allows us to track, to a limited extent, how courts in the towns and villages implemented disciplinary measures against reckless household management.28 The Urfehde was a written, formulaic oath that Württemberg district courts required offenders to sign and publicly swear. The use of formal sworn oaths as a legal instrument peaked in the 1530s and 1540s. They seem to have declined in Württemberg in the second half of the sixteenth century, although they continued to appear in smaller numbers in the 1550s and 1560s. The oath served as a

28 Bob Scribner’s analysis of vagrancy, including prodigal vagrants, in the Württemberg Urfehde records provides an excellent introduction to this source. Bob Scribner, "Mobility: Voluntary or Enforced? Vagrants in Württemberg in the Sixteenth Century" in Migration in Der Feudalgesellschaft, ed. Gerhard Jaritz and Albert Müller (Frankfurt; New York: Campus Verlag, 1988): 65-88. See also Andreas Blauert, Das Urfehde wesen im deutschen Südwesten im Spätmittelalter und in der Frühen Neuzeit (Bibliotheca Academica, 2000).
legally documented guarantee that the offender would improve his or her behavior and would not seek vengeance upon local officials for carrying out justice. Recidivists could be prosecuted for oath breaking upon subsequent offenses.

District administrators compiled Urfehde from their local subjects and delivered them to the central Württemberg administration in Stuttgart in the mid-sixteenth century. The surviving collection of Urfehde numbers over 7,000 for the period between the late fifteenth and late sixteenth centuries, but it is by no means complete, due to problems with transportation and preservation of the documents that resulted in the loss of an unknown number of Urfehden.29 The unknown extent of those losses precludes the possibility of conducting a prosopographical analysis based on frequency or change over time.

Even so, the Urfehde still shed light on this early period of law enforcement over a broad sweep of Württemberg’s forty-five administrative districts. The most common terminology used in the Urfehde to describe householders who mismanaged their financial resources included variations of the terms “Verschwender,” “Vergeuder,” and “Verthuner.” Key word searches reveal that courts in twenty-one of Württemberg’s districts produced 206 sworn oaths for prodigal subjects between 1473 and 1576. The districts with the most surviving Urfehde for prodigality included Stuttgart (21%),

Kirchheim (18%), and Nürtingen and Vaihingen (10% each). However, since document preservation varied widely from district to district, regional concentration of *Urfehde* alone does not necessarily indicate more offenses or court activity. The use of *Urfehde* to document and discipline poor household management peaked between the late fifteenth century and the 1530s, with eighty-six percent of surviving prodigality cases occurring between 1530 and 1570.\(^{30}\)

![Diagram: Prodigality prosecutions in Württemberg, according to surviving Urfehde](image)

**Figure 1: Prodigality prosecutions in Württemberg Urfehde, ca. 1500-1576**

Because the surviving set of documents is incomplete, 206 oaths may appear insignificant compared to Württemberg’s population of approximately 300,000 subjects.

\(^{30}\) Hauptstaatsarchiv Stuttgart (hereafter HStA) A44 Urfehde.
around the year 1500 (0.068% of the population). The Urfehde nonetheless yield information about the development of legal categories, sentencing patterns, and the relationship between centralized state policies and local enforcement.

Urfehde descriptions of offenses indicate that Württemberg local courts began using terminology like “Verschwender,” “Vergeuder,” and “Verthuner,” to name bad household managers long before any of these terms eventually appeared in the centralized Landesordnung of 1552 or the Landrecht of 1555 (a code of private, family, and inheritance law that consolidated and replaced local customs). The district court in Stuttgart, which produced forty Urfehde for wastefulness between 1514 and 1562, disciplined Paulus Ermbreich in 1521 for abusing his wife “and squandering her property.” In the same year, the Stuttgart court arrested Hans Mintzer for “lying around day and night, squandering the property of my wife and children.” In 1532, the court chided Konrad Deylin because he neglected the fields he had been employed to tend, and “in violation of the state legal code, lay around in the taverns, extravagantly squandering our property, to the great harm of my wife and children.”

31 Marcus, The Politics of Power, 8.
32 “Prodigus” first appears in a 1562 Urfehde from Marbach, however. A44 U2911.
33 “Darzu etlich Ir hab unnd gut verthonn.” HStA A44, U4288.
34 “Tag vnd nacht bym vmgelegenn, mein wyb vnd kindenn daß Ir verthonn.” HStA A44, U4289.
35 “Vnangesehen der Lanndsordnung vßgetreten, mich zu die wirtshüser gelegt, mir mein wyb vnd kinden zu verderplichen shaden, das vnsner ýppiglich verspilt vndon verthon.” HStA A44, U4357.
Similarly, the court in Göppingen, a district town located twenty-five miles southeast of Stuttgart, disciplined Wesch Krämer in 1529 because he “lay around in the taverns day and night [and] extravagantly squandered his property.”36 In 1532, the same court arrested Lienhart Hagmüller for “lying in the taverns day and night, drinking, gambling, and extravagantly frittering away his property and impoverishing his wife and children with his excessive prodigality.”37

The language of the Urfehde reveals that Württemberg’s district officials, like the ducal advisers who authored the Landesordnung, associated household management with other illicit behaviors like zutrinken, (drunkenness), spilen (gambling), fressen, saufen, zechen (gluttonous eating and drinking), and familial neglect. Table 1 shows Urfehde from the city court of Stuttgart that explicitly used synonyms for Verschwendung as well as phrases that conveyed the same meaning through slightly different terms.38 The court of Stuttgart ordered twenty-seven Urfehde from prodigal city residents between 1514 and 1562 (not including the villages located within the Stuttgart district). Over half of the cases specifically connected the offender’s Verschwendung to neglect of household dependents. One-quarter of cases also cited drinking, and an additional one-

36 “Am gutte zeÿt her tag vnnd nacht in Wurtzheüsern gelegenn das mein vppiglich verthon vnnd verschwendt.” HStA A44, U1253.
37 “Tag vnnd nacht in wurtzheusern gelegen, geprast, gespilt, vnd das mein vppiglich vnnutzlich vnnd vberflüssig mir meinem weyb vnd kinden zuverderbung verthon.” HStA A44, U1270.
38 See note 39.
quarter included gambling. In this constellation of associated meanings, the misuse of personal wealth carried immoral implications for how that wealth was disposed and who suffered as a result.39

Table 1: Urfehde for offenses related to "Verschwendung" in Stuttgart, 1514-1562

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>81%</td>
<td>Prodigality</td>
</tr>
<tr>
<td>59%</td>
<td>Neglecting family</td>
</tr>
<tr>
<td>30%</td>
<td>Violence</td>
</tr>
<tr>
<td>26%</td>
<td>Drinking</td>
</tr>
<tr>
<td>26%</td>
<td>Gambling</td>
</tr>
<tr>
<td>7%</td>
<td>Outstanding Debt</td>
</tr>
<tr>
<td>2%</td>
<td>Desertion</td>
</tr>
<tr>
<td>1%</td>
<td>Not working</td>
</tr>
</tbody>
</table>

A closer examination of the city court in Stuttgart indicates that local officials largely used brief periods of imprisonment to discipline offenders for household mismanagement during the first half of the sixteenth century. In all cases between 1514 and 1562, local officials arrested and imprisoned “bad householders” for days to weeks at a time, released them on condition of swearing an Urfehde, and fined them for the costs of their imprisonment. It is not clear how long a typical prison sentence lasted. In 1523, Oswald Schopff spent eight days in the Turn of the town of Leonberg, subsisting

39 HStA A44, U4258, U4264, U4288, U4289, U4353, U4354, U4356, U4357, U4368, U4370, U4401, U4402, U4405, U4406, U4408, U4409, U4412, U4413, U4417, U4420, U4421, U4441, U4503, U4504.
on “porridge, soup, water and bread” for “liv[ing] a wasteful lifestyle and getting drunk in the tavern, to his family’s disadvantage.” In 1531, Hans Henlin spent eight days in jail in Stuttgart with nothing but bread and water for committing a combination of Verschwendung, adultery, and domestic abuse. In 1556, Hans Schweitzer spent a month in the Kirchheim tower for a combination of Verschwendung and domestic abuse.

In addition to brief periods of imprisonment, the Stuttgart court also meted out other forms of punishment against prodigal subjects. These ranged from early curfews to drinking and gambling restrictions. The Stuttgart city court issued lifelong gambling bans against Konrad Deylin and Mathis Stumphart in 1532. Michel Moseder perhaps committed a lesser offense; the court banned him from gambling with high stakes in 1543, but permitted him to continue gambling for the low stake of one pfennig, in keeping with the Landesordnung. In 1562, the court limited one habitual drinker to drinking only ½ Maß of wine per day within his own home. Another notorious drunkard proved so incorrigible that the court commissioned the construction of a

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40 “Brei, Suppe, Wasser und Brot...weil er...trotz des Verbots der Amtleute zum Nachteil seiner Familie ein verschwenderisches Leben geführt und in Wirtshäusern geprasst hatte.” HStA A44, U2670.
41 HStA A44, U4353.
42 HStA A44, U2387.
43 HStA A44, Bü. 4356, 4357.
44 HStA A44, Bü. 4420.
45 HStA A44, Bü. 4503.
special cup for the offender, lest he exceed his daily allotment of wine. These sentencing practices offer further evidence of the common overlap between financial mismanagement and other criminalized behaviors. They also reveal how local courts chose from a toolbox of punitive measures to address threats to household stability. Konrad Deylin, for instance, was first banned from gambling and excessive drinking in 1532 and again with a nightly curfew one year later, when he squandered his wages instead of feeding his family.

Preventative measures like curfews and bans on drinking and gambling sought to avoid future infractions by limiting offenders’ access to public areas or certain activities (such as taverns or card games). Such measures, combined with reactionary punishments, such as imprisonment or fines, present a diversified portrait of sentencing practices in the Württemberg Urfehde during its periods of highest activity between 1530 and 1560.

Even so, the Württemberg state largely treated wastefulness as a problem of behavioral discipline in the first half of the sixteenth century. Disciplinary strategies occasionally focused on controlling access to certain public spaces, like tavern bans, but the primary focus remained one of controlling individual behavior. Not until mid-century did Württemberg’s fifth revised Landesordnung advocate a different model of

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46 HStA A44, Bü. 4483.
47 HStA A44, Bü. 4357, 4362.
preventative discipline to guide local justice in the districts. After 1552, Württemberg’s legal code approached prodigality as the problem of controlling access to property and to the credit and trading networks that dealt in property.

2.2.2.2. Incapacitation and Guardianship of Spendthrifts, ca. 1550-1600

The *Landesordnung* of 1552 marks the first time when Württemberg clearly drew on the Roman practice of spendthrift guardianship to attempt to solve the problem of wasteful householders. It also marks the first appearance of the terms “unnütze Haushälter,” “Verschwender,” and “Prodigus” in the *Landesordnung* to describe reckless household managers. The *Landesordnung* defined these legal categories as useless people who bring themselves and their wives and children into ruin [by] wickedly and uselessly spending not only their own property, but also their wives’ property and inheritance through daily and nightly gambling, feasting, drinking, debauchery, and frivolity, thus bringing not only themselves, but also their wives and children into misery and poverty.48

The language describing spendthrifts in the 1552 law echoed territorial ordinances since 1515, framing prodigality as a crime on par with illicit drinking and gambling. The reformed law code directed local district authorities—the Vogt and Gericht—to issue two formal warnings against such offenders, augmented by periods of brief imprisonment, depending on the severity of the infraction. Upon the third offense, the Landesordnung of 1552 prescribed a form of disciplinary action that had hitherto not appeared in previous iterations of the state law code. The officials were to publicly declare the offender a “Prodigum and spendthrift” and issue a mundtot sentence, which revoked the offender’s rights to administer any of his or her own property without the oversight of newly appointed guardians.

The Württemberg Landrecht of 1555 further elaborated on the new mode of punishment, adding that an officially denounced spendthrift “shall have no power or authority whatsoever to influence or pledge [his property] in any way without the knowledge and approval of his guardian. If [he should do so anyway], then it shall be considered null and void, and declared legally so.”


50 “Derselbig soll gentzlich kein Gewalt noch Macht haben, ichtzit zuverendern oder sich zuverbinden und zuobligieren, in keinerley weiβ noch weg, ohn Vorwissen und Willen seiner Vögt und Pfleger. Da aber einer hiewider etwas Klein oder Groß fürnemen thet, dasselbig soll krafftloß, nichtig unnd von unwürden sein unnd gehalten, auch also
widely: the new law forbade wastrels to buy, sell, mortgage, trade, or give away property without the consent of a guardian, nor determine the future of their estates by composing a last testament.

A **mundtot** sentence, or *Entmündigung*, thus declared offenders to be legally incompetent and incapable of making binding decisions about the administration of their own property. In contrast to the earlier preference for using criminal disciplinary actions—such as arrest, imprisonment, and eventual banishment—Württemberg’s ducal council tended to adopt a new policy of “pre-emptive” civil control, by which local courts would prevent suspected spendthrifts from independently accessing or influencing their own property. Although courts could still discipline reckless householders through arrest and imprisonment, the overarching impetus of the new legal approach was to block wastrels from forming destructive contracts by subordinating them under the authority of specially appointed guardians.

Rather than introducing an innovation, the new *Landesordnung* of 1552 and *Landrecht* of 1555 systematized a form of punishment already in use within its districts and in the larger southwestern region. In one particularly early case, the district court of Vaihingen had declared Georg Karst **mundtot** at some point before 1528, some twenty-

five years before the new *Landesordnung*. The court later reprimanded Karst again for violating his *mundtot* sentence, living wastefully, and gambling away his property.\(^{51}\)

Local courts also used the functionally similar arrangement without calling it a *mundtot* sentence. Claus Ostertag, for example, swore in 1545 “not to sell any of his land without the knowledge and permission of the authorities and to deliver all [documents] about his debts to the authorities.”\(^ {52}\)

Württemberg followed in the wake of a larger, empire-wide impetus to produce new legislation and court institutions to regulate guardianship for vulnerable subjects. The Holy Roman Empire facilitated the state takeover of guardianship duties when it published two imperial police ordinances (*Reichspolizeiordnungen*) in 1548 and 1577, both of which contained provisions for the guardianship of minors. In the wake of the *Reichspolizeiordnungen*, over fifty towns and territories throughout the German-speaking lands produced new *Vormundschafts-, Waisen-, Pflege-, Vogtei-, and Tragneiordnungen* between the 1550s and 1780s.\(^ {53}\) A few notable examples of this new genre of legislation

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\(^{51}\) HStA A44, U6403.

\(^{52}\) “Wo aber ich wenig oder vill, Ligends oder v[ertnds], on wissen, vnnd willen der Oberkhaitt, zu Ingershen verkaffen wurde, soll selbiger kauff, vnd verkaff als dann nichtig, vnd Crafftlos sein.” HStA A44, U230.

appeared in the Nuremberg Reformation of 1564, the Württemberg Landesordnung of 1552, the Freiburg Statutes of 1576, and the Basel Vormundschaftsordnung of 1590.54

It was within this imperial context that Württemberg’s Landesordnung of 1552 introduced a newly minted Pupillenordnung, directed towards the care of minors as well as “other people who need guardians, due not to youth, but for other reasons and impairments, namely people with physical impairments (Gebrächenhafttigen), the mentally ill (Unsinnigen oder Sinnlosen), spendthrifts (Verschwender oder Geyder), and also mutes and the deaf (Stummen und Ungehörenden), as well as the elderly [and] incapable (Alten, Unvermöglichen).”55 Württemberg’s legal code thus redefined spendthrifts as members of a larger social group of adult subjects who lacked sufficient competency to conduct their own affairs independently. In addition to the promulgation of new guardianship legislation, Württemberg also organized the establishment of new judicial bodies, often called Waisengerichten (orphan courts), to enforce the law and arbitrate family disputes related to guardianship. Through these new institutions, local officials took over the tasks of appointing guardians for any subject deemed incapable of managing his or her own property, as well as collecting annual reports and budgetary

54 Note that Baden’s guardianship policies emerged earlier, in 1511.
records from guardians.\textsuperscript{56} Württemberg’s public welfare policies and Kastenordnungen (common chest ordinance) similarly classified together orphans, other minors, and people with physical disabilities, designating all of these groups as deserving of charity and protection.\textsuperscript{57}

Württemberg also drew on Roman portrayals of prodigality as a legal status comparable, but not identical to, mental illness. Roman law defined competency as an individual’s ability to perform legally recognized acts, such as administering property, writing a valid will, or incurring liabilities for debts or contracts.\textsuperscript{58} By the time it was transmitted through Justinian’s Corpus Juris Civilis (529-534 CE), Roman law outlined a hierarchy of levels of competency. The lowest rung, including children under the age of seven (\textit{infans}) and people of unsound mind (\textit{furious, mente captus, demens}), were

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\textsuperscript{56} Württemberg’s orphan court instructions appear in its Pupillenordnung within the Landesordnung of 1552. Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 779. \\
\textsuperscript{57} “Erste Kastenordnung, 1. Juni 1536,” and “Ausschreiben, betr. die Einschärfung der Kasten-Ordnung, 20. Feb. 1547” Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 122-132, 141-142. Bietigheim’s local policies affirmed this practice: “Die frommen vnnd gehorsamen gefürdert, vnnd die bösen also gestrafft, Dardurch dem übel vnnd allen lastern desto mehr gewört, Auch witwen vnnd waisen geschützt vnnd geschirmet vnnd allem üppigem vnnd vnordenlichem verschwenden vnnd leben gewört werde.” StABi Bh B 544 Bietigheimer Annalen, Bd. 1, 74r-76v. \\
\end{flushleft}
prohibited from committing any legally binding acts.\textsuperscript{59} Chapter 4 examines this legal issue in greater depth (Section 4.1.1).

Within the individual Württemberg districts, local laws similarly conceptualized spendthrifts as members of a group category of the legally incompetent. Bietigheim, a district fifteen miles north of Stuttgart, founded a Waisengericht (orphan court) to implement the new Württemberg guardianship ordinance. The Waisengericht appointed guardians, arranged for inventories of estates under guardianship, and collected annual account reports from guardians to ensure that they were properly looking after their wards’ best interests. The “orphan court,” despite the narrow sense of its name, oversaw guardianships for the same diverse category of individuals as Württemberg listed in its guardianship ordinance: “orphans who have neither father nor mother, the senseless (synnlouß), women, lunatics (mönig), the deaf or mute (Tauben, Ungehördten, oder Stummen), and those burdened with chronic illness (öwiger Krannckhait), the lame (Bettrüsin), and all those who do not have sufficient reason (nit völlige Vernunnfft) to manage their affairs.”\textsuperscript{60}


\textsuperscript{60} “Waisen, die weder Vatter noch Mutter hannd, deßgleichenn wa da werenn Synnlouß frawenn, Auch die da Mönig sindt, dartzuo tauben, Vngehördten, oder Stummen, Auch die so beladen werenn, mit öwiger Kranckhait, Allß Bettrüsin, so die all nit völlige Vernunnfft habenn, Jr sach Zuohanndlenn.” Stadtarchiv Bietigheim-Bissingen (hereafter StABi), Bh B 544 Bietigheimer Annalen, Bd. 1, 170r-v.
Württemberg and its neighbors’ adaptations of Roman guardianship laws placed Verschwendung—a concept deeply embedded in immoral, criminal connotations—within the context of other legally disenfranchised groups who lacked those negative associations. Nearby Esslingen, for example, attributed the word Unsinn to spendthrifts’ actions, a term that normally lacked the connotation of immorality. Rather, it indicated a lack of “reasonable sense or understanding” in a legal sense, or a general indication of foolishness or miscomprehension. Sinnlos designated a mental impairment, a temporary or permanent loss of reason, or loss of consciousness. It could also indicate foolishness, simplicity, or stupidity.

However, Württemberg and its districts also maintained that spendthrifts remained liable for their criminal actions. The Landesordnung held that willful recklessness, rather than mental impairment, caused spendthrifts’ reckless, seemingly irrational financial mismanagement. This discrepancy ultimately served to justify the continued use of criminal law sanctions against spendthrifts, such as imprisonment.

Joost Damhoudere, a Flemish jurist and recognized authority on guardianship law, highlighted the paradox of treating spendthrifts as simultaneously senseless and criminally liable. Damhoudere (1507-1581) studied law at Leuven, Padua, and Orleans

and was one of the most influential authors of early modern European criminal law, particularly for his *Praxis rerum criminalium* (*Practical Handbook on Criminal Matters*), published in Antwerp in 1544.63 Another of his works, *Patrocinium pupillorum, minorum atque prodigorum* (*On the Guardianship of Children, Minors, and Prodigals*), drew on his experience working as an administrator for orphans’ property.64 Damhoudere’s treatise, which examines guardianship practices for children and other legally restricted groups, offers one of the most detailed reflections on the justifications for spendthrift guardianship in the sixteenth century. First published in Latin in 1544, it reached international audiences through translated editions published in French in 1567 and German in 1580 and 1595. Damhoudere’s work had an indirect influence on one of Württemberg’s *Hofgericht* judges as well. Albertus Dretsch, who composed a legal brief on a controversial Württemberg *Verschwender* trial in 1590, depended heavily on legal scholars who were familiar with Damhoudere’s text, such as Giuseppe Mascardi in his *On the Burden of Proof* (1588).65 Chapter 3 examines these connections in greater depth.

64 Joost Damhoudere, *Patrocinium pupillorum, minorum atque prodigorum* (Bruges: Crocus, 1544).
65 Dretsch repeatedly cited Mascardi’s work, including passages that Mascardi drew directly from Damhoudere’s treatise, conclusio. 1234, n. 1-2. Giuseppe Mascardi, *Conclusiones Probationum omnium* (Venice: Damianum Zenarium, 1588). HStA, A209, Bü 355, Nr. 3.
Damhoudere summarized the paradoxical criminal aspect of spendthrift law in his treatise on guardianship as follows: “Although [a spendthrift] can be compared to someone who has lost his senses [nicht wol bey sinne ist], this does not mean that his habitual abuses can be excused. He should be punished, physically or financially, for his deeds and excesses.”

Throughout his work, Damhoudere described spendthrifts as “not in his senses” (nit wol bey sinnen), “without sense and understanding, considered like a child” (die Prodigi ohne sinne und verstandt, gleich wie die Kinder geacht), and “very weak in understanding, and must have lost [his] wits” (sehr schwach im verstandt sey, und die witz verloren haben muß). He also attempted to explain the seemingly irrational behavior of spendthrifts by comparing them to fools and drunkards. Although Damhoudere repeatedly referred to the questionable mental competence of individuals who squandered their wealth, he firmly insisted that spendthrifts should bear criminal liability for their actions.

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66 “Ob er gleich einem der nicht wol bey sinne ist, vergleichen würde, von wegen begangener und geübter mißhandlunge, nicht zu entschuldigen, dann in solchen fällen ist und sol er nach seiner übertretung, verwirckter handlung und gestalt der sachen nach, es seye an leib oder an gut, gestraft werden...” Damhoudere, Patrocinium pupillorum, Ch. VIII, No. 7.

67 This appears at several points in Damhoudere’s work: a Verhuner is considered the same as “einem unvernünfftigen Menschen” (8.14), “nit wol bey sinnen sein, gehalten wirdt” (9.1), “sehr schwach im verstandt sey, und die witz verloren haben muß” (10.24), and “blind to understanding, and considered fools” (10.25). Damhoudere, Patrocinium pupillorum.

68 “Als wann sie gar doll oder thöreicht wurden gewesen,” “wirt er für ein dollen und törichten Menschen geacht,” and „blindt im verstandt, und für thorn und narren gehalten werden.“ Damhoudere, Patrocinium pupillorum, 35, 45.
In this respect, Damhoudere’s views are representative of Württemberg’s approach to controlling wastefulness, as well as its immediate neighbors in the southwest. Württemberg’s Landesordnung and Landrecht defined Verschwendung based on the premise that spendthrifts were in control of their actions and made deliberate decisions to disobey their authorities and shirk their social obligations. Spendthrifts appeared “mad” to their contemporaries because they defied commonly accepted moral norms of behavior. Rather than protecting the family or obeying local magistrates’ orders, spendthrifts appeared to plunge heedlessly down a road of willful self-destruction that likewise imperiled their dependents, heirs, neighbors, and creditors.

When it came to designing punitive strategies for Verschwendung, Württemberg’s ruling council thus continued to advocate the use of imprisonment, sworn oaths, and other criminal punishments to augment spendthrift guardianships. As a result of this decision, the legal concept of Verschwendung reinforced a heavily moralized and criminalized attitude towards individuals who violated social norms of citizenship, gendered household roles, and communal obligations.

2.3. Protecting the Family, the Public Welfare, and the State

This section builds on legislative definitions of Verschwendung by examining the purpose and social context of Verschwendung policies. Who did Verschwendung policies intend to protect, and against whom? Who enforced the law? The analysis that follows
situates these laws within demographic, economic, religious, and political developments of the sixteenth century.

The spendthrift laws of the early modern period served the interests of three primary structures of society—family, community, and state—amidst a tumultuous backdrop of demographic, economic, and religious change. As population rates increased over the course of the sixteenth century, Württemberg’s rulers expressed increasing concern over growing poverty rates, control of property, and the stability of their tax base, leading to new legislation aimed at preserving the stability of individual household economies. Simultaneously, growing concerns about moral and behavioral discipline, driven by the confessional reforms of the sixteenth century, added to the authorities’ interests in limiting how much their subjects spent on morally suspect activities like excessive drinking, gambling, conspicuous displays of wealth, and public festivities. It was within this context of property and disciplinary reform that Württemberg and its neighbors published new ordinances that prohibited reckless


70 Walter Zeeden, Heinz Schilling, and Wolfgang Reinhard originally formulated the concepts of “social discipline” and “confessionalization” to unite efforts of these kinds. For a summary of this literature, see Joel F. Harrington and Helmut Walser Smith, “Confessionalization, Community, and State Building in Germany, 1555-1870,” *Journal of Modern History* 69 (1997): 77-101. See also Ronnie Hsia, *Social Discipline in the Reformation: Central Europe, 1550-1750* (London: Routledge, 1989).
spending, restricted the legal rights of spendthrifts, and assigned them a legal guardian to manage their estates.

By cutting off spendthrifts’ access to legal and property rights, early modern magistrates hoped to achieve several goals in response to the tumultuous developments of the fifteenth and sixteenth centuries: protect their subjects from financial disaster, stabilize the territory’s tax base, and limit the number of poor households dependent on community charity. Families and other members of the public often served as ready allies in these efforts. By helping to declare a reckless spender incompetent, relatives could reassert control over the disposal of the family patrimony and ensure its successful transmission to anxious heirs. Neighbors and creditors likewise gained a say in determining who would have access to local networks of commerce and credit.

This constellation of interests also imbued the legal category of prodigality with multiple layers of meaning when contemporaries applied the term in day-to-day life. Through its multivalences, the judicial label of prodigus became an extraordinarily versatile tool in the hands of strategic litigants. Litigating parties used spendthrift laws to address a range of conflicts, including coercing debtors to pay outstanding sums, settling marital squabbles, revising the family line of inheritance, regulating alcohol consumption, and preventing the early modern equivalent of welfare fraud. As the

71 See also Elizabeth W. Mellyn, Mad Tuscans and Their Families: A History of Mental Disorder in Early Modern Italy (Philadelphia: University of Pennsylvania Press, 2014).
following analysis will show, spendthrift legislation largely targeted three primary specters of early modern society: the reckless Hausvater, the untrustworthy neighbor, and the disobedient Christian subject.

2.3.1. Reckless Hausväter

The fifteenth and sixteenth centuries witnessed demographic, religious, and economic developments that invested male heads of households with greater influence over the stability of the household, the welfare of its inhabitants, and the larger public welfare. As a result, public scrutiny into the conduct of male heads of households intensified, and magistrates developed new policies to discipline “bad husbands” who failed to fulfill their weighty responsibilities.72

Population growth in the sixteenth century placed ever intensifying pressures on households for land, resources and income. After the catastrophic losses of the fourteenth and fifteenth centuries, population finally recovered to pre-Black Death levels (14 million) by 1550 and then climbed an additional twenty percent to roughly seventeen million inhabitants by the year 1600.73 With more residents living per square mile within the region, competition for land and resources was intense. Chronicler Sebastian Franck

72 This intense scrutiny was reflected in literary productions from the sixteenth century as well. See Jennifer Panek, “Community, Credit, and the Prodigal Husband on the Early Modern Stage,” ELH 80, No. 1, (Spring 2013): 61-92.
73 Brady, German Histories, 21. See also Scribner, Germany: A New Social and Economic History, 1450-1630, 38-43.
reported in 1538 that, “no one needs new inhabitants, but every hamlet is so full that no one else can enter. In all of Germany it is the same, child upon child…” With an average of eight to ten households per square kilometer in the German southwest, local and state officials expressed growing concerns that the land could not support their own populations, much less any increase by way of migration or vagrancy.\textsuperscript{74}

Residents reacted to demographic growth in part by delaying marriage (twenty-three to twenty-seven for women and later for men) in order to allow young adults to work and save up sufficient resources to establish a joint household upon marriage.\textsuperscript{75} Inheritance formed a significant part of this household calculus. Württemberg used a system of partible inheritance that allotted equal shares to sons and daughters, and allowed spouses to retain rights over their property upon marriage. When a person died, a third of the estate value transferred to the surviving spouse and the remainder was divided equally between each son, daughter, and any other designated heirs. In contrast to primogeniture systems in other parts of Europe, which transferred the intact estate to an individual heir, each of several heirs received a portion of the estate’s land, buildings, furniture, livestock, and other goods.\textsuperscript{76} The size of an inheritance depended on the

\textsuperscript{74} Brady, \textit{German Histories}, 22.
\textsuperscript{75} Brady, \textit{German Histories}, 21.
\textsuperscript{76} For partible inheritance in the German southwest, see David Warren Sabean, “Devolution of Property in Southwest Germany around 1800,” in \textit{Distinct Inheritances: Property, Family and Community in a Changing Europe}, ed. Hannes Grandits et al (Münster:
number of heirs competing for property and the size of the estate—as well as the changing value of the estate before the parents’ death. In an ideal scheme, the Hausvater would faithfully administer the properties, increase their value, and pass them on to the next expectant generation of heirs.

Württemberg’s property system largely privileged the patriarchal rights of fathers and husbands over their dependents. Württemberg’s Landrecht of 1555 offered its male heads of household the legal tools to reverse any unsanctioned financial decisions of their dependents, who might endanger the patrimony by conducting commercial transactions without approval. It particularly forbade minors from “wast[ing] any property with gambling, whoring, and other unworthy ways, nor to give gifts or otherwise influence [property].”77 Any subjects who accepted property from a minor without the father’s permission were required by law to restore it to the father’s possession, or face punishment from the civic authorities.78 These types of ordinances

enforced the minor legal status of young men and women under the age of twenty-five in order to protect male heads of household from the recklessness and inexperience of youth.\textsuperscript{79}

However, as district and state authorities discovered over the course of the sixteenth century, patriarchs displayed a disconcerting inability to live up to expectations. Disciplinary courts struggled to keep in line male subjects who drunkenly gambled away the household fortunes, pawned off household wares, violently turned against their wives and children, shirked work duties, and committed sexual crimes.\textsuperscript{80} In theory, spendthrift policies provided anxious heirs and dependents with a legal mechanism to intervene in the disposition of the estate without waiting for formal transmission of the legacy to occur.

\textsuperscript{79} Except in Saxony, where the age of majority was 21. Thomas Schröer, \textit{Institutiones tutorum et curatorum Germaniae} (Leipzig: Henning Köllern, 1635), Tit. XXVI. Marriage or entry into a convent might also release young adults from the authority of their fathers. In the case of particularly mature young men, minors in France might petition for an early majority. Julie Hardwick, \textit{Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France} (University Park, PA: Penn State U Press, 1998), 91.

In addition to the demographic impact upon inheritance practices, religious reform and confessional debates throughout the sixteenth century put more pressure on male heads of household to embody the religious values of discipline, moderation, and order. From the perspective of family members, a spendthrift often simply meant a bad husband or poor householder—a *Hausvater* who failed to manage the family household with the proper measures of thrift, moderation, and industry demanded by Christian models of domestic life.\(^1\) Württemberg’s Lutheran church teachings not only urged male heads of household to keep their dependents in good discipline, but also to serve as a model of Christian virtue.\(^2\) Martin Luther viewed marriage as a catalyst of personal salvation and social order: through marital unions, reformed parishioners might escape the temptations of sexual sins and together pursue a godly life of order and good discipline. Just as governors ruled subjects and bishops guided congregations, Luther urged husbands to take responsibility for tending to the entire household’s moral and spiritual welfare. Luther’s ideal script for a wedding ceremony reminded couples that, “Wives are subject to their husbands as to the Lord, for the husband is the wife’s head,

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\(^2\) Renewed interest in patriarchal authority within the household crossed confessional boundaries into Lutheran, Calvinist, and Catholic territories. Hsia, *Social Discipline in the Reformation*, 144.
just as Christ is the head of the church.”\textsuperscript{83} Both parents—and particularly fathers—likewise assumed responsibility for the spiritual and material welfare of their children and servants: “Most certainly father and mother are apostles, bishops and priests to their children, for it is they who make them acquainted with the gospel.”\textsuperscript{84}

Spendthrift policies, by contrast, turned the logic of patrimonial protection on its head. Württemberg, like its immediate neighbors, addressed its spendthrift laws almost exclusively towards the married Hausvater who headed his own household of dependents.\textsuperscript{85} It appears that this single-minded focus stems from two major factors: the economic and religious systems that invested so much authority in male householders, combined with significant restrictions that were already in place on single and married women’s property rights (see Ch. 4, 5). The territory of Wiesensteig, a small lordship to the south of Württemberg, warned its male heads of household in 1587 to behave usefully, as is proper, to manage the household well and honorably, to prove themselves to be modest and proper, to administer his property

\textsuperscript{83} Susan C. Karant-Nunn and Merry E. Wiesner-Hanks, Luther on Women: A Sourcebook (Cambridge University Press, 2003), 117.
\textsuperscript{84} Karant-Nunn and Wiesner-Hanks, Luther on Women, 108.
\textsuperscript{85} Of the laws surveyed in this study, only the city of Freiburg explicitly directed its officials in 1520 to prosecute subjects for prodigality regardless of their age or marital status, while Electoral Pfalz (1599) and the small knightly territories of Öffingen and Hofen (1618) advised that married couples could also be penalized for prodigality. In practice, however, litigants exploited spendthrift laws to further limit the financial actions of married women and widows, especially women who attempted to leverage special privileges or their independence to win favorable terms in commercial disputes. See Chapter 3, “Incapable People: the Restriction of Civic Rights in Southwest Germany.”
well like a head of household, as is owed to God and according to the law. And if he proceeds further with such useless household management without care for his wife and children, then he should completely lose all authority and guardians should be appointed for all his property. Moreover, he should be declared incompetent (mundtot) and punished for any further disobedience or bad household management.  

Wiesensteig’s property system invested considerable power to husbands and fathers to care for their dependents. Wiesensteig’s lords nonetheless anticipated cases in which men “wickedly and uselessly [wasted] not only their own [property], but also their wives’ personal and inherited property.” Spendthrift laws prepared for the contingency of reckless householders who failed to fulfill the weighty obligations of their household authority.

Spendthrift laws empowered wives and children to monitor a prodigal adult’s financial activities and use the courts to reverse any unapproved transactions—just as fathers could otherwise do for their dependents. With the law on their side, some wives of southwestern Germany took advantage of these policies against spendthrifts to have

86 “Wie sichs gepürt nützlich, wol und erbarlich haußzuhalten, darbei sich wesenlich, bescheidenlich und geschicklich zu erzeigen, das seinig recht und wol wie ein haußvater vor gott und allen rechten schuldig zu verwalten, mit disem anhang, da er weiter mit solchem seinem unnützen haußhalten fortfahren, sich selbs, auch sein weib und kinder nit bedencken würde, das er genzlich seiner verwaltung entsetzt und seiner haab und güeterpfleger verordnet, darzu er munttod gemacht und nichtsdestoweniger seines ferneren ungehorsams oder übel haußhalts halber…gestraft sole werden.” “Herrschaft Wiesensteig Vogtgerichtsordnung und Statuten,” 652.

their husbands declared incompetent, or to retrieve property that their prodigal husbands had sold off. In the Württemberg district of Bietigheim in 1585, Eva Zehen took advantage of this legal provision to nullify a reportedly foolish contract that her husband made with a buyer at the Bietigheim market. As Eva explained to the local district court, her husband, Peter, had “extravagantly squandered her property and brought her into poverty, so that she had to take alms.”\(^8\) Naming her husband “a useless householder and spendthrift,” Eva argued that, “the sale is not valid, according to the *Landesordnung*, because he is a *Prodigus* and spendthrift.”\(^9\) Branding her husband as a *Prodigus* accorded Eva greater influence over the disposal of the household’s property, a development of no small significance within women’s increasingly narrow legal and economic realm in the sixteenth century.\(^9\)

The ability to upend family power dynamics was not limited to wives alone. Children, too, leveraged spendthrift laws in court to accuse parents of mismanaging the

\(^{88}\) “Ir mann das irig üppig verthon, und sie an bettelstab geriht, das sie das almusen nemen muos.” Stadtarchiv Bietigheim-Bissingen (hereafter StABB), Bh, B444, Peter Zehens weib contra Hans Welzing (12 July 1585), 177v-178r.

\(^{89}\) “Ir mann seÿ ain unnützen haußhälter vnd vershwender…solcher kauff aber geltte nichts, vermög der landtzordnung, weil er ain Prodigus vnd vershwender ist.” StABi, Bh, B444, Hans Welzing, 177v-178r.

family patrimony. In 1554, brothers Hans and Wolf Michel filed a suit against their father, Martin Michel, alleging that he had squandered the inheritance that their mother had left behind upon her death. Hans and Kaspar Hindenlang sued their father-in-law on similar grounds in 1560 for wasting nearly half of their mother’s legacy. For over a decade, three adult sisters in Leutkirch attempted to dissolve their father-in-law’s inheritance claims, citing that he had badly managed their deceased mother’s legacy.91 Siblings, cousins, in-laws, and other heirs similarly took advantage of spendthrift policies to interfere with the line of inheritance, intervene in a testator’s affairs before and after his or death, or reject others’ property claims. By empowering family members to place checks on male heads of household, spendthrift laws attempted to make the Hausvater’s legal autonomy and household authority contingent on his reputation to manage the household with due thrift and moderation.

When family members were willing to take a Hausvater to court, judges leveraged greater pressure over repeat offenders, who abused the considerable power that Württemberg’s ruling council invested in its male adult subjects. It would appear to be a solution that disconcertingly contradicted the otherwise powerful influence of male heads of household within Christian domestic ideology.92 The practice of Entmündigung

91 HStA C3, Bü. 2530 Martin Michel von Lachen contra Wyprecht Ziegler (1554-1556); Bü. 4076 Christoph Schmid contra Bartholomäus Sterr (1561-1572); Bü. 260 Georg Philipp und Albrecht von Berlichingen (1588-1591).
92 See Roper’s conclusions about the Augsburg council. Roper, Holy Household, 165.
(legal incapacitation), which revoked offenders’ legal right to control property and entrusted them to guardians, essentially assigned adult men a similar legal status as a child’s.\textsuperscript{93} Theoretically, family dependents who utilized spendthrift policies could temporarily rework the gender- and age-based hierarchies that governed household life.

In practice, however, it’s not clear how often wives, children, and other relatives made use of this option. Further, in the documented cases in which women and children did invoke spendthrift laws, they did not necessarily gain greater leverage over the future disposal of household resources.\textsuperscript{94} Rather, Württemberg’s legal code stipulated that male guardians would take on that role. Research for this dissertation uncovered examples of family dependents who clearly sought to gain some advantage through the application of spendthrift policies (see Chapters 4 and 5), but only a systematic study of the often fragmentary and inconsistent sixteenth century records would indicate how effective such tactics were on a society-wide level. Württemberg and its neighbors indicate the possibility for temporary, individual disruptions of traditional hierarchical

\textsuperscript{93} The restrictions on spendthrifts’ property rights put them on par with minors and adolescents in terms of legal status. Joost Damhoundere, for example, described spendthrifts as “without sense and understanding, considered like a child” (“die Prodigi ohne sinne und verstandt, gleich wie die Kinder geacht”). Damhoundere, \textit{Patrocinium Pupillorum}, Chapter X.

\textsuperscript{94} Some spendthrift laws did permit judges to appoint the next male heir as a guardian if the head of household was ultimately declared incompetent (e.g., Esslingen permitted the appointment of guardians “von siden gesipten nächsten.” SA ES, Bestand RSU Nr. 80, 24. Jan. 1438).
structures of power based on gender, age, and kinship relations. Chapters 4 and 5 provide an in-depth examination of how these disruptions occurred in such cases.

2.3.2. Untrustworthy Neighbors

Württemberg’s spendthrift policy extended the right to accuse spendthrifts not only to family members, but also to any affected member of an offender’s financial network. Württemberg’s Landesordnung permitted accusations from “the friends and relatives of the spendthrift, or his wife, or any other who experiences losses from such wastefulness.”

In at least two districts of Württemberg, town magistrates also deputized certain members of the population, such as notaries, tavern keepers, and watchmen, to keep a particularly close watch on the financial affairs of residents. In the district of Bietigheim, the town council instructed its official notaries to carefully inspect the contents of every contract before they confirmed it. If notaries came across contracts that “burdened” one of the parties’ “wives and children unnecessarily or with extravagant...wastefulness through interest...or otherwise sold [or] traded” family properties, they were directed to

report the parties to the sheriff and court. The notary would also receive three schilling as compensation for reporting the incident, the same amount he would normally receive as payment for notarizing an official document. Bietigheim’s local code also outlined provisions to keep watch on debtors who claimed to be unable to repay their creditors. The town council held the debtors’ closest friends and relatives, the town bailiffs, and local wine shop owners responsible “by their oath to the [Württemberg] authorities and to the city to do their duty and keep careful watch” over debtors who attempted to purchase wine, gamble, or otherwise misuse resources. Similar provisions from the district of Schondorf, located eighteen miles east of Stuttgart, held alcohol vendors and the town watch responsible for monitoring gamblers and spendthrifts (die spüler vnnd Prodigi) in 1600.

97 StABi Bh B 544 Bietigheimer Annalen, Bd. 1, 173v.
98 “Hierumb ist allenn Stattknechten, Bitteln, weinläder, Vnnd Andern, gemainlich vnnd sonnderlich, Pej glüpdtenn vnd Ayden, der herrschafft vnnd Statt, Zu Jrenn Diennstn gethan, ain Vleyssig vfsehenn Vff die düng Zuhabenn.“ StABi Bh B 544 Bietigheimer Annalen, Bd. 1, 188v-189r.
99 For tavernkeepers and the city watch, see the following city watch ordinances: “Wachtordnung über den Flecken Beüttelspach, Schondorffer Ambts” (1600) HStA A206, Bü. 4434; “Maßnahmen zur Linderung des Strassenbettels in Stuttgart” (1666-1694), HStAS A282, Bü. 1141, n. 19.
In return for their assistance in enforcing the law, community members received clear benefits. By branding someone a spendthrift, locals delineated the boundaries of acceptable behavior and exerted public pressure upon transgressors.\textsuperscript{100} Out of fifty spendthrift trials that the \textit{Reichskammergericht} (Imperial Chamber Court) adjudicated in southwestern Germany between 1500 and 1800, nearly half of litigants applied the term \textit{Verschwender} or \textit{Prodigus} to borrowers who had failed to repay their creditors.\textsuperscript{101} Other judges and litigants appropriated the term “spendthrift” to target charlatans suspected of commercial deception and trickery. In 1532 and 1533, the Stuttgart city court cited the \textit{Landesordnung} provision on wasteful tavern goers to discipline Konrad Deylin for “extravagantly squandering his [family’s] property.”\textsuperscript{102} Significantly, the court also punished Deylin for accepting payments to cultivate vineyards that belonged to orphans under guardianship, but after receiving the payments, he instead let the land lay

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\textsuperscript{101} HStA, C3, Bö 3266 Anna Oswald contra Jakob Mayr (1504); HStA, C3, Bö 3618, Bartholomäus Roth contra Berach, Jude und Sohn Liebman (1528–30); HStA, C3, Bö 3557, Anna Rosenberger contra Martin und Hans Aschenbrenner et al (1541–56).
\textsuperscript{102} “Darzu auch in vergeß meiner burger pflicht, vnnd vnangesehen der Lanndsordnung vßgetretten, mich zu die wirtsh:user gelegt, mir mein wýb vnnd kinden zu verderplichen shaden, das vnnser ýppiglich verspilt vnnd verthon.” HStA, A44 U4357.
\end{flushright}
fallow. In Württemberg, the Bietigheim Stadtcourt (town court) declared Jörg Franck incompetent for “prodigalität” (prodigality) in 1579 for breaking contracts with his fellow residents. Franck had agreed to construct buildings for several residents, but after accepting their payments, he failed to deliver his side of the bargain. 

Public proclamations were essential for enforcing the restricted legal status of convicted spendthrifts. With no visible markers to signal a spendthrift’s loss of rights and status (such as brands or bodily mutilation), local authorities instead depended on members of the community to help police the local commercial life of the town and prevent the convicted spendthrift from participating in restricted activities. Town officials attempted to reach a broad audience by publicly announcing the spendthrift to be mundtolt (incompetent) “to a crowd” in the busy marketplace. These announcements passed on valuable information about the person’s reputation and financial history.

When members of the community branded a fellow resident as a spendthrift, damning information about the person’s reputation and financial history circulated

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103 “Wiewol ich von Etlichen waisenpflegern vnnd anndern wingart zubuuwen bestannden vnnd gelt daruff empfanngen, so hab ich doch die selbigen nit gebuwen, sonnder w:ust ligen lassen.” HStA, A44 U4357.

104 StABi, Bh, B444, Vogt contra Jörg Franckh (18 December 1578), 56r.

105 The Landesordnung states only that the proclamation should be public: “daß er aller seiner Verwaltung entsezt mundtod gemacht, und also vor meniglichen außgerüfft und gehalten werden soll.” Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 782. A mundtolt record from the Bietigheim Stadtcourt indicates that the court announced the ruling in the morning marketplace: “ann freien wochenmarkt an dem Eck des Rathauß gekenn der Appoteckh publice vor meniglichen verlesen worden.” StABi Bh, B442, 30. Aug. 1577, 275v.
among neighboring regions. The circulation of such information was central to the
determination of an individual’s creditworthiness and social capital. Credit signaled
both the moral and financial worth of a person, and other members of the network
constantly assessed this value based on a combination of trust, reputation, and mutual
surveillance of their neighbors. Maintaining good credit was an indispensable, lifelong
task. In one district of Württemberg, residents accrued and paid off debts over the
course of their lifetimes, with 85% to 90% of residents still indebted at the time of their
deaths. Further, any decline in one household’s welfare had the potential to send
ripples of instability throughout an entangled web of local lenders and borrowers. This
“serial” quality of credit networks incentivized residents to monitor the trustworthiness
of their neighbors as well as to protect their own household’s public reputation for
trustworthiness and reliability.

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Without such information about their neighbors’ finances, residents took the risk of making illegal contracts with individuals who lacked the legal authority to control property. Württemberg’s spendthrift laws offered no protections for individuals who were duped or disadvantaged by notorious spendthrifts. If a person made a financial exchange with a reputed spendthrift—whether a purchase, loan, or otherwise—without the approval of the spendthrift’s guardian, then the guardian could petition the local court to nullify the agreement without compensating the other party for any losses. After all, to do business with a person reputed for financial recklessness amounted to foolishness in the eyes of the law. In the mid-sixteenth century, Joost Damhoudere, the Flemish legal authority on matters of adult guardianship, quipped, “Whoever lends money to a publicly denounced spendthrift is putting his money in a torn wallet and cannot demand it back using the law. Let everyone look out … and take note of whom one deals with.” For one litigant in the Upper Rhine in 1595, the practical implications of spendthrift policies were clear: “Let the buyer beware” (Wer da kaufft der luge wa es

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110 See also SA ES, RSU, Nr. 80 (24 January 1438); “Herrschaft Wiesensteig Vogtgerichtsordnung,” 653; Churfürstlicher Pfaltz Fürstenthums in Obern Bayern Landsordnung (Amberg: Michael Forster, 1599), 45–6.
111 „Dann wer einem öffentlichen erklärten Verthuner leihet, der legt sein Gelt in ein zerbrochen Seckel, und kan das mit Recht nit wider fordern. Darumb sol ein jeglicher wol vorsehen, und sollicher Gesellen müßig gehn, und acht haben mit weme er zu thun hab“ Damhoudere, Patrocinium Pupillorum, 48 (see note 66 above).
Keeping informed about one’s neighbors’ circumstances was a matter of personal responsibility, not merely a state mandate.

Magistrates, guardians, and residents applied the label of “spendthrift” to unreliable business partners as a way to publicize his or her bad reputation and high risk for conflict. It thus also created an incentive for residents to actively exclude untrustworthy individuals from their local credit and commercial networks. To name a spendthrift, in other words, constituted an act of exclusion, an attempt to eject the offender from an invisible yet powerful community made up of trusted residents. Barring the most extreme cases, in which irredeemable spendthrifts were occasionally banished from the region, naming drew only symbolic lines within the community. It was therefore necessary to rally general support from relatives, neighbors, and other members of the community to enforce these socially constructed divisions within a unified geographical space.

2.3.3. Sinful Subjects

While these new laws governing property and wastefulness went into effect, Württemberg’s rulers also established new judicial bodies, and legal codes to govern their subjects’ overall moral and religious conduct. These developments were part of a

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112 HStA, C3, Bü 4088, Baruch Juden, 15v.
113 Two exceptional banishments of spendthrifts occurred in Bietigheim in 1571 and 1584. HStA, A209, Bü 350, Peter Wagner (1571) and Bü 353 Brosi Buß (1585).
larger effort to enforce confessional uniformity by policing the morals and behavior of their subjects. Württemberg’s emerging state-church hybrid established annual parish visitations to discipline behaviors like drinking, gambling, sexual offenses, swearing, and wearing lavish clothing, as well as the types of social occasions which might foster such conduct, like weddings, church festivals, and dances.\(^{114}\)

Spendthrift policies targeted several behaviors that were already under fire by the new disciplinary ordinances and consistories, such as drinking, gambling, idleness, and sexual offenses. Württemberg’s policy in the *Landesordnung* of 1552 specifically targeted gambling, extravagant feasts, and drinking.\(^{115}\) The territory of Wiesensteig similarly published a statute in 1587 against “useless householders and spendthrifts” who “extravagantly squandered [their wealth] with daily and nightly feasting, drinking, [and] idleness.”\(^{116}\) In Öffingen and Hofen, two villages near Stuttgart that belonged to an

\(^{114}\) Bruce Tolley, *Pastors and Parishioners*; Hsia, *Social Discipline in the Reformation*, 122-23.

\(^{115}\) “Mit täglichen auch nächtlichem Spihlen, Fressen, Sauffen und schwelgen, üppiglich ohnwerden.” Reyscher, *Sammlung der württembergischen Gesetze*, Vol. 12, 782

independent small lordship, the local spendthrift policy suggested that extravagant spending made spendthrifts more likely to commit sexual infidelities.\textsuperscript{117} By regulating the disposal of individual wealth, the state-church sought to achieve more than the pragmatic goal of economic stability. Rather, spendthrift policies also reinforced Württemberg’s campaign to instill good moral discipline by targeting financial decisions connected to immoral behaviors.

Württemberg’s policies for the regulation of clothing reveal these state goals at work. Between 1300 and 1550, German towns and territories published approximately six hundred different laws to regulate clothing and other displays of luxury, both in quotidian life and on special occasions like baptisms, weddings, funerals, and holy days.\textsuperscript{118} Württemberg’s \textit{Landesordnung} of 1536, for example, banned extravagant

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\textsuperscript{117} Herrschaft Öffingen and Hofen: “mit unnutzlichem, verderblichem spülen, gesellschaften, lüederlichen weibern, müeßiggang, an unzimblich esen und trinken.” Similar phrasing appeared in the spendthrift policies of Freiburg (“mit spil / luder oder andern vnvertigen sachen”), Ulrich Zasius, \textit{Nüwe Stattrechten und Statuten der loblichen Statt Fryburg im Pryszgow} (Basel: Adam Petr, 1520), II, 9, Tit. 3, and Basel (“verschwendern und geadern, so mit spilen fressen saufen hüren und dergleichen üppichen sachen”), \textit{Erste Vormundschaftsordnung}, 40.
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\textsuperscript{118} Neithard Bulst, “Zum Problem Städtischer und Territorialer Kleider- und Luxusgesetzgebung in Deutschland (13.- Mitte 16. Jahrhundert),” in \textit{Renaissance du
weddings to prevent “young couples who have not brought any [property] into marriage from getting into debts that they cannot repay for the rest of their lives.”

Through restrictions on clothing in particular, Württemberg’s ducal council hoped to stabilize the state and public welfare through individual attention to household spending. In the *Landesordnung* of 1515, the section on clothing warned subjects to purchase modest clothing with cash only, lest they incur “large debts” (*grosen schulden*) by buying on credit. Subsequent revisions of the *Landesordnung* sketched out a hierarchy of material goods to determine what textiles were reserved for nobility and which were permitted to the peasantry, burghers, merchants, officials, servants.

Like clothing regulations, spendthrift laws did not target extravagance (*üppigkeit*) in general, so much as financial activities that exceeded the broader consensus about what was appropriate for subjects at each level of the social hierarchy. Court records indicate that litigants and judges used spendthrift policies to enforce class divisions and maintain the rigid hierarchy of the early modern social order.

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In the 1580s, for instance, the court of Neuenstadt, a district in northern Württemberg, investigated a butcher’s wife on charges of Verschwendung. Anna Fleck had allegedly defrauded her husbands’ creditors by helping her husband to squander their estate. The creditors accused Anna of buying clothing that was “expensive and [which] exceeded her station,” as well as hosting extravagant banquets and parties at their home in Neuenstadt. Anna, in contrast, insisted that she had dressed appropriately for her social class. During the previous three years, her daily garb had been a dress made of Engelsait, a cheap and narrow wool fabric, and a coat made from linen that she had spun herself, with no velvet or satin trims. Such clothes, she argued, “could not be considered so previous or expensive, nor considered extravagant or about her station.” In a similar case from 1700, several creditors from Esslingen accused a widow named Anna Pichler of helping her husband to waste their limited resources on “pompous meals and banquets, at which [Anna] purchased, prepared, and carried out the most expensive delicacies. And when [her husband] was invited [to banquets], she accompanied him in a carriage and horse team that exceeds their station.”

122 “Costlich und Iren standt ungemeβ solte geclaidt, banckhatiert und gastungen gehalten haben.” HStA C3 Bü. 59 Hans Aff contra Anna Fleck, 1582-1592.
123 Ire klaydlin...so h[oc]hen shatz nit werdt sein khündten, das ir selbiges fur ein vbermaβ oder Irem stand ungemeβ geshetzt möchte werden.” HStA C3 Bü. 59 Hans Aff contra Anna Fleck, 1582-1592.
124 “Wan ihr Maritus mit seinen cameraden pompose mahlzeitzen undt gastungen gehalten, undt selbige geladen, sie das kostbahrist undt delicaste eingekaufft, zubereitet, undt auffgetragen, auch wann Er wieder von selbigen geladen wordten, sie
A satin skirt or a new carriage might be deemed acceptable for some income levels, professions, or social groups, but reckless and wasteful for others. In practice, the legal category of Verschwendung was an adjustable, class-specific concept that depended on the social standing of each individual. However, just as some people challenged sumptuary laws to achieve social mobility or redefine their social identity, so too did spendthrift policies turn back the facade of social hierarchy to reveal an ongoing cultural debate over the precarious relationship between social differentiation and material culture. Anna Fleck’s case, examined in depth in Chapter 5, initiated a prolonged argument between the litigating parties about the material items to which a craftsman’s wife was entitled. The court called on dozens of witnesses to appraise the social value of Anna’s skirts, bodices, and accessories. In order to be enforced, spendthrift policies demanded consensus from the courts and community about the social and legal significance of material and financial choices. By the end of the early modern period, a Prussian legal commentator reflected on this relativity of Verschwendung as a legal

mitt ihm erschienen, undt der über seinen Standt gehalenn Pferdte undt chaisen, sich nebenst ihm bedienet habe." HStA C3 Bü. 3324 Anna Christina Pichler contra Bürgermeister und Rat der Stadt Esslingen, 1700-1702.
concept, noting “what one person stigmatizes as wastefulness, quite often is prized as magnanimity by others.”\textsuperscript{125}

\textbf{2.4. Conclusion}

This chapter has shown how state and local authorities adapted an inherently ambiguous legal category to fit within the web of legal, social, and religious contexts that gave Verschwendung its meaningful utility in sixteenth-century Württemberg. Württemberg’s legal codes provided only a broad explanation for Verschwendung based on imprecise references to “bad” management, “extravagant” spending, and “harm” to family dependents. The actual application of this legal term could encompass a diverse variety of social and economic scenarios, from breach of contract to tavern drinking to purchasing fine textiles.

In every case, magistrates drew upon at least three different types of legal frameworks to give the legal concept of Verschwendung relevance. First, they referenced the web of legal traditions, including classical Roman law, imperial law of the Holy Roman Empire, and local Württemberg customs. Württemberg’s lawmakers drew on a combination of criminal justice strategies and guardianship practices from family and property law to craft a solution for the problem of reckless financial management. Next, 

\textsuperscript{125} “Was der eine als Verschwendung brandmarkt, sehr oft von dem andern als Edelmuth gepriesen wird.” Ernst Ferdinand Klein, \textit{Annalen der Gesetzgebung und Rechtsgelehramkeit in den Preuss. Staaten}, Bd. 13 (Berlin; Stettin: Friedrich Nicolai, 1795), 313.
Württemberg’s magistrates informed Verschwendung with moral overtones of “senseless” and “willful” social behavior. Repeatedly, the term Verschwendung evoked associations with other crimes and sins, including drunkenness, gambling, and forms of extravagant indulgence. At the same time, after 1552, Württemberg’s new legal strategy for regulating prodigality also positioned Verschwender within a collective category of various social groups defined by their diminished legal competency, such as children and people with mental and physical disabilities. Paradoxically, Württemberg’s legal code may have characterized spendthrifts as “senseless” and “unreasonable,” but it also ultimately held them responsible for criminal offenses. Finally, the category of Verschwendung also accommodated the interdependent interests of three major institutions of early modern German society: the family household, the local community credit network, and Württemberg’s state-church.

Verschwendung had so many potential meanings in its legislative context that it can appear to be almost meaningless. This chapter is dedicated to restoring Verschwendung to its various contexts in order to recover its historically specific implications for the individuals who played significant roles in Verschwendung trials, namely families, members of the trading community, local officials, court judges, and state lawmakers. However, the contexts outlined above do not represent actual application of the law so much as the boundaries of the possible. A fundamental goal of this dissertation is to provide insights into a largely unstudied problem: how these
immensely flexible spendthrift laws operated on the micro level of accusations, court trials, legal incompetency rulings, and the consequences of these factors for the individuals who participated in Verschwendung trials. This chapter has thus laid the groundwork for examining how litigants and courts utilized the mutable nature of this legal category in the chapters that follow.
3. Practical Enforcement and Its Limits

3.1. Introduction

This chapter examines a particularly controversial Verschwendung trial within the context of a local case study in Bietigheim, a district in northern Württemberg, between 1535 and 1600. By reducing the scale of analysis to the local and individual level, this chapter seeks to answer two main questions. The first question addresses a major silence in the source record: How did courts establish proof of prodigality? Württemberg’s flexible definition of Verschwendung left the question of evidence to its district courts to determine. However, specific details about what this offense entailed rarely appeared in local court minutes.

The second goal of this chapter is to investigate the effectiveness of Württemberg’s change in Verschwendung policy over the subsequent half century. What did local officials and judges do when their diverse repertoire of punishments for spendthrifts failed to coerce better behavior? Due to the fragmented nature of sixteenth- and early seventeenth-century court records, a systematic analysis of the efficacy of Verschwendung regulations in Württemberg has yet to be done.¹ As a result of these

¹ Ludwig Griebl’s comprehensive study of early modern prodigality laws in two German states limits its scope to legislation. Griebl, Die Behandlung von Verschwendern Und Geisteskranken Im Frühneuzeitlichen Territorialstaat (1495-1806): Eine Darstellung Der Privatrechtlichen Und Policeylichen Massnahmen Im Kurfürstentum Mainz Und Herzogtum Württemberg (Hamburg: Verlag Dr. Kovač, 2010). Individual trials bear mention in the following works: Bruce Tolley, Pastors and Parishioners in Württemberg during the Late
methodological challenges, this chapter takes a micro-level approach to investigate how local and state officials contended with spendthrifts who defied punitive and rehabilitative judicial measures.

Through its chosen approach to these two guiding questions, this chapter also makes two methodological claims. First, understanding the legal concept of prodigality must go beyond prescriptive legislation and requires a local-level analysis of actual enforcement practices. Second, I argue that the individual trial I have chosen as this chapter’s focus represents not an exceptional case, but a larger conflict between villagers and their village, district, and state officials over a thirty-year period between 1570 and 1600, as the local court attempted to implement a statewide strategy to regulate household economies.

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3.1.1. Sources & Methodology

Württemberg’s centralized judicial procedure offered virtually no guidelines to its district officials about how to identify or weigh evidence of prodigality. The Landrecht of 1555 simply stated, “If someone makes a legal accusation that an individual [is] a spendthrift (Prodigum, Verthoner), and it is demonstrably argued [in a] satisfactory [way], then our deputy and judges...should take away his administration over his properties and appoint a guardian.” The ducal advisers who drafted Württemberg’s judicial code expected that “the friends and relatives of the Verschwender, or his wife, or others who may be affected by such wastefulness” would take the lead by reporting their prodigal associates. In cases in which no informants stepped forward, local officials would instead “keep careful watch” and initiate a court investigation “when they hear or discover that someone begins to squander his property in an extravagant or useless

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3 “Freundt unnd Verwandten des Verschwenders, oder seiner Haußfrauen, oder auch anderer, die solch Verschwendung zu Verlust berüren möchte.” Reyscher, Sammlung der württembergischen Gesetze, Vol. 4, 326.
way.” Beyond these general provisions, however, Württemberg provided no legal standard of evidence to direct local officials through the process of investigating a subject for prodigality. What constituted “satisfactory” evidence? Given the serious consequences of conviction, which revoked significant legal rights and access to property, Württemberg’s ruling council left considerable power in the hands of local officials to determine which financial activities counted as “extravagant” (üppiglich), “useless” (unnütz), or “frivolous” (liederlich).

This chapter privileges sources and methodology that can address this silence in the source record. To begin, I have ruled out sixteenth- and seventeenth-century sources that glossed over the important question of proof. Most surviving records from the town court of Bietigheim, the geographic focus of this chapter, are too brief to provide sufficient detail.

The Urfehde (written, formulaic oath sworn upon release of an imprisoned offender), examined in Section 2.2.2.1 of Chapter 2, provided only sparse information about each offender’s actions. These formulaic, standardized documents typically refer to imprecise actions like verschwenden, vergeuden, or vertun, all synonyms for wastefulness with little intrinsic meaning outside of an applied context. Aside from the verdict and sentence, Urfehde offer no information about the court’s deliberations.

4 “Sollen Unsere Amptleut und Gericht gut fleissigs aufsehens haben, und da sie hörn und erfarn, das einer das sein der massen üppiglich und unnutzlich zuverschwitzend anhiebe...” Reyscher, Sammlung der württembergischen Gesetze, Vol. 4, 326.
The surviving minutes of Bietigheim’s local district court (Stadtgericht), which will be examined below, provide important context for this case study, but also failed to document the court’s reasoning when it issued a verdict against prodigal subjects. Court minutes for the Bietigheim Stadtgericht survive since the year 1530, a comparatively early date for the Württemberg region, and extend well into the eighteenth century. This dissertation examined six five-year samples taken every fifteen years from the Bietigheim court minutes over the course of a century, from 1535-1540, 1555-1560, 1575-1580, 1595-1600, 1615-1620, and 1635-1640. The court heard complaints about a variety of issues, ranging from disputed contracts to slander and brawls. Court entries for the 1530s and 1540s were particularly brief, and often categorized infractions broadly, with little indication of the proceedings of the court in each circumstance. Even after the court’s recordkeeping practices became more thorough in late sixteenth century, documentation of Verschwendung hearings often contained little more than names, dates, and a general charge of “bad householding” or “wastefulness.”

In addition to examining local court records, this dissertation also considered appeals court cases from the broader region of the southwestern German lands, which left behind more thorough documentation of Verschwendung trials. The imperial chamber court (Reichskammergericht, or RKG) conducted long appeals investigations of

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5 Stadtarchiv Bietigheim-Bissingen (hereafter StABi), Bh Gerichtsprotokoll, B441, B442, B444, B445, B446, B448, B449, B451, B452.
lower court rulings from throughout the Holy Roman Empire, thereby collecting trial dossiers that at times exceeded hundreds, if not thousands, manuscript pages. The RKG’s impressive bureaucratic machine consolidated dossiers from approximately 80,000 appeals trials between its founding in 1495 and 1806. Approximately 7,500 of these cases, or nine percent of the total, originated from the region that is now the German state of Baden-Württemberg. The content of RKG dossiers varied from case to case, but often included detailed summaries of each litigant’s argument, corroborating textual evidence (such as contracts, testaments, and transcripts of witness testimony), rebuttals, and procedural notes.

However, one significant limitation of RKG research is the common absence of a verdict in the case record. The RKG compiled its verdicts in a separate collection (Urteilsbüchern), which were lost at some point before 1688, while the court resided in Speyer. More significantly for our purposes, RKG records also lack documentation of the court’s reasoning behind its verdict. The Reichskammergerichtordnung forbid the court to provide this information to litigants. While RKG records nonetheless offer rich rewards to researchers, as Chapters 4 and 6 demonstrate, the RKG dossiers consulted for this study did not shed light on judicial procedures and court perspectives regarding how to establish and weigh evidence of prodigality.

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However, one administrative district in Württemberg did produce a rare cache of records that provide an exceptional opportunity to examine how one appeals court judge explicitly laid out the process of proving prodigality. In 1590, the ducal council (Oberrat) of Württemberg intervened in a lower court case in the Bietigheim Stadtgericht. The case concerned a married couple, Conrad and Anna Bender, whom the Bietigheim sheriff had accused of prodigality. When the conflict escalated, potentially implicating Bietigheim officials on corruption charges, the ducal council chose to request legal advice from the Hofgericht, the high appeals court in nearby Tübingen. Albertus Dretsch, a Tübingen University trained jurist and Hofgericht judge, reviewed the case and authored an extensive legal opinion in September 1590, offering rare insights into applied judicial procedure within a controversial, multi-jurisdictional conflict.7

3.1.2. The Benders of Bietigheim

The case of Conrad and Anna Bender emerged during a strange period in Bietigheim’s legal history. In the half century since Württemberg implemented a statewide change in its policies for disciplining Verschwender in 1552, the Württemberg ducal council had to intervene on four different occasions to help the Bietigheim district court handle its prodigal subjects. Typically, a lower court in the districts had the power to issue non-capital criminal punishments and property restrictions against Verschwender

7 Hauptstaatsarchiv Stuttgart (hereafter HStA), A209 Kriminalakten Bü. 355.
without involving the central authorities. Indeed, that is how Bietigheim’s court proceeded with over four-dozen spendthrift hearings in the second half of the sixteenth century, with sixty percent of these prosecutions taking place in the first seven years after Württemberg implemented its new policy.\textsuperscript{8}

However, in 1571, 1572, 1585, and 1589, Bietigheim’s court reported to the ducal council that its standard toolbox of warnings, imprisonment, and \textit{mundtot} (legally incompetent) rulings had failed to resolve the problems posed by four prodigal subjects. Brosi Buß, for example, ignored numerous warnings from the \textit{Vogt} regarding his habitual drunkenness and neglect of his family’s welfare. By 1584, he had been declared legally incompetent, and, when that failed to reform his behavior, he was banished from the country for four years.\textsuperscript{9} Similarly, both Peter Wagner and Michel Kreß exasperated the local officials with their chronic alcoholism and financial mismanagement, leading the \textit{Vogt} to forward both of their cases to the ducal council for advice in 1571 and 1572.\textsuperscript{10}

In all four cases, the local court requested permission to take the more extreme step of conducting a criminal trial, primarily on grounds that the offenders had repeatedly broken oaths to improve their behavior. Oath breaking, according to Charles V’s imperial criminal code (\textit{Peinliche Halsgerichtsordnung}, or \textit{Constitutio Criminalis Carolina}), was punishable by corporal penalties, including removal of fingers, a hand,

\begin{itemize}
\item \textsuperscript{8} StABi, Bh Gerichtsprotokoll, B441, B442.
\item \textsuperscript{9} HStA A209, Bü. 353.
\item \textsuperscript{10} HStA A 209, Bü. 350, 351.
\end{itemize}
banishment, and even death. Due to the severity of the potential sentence, Bietigheim’s court required permission from the high ducal council to proceed with their criminal investigations.\textsuperscript{11}

In the context of sixteenth- and seventeenth-century Württemberg, Bietigheim’s requests appear to have been unique. None of Württemberg’s other fifty-seven districts left behind surviving evidence that they had solicited additional assistance from the ducal council to resolve cases of prodigal subjects.\textsuperscript{12} An excerpt from one of the Bietigheim sheriff’s 1585 petitions to the Oberrat for assistance captures some of the urgency of their situation: “I have punished [the offender] with imprisonment, or in other ways, every time I heard [of his offenses] for the past seven years, in accordance with the Landesordnung and Landrecht. I have tried everything against him, and even at this very hour, I have him imprisoned. But all of this [achieves] nothing, except [...] to


\textsuperscript{12} If such requests had been safely transmitted to the Oberrat, they would most likely be located in the Hauptstaatsarchiv Stuttgart’s collection of criminal cases (A209) from the districts (cases that involved the possibility of capital punishment).
make him wilder. I humbly ask you, in great need for your command: What should I do with such a useless person?”

The sheriff’s appeal suggested that the Bietigheim court had, after thirty-seven years of enforcement, discovered a problem that the flexible and diversified statewide judicial procedures for Verschwender nonetheless failed to solve. What did officials and judges do with incorrigible cases of prodigality? Conrad and Anna Bender were the last and most controversial case that confounded local authorities between 1571 and 1595. Their case, while unique for its research value, was embedded in a broader local story of conflict between villagers and their local officials. This chapter thus positions the Benders’ story within the political and jurisdictional context between the 1570s and 1600, drawing in additional Bietigheim cases from the 1540s through 1600 when necessary to weave a broader picture.

13 “Ob ich woll jetzunder in die 7 jhar, so offt ich dergleichen etwas ungerads erfarn, ime mit dem thurm, auch sonst in anderweg gestrafft obgemellte Mittel vermög der Landtzordnung und Landrechtens, alle gegen ime versuche, auch wirckliche nachgesetzt wie ich ine dan auch jetzunder dißer stunden wider ine gefenghnus inligen habe, so hatt es doch alles nichtiz anders dan oben noch lengs erzelt erschossen ist ihe lenger ihe wilder und spelltzamer, er wegen dan disse E. R. g. ich der erheishend notturf nach ausfuerlich underthenig bericht und was ich mich doch verner gegen einem sollichen onnützen Mensch verhalten gnedigen bevelchs und bescheids erhalten sollen.” HStA A209, Bü. 353, Nr. 1.
3.1.3. Historical & Institutional Settings

This section provides an overview of the district of Bietigheim and the three court bodies that collaborated to resolve the Bender case: the lower court of Bietigheim, the ducal council of Württemberg, and the Hofgericht, Württemberg’s high appeals court in Tübingen. It also provides an overview of the Verschwendung hearings in the Bietigheim Stadtgericht leading up to the Bender trial in 1589.

3.1.3.1. Bietigheim, its Stadtgericht, and local Verschwender

The administrative district and town of Bietigheim lay about nineteen miles northwest of Württemberg’s governing center, Stuttgart. Located on the fertile banks of the Enz and Metter rivers, Bietigheim was primarily home to farmers who worked in agriculture, particularly in viticulture. Favorable climate conditions and the profitable wine trade persuaded residents to convert more and more fields into vineyards in the first half of the sixteenth century. As one local commentator noted in 1526, “Viticulture is the primary crop of this city, and it is maintained by the hard work of the citizenry.”

Population similarly expanded with the growth of the wine trade, rising from 239

The residents of Bietigheim also enjoyed a considerably higher average distribution of wealth than in Württemberg’s fifty-seven other districts. In 1545, approximately thirty-one percent of Bietigheim’s households were valued at less than one hundred gulden, compared to fifty percent of Württemberg households. Nearly fifty percent of Bietigheim’s households owned 100-500 gulden in property value, indicating the presence of a large middle class. In addition to sheltering fewer poor residents, Bietigheim also housed considerably more wealthy households than other districts: twenty percent of its households owned more than 500 gulden of property, compared to the territorial average of 7.6 percent. When Württemberg’s new Verschwender policy was introduced mid-century, Bietigheim teetered at the apex of a long upswing in economic and demographic growth. During the subsequent period, however, the residents of Bietigheim contended with regular outbreaks of plague and bad harvests in


the 1560s and between 1571 and 1575, leading to famine, inflation, and stagnating population.¹⁷

As an administrative district of the Duchy of Württemberg, Bietigheim was governed by the duke’s representative, the Vogt, or sheriff, as well as two governing bodies composed of the local elite, the Gericht and the Rat. The Rat, or council, was composed of twelve members of the Bürgerschaft, the citizenry. Above the Rat was the Gericht, the court, similarly composed of twelve members of the local elite. The Gericht also acted as the primary judicial body of Bietigheim. Members of the Gericht met once or twice per month to adjudicate criminal matters within the jurisdiction of the town and to hear appeals cases from the surrounding villages and towns in the Bietigheim district.¹⁸

3.1.3.2. The Bietigheim Verschwender

Records from the Bietigheim Stadtgericht in the second half of the sixteenth century indicate that the court employed a flexible, diversified strategy to discipline household wastefulness. The court’s approach required persistent court surveillance over conflicts that routinely required repetitive court sanctions. The Stadtgericht’s

¹⁷ Benning, Himmelszeichen und Erdenwege, 38-40.
sentencing policies in the decades leading up to the Bender trial provide essential context for understanding why their flexible policies appeared to fail at the end of the sixteenth century.

Samples of Bietigheim’s court minutes indicate that the household economy was a more pressing matter of concern for Bietigheim’s authorities between 1550 and 1600, precisely during the period when the district’s period of prosperity began to taper off and decline. This was also the period immediately following the release of Württemberg’s new Landesordnung in 1552 and Landrecht in 1555 (a body of private, family, and inheritance law that replaced the disparate customs of the individual districts), both of which directed local authorities to more actively discipline wasteful subjects according to new guidelines. Between 1545 and 1600, the Vögte of Bietigheim brought suits against at least forty-four individuals for fifty-six offenses related to household economy, usually a combination of prodigality, drinking, gambling, and disorderly or “useless” householding. Forty-eight of the fifty-six cases occurred after the new Landesordnung of 1552, and roughly half of the cases occurred in the immediate decade after the new regulations were issued. From February 1555 to December 1559, the Bietigheim Stadtgericht heard a total of 205 complaints about a wide range of


19 Reyscher, Sammlung der württembergischen Gesetzte, Vol. 4, 325-327; Vol. 12, 782-785.
20 StABi, Bh Gerichtsprotokoll, B441, B442, B444, B445, B446.
disputes, and twelve percent of these addressed problems of household economy, including a combination of waste, drinking, familial neglect, and gambling.

Figure 2: Hearings for prodigality in the Bietigheim court, 1535-1560

Economic hardships in the district seemed to have made the prosecution of spendthrifts especially urgent. Unfortunately, the court minutes from 1560 to 1575 are missing, obscuring what was likely a highly volatile time, as the district dealt with poor harvests, famine, and a general shortage of resources within the community. It was precisely during and after these periods of famine that the *Stadtgericht* was forced to appeal to the ducal chancellery for assistance with four particularly problematic *Verschwender* cases in 1571, 1572, 1574, and 1589.

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21 StABi, Bh Gerichtsprotokoll, B443.
With the exception of these four cases, the Stadtgericht largely followed stipulations in the Württemberg Landesordnung and Landrecht when sentencing Bietigheim’s spendthrifts. As noted in Chapter 2, this process first entailed a combination of formal warnings, which the court often augmented by brief imprisonment and drinking or gambling bans based on the individual circumstances of each case. On June 29, 1553, for example, the court warned Veltin Landfaut “not to behave uselessly or wastefully, or else he would be severely punished according to the
princely \textit{Landesordnung}.\textsuperscript{22} If, after three documented warnings, the offender failed to improve his or her household management, the sheriff asked the court to declare the offender \textit{mundtot} and appointed guardians to manage his or her estate, thereby blocking the offender’s access to property.\textsuperscript{23}

\begin{table}
\centering
\begin{tabular}{|l|c|c|}
\hline
\textbf{Type of disciplinary action} & \textbf{Number issued} & \textbf{Percentage of total incidents} \\
\hline
Verbal warning & 31 & 55.4\% \\
\hline
Legal incapacitation (Entmündigung) & 17 & 30.4\% \\
\hline
Drinking ban & 14 & 25.0\% \\
\hline
Threat of legal incapacitation & 10 & 17.9\% \\
\hline
Written sworn oath (Urfehde) & 10 & 17.9\% \\
\hline
Imprisonment & 9 & 16.1\% \\
\hline
Weapons ban & 2 & 3.6\% \\
\hline
Contract ban & 2 & 3.6\% \\
\hline
Banishment & 2 & 3.6\% \\
\hline
Gambling ban & 1 & 1.8\% \\
\hline
\end{tabular}
\caption{Spendthrift sentences in the Bietigheim court, 1530-1630}
\end{table}

The most common sentence issued by the court in over half of \textit{Verschwendung} cases was either a first, second, or third verbal warning. In nearly half of the cases, the \textit{Stadtgericht} explicitly discussed whether to declare the offender \textit{mundtot}, usually at the behest of the local sheriff. Only in less than a third of cases did the Bietigheim court

\textsuperscript{22} "Nit vnnütz oder verthonish haltenn, sonst wurd er, vermög vnsers g. f. vnd hern landsordnung, vmb aidt vnd trew, hertiglich gestrafft werden." StABi, Bh Gerichtsprotokoll, B442, 205.

\textsuperscript{23} Reyscher, \textit{Sammlung der württembergischen Gesetze}, Vol. 4, 326-327.
actually carry out a _mundtot_ sentence. Even after an offender was declared legally incompetent, the members of the court occasionally felt compelled to issue a formal reminder to _Verschwender_ who attempted to violate their restricted legal status. On August 27, 1556, for instance, the court reissued Bartlin Bissen’s previous verdict from two years earlier.24

Württemberg’s sentencing practices for _Verschwwendung_ clearly anticipated repeat offenses. The _Landrecht_ directed local officials to follow a three-strikes policy with progressively stricter reactions against recidivist spendthrifts. Bietigheim’s own _Stadtgericht_ data indicates that the court did indeed require consistent oversight over approximately forty-four offenders, over half of whom reappeared before the court, typically months or years after their first appearance. The Bender trial of 1589 apparently stretched the limits of even this elastic, adaptive model of law enforcement. The Bender case emerged out of a backdrop of persistent court surveillance over conflicts that routinely required repetitive court sanctions. The Bietigheim’s court activity from the second half of the sixteenth-century gives essential context for understanding the court’s later decision to involve one of the most influential institutions in the state, the Württemberg _Oberrat_.

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24 StABi, Bh Gerichtsprotokoll, B442, August 4, 1554, August 27, 1556.
3.1.3.3. The Württemberg Ducal Council (Oberrat)

The Oberrat was one of four main departments that made up Württemberg’s central administration in the sixteenth century. The Oberrat was a judicial council that administered territorial justice throughout Württemberg. The ducal council comprised of one-third noble members and two-thirds educated members with legal training. In the first third of the seventeenth century, the council included between six to nine noble members and nine to seventeen doctors of law. After 1577, even the councilors of noble background were required to meet a similar standard as their university-trained peers. All members completed an entrance exam in which they composed a legal brief for a case and recommended a verdict. The Landhofmeister, usually a nobleman, was the highest-ranking member of the council and served as the Duke’s own representative.

The Oberrat served as the court of first instance for high-ranking individuals and institutions that were exempt from local justice, such as the Duke’s own family, courtiers, and high government officials. The Oberrat also arbitrated disputes between the districts as well as conflicts concerning vassalage. Finally, the Oberrat had to give

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26 Vann, *Making of a State*, 63-64.
permission to any district court that intended to try a subject for a capital offense or pronounce a capital sentence.27

By the late sixteenth and early seventeenth centuries, the Oberrat claimed greater supervision over the lower courts in the Württemberg districts. After 1577, all district sheriffs had to report to the Oberrat whenever the local court initiated a criminal trial. Bietigheim’s local legal code echoed this state policy by reminding its officials that the Duke’s legal representatives in each district “must have written permission from the [Württemberg] authorities before bringing a criminal accusation to court.”28 Additional requirements followed after 1629. District sheriffs were required to solicit permission to use torture and submit the minutes of the first interrogation to the ducal council. Finally, in particularly challenging cases, local courts also had to request legal advice from the law faculty at Tübingen University. Württemberg’s central administration began to urge its local courts to seek legal counsel from Tübingen as early as 1551. By 1629, it had become a matter of law.29 These measures sought to tighten the ducal council’s oversight of territorial justice and offset local judge’s lack of legal training. 30

27 Vann, Making of a State, 63.
28 “Soll ein Jeder, oder soliche anwaldt hierumb seinner oder Jrer Anwaldtschafft, vnnd die peinliche anclag Zum rechten Zuthon, von hochermelter herrschafft verschribnen beuelch haben.” StABi, Bh B 544 Bietigheimer Annalen, Bd. 1, 24v-25r.
29 Bietigheim 789-1989, 184
3.1.3.4. Albertus Dretsch, the Hofgericht, and the Tübingen Legal Faculty

Although it was not yet required by law to solicit university legal advice at the time of the Bender trial in 1589, there were nearly four decades of precedents in which the Tübingen legal faculty participated in local jurisprudence. Albertus Dretsch, the university-trained jurist who provided the legal brief for the Bender case, illustrates how professionally trained legal experts fit into the multitiered judicial system of sixteenth-century Württemberg.

The Oberrat chose a particularly well-suited candidate to review the Bender case. Albert Dretsch occupied a seat on the highest court in Württemberg, the Tübingen Hofgericht, lower in jurisdiction only to the imperial Supreme Court of the Holy Roman Empire. Little is known about Dretsch’s early life, but he had obtained legal training and experience in Roman and Württemberg law by the time Duke Ludwig recruited his expertise in 1590. In 1581, Dretsch had completed his studies at Tübingen University under the direction of Doctor Theodor Schneppf, a Professor of philosophy, philology, and theology at Tübingen who enjoyed a prominent position in the university’s intellectual culture as well as close personal connections to the ruling family of Württemberg.\(^{31}\) It is possible that Schneppf’s close connections in the ducal court helped Dretsch to cultivate similar relationships throughout his own career. Six years after his

graduation, Dretsch became a doctor of jurisprudence (*doctor iuridica*) in 1587 and co-published two Latin tracts on Roman property law alongside Matthaeus Entzlin in 1586 and 1587. Both texts investigated legal principles through which individuals might acquire and lawfully retain use of property, themes that would prove fundamental to the resolution of the Bender case. The question of who was suitable to own and manage property—and on what terms—was an issue that Dretsch’s training and career had well prepared him to consider.

In 1589, Dretsch obtained an influential position as a judge on the Tübingen *Hofgericht* (*gelehrter Hofgerichtsassessor*), the very year that the Bender case demanded the attention of the Duke and his closest counselors in Stuttgart. As a member of the high court, Dretsch would encounter similar appeals cases from dissatisfied appellants who contested the decisions of lower courts from throughout the many districts of Württemberg.

First established in the second half of the fifteenth century, the Württemberg *Hofgericht* consisted of approximately a dozen judges who represented the interests of three different social groups: the nobility, the rural citizenry, and educated

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professionals. When Dretsch joined the court in 1589, he assumed a seat on the
Gelehrtenbank, or scholars’ bench, composed of university-educated men, who quite
often served simultaneously as professors at Tübingen University. The Hofgericht shared
close connections with the Tübingen faculty. Tübingen was not only the site of the
court’s biannual meetings, but also the source of the most educated members of the
court (the four aristocratic judges, however, were not required to possess a university
education to qualify for service). Albertus Dretsch thus seems to have been a natural
candidate for the Duke’s request for an expert opinion on the Bender case.

The Bender case is particularly valuable as a case study because it highlights the
interworking of Württemberg’s complex, multitiered judicial system. The analysis that
follows broadly frames the Bender trial and their conflict over Verschwendung on the
village, district, state, and imperial levels. Six years of litigation brought to light clashes
over jurisdiction, political corruption, and tensions between judicial bodies that clearly
resented having their decisions appealed. Considering that the Württemberg state left it
up to the district courts to determine standards of evidence for Verschwendung, the
Bender trial provides rare insights into how judicial hierarchies nonetheless influenced
the practical definition and enforcement of the legal concept of prodigality.

34 Theodor Knapp, “Das württembergisch Hofgericht zu Tübingen und das
württembergische Privilegium de non appellando. Von Herrn Studiendirektor a. D. Dr.
phil. und iur. h. c. Theodor Knapp in Tübingen.” In: Zeitschrift der Savigny-Stiftung für
3.2. Proving Prodigality

This section provides a more detailed overview of the Bender conflict and closely examines Hofgericht Judge Dretsch’s process as he reviewed their case. Sections 3.2.4 through 3.2.7 use Dretsch’s comments and silences to chart out the diverse meanings of Verschwendung in Württemberg law and practical enforcement. Dretsch’s deliberations reveal that the nature of the relationship between officials and subjects was the most decisive factor in determining whether the Benders were indeed guilty of prodigality. The Bender case, when viewed alongside the cases of Bietigheim’s other prodigal subjects from 1570 to 1600, shows that Bietigheim’s local officials defined Verschwendung as a demonstration of willful disobedience and contempt for patrimonial values.

3.2.1. Escalating Conflict

The Bender family’s troubles in their village community first came to the attention of the Duke of Württemberg in 1589. Johann Schoenecken, the Vogt of the Württemberg district of Bietigheim, wrote a letter to his lord, Duke Ludwig III of Württemberg, to ask for permission to legally incapacitate two of his subjects in Bietigheim, Conrad and Anna Bender, on account of their wasteful household management (Verschwendung, or Prodigalität). Schoenecken explained that Conrad was a
frivolous and incapable man who had mismanaged his household for years, despite
multiple warnings from the local officials.\textsuperscript{35} According to witnesses who testified against
Conrad, his neglect had left the fields and buildings of his estate in needless disrepair.
Conrad allegedly exacerbated these conditions by racking up debts, mortgaging his
property, and selling off pieces of his estate in an unsuccessful attempt to reduce his
debts.\textsuperscript{36} Schoenecken sought to declare both spouses \textit{mundtot}, a restricted legal status
that would ban the Benders from making contracts or otherwise administering their
own property without the permission of specially appointed guardians.

It was quite unusual that \textit{Vogt} Schoenecken sought out the Duke’s permission to
declare notorious spendthrifts legally incompetent. The previous fifty years of local
court minutes give no indication that the Bietigheim local court customarily sought
permission from the central capital for this type of punishment, nor was it written into
the local or state law to do so.\textsuperscript{37} In fact, the \textit{Vogt} of Bietigheim (either Schoenecken or his
predecessor, Bernhart Rößlin) had already declared Conrad and his brother, Hans
Bender, legally incompetent two or three years earlier, in December 1586, apparently
without any prior communication with the central capital.\textsuperscript{38} In the years since then,
Conrad’s household management had seemingly not improved, even though the

\textsuperscript{35} HStA, A209, Bü. 355, Nr. 2.
\textsuperscript{36} HStA, A209, Bü. 355, Nr. 3.
\textsuperscript{37} Reyscher, \textit{Sammlung der württembergischen Gesetzte}, Vol. 12, 27.
\textsuperscript{38} HStA, A209, Bü. 355, Nr. 1.
Bietigheim authorities had used one of the more severe civil punishments to compel him towards more effective household management.

In part, it appears that the Duke became involved in this village-level conflict because legal incapacitation, the last resort of disciplinary action for these types of cases, had failed to achieve the desired result of curbing the family’s wasteful spending. Bietigheim’s Stadtgericht frequently depended on the threat and use of legal incapacitation as a strong enough deterrent to prevent wasteful expenditures. Conrad Bender’s recidivism underscored the dubious success of these policies.

However, as the Bender case unfolded over the months in 1589, it became clear that recidivism alone was not the only reason why this case escalated from a local village conflict into a highly unusual investigation that drew in the prince, his legal counsel, and neighboring district governors. After Vogt Schoenecken penned his complaint to Duke Ludwig, Conrad and Anna Bender likewise sent their own supplication to the Duke to accuse Vogt Schoenecken and their village Schultheiß of corruption, predation, and fabricating the charges against the Benders.39 According to Württemberg’s Landesordnung, subjects who wished to report grievances against their own local officials could forward their supplications directly to the Württemberg chancellery in Stuttgart. Normally, all petitions had to be sent to the local officer first, to prevent overwhelming central administrators with grievances. In the Benders’ case, however, their alarming

39 HStA, A209, Bü 355, Nr. 3 (cited as n. 6, 8).
accusations against the Schultheiß of their village and the Vogt of the larger district allowed them to bypass normal protocols and obtain a direct line of communication with the ducal chancellery.\footnote{Reyscher, Sammlung der württembergischen Gesetzte, Vol., 12, 27.}

The Benders’ supplications successfully persuaded Duke Ludwig to approve a retrial of their case, securing for them a rare chance to circumvent the judgments of officials with whom they had shared years of tense conflict. The duke called upon two of his deputies in the Württemberg districts of Vaihingen and Geislingen and directed them to travel to the village of Ingersheim to investigate the conflict, interview witnesses, and send their findings to the duke’s chancellery in Stuttgart. The duke then took one more step to ensure that the case would be thoroughly and expertly evaluated: he forwarded the entire case file to Albert Dretsch to solicit his expert opinion upon the question of Conrad and Anna Benders’ alleged prodigality.\footnote{HStA, A209, Bü 355, Nr. 3.}

**3.2.2. Recruiting an Expert Legal Opinion**

As Dretsch reviewed the extensive dossier from the Bender investigation, one central question guided his evaluation of the case: “The question is whether the Vogt justly accused and sentenced [the Benders] for prodigality [...] or whether the Vogt
transgressed the bounds of his office or not.” In posing this question, Dretsch not only subjected the Bender household to scrutiny, but also called into question the conduct of the primary authority figure of the district of Bietigheim. The Benders’ successful petition to the Duke for a retrial had significantly elevated the stakes of the trial. If the Benders were acquitted of the charges of prodigality, the verdict would undermine the authority of the Vogt, as well as the court of twelve Bietigheim judges who had approved the original sentence against the Benders earlier that year. In this case, the question of how to define and prove prodigality had significant implications for the stability of administrative authority, not only in the district of Bietigheim, but also for the state representatives who participated in the investigation.

In his deliberations, Dretsch considered a range of factors related to prodigality, including debt, the expansion and contraction of the Bender estate over time, and their responsiveness to official warnings. Yet, he also largely omitted several factors that figured prominently in other contemporary prodigality trials, such as consumption practices, the claims of family members, and the provocative question of spendthrifts’ mental and legal competency. The following subsections trace Dretsch’s considerations and conspicuous silences in greater detail, beginning with the question of competency.

3.2.3. Prodigality and Insanity

Dretsch accordingly set about the task of investigating the Benders’ alleged prodigality with great care. Over the course of the trial, witnesses and investigators had abstractly accused the Benders of “bad frivolous householding” and leading “a troublesome and wasteful life.” From the outset, Dretsch cautioned against such hasty assumptions, insisting to the Duke that the charge of prodigality required meticulous consideration before issuing a verdict. “At first,” he wrote, “it would appear that too much injustice has befallen the married couple. For it is rightly said that one should not presume that a person intends to waste his property.” Dretsch explained that individuals had no rational incentive to mismanage their property, since they depended on these material resources for survival. Judges could thus count on an individual’s instinct to conserve and protect what was necessary to live. However, Dretsch also raised a key difference between the behavior of spendthrifts and ordinary people:

43 “Wegen seines übell haußhallttnes” and “von weg[en] seines bösen liederlich heusshalltnes.” HStA, A209, Bü 355, Nr. 3. While the Benders’ request for a retrial was still pending approval, the Vogt had already proceeded to publicly denounce the Benders as “unfit” and legally incompetent.
44 “Anfangs hatt die sach dass ansehen als wan ihnen beede Eheleutt ohn disem bezüg zuvil und vnrecht beschehen, Dann zu Recht wol und heilsamlich ver sehen, dass nicht zu [presumieren] oder zuvermuotten, dz einer dass seinig vppiger weiss zuverthuen und zu verschwenden gesinnet.” HStA, A209, Bü 355, Nr. 3. Dretsch cited Fernand Vasquez’s Controversarium illustrium aliarumque usu frequentium (Venice, 1564). Dretsch’s references to international, Latin legal scholarship throughout his report to the Duke offer insight into the intellectual traditions that shaped his jurisprudence.
“spendthrifts are not considered to be sane,”⁴⁵ and therefore the expected logic of behavior did not apply in their case.

Judges could thus expect that a spendthrift’s conduct would exceed the bounds of the rational. Roman law—and the Württemberg spendthrift policies that borrowed from it—largely conceived of spendthrifts in explicit comparison with the insane.⁴⁶ Although the roots of their incompetence differed, both groups were governed by similar restrictions on their legal personhood and property rights. And, as Dretsch reminded the Duke, in both cases, judges should not too hastily assume that an individual was prodigal or insane, since both conditions occasioned a serious limitation on one’s legal rights. To legally declare the Benders as incompetent spendthrifts, the investigation had to uncover clear proof of their prodigality.

This was one of the exceedingly rare moments in Bietigheim’s historical record that we find documentation on the mental capacity of suspected spendthrifts. Aside from Dretsch’s comment, there are virtually no traces of documented reflection on this crucial aspect of spendthrift policies in Bietigheim. And yet, the mental competence of suspected spendthrifts was a subject of considerable importance in other trials in the German southwest after the mid-sixteenth century. Litigants in these trials emphasized

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⁴⁵ “Prodigi mentis sue non putantur compoter.” HStA, A209, Bü 355, Nr. 3. Here, Dretsch cited Italian jurist Giuseppe Mascardi’s De Probationibus Vol. 3 (Frankfurt am Main, 1588), conclus. 1234 n. 2.
⁴⁶ See Chapter 2.
the mental incompetence of the accused spendthrift to strengthen their case that the revocation of his or her legal personhood was indeed warranted. For example, some litigants stressed the youthful immaturity, confusion, mental illness, or insanity of the accused, in addition to weighing the external manifestations of these hidden conditions, their irrational economic behaviors (see Chapter 4). In contrast, the records of the Bietigheim town court portray wastefulness less as a symptom of mental incompetence than as a willful disregard for one’s social duties. While the Bender case lacks these former references to mental competence, Dretsch instead carefully sifted through the evidence to find hidden clues of the Benders’ financial mismanagement.

3.2.4. Distinguishing Prodigality from Common Vice

As we have seen in the previous chapter, Verschwendung by no means conveyed a singular or precise meaning when the legal term was applied in practical court proceedings. Verschwendung encompassed a range of behaviors that compromised the financial stability of the household, including chronic alcoholism, gambling, idleness, contracting Unpayable debts, or mortgaging or selling off household goods or real property. This latter behavior became particularly problematic if the alienated property was necessary for the long-term survival of the estate or its inhabitants—for example, if
the property belonged to the offender’s wife or if it was expected to pass to children and other heirs in the future.\textsuperscript{47}

Württemberg’s lawmakers supplied local courts with a particular stereotype of the spendthrift figure, which in Bietigheim’s case was often reinforced through application of spendthrift law. While idleness, alcoholism, and gambling were often attributed to the spendthrift figure, he was above all characterized by his heartless neglect of his dependent wife and children. The spendthrifts of Bietigheim were accordingly ninety-three percent male and, quite often, married fathers with dependent children, as well (See Table 3).\textsuperscript{48} On a territorial scale, Urfehden records from twenty-three different Württemberg districts also reveal that officials and litigants overwhelmingly targeted male offenders as spendthrifts in over two hundred documented cases.\textsuperscript{49}

\textsuperscript{47} The Württemberg Landesordnungen of 1552 and 1621 and the Landrecht of 1555 consistently framed spendthrifts’ transgressions as a violation of their patriarchal obligations to act as a wise temporary guardian of the family properties. Reyscher, \textit{Sammlung der württembergischen Gesetze}, Vol. 12, 782-785.

\textsuperscript{48} This data results from a survey of six samples of six-year periods from the Bietigheim court minutes between 1535 and 1660. StABi Bh B441, 442, 444, 445, 446, 448, 449, 451, 452.

\textsuperscript{49} Based on a survey of Urfehde from twenty-three Württemberg administrative districts, primarily from Bietigheim, Bottwar, Brackenheim, Göppingen, Markgröningen, Güglingen, Herrenberg, Kirchheim, Leonberg, Marbach, Neuenstadt, Neuffen, Nürtingen, Stuttgart, Tübingen, Urach, and Vaihingen between 1500 and 1576. HStA A44.
Table 3: Demographics of spendthrifts in the Bietigheim court, 1530-1630

<table>
<thead>
<tr>
<th>Gender</th>
<th>Marital Status</th>
<th>Family Status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Number</td>
<td>41</td>
<td>3</td>
</tr>
<tr>
<td>Percentage</td>
<td>93.2%</td>
<td>6.8%</td>
</tr>
</tbody>
</table>

However, within this general category of the spendthrift figure, there was considerable room for variation. Bietigheim’s Vogt and Gericht drew on Württemberg spendthrift policies to discipline drunks, debtors, gamblers, men who broke their contracts, men who abused their dependents, fathers who neglected their children’s education, married couples, or anyone who fit under the indeterminate heading of “disorderly householding” (unordentlich or böse haushalten). Often, spendthrifts reportedly exhibited several of these qualities simultaneously. Between 1554 and 1559, the court called in Theiß Hecken three times for a combination of drunkenness, Verschwendung, and “bad householding.”\(^50\) In 1584 and 1591, Caspar Kurzweil faced charges of swearing, gambling, outstanding debts, excessive eating and drinking, Verschwendung, and the catchall “bad householding.”\(^51\) In practice, the concept of


wastefulness (*Verschwendung*) connoted a flexible amalgamation of behaviors that violated the moral ideals and social expectations of those who helped to enforce the law.

Rarely did the terse town court minutes elaborate why the *Vogt* targeted individuals for behaviors that, like drinking and gambling, appear to have been widespread and notoriously difficult to control in the early modern period. To reduce moral and sexual offenses, principalities throughout the German lands released a profusion of ordinances during the sixteenth century to regulate drunkenness, gambling, and other extravagant modes of resource consumption. Lawmakers targeted common spaces of communal merriment, such as church festivals, weddings, taverns, dances, and spinning parties, seeking to place limitations on when, where, and how much alcohol their subjects could consume. Legal records also show that recidivism was especially high for drinking infractions in the Württemberg districts.

Some of Bietigheim’s accused spendthrifts asked their judges how they could expect to punish a behavior so universal as drinking. Brosi Buß, a thirty-year-old farmer, bitterly retorted to his interrogators that, "If they chased every man who got drunk out

52 Württemberg’s *Landesordnung* of 1495 issued fines for dances and gatherings in public or private. Gambling was restricted by income level and the pledging of health (*Zutrinken*, a competitive drinking ritual) was banned. The *Landesordnung* of 1515 restricted church festivals and limited the size of wedding parties and baptisms. Reyscher, *Sammlung der württembergischen Gesetze*, Vol. 12, 6-8, 17-20, 30-31. For a survey of similar efforts throughout the German lands, see Ronnie Hsia, *Social Discipline in the Reformation: Central Europe, 1550–1750* (London: Routledge, 1989).

53 *Urfehde* for drinking games, public drunkenness, and violation of tavern bans were particularly common during the sixteenth century. HStA A44.
of the country, there wouldn’t be many people left.” 54 Bechthold Wagner, a longstanding member of Bietigheim’s civic government, similarly commented that excessive drinking and wastefulness “is practically customary in this world.” 55 These men raised a question of scale: in defining what qualified as “prodigal” expenditures or consumption, how much was too much? This was the task that Dretsch had before him: distinguishing criminal consumption from the larger crowd of subjects who exhibited similar behaviors, during a period in which the Württemberg state took an ever more invasive interest in the moral and sexual lives of its subjects.

To do so, the Bender investigation had to parse out which behaviors constituted wastefulness, when uncontrollable economic forces played their role, and what counted as convincing evidence of either case. Dretsch relied on a combination of sources to establish evidence of prodigality, including documentary evidence and witness testimony. During the retrial in the village of Ingersheim, the Obervogt of Vaihingen and the Vogt of Geisingen interviewed at least thirty-four witnesses from Ingersheim and nearby Bietigheim, asking them to stretch their memories back over the past several years to supply testimony about the character and conduct of the Benders.

54 “Wan man die all solte vss dem Landt jagen, die sich vol trinckhen, dörffen wol nit vil darin pleiben.” HStA A209, Bü. 353, Rechtstag 20. February 1585.
55 “Dieweil doch das verwirkhen allain vom laidigen ÿppigen voltrinckhen, vnd vershwennden herkompt, welches bey diser wolt shier gemain ist.” HStA A 209, Bü. 350, petition from Bechthold Wagner to Duke Ludwig, 2. August 1571.
3.2.5. Outstanding Debts

The primary focal point of the investigators centered on the solvency and relative value of the Benders’ household estate. To prove the Benders’ inability to run their own household, the investigation had to yield evidence that the estate followed a path of dangerous decline that would justify government intervention into the couple’s property rights. One possible source of evidence in this regard was the extent to which the Benders were in debt. During a court hearing in February 1591, the Vogt argued that the Benders “make [new] debts daily, do not pay anyone back, and lead troublesome lives that are a bad example” for the community.\(^{56}\) To pay back the considerable debts that they had accumulated, the Benders allegedly mortgaged or sold off portions of their estate to appease their creditors. Unfortunately, no inventories or tax registers have survived that could shed light on the precise financial affairs of the Bender household, so it is impossible to ascertain how severely the Benders were in debt, relative to the overall value of their household.

Debt alone, however, was not sufficient to prove prodigality, particularly in a climate of economic decline. Dretsch reasoned that “prodigality does not necessarily follow from [this line of argument], considering that goods have not been particularly

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\(^{56}\) “sie nun täglich schulden machen, niemandt abzalen, auch ain ergerlich leben füren, darab [tä]glich ain bö́s exempel.” StABi Bh B445, 25. February 1591.
valuable in recent years, as is sadly known to many."\(^{57}\) The Benders suffered from the same symptoms of economic stagnation that had afflicted the residents of Bietigheim since mid-century, as the flourishing gains of the first half of the century tapered off and settled into a protracted course of decline. In 1574 and 1575, the duchy of Württemberg experienced a severe famine that forced districts throughout the country to divert limited resources to their large numbers of dependent poor.\(^{58}\) In light of these hardships, it was not unexpected—nor grounds for legal intervention—that the Benders had to contract debts in order to keep their household running. Outstanding debt was indeed a frequently cited characteristic of spendthrift trials in the sixteenth century,\(^ {59}\) but this by no means entailed a blanket condemnation of debt in general. Debt was an omnipresent and necessary part of the early modern economy.\(^ {60}\) Even the most vehement critics of indebtedness from the period, such as Heinrich Knaust writing mid-century,

\(^{57}\) "So ist dannacht fürs dritt kein prodigalitet hierauss zuerzwingen, In betrachtung dass nuhnmehr etlich jahr hero (wie laider meniglich wol bewusst) die güetter nicht so[nderst] eintreglich gewessen." HStA A209, Bü. 355, Nr. 3.


\(^{59}\) E.g., StABi Bh B444 6. April 1579, 10. August 1579 and B445 17. August 1590, 2. January 1591.

acknowledged that some amount of debt was inevitable.\textsuperscript{61} Dretsch concluded that these extenuating circumstances forced Conrad “out of unavoidable need” to borrow money.\textsuperscript{62}

### 3.2.6. Drinking, Gambling, and Extravagant Spending

Dretsch sought evidence that the Benders were in effect sabotaging their own estate, thus necessitating legal intervention.\textsuperscript{63} This section draws on similar cases of Verschwendung from the Bietigheim Stadgericht to highlight common themes that were conspicuously absent from the Bender trial records. In addition to debt, contemporary trials often considered other behaviors that endangered the long-term stability of the family estate, such as conspicuous consumption, gambling, or liquidating and alienating properties.\textsuperscript{64} These behaviors diverted resources away from family members who relied on household resources for sustenance, or who expected to eventually inherit them.

One of the primary ways that the Vögte of Bietigheim sought to prove prodigal behavior was to argue that male spendthrifts frittered away vital resources on selfish consumption, to the detriment of their household dependents and heirs. The Vogt and Gericht of Bietigheim frequently justified their intervention into the accused’s household

\textsuperscript{61} Heinrich Knaust, \textit{Hüt dich für Aufborgen und Schulden} (Frankfurt: Egenolff, 1567), 48r.

\textsuperscript{62} “Dannenher er Conrad auss vnvermeidenlich notturfft zu aus[beignung] seiner haussallung auch fortzplantzung [crossed out: seiner] güttlen gellt zu enthlehn und vff zu nemen verursacht worden.” \textsuperscript{HStA A209, Bü. 355, Nr. 3.}

\textsuperscript{63} Cf. Elizabeth Mellyn, \textit{Mad Tuscans and their Families}, 103-4.

\textsuperscript{64} See Chapters 4, 5.
by detailing the irresponsible ways that suspected spendthrifts used their money, such as for daily tavern visits, extravagant meals, or gambling. Württemberg's Landesordnung and Landrecht supplied families and officials with a vision of prodigality that clearly targeted male tavern culture. As spendthrift policy developed over the course of the sixteenth century, Württemberg's lawmakers initially defined offenders as "those who lie around in taverns and allow their wives and children to live on charity."

Prodigality was thus defined not only by the amount of property spent or alienated from the estate, but also by the way these resources were spent. In a similar manner, Mary Lindemann has shown that societies in northern Europe differentiated between bankrupts based on how their financial collapse came about. Bankrupts were not automatically condemned nor universally barred from commercial activity as a result of their financial misfortunes. Rather, a bankrupt's reception and future opportunities depended a great deal on the type of bankrupt he or she was perceived to be and on his or her conduct, before, during, and after the collapse.

Prodigality was similarly defined not only by the extent of the financial losses, but also by the public's and the court's perception of the debtor's conduct and character.

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Curiously, the surviving documents of the Bender case at no point speculate about how the Bender couple used any of the loans or mortgages that they acquired during this period. The witness testimony from the Bender case has been lost to history, leaving us dependent on what Dretsch chose to excerpt from these documents. However, it is nonetheless surprising that Dretsch’s and the Vogt’s letters to the Duke similarly lack the references to extravagant spending that were so common to other spendthrift trials from Bietigheim in the second half of the sixteenth century. Spendthrifts’ spending habits were usually directly juxtaposed with the neglected family who needed those resources to survive, to highlight their selfish disregard of the needs of their dependent family members. The Bietigheim officials had employed this strategy several times in the past to persuade the Duke and his council to approve criminal sanctions against notorious spendthrifts.

Had the Bietigheim court or the ducal council reviewed Bietigheim’s previous court documents from the past twenty years, they would have found accounts that focused intensely on the chronic drinking habits that led men to waste their money. In 1584, for example, the Vogt and court of Bietigheim disciplined Brosi Buß, a married thirty-year-old farmer and father, for his frequent gambling, idleness, and boisterous drinking. Instead of working his trade to support his family, BroSI reportedly "made drinking his profession", spending long days and nights paying for drinks at the
Brosi would have required a regular income to keep up with his daily drinking habits, an expense that a farm laborer could likely ill afford. The Vogt reported that Brosi sold off whatever household goods he could pilfer at home, such as his wife’s clothes and the linens and feathers from his family’s beds. An inventory of Brosi’s household from 1587 indicates that the family occupied a humble home with few household items and no landed property, livestock, or buildings as capital. With most of their household goods composed of tin and wood, there was little of real value left over for Brosi to sell.

To press his case, the Vogt who prosecuted Brosi framed his conduct as the heartless acts of a selfish saboteur, who willfully allowed his household and its helpless members to fall into poverty.

The Vogt adopted a similar tactic in his prosecution of another spendthrift in 1571, when he informed the Bietigheim court that Peter Wagner had been an incorrigible drunk for the past fourteen years, buying drinks with any money he could acquire, regardless of the legitimacy of the source. Despite the high inflation that Bietigheim experienced in the 1570s, Peter routinely borrowed money from his friends, ostensibly to buy food for his family, but instead spent all of it at the taverns. The Vogt strategically testified that Peter had deceptively exploited cash from the most vulnerable poor

68 “Daraus er ain hanndtwerckh gemacht.” HStA A209, Bü. 353.
69 HStA A209, Bü. 353, Nr. 4. StABi Bh B444 25. May 1584.
70 StABi Bh B919, 45.
71 Wagner reportedly spent large amounts of money on alcohol, including 6.5 gulden over the course of fifteen days and 1.5 gulden within three days. HStA A209, Bü. 350.
citizens in the community and burdened his elderly father with his expenses and debts.

By emphasizing the suffering of dependent relatives, heirs, neighbors, and creditors, prosecuting officials clearly identified the vulnerable subjects on whose behalf the court was compelled to act.

### 3.2.7. Jeopardizing Family and Inheritance

In addition to seeking evidence of outstanding debts, excessive consumption, or reduced capacity, Bietigheim’s sheriffs also sought to prove prodigality by identifying the family members who had claims on the property in question. In other jurisdictions, such family members were only too willing to testify, and often initiated the incapacitation hearings against notorious spendthrifts. Unlike in Bietigheim, where the district Vogt initiated virtually all proceedings against spendthrifts, unhappy heirs in other regions of the southwestern German lands did not hesitate to defend their property interests in court by petitioning judges to ban wasteful relatives from controlling any family property. Although the Bender trial documents remain unusually silent about which family members the court sought to protect, Dretsch nonetheless marked this point as one of the key factors in identifying prodigal behavior.

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72 See Chapters 4, 5.
Despite silences in Dretsch’s legal brief, minutes from previous Stadtgericht hearings offer clues as to who may have worked behind the scenes to prevent the Benders from liquidating, mortgaging, or alienating their properties. Records from the Bietigheim Stadtgericht reveal that Conrad Bender had a brother (Hans Bender), a nephew (Michael Bender), a daughter, and a granddaughter residing in the district of Bietigheim, although it is not clear whether his brother or daughter were still alive as the trial began. Conrad’s young granddaughter suffered from physical disabilities and required a legal guardian to oversee her care. While it is unknown which of these relatives or legal representatives may have motivated the prosecution of Conrad, there is one known factor which likely exacerbated the tensions between Conrad and his relatives and creditors: Anna was his second wife.

According to testimony from the Benders’ neighbors, members of the community had viewed Conrad’s first wife as a model housewife who had possessed the skills and diligence necessary to expand a modest household into a comfortable dwelling over the years of their marriage. Only after her death and Conrad’s remarriage, witnesses reported, did the Bender household descend into a dangerous spiral of financial mismanagement. Conrad and Anna allegedly neglected their fields and sold off their properties piecemeal to appease their creditors, gradually decreasing the value of the

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estate for the heirs who expected to inherit portions of it upon Conrad’s death.\textsuperscript{74} This narrative of the family’s decline constituted proof, in part, of the Benders’ prodigality, a factor that Dretsch carefully considered by numerating the many neighbors who were willing to testify to this point.

Compelling as this evidence of mismanagement may have been to Dretsch and his fellow investigators, there was one additional source of proof that drew Dretsch’s scrutiny, and which would become the overriding focus of court investigations into the Benders’ lives for the next five years. When proving prodigality, one final factor that both the Bietigheim court and Dretsch considered was whether the offender had been responsive to previous warnings and advice from officials, relatives, and other interested parties. In other words, could the offender be rehabilitated through court reprimands and other relatively light punishments? Or was the suspected spendthrift so resistant to instruction that more invasive interventions—like legal incapacitation—became necessary?

\textbf{3.3. Defiance and Disobedience}

This section examines how local-level conflicts between the district sherrif, village \textit{Schultheiß}, and residents influenced the practical definition of \textit{Verschwendung} in two cases, the Bender couple and Brosi Buß, between 1584 and 1595. Bietigheim’s

\textsuperscript{74} HStA, A209, Bü. 355, Nr. 3.
prosecuting Vogt subjected spendthrifts to serious criminal investigation not only because they had jeopardized their household’s stability, but also because they had threatened the authority of their local structures of power and the public order. From oathbreaking to open threats to physical attacks, Buß and the Benders undermined the credibility and security of Bieitigheim’s government. Ultimately, the intense focus in these trials on the relationship between authority and subject underscores how Bietigheim maintained a distinctive interpretation of prodigality. In contrast to other cases, in which factors like mental competency, drunkenness, conspicuous consumption, outstanding debts, or familial neglect played leading roles, Bietigheim’s court and Württemberg’s ducal council drew on Verschwendung laws to target subjects who had voluntarily and deliberately violated social norms and official directives.

3.3.1. Resisting Rehabilitation

From the viewpoint of Vogt Schoenecken and his supporters, the Benders had directly challenged the authority of their local officials by defying all orders to improve their household management. Even worse, they had accused the Vogt of inventing the charges of prodigality. For Dretsch, the evidence of Conrad Bender’s previous infractions, despite receiving multiple warnings to correct his behavior, weighed very heavily against the Benders. By the end of his thoughtful legal opinion, Dretsch ultimately concluded that, “I am humbly of the opinion that both [spouses] were
properly accused of prodigality.” The Benders’ relationship with local officials was one of the foremost considerations when Dretsch came to this conclusion. The Vogt and his supporters had persuasively portrayed Conrad and Anna Bender as disobedient and hopeless recidivists.

Yet, before issuing his decision, Dretsch took seriously the possibility that the Schultheiß of Ingersheim and Vogt of Bietigheim were motivated by a personal desire to secure a conviction of the Benders. Conrad and Anna Bender had moved beyond simple disobedience of the law, official warnings, and bans on property rights; they had entered the territory of outright insubordination and vocal attack on their local officials’ conduct and exercise of authority. As Dretsch acknowledged in his report, if the Benders were not guilty of prodigality, the inevitable implication was that the Vogt had acted in error, transgressing the bounds of his office. One of the fundamental tasks that the Duke assigned to Dretsch was to ascertain whether the Vogt had indeed acted in his own self-interest when prosecuting the Benders.76

One essential part of answering this question was to determine precisely why the Benders had ignored official directives to maintain better care of their property holdings. Dretsch, like his contemporaries trained in Roman law, held that spendthrifts “lacked

75 “Halle ich ihn und[er]thenigheit darfür, dass sie beede der prodigalitet halben billichen beclagt.” HStA, A209, Bü. 355, Nr. 3.
76 See note 45. Dretsch’s account even characterized the Vogt’s behavior as “jealous” at one point, as the term “Neidhunden gespihlet” suggests. HStA, A209, Bü. 355, Nr. 3.
control of their senses,” making them like the mentally ill and the mad. However, classical Roman law maintained a vital difference between prodigality and insanity: spendthrifts’ incapacity was not considered involuntary, as was the case with forms of mental disability. Prodigality indicated not only incompetence, but also disobedience and defiance. In this view, wasteful property management was the result of offenders’ willful refusal to heed the social expectations and warnings of local magistrates.

Dretsch’s criminalized interpretation of prodigality stems, in part, from the judicial procedure of Württemberg’s legal code for dealing with prodigal subjects. Württemberg’s legal code stated that magistrates should only revoke the legal personhood of suspected spendthrifts if the accused had already violated three official warnings, usually augmented by brief bouts of imprisonment to deliver the warnings home. In this “three strikes” system, the accused was by definition only deemed a spendthrift if he or she had willfully violated direct orders, which usually required months or years for the case to unfold. Theoretically, Württemberg’s lawmakers also designed one other possibility to incapacitate suspected spendthrifts: if a family member or other interested party was willing to submit an official petition and evidence to the magistrates, then the accused could be declared incompetent much more expeditiously to prevent unnecessary losses for the afflicted family and household.

77 HStA, A209, Bü. 355, Nr. 3.
In the case of Bietigheim, *Stadtgericht* records suggest that most accused *Verschwender* were indeed repeat offenders who had defied warnings from the court and the local sheriff. In at least eighteen percent of the Bietigheim cases, the *Gericht* had required the offender to swear a formal oath, or *Urfehde*, promising to improve their behavior. As a result, some spendthrifts were prosecuted not only as recalcitrant recidivists, but also as oath breakers. Further, the Bietigheim *Stadgericht* yields little evidence of relatives or friends coming forward to report their prodigal associates in the sample periods from 1540 to 1630. In all prodigal cases discovered through this study, the court minutes name the *Vogt* of Bietigheim as the accuser, with only rare instances of creditors or family members even warranting a mention in these brief entries. Court records thus indicate that most of Bietigheim’s spendthrifts had been officially warned multiple times before the *Vogt* undertook a formal prosecution of the accused. To the Bietigheim officials, these cases appeared to be habitual problems of disobedience and defiance.

In this respect, the Bender case matches the broader context of *Verschwendung* trials in Bietigheim. One vital piece of the case against Conrad Bender was his habitual defiance of authority figures like the *Vogt* of Bietigheim, the parish priest, and the local field officers who supervised land use. Dretsch showed a degree of sympathy with the

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financial hardships that drew the Bender household slowly toward insolvency, but the
evidence of Conrad’s repeated disobedience pushed Dretsch resolutely towards an
unfavorable verdict.\textsuperscript{80} The most damning evidence against Conrad was his previous
conviction for prodigality four years earlier in December 1586. At the insistence of the
Schultheiß of Ingersheim and the Vogt of Bietigheim, Conrad and his brother, Hans
Bender, had lost all rights to make contracts or control their property. The investigators
in the appeals trial secured statements from nine witnesses who testified that Conrad
had specifically been incapacitated for his “bad frivolous householding” in 1586, and
thirteen witnesses concurred that Conrad had contemptuously ignored the warnings
and commands of local magistrates.\textsuperscript{81} The town notary, Moses Hornmold, similarly
testified that Conrad had frequently been disciplined by the Feldschützter, or field
supervisors, for his disorderly lands, and Conrad ignored these warnings as well.\textsuperscript{82}

3.3.2. Counter-Accusations

However, from the Benders’ point of view, their repeated defiance of local
officials’ directives constituted not willful disobedience, but a rightful response to
corruption in government. To undermine the charges brought by the Schultheiß of

\textsuperscript{80} HStA A209, Bü. 355, Nr. 3.
\textsuperscript{81} “Dass er Conrad Bender von wegen seines bösen liederlich heusshaltnes fur
mundtodt beclagt, und erkandt worden. HStA A209, Bü. 355, Nr. 3.
\textsuperscript{82} HStA A209, Bü. 355, Nr. 1, 3.
Ingersheim and the Vogt of Bietigheim, the Benders sought to prove that these officials acted out of prejudice and personal interest. Should the Benders’ history of grudges and conflicts with local authority figures be interpreted as illicit insubordination or as a lawful appeal? The Benders’ alleged prodigality became intrinsically linked to a much larger question about the legitimacy of local authorities.

Conrad and Anna Bender argued that there were two main reasons why the Vogt of Bietigheim so energetically pursued a prosecution of the couple. First, as Dretsch discovered while reviewing the case file, the push to incapacitate the Benders originated when Conrad quarreled with the Schultheiß of Ingersheim about a disputed debt. Conrad alleged that the Schultheiß had taken eighty gulden from him, apparently without reason or any expectation of repayment. Depending on the Benders’ total household value, this debt could have represented a sizable portion of their overall wealth.

Approximately thirty-one percent of the district’s households possessed less than one hundred gulden in property value; for eighty percent of households, the debt would have claimed anywhere from twenty to one-hundred percent of the family’s total wealth (See Table 4). Unfortunately, there are no surviving records of the Benders’ household, but it is quite possible that the Schultheiß’s alleged actions would have constituted a heavy, if not ruinous, blow to the couple’s finances.

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83 HStA A209, Bü. 355, Nr. 3.
84 Table 5: Distribution of wealth in Bietigheim according to the Türkensteuer lists of 1545. Steffan Benning, Himmelszeichen und Erdenwege, 39.
Table 4: Distribution of wealth in Bietigheim, 1545

<table>
<thead>
<tr>
<th>Gulden</th>
<th>Number of Households</th>
<th>Percentage of Total Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;20</td>
<td>12</td>
<td>5%</td>
</tr>
<tr>
<td>20-99</td>
<td>61</td>
<td>26%</td>
</tr>
<tr>
<td>100-400</td>
<td>117</td>
<td>49%</td>
</tr>
<tr>
<td>500-999</td>
<td>36</td>
<td>15%</td>
</tr>
<tr>
<td>&gt;1000</td>
<td>11</td>
<td>5%</td>
</tr>
<tr>
<td>Total</td>
<td>237</td>
<td></td>
</tr>
<tr>
<td>Average per household</td>
<td>358</td>
<td></td>
</tr>
</tbody>
</table>

When Conrad issued a complaint against the *Schultheiß*, the *Vogt* of Bietigheim investigated the Benders’ household and apparently dismissed the accusations against the *Schultheiß*. Instead, the *Vogt* accused the Benders of prodigality and secured permission from the Duke to formally prosecute the couple as spendthrifts and revoke their legal personhood. Conrad’s allegations suggested that the *Vogt* had been, to some degree, complicit in the *Schultheiß*’s attempt to exploit his authority over his subjects and unlawfully extract money from them. Instead of accepting Conrad’s claims, the *Vogt* allegedly suppressed the Benders’ critiques of the *Schultheiß* and punished them with an unwarranted accusation of prodigality. The Benders thus pointed out a poignant risk in the prodigality laws of Württemberg: they could conceivably be used to exploit

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85 HStA A209, Bü. 355, Nr. 3.
innocent subjects, since they vested considerable power in local officials to determine what behaviors qualified as “wasteful.”

The Benders were not the first to raise concerns about the considerable power that local officials wielded over the fates of spendthrift subjects. Forty years earlier, Württemberg’s own lawmakers explained that the state’s revised prodigality laws of 1552 sought to rectify abuses by local officials, who had reportedly encouraged prodigality among their subjects to more easily claim personal control of the mismanaged property.86 There were already acknowledged concerns that even magistrates could exploit prodigality laws to serve their own financial interests.

In addition to accusing their local officials of colluding to cover up their financially exploitative behavior, Anna Bender also leveraged a second accusation about the immoral character of Bietigheim’s primary official. She reported that the Vogt had sexually abused her and suggested that he had used his political clout to protect him from any repercussions. Undeterred, the Benders boldly expressed this accusation directly to the Duke in a written supplication. Dretsch’s commentary on the incident offers the only surviving account of Anna’s words: “Conrad’s wife claims that the Vogt hit her, knocked her down, and touched her on her honor.”87 As Lyndal Roper’s research on Augsburg criminal trials indicates, a woman’s “honor” was a euphemism that

86 Reyscher, _Sammlung der württembergischen Gesetze_, Bd., 12, 45.
literally equated honorable reputation with genitalia. Further, Dretsch’s choice of words—that the Vogt first struck and then abused her—suggests that a violent confrontation occurred between Anna and Vogt Schoenecken. It is possible that the confrontation involved the Bender’s unresolved complaint of the Schultheiß’s alleged extortion, although without additional evidence, it is impossible to know.

This was not the only time that Anna Bender accused a prominent official of unsolicited sexual advances. In a subsequent trial in 1594, Anna also accused the corrupt Schultheiß of Ingersheim, Melchior Kaufmann, of attempting to extract sexual favors from Anna and another Ingersheim woman in exchange for lenient treatment towards their husbands, who had been imprisoned in the local jail at the time. Remarkably, when the ducal Oberrat investigated Anna’s claims against Schultheiß Kaufmann, her petition helped to bring to light that the Schultheiß had committed flagrant embezzlement and neglect of office. Further, Anna Bender implicated a third prominent official in 1596, when she accused the former mayor, Xander Umpfer, of attempting to seduce her into an adulterous affair eight years earlier, which would have occurred sometime around 1588, possibly overlapping with the Benders’ prodigality trial.

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89 The Oberrat nonetheless remained convinced that most Anna Bender’s accusations were false and motivated by spite. HStA A209, Bü. 355, Nr. 7.
90 HStA A209, Bü. 355, Nr. 4a.
Conrad and Anna Bender thus leveled grave accusations against the primary officials on both the village and district level in Bietigheim, which, if true, exposed these men to public disgrace, loss of position and honor, and possible criminal charges. They also used these claims to argue that they could not expect to receive a fair trial from officials with a history of abusing their authority and mistreating their subjects.

Although the Vogt had to secure the Bietigheim court’s approval to convict subjects of a crime, he nonetheless held a position of powerful influence over the town of Bietigheim and its outlying villages. The Vogt acted as the Duke’s own representative in the districts and was responsible for initiating suits against suspected offenders. Conrad and Anna thus asked the Duke to approve a third-party investigation of the dispute, to secure an “impartial report on [the Bender’s] behavior” so that they would have no cause “to complain about a suspicious trial.”

3.3.3. Attacks on Local Authority: Brosi Buß (1584-1585)

The Benders were not the only accused spendthrifts to take umbrage with the officials who dispensed justice in Bietigheim. Over the course of the Bender trial, the

91 “Mittler weilen haben beede Conrad vnd sein hausfr. ahn E. F. G. vnderthenig suppliciert...völl d[urch] vnpartheÿshe Ihres verhalltens, thun vnnd lassens gnugsamen bericht vnd erkundigung einnemen lassen Damit nuhn Ihnen Ihren begern noch der voll eingeschenckt, vnd sie sich keines verdechtigen process beclag mögen.” HStA A209, Bü. 355, Nr. 3.
Bietigheim administration and ducal council in Stuttgart may well have reflected on another recent case that had troubled both institutions just a few years earlier from 1584 to 1585. For years, *Vogt* Bernhart Rößlin (the predecessor to *Vogt* Johann Schoenecken, who initiated the prodigality case against the Benders) had pressured the Bietigheim court to incapacitate Brosi Buß, a thirty-year-old farmer and Bietigheim resident who had impoverished his family by selling off household necessities to fund his daily drinking and gambling habits. After seven years of warnings and threats, the *Vogt* finally persuaded the town court to formally incapacitate Brosi in December 1584. The court revoked Brosi’s rights to manage his own property without a guardian’s approval and banned him from all public and private drinking.\(^2\)

However, seven weeks later, Bietigheim’s administrative officers were abuzz with fearful outrage about a shocking new development. Brosi and another convicted profligate, Hans Meßner, had taken up the habit of roaming the local highways while drunk and violently accosting other travelers. Alarmingly, Brosi was specifically targeting individuals who had participated in his court sentencing for prodigality six weeks earlier; however, in his drunken state, he also accosted authority figures in general, regardless of whether they had had a personal hand in his punishment. Brosi’s chosen victims included the *Schultheiß* of Bissingen Untermberg (a nearby village), a member of the Bietigheim court, and the son of another Bietigheim judge. Brosi’s

\(^2\) HStA A209, Bü. 353, Nr. 3.
vindictive actions would have appeared threatening to authority figures throughout Bietigheim and the surrounding area. What was worse, due to his inebriated confusion, Brosi posed a threat to anyone in, or connected to, a position of power in the community. According to one report, Brosi mistakenly began to attack one victim, saying, "You are one of the ones who helped to convict me!" Brosi’s accomplice, Hans Meßner, intervened and explained that Brosi had the wrong man. Brosi ominously replied, "Oh, I thought he was someone else," hinting that he would have truly harmed the victim if he had indeed been one of the officials who Brosi sought. The Vogt of Bietigheim anxiously informed the Duke of Württemberg that no one in Bietigheim’s town court or council was safe from Brosi’s vendetta.

The Vogt of Bietigheim persuaded the Duke to allow him to banish Brosi from the duchy of Württemberg for a period of four years as punishment for his defiant attacks on the representatives of Bietigheim’s government. Just before his official expulsion, Brosi was made to swear an oath in which he forgave his judges and magistrates for their part in his sentencing, a formulaic measure required of all subjects upon their release from prison. This ritual of forgiveness theoretically operated as a form of insurance for civil servants, to protect them from the retribution of disgruntled...

93 “O du bist auch dro gesellen [rei]ner, der mir die virthel hatt helffen geben.” HStA A209, Bü. 353, Nr. 3.
94 “O ich hab vermaint es seÿ ainannderer.” HStA A209, Bü. 353, Nr. 1.
95 “Wa es ain inn gericht oder raht vonn Büettigkhaim antreffe, wölle er die virthel gegen ime rechen, vnnd Nun seinethalb niemandt gesicher…” HStA A209, Bü. 353, Nr. 4.
convicted offenders. While this part of the oath was common in many cases, regardless of the offense, it would have seemed particularly necessary in Brosi’s case, in light of his deliberate attacks upon his own judges.

Within six months, Brosi had already violated the terms of his banishment and had yet again filled the Bietigheim magistrates with the fear of retribution. When the case record resumes in August of 1585, the Vogt, mayors, and twelve court judges of Bietigheim collectively authored an incensed petition to the Duke, asking for permission to criminally prosecute Brosi yet again for his insubordinate verbal attacks on local authority. Brosi had ignored his exile and returned to a tavern in Gröningen, approximately six miles outside of Bietigheim, where he began to insult not only the authorities of Bietigheim for their unjust treatment of him, but also the residents of the district for blindly refusing to acknowledge the injustice that Brosi had suffered during his trial. The Bietigheim officials reported, “This oath-forgetting, contract-breaking knave has affronted our honor [and] publicly belittled and defamed [us], as if we had done him violence and injustice. But he is the denounced oath-breaker and madman.”

96 This likely refers to the town and district of Gröningen currently designated as Markgröningen, a town in the district of Ludwigsburg.
97 “Nachdem dann wir...von disem aidt vergessnen sigelbrüchigen Lecker, an vnsern gott lob wolhergebrachten ehrn, obgeshrübner massen [angetast], öffentlich verclainert vnd verruuoft worden, als ob wir ime gewaltt vnd vnrecht gethon hetten, Er aber ain verrüeffter kainni[g]er aÿdtvergessner verruochter mensch ist.” HStA A209, Bü. 353, Nr. 1.
They concluded with an urgent plea for permission to criminally prosecute Brosi to restore their injured honor.98

Brosi’s defamations posed a threat to the authority of Bietigheim’s officials. He had not only questioned their discretion and the fairness of their rulings. Far beyond that, Brosi had also reportedly attempted to incite the subjects of Württemberg to join his rebellious vendetta against their magistrates. “The [people] of Bietigheim need glasses,” Brosi reportedly ranted at his fellow patrons in the Gröningen tavern. “They peek through their fingers at the violence and injustice done to [me].” Brosi’s attempts to rally fellow residents to his side would have been viewed against the longer political tumult of the sixteenth century, in which Bietigheim’s residents had already taken part in bread riots against the town authorities in 1574, as well as the famous peasant rebellions that swept through the German southwest in the first quarter of the century.99 At the very least, Brosi heaped slander upon the steps of city hall; at most, however, he called for outright revolt.100

This episode also reveals the frustration of the Bietigheim officials, as they attempted yet again to implement an effective deterrent against Brosi’s willful defiance

98 “Er Brosin für sich selbsten mit disen wortten an ine gerahen, die von Bietigkheim bedörffen, kainer prillen, sie kendten durch die finger sehen, die ime gewaltt vntrecht gethon hetten…” HStA A209, Bü. 353, Nr. 1.
99 Bietigheim 789-1989, 298-300.
100 The Landesordnung of 1515 banned subjects from committing “den unnützen erdichten bößen reden” or trying to exploit “the poor man” and turn him against ruling authorities. Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, § 31.
of their authority. In a letter to the Duke, the Vogt wearily wrote, “I have punished him with imprisonment, or in other ways, every time I heard [of his offenses] for the past seven years, in accordance with the Landesordnung and Landrecht. I have tried everything against him, and even at this very hour, I have him imprisoned. But all of this [achieves] nothing, except [...] to make him wilder. I humbly ask you in great need for your command. What should I do with such a useless person?”  

The Vogt and his colleagues essentially admitted defeat: they had lost all control of Brosi’s behavior and thus asked the ducal council for approval, yet again, to impose criminal sanctions against him.

3.3.4. The Benders Request a Retrial

Frustrations about Brosi Buß may well have remained fresh in the memories of the ducal council and Bietigheim’s officials just a few years later, as they grappled with the Benders’ controversial allegations against the Schultheiß of Ingersheim and the new Vogt of Bietigheim. Yet, where Brosi had failed to persuade others of his case, Conrad and Anna Bender had at least succeeded in securing the rare advantage of a retrial, staffed by outside officials from neighboring districts. There were also significant similarities between their cases. Like Brosi, Conrad and Anna continued to be painful thorns in the sides of Bietigheim’s officials for many years to come. And, like Brosi, the

101 See note 13.
Benders threatened the personal honor and authority of the very magistrates and officials who had the power to rule on their case. It is perhaps unsurprising that the Benders’ appeal proceeded from a relatively successful beginning, starting with their granted petition for a retrial, to a precarious position that progressively exposed the Benders to criminal prosecution, imprisonment, and the threat of banishment from the duchy.

In December of 1590, after at least five years of court hearings and warnings, the Bender case seemingly reached a conclusion. Duke Ludwig accepted judge Dretsch’s official recommendation and commanded Vogt Schoenecken of Bietigheim to convict the Benders as spendthrifts.\(^{102}\) However, Schoenecken’s sense of satisfaction must have been disappointingly short lived. After four months, Schoenecken issued another complaint to the Bietigheim court: the Benders had somehow excused themselves from the court hearings for months, in order to delay the official incapacitation verdict.\(^{103}\) Instead of securing greater control over the Benders and their household, the reports from Bietigheim over the next few years reveal that the Benders had, like Brosi Buß, slipped progressively beyond the abilities of local magistrates to discipline their behavior.

When the documentary trail picks up again four years later in 1594, more disturbing revelations emerged. Like Brosi Buß, Anna Bender initiated a comprehensive

\(^{102}\) HStA A209, Bü. 355, Nr. 2.
\(^{103}\) StABi Bh B445, 15. March 1591.
attack on certain Bietigheim authorities. Instead of using violence and public speech, however, Anna strategically couched her denunciations in a number of searing petitions to Duke Ludwig, in which she accused the Schultheiß of Ingersheim yet again of rampant corruption, embezzlement, and abuse of power.\footnote{HStA A209, Bü. 355, Nr. 7.} Remarkably, the Benders again succeeded in persuading the Duke to send a third-party investigative committee to Ingersheim in January 1595 in order to investigate the case between the Schultheiß and Anna Bender, despite advice from several of the Duke’s counselors to refuse the Benders’ request.\footnote{HStA A209, Bü. 355, Nr. 5, 6.} Even more remarkably, the Ingersheim Inquisition, as the trial records called it, found that the Schultheiß was indeed guilty of several of these charges, including embezzlement of hundreds of gulden from the church coffers and theft of large quantities of wine reserved for the Duke’s own enjoyment.

Although the inquisition of 1595 validated some of Anna’s claims, the investigators resolutely recommended the use of severe punishment against the Benders for their overall contempt towards the Bietigheim authorities. The Ingersheim Inquisition report denounced Anna as “a hateful, jealous, slandering, shameful, unrepentant, godless, profane woman [...] and such a wench with whom no one would
want to associate.”

According to the Inquisition’s findings, Anna had become a community menace, prone to slander and mockery towards neighbors and officials alike. She reportedly accused the disgraced Schultheiß of attempting to drive her and Conrad from the region, and routinely subjected the Vogt to shame and slander. The picture of Anna that they painted was of a woman who had lost all control and decency. And to make things worse, she was again petitioning the Duke of Württemberg for a retrial by a third-party judge because she considered the sitting officials in Bietigheim to be “biased” (partheïsh) against her.\(^\text{107}\)

If the Benders’ defiance had started as a lawful appeal to a higher court, it now appeared to officials as a dangerously insubordinate habit of questioning the discretionary authority of Bietigheim’s magistrates. In frustration, the duke’s own council penned a letter to Duke Ludwig in July of 1595, urging him to refuse Anna Bender’s requests for another trial. They reported that there would be “no end” to Anna’s slanderous vendetta against the Bietigheim government. If the Duke allowed her another opportunity to escape judicial punishment, “this woman will not abstain from her unrepentant behavior, and the officials will never be able to give commands to her

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\(^{106}\) “Daß sie ein häderish, neýdish, shmachbegrig, shandtloß rohloß, Gottloß, vnnd vbelfluchendt weýb ist, vnnd ein solche dirn, ist mitt deren niemandt gern zu shaffen hatt.” HStA A209, Bü. 355, Nr. 7.

\(^{107}\) HStA A209, Bü. 355, Nr. 6.
anymore.”\textsuperscript{108} The newly appointed \textit{Schultheiß} of her village, they observed, had been in office for less than a year and “already cannot do anything with her.”\textsuperscript{109} As in Brosi Buß’s case, the Bietigheim district authorities and ducal council were confounded by this attack on their authority and frustrated with the impotence of local officials to resolve the matter.

Anna Bender’s repeated attempts to undermine village and district officials raised the stakes of their conflict to an unsustainable level. After the events of 1595, it is difficult to imagine a scenario in which Anna could have remained in her community without a complete change in village and district leadership—a step that the Duke proved unwilling to take, to the great relief of his counselors, who had long advocated for severe disciplinary measures against Anna. The final evidence of the Benders’ fate dates from June 1597. With the approval of the ducal council, the Bietigheim \textit{Stadtgericht} sentenced Anna to public beating and exile from the duchy, on pain of death. Conrad, who had apparently played a minor role in his wife’s public complaints, received a comparatively milder sentence. The court demanded that Conrad retract his slanderous critiques of local officials, promise not to seek revenge against local officials, and refrain from drinking in public. Conrad received another chance to demonstrate obedience and

\begin{flushright}
\textsuperscript{108} “Dises weybs onrüwiger händell nicht wol wirdt abkomen, vnnd der amptleütt ihr nimmer mehr wolgefülich amptlich beschaidt geben werden künden.” HStA A209, Bü. 355, Nr. 6.
\textsuperscript{109} “Wie dann der jetz ir neüw ermölte Schultheiss, schon Alberaitt mitt ihr nicht machen können kann.” HStA A209, Bü. 355, Nr. 6.
\end{flushright}
submission to his local officials. Anna, like Brosi and others who threatened the security and integrity of public government, was ejected from the community entirely.

### 3.4. Conclusion

This chapter examined two primary questions: How did courts establish proof of prodigality through practical application of Verschwendung laws? And what did local officials do with incorrigible spendthrifts who continued to commit infractions? This chapter has argued that Württemberg’s Verschwendung policies from 1552 and 1555 vested considerable power in its local officials in the districts by allowing them to determine standards of evidence for Verschwendung at their own discretion. Even in cases that did not involve corporal punishments or banishment, there was nonetheless much at stake in Verschwendung trials. A ruling of Entmündigung would revoke key legal rights to access property and networks of commercial exchange. Albertus Dretsch noted in his legal brief that judges had a responsibility to only place serious restrictions on an individual’s legal rights when it was necessary and clearly justified.

The Bender case provides one example of the risks that Württemberg’s ruling council took by granting so much discretion to its local courts. There was the risk that officials would abuse their power, as the Benders alleged. For the Bietigheim officers, it created the risk that the accuracy of their verdict became entangled with the integrity of their office. As Dretsch observed, if the Benders were ultimately exonerated of the
charges of prodigality, it logically followed that the Vogt overstepped the bounds of his office. Further, as the final section of this chapter has argued, the Benders—along with Brosi Buß—had mounted progressively more serious challenges to their local officials’ authority and integrity. Between 1584 and 1595, the question of the accused spendthrifts’ guilt became hopelessly entangled with the question of their accusers’ trustworthiness.

The problem of proving prodigality thus fed into the second problem examined in this chapter, the question of how to deal with incorrigible spendthrifts. This chapter has argued that Bietigheim had developed a flexible, elastic disciplinary strategy for handling cases of wasteful subjects, in response to centralized changes in Verschwendung policy in the mid-sixteenth century. The sheriff and local court drew on a diversified toolkit of penalties, including imprisonment, fines, drinking and gambling bans, warnings, and legal incapacitation to adapt to the circumstances of each case. The very meaning of the legal category of Verschwendung also remained flexible enough to adapt to a range of household problems, such as chronic drinking, outstanding debts, neglect of family and properties, idleness, conspicuous consumption, and reckless spending. Accounting for recidivism and constant oversight became part of the normal mode of operation of the Bietigheim court, as it kept tabs on a majority proportion of repeat offenders between the 1540s and 1580s. Dretsch’s legal opinion indicates that recidivism—framed as defiance and disobedience in this case—became a defining
characteristic for how Bietigheim’s court and Dretsch himself established proof of prodigality.

Despite the flexibility of Bietigheim’s judicial strategy towards spendthrifts, the court appears to have reached the limits of adaptation by the end of the sixteenth century. In four criminal investigations between 1571 and 1595, Bietigheim’s local officials turned repeatedly to their superiors in central Stuttgart for advice, for permission to proceed to more severe penalties, and for extra support to prop up the authority of Bietigheim’s local government in response to repeated challenges to its authority.

The narrative that I have presented of Verschwendung trials offers three conclusions about the practical enforcement of spendthrift law within the specific local context of Bietigheim in the second half of the sixteenth century. First, Bietigheim’s source record brings to light a contentious aspect of Verschwendung law that contemporary sources rarely documented. The Bender dossier and Dretsch’s legal brief are particularly rare documents for this period and region. Even though legislation from Württemberg, and indeed other southwestern states and cities, neglected to clarify

\[110\] Standards of evidence are also absent in the Verschwendung policies contained in the following legislation from principalities within Württemberg’s borders and on its immediate borders: Esslingen Verordnung of 1438, Stadtarchiv Esslingen (SA ES) Bestand RSU Nr. 80, 24. Jan. 1438; Der MargGrafschaft Baden Statuten vnd Ordenungen in Testamenten/ Erbfällen/ vnd Vormünschaften (1511); “Herrschaft Wiesensteig Vogtgerichtsordnung und Statuten 1587,” in Württembergische Ländliche Rechtsquellen,
standards of evidence for Verschwendung, this dissertation found only a single case in which judicial authorities documented the practical definition of Verschwendung in law enforcement.

Second, the case study of Bietigheim also reveals the great significance of local level interpersonal conflicts, longstanding rivalries, and public perceptions of biased justice and political corruption. More than any other factor, the corrosive relationship between the Benders and their local officials ensured their conviction, and the cases of Bietigheim’s other criminal spendthrifts proceeded similarly. It should be noted, however, that this case study cannot show whether authority-subject relations proved as contentious in Verschwendung trials beyond Bietigheim or the time period under study. It is significant, for instance, that family and creditors were virtually absent from the Benders’ trial records, considering that Württemberg’s own Landrecht explicitly invited both parties to use Verschwendung laws to protect their property claims. Chapters 4 and 5 of this dissertation account for these silences in the Bietigheim trials by examining the active roles of spouses, children, in-laws, other heirs, and creditors in the rich records of the Imperial Chamber Court.

Finally, while the conclusions of this chapter remain bound by narrow geographic and chronological parameters, this chapter has also sought to highlight Bietigheim’s tightening connections within a broader network of jurisdictions, legal professionals, and state administrators. Justice in Bietigheim must be viewed through this interconnected administrative and judicial framework. The period between 1571 and 1595, when Bietigheim relied on guidance and commands from central Stuttgart to resolve local conflicts, coincided with a broader push from the ducal council to secure greater oversight and control over justice in the districts. District courts and sheriffs lacked formal training in the law, a deficiency that the ducal council attempted to counteract by tightening the connections between local courts, professional legal advisers in Tübingen, and the Oberrat. In 1551, the Württemberg central administration recommended that each district court seek legal references from the legal faculty at Tübingen University.¹¹¹ By 1621, it became mandatory for local courts to not only seek legal advice for difficult cases, but also to secure preapproval from the ducal council before undertaking a criminal investigation.¹¹² Historians of Württemberg criminal law have interpreted these developments as the ducal council demonstrating distrust towards lay judges in the districts. While this assumption also rings true in the Bender

case, as the Duke repeatedly indulged his subjects’ request to investigate his deputies in Bietigheim, there is also another possible interpretation.

Bietigheim’s sheriff and village Schultheiß may have felt uncomfortable while under scrutiny between 1589 and 1595, but the Bietigheim local government also badly needed the support of the central administration during this period. The Benders and Brosi Buß revealed vulnerabilities in the authority of local administrators. Ultimately, the central administration decided to support its local officers in Bietigheim, except for the Schultheiß investigated for embezzlement charges. The ducal council and its chief officer, the Landhofmeister, had been decidedly in support of the Bietigheim officials from the beginning, with apparently only the Duke deciding to indulge additional requests for retrials. With the integrity of Bietigheim’s officers at stake, it became more important for the Oberrat to defend the authority of its local administrators rather than question local standards of evidence for Verschwendung.

\[\text{\footnotesize \cite{113}}\] Unfortunately, the source record offers no insights into the Duke’s sustained interest in the Benders’ case.
4. Categories of Legal Incompetency: Intersections of Age, Gender, and Disability

4.1. Introduction

This chapter examines the connections between prodigality (*Verschwendung*) and three other categories of legal incompetency: minority, disability, and femininity. As Chapter 2 has shown, in the 1550s, Württemberg published a new policy towards *Verschwender* that allowed lower courts in the Württemberg districts to declare reckless householders legally incompetent and appoint guardians to manage their financial affairs (Section 2.2.2.2). In doing so, Württemberg added *Verschwender* to a broad group category of individuals with restricted legal and property rights. This group included minors, people with mental and some physical impairments, spendthrifts, and women.

In legislation from several different polities in the German southwest and southeast, lawmakers assigned a diverse set of social groups into one collective legal category based on the premise that all these groups lacked sufficient competency to independently manage their own financial and legal affairs. Historians have developed scholarly literatures for most of these individual groups, but rarely consider all four of these categories of the legally impaired together as part of a system of laws. This chapter positions *Verschwendung* policies within the broader framework of legal competency laws to highlight how property and guardianship laws constructed a hierarchy of legal status based not only on age, gender, and (dis)ability norms, but also socially constructed ideas of what constituted proper household management. Through a
process of categorizing individuals as competent and incompetent, these laws defined
the prerequisites for legal personhood and regulated access to spaces of legal, economic,
and social exchange.

Historical studies of guardianship in the early modern period generally focus on
the individual guardianships of women, minors, or people with mental illness, but
rarely reflect on the legal restrictions that united these groups. Most scholarly activity on
this topic focuses on the revival of gender guardianship in northwestern and central
Europe.¹ Other recent works examine guardianship of minors and orphans,² royal
custodianship,³ or guardianship of people with mental illnesses or intellectual

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disabilities. Only two contemporary works on the early modern period deliberately examine the connections between two of these categories of legal incompetency, mental illness and prodigality, in guardianship and property law. Elizabeth Mellyn’s study of late medieval and early modern Tuscany, Mad Tuscans and Their Families, situates court trials for prodigality (prodighi) within the context of state and family collaborations to provide guardians for people with mental illness (furiosi, demens, mentecapti). For the German lands, Ludwig Griebl’s dissertation conducted a comparative study of mental illness and prodigality law in early modern Württemberg and Mainz, but his research focuses almost exclusively on prescriptive legislation. His work thus cannot address how litigants, judges, and lawyers responded to developing mid-sixteenth-century legal systems that redefined the legal status of not only Verschwender, but also people with disabilities, minors, and women.

This chapter argues that the collective category of incompetency and its internal subcategories were essential to how litigants at the Imperial Chamber Court attempted to navigate the law. In the hopes of securing a favorable verdict, litigants scrutinized

5 Mellyn, Elizabeth W. Mad Tuscans and Their Families: A History of Mental Disorder in Early Modern Italy (Philadelphia: University of Pennsylvania Press, 2014).
6 Ludwig Griebl, Die Behandlung von Verschwendern Und Geisteskranken Im Frühneuzeitlichen Territorialstaat (1495-1806): Eine Darstellung Der Privatrechtlichen Und Policeylichen Massnahmen Im Kurfürstentum Mainz Und Herzogtum Württemberg (Hamburg: Verlag Dr. Kovač, 2010).
and redefined these legal categories, highlighting where they overlapped and contradicted each other. In practice, legal competency proved challenging to measure and regulate. The cases under review in this chapter also highlight clear differences in the interests of families, neighbors, and magistrates, leading to bitter disputes over the extent of an accused person’s competency. In addition, some litigants redefined incompetency, developing their own functional standards based on a system of gossip, social cues, and intense scrutiny, rather than deferring to the final word of court judges. Finally, legal incompetence was not always objectionable to accused individuals, who occasionally sought sanctuary in the protections afforded by a dependent, restricted legal status. Widows, minors, and people with disabilities intentionally embraced their own diminished legal status as a legal strategy to excuse past blunders, extricate themselves from financial burdens, or strengthen kinship ties of obligation and protection. In doing so, litigants exposed themselves to clear risks: the label of “spendthrift” condemned many other individuals to years of legal dependency, public shame, bitter familial conflicts, and even criminal punishments, like imprisonment or banishment.

The analysis that follows draws from the records of the Imperial Chamber Court (Reichskammergericht, hereafter RKG) to investigate how litigants used the imperial

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appeals system to redefine their legal status and protect their property interests. Five cases have been selected not for their representativeness, but because they illustrate the overlaps between femininity, minority, disability, and prodigality. This chapter also highlights the common legislative framework shared by Württemberg and some of its southern neighbors. The case studies draw from four imperial cities and one village in the southwestern German lands between 1528 and 1611 (see Section 4.1.2. Sources & Methods).

4.1.1. Guardianship and Incompetency in Regional Laws

Beginning in the late Middle Ages, cities and territories in the German southwest began to stitch together sets of ordinances that aimed to protect vulnerable individuals unable to manage their own financial and legal affairs competently. Ordinances that initially applied only to minors came to encompass ever more categories of individuals eligible for protection under guardianship law. Lawmakers reassigned legal responsibility for these individuals and their property to a third party by appointing guardians for them. This trend began as early as the late fifteenth and early sixteenth centuries in a cluster of southwestern towns and territories that employed remarkably similar language to classify a collective category of groups who required legal guardianship.
The imperial city of Nuremberg—whose laws frequently served as templates for other territories in the Empire—published a particularly early guardianship policy in its Reformation (revised legal code) of 1479, which prescribed guardianship “not only for children, but also for the mentally ill (synnlosen)...also squanderers of their property (verschwentern), called Prodigos in Latin, lunatics (Mönisch), called mente captos in Latin, and also the deaf and mute (Tawben oder ungehörenden und den stummen), who lack sufficient reason (vernunffft) to manage their affairs, as well as those who are afflicted with chronic illness or injuries (ewiger kranckheit oder leger).” As the appearance of Latin terms indicate, Nuremberg’s lawmakers drew on Roman guardianship laws that regulated individuals’ rights to own and manage property.

Roman law defined competency as an individual’s ability to perform legally recognized acts, such as administering property, writing a valid will, or incurring liabilities for debts or contracts. By the time it was transmitted through Justinian’s Corpus Juris Civilis (529-534 CE), Roman law outlined a hierarchy of four levels of competency. The lowest rung, including children under the age of seven (infans) and

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8 “Nit allein den kindern. sonnd(er) auch den synnlosen...auch den verschwentern Irer habe die man zu latein prodigos nennet. auch den die da Mönisch sein. die man zu latein nennet. me(n)te captos. Vnd darzu den Tawben oder vngehörenden. vnd den stummen. die Ir sache zehandeln nit völlige vernunfftt hetten. vnd auch den. die da beladen sein mit ewiger kranckheit oder leger.” Reformacion der Statut vnd gesetze (Nürnberg, 1484).

people of unsound mind (*furiosus, mente captus, demens*), were prohibited from committing any legally binding acts.\(^{10}\) Those in the second level included children past puberty (age fourteen for boys and twelve for girls, called *impubes*) and spendthrifts (*prodigus*). Both groups were thought to have developed intellectual capacity, but had impaired judgment, which left them vulnerable to exploitation. As a result, the Code permitted *impubes* and spendthrifts to legally take actions that benefited them, but they could not be held legally liable for those acts, nor were they permitted to undertake judicial acts that materially disadvantaged their estate.\(^{11}\) Gradually, a third category of minority had emerged to extend similar protections to young adults between the age of puberty and twenty-five, beginning on a limited scale and becoming a universal rule under Emperor Marcus Aurelius (second century CE). Finally, until the late Roman Republic, women also remained under a guardian (*tutela mulierum*), either her husband or a male agnatic relative, although the precise nature of her incompetency and guardianship remained under debate throughout the period.\(^{12}\)

Corresponding to these levels of incompetency were two main types of guardianships that sought to protect these groups from bearing legal liability for


\(^{11}\) Sohm, *The Institutes*, 216.

reckless legal acts. A tutor, *tutela*, cared for both the person and the property of pre-pubescent *infans* and *impubes* and women. A second category of guardianship, *curatela*, provided a custodian primarily to manage the property of *prodigi*, *furiosi*, and young adults under the age of twenty-five. All other individuals not mentioned above occupied the final, top category of the legal hierarchy, and thus retained unlimited capacity to make contracts independently: namely, adult men over the age of twenty-five with independent households and who enjoyed the appearance of good mental health and responsible financial practices.

Nuremberg’s *Reformation* of 1479 clearly drew on Roman guardianship principles to construct a group category of incompetent individuals based on minority, femininity, disability, and prodigality. Latin terms like *prodigus* and *mente captos* (seized by the mind, insane) appeared less frequently in other legal codes from the southwestern region, but this basic categorization schema emerged frequently in vernacular German over the sixteenth century. This is perhaps unsurprising, given that Nuremberg’s *Reformation* of 1479 served as a model for other cities and states’ legal reforms, including

Tübingen’s Stadtrecht of 1493, the Worms Reformation of 1498, Frankfurt’s Reformation of 1509, and Württemberg’s Landrecht of 1555.  

In the state of Baden, which bordered Württemberg to the northwest, the Margrave released a guardianship ordinance in 1511 which prescribed guardianship for “the senseless (Unsinnige), mentally ill (Hauptkrank), lunatics (Mönische), fools (Thoren), the deaf (Taube), mutes (Stummen), also extravagant useless spendthrifts (Verthoner), those who gamble away their property, and also those with permanent illnesses (ewiger Krankheit oder läger) or who are so burdened that they cannot manage their own affairs.”  

Moving to the southwest of Württemberg, Freiburg’s city council commanded in 1520 that a near identical group of individuals required guardians: children under the age of twenty-five, “lame, senseless people who have lost their reason” (geprechhaftig, sinnloß lüt die...irer vernunfft beroubt sind), spendthrifts (Verthuger und güder), the deaf

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17 “Unsinnige, Hauptkrank, Mönische, Thoren, Taube, Stummen, oder auch üppige unnütze Verthoner, Herspiller irer haab, un[d] auch die mit ewiger kranckheydt oder läger, dermassen beladen seind, das sie ire sachens zuhandlen nicht geschickt seind.” Der MargGraffschafft Baden Statuten und Ordenungen in Testamenten/ Erbfällen/ vnd Vormünschafften (1511), XXIX.

18 Except for young adults who married, entered a holy order, or if a young man were particularly mature. Ulrich Zasius, Nüwe Stattrechten und Statuten der loblichen Statt Fryburg im Pryszgow (Basel: Adam Petr, 1520), III, 1, Tit. 2-3.
(Stummen und ungehörend), the elderly and incapable (alt onvermöglich lüt), and unmarried women (Wyhßbild die nit man haben).\textsuperscript{19}

In 1552, Württemberg, the largest of the southwestern territories, laid down the central features of its own guardianship laws. While revising the Landesordnung, Württemberg included a new Pupillenordnung (guardianship ordinance) that introduced comprehensive rules for establishing guardianships for minors under the age of twenty-five. The Pupillenordnung also suggested that the policies regarding minors should be applied to many other types of individuals with impairments: “other people who need guardians, due not to youth, but for other reasons and impairments, namely people with physical impairments (Gebrächenhaftigen) [and] mental illness (Unsinnigen oder Sinnlosen), spendthrifts (Verschwender oder Geyder), and also mutes and the deaf (Stummen und Ungehörenden), as well as the elderly [and] incapable (Alten, Unvermüglichen).”\textsuperscript{20}

Soon thereafter, Württemberg also adopted the Roman practice of appointing guardianships for women (Geschlechtsvormundschaft or tutela mulierum). In 1567, the Pupillenordnung was expanded to include optional guardianship for widows “only upon

\textsuperscript{19} Zasius, Nüwe Stattrechten und Statuten, III, 1, Tit. 4-5.
their request.” The revised *Landrecht* of 1610 omitted references to optional guardianships for widows, and instead directed local officials in the Württemberg districts to appoint guardians for single women and widows to supervise their property and represent them in court. Wives, too, generally required their husbands to serve as their legal representative in order to appear in court or to manage landed property or moveable goods.

The language of the ordinances of Nuremberg, Baden, Freiburg, and Württemberg appeared in other southern principalities in the late sixteenth and early seventeenth centuries. To the southwest, the city of Basel’s guardianship ordinance of 1590 extended its same policies for children to apply to people with physical impairments (*gebrechhaftiger*), mental illness (*sinloser*), spendthrifts (*verschwender*), the

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23 Riecke, *Das Württembergische Landrecht*, 64, 202. If a wife owned some property independently, so that her husband could not administer it without her approval, then the Landrecht of 1567 permitted the woman to manage that property “but only with modesty” (*mit der bescheidenheit*). Reyscher, *Sammlung der württembergischen Gesetzte*, Vol. 4, 231.
chronically ill, the elderly, and unmarried women.\textsuperscript{24} To the east, in the Catholic territorial stronghold of Bavaria, the ducal central government expanded its guardianship laws in 1616 to “give guardians not only to minor children...but also to the senseless (\textit{Sinnlosen}) and fools (\textit{Thoren}), those who have been judicially declared spendthrifts (\textit{Verschwendern})...also those who are deaf (\textit{Tauben oder ungehörenden}) and mute (\textit{Stummen}), who do not have sufficient reason (\textit{Vernunft}) to manage their affairs.”\textsuperscript{25}

To sum up, the six southern principalities reviewed above developed very similar categorization schema that assigned nine diverse types of people into a collective legal category of individuals who were defined as legally incompetent (albeit to varying degrees). The most commonly included subcategories include children, people with mental illness or intellectual disabilities (\textit{Unsinnige, Mönisch, Hauptkrank, Thoren}), the deaf (\textit{Tauben}), mutes (\textit{Stummen}), people with other forms of physical disabilities (\textit{brechhaftig}), those with chronic illnesses, the elderly, unmarried women, and spendthrifts (\textit{Verschwender, Verthoner}). These terms align approximately with modern analytical categories of age, gender, and disability—although prodigality has no clear


\textsuperscript{25} “Es sollen nit allain den Unmündigen, und unvogtbaren Kindern, Vormunder und versorger geben werden, sonder auch den Sinnlosen und Thoren, auch den Gerichtlich erklärten Verschwendern ihrer Haabe, und denen, die da monig seind, darzu den Tauben, oder ungehörenden, und den Stummen, die nit völlig Vernunft haben, ihr Sach zu handlen.” \textit{Landrecht, Policey-, Gerichts-, Malefitz- und andere Ordnungen der Fürstenthumben Obern- und Nidern Bayrn} (Henricus, 1616), Titul 5, Articul 11.
parallel in modern scholarly categories. By necessity, this chapter has narrowed down this broad concept of incompetency to focus primarily on the legal restrictions that were based on femininity, minority, mental disability, and prodigality.

4.1.2. Sources and Methods

This chapter focuses on sources that reveal the experiences of widows, the youth, and people with disabilities—all groups that rarely appeared in the data that informed the previous chapters of this dissertation. The Bietigheim district court (Stadtgericht) and the Württemberg ducal council (Oberrat) primarily used spendthrift policies to target married men with their own households and dependent children. This chapter instead draws on the rich collections of the Imperial Chamber Court (RKG), which reveal a much broader social group of litigants and accused spendthrifts than typically appeared in the Bietigheim sample examined in Chapter 3. This section provides an overview of the RKG and an introduction to the five case studies that form the basis of this chapter.

4.1.2.1. The Reichskammergericht (RKG), its Records, and Patterns

This dissertation examined a sample of forty-six appeals cases from the surviving records of the Imperial Chamber Court from southwestern Germany between 1500 and 1800. Established in 1495 and based in Speyer from 1527 to 1688, the RKG served as the highest jurisdiction in the Holy Roman Empire and ruled on appeals cases from the
lower courts throughout its subject lands.\textsuperscript{26} The court, staffed by judges appointed by the emperor, met every two to four weeks to examine a given case. Legal representatives for each party typically submitted a summary of their argument, corroborating textual evidence (such as contracts, testaments, and transcripts of witness testimony), rebuttals, and procedural notes. The range of sources that survived for each RKG conflict varied widely from case to case.

The unusually extensive and detailed collections from the RKG attracted renewed scholarly interest since the 1970s.\textsuperscript{27} Their efforts have yielded not only important studies about the litigants, staff, and procedures of the RKG, but also comprehensive research tools, such as the series of inventories funded by the Deutsche Forschungsgemeinschaft to catalogue the RKG cases in each state archive since the early 1980s.\textsuperscript{28} For the southwestern region, the Baden-Württemberg state archive published a seven-volume catalogue. The catalogue indexes 1,200 legal deeds (\textit{Urkunden}) and 6,300 trial dossiers by name, region, and key terms related to the legal dispute in question.\textsuperscript{29}

\begin{flushright}
\begin{footnotesize}
\begin{enumerate}
\item See overview by Bernhard Diestelkamp, ed., \textit{Das Reichskammergericht in der Deutschen Geschichte. Stand der Forschung, Forschungsperspektiven, Quellen und Forschungen zur Höchsten Gerichtsbarkeit im Reich}, Vol. 21 (Cologne: Böhlau, 1990). Fuchs, “The Supreme Court of the Holy Roman Empire.”
\item Fuchs, “The Supreme Court of the Holy Roman Empire,” 20.
\end{enumerate}
\end{footnotesize}
\end{flushright}
Only through the extensive efforts of the catalogue editors was it possible to identify the fifty-three cases involving Verschwendung that the RKG investigated between 1500 and 1800. In addition to this sample, I selected three cases that involved functionally similar legal themes, although the cataloguers had not labeled them as Verschwendung cases. Finally, I excluded ten trials in which either Verschwendung proved to be a minor factor or the trials extended beyond the end of the eighteenth century. The resulting sample examined in this dissertation includes a total of forty-six cases of Verschwendung investigated by the RKG between 1500 and 1800.

Chronological distribution of Verschwendung cases appealed to the Reichskammergericht, 1500-1800

Figure 4: Prodigality cases appealed to the Reichskammergericht, 1500-1800

Compared to the much more localized sample of Bietigheim discussed in Chapter 3, the RKG cases provide the opportunity to examine a longer period of court activity and a significantly broader geographical distribution of cases from a variety of
types of states in the southwestern region of the Holy Roman Empire. Nearly three-quarters of those cases occurred between 1550 and 1630, and nearly fifty percent occurred between 1580 and 1620. In contrast, the period between 1620 and 1800 witnessed only eight cases involving Verschwendung that were appealed to, and investigated by, the RKG. The RKG Verschwendung cases thus show a strong bias towards the fifty-year period between the end of the Schmalkaldic War and the beginning of the Thirty Years War. It is not clear whether this chronological concentration resulted primarily from the administrative difficulties of maintaining the RKG during wartime, or from a combination of other factors. The chronological pattern suggests that Verschwendung laws provoked considerable controversy during a period when several southwestern territories first introduced them, possibly leading the RKG to claim the prerogative to rule decisively on these matters with such regularity during this period.30

Regionally, the RKG sample pulls significantly from free cities of the Holy Roman Empire. Imperial cities, or Reichsstädte, received special legal privileges from the Holy Roman Emperor that allowed them a degree of autonomous self-rule, representation in the Imperial Diet, and made them legally accountable only to the emperor—as opposed to a territorial lord. Nearly half of the RKG Verschwendung cases originated in eleven imperial cities, with Ulm and Esslingen accounting for the most significant number of cases, at thirteen and nine percent, respectively. The territorial state of Württemberg also produced a significant number of appeals, at eleven percent. Finally, a quarter of cases originated in small lordships. In thirteen percent of cases, I was unable to confirm the location of the dispute’s origin. Overall, the RKG sample offers insight into litigation practices in at least twenty principalities of the southwestern German lands, with the heaviest focus on imperial cities.

The RKG also sheds light on a broader social group of litigants and accused spendthrifts than typically appeared in a local case study. Chapter 3 has argued that the local court of Bietigheim reinforced the stereotype of the male spendthrift in Württemberg’s legislation, which portrayed prodigality as a male vice, perpetrated by married men with dependent children. Ninety-three percent of the Bietigheim

Collectio Quorundam Statutorum Provinciarum Et Urbium Germaniæ, ed., Georg Melchior von Ludolf (Wetzflariae: Nicolas Ludovicus Winckler 1734 [originally 1618]), Tit. XI.
spendthrifts were men, at least fifty-two percent were married, and at least forty-one percent had dependent children. In contrast, RKG appeals cases indicate that a more diverse group of social actors brought suits or faced charges of prodigality. While men still made up most accused Verschwender, twenty percent of cases concerned female spendthrifts and a further seventeen percent of cases included accusations of prodigality against both men and women. The RKG records also reveal women playing active roles as accusers and witnesses in Verschwendung cases.

Table 5: Gender of accused spendthrifts in RKG trials, 1500-1800

<table>
<thead>
<tr>
<th>Gender of Accused</th>
<th>Only Men</th>
<th>Only Women</th>
<th>Both Men and Women</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Cases</td>
<td>28</td>
<td>9</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Percentage of Total</td>
<td>61%</td>
<td>20%</td>
<td>17%</td>
<td>2%</td>
</tr>
</tbody>
</table>

Additional social factors, like marital status, profession, and kinship, are more difficult to quantify based on the surviving documentation, but nonetheless suggest that the RKG illuminates a broader cross-section of the societies from which each case originated. For instance, widows and widowers were litigants in at least thirty-five percent of the Verschwendung cases, although the long duration of RKG cases suggests that these court disputes likely outlived spouses and litigants on several occasions. In

31 See Chapter 3, note 48 and Table 3.
terms of profession, litigants hailed from bourgeois trades, the merchant class, and the landed nobility. Where profession does explicitly appear in the record, we know that litigants included craftspeople like butchers, dyers, and producers and vendors of alcohol. Finally, the RKG sample indicates that the most frequent disputes pitted a combination of spouses, relatives, in-laws, heirs, creditors, and local officials against each other. Disputes between one spouse and a party of in-laws, heirs, and creditors were especially common.

4.1.2.2. Identifying Common Tropes

The RKG sample provides valuable in-depth insight into the four categories of legal incompetency (i.e., regarding women, minors, people with disabilities, and spendthrifts) that appear in the legal codes of Württemberg and some of its southwestern neighbors. Even more significantly, RKG trials involving Verschwender highlight the overlaps between categories of incompetency, with some litigants representing a combination of femininity, minority, disability, and/or prodigality. This chapter prioritized five cases based on three main criteria. First, I chose cases in which the tropes of femininity, minority, and disability were the most explicit and central to the resolution to the case. Second, I selected cases with longer dossiers containing
diverse forms of evidence, such as witness testimony and debt contracts. Finally, this chapter features cases that add breadth to the dissertation (e.g. by omitting cases that appear in Chapter 5). Further, for geographical breadth, I have paid attention to the strong representation of free imperial cities in the RKG sample and have also incorporated a case from one of the minor lordships that accounted for a quarter of the RKG sample.

Widows and widowers were among the most represented litigants in the sample, accounting for approximately thirty-five percent of cases, a large majority of which fell between 1550 and 1630. Section 4.2 examines two particularly revealing cases of widows who were accused of Verschwendung and, in one of their cases, also madness (wahnsinnig, verrückt), in the 1550s and 1580s in the imperial cities of Ulm and Esslingen, respectively.

The legal categories of minority and disability appeared less frequently in RKG Verschwendung cases, but they nonetheless were central to the resolution of the case when they did appear. Youth featured prominently in three cases between the 1520s and 1630. It was also a resonant cultural theme in art and literature, in the form of the

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32 RKG cases could run extraordinarily long. The longest cases, while extremely valuable, could nonetheless prove overwhelming from a research standpoint. Reconstructing a faithful narrative from, e.g., a bundle of pages over nineteen centimeters thick, requires considerable time. As a result, this chapter focuses deeply on a handful of trials instead of attempting to synthesize the entire sample.
parable of the Prodigal Son. Section 4.3 examines two young men from the imperial city of Rottweil in 1528 and the Rhineland lordship of Hanau-Lichtenberg in 1595, both of whom had been legally declared Verschwender and mundtot during their youth.

Finally, in four cases, litigants labeled men and women not only as Verschwender, but also as geistesschwach (feebleminded, mentally ill), geisteskrank, or wahnsinnig (insane), primarily during the long sixteenth-century between the 1520s and 1606. Section 4.4 examines the case of a mundtot spendthrift from 1611 who attempted to reclassify his prodigality as a form of inborn disability to avoid disinheritance.

4.2. Wasteful Widows

4.2.1. Anna Fulssner, 1586-1590

In 1586, Anna Fulssner, a widow and mother of five, submitted an appeal to the Imperial Chamber Court of the Holy Roman Empire with an impassioned complaint against her own municipal government in Esslingen. Fulssner wrote that the council and mayors of Esslingen had illegally imprisoned her for eight months without a proper

trial, seized all her assets, and revoked her right to manage her own wine and brandy business independently, as she had done since her husband’s death, years earlier. In response, the magistrates of Esslingen defended their right to intervene in Fulssner’s affairs and to declare her legally incompetent. Fulssner, they argued, had exhibited worrying signs of insanity and prodigality since her husband’s death, allowing her robust business—and her five children’s future inheritance—to decline into financial ruin within a few short years.\footnote{HStA C3, Reichskammergericht, Bü. 2935, Anna Fulssner v. Bürgermeister und Rat der Stadt Esslingen, 1586-1590.}

In the ensuing five years of litigation, this dispute escalated into a bitter battle over the extent of Anna Fulssner’s mental and legal competency. Did she possess sufficient competency to manage her own estate independently, or was the city government justified in restricting her legal autonomy?

Fulssner resided in Esslingen, a free imperial city of approximately 5,000 inhabitants that had enjoyed the privilege of its own autonomous jurisdiction since 1398. Wealthy patrician families and the city guild masters, who exerted considerable influence over city politics, had elected the councilmen with whom Fulssner feuded. Esslingen formed a small autonomous island, surrounded by its large territorial neighbor, the duchy of Württemberg. Between the fourteenth and sixteenth centuries, Esslingen occupied a tense position within the power politics of the German
southwestern. The city joined the Swabian League, an alliance of southern cities, in 1488 to protect its independence. Tensions between Esslingen, the Swabian League, and Württemberg came to a head in 1519, when Duke Ulrich of Württemberg besieged Esslingen and burned one of Esslingen’s outlying monasteries. Further political crises accompanied the gradual introduction of evangelical religious services into the city in the early sixteenth century. Esslingen joined the Schmalkaldic League, an alliance of Protestant towns and princes, in 1531, and paid a price for it in 1548 during the Interim, when Emperor Charles V’s victorious armies occupied several imperial cities (including Ulm and Augsburg).  

As a widow, Anna Fulssner already occupied a precarious position within the changing legal landscape of early modern Esslingen. The council of her hometown, like other nearby towns or territories, sought to subordinate single women and widows under the authority of a male guardian, betraying an increasing suspicion of “masterless” women in the legal and economic spheres of early modern society. Such restrictions in Esslingen formed part of a wider trend in which sixteenth-century magistrates in the region tightened property restrictions for unmarried women. This trend particularly targeted the widows of profitable craftsmen, such as Fulssner’s

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36 Merry E. Wiesner, Working Women in Renaissance Germany (New Brunswick, New Jersey: Rutgers U Press, 1986), 23-25. See also Section 4.1.1, above.
deceased husband, who had managed a brandy business and occupied a seat on the city council.\textsuperscript{37} Fulssner’s widow status and sizable properties already exposed her to infringements on her legal status.

In Fulssner’s case, however, the Esslingen council sought to stack the odds in their own favor by associating three different legal categories of incompetency with Fulssner. When the RKG agreed to review Fulssner’s case in 1986, the legal representative for the Esslingen council compiled an extensive refutation of Fulssner’s allegations (an \textit{Exceptiones} or \textit{Responsiones}). Their argument alleged that Fulssner was not only a “masterless woman” in need of guidance, but also a spendthrift and madwoman.\textsuperscript{38} The council argued that Fulssner exhibited the financial recklessness of a \textit{Prodigus}, or a spendthrift, a label primarily reserved for men. This legal category not only denoted financial misbehavior, but also assumed that the offender was too legally incompetent to manage property independently and was thus in need of the formal supervision of a guardian. To prove their allegations, the council argued that Fulssner had allowed her deceased husband’s brandy business to lose over one thousand \textit{gulden} within three years, a trend which they argued would end in the complete ruin of the estate and the pauperization of Fulssner and her five children. Fulssner, by her own estimation, only brought in roughly 400 \textit{gulden} each year in income. Her substantial

\textsuperscript{37} Wiesner, \textit{Working Women in Renaissance Germany}, 157-163.
\textsuperscript{38} See notes 47-50, below.
losses, combined with the accumulation of debts and mortgaging of properties, served as justification for the council’s swift intervention into her affairs.\(^{39}\)

The council’s charges recalled an ordinance that had first appeared in Esslingen in 1438 to protect reckless householders from impoverishing their own households. This ordinance concerning “extravagant useless spendthrifts” (*unnutzlichen uppigen vertuner*) targeted residents “in the city of Esslingen who willfully and uselessly squander his property, whether it be with extravagant women...gambling, debauchery, and improper excesses, or with...frivolity, or with irrationality (*Unvernunft*) or senselessness (*Unsinn*).”\(^{40}\) Heads of household who allowed their properties to fall into ruin jeopardized their own financial security and that of their dependents. Esslingen’s solution, like that of several other southwestern cities and states in the late fifteenth and early sixteenth centuries, was to declare the offender legally incompetent and assign guardians to manage the estate.\(^{41}\) The ordinance concluded, “[because] the spendthrift’s

\(^{39}\) HStA C3, Bü. 2935.

\(^{40}\) “Hie zu Eßlingen kuntlich erfunden werde daz ainer oder ains sins gutes das in der Statt zu Esselning Stur ist mit mutwillen unutzlichen vertut, Es sey mit uppigen frawen zu der ledkait oder spilen oder luder und unzimlicher Zerung oder mit gutigkait oder liderlichen oder mit unvernuft oder unsinn.” Stadtarchiv Esslingen (hereafter SA ES) Bestand RSU, Nr. 80, 24. Jan. 1438.

\(^{41}\) See Section 4.1.1.
property [is] under guardianship at the behest of the council of Esslingen, he will not have the authority to sell or alienate his property, nor to give it away or influence it.”

As the gendered language of the 1438 ordinance suggests, Esslingen’s council had typically defined Verschwendung as a male vice. Other principalities in the surrounding region, such as the city of Nuremberg and territorial Württemberg, similarly targeted a narrow class of individuals, married men and fathers. Nuremberg’s Reformation of 1479 referred to Verschwenter as husbands and fathers. Württemberg’s Landesordnung of 1552 defined Verschwender as “useless people who bring themselves and their wives and children into ruin [by] wickedly and uselessly spending not only their own property, but also their wives’ property and inheritance with daily and nightly gambling, feasting, drinking, debauchery, and frivolity, thus bringing not only themselves, but also their wives and children into misery and poverty.”

Husbands and fathers drew more attention from lawmakers because their legal authority over the household finances determined the fortunes of all of his dependents and heirs. Further,

43 Reformacion der Statut vnd gesetze, Tit. 12.7, 18.2.
44 “Etliche unnütze Leut, ihnen selbs, auch ihrer Weib und Kinder zu verderbung, nit allein ihre selbs, sonder auch ihrer Weiber zugebrachte und ererbte Haab und Güter, bößlich und unnutzlich, mit täglichen auch nächtlichem Spihlen, Fressen, Sauffen und schwelgen, üppiglich ohnwerden, damit nit allein sich selbs, sonder auch ihre arm Weib und Kinder, zu höchstem verderben, ins Ellend und Bettelstaab richten.” Reyscher, Sammlung der württembergischen Gesetzte, Vol. 12, 782.
territories like Württemberg mandated guardianship for single women and widows in most cases, which would make a second guardianship on grounds of prodigality redundant.\textsuperscript{45}

Yet, although the principalities mentioned above directed prodigality laws almost exclusively at men, the records of the Imperial Chamber Court reveal that other courts adapted these laws to restrict the property rights of other social groups as well, such as women, young men, and married couples. In approximately thirty-seven percent of the RKG trials examined for this dissertation, litigants accused women of prodigality, particularly widows who had custody over family properties, as Anna Fulssner did. Other trials featured prodigality accusations against young men and women, such as those in Section 4.3 below.\textsuperscript{46} By contradicting the common stereotype of the male spendthrift, litigants in cases like Fulssner’s revealed the fluid nature of incompetency as a legal category, which often housed a diverse group of disenfranchised individuals marked by the overlapping labels of minority, femininity, profligacy, and disability.

It was perhaps with some redundancy, then, that the Esslingen council also took the extra step of accusing Fulssner not only of prodigality—grounds for incapacitation in itself—but also mental illness. The severity of the council’s language escalated over the course of the trial. In 1584, shortly after the council first revoked Fulssner’s legal and

\textsuperscript{45} See notes 21-23.
\textsuperscript{46} See also the case of Anna Catharina Moser in Chapter 5.
property rights in the early 1580s, the council referred to Fulssner’s “feeble mind” (blödigkeit ires Haupts) and “her confused stupidity” (irer verwirten plödigkeit). After 1586, in their counterargument to the RKG, the councilmen called Fulssner a “proud, arrogant, defiant, slanderous, and wasteful woman, who went insane (verrückht, wansinnig, unsinnig) before her husband’s death.” As evidence, the councilmen reported on Fulssner’s unusual behavior with respect to her family and household. First, the council accused Fulssner of threatening her husband with a knife and causing his mortal illness, alleging that her “strange, senseless behavior” (selzamen unsinnigen) had played some role in her husband’s recent death.

Further, the councilmen repeatedly stressed that Fulßher had compromised the financial stability of her estate through debts, sales, and mortgages that jeopardized her own and her children’s welfare. Alarmingly, Fulssner allegedly exhibited no regret whatsoever about the decline of her estate, reportedly stating, “she would sell off [her properties] one after another; and if she could put all her property into a spoon or into a strawberry and swallow it, she would do so.” The city council thus sought to portray

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47 HStA C3, Bü. 2935.
48 “Ein brechtig, stolz, übermüetig, trutzig, stolzen, ubelredend, und verthünsch weib, und Im Lebzeiten auch Ires Mans wansinnig, und Im Kopf verrückht gewesen.” HStA C3, Bü. 2935.
49 HStA C3, Bü. 2935.
50 “Das sie gesagt, Es sey alles Ihr, sie wölle eins nach dem andern Verkauffen, und wann sie all ihr Vermögen ihn einen Löffel versincken, oder in einem Erpeer verschlucken köndte, so wolt sies thun.” HStA C3, Bü. 2935.
Fulssner as impulsive, irrational, and dangerous, suggesting that she would consume all her own and her children’s property, if left unchecked. This stereotypical portrayal of prodigality assumed that spendthrifts lacked sufficient self-control to prevent the complete ruin of their households, thus justifying the swift intervention of alarmed creditors, relatives, and magistrates.

In its argument to the RKG, the Esslingen council justified their decision to revoke Fulssner’s legal and property rights by conflating two categories that had in Roman law remained vitally distinct: prodigi and furiosi. In contrast to people with mental illness, whose diminished legal competency resulted from an uncontrollable mental deficiency, legislators considered prodigi to be morally at fault for their own reckless and seemingly unreasonable financial activities. By accusing Fulssner of occupying both categories, the Esslingen council not only redoubled their case that she lacked the competency for independent legal and property administration, but also cast doubt on Fulssner’s moral character. This tactic characterized Fulssner’s behavior as irrational and criminal, thus excusing the council’s remarkable decision to imprison Fulssner for over eight months in reportedly harsh prison conditions. The council had allegedly denied Fulssner a trial, refused to inform her of the charges against her, and kept her illegally imprisoned, charges that she hoped would draw a sympathetic ear from the RKG judges. By framing Fulssner as an obstinate and criminal prodigal, the
council apparently hoped to discredit Fulssner’s claims that she had been denied fair
treatment.

Legal incompetency resulted in severe disadvantages for Fulssner’s financial
welfare, social relations, and the power dynamics within her own household. The
charges of insanity and prodigality forced her into a socially and financially precarious
position in her community. Fulssner reported that the years of trial activity from the mid
to late 1580s exposed her to unfounded ridicule and slander, leading her fellow citizens
to label her indiscriminately as a “criminal,” “murderer,” “thief,” “dishonorable
woman,” and “child killer.” Further, Fulssner lost the considerable power and
independence that she had once enjoyed over a valuable middle-class estate in the three
years following her husband’s death. She contended not only with the sudden
authority of her own new guardians in her affairs, but also the guardians of her
underage children, all of whom claimed a decisive say in the administration of the
family estate. Fulssner estimated the value of her own home at 2,200 gulden. In addition
to her land plots, buildings, livestock, and other valuables, her wine and brandy

51 “Ein diebin, ein unzuchtige und unerbare fraw, Item als ein Kinds Morderin
gescholten.” HStA C3, Bü. 2935.
52 As McGinn has observed, German widows of merchants or retailers “enjoyed
something close to the freedom males possessed.” Unlike English coverture laws,
resourceful German widows might retain considerable power over property despite the
national trend towards a more hierarchal gendered property regime in the early modern
period. Thomas A.J. McGinn, Widows and Patriarchy: Ancient and Modern (London:
Duckworth, 2008), 81, 85.
business reportedly brought in as much as 400 gulden each year in profits to support Fulssner and her five children. However, after the Esslingen council seized her assets and restricted her competency, Fulssner reported that the estate suffered thousands of gulden in lost revenue, mismanaged harvests, and unwisely auctioned properties. Further, in contrast to the 400 gulden that she had once enjoyed each year, Esslingen’s magistrates restricted her disposable income to a yearly pension (Leibgeding) of seventy-five gulden and two Eimer of wine (approximately 128 liters).\(^{53}\)

Incompetency thus also forced Fulssner into a state of dependency upon the council and her guardians—a vulnerable position that exposed her to possible exploitation and retaliation. By limiting Fulssner’s property access to less than a fifth of her normal revenue, the council hoped to put a stop to any future waste of the household’s resources. From Fulssner’s perspective, however, this restriction to her legal authority over her own estate constituted a stranglehold that forced her family into poverty, instability, and an unbearable dependency upon her city government and her guardians’ goodwill. Several years after her appeal to the RKG, Fulssner struggled to maintain access to this vital lifeline of material support. As she reported to the Imperial Chamber Court of the Holy Roman Empire in 1589 and 1590, she had failed to receive her annual allotment of wine for six years in a row (amounting to roughly 768 liters), and on one occasion only received little over half of her promised stipend payment. In

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\(^{53}\) HStA C3, Bü. 2935.
her repeated pleas to the court, Fulssner expressed her suspicion that the mayor of Esslingen was punishing her for refusing to drop her appeals case against the council, forcing her to suffer “daily hunger and worry” in her pursuit to restore her legal and property rights. Fulssner, like many of her peers who appeared before the Imperial Chamber Court, continued to fight to expand her constrained property rights and restore her autonomy.

4.2.2. Anna Holzmüller, 1550-1553

Although most Imperial Chamber Court litigants protested their restricted legal status, other litigants in cases like Fulssner’s sought sanctuary in their incompetency to defend their property against the claims of creditors or other heirs. In 1543, for example, a widow named Anna Holzmüller from Ulm embraced her own legal incompetence to defend her property from creditors’ claims. Stories like hers challenge us to reconsider the assumed advantages of legal autonomy in order to appreciate the situations in which dependency and subordination offered refuge to strategic litigants with little other recourse. While Holzmüller’s strategy was by no means representative of the majority

54 “Tegliche hunger und kumer.” HStA C3, Bü. 2935.
55 As historical studies of the legal strategies of widows have shown, disempowered individuals exhibited creativity and resourcefulness to exploit gender-based stereotypes of the weak and helpless widow in order to secure protections and exemptions from civic and regulatory officials. McGinn, Widows and Patriarchy, 81.
of RKG defendants, her case nonetheless reveals a significant factor in Verschwwendung trials more generally, such as the crucial roles that community credit networks played in defining competency in everyday life.

Anna Holzmüller lived in the free imperial city of Ulm in the 1540s, a free imperial city located east of Württemberg on the Danube River. She and her husband, Jörg, had worked as dyers in the lucrative textile manufacturing trade that flourished in Ulm in the first half of the sixteenth century. Through the city council, an elite circle of wealthy patricians and powerful merchant and craftsmen families dominated Ulm’s administration and governed the city’s residents, which numbered approximately 17,000 around the year 1500. The city gradually introduced the Reformation after the 1520s, releasing its first Lutheran church ordinance in 1531, the same year it joined the Protestant Schmalkaldic League. Like in Esslingen, Ulm’s political loyalties exacted a price in 1548, when imperial troops occupied the city and Charles V engineered greater patrician control of the city council.56

Over the course of the sixteenth century, Ulm also developed an especially comprehensive body of regional law, similar in scope to Württemberg’s legal codes. Ulm’s legislative energies also produced increasingly more protective laws for the livelihoods of widows and other dependents over the course of the sixteenth century.

These protections would have been particularly relevant to Anna Holzmüller’s experience in the early 1540s, when her deceased husband’s creditor, Niclaus Böringer, sought to seize a significant portion of her private property as compensation for her husband’s outstanding debts. In 1531, the city council of Ulm had published a series of ordinances that stated that a widow like Holzmüller, who appears to not have had children, could claim her husband’s real and moveable property if it had not been bequeathed or pledged to elsewhere. Holzmüller could also claim the properties that she and her husband had brought into the marriage from their families or earned during their marriage, since her husband was not permitted to bequeath them to anyone else. However, Ulm’s property law also stipulated that the surviving spouse must pay for all the couple’s debts using any property that either spouse owned, regardless if they were made before or during their marriage. If Holzmüller wished to renounce liability for her husband’s debts, she would also have to formally renounce “all of her husband’s and all of her own property...except for what she could hold in her belt [i.e., her everyday clothes].” Subsequent revisions of Ulm’s marriage and property law, such as one

57 HStA C3, Bü. 240, Niclaus Böringer v. Anna Holzmüller, 1550-1553.
58 Eins Ersamen Raths der Statt Ulm, Gestatz und Ordnung, So er Anno MD und XXXI, Alls das allt Statut, der anfalligen Güter halben, cassiert und auffgesetz worden, in heuratssachen, nit allein in der Statt, sonnder auch in seinen Herrschaften und Oberkeiten fürgenommen und wiederumb ernewert, Anno MDLXI (Ulm: Hanns Varnier, 1561)
59 “Auch von Ihres Manns und Ihren eignen Gütern bey Ihren deßwegen erstatten Pflichten mehrers nicht dann wie Sie die Gürtel beschleußt hinnemen.” This provision
edition from 1683, explicitly extended widow’s rights to also include ownership of the property that she brought into the marriage and any properties that she inherited during the marriage. Such a provision intended to preserve some degree of financial security for married women and widows by granting them administrative rights and ultimate ownership over their dowries (Heimsteuer or Zugeld) and marriage gifts (Heiratsgüter). These protections for women ensured that surviving widows would retain some form of living support (Leibgeding) — even after dividing the estate between creditors and heirs — instead of depending on the public welfare for survival. Protections for widow’s pensions also appeared in the legal codes of nearby states like Württemberg.

However, at this point in Ulm’s legal history, it is not clear that Holzmüller enjoyed any explicit guarantees for her widow’s pension. Rather, it appears that she would have had to renounce her property and inheritance claims to escape Niclaus Böringer’s demands for repayment. With her pension under threat, Holzmüller strategically argued that both she and her deceased husband, Jörg Bausch, had been applied in marriages performed without contracts. The Holzmüller dossier does not refer to a marriage contract that would have altered their inheritance arrangement. Der Statt Ulm Gesatz und Ordnungen (Ulm: Johann Antoni Ulhart, 1579), Teil I, Tit IX. Carl Georg Wächter states that this passage of the 1579 edition is identical in the Statute of 1531. Wächter, Handbuch des im Königreiche Württemberg geltenden Privatrechts. 1. Abteilung, 1. Bd. Geschichte, Quellen und Literatur des Württembergischen Privatrechts (Stuttgart: Mezler’schen Buchhandlung, 1839), 752.

60 McGinn, Widows and Patriarchy, 80-81.
under guardianship when the contract with Böringer took place, and thus lacked the competency to have legally consented to the contract.

Holzmüller’s entire defense depended on the unusual marital relationship that she had cultivated with her husband, which inverted the normative gendered power dynamics of the early modern household. Anna Holzmüller and her husband, Jörg Bausch, had operated a dying business in the free imperial city of Ulm, where they both held citizenship, in the mid-sixteenth century. At some point in the 1510s or 1520s, Bausch enlisted in the military and disappeared for eight years, leading the municipal authorities of Ulm to presume him dead. According to Ulm’s legal code of 1531, a wife who survived her husband “should be provided with a guardian within a month’s time by the Honorable Council, according to civic law.”61 The city council accordingly placed Holzmüller under the guardianship of two adult male citizens, Matheus Beßerer and Lienhart Bundelfinger. Holzmüller continued to manage her household’s textile workshop in the intervening years, until her estranged husband unexpectedly returned to Ulm. Theoretically, Holzmüller’s guardianship should have shifted from her two intermediary guardians, Beßerer and Bundelfinger, to the authority of her husband, in keeping with Ulm marital and property law. In a surprising innovation, however, the

two guardians continued to supervise Holzmüller’s financial affairs for the next twenty years, while the Holzmüllers resumed married life.\textsuperscript{62}

It was during the tenure of this unusual arrangement that Bausch entered into the agreement with the plaintiff, Niclaus Böringer, which would become the focal point of several years of judicial investigation. In 1542, Jörg Bausch agreed to serve as surety for a contract between his brother, Hans Bausch, and Niclaus Böringer, for the sale of fifty-one gulden and seven groschen worth of wool. Unfortunately, Hans found himself unable to pay the fifty-one gulden when the debt was due and decided to flee from Ulm. His brother and co-signer, Jörg Bausch, died some time thereafter, leaving Anna Holzmüller to deal with the persistent demands of her husband’s and brother-in-law’s dissatisfied creditor for a decade between 1543 and 1553.\textsuperscript{63}

In the ensuing court trials, first in the Ulm city court and then in the RKG, Böringer and Holzmüller engaged in an unusually contentious legal fight over the following question: Who had the right to determine an individual’s competency? And what evidence would serve as the external markers or proof of diminished competency?

Legal statutes from Ulm, like elsewhere in Southwest Germany in the mid-sixteenth century, reserved this right to court judges. By 1579, Ulm had developed a court procedure for Verschwendung cases that closely resembled Württemberg’s to the

\textsuperscript{62} HStA C3, Bü. 240.
\textsuperscript{63} HStA C3, Bü. 240.
west. The Ulm city council urged its subjects to report their relatives’ “useless wastefulness” to the civic officers in charge of guardianships in the city, who would then appoint guardians for spendthrifts who failed to heed a warning. Joost Damhoudere, the Flemish jurist and recognized authority on the matter of adult guardianship in the Empire at this time, insisted in 1544 that court officials possessed the power to determine individual competency: “Although others might say that such a man may be justly considered a spendthrift as soon as he behaves [wastefully], regardless of whether he has an appointed guardian, it is nonetheless necessary that it occurs through an orderly verdict (ordentliche erkänntniß) so that everyone knows how to perceive him (was man sich gegen im zuversehen habe).” Nicolaus Böringer, Bausch’s creditor, exploited this aspect of prodigality law to argue that neither Holzmüller nor her notorious husband had ever been formally declared as spendthrifts or incompetent, regardless of the unusual presence of legal guardians in their home.

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64 Der Statt Ulm Gesatz und Ordnungen (Ulm: Johann Antoni Ulhart, 1579), Teil 2, Titel 5.
65 Damhoudere’s works were cited in Giuseppe Mascardi’s De probationibus Vol. 3 (Frankfurt am Main, Feierabend, 1588) and Christopher Blumbacher’s Vormundschafts-Büschel (Salzburg: Mayr, 1668), for example. See Chapter 2, Section 2.2.2.2.
66 “Dann ob gleich möcht gesagt werden, daß ein sollicher Gesell von rechts wegen, so bald als er sich oberzelter massen anlegt, für ein Verthuner zu halten sey, ungeacht, daß er noch keine Trewhälter bekommen, so wil doch von nöten sein, daß durch ordentliche erkänntniß solches geschehe, damit meniglichen bewust, was man sich gegen im zuversehen habe.” Joost Damhoudere, Patrocinium Pupillorum. Von Vormundtschaften (Frankfurt am Main: Johann Burkhard, 1576), 35.
In practice, however, Damhoudere and other contemporary jurists were forced to concede that community participation was not only permissible, but also necessary for the successful enforcement of laws against spendthrifts. The network of kinship and credit bonds that bound citizens together provided a vital source of information about the social capital and reliability of an individual. Ulm’s merchant community played an essential role in initiating, facilitating, and even temporarily substituting for official judicial procedures. The city council recognized that the cumbersome court process might react too slowly to protect vulnerable households from a looming financial disaster, and thus wrote exceptions into the law that undermined the immediate necessity of a judicial verdict in every case. Public opinion could thus exert a decisive

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68 The Württemberg Landrecht of 1555 admitted that court procedures might be too cumbersome to keep up with the financial mismanagement of spendthrifts in everyday life. If a “notorious” [kundlich] spendthrift signed a contract that was “obviously” wasteful [offenbar, scheinbar] to observers, then the contract could be declared null and void—even if the alleged spendthrift had not been formally sentenced in a court of law. Similarly, when the kingdom of Franken published its own judicial code in 1618, its legislators allowed that “if a notorious, obvious spendthrift, who had not yet been officially declared a spendthrift in court, makes an obviously wasteful contract with someone, then the contract will be void.” Des hochloeblichen Stiffts Wuertzburg und Hertzogthums zu Francken Kayserliche Land-Gerichts-Ordnung. In Collectio Quorundam Statutorum Provinciarum et Urbium Germaniae, edited by Georg Melchior von Ludolf (Wetzflariae: Nicolas Ludovicus Winckler, 1734), Tit. XI.
influence over an individual’s legal status, regardless of whether his or her reputation had merited an official denunciation from the local magistrates or not.

The exigencies of daily life demanded more flexibility than a purely institutional regulation of competency would allow. Members of a local commercial networks exchanged credit and goods without referring to formal documentation of each party’s official legal status. Legal competency was not rigidly fixed in written verdicts, but fluidly performed in everyday life. Members of the trading community developed their own informal standards of competency by interpreting an individual’s reputation for trustworthy behavior.

Anna Holzmüller’s own testimony sheds light on how informal conclusions about an individual’s competency developed, in part, from the public performance of gendered economic and labor roles within the household and larger community. Although neither Holzmüller nor her husband had ever been formally incapacitated by a court judge, she nonetheless sought to prove that both she and her husband had lacked the legal competency to have consented to the contract with Böringer. First, Holzmüller pointed to the twenty-year-long guardianship relationship that remained in place long after her husband’s return to their home in Ulm. Guardians were only used for people with diminished legal competency: minors, people with mental and some physical disabilities, and women (such as widows, in this case). The longstanding continuation of

69 HStA C3, Bü. 240.
this unusual arrangement clearly suggested that Bausch lacked the usual authority that a

*paterfamilias* would typically wield over his wife and other dependents.

Further, Holzmüller’s husband had a notorious reputation in Ulm as a *prodigus*, who lacked the good sense and responsibility to effectively manage their estate. If Bausch had indeed been convicted as a spendthrift, this would have barred him from legally consenting to any contract that alienated, pledged, or disadvantaged his household estate. In order to further emphasize Bausch’s incompetency and dependency, Holzmüller insisted that she never permitted her husband to take up an authoritarian role (*meisterschaft*) when he returned to her household after his eight-year absence.⁷⁰ Instead, Holzmüller had conditionally accepted Bausch into her home solely in the role of a servant (*knecht*), who provided manual labor to the household in return for his room and board.⁷¹ By describing her husband as a servant, Holzmüller rhetorically positioned Bausch on one of the lowest and most dependent rungs of the household hierarchy.

The portrayal of a *paterfamilias* performing the menial labor of a house servant gained currency as a symbol of male degradation and gender disorder in the sixteenth century. Published images, songs, and books from the period depicted such effeminate men in the humble act of washing dirty diapers, sweeping floors, and hauling water and

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⁷⁰ HStA C3, Bü. 240.
⁷¹ HStA C3, Bü. 240.
firewood. In one satirical broadsheet circa 1650, a squadron of hyper-masculine wives—or “She-Men” (Sieherren)—forced their henpecked husbands to clean their clothes, serve them dinner, “and manage everything in the household according to her direction.” Scenes like this one represented gender disorder by reversing gender-based labor roles for husbands and wives. Images of men performing household labor or wielding symbols of female labor, like the spinning distaff, also appeared in more explicit representations of marital power struggles. Late medieval and early modern art and literature often portrayed husbands and wives in a literal “battle for the pants,” violently pummeling each other with fists and cudgels to determine which spouse could don the man’s breeches and dominate the relationship. Holzmüller’s comment about her husband’s menial household labor, whether conscious or not, invoked contemporary

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72 See, for example, Paul Rebhun, Ein Hochzeit Spiel Auff Die Hochzeit (Zwickaw: Meyerpeck, 1538); Johann Sommer, Malus Mulier (Magdeburg: Brauns, 1608); Anonymous, Der Weiber wohl-candirete Privilegia (ca. 1650); Pheropon Andro, Die Böse Frau/ Das ist: Artige Beschreibung der heut zu Tage in der Welt lebenden bösen Weiber (1685); Adam Schubart’s Der Siemann / das ist wider den Hausteuffel. In Ria Stambaugh, ed., Teufelbuecher in Auswahl Vol. 2 (Berlin; New York: Walter de Gruyter, 1972).
tropes in which domestic labor compromised a man’s authority within the household. Her argument suggested that her husband’s competency depended on the economic role he played within their household, rather than the judicially controlled verdict that her opponent insisted was necessary.

Böringer appears to have picked up on this implication in Holzmüller’s argument. He responded vehemently to Holzmüller’s characterizations of her husband’s role in their household. He insisted that Holzmüller’s husband had “conducted his trade as the man. He neither acted nor was perceived as his wife’s servant, but as the master and nothing less.”

Clearly, Holzmüller’s allegations about her husband’s household role posed the risk of undermining Jörg’s legal competency. Neither party denied that public perceptions of Jörg’s authority in his own marriage and household had significant implications for the extent of his legal competency.

Holzmüller and Böringer’s legal arguments also debated whether the trading community had any bearing on determining a person’s legal incompetency. Although it was technically necessary to secure an official conviction from a court judge to revoke a person’s legal autonomy, even Böringer recognized that the local trading community in which an individual operated played a vital role in determining a person’s competency to perform acceptable legal acts. Böringer thus sought to prove that Bausch had a

75 “Jorg Bausch...sein Hantwerck, als der Man getrieben, und das er in dem selben nicht fur seiner Frawen Knecht, sonder fur den Maister gehalten worden auch billich nit anders geacht werden sollen.” HStA C3, Bü. 240.
reputation for responsible commercial activity within their community by presenting
evidence of other occasions in which Bausch had successfully served as surety on
contracts with other citizens without raising any controversies about his competency for
such a legal action.\textsuperscript{76} Holzmüller, in contrast, fired back that,” “It’s well known to
everyone in Ulm that Jörg wasted his own property and his wife’s. [...] He conducted
himself in such a way [that it was unnecessary] to have him legally declared a \textit{Prodigus}.
And since Jörg did not say anything to [contradict] this, it was also unnecessary to
implement an interdiction against him or to give him a guardian.”\textsuperscript{77} If Jörg Bausch had
forfeited the trust of his fellow residents, a formal verdict of prodigality would have
been redundant.

The case of Anna Holzmüller reveals a crucial difference in how Ulm’s
community members, creditors, and magistrates defined legal competency in the middle
of the sixteenth century. Some litigants followed the lead of magistrates and legislators
by insisting that incompetency required a formal judicial verdict. On the other hand,
Anna Holzmüller developed a contradictory perspective, which valued the informal
judgments of the local trading community over the interventions of the city council. As

\textsuperscript{76} Jörg Bausch had previously stood surety on contracts with Hans Bausch and Lenhart
Seidler. HStA C3, Bü. 240.

\textsuperscript{77} “Dann es ist einmal und fur alle zu Ulm offenbar, stattrichtig und kundig dass Jorg
Bausch erstlich das sein auch seiner Frawen der Appellatin gutter verthonn...und also
sich gehaltem dass vonn unnotten gewessen Inen mit recht fur ein Prodigum zu
erkennen, und als er Georg fur sich nichts gesagt, ist Ime auch nichts zu Interdic[iren]
the cases below demonstrate, the Imperial Chamber Court continued to hear appeals
cases related to this contested definition of competency throughout the sixteenth and the
beginning of the seventeenth century.

4.3. The Prodigal Son

This section builds on the questions of authority that arose in Anna Holzmüller’s
trial by examining cases that debated the scope of legal competency and the external
markers that identified the extent of a person’s legal autonomy. Litigants like Niclaus
Böringer supported a definition of competency that encompassed the entirety of a
person’s legal identity. Thus, individuals who were officially declared in court as
“insane” or “prodigal” lost their ability to legally consent to many major actions, from
buying and selling property to writing a will. By subordinating such individuals under
the broad authority of a guardian, legal codes sought to fundamentally alter that
person’s identity as a member of the civic, commercial, and social community.

In contrast, the trial records discussed below reveal a different definition of
competency championed by some creditors, neighbors, and accused prodigals. Rather

78 In some cases, this ban only applied to contracts that obviously disadvantaged the
spendthrift; however, these legal provisions left unanswered the question of how to
determine “clear disadvantage” in practice. Damhoudere, Patrocinium pupillorum, Tit. IX.
Further, some trial records indicate that some spendthrifts also lost custody of their
children, indicating that parenthood, too, was tied to a totalizing understanding of legal
incompetency. E.g., HStA C3, Bü. 2566, Dorthea Lauer vs. Stättmeister und Rat von
Schwäbisch Hall et al. 1601-1602.
than deferring to judicial pronouncements, this opposing perspective determined the extent of an individual’s competency based on daily scrutiny of the person’s behavior. If a supposedly incompetent person nonetheless appeared capable of carrying out certain actions without controversy—such as sales, trades, or purchases of property—some members of the community ignored or challenged official court verdicts. Rather than defining competency as a monolithic label upon a person’s entire identity, these witnesses thus promoted a functional definition of competency based on an individual’s perceived ability to perform specific functions in daily life. The cases that follow suggest that the concept of legal competency had little value, then, outside of the communal context in which an individual operated. More than judicial decrees sealed in parchment and ink, a flexible and ongoing process of communal interactions determined the extent of an individual’s legal rights.

Like, Anna Holzmüller, Bartholomäus Roth, a young married man and father from Ulm, also strategically sought sanctuary in his own diminished legal status to escape an onerous financial conflict. In 1527, two creditors complained to the Rottweil Hofgericht that Bartholomäus Roth refused to repay a debt of 250 gulden that he had

79 In this respect, these early modern trials display a remarkable similarity to late twentieth century debates over the reform of guardianship law in many western nations, which gradually shifted away from a paternalistic system of plenary guardianship to a new functional definition of capacity that aimed to maximize a ward’s participation and autonomy. A. Kimberly Dayton, ed., *Comparative Perspectives on Adult Guardianship* (Durham, NC: Carolina Academic Press, 2014), 239-240.
contracted four years earlier. However, Roth argued in his own defense that the debt
contract was illegal because he had lacked the autonomy to legally consent to the
agreement.\textsuperscript{80} As a married father with a precocious career in imperial civil service, Roth
appeared to have every semblance of a fully empowered \textit{paterfamilias}. Over the course of
the investigation, Roth sought to redefine his image as that of a reckless, subordinate,
and incapable youth.

Roth’s defense sought to exploit city property laws that privileged the protection
of male adult heads of household by restricting the legal competency of their household
dependents. Over the course of the sixteenth century, Ulm developed a property system
that closely regulated the control of property and reinforced the patriarchal rights of
fathers and husbands over their dependents. These types of ordinances enforced the
minor legal status of young men and women under the age of twenty-five to protect
male heads of household from the recklessness and inexperience of youth.\textsuperscript{81} Members of
Roth’s community shared closely bound commercial and credit networks with their kin
and neighbors. However, only adults who enjoyed legally protected economic
autonomy held the right to operate freely within these networks, while their household

\textsuperscript{80} HStA C3, Bü. 3618, Bartholomäus Roth the Younger v. Berach and Liebmann, 1528-
1530.
\textsuperscript{81} \textit{Der Statt Ulm Gesatz und Ordnungen} (Ulm: Johann Antoni Ulhart, 1579), Theil 2, Tit. XVI, xxxiii, r.

Except in Saxony, where the age of majority was 21. Thomas Schröer, \textit{Institutiones
tutorum et curatorum Germaniae} (Leipzig: Henning Kölern, 1635), Tit. XXVI.
dependents might operate only in a restricted capacity as auxiliaries of the head of household.  

Some lawmakers, like those of Ulm, clearly anticipated misbehavior from prodigal sons and daughters. Ulm’s council warned its residents about “underage young people who get married and immediately squander their property through frivolous, senseless, or useless household management and then must either suffer poverty or burden public charity.” Württemberg’s lawmakers similarly sought to prevent young adults from endangering their family patrimony by conducting commercial transactions without their fathers’ express approval. The Württemberg Landrecht of 1555 stated, “sons or daughters who are under their father’s authority have no power to squander or dispose of [property] through gambling, debauchery, or in other improper ways. Any subjects who accepted property from a minor without the

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83 “Ettwan verpflegte Junge Leut, inn die Ehe zusamen kommen, welche Ihr vermögen auß liederlich unverstendigem, oder sonst unnutzen Haußhalten, so bald verschwenden, das sie schnell zu Armut gerathen...und eintweder mangel leiden müssen, oder sonst das gemein Allmusen und das Spital beschweren.” Der Statt Ulm Gesatz und Ordnungen (Ulm: Johann Antoni Ulhart, 1579), Theil 2, Tit. XVI, xxxiii, v - xxxiii, r.
father’s permission were required by law to restore it to the father’s possession” and could face a fine or imprisonment. To the southwest, the city of Freiburg had released an extremely similar policy in its Stadtrecht of 1520, which protected property holders from the incautious conduct of “the youth, those of weak fortitude, those of lesser reason, and reckless householders.” The law code accordingly forbid minors from “wast[ing] any property with gambling, whoring, and other unworthy ways, nor to give gifts or otherwise influence [property].” These types of ordinances enforced the minor legal status of young men and women under the age of twenty-five in order to protect male heads of household from the recklessness and inexperience of youth.

84 “Kinder, es seien Knaben oder Töchter, under ires Vatters Gewalt seind, so haben sie nit Macht noch Gewalt, mit Spiln, Ludern, oder in andern unfertigen Sachen, ichtz zuverthun und zuverendern, sie mögen auch gentzlich nichts hingeben noch verschencken, ohn des Vatters wissen und willen. Da sie aber etwas, wie das wer, verspilten, verzerten, vertheen, hingeben oder verenderten wider des Vatters wissen und willen, das soll dem Vatter auff sein Beger ohn entgeltnuß unnd ohn allen abgang widerkert werden.” Reyscher, Sammlung der württembergischen Gesetzte, Vol. 4, 323.

85 “Etlich irer iuger / etlich schwacher stanthaftigkeit / etlich sunst weniger vernunft halb / etlich vß vnfürsichtiger hußhaltung.” Zasius, Nüwe Stattrechten und Statuten, II.9, Vorrede.

86 “So haben sy nit gewalt noch macht / ichts zeverthûn mit spil / luder oder andern vnvertigen sachen / Sy möge[n] ouch dhein gab noch schencke thûn / vnd gentzlich nicht verendern / vnd was sy verspil[n] / verzeren / verthûnd / hingeben / oder verendern / on deß vatters wissen vnd willen.” Zasius, Nüwe Stattrechten und Statuten, II.9.3.

87 Except in Saxony, where the age of majority was 21. Thomas Schröer, Institutiones tutorum et curatorum Germanicae (Leipzig: Henning Kölern, 1635), Tit. XXVI. Marriage or entry into a convent might also release young adults from the authority of their fathers. In Württemberg, the Landrecht permitted early majority for minors who “married, came into their own household, or were otherwise considered capable of administration.” LO
If Roth could prove that he had been an immature and reckless minor who had violated his father’s patriarchal authority, he could thus extricate himself from the onerous debts to his creditors. In his defense, Roth explained that he had been twenty-four years old, technically still a minor, when the debt was contracted. Since Roth had failed to secure his father’s permission for the debt contract, he or a representative held the legal right to contest and nullify the contract in court—if the unhappy father could prove that his dependent had made a reckless decision that clearly disadvantaged the youth’s and the family’s financial wellbeing. Roth sought to prove this by characterizing himself both as a powerless minor as well as an incompetent Prodigus, both of which excluded him from the community of autonomous commercial actors in Ulm. Citing passages from imperial law, Roth reported to the Hofgericht that, “I, as an uncomprehending youth, squandered the borrowed money and did not use it for my own benefit.” Roth’s lawyer later stressed that Roth “is commonly considered by many to be a Prodigus and spendthrift of his property. Even to this day, he has no authority

1552, Reyscher, 12, 781. In the case of particularly mature young men, minors in the state of Baden could petition for early majority, which local officials evaluated on a case by case basis. Der MargGrafschaft Baden Statuten vnd Ordenungen in Testamenten/ Erbfällen/ vnd Vormünschafften (1511) minors in France might petition for an early majority. Julie Hardwick, Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France (University Park, PA: Penn State U Press, 1998), 91.
88 “Ich als ain unverstendige Jungene das...dargelihen gellt verschwennt und nit im meinen nutzen gewenndt.“ HStA C3, Bü. 3618.
over his property, but rather receives an allowance [from his father] from week to
week.” 89 Above all, Roth argued that he was notoriously well known among the Ulm
trading community as an unreliable and incompetent youth, with whom no contract
should be undertaken.

Guardianship laws, like those discussed in Section 4.1.1, incentivized commercial
actors to develop an intimate knowledge of the legal and financial circumstances of their
potential partners in the commercial community. To weaken his own creditors’ claims
upon his property, Bartholomäus Roth sought to convince the Rottweil court that his
credit network had been aware of his dependent and incapacitated and legal status, and
had thus been legally barred from attempting to do any business with him without his
father’s permission. Any conduct to the contrary smacked suspiciously of attempted
exploitation. And for his would-be creditors, this implication would put them in a
dangerous position. As Jewish men, Roth’s two creditors navigated a risky commercial
landscape in which many regional magistrates erected legislative barriers specifically to
exclude Jewish merchants. 90

89 “Das er von meniglichen pro prodigo und fur ein verschwender seiner guter gehalten
worden, alß das er heutigs tags kein Administration seiner guter hat sunder wurdt ime
von wochen zu wochen, sein underhaltung gegeben.” Roth would have been about 27 at
this point, well past the age of majority. HStA C3, Bü. 3618.
90 As noted by historian Dean Bell, Jewish merchants and lenders navigated a complex
terrain of legal privileges and severe restrictions on business activities, leading to
volatile relations with local trading communities. Dean Philip Bell, Jewish Identity in
Early Modern Germany: Memory, Power, and Community (Burlington: Ashgate Publishing,
Roth’s creditors, in contrast, employed a functional definition of Roth’s alleged competency to point out his successful performance of marital, parental, civic, and economic roles within the Ulm community, actions that were more suggestive of a full-fledged *paterfamilias* rather than a dependent *filius familias*. Roth’s creditors argued that Roth had deliberately misled them by falsely presenting himself as an autonomous “*paterfamilias [...] pro emancipatis*” who possessed “full administration” over his property.91 Married since the tender age of fifteen, university-educated, and the father of at least one child, Roth already possessed many of the outward markers of an independent male head of household. Roth had also already been called to the elections of the Ulm city council before he reached the official age of majority, a status accorded to all married men of the city by longstanding custom. Finally, Roth had established creditworthiness within the trading community of Ulm, where he had already stood surety for several contracts.92 To his creditors, Roth appeared as a man who headed his

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Ltd., 2007), 77. Commerce with Jewish lenders and buyers was both explicitly and implicitly forbidden in prodigality law. When sentenced as a spendthrift, Philipp Hector Weidmann, was specifically barred from doing business with the Jewish residents of his local community. HStA C3, Bü. 3618.

91 “*In zeit seins lebens, waib, und kindt gehabt, und als paterfamilias gehandelt, auch in seiner handlungen, vor einen haußvater geacht und gehalten wurden.*” HStA C3, Bü. 3618.

92 HStA C3, Bü. 3618.
own household, possessed authority over wife and children, and participated in the civic and economic life of the city.

Doubtless, Roth’s creditors were motivated by a clear desire to retrieve their loaned sum, but they were by no means unusual in their insistence upon a functionally-based, communally-informed definition of legal competency. Even when confronted with official evidence of that individual’s incapacitated status—such as a court verdict—some residents refused to abandon this functionally-based definition of competency, insisting instead that the monolithic label of “incompetency” failed to consider the demonstrable abilities of a supposedly incapacitated individual.

We can take as an example the controversial case surrounding another young man, named Philipp Hector Weidmann, from the end of the sixteenth century. Like Bartholomäus Roth, Weidmann had borrowed two hundred gulden from a creditor named Baruch in 1593 and failed to repay the debt. When the creditor attempted to reclaim the sum, he discovered that Weidmann had lost his legal autonomy several years earlier, due to a series of reckless financial decisions that had threatened to dissolve his inheritance. In 1587, the local official (Schultheiß) of the town of Oberbrunn (in the County of Leiningen) had officially pronounced Weidmann to be a Prodigus and placed him under the guardianship of his brother-in-law, Adam Schmidberg. Schmidberg would supervise Weidmann’s conduct, administer the young man’s estate, and dissolve any reckless contracts that his prodigal ward might make in the future. For
a time, Weidmann lived in the town of Reichshofen with his wife, where Schmidberg succeeded in maintaining a close eye on his ward by recruiting the help of local officials. Schmidberg asked the Vogt of Oberbrunn, Appen Hans, to join him as a co-guardian of Weidmann’s estate, and recruited the Schultheiß and court notary of Reichshofen to monitor Weidmann’s behavior and warn the community not to attempt to form contracts with his incapacitated ward.93

However, Weidmann’s subsequent marriage, the passage of time, and a highly mobile lifestyle allowed him to escape the commercial community where he had been sentenced, and to integrate into new communities that welcomed him as an autonomous member of their credit network, despite the vehement protests of Weidmann’s frustrated guardian. When Weidmann moved to the town of Wördt in 1590, Schmiedberg’s system of surveillance and control shattered. The townspeople of Wördt later testified that Weidmann’s restricted legal status had never been publicized by the local officials in Wördt, as Schmiedberg had expected would occur, a lapse which allowed Weidmann to rebuild his reputation afresh in his new community.94

As Baruch and several others who had done business with Weidmann attested during the ensuing trial, Weidmann possessed every appearance of a responsible and fully competent citizen. For example, several witnesses testified that Weidmann had

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94 HStA C3, Bü. 4088.
concluded a series of uncontested trades or sales with various members of their community. Weidmann sold off livestock, plots of land, and household goods.\footnote{The coin master of Wördt purchased landed property that Weidmann had inherited from his deceased parents, and another local official had purchased a set of gilded silverware from Weidmann. HStA C3, Bü. 4088.}

Weidmann also purchased wine from several towns to keep his tavern business well stocked. These commercial actions went largely uncontested until Schmiedberg initiated a trial in 1595. In the meantime, the residents of Wördt interpreted Weidmann’s commercial activity as self-evident proof of his competency for such legal acts.

The surviving testimonies from the trial reveal that roughly half of the witnesses considered an official verdict to be unnecessary—and even inapplicable—to exclude a resident from the local credit network. Over the course of the trial, the regional court of Hagenau interviewed dozens of witnesses from Wördt and the surrounding towns to assess residents’ knowledge of Weidmann’s legal competency and the validity of his contested contract with Baruch. When asked about the legality of Weidmann’s contracts, Friedrich Bartholme, a distinguished member of the local government, testily countered, “Why shouldn’t they then be valid?”\footnote{“Warumb dan solche nit krefftig sein sollten?” HStA C3, Bü. 4088.} Bartholme pointed out that none of Weidmann’s other known contracts to date had been contested during his residency in their town. On these grounds, Bartholme concluded that he “believes that Weidmann’s contract was much more valid than Schmiedberg’s [claim] for the following reasons: [Weidmann] had
personal control over everything and he had sold his property on many occasions without any controversy.”97 Another witness, Georg Waltter, testified that he had heard that Weidmann “had authority over his property and its administration, just like any other honorable citizen.”98 Other witnesses pointed specifically to Weidmann’s appearance of adulthood and independence to justify their decision to accept Weidmann into their trading community. Peter Zugmantel remarked that “Philipp Weidmann had been of full age and understanding to [manage] his property himself. That is why he thought he had free administration [of his estate].”99 When pressured by their interviewers, some witnesses pushed back against the expectations of officials. Paulus Hürlin, the "Schultheiß" of Wördt, defensively stated that he had not been aware of Weidmann’s diminished competency, nor had he requested proof (schein oder urkundt) of Weidmann’s rights, because that was not the responsibility of the Wördt "Schultheiß" or local court.100

97 “Er halt gänzlich dafür, dass Weidmans Contract seyen viel krefftiger dann Herr Schmidbergers Consens auß dissen Ursachen dieweyl Ihme alles under sein handt geben worden, und dass er mehrer theilß seyns Gütter ohne Widerredt verkhaufft habe.” HStA C3, Bü. 4088.
98 “Seines guets mechtig gewesen seye, und damit zu handlen, wei ein andere Ehrlicher Burger macht gehabt.” HStA C3, Bü. 4088.
100 HStA C3, Bü. 4088.
Weidmann’s trial thus generated considerable support for his full legal autonomy, despite the protestations of his guardian that Weidmann had forfeited these rights years earlier through reckless behavior in his previous residences. These witness testimonies suggest that the concept of legal competency had little value, in a practical sense, outside of the communal context in which an individual operated. This indicates that Weidmann’s contemporaries considered competency to be based on individual functions—such as whether an individual could contract debts or sales without controversy—rather than totalizing categories of identity. Monolithic labels of “incompetence” could be difficult to enforce, because these designations required the willing participation and concurrence of community members who had to enforce these prohibitions on a daily basis. Official court verdicts were rarely conveniently accessible, as the Weidmann case reveals, which meant that members of a credit network relied on more accessible and flexible signifiers like reputation, gossip, and appearance.

4.4. Prodigality, Disability, and Incompetency

The extent of an individual’s competency could generate significant disagreement among litigants and witnesses. Due to the high stakes of prodigality trials, even the most intimate of observers might voice diametrically opposed assessments of a person’s competence, leading to considerable confusion over the validity of that individual’s legal rights and claims. Even if the parties could come to agreement about
the diminished extent of a person’s competency, they might still disagree about which precise factors—age, gender, marital status, ability, rationality, and moral character—caused that person’s incompetence. As some of the cases analyzed above demonstrate, the differences in degree had significant consequences for the rights of the individual. Although many social groups inhabited the collective category of “incompetency,” they were also hierarchically differentiated, meaning that some litigants could forge stronger claims to legal rights than others.\textsuperscript{101}

The subtle distinction that separated prodigality from mental disability was particularly controversial. Guardianship laws, such as those examined in Section 4.1.1, justified the practice of declaring spendthrifts incompetent by citing Roman policies that linked \textit{prodigi} and \textit{furiosi}. However, the assumed association between prodigality and insanity sat uneasily with some contemporaries, who had to reconcile spendthrifts’ “unreasonable” actions with the fact that they still bore legal responsibility for their illicit behavior.\textsuperscript{102}

One of the most prolific commentators on spendthrift law, Joost Damhoudere, dwelled on this point in his extensive tome on Flemish guardianship law, \textit{Patrocinium pupillorum, minorum atque prodigorum}, in the mid-sixteenth century. Although


\textsuperscript{102} Damhoudere, \textit{Patrocinium pupillorum}, Tit. X.
Damhoudere discussed a region far removed from southern Germany, his international renown as a jurist in criminal and private law nonetheless merit consideration in this case. Damhoudere firmly insisted that spendthrifts should bear criminal liability for their actions, but he nevertheless repeatedly referred to the questionable comprehension of individuals who squandered their wealth. Throughout his work, Damhoudere described spendthrifts as “similar to unreasonable people,” “not in his senses,” “without sense and understanding, considered like a child,” and “very weak in understanding, and must have lost [his] wits.”

He also compared spendthrift to fools and drunkards. Although prodigality was routinely associated with mental illness, prodigality nonetheless never quite escaped its connotations as a sinful and criminal rejection of the social expectations of family, community, and authority. Spendthrifts and madmen both posed a potent threat to the family patrimony, that bulwark of social stability. However, only spendthrifts were perceived to do so intentionally and obstinately, despite warnings and punishments. Damhoudere summarized the paradoxical criminal aspect of spendthrift law in his treatise on guardianship as follows:

“Although [a spendthrift] can be compared to someone who has lost his senses [nicht wol

\[\text{103} \] This appears at several points in Damhoudere’s work: a Verthuner is considered the same as “einem unvernünfftigen Menschen,” “nit wol bey sinnen sein, gehalten wirdt,” “sehr schwach im verstandt sey, und die witz verloren haben muß” (58), and “blind to understanding, and considered fools.” Damhoudere, Patrocinium pupillorum, 38, 41, 58.

\[\text{104} \] “Als wann sie gar doll oder thörechtig weren gewesen” and “wirt er für ein dollen und törichten Menschen geacht.” Damhoudere, Patrocinium pupillorum, 35, 45.
bey sinne ist], this does not mean that his habitual abuses can be excused. He should be punished, physically or financially, for his deeds and excesses.”

The records of one Imperial Chamber Court Verschwendung case offer a rare opportunity to see how litigants debated this precise issue. In the early 1600s, Burkhard Garb learned that his parents had disinherited him on grounds of his prodigality, leaving his portion of his parents’ legacy to be divided among his ten other siblings. Garb took his case first to the Stadtgericht of Strasbourg in 1609 and, after he won the case, had to defend the verdict when his siblings appealed to the RKG in 1611. Throughout the court suit, Garb’s lawyer considered it strategically superior not to reject the accusations of reckless financial behavior out of hand, but to reclassify Garb as having a mental disability. By claiming that he had been motivated by an inborn disability instead of obstinate prodigality, Garb strategically exploited the social obligations of families to care for relatives who could not work to support themselves.

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105 “Ob er gleich einem der nicht wol bey sinne ist, verglichen würde, von wegen begangener und geübter mißhandlunge, nicht zu entschuldigen, dann in solchen fällen ist und sol er nach seiner übertrettung, verwirckter handlung und gestalt der sachen nach, es seye an leib oder an gut, gestraft werden.” Damhoudere, Patrocinium pupillorum, 36. In the longer history of guardianship law, this association proved to be the weak point in prodigality legislation, as legal commentators of the mid-eighteenth through twentieth centuries repeatedly challenged the idea that reckless financial behavior resembled insanity. Adolf Schwarz, “Die Entmündigung des Verschwenders nach gemeinem Rechte” (PhD diss., Universität Tübingen, 1891), 1-2.

To be sure, claiming mental and intellectual disability exposed Garb to the risk of incompetency and dependency; but in this case, Garb’s decision to embrace his disabled identity maintained a vital lifeline to his family and its fortune in a moment when poverty and isolation were his only other options. In short, Garb deemed it better to ensure ownership of property in name only and submit to the authority of guardians, than to find himself entirely disinherited. The Garb family’s debate over his case suggest that subcategories of incompetency ranged along an internally hierarchical scale, within which accused persons might count on varying degrees of opportunity for financial support.

Burkhard Garb the Younger approached the city court of Strasbourg in 1609, shortly after his widowed mother had passed away. Garb reported that he had been heartlessly excluded from his deceased parents’ legacies, left to wander the countryside in poverty, while his ten siblings divided their parents’ sizable properties between them. In Garb’s estimation, this settlement excluded him from 500 gulden that he considered his rightful due, in keeping with the equitable family inheritance laws of the city. His siblings’ seemingly unchristian behavior appeared even more illegitimate because Garb alleged that he suffered from mental and physical disabilities that had left him incapable of completing any educational or professional training to support himself. Garb’s lawyer stated, “It is incontrovertibly true that [Garb] was born a fool (albern) by nature, with weak and impaired understanding (schwachen undt bresthafften verstandts). As a child, he
also [suffered] a fall that [impaired] his understanding (ihme die Sinn uberschlagen) and made him feebleminded (blödheüptig), so that he had to be bound with chains. He was thus unfit (nicht tauglich) to get an education.”

At other points in the proceedings, Garb’s lawyer also referred to Garb’s disability as his “simplicity” (simplicetet), his “stupid wits” (blöden Verstand), and his “naturally impaired mental wrongness (von Natur...bresthaft unrichtigkeit des Haupts). These repeated references to Garb’s impairment resemble the language of contemporary guardianship ordinances, which prescribed guardians to care for people with physical impairments (bresthaft) or mental illness.

Garb’s lawyer also repeated the phrase “naturally” (von Natur) to emphasize that Garb had lived with his impairment since his birth. Garb’s inborn limitations, in his court narrative, directly impacted his ability to comply with social expectations of his adolescence, education, and professional training. Garb had failed to complete several attempts at a religious educational training at multiple monastic and Jesuit schools. He also began training as a weaver in his youth, but dropped out after his apprenticeship, a decision that forfeited the apprentice fees that his father had invested in Garb’s

107 “Ist also unwiderspruchlich wahr, das derselbig von Natur albern, schwach[en], undt bresthaft verstandts erboren, undt hernacher baldt in seiner Jugendt einen fall gethan, davon ihme die Sinn uberschlagen und blödheüptig worden, auch mit springer undt ketten verwahrt werden müeßen, dahto Er dann zum studiren...nicht tauglich gewesen.” HStA C3, Bü. 5130.

108 HStA C3, Bü. 5130.
education. Garb’s struggles to establish a viable career continued into adulthood. In addition to dropping out of skilled intellectual and vocational trainings, he also gave up several forms of employment as a shopkeeper in Freudenstadt, a border officer at a Hungarian outpost, and a position at the ducal court in Vienna. Penniless and jobless, Garb had eventually resorted to working on his father’s pig farm to support his young wife and child.\textsuperscript{109} Garb had thus undertaken unsuccessful attempts at a variety of types of labor, including skilled and unskilled, intellectual and physical, local and abroad, and long-term and intermediary.

Garb attribute his professional failures to his permanent intellectual disabilities and a physical injury to his arm, all of which prevented him from successfully supporting himself and his family without aid from his parents’ legacies. By claiming that his mental and physical disabilities had barred him from fulfilling his family’s expectations, Garb attempted to redefine his alleged prodigality as disability. In doing so, Garb shifted the blame away from his own moral and financial failings and instead held accountable the family and society that had failed to accommodate his impairments. Garb insisted that he was “in no way such a useless man, as he is decried, but rather is a foolish person [who has] suffered much misfortune. Against all brotherly love and devotion, his siblings deprived [Garb] of his parents’ affection and mercy,

\textsuperscript{109} HStA C3, Bü. 5130.
casting [Garb] into misery.” Garb thus sought refuge in a state of familial dependency and the material protections that kinship afforded. Like the cases of Bartholomäus Roth and Anna Holzmüller, Garb’s claims reveal that dependency and incompetency could provide financial and legal protections to litigants who had little other recourse.

The other Garb siblings clearly also realized that Burkhard’s claims of disability would bind them together through the moral obligations of kinship. The other ten siblings of the Garb family vehemently insisted that Burkhard the Younger had never developed any mental or physical impairment. Burkhard’s alleged disability, they argued, “has so little truth [...] [Burkhard] actually has sense and understanding just like all of his brothers do.” What distinguished Burkhard from his brothers, however, was his poor work ethic and prodigal habits, caused by a “wicked wrongness in the head.” The siblings’ language indicates that they viewed Burkhard’s mental “wrongness” not as intellectual disability or mental illness, but as a form of deliberate immorality and a refusal to conform to social and cultural norms. Burkhard “had been a frivolous, useless spendthrift since his youth who had never heeded his mother and

110 “Kheins wegs ein solcher unnützer gesell, wie er verschreyet würdt, gewesen, sondern demselben als einem albern Menschen, alles ungemach zugefügt, und der Eltern affection und zuneigung durch die Geschwistern wider Brüederliche lieb und trewe unbilich entzogen, und ins ellendt verstoßen worden.” HStA C3, Bü. 5130.
111 “Welches so wehnig wahr, das er Cläger auch alle seiner Brüeder mit Sinn und Verstandt.” HStA C3, Bü. 5130.
112 “Mit einer boßhafften unrichtigkeit des Haupts behafftet ist.” HStA C3, Bü. 5130.
The only barrier to Burkhard’s successful completion of his education or apprenticeships, they countered, had been his obstinacy, laziness, and prodigality. The Garb siblings likewise contradicted that their brother had ever suffered a physical injury that prevented him from attaining professional success. They denied having any knowledge “that [Burkhard] had ever suffered any deficiency of his body. He only pretended so on this occasion so that he might excuse his own laziness and idleness.”

The Garb family’s feud over the nature of Burkhard Garb’s incompetency offers rare insights into early seventeenth century attitudes towards disability and the body. First, the Garb family’s testimony sheds light on how we should redefine modern concepts of “disability” to reflect the historically specific economic, moral, and social landscape of the early modern community. The region through which Garb wandered over his life, such as Württemberg, relied on community taxpayers to support their local poor and people with disabilities who could not work to support themselves. District

113 “Er von Jugendt auff für ein leichtfertiger unnützer verthüenischer gesell gewesen, welcher Vatter und Mutter niemaln gefolgt.” HStA C3, Bü. 5130.
114 “Das demselben an seinen leib jemal etwas gefehlet hatt, undt zu dißenmahl allein zu dem endt praetendirt wüerdt, damit er Cläger sein faulkeit undt müeßiggang desto beßer entschuldigen möcht.” HStA C3, Bü. 5130.
115 Although some major European cities like London and Amsterdam had begun to erect poorhouses and workhouses to confine their indigent poor and disabled, the institutions of Foucault’s “Age of Confinement” had yet to significantly impact the criminal and welfare policies of Europe. Cf. Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Pantheon Books, 1965). Württemberg, for example, did not establish its Zucht- und Arbeitshaus until the 1730s. Albert Bertsch, “Das Herzoglische Zucht- und Arbeitshaus in Ludwigsburg 1736-1806,” *Württembergische
administrators provided support to the “deserving” if they were residents, had a reputation for industrious and moderation, and could not sustain their dependents through their own labor. In an ordinance from 1562, Württemberg’s central administration reminded its subjects, “Everyone is obligated to assist the poor out of brotherly love, as Christ commands, and as we have stated in our Kastenordnung (common chest ordinance) that necessary and compassionate assistance should be provided. But what has happened is that the majority only thinks about themselves...also, the idle and spendthrifts can be found in violation of our ordinances and mandates.”

Württemberg published regular ordinances that decried abuses on its public welfare system, especially those committed by the vagrant poor and those who refused to work and squandered precious resources. It is not clear whether Garb could have acquired financial assistance in his native town of Horb, but the incredible animosity


that he faced from his ten siblings, including the pastor of Horb, raises the possibility that his native town may have harbored similar ill will against him. Garb appears to have traveled extensively and often over the course of his lifetime, which would have made it more difficult for him to qualify for financial assistance in foreign communities.

The family, and not the state, then, was Burkhard Garb’s best recourse for material support, a fact of which his disgruntled siblings were acutely aware. However, individuals like Garb were only morally entitled to this kinship or communal lifeline if they physically could not work to the full extent of independent subsistence and survival. Prodigal sons, in other words, might solicit charity, but could not lay claim to the equal rights of full competency or inheritance. It was therefore of vital importance to determine whether Garb was physically and mentally capable of supporting himself.

However, this work-centered definition of disability by no means indicates that people with disabilities did not work or were not expected to work. Burkhard Garb clearly visualized himself as a contributing and active member of the labor force and of his household economy, regardless of his mental impairment. When faced with virtual disinheritance, Garb had turned to the Duke of Württemberg for aid. Garb successfully convinced the Duke to grant some of his deceased parents’ landed properties in Württemberg to Garb, despite his siblings’ complaints. Garb used the proceeds to set up a shop in Freudenstadt, where he hoped to prosper with his growing family of four children. Garb did not appear to consider his self-professed “foolishness” and “feeble-
mindedness” as barriers to his own professional success. However, his venture in Freudenstadt nonetheless failed for various reasons, partly because Garb could not secure the full amount of his parents’ legacies to which he laid claim.

Remarkably, Burkhard Garb argued that it was not his own impairments which caused his professional and financial crises, but rather his own family’s and society’s refusal to accommodate his impairments. Burkhard argued that his intellectual impairment “made him unfit to get an education,” putting the blame onto his parents and older siblings for forcing him into unpractical career paths without considering the limitations of his body.117 In other words, Garb did not necessarily consider his impairments totally disabling for pursuing a livelihood; they merely excluded him from certain career paths. Garb’s siblings clearly acknowledged the logic of this point, conceding, “If [our] parents [...] had not considered [Burkhard] to be fit to study, then they never would have wanted to [expend] futile payments [...] or send him off to school in different regions.”118 Because Garb’s family denied that he had ever suffered from a disability, they refused to acknowledge his demands for more flexible expectations of his limited abilities.

117 See note 107.
118 “Wann derselbig zum Studieren von den Eltern und andern ehrlichen Leütten, deren Rhat sie darunter gepraucht, nit tauglich were befunden worden, das sie freylisch denselben mit vergeblichen uncosten nit würden begert haben, dahin anzuziehen, sonder vil beßer die Zeit genommen, und das gelt gespart, undt ihne nit an underschiedliche ort zur schulen geschickt haben.” HStA C3, Bü. 5130.
The Garb case also underscores the fluidity of incompetency in RKG cases for Verschwendung. The broader concept of incompetency housed a motley cast of overlapping subcategories, including minority, femininity, disability, and prodigality. Due to the mutability of these categories, the act of declaring a person legally incompetent was rarely a simple thing. The socially devastating consequences of incompetency, combined with the instinct to protect personal interests, also put pressure on litigants, witnesses, and magistrates to explore and police the boundaries of each category. For the Garb family, the entire case turned on the question of whether Burkhard could successfully cross the bounds that tenuously separated prodigality from disability. This was no simple feat, considering that the ten surviving relatives who possessed the most intimate knowledge of his character and history contradicted his self-professed identity. However, despite the vehement protests of his siblings, Burkhard succeeded in persuading the Strasbourg city court that he had a valid claim to the material protections of his family.

4.5. Conclusion

This chapter has argued that the legal concept of competency functioned less as an officially sanctioned right, in the material form of a documented verdict, so much as a processual and communal evaluation of a person’s conformity to social roles based on his or her age, gender, marital status, ability, and rationality. Litigants’ court arguments
not only reveal how individual litigants applied legal categories like incompetency in lower and appeals courts, but also how they could stretch and redefine subcategories of femininity, minority, disability, and prodigality to strengthen their claims.

In three of these cases between 1520 and 1610, litigants embraced their own incompetency as a legal strategy. In Ulm in the late 1520s, Bartholomäus Roth took advantage of his restricted legal standing as a minor to extricate himself from a hefty debt. Even though Roth had already gone through several important rites of passage—including marriage, fatherhood, directing an independent household, and eligibility for public office—he leveraged the technicality of his age to renounce liability for his actions. Roth also took advantage of his alleged reputation for reckless, immature financial mismanagement to strengthen his legal argument. In the same city in the 1540s, Anna Holzmüller preferred to retain her two court appointed male guardians for two decades rather than resume her role as her husband’s ward, a decision that apparently ensured a more peaceful relationship with her estranged husband. Holzmüller also sought refuge in her own state of legal incompetency and sought to leverage her husband’s alleged prodigality and incompetency to repudiate the financial claims of her husbands’ creditors. Finally, in Strasbourg in 1609, Burkhard Garb sought to reclassify his alleged prodigality as the result of mental and physical disabilities to claim his right to the protection and support of his family. Sixteenth-century stories like theirs from the Reichskammergericht challenge us to reconsider the assumed advantages of legal
autonomy to appreciate the situations in which dependency and subordination offered refuge to strategic litigants with little other recourse.\textsuperscript{119}

There were, however, clear risks to accepting a state of diminished legal competency. The widowed Anna Fulssner, for example, appears to have drawn no discernible benefits from the state of severe dependency in which she suddenly found herself after three years of relatively autonomous widowhood in Esslingen. Her story of material suffering and instability is far more representative of most cases of incapacitated prodigals in the records of the Imperial Chamber Court and the regional courts of Württemberg. The label of “Prodigus” condemned many individuals to years of dependency, public shame, intense familial conflicts, and even criminal punishments. Given these potent risks, it is not surprising that Burkhard Garb would seek to rehabilitate his image as a spendthrift into that of a person with an inborn disability. Within the collective category of incompetency ranged a hierarchy of subcategories, and the brand of Garb’s alleged incompetence had vital consequences for his legal and property rights.

Exploiting incompetency was not a common strategy for most Imperial Chamber Court litigants in \textit{Verschwendung} cases between 1500 and 1800. In this respect, the precise

\textsuperscript{119} As historical studies of the legal strategies of widows have shown, disempowered individuals exhibited creativity and resourcefulness to exploit gender-based stereotypes of the weak and helpless widow in order to secure protections and exemptions from civic and regulatory officials. McGinn, \textit{Widows and Patriarchy}, 81, 91.
arguments of the litigants examined above cannot bear the weight of wide representativeness in the region of southwestern Germany. However, the nature of the legal systems in which they elaborated their arguments does extend beyond these five cases alone. In many towns and principalities in the southwest (see Section 4.1.1), guardianship systems reinforced the differentiation of social groups into a hierarchy of legal statuses. In each case of Verschwendung examined by the RKG, the lower courts and the RKG had to reconcile extremely broad and flexible legal categories with the bitterly contested facts of each case. The courts also weighed evidence from members of community credit networks, whose perceptions of an individual’s daily performance of social roles had a crucial influence on the determination of an individual’s status. The meaning of significant legal terms like minor, spendthrift (Verschwender), and mental illness (Geisteskrankheit) largely took shape through heated debate, by consulting public rumor and memory, and through the formal arbitration of the court system.
5. Docile Wives & Defiant Women: Courtroom Stories of Gender, Power, and Debt

5.1. Introduction

In 1582, the Imperial Chamber Court of the Holy Roman Empire (Reichskammergericht, or RKG) investigated a property conflict from a district in northern Württemberg. Bernhard Fleck, a butcher from the town of Neuenstadt, had filed for bankruptcy after a risky investment failed to return profits. Even after the Neuenstadt court had seized and auctioned Bernhard’s holdings, he lacked the funds to repay his creditors several hundred gulden. In the ensuing trial, Bernhard’s creditors alleged that Bernhard’s wife, Anna, had caused his financial troubles through her wasteful household management. In contrast with the creditors, who “have good reputations and have always run their households properly,” Anna Fleck squandered her household resources, and thereby “deviously brought the creditors into considerable harm.”¹ On these grounds, the creditors sought to claim Anna’s dowry and other personal possessions to cover her husband’s remaining debts. In response, Anna Fleck blamed her household’s financial ruin on the predatory financial practices of her husband’s creditors. Anna called upon the Imperial Chamber Court to uphold her property rights.

¹ “Mit waß sondern listen und grifflen sie ire Creditores und gleubiger...Jetzo in merckhlichen nachtheyl und schaden zubringhen,...Aber ire gläubiger, die (ohn rhum) Je und allwegen wesenlichen und wol haußgehalten.” Hauptstaatsarchiv Stuttgart (hereafter HStAS), C3, Bü. 59, Hans Aff, Burgermeister zu Wimpfen contra Anna Fleck, Ehefrau des Bernhard Fleck, Burger zu Neuenstadt am Kocher, 1582-1592, Litis Contestation in Causa Appellationis.
by denying the creditors’ claims. Anna’s lawyer informed the court, “It is well known and obvious to many people that [Anna] faithfully managed her household well with her husband and is not to blame for her husband’s [financial] ruin, much less for the creditors’ [losses].”\(^2\)

The Fleck dispute represents a recurring conflict in the records of the Imperial Chamber Court of the Holy Roman Empire in the period between 1500 and 1750. Both litigating parties emphasized their own vulnerable legal standing and called upon state authorities to protect them from exploitation and fraud. In such matters, the territorial state of Württemberg sought to strike a balance between protecting the interests of the Hausvater, his dependents, and the commercial community with whom they did business. However, in cases like the Flecks’, when creditors and household dependents believed that the state had failed in its duty to protect their interests, they appealed to the imperial court to put pressure on their state officials.

This chapter uses the Fleck conflict as a case study to examine common themes that appeared in nine appeals to the RKG between 1504 and 1702 (see 5.1.1 below for methodological details). These nine conflicts hailed from seven locations throughout the southwestern Empire, including six free imperial cities and the territorial state of

\(^2\) "So ist auch sonnten meniglich bewust vnd offenbar, dass clagennde Fleckhin, Irem Eeman, getrewlich vnd wol hausgehalten vnd an solchen Ires Ehemans verderben, allerdings unshuldig, unnd vilmehr die anndern glaubiger unnd Ochsen Herren, hier zue vrsach gegeben haben." HStAS, C3, Bü. 59, Rechtstag (23 Nov. 1573).
Württemberg. Each of these cases revolved around a common issue: the rights of married women vis-a-vis their husband’s creditors. Through these court suits, litigating parties debated how much influence a married woman wielded over the financial decisions of her household, and what degree of legal liability she should bear to reflect the extent of her power. These court battles reveal a broad spectrum of opinions about how much power women did—and should—exert within the estate of marriage. When determining whether to honor women’s property rights, courts repeatedly returned to the question of how well these wives had managed their households. Opposing parties scrutinized women’s public reputation for thrift, moderation, and industry.³

To assess women’s household management, regional courts looked for several forms of evidence, much of it taking the form of public perception and reputation. Courts interrogated witnesses about the past behavior of married couples and asked the spouses themselves for depositions that accounted for their behavior.⁴ Courts also looked at household inventories, expense records, and contracts to determine whether the value of the household had increased or declined over time. Finally, they also solicited information about the material possessions of married couples to determine whether they had violated class-specific norms of proper spending by purchasing items

³ See especially HStAS, C3, Bü. 240, 59, 2438, 4029, 3324, and 4659.
⁴ Witness testimony appears in the RKG dossiers of the following three marital debt cases: HStAS, C3, Bü. 3557, 59, and 2438.
“above their station” (irem Stand ungemeß). Most of this evidence depended on public perceptions of how husbands and wives at each level of the social hierarchy and in various professions should run their households, interact with the rest of the community, and relate to their own spouses.

Through a close analysis of court testimonies, this chapter argues that judicial recognition of women’s property rights hinged on gender- and class-specific expectations of proper use and management. The judicial procedures discussed below pressured female litigants to provide public confirmation of their reputation for thrift, moderation, and industry as a legal strategy to repudiate creditors’ attempts to seize their property. Although wives and creditors disagreed about which party’s interests should receive priority, all participants in the judicial process based their arguments on the presumption that property claims depended on compliance with prescribed household roles. Court storytelling methods thus served as a critical forum to remake a woman’s public image and renegotiate her legal and property rights accordingly.

The overarching goal of this chapter is to investigate the roles that women played in spendthrift trials. Legal codes from Württemberg and several imperial cities in the southwest indicate that state authorities assumed women would play a central role in the regulation of personal spending, whether as informants or accomplices.6

5 See notes 68, 75, 76, and 85, below.
6 See notes 45, 47, 102, below.
However, surviving textual evidence of women’s participation is surprisingly elusive. Silences in the source record leave key questions unanswered. Considering that the primary purpose of prodigality laws was the protection of household dependents, how well did law enforcement serve married women’s interests? How often did women actively ask the courts to intervene in their marriages and household finances? In light of methodological challenges (discussed in the following section), this chapter narrows the scale of analysis to examine the handful of rare documented instances in which women not only invoked prodigality laws, but also faced accusations of prodigality themselves.

5.1.1. Sources & Methods

What roles did women play in the enforcement of spendthrift laws? Did women also face accusations of prodigality, or was this a legal offense attributed to men alone? Prescriptive sources from the German lands in the sixteenth through eighteenth centuries, such as legislation, sermons, and household manuals, certainly suggest that religious and administrative authorities were concerned about the possibility that both women and men might endanger their households through reckless mismanagement. In the popular genre of marital advice literature of the sixteenth century, Lutheran authors devoted entire sections of their writings on marriage to the topic of women’s household obligations. Notable sixteenth-century Lutheran polemicists like Joachim Magdeburg,
Wolfgang Russ, and Cyriacus Spangenburg warned their readers against the temptations that vanity, idleness, and extravagant spending posed to married women. In some parts of the southern German lands, state authorities inscribed their concerns about prodigal wives and husbands into regional law. Two villages belonging to the lords of Neuhausen published rules specifically concerning prodigal couples in 1618. The villages of Öffingen and Hofen lay approximately seven miles northeast of Stuttgart. Although surrounded by the large territorial state of Württemberg, Öffingen and Hofen had belonged to the independent imperial knights of Neuhausen since 1369. Their Vogtordnung of 1618 contained a spendthrift policy that largely reflected that of Württemberg’s Landesordnung of 1552, with a significant exception: the lords of Neuhausen urged their local officials to “severely punish [spendthrifts] and especially declare married couples incompetent” for household mismanagement.

Compared to Öffingen and Hofen, Württemberg’s legal codes are more ambiguous about the intended target of its spendthrift policies. Württemberg’s most

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7 Joachim Magdeburg, *Die Ware und in Gottes wort gegrundete Lere* (Eisleben: Urban Gaubisch, 1563), III.2.I; Wolfgang Russ, *Der Weiber Haushaltung* (Leipzig: Berwald, 1561), III-X; Cyriacus Spangenburg, *Die Christliche Haustafel* (Wittenberg: Lorenz Schwenck, 1558), sermon VI, I, III; Joris Vivien, *Weiberspiegel* (Leipzig: Berward, 1565), Book 1, Ch. 11, 22, 23; Book 2, Ch. 6.

important statement of its policy on spendthrifts omitted any references to prodigal wives, instead depicting spendthrifts as married men and fathers. Yet, Württemberg’s legal and judicial codes also contain subtle references to wasteful women embedded within its rules for bankruptcy, debt, and parental custody rights. Württemberg’s courts could theoretically discipline wasteful women in the same manner as prodigal husbands, including declaring them legally incompetent, rescinding property and inheritance rights, and revoking child custody. Clues as to whether litigants invoked these laws against women and whether courts enforced them depended on the vagaries of the surviving source record.

As Chapters 1 and 3 have shown, my case study of Württemberg court records yielded little information about the roles of women in early modern spendthrift trials. Of my extensive survey, only in one incident in 1585 had a woman clearly initiated an accusation of prodigality against her husband. All other entries in the Bietigheim court minutes offered only suggestive clues about women’s key roles in these family conflicts. Even in the most controversial and well-documented cases, in which the local

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11 Stadtarchiv Bietigheim-Bissingen (hereafter StABi), Bh, B444, Peter Zehens weib contra Hans Welzing (12 July 1585), 177v-178r.
Stadtgericht solicited the help of the Württemberg ducal council (Oberrat) to discipline repeat offenders, women made only token appearances as the silent victims of patriarchal neglect (See Chapter 3). While it is likely that the wives of spendthrifts offered testimony during the investigations, the court failed to document their perspectives. It remains unclear whether women actively reported their husbands to solve household conflicts or whether local officials primarily took on this disciplinary role.

Wasteful wives also appeared in Bietigheim’s historical record, but their experiences remain similarly muted and incomplete. The Bietigheim Stadtgericht charged three married couples with prodigality during the century under investigation. Two of these incidents merited only brief mentions within the court’s record books.$^{12}$ The third, Bietigheim’s most controversial criminal case of its kind, resulted in the conviction of Conrad and Anna Bender for prodigality and forms the subject of Chapter 3. Of the few women of Bietigheim mentioned in these case records, only Anna Bender left behind extensive, albeit indirect and distorted, statements that captured some degree of how she responded to several years of court investigation into her household life.$^{13}$

Secondary literature likewise sheds little light on the role of women in spendthrift trials. David Sabean’s study of early modern Neckarshausen, a village in

$^{12}$ StABi, Bh, B442, Marx Engelfaind (Mittwoch nach Valentini 1546), 109v; Leonhart Eberwein (14 Sept. 1553), 209r and (2 March 1554), 216r.
$^{13}$ HStAS, A209, Bü. 355. See Chapter 3.
southern Württemberg, documents cases in which women took their spendthrift husbands to court, but his study begins with the year 1700. As a result, Sabean has concluded that wives’ attempts to have their husbands declared incompetent (mundtot) were “a distinctly eighteenth-century phenomenon,” followed by a shift towards petitioning for divorce after women gained the right to independently manage property in 1828. This leaves unanswered the question of how spendthrift policies influenced marital relations and women’s household roles during the 150-year period after Württemberg’s new spendthrift rules appeared in the 1550s. As noted above, the sixteenth and seventeenth centuries generally yield far less informative court records than in later centuries.

This chapter responds to the challenges of the source record, by developing a methodology to explore women’s roles in prodigality trials in southwestern Germany between 1550 and 1700. Source limitations prevent this dissertation from exploring women’s experiences systematically or comparatively at the local level, since female litigants and offenders appeared so seldom in the source records of Bietigheim or the Württemberg council. Instead, this chapter draws on the extensive collections of the Imperial Chamber Court (Reichskammergericht, or RKG) to offer an in-depth analysis of one particularly controversial conflict involving a married couple, Anna and Bernhard

14 David Sabean, Property, Production, and Family in Neckarshausen (Cambridge: Cambridge University Press, 1990), 111.
15 Sabean, Property, Production, and Family in Neckarshausen, 114, 215.
Fleck, from northern Württemberg. By focusing on one primary narrative, this chapter makes two assumptions about historical methodology.

First, I have chosen to focus on detail rather than volume. Anna Fleck was by no means the only female spendthrift investigated by the RKG, nor was she the only litigant to leverage spendthrift laws against her husband. Out of the forty-six RKG cases examined for this dissertation, ten of them concerned women who accused their husbands of prodigality.\(^\text{16}\) Seventeen cases investigated women for wasteful household management,\(^\text{17}\) and in eight of those, both husband and wife faced accusations of prodigality.\(^\text{18}\) However, the cases that centered on women’s experiences varied widely in terms of the types of sources and the amount of information that each dossier contained. Dorothea Rebmann of Rottweil left behind only a single petition to document her request to separate from her prodigal husband in 1610.\(^\text{19}\) On the other end of the spectrum, in the mid-sixteenth century, Anna Rosenberger of Heilbronn invested over twenty years of her life and hundreds of pages of depositions, witness interrogations, and appeals into the court process, leaving behind a dossier over nineteen centimeters

\[^{16}\text{HStA C3 Bü. 3266, 3557, 240, 59, 5158, 3441, 4029, 2197, 4752, 5553.}\]
\[^{17}\text{HStA C3 Bü. 1830, 59, 2935, 5425, 2566, 2949, 5542, 3308, 2197.}\]
\[^{18}\text{HStA C3 Bü. 2915, 1378, 4659, 4718, 4029, 3324, 5553, 4843.}\]
\[^{19}\text{HStA C3 Bü. 5158.}\]
faithfully representing the narratives of these cases requires considerable time and contextualization in order to reconstruct the events and legal circumstances.

The range of sources that survived for each marital conflict also varied widely. At times, the surviving documentation consists merely of a list of allegations from each litigating party. Longer dossiers contain additional types of documents, such as procedural requests, copies of lower court minutes, and textual evidence such as household inventories, marriage contracts, wills, and debt agreements. While these types of sources are indeed valuable, my method prioritizes cases that conducted extensive witness interrogations. Only three of the RKG cases that featured marital debt conflicts contained witness testimony.21

Rare trials like Anna Fleck’s documented statements from dozens of witnesses who expressed a diverse range of opinions and calculated responses about the social problem of prodigality. To be sure, layers of translation, transcription, and intrigue have filtered through the information that made it onto the notary’s page, and additional archiving processes influenced what has survived to the present day. Such cases nonetheless offer rare, in-depth, and polyvocal portraits of how these social conflicts operated. Rather than superficially comparing several of these extensive dossiers, I have seized the opportunity to study legal strategies, cultural norms, and community-level

20 HStAS C3 Bü. 3557.
21 HStAS C3 Bü. 3557, 59, 2438.
relations at a level of granularity that has been virtually impossible for the surviving
collections of Bietigheim and the Württemberg ruling council.\textsuperscript{22}

Second, in addition to prioritizing the granular view over the comparative, my
method suggests that Anna Fleck is a representative case. The dispute that she litigated
in three different courts for over two decades represents a type of conflict that
repeatedly confronted state and city authorities in southwestern Germany and
repeatedly drew the interest of the highest court in the Empire. In nine cases between
1504 and 1702, wives, creditors, and their local officials asked the imperial court to
determine whether women could be held liable for their husband’s debts. This type of
conflict resurfaced in the highest regional courts throughout a two-hundred-year period,
with an emphasis on the century between 1540 and 1640. It is also a judicial question
that provoked controversy across a broad geographic region within the imperial
southwest. The Fleck dispute, for example, originated in a northern district of
Württemberg, while eight additional cases hailed from six free imperial cities
throughout the southwestern German lands, namely Esslingen, Heilbronn, Reutlingen,
Rottweil, Schwäbisch Hall, and Ulm. Further, in four of these cases, between 1600 and
1702, wives took their own city governments to court on the grounds that the city
council had illegally favored the claims of their husbands’ creditors over the imperially

\textsuperscript{22} Aside from the Bender conflict, which forms the focal point of Ch. 3.
protected rights of married women. Taking together, nine cases scattered across the southwest suggest a pattern of unresolved judicial conflict around the issue of the state’s role in marital debt disputes.

5.2. Agency and Debt in Early Modern Marital Property Law

Anna Fleck’s case brings to light common tensions between state and city officials, creditors (which could include councilmen as well), and married women and widows. As the analysis below will show, these tensions often originated in a very specific legal principle in Roman, imperial, and regional law, that of weibliche Freiheit (women’s freedom, or Senatus Consultum Velleianum), which protected married women from the financial claims of their husbands and creditors. The fact that this legal principle repeatedly attracted imperial intervention into local governance suggests that the Fleck conflict—while by no means wholly representative for the southwestern

23 HStAS C3 Bü. 2438, 4029, 2778, 3324.

region—nonetheless offers much needed insight into a common legal problem in the court systems of the imperial southwest. This chapter will follow Anna and Bernhard’s story, drawing on additional cases from the RKG when relevant.

5.2.1. Husband’s and Wife’s Property Rights

In the 1570s, Anna and Bernhard Fleck worked together in the butcher’s trade in Neuenstadt am Kocher, one of the northernmost districts of Württemberg that bordered the Kocher river. Neuenstadt served as one of the residences of the Dukes of Württemberg in the sixteenth and seventeenth centuries. By the mid-sixteenth century, the district enjoyed a degree of prosperity that exceeded the average income throughout Württemberg as a whole. Neuenstadt consisted of a district town with the ducal residence and a judicial court, the Stadtgericht, as well as several villages in the surrounding countryside.

When Anna and Bernhard had married, likely over a decade earlier, each spouse brought personal property and family gifts together to build a joint household. Orendel Metz, Anna’s father, had bequeathed several plots of land as a wedding gift to his

\[\text{As of 1545, the average value of an estate was 241 gulden, compared to a state average of 171 gulden throughout Württemberg. K.-O. Bull, “Die durchschnittlichen Vermögen in den altwürttembergischen Städten und Dörfern um 1545 nach den Türkensteuerlisten.” Historischer Atlas von Baden-Württemberg: Erläuterungen, XII, 1, p. 1-15.}\]
daughter in his will, in addition to a variety of furniture, linens, cookware, and clothing to start the couple out in their new home.\textsuperscript{26} Bernhard’s family likely contributed a Morgengabe in the form of goods or cash, a traditional gift from the groom’s family that typically matched the value of the gift from the bride’s family.\textsuperscript{27} In keeping with Württemberg law, Anna and Bernhard only held part of their property in common as joint marital property, which Bernhard had the legal right to administer. Although Bernhard enjoyed usage rights and the profits of Anna’s property during their marriage, he could not sell or mortgage her dowry, inheritance, or personal possessions.\textsuperscript{28} Anna retained legal ownership of her dowry and wedding gifts from her family, as well as her inheritance, her wardrobe, and any other personal property. For example, Anna’s personal property also included one-half gulden that she had received as a wedding gift from the wife of a family friend many years earlier. While this gift represents a small sum of their total estate, Anna’s careful documentation of the amount represented the importance of the legal divisions between individual and joint marital property. \textsuperscript{29}

\begin{thebibliography}{9}
\bibitem{26} HStAS C3 Bü. 59.
\bibitem{29} HStAS C3 Bü. 59.
\end{thebibliography}
Restrictions on men’s control of the family property ensured that women who outlived their husbands could retain sufficient resources to support themselves (called her *Leibgeding*), rather than depending on public or state welfare for survival.\(^{30}\) In the German lands more broadly, widows were particularly vulnerable to financial instability, as household tax records indicate. Households headed by widows were among the poorest in early modern Germany. In the lower estates, widows, alongside unmarried women, also made up the largest group of menial day laborers, and they earned lower wages than their male counterparts. At the other end of the social spectrum, some widows reached a level of material success and relative autonomy, particularly those who continued to run their husbands’ businesses in widowhood.\(^{31}\) Unfortunately, Anna Fleck’s RKG dossier contains no precise estimate of her family’s financial assets. We can assume that Anna Fleck’s financial stability would have depended on a combination of factors, such as local economic conditions, the value of her dowry, the success of Bernhard’s butcher business, and the total value of the Flecks’ joint household.

In Württemberg, the ducal council introduced new restrictions on women’s legal and property privileges over the course of the sixteenth century that prescribed

\(^{30}\) McGinn, *Widows and Patriarchy*, 79.

limitations on married women and widows’ control over property.\textsuperscript{32} In the sixteenth century, Württemberg reintroduced the Roman practice of gender guardianship (\textit{Geschlechtsvormundschaft} or \textit{tutela mulierum}), which required single women and widows to surrender management of their legal affairs and property to male guardians.\textsuperscript{33} Wives, too, generally required their husbands to serve as their legal representative in order to appear in court. Anna Fleck could expect to maintain ownership of her dowry and other possessions, while Bernhard served as the custodian of her properties and her legal representative whenever any court conflicts arose. Without preapproval from her guardian—in this case, her husband, Bernhard—Anna could not give, sell, buy, borrow, or mortgage landed property or moveable goods.\textsuperscript{34}

\begin{footnotesize}
\begin{enumerate}
\item Riecke, \textit{Das Württembergische Landrecht}, 64, 202. If a wife owned some property independently, so that her husband could not administer it without her approval, then the Landrecht of 1567 permitted the woman to manage that property “but only with modesty” (\textit{mit der bescheidenheit}). Reyscher, \textit{Sammlung der württembergischen Gesetzte}, Vol. 4, 231. If a wife owned some property independently of her husband, the \textit{Landrecht} of 1567 permitted the woman to manage that property “but only with modesty” (\textit{mit der bescheidenheit}).
\end{enumerate}
\end{footnotesize}
All of these legal measures reflected a prevailing assumption that women were ill suited to handle the responsibilities of business and property management. Patriarchal restrictions on women presumed that they were, as Anna’s lawyer would later characterize her, “ignorant and naive” and rationally “weak,” and thus required protection due to her vulnerable nature. Entrusting full legal rights to women ran the risk that they would “be fooled or compelled” to agree to disadvantageous terms. Württemberg’s property laws acknowledged that women were also vulnerable to possible exploitation by their own husbands. To prevent large-scale exploitation of wives, the Landrecht required married couples to seek approval from local officials or their prince if they intended to conduct business involving a sum that exceeded one hundred gulden.

Despite this exception for large contracts, the Württemberg state largely depended on Hausväter to regulate the affairs of their own households, including making decisions about joint marital property and monitoring their wives’ affairs. In the early 1570s, Bernhard decided to undertake a new, large-scale financial venture to augment their income as butchers. Bernhard acquired loans from several cattle traders in

35 Wächter, Württembergischeen Privatrechts, 466.
38 Reyscher, Sammlung der württembergischen Gesetze, Bd. 4, 325.
Nuremberg (located ninety miles east of Neuenstadt) to establish himself in the oxen trade. For unclear reasons, Bernhard’s investment collapsed, leaving him scrambling for a way to repay his debts. In the summer of 1573, with no other option on hand, Bernhard asked his wife to stand surety for his largest debt, a loan for one thousand gulden that he had borrowed from Hans Aff, a mayor of the town of Wimpfen (located nine miles west of Neuenstadt). Adding cosigners allowed Bernhard to increase the amount of available collateral that he pledged against Aff’s loan. Although the circumstances around Anna’s participation remained heavily contested, trial records indicate that Anna signed a contract to assume liability for the loan.

5.2.2. Liability and weibliche Freiheit in Marital Debt Law

Württemberg had complex, and often controversial, rules regarding women who interceded, or assumed liability, for the debt of a third party—particularly if they did so on behalf of their husbands. Drawing on the Corpus Iuris Romanum, the law of the Holy Roman Empire, Württemberg extended its protective restrictions on women’s legal rights by allowing women to retroactively renounce liability for a legal agreement. These provisions aimed to protect women from the more severe consequences of doing business. The rule, called weibliche Freiheit (or Senatus Consultum Velleianum), allowed women to take back their word after they had already agreed to stand surety for a third party. If a creditor chose to initiate a court suit against the woman in question, she was
legally obligated to invoke her *weibliche Freiheit*, which rendered the agreement null and void.\(^{39}\) While this provision did not necessarily prevent women from continuing to sign liability agreements for their husbands, it did preserve a loophole for women who sought to escape a disadvantageous contract.\(^{40}\)

Through its *weibliche Freiheit* rules, Württemberg appeared to prioritize protections for married women like Anna Fleck over the interests of creditors like Hans Aff—an opinion that creditors expressed on multiple occasions to lower and imperial courts.\(^{41}\) To prevent women from abusing their privileges, the *Landrecht* thus stipulated exceptions to the rule of *weibliche Freiheit*. As Anna’s lawyer would later explain, “The princely *Landrecht* of Württemberg as well as the common law clearly and explicitly state... that a married woman who resides in the principality of Württemberg cannot assume liability for a debt or other contract for her husband at his command, unless she does so out of her free will without coercion, for the good of the joint household for


\(^{40}\) Merry Wiesner’s study of southern cities indicates that *weibliche Freiheit* rules were not only controversial but often ignored outright. Women continued to make contracts, buy, sell, and trade property, and use the courts to arbitrate disputes over their financial dealings well after city magistrates attempted to curb their economic access by issuing guardianship laws and *weibliche Freiheit* protections. Wiesner, *Working Women*, 30-31.

\(^{41}\) HStA C3, Bü. 59, Litis Contestation in Causa Appellationis; HStA C3, Bü. 4029, Gabriel Steinhauser v. Stättmeister und Rat von Schwäbisch Hall, 1627-1630, Duplic und Conclusion Schrift (2 June 1630); HStA C3, Bü. 3324 Anna Christina Picher v. Bürgermeister und Rat der Stadt Esslingen, 1700-1702, see response to Replicae (14. Feb 1701).
compelling reasons, and appears before a court [to do so].”42 A few other exceptions
restricted the application of weibliche Freiheit. Women forfeited their right if it was
discovered that they had intended to commit fraud by interceding for their husbands.43
The right to weibliche Freiheit also failed to apply if the contract in question provided an
observable material benefit for the wife and their children, as opposed to serving the
husband’s interests alone. Couples who worked together in a trade would have deeply
intertwined financial interests. As a result, some regions, like the imperial city of
Schwäbisch Hall, specifically denied the right to renounce liability to married women
who worked alongside their husbands in market or food services (as “market women”),
since both spouses “have equal administration of income and expenses, purchases, sales,
and the entire household.”44 Bernhard, as a butcher, did not automatically fall into a
prohibited profession, and it is not clear whether he enjoyed a similarly collaborative

42 “Dieweyl dann dz furstlich Württembergisch Lanndtrecht so wol, alls sonnsten die
gemainen beschribnen Recht, clärlich und austrucklich Statuirn, ordnen, und wollenn,
das ain jedes weibbildt, so im Furstenthumb Wurttemberg seßhaft, und inn der Ehe ist,
sich fur deßselben Ehemann, aus seinen gehaiß, (Es were dann das sie es aus selbs
freyen ungezwungen willen, und gemainer Haußhaltung furstendigen pillichen
bewegenden ursachen thett, sich auch solcher vor ain gericht gnugsam erscheint), inn
khain weiß noch gestallt, umb schulden oder inn andern Contracten, und handlungen
43 Wächter, Württembergisheen Privatreichs, 488.
44 ”Wo ein Ehefraw mit irem Mann...also im Einnemen und Außgeben, Kauffen,
Reichs Statt Schwæbischen Hall/ Reformation (Tübingen: Georg Gruppenbach, 1573), X,
relationship with his wife. As a result, Anna’s legal capacity to sign the contract with Hans Aff remained subject to a highly controversial rule with a history for provoking legal conflicts about the applicability of its various loopholes. As will become clear below, some courts spent years attempting to untangle the interwoven property and obligations of husbands and wives.

5.2.3. Determining Liability in Bankruptcy Cases

The parties involved would put this question to the test for nearly a decade as their business relationship began to crumble. By the end of 1573, Bernhard and Anna had failed to find the resources to repay Aff and the other creditors from Nuremberg. As a result, Bernhard was forced to begin the legal process of beneficium cessionis, a form of bankruptcy in which Bernhard forfeited all of his property to satisfy his creditors. Several officials visited the Fleck home and carefully inventoried all the property in their names, from the mattress in the maid’s chamber to each towel, plate, and utensil.

Anna and Bernhard, like many spouses in the Württemberg region, owned property both jointly and independently. Thus, the bankruptcy proceedings had to determine whether Bernhard’s business debts should be considered jointly or

45 See Wiesner’s account of disputes from Strasburg and Munich over the very question of whether a butcher’s wife should be classified as a market woman. Wiesner, Working Women, 29-30.
46 HStAS C3, Bü. 59.
individually held. Complex rules governed whether a husband or wife could be held liable for the debts of a spouse. In Württemberg, both spouses were responsible for the debts that they contracted jointly, such as loans that funded maintenance of the shared household.\textsuperscript{47} If, when repayment was due, their jointly held property did not cover the full amount of the debt, then each spouse had to pay one-half of the remaining sum out of their own individual property. In contrast, if only one spouse accrued debts through “wicked, extravagant, wasteful living, such as feasts or gambling, or through criminal offenses,” the offender alone would bear the cost of those debts, with any outstanding sum covered by their joint property.\textsuperscript{48} The innocent spouse’s individual property, however, could not be seized to cover the debt.

As in many of its other policies, Württemberg’s judicial procedure for bankruptcy attempted to strike a balance between protecting vulnerable debtors and their families from indigence and protecting creditors from financial losses.

Württemberg’s Landrecht allowed Bernhard to surrender all his properties to local officials for public auction, with the proceeds going towards his creditors. Bernhard kept only a suit of his clothes and the tools of his trade, an exception to ensure that he could

\textsuperscript{47} Reyscher, \textit{Sammlung der württembergischen Gesetze}, Vol. 4, 369.
provide for himself and his dependents.49 The Landrecht acknowledged that a Hausvater had simultaneous duties towards his commercial network and the members of the household. However, in a typical bankruptcy proceeding, the state privileged wives and children over creditors. Before the creditors could assert their claims, Anna Fleck would be permitted to retrieve her dowry, inheritance, personal possessions, and any other individually owned property from the family estate.50

This compromise between community and family claims was entirely based on the premise that both husband and wife had conformed to communal standards of acceptable economic practices. As Mary Lindemann and Thomas Max Safley have shown, bankruptcy law distinguished between “virtuous” and “frivolous” bankrupts based on public perceptions of the individual’s ethical conduct.51 Enterprising businessmen could claim the assistance of beneficium cessionis procedure when their ventures met with ill fortune, if they had a reputation for honest and legitimate dealings.

However, secular officials and the community at large remained alert to possible fraud. Württemberg’s *Landrecht* warned that men who “extravagantly squandered their [property] through idleness, excessive indulgence, gambling, and other unproductive means...[would] be warned to improve their household management and punished for their malicious wastefulness and dangerous deception of [their] creditors, as an example to others.” 52 If Bernhard’s creditors suspected him of deceiving his creditors or committing illicit business practices, they could pursue criminal bankruptcy charges. A public trial enabled creditors to expose fraudulent dealings to the community, turn public opinion against the offender, and deter future incidents. 53

On the other hand, legal maneuvers against Bernhard would return no material gains to recuperate the creditors’ losses, like squeezing proverbial blood from a stone. Bernhard had already surrendered all his properties when he declared bankruptcy. Bernhard also had a good reputation in Neuenstadt, where he had served as the mayor and on the city council “due to his reasonable and honorable conduct.” 54


53 Safley, “Business Failure and Civic Scandal.”

54 “Wom wegen seines verstands und erbarn wandels.” HStAS, C3, Bü. 59, Exception und Probation Schrift.
would later insist, Bernhard had enjoyed past financial success in his other dealings in
the wine, sheep, and wool trades, suggesting that blame did not lie with Bernhard’s
business ethics or competency.

Instead of pursuing a suit against Bernhard, Aff shifted his focus to Anna, who
had signed surety for Bernhard earlier that year. Württemberg bankruptcy law
stipulated that Anna could retrieve her individual property from the estate only “so long
as the wife was blameless concerning her husband’s ruin.” Aff’s legal representation
built a suit against Anna based on loopholes in the legal protections for women in
Württemberg’s bankruptcy and weibliche Freiheit policies. Married women forfeited these
protections if, as Aff noted in his petition, “a woman is to blame for her husband’s
downfall, [if she] caused it, or was mixed up in his business, had a shared part in it...and

55 “Sover sie das Weib, an solchem des Manns verderben unschuldig.” Reyscher,
Sammlung der württembergischen Gesetze, Vol. 4, 287. In a similar policy from 1559,
Electoral Pfalz denied wasteful widows the right to retrieve their dowry and individual
property from their husbands’ estate before creditors and other heirs made their claims
for repayment. (“Wurde sichs aber zutragen, daß ein Weibsperson ihrem Mann zu
seinem Verschwenden, Abfall oder Armut, durch ihren Pracht, verthunischen
Haußhalten, oder andere Wege selbsten geholffen oder ursach gegeben hette, dieselben
Weiber, auff welche solchs kundlich kan gebracht oder erwiesen werden, sollen solcher
ihrer Freyheiten gegen andern ihres [end page 46] Manns Glaubigern mit nichten
genissen, Sondern in ihren Förderungen andern gemeinen unbefreyten Glaubigern
gleich gehalten, und ihnen einiger Vortheil vor denselben, es sey in: oder ausser
Rechtens nicht zuerkant oder verstattet werden”).
pledged herself as Principal and debtor alongside her husband for her own good and benefit.” 56

This strategic move opened the possibility of seizing Anna Fleck’s property, the only remaining unclaimed resources of the Fleck household. Inventory records indicate that nearly all the Fleck family’s real estate belonged to Anna alone. Upon Anna and Bernhard’s marriage, Anna’s father had provided several plots of land and various goods to stock their new household. Anna owned nine morgen of land (equivalent to 0.779 acres) in five different plots around the city, along with a grazing pasture, a vineyard, and two gardens for growing herbs and vegetables.57 She also owned all the basic furnishings of a home, from mattresses and towels to pans and a cauldron, all of which she had brought into the marriage on her wedding day.58 Unfortunately, the contemporary value of her property remains unknown.59

56 “Sover sie das weib sollichs clarlich mitbringt und ausweiset, wa aber ain fraw an ires Manns verderben schuldig, ime darzue geholfen und ursach geben, auch sich inn seine handel mit eingemüscht, und nichts abgesonnderts, sonder gmein und theyl daran gehapt, und im allwege mit angelegen, auch sich mit und neben dem Mann ir selber zue nutz und gutten, als ain Principälin und selbst schuldnerin verschriben.” HStAS, C3, Bü. 59, Litis Contestation in Causa Appellationis.
57 “Maasordnung vom 31. März 1557” in Reyscher, Sammlung der württembergischen Gesetze, Bd. 12, 299.
58 HStAS, C3, Bü. 59, Heüratguot und Eestewer.
59 The value of inventory items can vary widely based on the material, age, and condition of the items. The inventory preserved in the Neuenstadt Stadtgericht records does not provide adequate information to estimate net worth, nor does it provide itemized estimates, as other contemporary inventories sometimes did.
While it is unclear how much Bernhard’s creditors would have gained from a public auction of Anna’s property, we can certainly infer that the land and furnishings meant a great deal to Anna herself. A wife or widow’s right to retrieve her dowry and wedding gifts was intended to support her when she had no other means of financial support in old age and widowhood. The dispute over Bernhard’s loan thus became a fight for her long-term survival.

In the ensuing twenty years of litigation, both Hans Aff and Anna Fleck called on state authorities to protect the vulnerabilities of creditors and dependents, respectively. As the preceding section argued, Württemberg’s system of marriage, debt, and bankruptcy law strove to balance the competing claims of debtors, household dependents, and the business community—a challenging task in practice, given the loopholes and contingencies contained in its legislation. The Neuenstadt Stadtgericht, Württemberg’s lower court in the district, ruled in April 1574 that creditors’ rights to recuperate losses superseded Anna Fleck’s rights as a married woman to preserve her individual property. However, upon appeal to the next highest jurisdiction, the Tübingen Hofgericht reversed the ruling, instead confirming Anna’s right to maintain ownership of her wedding gifts, dowry, personal possessions, and any other individually-held property. Appealing these court decisions allowed each party to put pressure on their state officials to rearrange its legal priorities. In 1582, Hans Aff

60 HStAS, C3, Bü. 59.
petitioned the highest court in the land, the Reichskammergericht, to issue an ultimate verdict. The ensuring trial outlasted the life spans of both litigants and, like many RKG appeals, left no documentary trace of a final ruling.

5.3. Stereotypes and Argumentative Strategies in Marital Debt Trials

Despite silences in the source record, the twenty years of records that the Fleck dispute left behind sheds light on how litigating parties attempted to renegotiate a woman’s property rights by remaking her public reputation as a good housewife. The remainder of this chapter draws on Anna Fleck’s case as well as similar RKG appeals that debated women’s liability and agency in the household economy. Lawyers and litigants investigated three common themes as they debated women’s household roles, liability, and rights within the estate of marriage: (1) the balance of power between husband and wife; (2) the wife’s use of household property; and (3) the wife’s public performance of support or disapproval towards her husband.

Instead of sifting for social realities, the following analysis focuses on the craft of court storytelling. When telling women’s stories, litigants used common scripts, stereotypes, and public rumor to negotiate gender roles within the private household. The tales that they constructed portrayed themselves and their opponents in calculated ways, using recognizable tropes from legal culture, literature, and moral and social codes. Lawyers, notaries, neighbors, and relatives helped to write the scripts, while court
officials directed the drama. To highlight how law and culture influenced court stories, the sections below examine three recurring stereotypes of married women in the RKG cases: the shrewish tyrant, the obedient subordinate, and the public critic.

5.3.1. Women in Charge: Usurping Power

This section examines legal and literary representations of the domineering wife, a stereotypical figure who defied the subordinate legal role of wives in the household gender hierarchy. Hans Aff drew on this common stereotype to argue that Anna Fleck had exerted inappropriate influence over the household finances. His legal strategy depended on the assertion that powerful wives hardly required state intervention—such as the principle of *weibliche Freiheit*—to shield them from the harsh consequences of doing business. If women exerted greater influence over their household property, Aff argued, they must also accept a correspondingly heavier degree of liability for financial losses and debts. Aff grounded his claims on two types of observations about the Fleck’s marriage: (1) how Anna leveraged greater influence within her marriage and (2) what decisions she made about the household finances.

Through his petitions and witness questioning, Aff portrayed Anna Fleck as the “master” of her household. Aff’s lawyer quipped that, “Bernhard Fleck was not often
the lead singer of his household. Rather, his wife too often took power for herself.”

One of Aff’s witnesses similarly testified that “Anna Fleck has had enough authority over her husband, Bernhard, even to the present day, so that he dare not undertake something that [Anna] and her mother [would reject].” The same witness emphasized that Anna “especially wielded power” over Bernhard during the time leading up to the debt agreement with Hans Aff.

The trope of the shrewish, domineering wife was a popular stereotype in late medieval and early modern art and literature. Images and narratives in this tradition often portrayed husbands and wives in a literal “battle for the pants,” violently pummeling each other with fists and cudgels to determine which spouse could don the man’s breeches and dominate the relationship. In these scenes, husbands and wives

61 “Das Bernhardt Fleck nicht viel Meister gesang inn seinen hauß gesungen, sondern sein weib nur allzuviel der Miesterschaft sich angenommen.” HStAS, C3, Bü. 59, Exception und Probabtion Schrift.

62 “Anna Fleckin hette der Maisterschaft gnug über iren Mann Bernhardten gehabt, und noch auf diesen tag, also das Er nit wol etwas hinderwars ir und irer Mutter fürnammen und verhandlen dörffen, und das Appellantin [Anna] sonderlichen auch vorm Ochsenhendel solche Maisterschaft geübt.” HStAS, C3, Bü. 59, Exception und Probabtion Schrift. On Meisterschaft as a reference to the marital purse strings, see Sabean, Property, Production, and Family, 167-174.

fought over sexual symbols of masculinity, like swords and codpieces, or engaged in violence to represent the supremacy of one spouse over the other.64

Other scenes represented gender disorder through a more mundane reversal of gender-based labor roles for husbands and wives, a dynamic that strikes closer to Hans Aff’s provocative statement about the Fleck couple’s marriage. Common examples included the use of symbols like the spinning distaff or laundry (particularly diapers).65 Two printed depictions of inverted gender roles from circa 1650, one a pamphlet and the other a broadsheet, indicate how marital labor roles evoked stereotypes of dominance and subordination. While these documents postdated the Fleck conflict and their circulation range is unknown, they nonetheless serve as a useful analogy to highlight the significance of class and material consumption for gendered household roles, as will be shown below.

The first, an anonymous and partially damaged pamphlet, celebrates an unknown couple’s wedding with a playful satire on traditional marital gender roles.  

The title page declares itself as “The Law of the Sweet Women, recently issued by the most serene, powerless and conquerable She-Man—the 15th King of Utopia, Archduke of Nowhere, Prince of Ignorance […], Baron of No-City and Lord of No-Town.” After this self-deprecating claim to the She-man’s false grandeur, the narrator lays out a code of fifty-two household “laws” that a newlywed husband should follow. The verses command husbands to obey and serve their wives:

  The husband should perform Whatever she wishes
  [He] will serve her and she will rule.

The Law of the Sweet Women elaborates on this inverted marital dynamic, commanding the husband to perform domestic tasks like heating his wife’s room and bath, cooking and serving elaborate meals for her, and indulging her with wine and sweets. The list of marital chores sketches the environment of a well-stocked household with ample cash,

66 The pamphlet has survived only in rare and partially damaged copies. The title page, although damaged, indicates that the author composed the piece for the wedding feast. The publication date and location have become illegible. “Der Weiber wohl-candirete Privilegia” (ca. 1650), Herzog August Bibliothek (hereafter HAB), Xb 6106.
68 “Denn was sie nur wird haben wollen / Das wird ihr Mann verrichten laßen. — (in margin: sollen). Und wird ihr dienen / sie wird herrschen.” HAB Xb 6106.
wine, roasted meats, sweets, and household comforts to indulge the demands of a spoiled housewife—including the cost of carriage rides for her nightly adventures and pocket money for her card games.

In a broadsheet published around the same year, entitled *The Command of Women*, a combination of text and image portrays men in the role of industrious housemaids. With equally inflated decorum, the narrator lists the commands of “We, the Duchesses of Maiden Castle, Wife-City, [and] Woman-Town […] and Lord of the She-Men” to their subordinate husbands.69 The image depicts a luxurious household interior in which six simply dressed men attend to the needs of several elegant women wearing aristocratic costumes. The men serve drinks, sweep the floors, primp their wives’ clothes, and warm the room with a stove-heater. The verses that accompany the image elaborate on the husband’s subservient roles. The men clean the household and their wives’ clothes,

69 “Wir Hertzog Weiberhold / von- vnd zu Jungfraw-Stein Auff Frawstadt/ Magdeburg vnd Herzberg an dem Rein / Fürst zu groß Dütledörff/ ein Lehnherr der Sieherren.” Neweröffneter Ernsthaffter/ hochstraffwürdiger/ und unverbrüchlicher Weiberbefelich Abgegangen an Alle Nichtswichtige und nichtsdüchtige Siemänner (Nuremberg: Fürst, ca. 1650), HAB Einbl. Xb FM 287. *The Command of Women* was published by Paul Fürst, an art collector of Nuremberg who printed several other broadsheets about married life and dissatisfied domestic servants circa 1630s-1660s. The broadsheet is part of a twin set; Fürst also printed one entitled Neweröffneter Ernsthaffter/ hochstraffwürdiger vnd unverbrüchlicher Männerbefehlich: Abgegangen an alle nichtswichtige schlechtduchtige Gernemänner, which depicts a land of unimpeachable patriarchal domination in which aristocratic wives serve their husbands’ every whim. The broadsheet has survived only in rare and partially damaged copies.
serve her at table, stoke the fire, cook fine meals, “and manage everything in the household according to her direction.”

Notably, in both depictions of masterful women, the wives have not only usurped a position of power over their husbands, but have also used that position of influence to indulge in elaborate parties, fine clothing, and other luxuries. Unlike contemporaneous portrayals of topsy-turvy gender roles, which often focused on violence and sexual symbols, these portrayals of refined “She-man” bring into sharp relief just how central social status was to concepts of good and bad householding. Sweets, card games, and fine dresses symbolize the vanity commonly attributed to women in household literature; but these symbols also indicate the transgression of class-based gender norms that differentiated early modern German society.

5.3.2. Wasteful Women: Misusing Power

To portray Anna Fleck’s influence over her husband as illegitimate, Hans Aff submitted depositions and recruited witnesses to persuade the court that Anna had misused her power over the household finances. Anna Fleck was a poor manager, Aff argued, and her reckless decisions were the primary reason for Bernhard’s financial ruin:

70 “Alles in den Hauß nach ihren Kopff verwalten.” See the second stanza of The Command of Women. HAB Einbl. Xb FM 287.
As many people in Neuenstadt well know, [Anna] is responsible not only for this debt [to Aff], but for all of her husband’s debts, and therefore [she is] also responsible for the resulting bankruptcy because she ... did not manage the household industriously nor in accordance with her social status, as is proper for a loyal helpmeet. She was extravagant, vain, proud, and arrogant in everything she did, particularly so with respect to her clothes, so that soon no other burgher’s wife in Neuenstadt could equal her. It is also well known that she [hosted] parties, banquets, and other expensive things with such extravagance, giving away [money] so freely, that any money that her husband had brought home from the oxen [transaction with his creditors] did not last long.\(^7\)

Hans Aff’s allegation aimed to deny Anna’s right to her *weibliche Freiheit* in two ways.

First, as noted above, accusing her of prodigality also invoked Württemberg bankruptcy laws to pin responsibility for the outstanding debt on Anna. Second, Württemberg’s legal code prohibited women from renouncing liability for a debt if it could be proven that she had used the proceeds for her own benefit or to support the joint household.

Repeatedly throughout the trial, Aff and his witnesses defined prodigality as expenditures that “exceeded one’s station” (*irem Stand ungemeß*). By accusing Anna of

\(^7\) “Dann wie meniglichen zur Newenstat wißendt, ist gegentheylin nit allein an diesen, sonder auch an deß Manns gantzen schuldenlast, und deswegen ervogter Cession, mehrertheils schuldig, weyl dieselbig sich irem Standt gar nicht gemeß, noch wie einer heüßlichen frawen, und getrewin Mitgehilffin gepürt, Inn der Haußhaltung verhalten, dann zue dem daß sie inn allen iren sachen, thun und laßen, sonderlichen aber in Klaidungen dermaßen so kostlich, prächtig, stolltz und übermüettig geweßen, das nicht baldt ein Burgersfraw zur Newenstatt Ir gleich thun mögen, Waist man auch gutermaßen das sie mit gastungen, panckhetieren, und andern, so dem gellt wehe gethon, ein soolich übermaß gepraucht, auch allso milt und frey geb gewesen, das wa schon Ir haußwürt etwan vil gelts von Ochsen erlösßt heimbgebracht und bey einander gehapt, doch daßselbig nicht lang kleckhen.” HStAS, C3, Bü. 59, Verantwortung & Gegenbericht.
spending above her social class, Aff laid the groundwork to investigate Anna’s conduct on the level of concrete, material items—especially her clothing. Stories about married women’s mismanagement highlight how litigants used the legal concept of prodigality not only to regulate gender roles, but also to enforce or renegotiate class divisions within the early modern social order.

The following section argues that thrift, moderation, and good household management were class-specific concepts. Like sumptuary laws, spendthrift laws did not target extravagance in general so much as financial activities that exceeded the broader consensus about what was appropriate for subjects at each level of the social hierarchy. Aff’s attacks on Anna Fleck’s household management shed light on how court trials enabled litigants to reinforce or renegotiate standards of socially appropriate spending. In the Fleck case, Anna’s financial security and twenty years of litigation all hinged on how her acquaintances in Neuenstadt chose to characterize her compliance with class- and gender-based standards of proper household management. Two areas of household life proved central to the Fleck dispute: her wardrobe and her social life.

5.3.2.1. Clothing

Between 1300 and 1550, German towns and territories published approximately six hundred different laws to regulate clothing and other displays of luxury, both in quotidian life and on special occasions like baptisms, weddings, funerals, and holy
days. Württemberg’s Landesordnung of 1536, for example, banned extravagant weddings to prevent “young couples who have not brought any [property] into marriage from getting into debts that they cannot repay for the rest of their lives.”

Through restrictions on clothing in particular, Württemberg’s ducal council hoped to stabilize the state and public welfare through individual attention to household spending. In the Landesordnung of 1515, the section on clothing warned subjects to purchase modest clothing with cash only, lest they incur “large debts” (grosse schulden) by buying on credit. Subsequent revisions of the Landesordnung sketched out a hierarchy of material goods to determine what textiles were reserved for nobility and which were permitted to the peasantry, burghers, merchants, officials, servants.

Hans Aff’s lawyer interrogated at least twenty-one witnesses over the course of the investigation. One focus of Aff’s questions concerned whether the witnesses had observed Anna Fleck wearing fine clothing during the years of her husband’s business troubles. Aff’s legal representative hoped to produce evidence that Anna had sported

74 Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 23.
75 Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 860-2.
unusually fine fabrics that surpassed a bourgeois woman’s typical repertoire of available textiles. These included silk, taffeta, and mohair, a highly prized cloth woven from goat or camel hair (a.k.a. *camelot, Schamlot*). Aff also asked witnesses to corroborate salacious details about Anna’s vanity, such as a rumor that she changed her wardrobe three different times during a single dinner party. The interrogation pushed witnesses toward Aff’s primary claim: that Anna “did not behave in a manner befitting her standing as a butcher’s wife, neither in the household management, nor as is proper for a useful housewife and woman.” Aff’s questions for witnesses lay the groundwork for his argument that Anna’s social ambition forfeited her right to claim the protections of *weibliche Freiheit*.

Like Aff, Anna’s legal representatives adopted the same assumption that Anna’s ownership rights depended on her reputation for moderate spending. In her defense, her lawyer sought to provide witness testimony to prove that public perceptions of Anna’s appearance matched conservative social expectations of a butcher’s wife. Unlike Hans Aff’s singular focus on the fabric type, Anna submitted a carefully crafted account

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76 “Ob sie mit derweylen Claider von Schammlott, Daffett unnd anndern Seidin gewanndt ir anmachen laßen, auch selbige zutragen sich gar nicht gescheüht hat.” HStAS, C3, Bü. 59, Attestationes und Examina.

77 “Ob sie nicht an hohenn fästen, hochzeitlichen tagen unndt gastungen ettwann einstags sich zum drittenmal annderst angethon, unnd die Claider abgewechßelt.” HStAS, C3, Bü. 59, Attestationes und Examina.

78 “Daß hergegen sein haußfraw allß ain Metzgerin, sich irem Stanndt nicht gemeß, noch auch inn der haußhaltung, wie ainer nutzlichen haußhälterin und frawen gepürt, verhaltten.” HStAS, C3, Bü. 59, Attestationes und Examina.
of her wardrobe with details about the fabric quality, origin, and age and condition of each garment.

While the source record offers no official inventory of her wardrobe to corroborate her account, it does nonetheless shed light on what Anna and her counsel believed a craftsman’s wife should own in late sixteenth-century Württemberg. During the previous three years, she claimed, her daily garb had consisted of a dress made of Engelsatt, a narrow woolen fabric, and a coat made from homespun linen, an extremely common fabric used for clothing and housewares. Anna took care to mention that her clothing lacked velvet or satin trims. Such clothes, Anna concluded, “could not be considered so precious or expensive, nor considered extravagant or above her station.”

Velvet was a valuable textile often used in small quantities as trim or accessories in bourgeois clothing to indicate social distinction. Further, trims were specifically regulated by the Württemberg Landesordnung, which permitted female burghers to sport garments with precious bindings—made from silk, for example—only on certain parts of the body, such as around the neck and arms. Velvet bindings, as Anna apparently knew, were forbidden on burgher clothing.

79 “So h[oc]hen shatz nit werdt sein khündten, das ir selbiges fur ein vbermaß oder Irem stand ungemeß geshetzt möchte werden.” HStAS C3 Bü. 59, Appellation Clag.
81 Reyscher, Sammlung der württembergischen Gesetzte, Vol. 12, 860.
The age of Anna’s belongings was particularly important to her defense. Above all, her lawyer sought to disprove that Anna used any of Hans Aff’s loans to purchase anything for her own personal use. Her depositions repeatedly claimed that “her possessions [during the trial] were not as fine as they had been before this business [with Hans Aff’s loan] began.”82 Perhaps to hedge her bets, Anna later expanded her claim, pushing the reference point back many years earlier. “The truth,” she submitted to the Tübingen Hofgericht, “is that she brought more and better clothing [into her marriage] to her husband” than she later owned during the investigation.83 Anna’s longtime maid corroborated that Anna’s wardrobe had weathered years, if not decades, of use. The maid revealed that Anna did indeed own a muff made of Schamlot (despite Anna’s own denials), albeit one eight years old, as well as four taffeta dresses from her days as a single woman. Among Anna’s most precious textiles were also the oldest: two skirts made of Arlas, a woolen textile nearly as valuable as Schamlot, that had weathered twenty years of wear.84

By tracing her most valuable items back to her wedding day, Anna essentially asked the court to view her finest possessions as a souvenir from her youth, not as a reflection of her current identity as a craftsman’s wife. After all, as one sympathetic

82 “So hab Bernhardt weyb zuvor und ehe ir Mann diesen handel angefangen, beßere Clayder gehapt, dann jetzt.” HStAS, C3, Bü. 59.
83 “Die erfundtlich warheit, das sie mehr und bessere Klayder zuer Mann gebracht, dann sie heuttigs tags hatt.” HStAS, C3, Bü. 59, Appellation Clag.

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witness later testified, “her belated father had been a rich man, who only had one other child besides [Anna]” between whom he divided his resources. 85 Aside from one “fine” (cöstlicher) garment that Bernhard bought Anna as a wedding gift, 86 Anna stressed that “she received the majority not from her husband, but from her dear parents.” 87

When Aff’s lawyer pressed witnesses to evaluate Anna’s account of her own wardrobe, they disagreed about whether her appearance matched or exceeded her social standing. Hans Müller, one of Anna’s chosen witnesses, testified that Anna “had never worn unusually expensive clothes, such as Schamlot or silks, but rather fine, clean bourgeois clothes that fit her social standing, just like other burgher’s honorable wives would wear.” 88 Like Anna’s own account, Müller thought she mostly wore flaxen linen and Engelsatt. He also estimated that Anna had spun much of the materials herself, indicating a lower quality and overall value. In response to Hans Aff’s accusations, Müller emphasized the social propriety of Anna’s wardrobe, repeating that Anna

85 “Iren Vattern seeligen, so ain Reicher Mann gewesen, und sonnsten neben Ir nur ein dochter gehapt.” HStAS, C3, Bü. 59, Examen.
86 HStAS, C3, Bü. 59, Attestationes und Examina.
87 “Sie deren Mererentheyl wie beweysslich gar nit vonn Irem Mann, sonder vonn Iren Lieben älttern empfanngenn” (emphasis is mine). HStAS, C3, Bü. 59, Appellation Clag.
dressed herself “as a proper burgher’s wife.”89 The witness had observed Anna at four different weddings over the years, at which she “always wore fine, clean clothes that were not too expensive.”90 Anna’s “fine clean clothes,” he clarified, were “befitting for an honorable woman (Biederweib).”91

Other witnesses, on the other hand, supported Aff’s claims that Anna’s wardrobe was “expensive” (costlich) and “vain” (prechtig) with both terms implying that the source of her impropriety lay in her social standing. One of Hans Aff’s chosen witnesses testified, “Anna wore unusually expensive clothes: dresses with very broad trims and shirts trimmed with broad bands of velvet. People paid attention to her due to her fine clothing.”92 Another witness, Bernhard Seckel stated that “Anna wore clothes [that] were often new, in many different colors with broad trims, to weddings, parties, and on Sundays and holidays.”93 Clothing trims were regulated not only by the type of precious textile, but also by width, according to the Landesordnung.94

89 “Wie aines zimblichen Burgers weib wol aussehet.” HStAS, C3, Bü. 59, responses to Attestationes und Examina.
90 “Sie allwegen feine saubere und nit zue gar köstliche claider angehapt.” HStAS, C3, Bü. 59, responses to Attestationes und Examina.
91 “Feine saubere Claider, wie einem Biderweyb zusteet.” HStAS, C3, Bü. 59, responses to Attestationes und Examina.
92 “Anna ungewonlich costliche Klaider, Röck mit gar breiten beleginen, auch [ermelt] hembder gemeinlich und brait mit Samet belegt getragen, Also das man ein sonder aufsehens solcher schöner kleider halben, auf sie gehabt.” HStAS, C3, Bü. 59, Exception und Probation Schrift.
93 “Das Anna bey hochzeiten, gastungen, auch Sonn: und Feýrtagen, klaider von allerhandt farben, und mit breitten belegen angetragen, Welche mehrertheils new
This contradictory composite portrait of Anna’s trousseau underscores the difficulty of reconstructing early modern appraisals of material goods. But their testimonies also suggest that the precise worth of Anna’s clothes lay beyond an objective numerical value, of which only the few individuals who had exchanged money had knowledge. In other words, beyond market value, Anna’s wardrobe also had a shifting, subjective social worth that was embedded in public perceptions of the condition of her clothes, combined with her income, social status, reputation, and relationships within the community. The worth of Anna’s clothes, like that of her own identity, depended on how she fit into the broader community.

5.3.2.2. Social & Work Life

Observers performed a similar calculus to assess whether wives had eaten, drunk, socialized, worked, and slept in a manner that befit their social standing and their obligations to the members of their household. The witnesses in the Fleck case discussed what types of meat the Fleck family had served to their guests, ranging from gewesen, dann sie das allt irer schwester döchterlin angemacht.” HStAS, C3, Bü. 59, Exception und Probation Schrift.

Reyscher, Sammlung der württembergischen Gesetze, Vol. 12, 860.
fish and salted sausages to more precious delicacies like poultry and wild game. Given that access to hunting was limited, wild game was expensive and thus indicated social distinction.

Women’s social lives also took on symbolic importance, not only in Anna Fleck’s case, but in other RKG trials as well. Anna Moser, a young widow who faced similar charges in Schwäbisch Hall in the 1620s, reportedly spent too much on frivolous diversions like walks through the rural villages and church festivals. Her husband’s creditors also circulated rumors that Moser routinely went traveling with a posse of five to six carriages full of friends, rather than tending her own home in Schwäbisch Hall. In a similar case from 1700, several creditors from Esslingen accused a widow named Anna Pichler of helping her husband to waste their limited resources on “pompous meals and banquets, at which [Anna] purchased, prepared, and carried out the most expensive delicacies. And when [her husband] was invited [to banquets], she accompanied him in a carriage and horse team that exceeds their station.”

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95 HStAS, C3, Bü. 59, responses to Attestationes und Examina; Special und Besondere Fragstuckh.
97 “Dass sie zu hausse nit allein mit Einkauffen, kochen und gastladen costlich gewesen, sondern auch mit vielen Spazier gehen, in die dorffer, zur Kirchweyhen und anderer Kurtzweyler, dass Geltt unnottiger weiss verthon habe.” HStA C3, Bü. 4029, Exceptiones sub: & obreptionis articulatae
98 “Pompose mahlzeitten undt gastungen gehalten, undt selbige geladen, sie das kostbahrist undt delicateste eingekaufft, zubereitet, undt auffgetragen, auch wann Er wieder von selbigen geladen worden, sie mitt ihm erschienen, undt der über seinen
Daily routines and work habits likewise drew scrutiny. In the Fleck case, Hans Aff asked witnesses to testify “when [Anna] usually went to sleep at night and when she woke up in the mornings.” 99 Making his question more explicit, Aff also asked witnesses to confirm “whether she brought her household into ruin with her idleness, neglect, sleeping in, and waste of important household resources.” 100 Other questions assessed her work performance in the household and in the fields and how often she spun thread on winter evenings. One of Anna’s supporters, Hans Müller, testified that Anna was “considered to be a good householder in Neuenstadt” and behaved “honorably, industriously, and domestically, like an honorable wife.” 101 She had always kept herself busy with spinning and other housework when he came to visit Bernhard.

Household labor was also a focal point in a dispute between Caspar Gärtner, the sheriff of Gaildorf (located in the principality of Limpurg), and his son and daughter-in-law in 1626. According to Gärtner, both of the spouses “rarely looked after their

Standt gehaltenn Pferdte undt chaisen, sich nebenst ihm bedienet habe.” HStAS C3 Bü. 3324 Anna Christina Pichler contra Bürgermeister und Rat der Stadt Esslingen, 1700-1702, Untertänigste Exceptiones desertae Mandat mit angehängter Hauptsächlicher Eventual Handlung.

100 “Ob nit darneben durch Iren unfleiß, verlesßigkhait, spates auffstehen unnd versaumung Notwendiger Haußgeschäft, vil Inn Irer Haußhaltung under: und zu Grundt gangen.” HStAS, C3, Bü. 59, Attestationes und Examina.
property or fieldwork, if at all. Instead, they gave the tasks to day laborers so that they could spend their time on sleep (nearly always [sleeping in] until nine o’clock in the morning), staring out the window, and eating and drinking.”

In the city of Schwäbisch Hall in the 1620s, creditors levied similar allegations against Anna Moser, who allegedly traveled with multiple maids, suggesting that her household workforce exceeded her social status. Through debates over women’s work schedule, diet, wardrobe, and household staff, litigants on both sides attempted to calibrate how well female litigants matched social expectations of their socioeconomic standing.

5.4. Silent Subordinates and Public Critics

The previous section argued that public perceptions of a wife’s influence over her husband and the quality of her financial management were two central considerations when courts reevaluated a woman’s property rights. When female litigants argued that they had indeed fulfilled their household role as expected, they still had to explain what had caused the crisis in their household finances. Like Anna Fleck, some wives shifted the blame for their household’s financial problems to their husbands.

102 “Ebenmeßig haben sie sich auch der Güether oder Veldtarbeit wenig oder vasst gar nichts aingenommen, sondern alles mit Taglöhnern verricht, und sie Ihren Schlaff (so ordinarie vast allwegen biß umb 9 Uhr geweßen), Fenstergaffen, Essen undt Trinckhen, abgewartet.” HStA C3, Bü. 4659, Christoph Wegelin v. Kaspar Gärtner, 1626, Grundtlichen und Warhafften Gegen Bericht.

103 HStAS, C3, Bü. 4029, Underthöniger Warhaffter Gegenbericht undt Bitt. pro Decernendo Mandato poenali sine clausula.
instead. Women who took this approach still faced a significant hurdle. As Hans Aff reminded the court in his dispute with Anna Fleck,

no woman is obligated to pledge her own dowry and individual properties to [her husband’s] business or to place herself at risk. No less is any wife forced to stand by and watch her husband do such a thing until he has squandered all of her property. Rather, there are—God be praised—many helpful ways for wives to protect and conserve their property in useful ways... The imperial law of this region contains measures for this, which have also carried over into common law. 104

The laws of the Empire, Württemberg, and other southern imperial cities indeed offered protections for the wives of prodigal husbands. Württemberg, Esslingen, and Schwäbisch Hall, among others, all allowed married women to report prodigal husbands to the authorities and petition for judicial incapacitation of their husbands. 105 Through these state protections, women theoretically could prevent their husbands from accessing their personal property and avoid liability for their husbands’ debts.

104 “Das sie ire zugebrachte heuratsgüeter zu solchen handel auch darstrecke, oder inn besorgende gefahr setzte, seitemalen kein fraw gezwungen ist, das sie irem Mann zusehe, bis er ir das irige verthut, oder unnutzlich onwirdt, sondern mann hat Gott lob noch allerhandt heilsame Mittel und weeg, deren sich die weiber ad dotem protegandam, conservuandam, et in tuto ponendam...fruchtbarlichen gebrauchen können und mögen, wie dann die Keyserliche geschriebne Recht dis orts sonderliche maas und ordnung geben, auf die offenbare Recht gezogen.” HStA C3, Bü. 59, Exception und Probation Schrift.

However, some creditors and city councils demanded that such women also publicly rebuke their husbands before they could claim legal protections from liability. According to the Reformation of Schwäbisch Hall, if a wife failed to report her husband’s poor management, the law held her equally liable as if she had directly abetted her husband or committed outright fraud: “if a woman assists her husband with dangerous loans, wastefulness, or bad household management, or commits fraud, or if she notices her husband’s mismanagement...and does not report him to her friends or the proper authorities, then...the wife [forfeits] legal benefits and [her weibliche Freiheit].” A woman’s silence constituted tacit support of her husband’s offenses. In such a scenario, Schwäbisch Hall’s council allowed her husband’s creditors to seize the wife’s property to cover her husband’s outstanding debts. Through these strict policies, the city officials attempted to prevent poverty before a household’s finances reached crisis. The state’s goal, when intervening in a couple’s finances, was to prevent a future burden upon the public welfare. When the free imperial city of Ulm updated its spendthrift polices in 1683, the council made the public duties of its subjects explicit: Subjects who failed to report “their closest relatives and kin will be obliged to support and care for their wasteful, impoverished husband or wife without the support of the

council, because of their their dangerous and harmful silence.” ¹⁰⁷ In Schwäbisch Hall and Ulm, a spouse’s property claims thus depended on the public performance of dissent in a manner that could later be proven through witness testimony.

In Württemberg, in contrast, neither the Landesordnungen of 1552 and 1621 nor the Landrecht of 1555 and 1567 explicitly tied protections for women to performance of public dissent. Yet, litigants in Württemberg, like Hans Aff, still pressured spouses to document their innocence by confiding in relatives, friends, and local officials. Aff’s and Anna Fleck’s lawyers returned repeatedly to the question of whether Anna’s distaste for her husband’s cattle trading had been “widely known to the residents of Neuenstadt.”¹⁰⁸ Aff’s lawyer emphasized that Anna had “remained silent” (still geschwigen) and “never complained to the officials” (den Amtpleутten niemal geclagt).¹⁰⁹

Aff expressed an expectation shared by other creditors as well. From their perspective, wives who did not report their husbands’ poor management appeared to be complicit in the disadvantages that it caused to the couple’s household as well as to their

¹⁰⁷ “Sonder es solle auch ihre nächste Blutsfreund und Verschwägerte / um willen solches ihres gefährlichen und hochschädlichen Verschweigens und nicht Anzeigens / solche durch ihr verthunisch Leben in Armuth gerathene Manns= und Weibspersonen / ohne Unser / eines Raths Hülff / under sich selbstten zuernehen und zuversorgen schuldig und verbunden seyn.” Der Statt Ulm Gesatz und Ordnungen, wie es in der Statt und derselben Herrschaft und Oberkeit ... gehalten werden solle (Ulm: Christian Balthasar Kühnen, 1683), Part ii, Tit. VI.
¹⁰⁸ „Wie meniglichen zur Newenstatt khundt und offenbar, die gegentheülin von erkhauftten Ochsen gemain und theyl gehapt.” HStA C3, Bü. 59, Verantwortung und Gegenbericht.
creditors. In a similar case from 1700, the council and mayors of the imperial city of Esslingen expressed frustration that Anna Christina Pichler had not reported her husband’s fraudulent business dealings. The Esslingen government decided to hold Anna Christina personally liable for her husband’s outstanding debts, despite her attempt to invoke her right to weibliche Freiheit. Although Pichler insisted that she had indeed voiced her displeasure about her husband’s financial problems, the Esslingen council retorted that her protests “had not been proven or...had only occurred in private or in her thoughts.”

The Esslingen council assumed that financial mismanagement was preventable and it put the obligation on a spendthrift’s family to initiate prevention. It was a pragmatic approach to the problem of law enforcement. Authorities needed informants to report on unstable households before they reached the point of crisis. But their pragmatism also included the optimistic assumption that involving friends or local officials would provide an adequate solution to married women’s marital troubles.

In practice, Anna Fleck and other female litigants insisted that the availability of legal protections did not guarantee that women could obtain the support of relatives, friends, or local officials to arbitrate marital conflicts. Married women employed two main legal arguments to address the demand for their public dissent: (1) claiming that

110 “So ist solches erstlich nicht erwiesen, oder 2tens doch nur privatim oder in den Gedancken geschehen.” HStA C3, Bü. 3324, Unterthänigste Duplicae Eventuales cum petitione.
they had been coerced to actively or passively support their husbands, and (2) providing evidence that they had indeed publicly rebuked their husbands, to no effect. The court debates that ensued shed light on litigants’ polarized views about the efficacy of law enforcement. While creditors insisted that women had access to generous legal privileges, their female opponents pointed to systemic problems that created barriers to their legal rights. Implicated in this legal debate was a larger conversation about gender and power. At stake in their legal battle was the controversial question of how much influence women could exert within the marital relationship.

5.4.1. Obligated to Obey

In several of the RKG cases, women argued that social pressures on wives to obey their husbands conflicted with women’s rights to claim legal protections for their property. Studies of women and the law in sixteenth-century Germany have shown that female petitioners exploited stereotypes about women’s fragility and vulnerability to request charity, legal exemptions, and protection from administrative officials.111 Anna Fleck and other female litigants likewise leveraged their subordinate roles in their argumentative strategies. Married women’s lack of autonomy, they argued, put them in a position of legal vulnerability that their state authorities had a patriarchal obligation to

address. Ultimately, their arguments implied that women’s restricted legal autonomy
 demanded that women have equally restricted financial liability.

When unfolding her defense, Anna Fleck drew on Lutheran teachings about the
duties of married life to construct a legal argument about men and women’s liability for
the household economy:

The husband is the head of the entire household. By divine will and
secular law, his wife and all of the household servants are obligated to
obey [him], so that everything that is done by his command is the same as
if he alone had personally done it... The wife should and must perform it
[in accordance with] her husband’s intention and will. On the other hand,
the husband is obliged to properly administer the wedding gifts that his
wife brought into marriage and profitably manage his entire household.
For the husband is obliged to support his wife and family. Even if some
of this money or food is used for [the wife’s] wellbeing or for the good of
the joint household, the husband alone, and not [the wife], is
responsible.¹¹²

Anna Fleck presented her own marriage as a covenant between husband and wife,
consistent with Lutheran teachings. She owed her husband obedience and assistance,
and he owed her proper care and protection in return.

¹¹² “Dann ainmal der Mann das Haupt der gantze Haushaltung ist, dessen willen
vermögt göttliche und weltlichen gesatz sein hausfraw und aller Hausgesündt
zugel[oben] und gehorsamen schuldig, allso das alles so aus desselben befech oder
zulassen geschicht, gleichsam ist, alls hette er es selbs aigner Person und allein
verhandelt, der gestalt sich dann dass weyb inn dess Manns Kopff und willen richten
und schickhen soll und muss, Hergegen aber ist der Mann verpunden dass weib gegen
gepürlicher miessung Ires zugebrachtten heüratgutts, wie auch sonsten sein gantze
haushaltung zuermeren und zuerhalten, Derowegen dann (Quia maritus uxorem et
familiam suam alere tenetur), ob sie gleich ettwass von diessen erlosten gellt oder flaish
gemeiner haushaltung oder auch Ir selbert zue gutten verpraucht, so steet doch selbiger
allein dem Mann und nicht Ir zuverantworten.” HStA C3, Bü. 59, Appellation Clag.
Anna’s defense combined legal and religious gender roles on four levels to deny her liability for her husband’s debts. First, she argued that a man’s authoritative legal role over his wife and household granted him complete responsibility—or liability—for the dependents who served as his proxies within the trading community. Second, Anna emphasized the obedience that she owed to Bernhard, in keeping with the Lutheran marriage ideology supported by Württemberg’s state church. Anna’s claims suggested that her wifely duty to obey her husband conflicted with her imperially protected rights in the principle of *weibliche Freiheit*, which voided any contract that a woman was forced to sign. As her lawyer reminded the court, Anna Fleck did not agree “of her own free will, as required by the *Landrecht*, but rather [due to] pressure and stern persuasion from her husband and others.”113

Third, Anna’s portrayal of marriage reminded the court that Bernhard’s duty as a husband required him to responsibly manage her dowry and other personal possessions. Anna’s defense shifted the blame for their financial crisis onto Bernhard’s poor management. This was precisely the sort of situation for which early modern authorities designed spendthrift policies: to protect innocent household dependents from the reckless decisions of *Hausväter* who had shirked their patriarchal duty. Finally, Anna sought to deflect claims that she had fraudulently taken some of the loan money.

113 “Gar khein freyer ungezwungner will, so im Landrecht ervordert würdt, sonder vil mehr ein betrangnus und ernstliche beredung, Ires Eemans und anderer hierzue underrichter Personen.” HStA C3, Bü. 59.
from Hans Aff and used it for her personal benefit or to fund the joint household.

Bernhard’s obligations as a husband also required him to provide Anna with shelter, food, and clothing. As a result, Anna claimed that “her husband alone” (allein dem Mann und nicht Ir) was responsible for any purchases that she made after the Flecks received Aff’s loan. Essentially, Anna’s lawyer argued that Lutheran marriage teachings put women in a compromising legal position that made them vulnerable to exploitation, unless it also protected women from the burden of liability. Her argument presumed that liability went hand in hand with autonomy. If women had limited influence over the disposal of household resources, their liability should be equally limited.

By way of example, her lawyer reasoned that Anna was obligated by wifely duty to assist her husband when he declared his intention to host extravagant parties in their family home. “Her husband had, in past years, invited officials and some of the city council to their home... However, the husband should bear responsibility for that, and the wife should suffer no disadvantage or bear blame for it. Rather, she should obey and follow her husband.”  

Anna Fleck was not the only female litigant who tried out this tactic to renounce liability for her husband’s debts. In 1628, Anna Katharina Moser, a

114 “Der Gastungen halb ist gleichwol nit on sonnder mag sein das Ir haußwürt ettwann zue sonndern Jars zeitten die amptleutt unnd etttich deß gerichtz zue gast gehalten, die Ine hergegen zuch widerumb vnd vilmalen geladen, daß solle aber der Mann veranttwurtten, vnnd darumb billich der frawen khain nachtetyl geberen seitemahl sie einmahl khein shuld darann tragen, sonnder dem Mann gehorchen und volgen sollen.” HStA C3, Bü. 59, Appellation Clag.

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young widow from Schwäbisch Hall, also insisted that her obligations as a wife required her to obey her misguided husband. According to Anna Katharina, her deceased husband had misused her inheritance to purchase fashionable new clothes that mimicked the style of the nobility, including garments “edged with golden trim, a feather in his hat, and a taffeta scarf.” Due to her husband’s ambitious tastes, Anna Katharina claimed that she too “also dressed somewhat finer than usual. It was his command. So as not to give offense, there had to be some similarity between the two of them.”

Like Anna Fleck, Anna Katharina Moser equated her subordination with unaccountability. As a result, she concluded, “wives are not obliged to pay for their husbands. Rather, they can enjoy their weibliche Freiheit.”

Anna Katharina also denied any liability for her contracts based on her youthful, as well as her feminine, incapacity. A key part of Moser’s defense against her husband’s creditors depended on her age at the time of the alleged financial mismanagement. Katharina married her husband, Johann Hans Wilhelm Moser, at the age of twenty-one. It would be approximately four more years until she reached the age of majority, which

116 “Daβ sie nun auch etwaβ stattlicher auffgezogen alβ sonst, ist sein befehl gewesen, undt hatt in under beeden, damit es keinen schimpff gebe, in etwaβ gleicheit sein müβen.” HStA C3, Bü. 4029, Underthöniger Warhaffer Gegenbericht.
117 “Die Weiber vor den Mann zuzahlen nit schuldig, sondern ihrer weiblicher freyheiten zugenieβen haben.” HStA C3, Bü. 4029, Underthöniger Warhaffer Gegenbericht.
was typically twenty-five throughout most of the German lands (except for Saxony, which designated twenty-one as the age of majority).\textsuperscript{118} For the first few years of their marriage, Anna Katharina’s guardian retained legal control of her inheritance and parceled out regular allowance payments to the young couple, for which, Anna Katharina argued, her husband then assumed responsibility.\textsuperscript{119}

By emphasizing her minority and her gender-based incapacity, Anna Katharina sought to deflect blame for her actions onto the parties who typically assumed responsibility for incapacitated individuals under guardianship: the city council, who oversaw all local guardianship arrangements. Moser’s lawyer argued, “the council and the citizenry, who... did not pay attention when [Johann] Moser squandered [her allowance] when it was delivered to him, are responsible [\textit{in culpa undt schuldig}] for restitution of that which was wasted in this manner... because everything was squandered before she reached her twenty-fifth year.”\textsuperscript{120}

\begin{enumerate}
\item Thomas Schröer, \textit{Institutiones tutorum et curatorum Germanicae} (Leipzig: Henning Kölern, 1635), Tit. XXVI.
\item HStA C3, Bü. 4029, Underthöniger Warhaffter Gegenbericht.
\item “Der Rath aber undt die Bürgern, so ihre caution nit geachtet, nit zugesehen daß Moßer, wàß ihme gelieffert, wider angelegt, sondern alles verthon laßen, sindt in culpa undt schuldig daß jenige, wàß dadurch ubbracht, zu restituren, undt vermög der caution gutt zu machen, zumal weil alles ehe undt zu voehr [Annas] daß 25. Jahr erreicht, schon durchgejagt geweßen, undt Moser’s schulden, so er lediges standts gemacht, damit bezahltt worden, kan also der Rath sich mit ihrem der Zeit halben geschehen einbringen nit retten.” HStA C3, Bü. 4029, Underthöniger Warhaffter Gegenbericht.
\end{enumerate}
Anna Katharina’s defense highlighted a contradiction in the property and guardianship policies of her native Schwäbisch Hall and in Württemberg as well. Restrictions on the legal rights of women and minors presumed that these groups needed protection due to their diminished capacity for business and legal acts. In their legal arguments, Anna Katharina Moser and Anna Fleck strategically claimed that their legal incompetency, whether as minors or women, also prevented them from bearing liability.

5.4.2. Performing Dissent

A second legal strategy that women used in court was to provide evidence that they had publicly demonstrated their dissatisfaction with their husband’s financial decisions. As noted above, lawmakers in different jurisdictions did not necessarily require the wives of prodigal husbands to issue a public complaint. While the imperial cities of Esslingen, Ulm, and Schwäbisch Hall held silent wives liable for their prodigal husbands’ debts, the duchy of Württemberg omitted any reference to public dissent from its legal and judicial codes. However, in practice, Hans Aff still put pressure on Anna Fleck, a resident of Württemberg, to provide proof that she had voiced opposition to her husband. In his petition to the court, Aff reasoned that Anna could have told Bernhard that “she did not like her husband’s business with the oxen purchase, so that
he might see what he was doing.” Aff presented an idealized vision of women’s influence in the marital relationship, suggesting that Anna had the power to intervene when her husband made reckless decisions about their shared household. Instead of changing her husband’s mind, Aff alleged, Anna “not only remained silent and let the business happen,” but also actively participated in her husband’s misadventures in the oxen trade. Silence took on the appearance of tacit consent, if not worse. Creditors thus pressured wives to provide evidence that they had complained to their husbands, sought help from relatives and friends, and reported their husbands to the local officials for disciplinary action.

Anna Fleck and Anna Moser emphasized the risks and obstacles involved when they attempted to exercise their legal privileges. Anna Katharina Moser, for instance, insisted that “she did not hold back [her opinion about] his bad household management, but instead complained to her and her [husband’s] friends many times, to no avail.”

121 “So hett sie Inen Amwaldts Principaln, mit schlachten worten mögen und khomenden anreden, das Iro Irs haußwürtts handlung mit dem Ochen khauff nit Lieb wer, darum so möchten er sehen, was er mit Ime handelt, und wie er von Ime bezalt würdt.” HStA C3, Bü. 59, Gerichtstag (25. Nov. 1573).
122 “Solchen handel wol lassen gefallen, und darzue still geschwigen, sonnder sie hab auch selbs aigner person verhaißen, Ine Erlich und Redlich zubezalen, und auch fur ettliche somma, alls namlich der tausendt gulden, einvershreibung neben Hans Albrechten und seinen weyb auffgericht, und sich neben Iren hauswirth vershriben, auch umb siglung bitten laßen.” HStA C3, Bü. 59, Gerichtstag (25. Nov. 1573).
123 “So hatt sie auch sein ubel haußhalten nit vertru[c]kt oder verhaltten, sondern ihren undt seinen freunden vielfeltig aber vergebens geclagt.” HStA C3, Bü. 4029, Underthöniger Warhaffter Gegenbericht.
Anna Katharina’s feud with her husband’s creditors was a secondary concern in comparison with her larger grievance against the city council of Schwäbisch Hall. In the 1620s, the court of Schwäbisch Hall ruled that Moser would be held liable for the remainder of her prodigal husband’s debts. After a controversial trial, Anna Katharina was expelled from the city with only her personal possessions. With the assistance of several male relatives who held positions of political power, Anna Katharina then appealed her case to the Imperial Chamber Court, with the city government of Schwäbisch Hall as defendants.

Her defense primarily rested on the claim that the city government had illegally prioritized the interests of her husband’s creditors over Anna Katharina’s protected rights as a wife, widow, and woman, an oversight that the council “could not disguise or defend with any appearance of justice.” Anna Katharina maintained that she “spoke to [the councilmen of Schwäbisch Hall] often to persuade her husband. [She] begged them to urge [him] to run the household in a more frugal manner...But they did little about it.” In this allegation, Anna Katharina seemed to undermine the very purpose of public performances of dissent. Wives’ public complaints were supposed to serve as a

124 “Mit keinen schein rechtens vertheidigen, oder nur bemäntelen kan.” HStA C3, Bü. 4029, Underthöniger Warhaffter Gegenbericht.
125 “Mögen sie sich ihrer Herrn Reformation...wie offtmals [Aldts Pralen] Haußfraw sie angesprochen, Ihrem Mann einzureden, undt daß er anders auch sparsamer haußhalte, anzuhalten zum höchsten gebetten, erinnern, wie wenig aber sie darzu gethon, ist ihren beßer, als sie gestehen werden bekandt.” HStA C3, Bü. 4029, Underthöniger Warhaffter Gegenbericht.
signal to local officials that their intervention was necessary to protect women from an exploitative or neglectful husband. Without the support of allies or authorities, women’s vulnerable legal position left them without leverage.

Aside from the uncertainty of support from officials, women also faced ambiguity from the wider community that bore witness to marital troubles. Some members of the public reacted sympathetically when women opposed their prodigal husbands. Anna Fleck, for instance, asked witnesses to support her claim that she told her husband, “If he wanted to deal with oxen, then he should squander his own money, not hers.” 126 Wilhälm Wägner provided corroborating testimony to confirm Anna’s account. Wilhälm reported that he had observed a similar conversation while visiting the Fleck’s home in Neuenstadt. As Wilhälm sat with Bernhard Fleck, an associate of Bernhard’s, and Anna’s mother, Anna entered the room and asked Bernhard not to go to Nuremberg to undertake the oxen venture. 127 Other witnesses offered support for Anna Fleck’s defense by emphasizing the emotional distress that Anna experienced due to her husband’s financial affairs. According to Margretha Bonngärtnerin, a fellow resident of Neuenstadt, Anna visited her house and wept in distress about Bernhard’s oxen venture. 128

127 HStA C3, Bü. 59, Rechtstag (23. Nov. 1573).
128 HStA C3, Bü. 59, Attestationes und Examina.
Yet, there were also clear risks when women turned to their neighbors or officials to express grievances about their husbands. Airing their dirty laundry would expose not only their husbands, but also their own conduct, to scrutiny. Anna Katharina Moser reported that her critical statements about her husband’s finances provoked a public backlash against her. The residents of Schwäbisch Hall allegedly “want to put all the blame...on [Moser’s] wife.”129 Anna Katharina suggested that her decision to publicly confide her husband’s financial troubles turned public feeling against her character, instead:

The bitter reality is that truth breeds hatred. These great people quickly became so enraged about [Anna Katharina’s claims], as if they and all of their kin had incurred the highest dishonor, scandal, and slander. However, a man can get into debt without [it being] his fault or [caused by] extravagance. [Johann] Moser is not accused of prodigality. Yet, [these people] have the effrontery to call [Anna Katharina] a Prodigum and gravely slander and insult her, without having the least provocation to do so.130

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130 “Die bitter warheit, regt sich daß veritas odium parit, so baldt erzürnen undt entrüßten sich dießer groß leuth darüber so sehr, alß wann ihnen undt ihren gantzen geschlecht die höchste unehr, schandt undt schmach zugezogen worden, da doch ein ehrlicher mann ohne sein verschulden oder einige üppigkeit in schulden gerathen kan, undt ist Moser auch keines ungleichen oder Verschwendung bezüchtiget worden, sie [the people] aber hergegen entblöden sich nicht, [Aldts Pralen] Haußfraw, ohngeacht Ihnen nit die geringste ursach darzu gegeben worden, eine prodigum zu nennen, auffs grewlichst zu schmähen undt zu lästern.” HStA C3, Bü. 4029, Underthöniger Warhaffter Gegenbericht.
It is not clear from Moser’s RKG dossier whether public sentiment truly opposed her to this degree. The proceedings in Anna Fleck’s case suggest that general witness testimony about marital troubles was critical to her own defense and to opposing Aff’s allegations against her. If allegations of female prodigality depended on public perceptions of a wife’s material possessions, social status, and marital role, then it appears to have been a risk to publicly assert her husband’s financial shortcomings to community allies and officials. Litigants like Anna Fleck and Anna Moser used these court narratives as legal arguments to persuade the RKG that they needed additional legal protections, not fewer. While their opponents argued that women abused the privilege of *weibliche Freiheit* to the detriment of creditors, Fleck and Moser pointed out the unexpected barriers within the law that prevented them from even accessing their privileges, such as government inertia and community resistance.

**5.5. Conclusion**

The principle of *weibliche Freiheit* was a right guaranteed by the Holy Roman Empire, yet largely left to regional and local courts to enforce. In her study of women in southern cities, Merry Wiesner shows that city councils gradually narrowed the protections of *weibliche Freiheit* in the mid- to late-sixteenth century in response to complaints that women abused the privilege. The councils of Nuremberg and Frankfurt, for example, attempted to deny the right not only to market women who worked in a
common trade with their husbands, but also artisans, day laborers, and other professions.\textsuperscript{131} Butcher’s wives, like Anna Fleck, also figured among these controversial groups, due to their active participation in the household business.\textsuperscript{132}

Women resisted restrictions on their imperially-protected right to \textit{weibliche Freiheit} not only in regional courts, but also took their claims to the highest court in the empire, in their attempts to bypass lower court rulings. Thus, as city and state authorities sought out a middle course to balance the protections that they accorded to male householders, their dependents, and members of the trading community, regional officials also had to contend with the intervention of the imperial court.

Litigants like Anna Fleck and Anna Moser asked the RKG to protect their privileges against creditors’ claims, but in doing so, they had to construct compelling narratives that justified their entitlement to a right that protected women from their own alleged incompetency. Wiesner’s case studies show that women often responded to creditors by downplaying their professional competence and their involvement in the household business.\textsuperscript{133} This chapter’s analysis of RKG cases indicates that court scrutiny of women’s economic roles was not limited to their labor and productive contributions. Rather, the public’s memories about a woman’s entire lifestyle constituted evidence of her eligibility for legal protections. Reports about her wardrobe, diet, social activities,

\textsuperscript{131} Wiesner, \textit{Working Women}, 27-29.  
\textsuperscript{132} Wiesner, \textit{Working Women}, 29-30.  
\textsuperscript{133} Wiesner, \textit{Working Women}, 29-30.
and work routine all came to bear on the question of whether she met social expectations of proper conduct. And, as Anna Fleck’s case suggests, these norms were contingent on public perceptions of the comportment appropriate to a person’s age, gender role, social status, and profession. To build their court narratives, both litigating parties—wives and creditors alike—drew on common evidence, like witness testimony, and common stereotypes, like the domineering shrew, the dutiful housewife, and the public informant.

The underlying theme of these narratives centered on power and protection. Litigants debated whether women already exerted too much influence over their husbands, the household finances, and their creditors, or whether wives’ subordinate position within the household necessitated greater legal protections for married women. Women’s dependency within marriage theoretically denied them the ability to incur liability or manage property independently under the new guardianship laws of the sixteenth century. Anna Moser’s lawyer seized upon this logic to protect Moser by suggesting that the due reward for women’s dependency was their unaccountability. In reality, women’s legal standing was far less simple. Women were legal contradictions, acting both independently, with some limited rights over their own property, and as
“dependent parts of a legal entity, the family, whose financial decisions they did not officially control.”

Further, *weibliche Freiheit* accommodated multiple loopholes that litigants stretched to accommodate or exclude certain women. With the assistance of prodigality laws, creditors could build a case based on a married woman’s reputation for proper household management; women, too, could draw on similar material to shore up their legal defense.

While a case like Anna Fleck’s is remarkable and exceptional for its research value, given the scarcity of similar records on women in prodigality trials, the nature of her trial’s proceedings were not unique to this single case. The Fleck trial was one of at least nine RKG disputes between women and their husbands’ creditors from southwestern Germany, hailing from six different imperial cities and the territorial state of Württemberg. The cases reviewed in this chapter point to a common legal framework that linked women’s legal and property rights to their performance of gender- and class-specific norms of “good” and “bad” household management. Both litigating parties in each of these cases based their arguments on this premise. These cases suggest that in practical law enforcement, women’s property claims and legal status were deeply intertwined with their marital and kinship relations, reputation and standing in the community, and a support network of sympathetic witnesses.

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6. Epilogue

6.1. Introduction

In 1795, at the end of the early modern period, Dr. Ernst Ferdinand Klein, a member of the highest Prussian court and director of the legal faculty at Halle University, reflected that it may one day be prudent to “completely abolish” the legal practice of declaring spendthrifts incompetent.\(^1\) Klein reasoned that the culture and morals of classical Romans could, one day, no longer reflect the values of Prussian society, making the concept of Verschwendung obsolete. Klein never saw that day come to fruition. It was not until January 1, 1992, nearly two hundred years later, that the newly reunited Federal Republic of Germany officially removed the last law permitting the incapacitation of Verschwender from the German Civil Code (Bürgerliches Gesetzbuch).\(^2\)

The intervening centuries transformed the political and legal landscape of the German lands. After the dissolution of the Holy Roman Empire in 1806, German states regrouped as the Deutscher Bund (German Confederation) in 1815 and, under Prussian

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dominance, unified as the Deutsches Reich (German Empire) in 1871. The Roman practice of incapacitating spendthrifts weathered numerous political transitions, making its way from regional policies like Württemberg’s legal code into the Prussian Civil Code (Allgemeines Landrecht) of 1794, the imperial Civil Code (Zivilprozessordnung) of 1879, and the German Civil Code (Bürgerliches Gesetzbuch, or BGB) of 1900. All through the subsequent upheavals of revolution and world wars, Germany’s Verschwendung policies endured until the reunification of West and East Germany.

The historical literature says very little about the longue durée of this legal practice. Contemporary research on this subject largely diverges into the classical and medieval periods or the nineteenth and twentieth centuries. For the modern period, historians have conducted studies of German and Swiss guardianship law in individual case studies in the nineteenth and early twentieth centuries, but do not examine the deep connections that linked medieval and early modern policies to early twentieth century legal practices.

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3 See notes 6-8, below.
4 See Chapter 1, notes 32-36.
Most of what we do know comes from the sources themselves. In addition to the regional, state, and imperial codes that ferried spendthrift laws into the twentieth century, there is also evidence from Württemberg that its administrative districts documented an unprecedented surge of petitions for legal incapacitation on grounds of prodigality (Verschwwendung) between 1880 and 1910, in the wake of the unification of the German Empire.

This dissertation has argued that the flexible category of Verschwwendung drew its meaning in part from the historical conditions in which it was re-forged between 1400 and 1600, as well as from direct application to the individual circumstances of court trials; it meant very little outside of its immediate local context. Spendthrift laws were useful, as Klein suggests, because they could reflect the priorities and values of early modern German society. In a parting epilogue, I would like to consider the question of why the guardianship of spendthrifts may have endured into the late twentieth century. To what extent did these laws evolve from or continue to resemble their early modern forbearers? What did Verschwwendung mean in the nineteenth and twentieth centuries?

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6.2. Prodigality in Late Nineteenth-Century German Court Cases

The sixteenth-century spendthrift laws discussed in Chapter 2 provided a legal pathway to relatives, creditors, neighbors, and local authorities to declare members of the community incompetent if they could no longer manage their own affairs independently. The legal procedures for incapacitation largely remained consistent in the regional and later the national law codes of southern Germany from the seventeenth to the dawn of the twentieth centuries. In the Prussian Civil Code (Allgemeines Landrecht) of 1794, which was adopted by the other imperial German states in the nineteenth century, spendthrifts “were legally considered the same as minors” and subjected to guardianship. Its replacements, the Zivilprozessordnung (ZPO) of 1879 and

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6 The duchy (and later kingdom) of Württemberg, for example, recycled similar language about the judicial procedure for spendthrifts throughout the eighteenth century, as did other southern states like Bavaria and Baden. Württemberg renewed its spendthrift policies on several occasions through new iterations of its Landesordnung, various General-Reskripte from 1730, 1739, and 1781, a Verordnung of 1808, and its Polizeistrafgesetz of 1839. August Ludwig Reyscher, Vollständige, historisch und kritisch bearbeitete Sammlung der württembergischen Gesetze, Bd. 6, 358, 628; Bd. 7, 156; Bd. 14, 232 (Stuttgart: Cotta, 1835-1843); Hermann Knapp, Das Polizeistrafgesetz für das Königreich Württemberg: mit Erläuterungen (Stuttgart: Cotta, 1840), 37-38, 104, 117, 138. Bavaria’s Maximilianus Bavarius Civilis (a.k.a. Bayerisches Landrecht) of 1756 remained valid until 1900. Austria, after a brief abolition of spendthrift guardianship between 1784 and 1791, reintroduced the practice in its Allgemeines bürgerliches Gesetzbuch in 1811. Graf Carl Chorinsky, Das vormundschaftsrecht Niederösterreichs vom sechzehnten jahrhundert bis zum erscheinen des josefinischen gesetzbuches (A. Hölder, 1878), 364.

7 Allgemeines Landrecht für die Preußischen Staaten (Berlin, 1794), Th. 2, §. 31. “Wer...wegen Verschwendung oder wegen Trunksucht entmündigt...steht in Ansehung der Geschäftsfähigkeit einem Minderjährigen gleich, der das siebente Lebensjahr vollendet 308
the German Civil Code (Bürgerliches Gesetzbuch, or BGB) of 1900 reinforced the standing spendthrift policies of southern states like Württemberg and continued to promote incapacitation and guardianship as legal tools to protect unstable households.  

The BGB also maintained the classical Roman legal comparison between children, people with mental disabilities (now termed geisteskrank or geistesschwach), spendthrifts (Verschwender), and a relatively younger category, alcoholism (Trunksucht).

Between 1880 and 1910, in the wake of the unification of the German Empire, Württemberg’s administrative districts documented an unprecedented surge in petitions for legal incapacitation on grounds of prodigality (Verschwendung). A quantitative analysis of the districts’ archival holdings yielded over 260 petitions, with seventy-nine percent of those investigations occurring in the thirty-year period between 1880 and

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9 Although differentiated in subtle ways, all of these groups could be legally incapacitated if the individual was deemed “incapable of managing his affairs” or if they “placed themselves or their families in danger of impoverishment or endangered the security of others.” (“seine Anglegenheiten nicht zu besorgen vermag oder sich oder seine Familie der Gefahr des Nothstandes aussetzt oder die Sicherheit Anderer gefährdet.”) Planck, Bürgerliches Gesetzbuch, §. 6.
1910. These cases provide an ideal opportunity to examine the meaning of premodern
categories in the modern context.

![Prodigality Trials in Selected Districts](image)

**Figure 5: Prodigality trials in Württemberg districts, 1860-1920**

It goes beyond the scope of this dissertation to assess why legal requests to
incapacitate spendthrifts peaked so dramatically in Württemberg during this period, nor
why the peak declined so rapidly. It is possible that political and administrative
transitions played a role in the aftermath of imperial unification, perhaps by establishing
the bureaucratic support and political oversight to encourage this pattern. It is also
possible that the worldwide economic recession from the 1870s to 1890s increased the
demand for court protection of family estates.\textsuperscript{10} Whatever the cause, these cases show that spendthrift laws not only endured into the modern period in the ZPO and BGB legal codes, but also saw active use at an overall average rate of eight to nine cases per year for the state of Württemberg alone.

Legal incompetence cases were divided into distinct categories. Petitioners could ask the court to declare an individual incompetent on grounds of mental illness (\textit{Geisteskrankheit}), intellectual disability (\textit{Geistesschwäche}), prodigality (\textit{Verschwendung}), or alcoholism (\textit{Trunksucht}). While most of these petitions concerned cases of mental illness and intellectual disability, spendthrift and alcoholism cases also figured prominently within the new imperial bureaucratic regime. A survey of five of Württemberg’s district courts (out of a total of sixty-four districts)—Besigheim, Brackenheim, Ellwangen, Marbach, and Vaihingen—indicates that each district court investigated an average of twenty-eight cases of alleged prodigality during a twenty-year period at the height of court activity, around 1880 to 1900 (see Fig. 6).\textsuperscript{11}

In one of these administrative districts, Vaihingen Enz, located approximately sixteen miles northwest of Stuttgart along the fertile heights and valleys of the Enz River, approximately one percent of the district’s three thousand residents were

\textsuperscript{10} Although the global crisis appears to have exerted a lesser impact on the southwest German economy. Hans Fenske et al., \textit{Handbuch Der Baden-Württembergischen Geschichte}, Bd. 2 (Stuttgart: Klett-Cotta, 1992), 623.

\textsuperscript{11} Staatsarchiv Ludwigsburg (hereafter StAL), F 252I, F254 I, F 258, F263 I, F 282 I, F310 I.
investigated for prodigality between 1860 and 1920. Wastefulness accusations accounted for forty-three percent of all petitions to evaluate a resident’s incompetency in Vaihingen. In the other four districts surveyed for this study, prodigality cases comprised an average of thirty-nine percent of requests for incapacitation, alongside the remaining petitions for mental illness, feeblemindedness, and alcoholism.¹²

Figure 6: Prodigality trials in Vaihingen Enz, 1860-1910

Because of the fundamental legal difference between prodigality and insanity, it was technically impossible for a court to attribute both legal categories to a single individual. Dr. Adolf Friedländer, a probationary judge in Frankfurt am Main, published detailed guidelines on the procedure for incapacitation cases in 1896, based

¹² Besigheim 36.2%, Brackenheim 62.5%, Ellwangen 24.4%, Marbach 28.3%, and Vaihingen 43.2%. StAL F 252 I, F254 I, F 258, F263 I, F 282 I, F310 I.
on the policies laid out in the Prussian civil procedural code. When a relative or other member of the community asked the local court to declare an individual incompetent, “The petition must state clearly whether the incapacitation should occur for prodigality or insanity. The combination of both is permissible, but [the accused] can only be incapacitated for one [of these] reason[s].”\textsuperscript{13} In other words, petitioners were not necessarily required to explain the cause behind the accused’s aberrant behavior, but the court investigation \textit{must} do so to issue a verdict.

Many petitioners followed Friedländer’s advice by expressing a clear opinion about the cause of the accused’s behavior. However, some petitioners declined to venture an opinion about what caused financial misbehavior. Instead, they pragmatically claimed that their relatives exhibited characteristics of three to four different legal grounds for incapacitation. Joanna Schäfer asked the district court of Besigheim to declare her husband incompetent both for prodigality and insanity in 1899. Josefa Kucher submitted a similar petition regarding her husband to the district court of Ellwangen in 1885. Karl Stroh submitted three petitions to the district court of Vaihingen

against his father for a combination of prodigality, alcoholism, and mental illness between 1902 and 1905.\(^\text{14}\)

Petitioners’ ambivalence led to conflicts between relatives, medical examiners, and local and district officials, as each party insisted upon a different legal diagnosis. In 1902, for example, Ludwig and Wilhelm Nonnenmacher asked the Vaihingen district court to declare their older brother, Gottlob, legally incompetent for a combination of prodigality, alcoholism, and mental illness after he frittered away over 2,000 marks—two-thirds of his total inheritance from their parents’ recent death—in three years.\(^\text{15}\) Dr. Maïr Bubenhofen, the medical expert called to inspect Gottlob Nonnenmacher, concluded that his financial mismanagement “occurred not because Nonnenmacher is an alcoholic or a spendthrift (\textit{Verschwender}), but rather because he is periodically mentally impaired.”\(^\text{16}\)

However, over the next few months, Dr. Bubenhofen and the lead judge of the Vaihingen court, named Link, engaged in a heated debate about Bubenhofen’s diagnosis. Link believed that Bubenhofen’s medical diagnosis failed to match the legal category of insanity stipulated in the German Civil Code (BGB). Bubenhofen had reported that Gottlob “belongs to [that group of] people who, due to an abnormally

\(^{14}\) StAL F 254 I, Z 355, Nr. 1; F 263 I, Z 686, Nr. 1; F 310 I, Bü. 318, 22. March 1902, 11. December 1903, 24. October 1904.

\(^{15}\) StAL F 310 I, Bü. 317, 1. April 1902.

\(^{16}\) “Dies geschehen ist, nicht weil Nonnenmacher ein trinker u. Verschwender ist, sondern weil er periodisch geistig gestört ist.” StAL F 310 I, Bü. 317, Nr. 20.
inferior mental constitution, do not possess mental normality, and yet are not actually insane.” Judge Link, on the other hand, took issue with Bubenhofen’s nuanced statement that Gottlob could be “mentally inferior” and yet “not actually insane.” Link insisted that the ZPO and BGB did not accommodate such a middling category of insanity as Bubenhofen had described in his report. The head medical and legal authorities in the investigation both distrusted each other’s expert opinion and prioritized the authority of their own academic specialty. After three months of deliberation, Link and the district court rejected the claim of insanity and instead declared Nonnenmacher incompetent on grounds of “prodigality and alcoholism.”

Cases like Nonnenmacher’s evoke similar disputes over incompetency and legal categories from the sixteenth and seventeenth centuries. These debates over diagnoses suggest that the legal categories of prodigality and insanity could still be difficult to define and distinguish in court investigations.

17 StAL F310 I, Bü. 317, Nr. 20.
18 “Er gehört zu jenen Menschen, welche wegen einer abnormen minderwertigen Constitution ihren Gehirne nicht im Vollbesitze geistiger Normalität sind, ohne doch eigentlich geisteskrank zu sein.” StAL F310 I, Bü. 317, Nr. 20.
19 StAL F310 I, Bü. 317, Nr. 38.
6.3. Insanity and Prodigality in Nineteenth-Century Law and Medicine

There is additional evidence to suggest that the dynamic relationship between these two legal categories, prodigality and insanity, was of central importance to the eventual decline of spendthrift laws in twentieth-century Germany. While the historical relationship between insanity and prodigality retained its importance in German guardianship law into the nineteenth and twentieth centuries, the precise meanings of these terms changed in significant ways. The emerging international fields of brain science and psychiatry proposed new categories of insanity that encompassed behaviors that early modern jurists and lawmakers had attributed to Verschwender. The controversial nineteenth-century diagnosis of “moral insanity” illustrates how psychiatrists and legal commentators attempted to redefine or reinforce the borders between prodigality and insanity.\(^{20}\)

In the early nineteenth century, medical doctors who specialized in the study of the brain—called “alienists” (an early term for psychologist or psychiatrist)—advocated for a broader definition of insanity. Their proposed definition encompassed not only damage to the intellect (e.g., through delusions), but also damage to the emotions, sensations, sexual drives, morality, and instinct. Several early alienists proposed new diagnoses of mental illnesses that affected only an isolated part of the brain, leaving the intellect and other faculties largely intact.\textsuperscript{21} Dr. H. M. Bannister, an American physician writing in 1877 about the early nineteenth-century pioneers of this field, explained that, “If we have a distinct moral sense, [...] there is every reason, from analogy, to believe that it may suffer disorders, be pathologically exalted, suppressed, or perverted.”\textsuperscript{22} French alienists similarly described a type of \textit{manie sans delire} (non-delusional mania),\textsuperscript{23} while German doctors labeled it \textit{moralischer Irrsinn}, \textit{moralischer Schwachsinn}, and \textit{moralische Idiotie} (moral insanity / imbecility / idiocy).\textsuperscript{24} The English term “moral

\textsuperscript{22} Bannister, “Moral Insanity,” 651.
\textsuperscript{23} Verplaetse, \textit{Localizing the Moral Sense}, 193-194.
\textsuperscript{24} While some German authors retained the English term, “moral insanity,” others adopted German variations. See, for example, Emanuel Mendel, ‘Die moralischen
insanity,” which was later incorporated into German scholarship, first appeared in the work of James Cowles Prichard in 1835 upon the publication of his *Treatise On Insanity And Other Disorders Affecting The Mind*. Prichard defined “moral insanity” as “madness consisting in a morbid perversion of the natural feelings, affections, inclinations, temper, habits, moral dispositions, and natural impulses, without any remarkable disorder or defect of the interest or knowing and reasoning faculties, and particularly without any insane illusion or hallucinations.” Because the brain was localized into discrete functions, individuals afflicted with moral insanity “may have intellectual abilities of the first order, and yet be deficient in those qualities which go to the composition of a good subject in his social, domestic, and moral relations.”

Although the concept of moral insanity encompassed “a truly kaleidoscopic portrait” of deviant behavior, one common type of case study appeared throughout nineteenth- and twentieth-century medical writings on moral insanity: the spendthrift.

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25 The disease resulted from damage to the moral faculties, either through heredity or some form of trauma, such as illness or an accident. Prichard, *A Treatise on Insanity*, 16.


27 Näcke, Über die sogenannte ‘moral insanity,’ 23.
Prichard described this subcategory of moral insanity in a manner that closely parallels the content of sixteenth- and seventeenth-century prodigality trials:

[M]any persons have continued for years to be the sources of apprehension and solicitude to their friends and relatives. [...] When it happens that the head of a family labours under this ambiguous modification of insanity, it is sometimes thought necessary, from prudential motives, and to prevent absolute ruin from thoughtless and absurd extravagance, [...] to make some attempt with a view to take the management of his affairs out of his hands.28

However, since English law maintained a narrow definition of insanity based on delusions and hallucinations, the relatives of moral madmen rarely convinced English juries to declare the patient mentally incompetent.29 Prichard believed that English courts were unfairly punishing sick people because they lacked a correct understanding of brain disease. Several notable German psychiatrists agreed that the disease of “moral insanity” matched what they had found in clinical studies.30 Paul Näcke, for example,

described the “Verschwendertypus” (spendthrift type) as a “relatively frequent” theme in his clinical research. Näcke wrote that the spendthrift “feels little allegiance towards his parents and others, thinks only of his own pleasure, squanders his money or gives useless gifts, etc., but he is only rarely a thief or fraudster. He is therefore more of a parasite.”

Psychiatrists who supported the diagnosis of moral insanity sought to locate immorality within the brain, and thus rewrite immoral actions—such as reckless financial management—as a form of biological disability. In this medicalized framework, it was “impossible” (unmöglich) for a spendthrift to resist immoral impulses. As a result, Prichard’s supporters in the U.S. and in Germany urged a

distinguished from the usual case of idiocy by a prominent tendency towards immorality and criminal behavior.” Müller, ‘Ueber “moralischen Insanity”,’ 333.

31 “Hat er wenig Anhänglichkeit für die Eltern und Andere, denkt nur an sein Vergnügen, verprasst sein Geld oder macht unnütze Geschenke etc., wird aber wohl nur ganz ausnahmsweise Dieb oder Betrüger. Er ist also auch schliesslich mehr Parasit.” Näcke, Über die sogenannte ‘moral insanity,’ 28. Even critics of moral insanity conceded the temptation to view prodigal behavior as a symptom of mental illness. Ferdinand Regelsberger admitted that, “the border [between the categories] cannot be sharply drawn. One may well doubt the full mental health of a person who throws himself and [his dependents] into crisis and poverty for the sake of momentary pleasure.” (Freilich lässt sich die Grenze nicht scharf ziehn. Man darf an der vollen geistigen Gesundheit eines Menschen zweifeln, der sehenden Auges um augenblicklichen Genusses willen sich und die Seinigen in Mangel und Not stürzt.) Ferdinand Regelsberger, Pandekten Bd. 1 (Leipzig: Verlag von Duncker & Humblot, 1893), 261-262.

therapeutic, rather than punitive, solution for patients with moral insanity. Paul Näcke insisted that all of his patients with moral insanity had diminished mental capacity (Zurechnungsfähigkeit), at the very least. In the more severe cases, Näcke concluded, “One can convince the judges that such inborn, severe ethical defects should at least be considered the same as an intellectual defect.”

However, these attempts to enlarge the medical and legal categories of insanity and incompetency met with heated resistance throughout nineteenth- and early twentieth-century debates over the validity of moral insanity. From a medical standpoint, the majority of German psychiatrists accepted a narrower definition of mental illness and denied that brain disease could afflict a moral sense without affecting insanity....is unable to forego the gratification of his desires at the present moment, without regard to the future or to its effect on others...The spendthrift, the gambler, the drunkard, the seducer, all are morally insane to the extent that they injure others regardless of consequences. Their inhibitory power is lost or in abeyance.” Mills, Practice of Medicine, 569. See also John Kitching’s lecture on moral insanity from 1857: “In the moral madman, the powers are unequal; the force to refuse is inferior to its antagonist, or does not exist; the act results from an organic impulse almost equal, if not quite, to a necessity; the imperious instinct rushing, half blind, to its gratification, with the irresistible ascendancy of a fate.” Kitching, The Principles Of Moral Insanity, 39.

33 See, for example, Mills’ prescription: “Development of will power is the only cure. Treatment must be psychological. The patient must be given a normal trend of mind.” Mills, Practice of Medicine, 569.

other parts of the brain. Other opponents feared that accepting “moral insanity” would open a Pandora’s box of legal trouble, allowing common criminals to renounce responsibility for their immoral actions by claiming that they suffered from moral insanity. It would also raise new logistical problems for institutions of correction and care, forcing criminal justice and medical authorities to reevaluate the line between asylum and prison.

The enduring line between mental illness and spendthrifts in German law did not sit well with all legal scholars. A literal interpretation of the law required court judges to fundamentally distinguish spendthrifts’ impairments from the type of organic incapacity brought on by natural diseases that afflicted people with mental illness. Spendthrifts demonstrated impaired capacity for good judgment, but not to such a

35 German schools of psychiatry largely promoted a more holistic view of the brain and therefore expected that any patient who had sustained damage to the moral faculties would inevitably display signs of a significantly impaired intellect. Verplaetse, Localizing the Moral Sense, 200-201.
37 In 1834, the The Medico-Chirurgical Review and Journal of Medical Science mused, “We think that, as far as prevention goes (which is said to be better than cure), a cell in a madhouse would very effectually prevent the commission of crimes—and especially the extravagance of spendthrifts; but if this kind of moral insanity were to come under the law, where, in God’s name, would we find prisons?” The Medico-chirurgical Review and Journal of Medical Science 25 (Burgess & Hill, 1834), 468. The London Times printed a similar critique in 1854: “If all the passionate, prejudiced, vicious, and vain people in this world are to be locked up as lunatics, who is to keep the key of the asylum?” Alfred Swaine Taylor, “Insanity,” A Manual of Medical Jurisprudence (Philadelphia: Henry C. Lea’s Son & Co., 1880), 178.
severe extent that they enjoyed certain protections of the law, such as the use of a legal representative in court or exemption from criminal liability. Dr. Friedrich Christian von Arnold, a member of the Bavarian state council and retired appeals court president, put it simply: spendthrifts may appear unreasonable, but they were “not so mentally impaired” to be considered mad. 38 Adolf Schwarz, who composed his dissertation on prodigality laws in 1891, questioned the extent to which prodigality and insanity were comparable. In the opening pages of his thesis, he mused, “When one compares spendthrifts to madmen, it is not surprising that one seldom thoroughly considers whether the state is even justified to declare its citizens incompetent. And yet the circumstances surrounding spendthrifts are completely different from those of madmen.” 39 Schwarz struggled to accept the legal incapacitation of individuals who the law insisted were technically sane and mentally capable (handlungsfähig). 40

40 Other notable critics of laws for the incapacitation of spendthrifts include Klein, Annalen der Gesetzgebung und Rechtsgelehrsamkeit in den Preuss. Staaten, Bd. 13 (F. Nicolai, 1795) and Ernst Gottlob Morgenbesser, Beyträge zum republikanischen Gesetzbuche. Allgemeinen Landrecht und zur allgemeinen Gerichtsordnung fuer die preussischen Staaten (Königsberg: Friedrich Nicolovius, 1800).
These debates in psychiatry and criminal and civil law raised crucial questions about prodigality laws: If spendthrifts were legally sane, on what grounds did the state claim the right to disenfranchise them? And if spendthrifts were not sane, could the state reasonably hold spendthrifts criminally liable for their actions? It may be instructive to view nineteenth- and early twentieth-century transatlantic conversations about the merits of “moral insanity” as an attempt, in part, to grapple with the far older legal classifications of prodigality and insanity. The theory of moral insanity injected new life into this historical dilemma by drawing on cutting edge theories in psychiatry and criminal justice to offer a novel, scientific explanation for the type of “moral madness” that spendthrifts exhibited. Moral madness thus carried with it many of the assumptions and priorities of early modern predecessors, such as an overwhelming preference for familial and corporate—rather than individual—rights, as well as a deeply paternalistic understanding of the state’s role regarding the education, morality, and religion of its subjects (see Chapter 2).

6.4. Prodigality in the Twentieth Century: Manifestations of Mental Illness

Moral insanity was an extremely controversial diagnosis that provoked debate well into the early twentieth century. To expand the definition of insanity to immoral conduct provided a medicalized, physiological explanation for behaviors, like Verschwendung, that remained criminal by law in the German Civil Code. Further, while
some German psychiatrists supported the idea that spendthrifts suffered from a localized form of mental illness, most of the German psychiatric profession remained skeptical of the theory of localization that undergirded moral insanity (i.e., that a moral sense operated independently of the intellect).  

The theory of moral insanity may not have succeeded in expanding the definition of insanity in German law in the nineteenth century, but the debates about it may shed light on why trials, and eventually the laws themselves, disappeared by the end of the twentieth century.

In 1969, Dr. Manfred In der Beeck, a member of the Obermedizinalrat (High Medical Council), and Dr. Horst Wuttke, a state lawyer, conducted an investigation of guardianship law enforcement to assess how commonly and effectively the laws were put to use. In der Beeck and Wuttke interviewed judges from the Schleswig-Holstein appeals court system and reported that only one judge had encountered a petition for incapacitation on grounds of prodigality on one single occasion during his entire career. Based on this and other evidence, the authors concluded, “Prodigality as grounds for incapacitation is—and was—insignificant.” Particularly after World War II, the highest level of courts appears to have ceased hearing cases related to incapacitation for

41 See note 32.
prodigality. There is some suggestive evidence in support of In der Beeck and Wuttke’s assertion. While prodigality trials surged in Württemberg at the end of the nineteenth century, few Württemberg court petitions survive from the 1910s and 1920s. Further, In der Beeck and Wuttke’s contemporaries expressed similar critiques of the apparent obsolescence of spendthrift policies in the German Civil Code. Egon Arnold, a district court judge, recommended the abolition of incapacitation for prodigality for this very reason in 1971.

The clearest evidence of the decline of prodigality trials emerged in the 1980s, as the West German government tackled in earnest the task of reforming its entire guardianship system, which had become fraught with critiques of exploitation and abuse. In November 1985, a special report to the Bundestag revealed that incapacitation trials for prodigality had declined to a tiny percentage of the total guardianship hearings conducted throughout Germany. Mental illness (Geisteskrankheit) and intellectual

disability (Geistesschwäche) comprised the overwhelming majority of incapacitation requests since 1970, remaining relatively steady at 92.4% of all cases in 1970 and 91.8% in 1984. Petitions on grounds of alcoholism (Trunksucht) accounted for most of the remaining cases, declining from 7.4% of all cases in 1970 to roughly 6% in 1985.

Prodigality (Verschwendung), in contrast, produced only a handful of cases per year, ranging from 0.2% of all guardianship hearings in 1970, peaking at 0.4% in 1984, and declining to 0.1% by 1985. Considering the total population under study, it would appear that West German courts declared approximately fourteen people incompetent for prodigality in 1984, followed by a mere two to three individuals in 1985. The only category with lower percentages per year was incapacitation for drug addiction, which accounted for 0.1% of all cases in 1980, 1984, and 1985. Based on this data, the committee concluded in its report that “incapacitation for drug addiction and prodigality play practically no role. Incapacitation on grounds of alcoholism is only of minor importance.”

Considering the disputed relationship between prodigality and other categories of incompetency (such as moral insanity), a question bears asking: Did cases of reckless financial management cease to be a concern for German families and courts? Or could it be that legal and medical understandings of these perceptions had shifted?

In their study of the guardianship system, In der Beeck and Wuttke also observed that, “in the majority of reviewed circumstances, prodigality was not the only grounds given for petitioning for incapacitation. Alcohol abuses as well as mental disturbances were explicitly linked with prodigality. [...] There is reason to presume that the alleged economic misconduct [is] a peripheral side effect of an abnormal personality structure and/or of a psychopathic medical condition.”48 Their conclusion raises the possibility that behaviors that early twentieth-century courts categorized as evidence of prodigality may have been diverted into a parallel channel of the guardianship system, incapacitation for mental illness. Redrawing the lines between prodigality and mental illness would also entail a new legal response to wastefulness. In der Beeck and Wuttke reasoned, “Incapacitation for prodigality does not serve the best interests of the person in question, if alcoholism or, above all, mental deficiency, is the deeper cause of his behavior.”49


In subsequent revisions to German guardianship law, the West German Bundestag sought to prevent courts from accepting wastefulness as legal grounds for incapacitation unless it was specifically classified as a symptom of mental illness. In 1989, the West German Bundestag approved a complete overhaul of its guardianship system based on the findings of their investigation. The new Betreuungsgesetz (guardianship law), which took effect on January 1, 1992, removed all references to guardianship for prodigality, alcoholism, and drug addiction because “alcoholism (Trunksucht) and drug addiction (Rauschgift) are considered by contemporary understanding to be manifestations of mental illness; and wastefulness (Verschwendung) can also be a manifestation of mental illness.”\(^{50}\) A draft of the new guardianship law from May 11, 1989 recommended that “the appointment of a guardian be considered insofar as prodigality (Verschwendung) is a manifestation of a psychic (psychisch) or mental (geistig) or psychological (seelisch) illness. If the prodigality does not lead back to such a cause, and especially if it is solely an expression of a costly lifestyle (aufwendigen Lebensstils), then the appointment of a guardian is not justified.”\(^{51}\)

\(^{50}\) “Trunksucht und Rauschgiftsucht werden nach heutigem Verständnis überdiese als Ausdruck einer psychischen Krankheit begriffen; auch Verschwendung kann Ausdruck einer solchen Krankheit sein.” “Entwurf eines Gesetzes zur Reform des Rechts der Vormundschaft und Pflegschaft,” 52.

\(^{51}\) “Soweit eine Verschwendung Ausdruck einer psychischen Krankheit oder geistigen oder seelischen Behinderung ist, kommt im übrigen auch nach den Vorschlägen des Entwurfs die Bestellung eines Betreuers in Betracht. Ist die Verschwendung nicht auf solche Ursachen zurückzuführen, ist sie insbesondere lediglich Ausdruck eines
Germany’s new guardianship system broke from a long legislative tradition of distinguishing prodigality and mental illness. It goes beyond the scope of this dissertation to pinpoint when and how, precisely, this transition developed in the modern history of German guardianship law. Yet, by taking a satellite’s view of the early modern and modern periods, a few key conclusions about early modern Verschwendung laws come into clearer focus.

First, the new guardianship system of 1990 advocated a medical, physiological framework for assessing wastefulness. Legal determinations of an individual’s competency still considered whether the person complied with economic norms, but it also significantly shifted toward concepts of “normal” conduct and “able” bodies based on the consensus of the contemporary psychiatric profession. Significantly, the 1990 law omitted any negative statement or consequence for extravagant spending. In contrast, the sixteenth- and seventeenth-century jurisprudence examined in this dissertation consistently portrayed wastefulness through the moralizing framework of sin, crime, and neglect of social obligations. It should be noted, however, that both the early modern and the twentieth-century policies largely left it to litigants, lawyers, and court judges to assess what kinds of financial decisions, work patterns, business practices,
lifestyles, social activities, and family and community interactions qualified as “good” or “bad” financial management.

Second, the *Betreuungsgesetz* of 1990 privileged the legal autonomy and property rights of the individual citizen, rather than the corporate claims of family members, taxpayers, and members of the trading community. Twentieth-century policy throws into sharp relief the fundamentally corporate nature of early modern German mentalities. Premodern spendthrift policies protected above all the interdependent rights and interests of families, communities, and the state, to which the individual subject owed inviolable obligations.
7. Conclusion

A significant part of the history of wastefulness is a history of language, definitions, and meanings. In this dissertation, I interrogated the socially constructed concept of prodigality (*Verschwendung, prodigilitas*) within a few concrete points along its 2,500-year history.

To focus on words and meanings was one methodological choice among other possible approaches. This dissertation is indebted to the path breaking work of historians who made other methodological choices, such as analyzing the web of legal traditions that shaped prodigality legislation.¹ Building on their work, I used court records to show that *Verschwendung* was an inherently ambiguous legal category when applied in practice. As one Prussian legal commentator reflected at the end of the eighteenth century, “what one person stigmatizes as wastefulness, quite often is prized as magnanimity by others.”² The very ambiguity of prodigality makes it an ideal subject of analysis. The chapters of this dissertation tracked how early modern individuals interpreted legal concepts like prodigality (*Verschwendung*), reason (*Verstand, Sinn*), and competency (*Geschäftsfähigkeit, Macht*) because they were inescapably bound to the

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¹ Griebl, Ludwig. *Die Behandlung von Verschwendern Und Geisteskranken Im Frühneuzeitlichen Territorialstaat (1495-1806): Eine Darstellung Der Privatrechtlichen Und Policeylichen Massnahmen Im Kurfürstentum Mainz Und Herzogtum Württemberg* (Hamburg: Verlag Dr. Kovač, 2010).
precise historical contexts which only imbued them with meaning through practical application. Erik Midelfort’s approach to the study of madness provides an eloquent metaphor for what the study of prodigality has entailed: “Madnesses of the past are not petrified entities that can be plucked unchanged from their niches and placed under our modern microscopes. They appear, perhaps, more like jellyfish that collapse and dry up when they are removed from the ambient seawater. To see what madness meant in the sixteenth century, to see how it was experienced and treated, we must learn to swim.”

It is perhaps unsurprising that prodigality, with its ancient and persistent associations with madness, should behave similarly in the historian’s petri dish.

When returned to its native waters in sixteenth-century Bietigheim, seventeenth-century Schwäbisch Hall, or nineteenth-century Württemberg, what does the concept of Verschwendung reveal?

In our case studies of early modern Württemberg, prodigality sustained a web of associated moral and social codes. Through debates over the meaning of Verschwendung, contemporaries negotiated standards of good and bad household and financial management. Interpreting Verschwendung required contemporaries to make judgments about the type of comportment that was acceptable to different genders, age groups, marital statuses, socioeconomic levels, professions, and types of minds and bodies.

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This social, collaborative dynamic to *Verschwendung* also made the term contingent upon the nature and quality of an individual’s relations within the estate of marriage, their family, and their larger commercial community. The prodigality laws reviewed in this dissertation theoretically promoted the interdependent interests of three major institutions of early modern German society: the family household, the local community credit network, and Württemberg’s state-church. *Verschwendung* made sense within a mentality based on corporate values and obligations, rather than a worldview founded on inviolable individual rights. Like early modern Württemberg’s policies on property rights, public welfare, or criminal justice, prodigality laws served *Gemeinnutz* (the common good) by subordinating *Eigennutz* (self-interest, or even greed, in the early modern context). However, my case studies also showed that the interdependent interests of family, community, and state did not necessarily promote balance and cooperation. The RKG appeals cases in particular indicate that members of these three groups struggled to reset the balance of corporate interests, with wives and creditors as the most common opponents in prodigality trials.

When litigants took to the courts to debate the ambiguous meaning of *Verschwendung*, the stakes were high. Widows sought to safeguard their pensions, creditors pursued financial remuneration, and accused spendthrifts resisted legal restrictions on their rights and legal identity. Their court strategies combined techniques of narrative storytelling with public performance. To prove or deny *Verschwendung* in
court required litigants to provide publicly verifiable “facts” about their household management based on witness reports, memories, and a supportive network of sympathetic witnesses. Witness testimonies suggest that the legal status of spendthrifts depended less on formal written verdicts than on a communal process in which members of a trading community assessed and communicated about each other.

Württemberg’s developing legal system added additional layers of meaning to the concept of Verschwendung. Over the course of the sixteenth century, Württemberg’s ruling council experimented with how to frame Verschwendung as a social problem and what legal strategies to prescribe as solutions. During the first half of the sixteenth century, Württemberg’s lawmakers largely framed wastefulness as a problem of sin and crime, an offense perpetrated by male householders who shirked the weighty obligations that they owed to their dependents and authorities. By mid-century, however, Württemberg introduced the Roman practice of declaring spendthrifts incompetent. New guardianship laws in 1552 consigned spendthrifts to a collective category of various social groups defined by their diminished legal competency, such as children and people with mental and physical disabilities. The legal incapacitation of spendthrifts transformed moral- and economic-based norms of proper household management into legal norms that regulated access to property rights and networks of credit and commercial exchange. Württemberg’s new policies brought in cultural values like thrift and moderation as part of the institutional process of determining competency
and legal status. The late nineteenth through twentieth century witnessed the emergence of new, competing explanations for the meaning of Verschwendung. By the second half of the twentieth century, West Germany had gradually adapted early modern legal frameworks to accommodate physiological explanations for human behavior. Verschwendung formed one aspect—one symptom—for how petitioners and court judges could categorize “normal,” “mentally ill” (geisteskran), or “addicted” (trunksüchtig) minds.

The ambiguity of Verschwendung makes it an ideal subject for historical study, but also requires caution when applying it broadly across geographical and chronological distances. This dissertation provides a framework for interrogating Verschwendung in individual historical contexts. Prodigality should be studied in practical application as an elastic concept loosely tied into a web of associated legal categories (incompetency, insanity, minority, disability), social relationships (dependents, heirs, creditors, officials), norms and values (thrift, moderation, industry, piety, duty), analytical categories (gender, age, social status, ability), and criminal justice strategies (punitive, rehabilitative, preemptive).
References

Primary Sources

Unpublished Sources

StABi  Stadtarchiv Bietigheim-Bissingen
   Bh A2088 Armenkasten Rezess
   Bh A2089, A2151 Armenfürsorge
   Bh Waisengericht
   Bh A2161 Armenkastenrechnungen
   Bh Gerichtsprotokoll B441, B442, B444, B445, B446, B448, B449, B451, B452
   Bh B539 Statuten
   Bh B544 Annalenbücher
   Bh B919 Inventuren und Teilungen

SA ES  Stadtarchiv Esslingen
   RSU Nr. 80 Verordnung über Verschwender
   B384 Esslinger Prozesse beim RKG Fasz. 293

HStA  Hauptstaatsarchiv Stuttgart
   A44 Urfehden
   A206 Oberrat Bü. 741, 743, 4434
   A209 Kriminalakten Bü. 350, 351, 353, 355
   A210 III Oberrat Bü. 154
   A213 Oberrat Jüngere Ämterakten Bü. 428-431
   A281 Kirchenvisitationsakten Bü. 99-103
   A282 Kirchenrat Bü. 1141
   C3 Reichskammergericht Bü. 59, 240, 260, 265, 273, 1359, 1378, 1830, 2074, 2197,
        2242, 2324, 2438, 2530, 2566, 2574, 2778, 2829, 2915, 2935, 2949, 3266, 3305, 3308,
        3324, 3441, 3557, 3618, 3868, 3921, 4029, 4076, 4088, 4109, 4279, 4659, 4718, 4752,
        4843, 4979, 5130, 5158, 5287, 5425, 5542, 5553

StAL  Staatsarchiv Ludwigsburg
   F 254 I Entmündigungen Z 333, 355
   F 258 Vormund- & Pflegschaftssachen Bü. 158, 161, 182
   F 263 I Entmündigungen Z 686
   F 282 I Entmündigungen Bü. 24, 25, 30, 36, 37, 146
   F 310 I Vormundschafts- & Pflegschaftssachen, Entmündigungen Bü. 269, 272,
        314, 315, 317, 318
Published Sources

HAB  Herzog August Bibliothek, Wölfenbüttel
    H: L 553.2° Helmst. (1)
    Einbl. Xb FM 287
    IE 101
    Xb 6106


Churfürstlicher Pfaltz Fürstenthumbs in Obern Bayern Landsordnung. Amberg: Michael Forster, 1599.


Hoppe, Friedrich. Versuch, die Lehre von juridischen Verschwendern systematisch und kritisch zu bearbeiten. Giessen; Darmstadt, 1803.


Mascardi, Giuseppe. De probationibus. Frankfurt am Main: Sigismund Feyrabend, 1588.

Mayo, T. “An Essay on the Relation of the Theory of Morals to Insanity” 1834


Näcke, Paul. Über die sogenannte “moral insanity.” Bergmann, 1902.


Prichard, James Cowles. *A Treatise on Insanity and Other Disorders Affecting the Mind.* Haswell, Barrington, and Haswell, 1837.


*Reformacion der Statut und Gesetze.* Nuremberg, 1484.


**Secondary Sources**


Benning, Stefan. “‘Eine Stadt ‘...in Höchsten Flor’? Strukturelle Aspekte Der Stadtgeschichte Bietigheims Im 16. Jahrhundert.’” In: *Himmelszeichen Und*


Blauert, Andreas. Das Urfehdewesen im deutschen Südwesten im Spätmittelalter und in der Frühen Neuzeit (Bibliotheca Academica, 2000).


Brady, Thomas A. German Histories in the Age of Reformsations. Cambridge: Cambridge University Press, 2009


Chorinsky, Graf Carl. Das vormundschaftsrecht Niederösterreichs vom sechzehnten jahrhundert bis zum erscheinen des josefinischen gesetzbuches. A. Hölder, 1878.


Biography

Ashley Lynn Elrod was born in Ventura, California in 1988. She graduated from the University of California, Los Angeles in 2010 with a Bachelor’s of Arts in History and German Language & Literature (Summa Cum Laude). In 2010, Ms. Elrod was admitted to Duke University and awarded the James B. Duke Graduate Fellowship for a PhD program in History. In summer 2011, she completed an Intensive Latin program at the University of Virginia Language Institute. Ms. Elrod received a Master’s of Arts in History from Duke University in 2013. She was awarded grants to conduct dissertation research in Germany from Duke University between 2011 and 2016, the Central European History Society in 2013, the German Academic Exchange Service (DAAD) from 2013 to 2014, and the Fulbright Commission from 2013 to 2014 (the latter she declined). Ms. Elrod received a Mellon Dissertation Completion Fellowship from the Council for European Studies from 2016 to 2017 to complete her PhD.