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MARRIED WOMEN, WORK AND THE LAW: EVIDENCE FROM EARLY MODERN GERMANY

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Married women in early modern Germany were affected by the law in a wide variety of ways – so many, in fact, that a single essay cannot hope to cover them all. The special character of women's legal position in each German polity forces us, in fact, to pause and ask ourselves what we mean by concepts we have largely taken for granted – 'the law' itself and how it assigned different rights to people according to sex and marital status. In pre-Napoleonic Germany, this question is of immediately striking relevance. For one thing, the Holy Roman Empire of the German Nation contained a large number of sovereign territorial units – almost 2,500 when one includes the sovereign estate of Imperial Knights, and 384 even when these are excluded.[1] Moreover, these territories were widely heterogeneous on almost every conceivable axis of comparison including their legal systems. Furthermore, in German-speaking central Europe both the law itself and its concrete implementation in daily life were affected by the co-existence of various levels of authority in each society – empire, prince, community, guild, church – so the nature of the 'composite state' of the Empire raises questions about the legal system, which are not easy to fit into the framework which historians have devised for other early modern European societies with a closer resemblance to modern nation-states.[2] Germany is thus a good context for reflection on what we might mean by the effect of the law on the lives of married women, because it undermines so many of the ideas we have come to take for granted about what the law is, where it comes from, and how it functions.

We cannot proceed to study married women and the law in Germany until we understand much more concretely what 'the law' meant when it derived simultaneously from multiple levels of authority. Only by looking at how the law affected married women in practice, in specific spheres of activity in particular early modern German societies, will one begin to understand the complicated ramifications of what was meant by 'the law' for early modern women. In pur-

1 J. G. Gagliardo, *Germany under the Old Regime, 1600–1790* (London, 1991), pp. 2–3.

2 S. C. Ogilvie, 'The German State: A Non-Prussian View', *Rethinking Leviathan: The Eighteenth-Century State in Britain and Germany*, ed. E. Hellmuth and J. Brewer (Oxford, 1999), pp. 167–202.

suit of this goal, I will concentrate my examination here on married women in the Duchy of Württemberg, a middle-sized state in southwestern Germany. I will focus primarily on how the law affected married women in one broad sphere of their lives – their economic activities. Many of the details will be specific to Württemberg, and neither here nor elsewhere in early modern Europe did women live by bread alone. But I will show how the multiple ways in which the law affected how married women could earn bread for themselves and their families in this particular society help us understand more general principles about how the law mattered to married women's lives in early modern societies more widely.

A dominant theme in the history of married women and law is the question of their legal autonomy – in the English-speaking world the question of 'coverture', in the German-speaking world the issue of *Geschlechtsvormundschaft* ('gender guardianship'). This essay will argue that, important though legal autonomy was, it should not lead us to neglect other legal influences on married women. The case of early modern Germany throws into prominence two additional ways in which the law crucially circumscribed the economic options of married women, and thus their life chances and well-being: the legal privileges of guilds and other occupational associations; and the legal powers of local communities, including local church courts' jurisdiction over the conduct of married life.

The German Territory of Württemberg and the Legal Position of Married Women

The Duchy of Württemberg was a principality in southwestern Germany of about half a million inhabitants (450,000 in 1600, rising to 620,000 by 1790) – what has been called a 'German territory of the second rank'.[3] Although market-oriented in many ways, Württemberg had strong non-market institutions, which enjoyed extensive legal powers and imposed quite serious legal constraints on women.[4] For married women, three aspects of this legal framework were of particular importance in circumscribing their economic choices – the Württemberg version of 'gender guardianship'; the legal privileges of guilds and other professional associations; and the legal powers enjoyed by local communities and their officials.

[3] J. A. Vann, *The Making of a State: Württemberg, 1593–1793* (Ithaca, 1984), p. 36; P. H. Wilson, *War, State and Society in Württemberg, 1677–1793* (Cambridge, 1995), pp. 42–6.

[4] For a detailed examination of these constraints, see S. C. Ogilvie, *A Bitter Living: Women, Markets, and Social Capital in Early Modern Germany* (Oxford, 2003); S. C. Ogilvie, 'How Does Social Capital Affect Women? Guilds and Communities in Early Modern Germany', *American Historical Review* 109 (2004), 325–59; S. C. Ogilvie, 'Women and Labour Markets in Early Modern Germany', *Jahrbuch für Wirtschaftsgeschichte* 2004:2 (2004), 25–60; S. C. Ogilvie, 'Guilds, Efficiency and Social Capital: Evidence from German Proto-Industry', *Economic History Review* 57 (2004), 286–333; S. C. Ogilvie, *State Corporatism and Proto-Industry: The Württemberg Black Forest, 1580–1797* (Cambridge, 1997), pp. 45–57.

The first aspect of the law that affected married women was 'gender guardianship' (*Geschlechtsvormundschaft*). The legal system in Württemberg, as in other pre-industrial German societies, did not regard a married woman as a legal adult.[5] Instead, it placed her under the guardianship of an adult male called a *Kriegsvogt*. This term translates literally as 'war governor' or 'war overseer': 'Krieg' meant 'war' and 'Vogt' was an Old High German term for an overlord who exerted guardianship or military protection as well as secular justice over a particular territory or area of responsibility.[6] The obligation for a married woman to be under the legal guardianship of a *Kriegsvogt* meant that she did not have the legal right to sign enforceable contracts without this man's permission, let alone to engage independently in any other legal proceedings.

Every part of German-speaking Europe had some variant of gender guardianship in the early modern period and, as Figure 11.1 shows, most of them retained it until at least 1815. The medieval period had seen a limited legal emancipation of women in German legal thinking, especially with the so-called 'Reception' of Roman Law, overlaying (though not eradicating) the older German customary law. However, the legal emancipation of women under Roman Law had been largely resisted in Württemberg, whose *Erste Landrecht* (first national law-code) of 1555 subjected women to unlimited male guardianship. But Württemberg was by no means unique in this regard. Rather, it was part of a much more widespread pattern that characterized almost all the Swabian, Alemannian, and Franconian polities of German-speaking Europe, in which both unmarried and married women remained subject to unrestricted male guardianship.[7] A very similar degree of full gender guardianship for both unmarried and married women prevailed in those many parts of Germany subject to Saxon or Lübeck law, including Lübeck itself and the other great cities that used its legal system; much of Mecklenburg, Holstein, Pomerania, East Friesia, Schleswig, the Duchy of Prussia, and Prussian Poland; and a number of areas of Electoral Saxony, Lusatia, Thuringia, and Silesia.[8] Somewhat milder versions of gender guardianship appear to have prevailed in eighteenth-century Prussia, parts of Thuringia, Silesia, Anhalt, Halberstadt, Magdeburg, Lauenburg, Holstein, Lower Saxony, Westphalia, Electoral Palatinate, Tirol, and most of the south German Imperial Cities.[9] However, the legal status of women varied so much from one early modern German territory – or town – to the next that even the modern expert on the German law of gender guardianship, Ernst Holthöfer, concludes that many more monographs based on much deeper archival research would be

[5] E. Holthöfer, 'Die Geschlechtsvormundschaft. Ein Überblick von der Antike bis ins 19. Jahrhundert', *Frauen in der Geschichte des Rechts: von der frühen Neuzeit bis zur Gegenwart*, ed. U. Gerhard (Munich, 1997), pp. 390–451; C. Ulbrich, *Shulamit und Margarete: Macht, Geschlecht und Religion in einer ländlichen Gesellschaft des 18. Jahrhunderts* (Vienna, 1999), pp. 32–3 with n. 117.

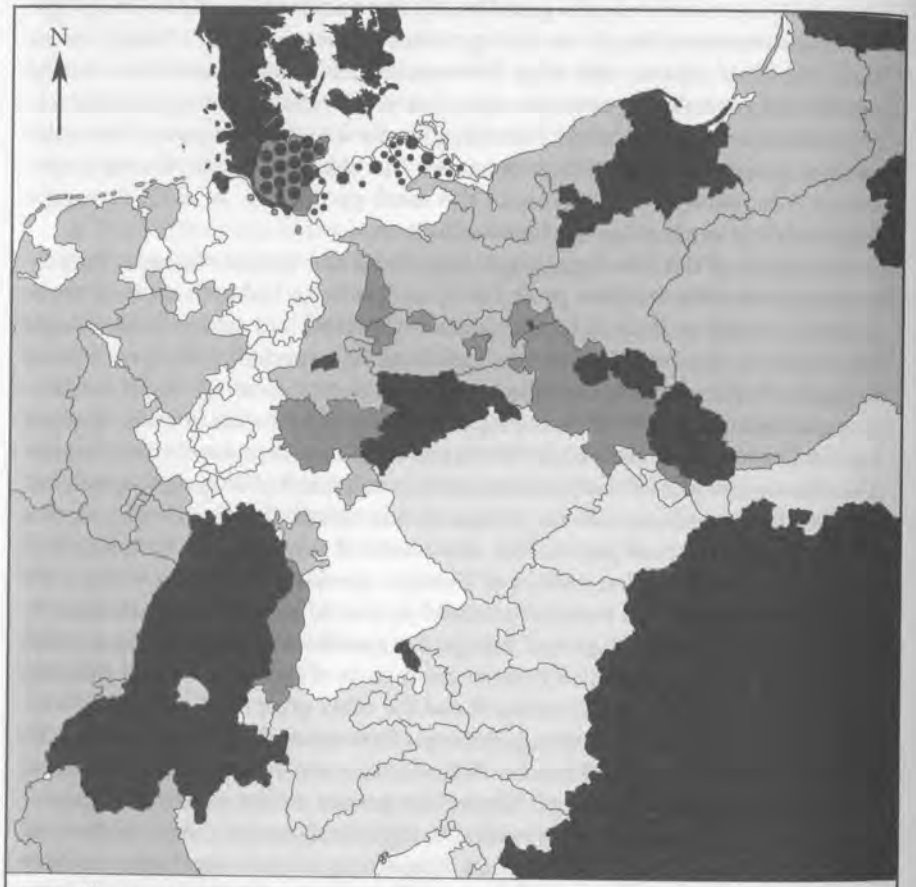
[6] For a discussion of the institution and meaning of the office of the 'Vogt' in the territories of late medieval German-speaking central Europe, see F. Reichert, *Landesherrschaft, Adel, und Vogtei: Zur Vorgeschichte des spätmittelalterlichen Ständestaates im Herzogtum Österreich* (Cologne and Vienna, 1985).

[7] Holthöfer, 'Geschlechtsvormundschaft', pp. 419–20.

[8] Holthöfer, 'Geschlechtsvormundschaft', pp. 420–3.

[9] Holthöfer, 'Geschlechtsvormundschaft', pp. 423–4.

Figure 11.1: Geographical Distribution of Gender Guardianship in German-Speaking Europe, c. 1815



Source: Holyhöfer, 'Die Geschlechtsvormundschaft', pp. 436–7

necessary to clarify the heterogeneous and blurred picture of the legal situation of women in German-speaking Europe around 1800.[10]

The legal position of married women only began gradually to become more standardized across German-speaking Europe in the course of the great legal codifications that took place at the end of the 'natural law' period – the 1794 *Allgemeine Landrecht* in Prussia, the 1804 *Code Civil* in France (important for those German territories occupied by France during the Napoleonic period), and the 1811 *Allgemeine Bürgerliche Gesetzbuch* in Austria. As late as 1815, there was still enormous variation among the different polities of German-speaking Europe, which fell into five main zones and a range of sub-variants. First, at the most liberal end, a small number of territories in the centre of German-speaking central Europe (those shaded white in Figure 11.1) allowed full legal autonomy to both unmarried and married women. Second, and slightly less liberal, came the newly codified Austrian system, under which, although all women were legally autonomous, a married woman was still subject to power of representation by her husband. Third, with only an intermediate degree of female legal autonomy, came those German polities subject to the French and Prussian codes, according to which unmarried women were legally autonomous but married women were not. A fourth group of Germany polities, in which a more severe situation prevailed, were those subject to Saxon law, where unmarried women were autonomous except for not being allowed to engage independently in legal proceedings, but married women still enjoyed no legal autonomy. The fifth group, characterized by the most severe legal restrictions on women, consisted of those territories – including Württemberg – where the 'particular law' of that specific territory's legal system, as handed down from the medieval and early modern period, continued to prevail, and both unmarried and married women continued to be subject to a completely non-autonomous legal status well into the nineteenth century (in the case of Württemberg until 1828).[11]

What did gender guardianship actually mean for married women? Some interpretations of the German law of gender guardianship regard it as having existed mainly to shield the property of a married woman from the control of her husband, and especially to protect her from his possible prodigality or coercion. This view was put forward by many German legal commentators in the later eighteenth century, when female legal emancipation began to be debated more widely in German-speaking Europe.[12] However, it is also accepted by some modern historians of pre-industrial Germany. In the context of early modern Württemberg, for instance, David Sabean has emphasized the beneficial role of gender guardianship in

[10] See the survey of the law of gender guardianship in early modern Germany in Holthöfer, 'Geschlechtsvormundschaft', pp. 419–26. Cf. on this D. W. Sabean, 'Allianzen und Listen: Die Geschlechtsvormundschaft im 18. und 19. Jahrhundert', *Frauen in der Geschichte des Rechts*, ed. Gerhard, pp. 460–479, here p. 463, according to which gender guardianship in early modern Germany had become quite standardized by the late seventeenth century. This is contradicted by the map in Holthöfer, 'Geschlechtsvormundschaft', pp. 436–7.

[11] Holthöfer, 'Geschlechtsvormundschaft', pp. 427–32.

[12] See, e.g., C. L. C. Röslin, *Abhandlung von besondern weiblichen Rechten* (Stuttgart, 1775).

protecting wives against exploitative husbands and their kinship groups.[13] On the other hand, by the later eighteenth century there was a strand of thought within German jurisprudence which advocated the abolition of gender guardianship on the grounds that there was no 'natural' difference in intelligence between the sexes and that gender guardianship was often manipulated by both sexes in ways that inhibited the efficient functioning of the economy.[14] A number of modern historians have also discovered that in practice gender guardianship often operated in such a way as to protect male producers against competition by entrepreneurial females, since it restricted women's ability to operate independently in agriculture, crafts, proto-industry or commerce, all of which required the ability to sign enforceable contracts relating to real estate, labour, credit, and output.[15]

This essay will show that neither of these extremes accurately reflects how gender guardianship worked for early modern German women. Instead, it argues, we should recognize that gender guardianship was used by different people in early modern German societies for different purposes. Some women were able to use it to their own benefit, either by pitting their guardians against abusive husbands or by claiming legal incapacity in order to escape from the consequences of disadvantageous contracts. But men were also able to manipulate gender guardianship in ways that circumscribed women's economic options and reduced their well-being. Husbands themselves were often able to block their wives from either appointing guardians to begin with or using those guardians to protect their economic interests within marriage. Furthermore, men who regarded married and widowed women as dangerously entrepreneurial used the regulations governing gender guardianship to claim that married women were not autonomous legal agents, could not enter into binding contracts, and thus could not carry out all the activities needed to conduct an independent business – particularly one that competed with their own.

Gender guardianship, though important, was not the only aspect of the law that affected married women in early modern German society. A second major set of legal prescriptions that constrained the economic choices of married women in Württemberg, as in almost all other German societies in the early modern period, were the legal privileges of guilds and guild-like merchant associations. As in many other parts of German-speaking Europe, in Württemberg guilds existed not just in traditional handicrafts, but in export-oriented proto-industries, in tertiary activities such as shop-keeping and merchant trading, and even in some primary activities such as fishing, sheep-herding, or wine-growing.[16] Guilds regulated economic activities not only in large cities but in the smallest towns. Moreover, in Württemberg and many areas of central, southern and eastern Germany, guilds even extended their controls

13 Sabean, 'Allianzen'; D. W. Sabean, *Property, Production and Family in Neckarhausen, 1700–1870* (Cambridge, 1990), pp. 208–14.

14 See, e.g., A. S. P. Semler, 'Über die Entbehrlichkeit und Abschaffung der Geschlechtscuratel in Deutschland überhaupt', *Archiv für die theoretische und practische Rechtsgelehrsamkeit* 6 (1792), 30–85.

15 See, e.g., A. Ryter, 'Die Geschlechtsvormundschaft in der Schweiz: Das Beispiel der Kantone Basel-Landschaft und Basel-Stadt', *Frauen in der Geschichte des Rechts*, ed. Gerhard, pp. 494–508.

16 See Ogilvie, *State Corporatism*, pp. 72–9.

out into the village workshops in the countryside. In addition, guild-like merchant associations monopolized many sectors of commerce, including the proto-industrial export trades.[17] As late as 1793, one traveller's account remarked that industry and commerce in Württemberg 'is constantly made more difficult by the form which it has taken for a long time. The greatest share of trade and manufactures are in the hands of closed and for the most part privileged companies.'[18] Where guilds retained their legal privileges, they regulated who could engage in particular economic activities, whom they could employ, the wages they could pay workers, the amount they could produce, the prices they could charge customers, which of their family members could participate, who was allowed to buy and sell particular goods, and what equipment and techniques could be used. It was 1864 before guilds in Württemberg were abolished.[19] In earlier publications I have discussed how guilds in early modern Württemberg generated a rich 'social capital' of shared norms, information transmission, sanctions on deviance, and collective action, which enabled them to exercise intensive surveillance and control over their members as well as over non-members whose economic activities impinged on that sector.[20]

A third major component of the law that constrained the economic choices of married women in early modern Württemberg was the legal powers devolved to the local community. Württemberg – like many other parts of German-speaking central Europe – had an institutional framework which gave very strong legal powers to local communities. People held legal citizenship rights in their community first and foremost, and in the nation only by virtue of their community membership.[21] The villages and tiny towns of rural Württemberg operated their own powerful community courts, appointed a myriad of community officials (about one-fifth of male household heads held some communal office), and met in annual face-to-face community assemblies (*Vogt-Rüg-Gerichte*), where the princely district officials asked each (male) citizen if he had anything to report. This 'social capital' enabled communities to exercise intense surveillance and control over crop choice, farming techniques, agricultural and industrial markets, citizenship, settlement, marriage, mobility, inheritance, residential arrangements, sexuality, education, diligence, leisure, and consumption.[22] Württemberg communities also maintained a strong symbiotic

17 W. Troeltsch, *Die Calwer Zeughandlungskompagnie und ihre Arbeiter. Studien zur Gewerbe- und Sozialgeschichte Altwürttembergs* (Jena, 1897); Ogilvie, *State Corporatism*, pp. 77–9, 106–11; H. Medick, *Weben und Überleben in Laichingen 1650–1900. Untersuchungen zur Sozial-, Kultur- und Wirtschaftsgeschichte aus der Perspektive einer lokalen Gesellschaft im frühneuzeitlichen Württemberg* (Göttingen, 1996), esp. pp. 65–140.

18 C. Meiners, 'Bemerkungen auf einer Herbstreise nach Schwaben. Geschrieben im November 1793', *Kleinere Länder- und Reisebeschreibungen*, ed. C. Meiners (Berlin, 1794), vol. 2, pp. 235–380, here p. 292.

19 Ogilvie, *State Corporatism*, pp. 72–9, 419–37.

20 Ogilvie, *A Bitter Living*; Ogilvie, 'How Does Social Capital Affect Women?'; Ogilvie, 'Women and Labour Markets'; Ogilvie, 'Guilds', esp. pp. 289–90, 297–8, 303–7, 312–13.

21 Ogilvie, *State Corporatism*, pp. 45–57.

22 S. C. Ogilvie, 'Coming of Age in a Corporate Society: Capitalism, Pietism and Family Authority in Rural Württemberg, 1590–1740', *Continuity and Change* 1 (1986), 279–331; Ogilvie, 'The German State', pp. 193–9; Ogilvie, *State Corporatism*, pp. 42–72; Ogilvie, *A Bitter Living*; Sabean, *Property*, pp. 106, 109, 148, 160–1.

relationship with the Lutheran state church, especially through the local church courts (*Kirchenkonvente*) which were established in the 1640s and remained active until c.1890. These local church courts had the power to impose fines and incarceration as well as religious penances, and their minutes show that they closely regulated work, consumption, sociability, sexuality, poor relief, and cultural practices.[23]

Information on women's economic activities in pre-industrial societies is extremely scarce, and is particularly hard to obtain for married women.[24] Statistical sources usually record only household heads, which means that they typically exclude all females except for widows (or deserted wives) who headed their own households. Censuses and parish registers provide information on the demographic behaviour and household status of other females, but no details of their economic activities. For information about the work of married women, we have to rely almost exclusively on scattered references in qualitative sources such as court records, petitions, and account-books. Württemberg is fortunate in possessing unusually detailed local archival sources, and this essay relies on a large database of observations of women (and men) working, compiled from such sources for the administrative district of Wildberg in the Nagold Valley in the Württemberg Black Forest. It uses this database both qualitatively, to examine the detailed context for women's market work, and quantitatively, to assess the relative importance of particular types of work for different women and men.

This quantitative database was created out of a legal source, the sixteen volumes (over 7,000 handwritten pages) of the church court records (*Kirchenkonventsprotokolle*) for two Württemberg communities – the small town of Wildberg (population c.1,300) and the village of Ebhausen (population c.900) – in the period 1646–1800. From these church court records, all observations of working activities by either females or males were extracted, transforming a qualitative source into a quantitative database. The records of the local church courts in Württemberg communities are well suited for investigating women's work because they regulated sexual and familial relationships, thereby opening a window into the domestic sphere, and because they legally required the reporting of all work performed at religiously forbidden times. In compiling the quantitative database, only references to *actual tasks being carried out* were enumerated. References to people earning a living from a certain occupation, serving a master of a certain occupation, or being apprenticed to a certain craft were excluded, on the grounds that they did not register actual working behaviour, and were also likely to be biased towards males, who were more likely than females to hold formal occupational designations but not necessarily more likely to engage in tasks relating to these occupations. Likewise, this church court work database excluded all references to individuals begging, being given money or food by their relatives, or receiving public poor relief, on the grounds that such references

[23] Ogilvie, *A Bitter Living*.

[24] On this, see R. Wall, 'The Contribution of Married Women to the Family Economy under Different Family Systems: Some Examples from the Mid-Nineteenth Century from the Work of Frédéric Le Play', *Socio-Economic Consequences of Sex-Ratios in Historical Perspective, 1500–1900: Proceedings, Eleventh International Economic History Congress Milan, September 1994*, ed. A. Fauve-Chamoux and S. Sogner (Milan, 1994), pp. 139–148, here p. 139.

did not register actual working behaviour, were likely to be biased towards widows and spinsters who were disproportionately represented among the poor, and were likely to overstate the importance of charity as a livelihood source.

This exercise yielded a database of 2,828 separate observations of individuals working, as Table 11.1 shows. It includes 397 observations of the work of married women, approximately proportionate to their share (43 per cent) in the female population over the age of eleven.[25] In the discussion that follows, this database, enhanced by references to married women's work in other sources, particularly petitions and the minute-books of other local law-courts, is used to provide a window onto the activities of a group of women about whose work the historiography has long contained more theoretical assumptions than empirical findings.[26]

Married Women in Agriculture

The most important sector of the pre-industrial European economy was agriculture, which means that it is particularly important to examine married women's ability to participate fully in that sector. As Table 11.1 shows, married women in early modern Württemberg were highly active in agriculture, which accounted for 20 per cent of their observed work in Wildberg and Ebhausen between 1646 and 1800. This was not as high as the share of agriculture in the work of unmarried daughters living at home with their parents (22 per cent), independent unmarried women (27 per cent), widows (33 per cent), or maidservants (40 per cent), but farm-work still made up a non-trivial proportion of married women's working activity. Although it was also much less than the share of agriculture in the observed work of unmarried men (50 per cent for male servants, 42 per cent for sons), it was not enormously lower than its share in the observed work of married men (29 per cent).

This finding from the quantitative database is borne out by a more detailed analysis of the qualitative evidence, which illuminates the wide variety of agricultural activities married women undertook. For one thing, land, the absolute prerequisite for all agricultural activities, was bought and sold in markets in which married women participated. Sometimes they did so without any involvement from their husbands, as in 1611 when the wives of two Wildberg men got into conflict in the community court over the sale of an arable field,[27] or in 1654 when a married woman from Effringen appeared in the Wildberg church court and successfully demanded right of prior purchase on a pasture and an arable field

[25] See Ogilvie, *A Bitter Living*, p. 27 (table 1.3), for a detailed breakdown of contemporary censuses for this part of Württemberg showing that 43 per cent of females (and 55 per cent of males) over the age of eleven were 'currently married'.

[26] For a detailed discussion of the compilation, composition and representativeness of this database, see Ogilvie, *A Bitter Living*, pp. 22–36.

[27] Hauptstaatsarchiv Stuttgart (henceforth HStAS) A573 Bü. 25, 4.3.1611, unpag. ('Jeorg harders weib Clagt Ab Michel Brossen weib').

Table 11.1. Observed Work by Females and Males, According to Marital and Household Status, Wildberg, 1646-1800, and Ebhausen, 1677-1800

	Agriculture		Guilded craft		Guilded proto-industry		Unguilded craft (esp. spinning)		Mill		Tavern		Commerce		Labour		Service		Housework		Care		Healing		Marginal occupations		Total	
	no.	%	no.	%	no.	%	no.	%	no.	%	no.	%	no.	%	no.	%	no.	%	no.	%	no.	%	no.	%	no.	%	no.	%
Daughters	30	22	2	1	3	2	30	22	0	0	0	0	2	1	4	3	2	1	16	12	13	10	0	0	34	25	136	100
Maids	43	40	0	0	2	2	10	9	2	2	0	0	1	1	0	0	0	0	19	18	15	14	0	0	15	14	107	100
Wives	81	20	17	4	9	2	34	9	10	3	18	5	12	3	7	2	4	1	111	28	43	11	8	2	43	11	397	100
Widows	58	33	3	2	11	6	16	9	11	6	5	3	5	3	8	5	5	3	25	14	17	10	6	3	4	2	174	100
Indep. unmarried women	34	27	0	0	0	0	42	33	0	0	0	0	2	2	5	4	7	6	8	6	14	11	1	1	13	10	126	100
Unknown status	0	0	0	0	0	0	0	0	0	0	0	0	1	50	0	0	0	0	1	50	0	0	0	0	0	0	2	100
Total females	**246**	**26**	**22**	**2**	**25**	**3**	**132**	**14**	**23**	**2**	**23**	**2**	**23**	**2**	**24**	**3**	**18**	**2**	**180**	**19**	**102**	**11**	**15**	**2**	**109**	**12**	**942**	**100**
Sons	88	42	26	12	12	6	4	2	12	6	2	1	3	1	7	3	7	3	6	3	3	1	0	0	42	20	212	100
Male servants	108	50	25	12	4	2	1	0	27	12	2	1	1	0	15	7	1	0	3	1	3	1	0	0	27	12	217	100
Husbands	405	29	198	14	170	12	8	1	119	8	54	4	56	4	75	5	63	4	58	4	25	2	26	2	146	10	1403	100
Widowers	6	33	0	0	2	11	0	0	4	22	0	0	0	0	0	0	0	0	3	17	3	17	0	0	0	0	18	100
Indep. unmarried men	4	15	1	4	1	4	3	12	1	4	0	0	1	4	1	4	0	0	0	0	1	4	0	0	13	50	26	100
Unknown status	1	10	0	0	0	0	1	10	0	0	0	0	0	0	0	0	5	50	2	20	0	0	1	10	0	0	10	100
Total males	**612**	**32**	**250**	**13**	**189**	**10**	**17**	**1**	**163**	**9**	**58**	**3**	**61**	**3**	**98**	**5**	**76**	**4**	**72**	**4**	**35**	**2**	**27**	**1**	**228**	**12**	**1886**	**100**
Total persons	**858**	**30**	**272**	**10**	**214**	**8**	**149**	**5**	**186**	**7**	**81**	**3**	**84**	**3**	**122**	**4**	**94**	**3**	**252**	**9**	**137**	**5**	**42**	**1**	**337**	**12**	**2828**	**100**

Source: PAW, Kirchenkonventsprotokolle (church court minutes), Bde. I-VII (1646-1800); PAE, Kirchenkonventsprotokolle (church court minutes), Bde. I-VII (1674-1800).

Notes:
Agriculture = all forms of farm-work, plus selling farm output.
Guilded craft = all guilded activities except for worsted-weaving.
Guilded proto-industry = making worsted textiles and selling them.
Unguilded craft = spinning, seamstressing, knitting, brewing, attending or holding spinning-bees.
Mill = operating mill, transporting materials to or from mill.
Tavern = operating or serving in tavern.
Commerce = as merchant, shopkeeper, peddler, or private person.
Labour = carting, day-labouring, building, repairing, military work.
Service = teaching, music, writing, magic, housekeeping, laundry, barbering, bathing, prostitution, miscellaneous service.
Housework = indoor and outdoor household chores, providing lodgings.
Care = child-minding, nursing, tending women in child-bed, and all other forms of paid and unpaid care for other persons.
Healing = as barber-surgeon, physician, *Feldscherer,* bathman, *Kleemeister,* shepherd, midwife, sworn woman, private person.
Marginal occupations = doing errands, gathering, stealing.

from an unrelated male.[28] Wives expressed strong views on their husbands' property transactions, as in 1613 when a Nagold man was forced to retreat from an agreed contract on the grounds that 'his wife simply did not like the sale',[29] or in 1767 when the wife of an Ebhausen weaver refused to co-sign a note for 70 *Gulden* because it would mean that 'their best lands would be pledged'.[30] Wives even sometimes took the initiative in land transactions, as in 1788 when an Ebhausen man described how 'it was his wife who first had the idea that the farm that had been sold ... should be brought back into their possession, and she herself consequently went to Nagold to consult with the public secretary there about how this might be initiated'.[31]

These examples of the economic initiative women were willing and able to manifest in land transactions, though, should not lead us to exaggerate their economic autonomy, which was constrained by several aspects of the legal arrangements discussed in the preceding section. We must, for example, consider the way in which the system of gender guardianship in practice operated to shape married women's position in agriculture by affecting their rights of disposition over land. Women were subjected to unrestricted gender guardianship in the Württemberg national law-code of 1555, and were not liberated from it until 1828.[32] However, gender guardianship does not appear to have been systematically enforced until around 1600, as shown by two civil cases of 1602 in the Wildberg community court. In one, explicit uncertainty about whether a married woman 'may go to law without her husband' was resolved when the court ordered the woman in question to withdraw from a civil case unless and until she could appear in court with her husband.[33] In the other, an unmarried man defended the validity of his purchase several years earlier of a field from his widowed mother despite her lack of a community-appointed *Kriegsvogt*, on the grounds that 'no guardian and *Kriegsvogt* were appointed because at that time this was not customary'. The exact date of the transaction in question was not stated in the court-minutes, but the unmarried status of the man suggests that it had probably been fairly recent since he must have himself reached his majority in order to engage in such a purchase, and the mean age at marriage for men in this society in the seventeenth century was twenty-six.[34]

28 Pfarrarchiv Wildberg (henceforth PAW), Kirchenkonventsprotokolle (henceforth KKP), Bd. 1, fol. 112v, 14.6.1654.

29 HStAS A573 Bü. 15, fol. 141v, 11.3.1613.

30 Pfarrarchiv Ebhausen (henceforth PAE) KKP Vol. V, p. 230, 20.9.1767.

31 PAE KKP Vol. VII, fol. 74v, 22.1.1788.

32 On gender guardianship in Württemberg, see A. Kraut, *Die Stellung der Frau im württembergischen Privatrecht: eine Untersuchung über Geschlechtsvormundschaft und Interzessionsfrage* (Tübingen, 1934). For the relevant Württemberg laws, see 'Erstes Landrecht' (6.5.1555), *Sammlung Vollständige, historisch und kritisch bearbeitete Sammlung der württembergischen Gesetze*, ed. A. L. Reyscher, 19 vols (Stuttgart, 1828–51), here vol. 4, 95, referring to 'Zweites Landrecht' (1.7.1567), pp. 171–420, where differences between the 1555 and the 1567 version are recorded in the footnotes, here esp. p. 231; 'Pfandgesetz', *Regierungsblatt* (21.5.1828), pp. 361–3.

33 HStAS A573 Bü. 14, fol. 130r, 10.8.1602.

34 HStAS A573 Bü. 14, fol. 107r, 16.3.1602. On marriage ages in early modern Wildberg, see Ogilvie, *State Corporatism*, p. 244 (table 8.3).

Many eighteenth-century German jurists and some modern historians view gender guardianship as having operated to benefit married women. In support of this interpretation, they make four related claims, which I shall treat in turn in relation to early modern Württemberg.

First, they argue that the institution of gender guardianship in Germany in general and Württemberg in particular was directed 'solely and only against husbands', to prevent their abuse of wives' property rights.[35] Doubt is cast on this view by the fact that a *widow* was also required to have a *Kriegsvogt*, even though she did not have a husband against whom protection might have been required. Further doubt is cast on this notion by the fact that in practice, the local authorities in early modern Württemberg appear to have regarded a husband as an acceptable *Kriegsvogt* for his own wife. In August 1602, for instance, Appollonia Schelling from the Württemberg village of Ebhausen was ordered by the Wildberg district court to get her husband to appear in court with her 'as her *Ehevogt* and *Kriegsvogt*'.[36] ('Ehevogt' translates literally as 'marital governor' or 'marital overseer'.) A husband's position as *Ehevogt* meant that he had the right to carry out legal business on behalf of his wife as her representative and in her name, as well as to administer his wife's property, although he was not entitled to alienate it without her consent to cover his own liabilities.[37] When a married woman had a different man than her husband as a *Kriegsvogt*, then she had at least the formal legal possibility of giving expression to her own will, but if her *Kriegsvogt* was also her *Ehevogt* (that is, if both types of guardianship were combined in the person of the husband), as was the case for Appollonia Schelling, then obviously the institution of gender guardianship did not give her this advantage and instead only brought the constraint that she could not bring legal proceedings without his permission and participation.

Second, some defenders of gender guardianship maintain that it did not reflect any legal conception that women were inherently incapable of acting responsibly: 'no jurist regarded women as "weak" and "submissive" vis-à-vis persons who did not belong to their own families'.[38] But legal histories provide rich evidence that in German law, *Vormundschaft* (guardianship) was applied to adult persons who were regarded as incapable of acting responsibly.[39] This applied to all women, since females were viewed as inherently having this characteristic. It also applied to a small number of men, who were regarded by their community courts as having demonstrated by their behaviour that they were unable or unwilling to act responsibly, although in these cases it was sometimes justified in terms of inherent personal characteristics such as old age. To give just one example, in 1677 a Wild-

35 Sabean, 'Allianzen', p. 461.

36 HStAS A573 Bü. 14, fol. 130r, 10.8.1602.

37 Kraut, *Die Stellung der Frau*, pp. 295, 329, 392; J. B. Wiesner, *Das Vormundschaftsrecht sowol nach gemeinen deutschen, kanonischen und römischen als auch nach heutigen statutarischen vorzüglich nach Sächsischen, Schlesischen und übrigen Preussischen Rechten theoretisch und praktisch in systematischer Ordnung abgehandelt* (Halle, 1785), p. 209.

38 Sabean, 'Allianzen', 461.

39 Holthöfer, 'Geschlechtsvormundschaft', p. 392; S. Weber-Will, 'Geschlechtsvormundschaft und weibliche Rechtswohltaten im Privatrecht des preußischen Allgemeinen Landrechts von 1794', *Frauen in der Geschichte des Rechts*, ed. Gerhard, pp. 425–59, here esp. p. 453.

berg weaver who had applied for poor relief because 'he could no longer attend to his craft', and was finding it impossible to control his offspring, instead found the communal church court assigning him a *Kriegsvogt* 'because he is an old man'.[40] Cases such as this imply that early modern law-courts did regard the appointment of a *Kriegsvogt* as reflecting the conception that the person placed under such guardianship was inherently incapable of acting responsibly.

Third, proponents of gender guardianship have claimed that women voluntarily chose their own *Kriegsvögte*, and that although this choice had to be approved by the legal authorities it was a free choice on the part of the woman and there was no compulsion involved.[41] Doubt is cast on this claim by the many cases in early modern Württemberg community court-minutes in which a *Kriegsvogt* was not voluntarily chosen by a woman, but rather was imposed on her by the community, often in situations of conflict or coercion. In 1664, for instance, Catharina, widow of Gabriel Sahl, complained in the Wildberg church court that she had been defamed by Georg Berger and his wife and had been asked why she did not go back to Reutlingen where she came from. The communal church court fined Berger and his wife, but also compulsorily appointed Hannß Faißler as a *Kriegsvogt* for Catharina.[42] In 1712, likewise, when a married woman complained in the Ebhausen church court that she had been defamed by her father-in-law, the schoolmaster, who had accused her of frequenting taverns, she was sentenced to half a day in the 'Häuslin' (the women's lock-up in the village) and told that 'she shall have a *Kriegsvogt* set for her'.[43] Such cases show that the appointment of a *Kriegsvogt*, whether for a married woman or for a widow, was not necessarily a matter of voluntary choice; rather, it was regarded as a component of the penalties inflicted by the communal legal authorities when a woman was viewed as having misbehaved in some way.

Finally, certain eighteenth-century jurists and modern historians claim that gender guardianship did not affect women's dealings with other members of the kinship group or with outside individuals or institutions.[44] Doubt is cast on this view by the fact that in Württemberg after c.1600 a married woman had to be supported by a *Kriegsvogt* in all transactions, including those with persons outside their families.[45] Württemberg community authorities began in the early years of the seventeenth century to forbid married women and widows to litigate without *Kriegsvögte*, appealing to the national law-code to justify this policy.[46] In 1614, for instance, Hanß Großman refused in the Wildberg community court to answer a

40 PAW, KKP Vol. IV, fol. 102v–103r, 8.6.1677.
41 Sabean, 'Allianzen', p. 466.
42 PAW, KKP Vol. II, fol. 104r, 3.6.1664
43 PAE KKP Vol. II, fol. 98v, 4.11.1712.
44 Sabean, 'Allianzen', p. 461.
45 Cf. S. Sogner and H. Sandvik, 'Minors in Law, Partners in Work, Equals in Worth? Women in the Norwegian Economy in the 16th to the 18th Centuries', *La donna nell'economie secc. XIII–XVIII. Attit della 'Ventusima Settimana di Studi' 10–15 april 1989*, ed. S. Cavaciocchi (Prato, 1990), pp. 633–53, here pp. 634–5 with n. 5, on early modern Norway, where having a *Kriegsvogt* was a right, not an obligation.
46 For the law, see '2. Landrecht' (1567), in Reyscher, *Sammlung*, vol. 4, 231.

civil case brought by a married woman on an unpaid debt on the grounds that her son Martin Klaiß was not present to speak on her behalf, and the court accepted the argument.[47] We also find cases in which the community authorities put pressure on a *Kriegsvogt* to compel a woman to undertake an economic transaction against her will. In 1621 Jerg Müller from the village of Oberjettingen appeared in the Wildberg court to describe how he had been appointed as the *Kriegsvogt* of Jerg Küentz's wife and 'he had been commanded ... to sell the house, which the woman did not want to do'.[48] Ryter describes similar situations in Switzerland, where guardians were legally entitled to act against women's expressed desires in economic matters.[49]

Conversely, in situations when a married woman *did* wish to have a *Kriegsvogt*, the legal system often failed her, since it did not automatically appoint one for her and her husband was in an advantageous position to deter her from obtaining one. In 1708, for instance, a Wildberg butcher's wife testified in court that her husband had come to her in childbed and threatened to:

> deal with her in such a way that she would have to give her money to the doctor; he had heard that she was looking for a *Kriegsvogt* and a guardian for his children, he would set matters up in such a way that she would not get very much more from this bloody farm [that she had brought into the marriage], and would have to eke out the household with spinning.[50]

In situations such as this, for a wife to appeal to the community court could be worse than useless. In 1652, when an Effringen farmer used his wife's marriage portion to buy a small farm, which he then sold 'without her prior knowledge and consent', she first demanded an official inventory of their property, and when this failed walked out, taking some of her possessions; this finally spurred the community court to appoint a *Kriegsvogt* for her, but also to order her to move back home and 'recognize her own weakness, meet her husband with good words, and loyally do her part in the householding as best she knows how'.[51] In 1686, when a Wildberg tanner 'whipped his wife until her teeth rattled ... because she would not deliver her property as stated in the inventory', although he had been repeatedly warned and gaoled for 'bad householding' and wife-beating, and his wife had left him on at least one occasion, the community court ordered her to 'deliver up her property'.[52]

Even when a wife did get a *Kriegsvogt*, her husband could sell conjugal property without consulting him, as in 1775 when a woman in Ebhausen complained that 'only a few days ago [her husband] had put the house and lands on sale without

47 HStAS A573 Bü. 15, fol. 232r, 22.9.1614; ibid., fol. 248v, 9.2.1615.
48 HStAS A573 Bü. 15, fol. 545v, 25.8.1621.
49 Ryter, 'Geschlechtsvormundschaft', pp. 498–502.
50 PAW KKP Vol. IV, fol. 265r–266v, 15.6.1708.
51 PAW KKP Vol. I, fol. 87r, 10.12.1652.
52 PAW KKP Vol. V, fol. 54v–55r, 12.3.1686.

in the least consulting his wife and her *Kriegsvogt*, and had sold some of them'.[53] In 1788, when an Ebhausen woman objected to her husband's prodigal dealings with her land (and his fornication with the maidservants), the church court told her 'that although she had a larger property than her husband, she should not regard him as a servant but rather as a husband, and not strive for unrestricted domination'.[54] Sabean's research on the Württemberg village of Neckarhausen also provides many examples of Württemberg husbands who dissipated their wives' property despite the fact that these wives had *Kriegsvögte*.[55]

As these examples illustrate, an important practical influence on how gender guardianship operated, and hence on the economic position of married women more generally, was the stance taken by community officials and community courts, which exercised considerable legal powers over spouses' behaviour both outside and inside the household. In Württemberg, as in most other pre-industrial European societies, community officials, from the town mayor or village headman down through the twelve members of the village council to the lowly fieldwards, were all married (or occasionally widowed) males. Community assemblies invited each male household head in turn to report his concerns to his fellow citizens but did not invite the same expression of views from married women and even excluded the c.15 per cent of household heads who were widowed females.[56] Females were thus excluded from community assemblies, community council membership, and community offices. The interests of wives and daughters may have been represented by their husbands and fathers, but those of widows and independent unmarried women relied on more distant male relatives (if they were fortunate enough to possess any) – or on *Kriegsvögte* who were appointed by the community council and thus reflected its interests, as well as (sometimes instead of) those of the women. Community courts were widely recognized by contemporaries as not being impartial. They favoured the kin of the court members, as reflected in a 1717 complaint in Ebhausen 'that the church-court members, when their kin are examined in a case, have the custom of continuing to preside, which means that the latter's accusers are reluctant to testify properly'.[57]

When it came to marital conflict, too, community courts had their own priorities, high among which was the desire to sustain existing marriages at almost any cost, in order to ensure tax payments and prevent welfare burdens. Community courts were also made up of married men who had to deal with accused husbands as their fellow citizens and guild members in everyday transactions after the court-hearing was over, and who in any case explicitly held the view that wives should defer to husbands and husbands were entitled to discipline wives. In cases of marital conflict, this led them to inflict often risibly feeble penalties on erring husbands while ordering wives to defer to their husbands, even when these were feckless, alcoholic, violent, or deranged. As married males, commu-

53 PAE KKP Vol. VI, fol. 18r, 2.9.1775.
54 PAE KKP Vol. VII, fol. 75r, 23.1.1788.
55 Sabean, *Property*, pp. 214–22.
56 HStAS A573 Bü. 81–103 (1554–1801). Ulbrich, *Shulamit*, pp. 153–4.
57 PAE KKP, Vol. III, fol. 44, 21.12.1717; Sabean, *Property*, pp. 48–9 with n. 53.

nity council members tended to show understanding for the difficulties of other married males but little for those of married females. Thus in 1720 the Ebhausen court excused a man for physically abusing his pregnant wife on the grounds that 'his wife is unspeakably wicked [*bös*], which the court-members bear witness to'.[58] Although the law in principle provided protection for wives' property, a wife was vulnerable to her husband's physical coercion and to admonitions by community courts to 'recognize her own weakness', 'not strive for domination', and give way even to a prodigal husband.[59]

Community courts also had discretion to decide the conditions under which a deserted wife might be allowed to dispose freely of her land, and the married male members of communal courts tended to use this discretion in the interests of married males, not married females. Thus in 1784, the Liebelsberg village court refused a deserted wife the right to sell her lands, despite the husband's desertion having lasted the statutory seven years, and 'even though they knew well that the property standing in guardianship did solely belong to the deserted woman'. When she appealed to the district court, she was refused access to her land unless she set aside 90 *Gulden* to support her husband should he ever return – a clear case of the community court members placing the interests of a married male (not to mention themselves as contributors to the community poor-relief fund) ahead of the property rights of a married woman.[60] Such decisions made it hard for a married woman, even if she was deserted by her husband, to sell or mortgage land, which in turn constrained her ability to secure the agricultural micro-credit which kept Württemberg's small-scale farmers afloat from season to season.

On paper, therefore, the legal system might protect the property rights of married women, whether through gender guardianship or through the inheritance system. But in practice these legal rights were interpreted and enforced mainly through communal institutions which had wide-ranging legal powers and were manned by married (or occasionally widowed) men. The implementation of the law thus often functioned to limit married women's ability to protect their land or dispose of it freely, and thus constrained their ability to operate independently in agriculture, regardless of how economically active they were in the actual operation of the farm.

Married Women in Crafts and Proto-Industries

The legal system affected the economic options of married women somewhat differently in the industrial sector than it did in agriculture, since industrial activities

58 PAE KKP, Vol. III, fol. 87v, 25.7.1720.
59 For similar admonitions administered to wives by community courts in other parts of Germany, see L. Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford, 1989), p. 174; R. Beck, 'Frauen in Krise: Eheleben und Ehescheidung in der ländlichen Gesellschaft Bayerns während des Ancien Régime', *Dynamik der Tradition. Studien zur historischen Kulturforschung*, ed. R. Van Dülmen (Frankfurt am Main, 1992), pp. 137–212, here pp. 179–80.
60 HStAS A573 Bü. 49, fol. 197v–199r, 27.10.1784.

were much less dependent on their practitioners, having secure property rights in land. In early modern Württemberg, as in many other parts of Europe, married women participated vigorously in industrial activities, in the form both of locally-oriented crafts and of export-oriented 'proto-industries'.[61] This can be seen quantitatively in the database of observed work (see Table 11.1).

Married women's participation in the core tasks of guilded crafts appears to have been quite limited: only 4 per cent of their observed work occurred in guilded crafts and 2 per cent in the regional worsted-weaving proto-industry, which was also guilded. By contrast, 9 per cent of married women's observed work occurred in *unguilded* industrial activities, particularly spinning, but also knitting, sewing and lace-making. Furthermore, married women also participated in the commercial side of craft activity, which accounted for another 3 per cent of their observed work. Finally, married women were active in operating mills, which accounted for another 3 per cent of their observed work. In combination, these variegated industrial activities accounted for 21 per cent of the observed work of married women – about the same proportion as for agriculture.

This is confirmed by qualitative sources, which show the wide array of industrial activities in which married women participated. For one thing, craft output was sold in markets in which we observe active selling by the wives of – to give just a few examples – shoemakers,[62] hat-makers,[63] bakers,[64] butchers,[65] and proto-industrial worsted-weavers.[66] Some married women were devious bargainers, as with a Sulz weaver's wife who was accused in 1661 of supplying short measure to a customer buying her woollen broadcloth.[67] Craftsmen's wives often emerge as relentless debt-collectors, as in 1617 when a worsted-weaver's wife tried to collect a 17-*Batzen* debt from a customer 'four times in a single day',[68] in 1706 when a shoemaker's wife threatened to report a customer to the district governor for a shoe-repair bill,[69] or in 1720 when a baker's wife collected debts around the town just before attending confession at the church.[70] Wives courted marital conflict by selling craft output independently, as in 1675 when a potter accused his wife of selling pottery in a way that he characterized as 'not fair',[71] in 1681 when a butcher's wife berated her husband for spending 'the 24 *Kreuzer* which ... the shoemaker paid her on a meat debt',[72] or in 1785 when an Ebhausen

61 C. Vanja, 'Zwischen Verdrängung und Expansion, Kontrolle und Befreiung. – Frauenarbeit im 18. Jahrhundert im deutschsprachigen Raum', *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte* 79 (1992), 457–82, here pp. 463, 472–3; M. E. Wiesner, *Working Women in Renaissance Germany* (New Brunswick, 1986), pp. 153–6; Ulbrich, *Shulamit*, p. 186.
62 HStAS, A573 Bü. 15, fol. 566r, 16.1. 1622.
63 HStAS, A573 Bü. 4395, Heftchen #1 (1636–42), unpag.
64 PAW, KKP, Bd. IV, fol. 68v, 1.8.1676; PAW, KKP, Bd. V, fol. 146r, 17.8.1694.
65 PAE, KKP, Bd. VII, fol. 50v, 5.12.1786.
66 HStAS, A573 Bü. 12, fol. 19.5r-v, 4.11.1591.
67 PAW, KKP, Bd. II, fol. 22r, 15.2.1661.
68 HStAS A573 Bü. 15, fol. 357v, 18.12.1617.
69 PAW, KKP, Bd. V, fol. 255r-v, 26.2.1706.
70 PAW, KKP, Bd. V, fol. 363r, 16.8.1720.
71 PAW, KKP, Bd. III, fol. 692–3, 15.1.1675.
72 PAW KKP Vol. IV, fol. 199r, 22.4.1681.

nail-smith's wife insisted on accompanying him to Berneck to sell nails 'because she knew well that he would gladly drink away the earnings'.[73]

Craftsmen's wives not only sold the output from the craft workshop but also took responsibility for securing raw material inputs through market transactions. Thus, for example, in 1595 a Wildberg woollen-broadcloth-weaver's wife was recorded buying raw wool from another married woman,[74] in 1636 a butcher's wife participated in a purchase of beef-cattle,[75] and in 1668 a worsted-weaver's wife complained that her husband was being prodigal with four and a half hundredweight of wool which they had purchased.[76] A craftsman's wife might be far readier to pursue a putting-out debt than her husband, as in 1622 when Jacob Klay loaned raw wool to Basti Mosapp on a promise of repayment in cloth and cash. Mosapp repaid the cloth but refused to pay the cash, so Klay 'regarded it as best to let these 9 *Batzen* fall, so that he might be spared further running around'. But Klay's wife 'would not permit him to do this, so he told her she should bring in these 9 *Batzen* herself'; she ultimately elicited repayment after repeated disagreeable confrontations and verbal abuse from Mosapp and his wife.[77] Many of these wives regarded themselves – rightly or wrongly – as better suited to business than their husbands.

Legal provisions still shaped and constrained the activities of married women in the industrial sector, just as they did in agriculture. In industry, however, the main aspect of the legal system affecting married women consisted of the legal privileges of guilds. According to the guild ordinances which regulated almost all crafts and proto-industries in Württemberg, as in most other parts of early modern Germany, the wife of the master was the only female allowed to carry out all tasks associated with the craft – but she could legally do so only in the particular occupation in which her husband held his mastership licence. Most guild ordinances were uncompromising. The master was allowed to work with male journeymen (too costly for most poor masters, and rationed by the guild), male apprentices (cheaper, but untrained and also rationed by the guild), male offspring (often non-existent or the wrong age), or his own wife. He was not allowed to use non-guild-trained servants or labourers (of either sex), or his own daughters, or other female relatives. This is reflected quantitatively in Table 11.1, where we see that more than half of all observations of guilded work (crafts, proto-industry and milling) recorded for females were by married women and another 36 per cent by widows: only 13 per cent (mostly running errands and operating mills) was carried out by daughters or maidservants, and none by independent unmarried women.

These guild restrictions on craft work created strong incentives for craftsmen's wives to participate in all aspects of the activities of the workshop, including the heaviest physical labour. Thus in 1592 a Wildberg mason's wife 'was making a wall'.[78]

73 PAE KKP Vol. VII, fol. 1r, 3.1.1785.
74 HStAS, A573 Bü. 12 , fol. 248r, 16.1.1595.
75 HStAS, A573 Bü. 17, fol. 401v–402r, 3.9.1640.
76 PAW, KKP, Bd. III, pp. 252–3, 2.4.1669.
77 HStAS A573 Bü. 15, fol. 608r, 19.12.1622.
78 HStAS A573 Bü. 12, fol. 87v, 22.6.1592.

In 1668 the wife of a fountain-master was repairing the Wildberg fountains.[79] In 1676 a Neubulach baker's wife was carrying bread long distances in hilly country when eight months pregnant.[80] In 1687 a Wildberg baker's wife was lifting heavy bales of flour when eight months pregnant.[81] In 1709 a Wildberg cooper's wife was carrying barrel-wood in from the forest.[82] In 1738 a smith's wife was helping him drag a heavy load of iron from Nagold to Altensteig in pouring rain.[83] In 1790 a twenty-four-year-old woman pregnant by a journeyman nail-smith described their intention of working together at a nail-smithy after they married.[84]

On the other hand, guild regulations absolutely *excluded* married women from work in any *other* occupation. Thus in 1624 the wife of a man who wove both traditional woollen broadcloths and new-style proto-industrial worsteds sought to purchase a share of a shipment of raw wool which was legally reserved for members of the woollen-broadcloth-weavers' guild. She was excluded on the grounds that her husband was a member of the worsted-weavers' rather than the woollen-weavers' guild.[85] In 1635, a woman whose woollen-broadcloth-weaver husband had just died was fined the equivalent of one-third of a maidservant's annual wage by the worsted-weavers' guild in Wildberg because 'she had taken it upon herself to practise the craft even though her husband had never been apprenticed to worsted-making'.[86] The only exceptions to this rule were activities such as mill-labouring, spinning, and working as a seamstress. The millers' guilds were unusually liberal in permitting the employment of unguilded general servants and labourers, with the result that some mill-labourers were married women, such as the donkey-driver's wife employed by an Ebhausen miller in 1736.[87]

Guilds also limited married women's work by prohibiting masters from paying employees above a particular maximum rate. A particularly severe example was the spinning piece-rate ceiling imposed by the guilds of the worsted-weavers and the merchant-dyers, and enshrined in law so that it could be enforced by state officials.[88] As the weavers' guild-ordinance put it, 'spinning a pound [of yarn] shall be paid at as high a wage as the [weavers'] craft agrees among its members, and the dyers as well as the worsted-weavers shall support this in all ways, and each master shall then infallibly stick to the agreed wage'.[89] We can observe these legal privileges of the male weaving-masters affecting married women's industrial work

79 HStAS A573 Bü. 92, fol. 6v, 1.12.1668.
80 PAW KKP Vol. IV, fol. 68v, 1.8.1676.
81 PAW KKP Vol. V, fol. 64r, 4.2.1687.
82 PAW KKP Vol. V, fol. 268v, 31.5.1709.
83 PAE KKP Vol. III, fol. 207r, 16.3.1738.
84 PAE KKP Vol. VII, fol. 194v, 20.5.1790.
85 HStAS A573 Bü. 16, fol. 79v, 19.8.1624.
86 HStAS A573 Bü. 810, 1635–6, unpag., 'Strafen'.
87 PAE, KKP, Bd. III, fol. 201v, 18.11.1736; for the occupations, see HStAS, A573 Bü. 6967, fol. 30r, 1736.
88 For a detailed discussion of these regulations, see Troeltsch, *Zeughandlungskompagnie*, pp. 125–31; Ogilvie, *State Corporatism*, pp. 353–5; Ogilvie, *A Bitter Living*, pp. 165, 298, 307–8, 318, 347.
89 Emendations dated 1654 to 'Engelsattweberordnung in A. 1608 [actually 1611] vfgerichtet', in Troeltsch, *Zeughandlungskompagnie*, 435–53, here article 21 (p. 446 n. 2).

in practice. In 1623, for instance, a married spinner from the village of Gültlingen fell foul of these guild piece-rate ceilings when she was reported to the district court for charging weavers higher prices for finishing work faster, in violation of the legal maximum rate she was allowed to charge.[90]

Even when guilds permitted married women to work and did not cap their earnings, there were other aspects of the law that constrained their work in the industrial sector. Here, again, gender guardianship can be seen in action as a way for male transaction partners to gain an advantage over a female seeking to conduct a business independently. In 1614–15, a woman called Anna Klaißin was operating as a broadcloth-weaver in Wildberg on the basis of the guild licence of her husband, who had either died or deserted her, leaving her to enjoy the legacy of his guild licence. However, Anna's ability to continue conducting the workshop was limited by the legal requirement, which had been introduced in Wildberg after about 1600, for a married or widowed female to be represented in transactions before the community court by a legal guardian. For five months in 1614–15 two of Anna's male customers managed to delay payment of a debt on cloths she had supplied – in the amount of 78 *Gulden*, equivalent to three-quarters of the value of an average house at the time – by refusing to answer her debt suit until she was represented in court by a male relative.[91]

The legal powers of the local community also affected married women's ability to earn a living in the secondary sector. Even when an industrial occupation was not regulated by a guild, it could require a licence from the community authorities, which they might prove extremely unwilling to grant to a married woman. In 1793, for instance, a male citizen of Wildberg complained at the annual communal assembly that a basket-maker called Kiefer was dwelling at the paper-mill in the nearby village of Gültlingen, 'and his wife, equipped with a slip of paper from [the paper-miller], but without any permit [*Patent*], is roaming around this district and neighbouring ones under the pretext of collecting rags'. The assembly responded by instructing the Gültlingen village headman 'no longer to permit this basket-maker to stay there, and to make known this prohibition against giving him shelter to the entirety of the inhabitants, and especially the paper-miller, on pain of a *Kleine Frevel* [3 *Gulden*] fine'.[92] Even an industrial occupation from which women were not debarred by any guild, such as collecting rags to make paper, was regarded as requiring a legal *Patent* (permit), and could prove impossible to pursue for a married woman who had not secured permission to do so from the local community.

Communal courts also constrained married women's work in industry, by systematically supporting husbands against wives in cases of marital conflict over the craft activity which provided the family's livelihood. In 1668, when a Wildberg worsted-weaver beat his wife for objecting to his drunkenness, gambling, and prodigality with their purchased store of raw wool, 'and now there was none left, and they still owed 12 *Gulden* down there in the purchasing-

90 HStAS, A573 Bü. 15, fol. 618r, 20.2.1623.
91 HStAS A573 Bü. 15, fol. 232r, 22.9.1614; ibid., fol. 248v, 9.2.1615.
92 HStAS A573 Bü. 100, fol. 28r-v, 1793.

house, and also had various other debts', the community court did gaol the husband briefly, but admonished the wife 'to show and conduct herself towards her husband peacefully and modestly, and loyally attend to the householding as befits an honourable wife, and not give him cause to give her trouble'.[93] In 1674, when a Wildberg butcher beat his wife, ejected her from the house, and threatened to murder her for not yielding up to him 30 *Kreuzer* which she had earned from selling meat ragout, the court regarded the situation as dangerous enough to send their child to foster-parents, but ordered the wife to return home to her husband, feebly admonishing both spouses to treat each other better in future.[94] In 1697, when the Ebhausen community court reproved (but did not punish) a miller for beating and abusing his wife 'wickedly and bestially', as well as for his 'tyranny and cruelty ... enmity and embittered moods', the wife was 'also, as a *Weib* [wife/woman], given the appropriate lesson, with illustrations of how she should not incite her husband with scornful, impertinent and wicked words or unpeaceful gestures to anger and beatings but rather much more greet him virtuously at all times and thus protect herself from misfortune'.[95] In 1778, when a Wöllhausen worsted-weaver threatened to kill his wife if she continued to criticize him for his perpetual bad householding, idleness, drinking and gambling, the court warned him to improve his behaviour, but concluded by ordering the wife to stay home, work diligently, and refrain from gossiping about her husband with her sisters, which he claimed had caused all the problems.[96]

Not surprisingly, husbands regarded their own decisions as sovereign, used physical violence to enforce them, and acted bemused when reproved by community courts.[97] In 1681, for instance, when a Wildberg butcher threatened his wife with a knife if she would not stop criticizing his prodigality with a sum of money collected from a customer, he evidently regarded such behaviour as normal, putting it to his fellow married men in the church court that, after all, 'one can easily imagine that sometimes trouble arises between married people'.[98] In 1785, when an Ebhausen nail-smith nearly throttled his wife on discovering that she had drawn up a list of his debts to send to the district authorities to prove his poor householding, and threatened to kill her when she insisted on accompanying him on a nail-selling expedition for fear he would drink away the proceeds, he defended himself to the community court in wondering tones: 'the money belongs to me, after all'.[99] In 1797, when an Ebhausen woollen-broadcloth-weaver subjected his wife to violent sexual assault after she objected to his gambling and criticized his conduct of the household economy, he answered that 'he had the choice, he did what he wanted, he didn't have to ask anyone ... it was nothing to

93 PAW KKP Vol. III, p. 254, 2.4.1669; ibid., pp. 256–7.
94 PAW KKP Vol. III, pp. 641–2, 12.6.1674.
95 PAE KKP Vol. I, fol. 82v–83r, 9.12.1697.
96 PAE KKP Vol. VI, fol. 41v–44r, 6.2.1778.
97 For similar acceptance, on the part of both husbands and communities, of violence against wives, see Roper, *Holy Household*, pp. 185–94; Ulbrich, *Shulamit*, pp. 78–9.
98 PAW KKP Vol. IV, fol. 199r-v, 22.4.1681.
99 PAE KKP Vol. VII, fol. 2v, 3.1.1785.

do with her, he didn't need to ask such a snot-nose as she, after all she doesn't have anything, he could give her (saving reverence) filth to her and then she could go wherever she wished'.[100]

Married women were both able and willing to participate in industrial activity. Neither physical weakness, domestic responsibility, nor lack of specialized training prevented them from doing so. What did constrain their participation in the secondary sector were legal rules – guild privileges, community powers, and gender guardianship – which, even if they were not deliberately devised to regulate the economy in the interests of male masters and male citizens, were interpreted in such a way as to give rise to this outcome in a large number of situations.[101]

Married Women in the Service Sector

The service sector was an important and growing part of most early modern European economies. Commerce, in particular, expanded greatly in the early modern period, and evidence from all over Europe testifies to married women's active engagement in trading and retailing. The same was true in Württemberg, in so far as this was not prevented by the complex network of legal privileges governing permission to participate in commercial activities. According to Württemberg law, farmers and craftsmen were the only people allowed to sell their own products. Middlemen (and -women) who traded in goods they had not themselves produced, and that were not on the list of legal 'merchants' wares', were defined as *Fürkäufer* (regraters), whose activities were illegal. To specialize in commerce legally, one had either to obtain admission to the guild of merchants and shopkeepers as a master, or to pay a fee to the guild in lieu of membership, or to obtain a special dispensation from the duke of Württemberg. Those trading under the latter two conditions were restricted to the specific goods named in their permits.[102] Trading in certain wares, specifically proto-industrial worsteds destined for export-markets, was after 1650 made the monopoly of an association of merchant-dyers whose legal charter explicitly excluded all women from trading, even their own members' wives and widows.[103]

Wives of men who possessed the required guild membership (or other special permit) did participate actively in commercial businesses, as shown by the 3 per cent of the observed work activities of married women in commerce in Table 11.1. In 1615, for instance, a Heilbronn merchant's wife sold a sack full of raw wool to a Wildberg worsted-weaver,[104] and in 1714 a Wildberg shopkeeper's wife was fined

100 PAE KKP Vol. VIII, p. 100, 10.4.1797.
101 For similar conclusions see Wiesner, *Working Women*, pp. 168–85.
102 See J. F. C. Weisser, *Das Recht der Handwerker nach allgemeinen Grundsätzen und insbesondere nach dem herzoglichen Wirtembergischen Gesezen entworfen* (Stuttgart, 1780), pp. 329–30; Ogilvie, *State Corporatism*, pp. 70–9; Sabean, *Property*, p. 160.
103 Troeltsch, *Zeughandlungskompagnie*, p. 67; on women's non-participation in other early modern merchant trading companies, see M. E. Wiesner, *Women and Gender in Early Modern Europe* (Cambridge, 2000), p. 107.
104 HStAS, A573 Bü. 15, fol. 282r, 7.9.1615.

for crying out wine for sale on the Sabbath.[105] Soldiers often got permits from the prince allowing their wives to run small shops in their absence, as in Balingen in 1711 when 'Conradt Götz, by profession a bird's-nester, got a ducal permit to conduct a business ... and (because he has not been here now for more than 3 years and is serving in the army) he conducts through his wife some little business selling tobacco cuttings',[106] or when Adam Achach in Dagersheim, 'a hussar and in the field ... obtained a ducal command dated 22 October 1697 ... permitting him to conduct a little shop with tobacco, and his wife thus runs this little shop'.[107]

But the legal privileges of the guilded shopkeepers – and of the masters of other guilds who had monopoly rights over retailing wares they regarded as appertaining to their craft – severely constrained married women's ability to pursue such commercial activities. In 1711, for instance, the guilded shopkeepers of Backnang sought to prevent married women from selling soap and other washing products at weekly markets 'without being able to show any permits to do so'.[108] In 1742 an Effringen soldier's wife was gaoled for 'dealing in foreign nails' after a complaint by the Wildberg nail-smith that this 'violates the nail-smiths' [guild] ordinance and damages him in his craft'.[109] In 1793 five male citizens separately made use of the *Vogt-Rüg-Gericht* – an assembly of all community citizens at which each (male) citizen in turn was asked if he had anything to report – to complain that 'in Liebelsberg and Schönbronn, lard is being bought up by a *Fürkaufferin* [female regrater] from Teinach, even outside shop-opening-hours'. The community officials immediately sent out written reminders to all communities in the district about the illegality of regrating, urged all citizens to report every case of regrating instantly, and wrote to the governor of the district in which this woman lived, 'warning her against further regrating and the penalties it involves'.[110]

Married women were active not just in commerce but also in other tertiary-sector activities such as music, teaching and healing. Pastors' wives worked as organists, as in 1720 when the new Ebhausen pastor applied for a yearly salary of 12 *Gulden* for his wife for playing the organ at church services, funerals and weddings, 'as she had in Bulach for 3 years and previously in Dettingen near Anhausen for 11 years'.[111] When the pastor's wife died in 1721, the village embarked on wearisome years of unsatisfactory contracts with male organists.[112] Schoolmasters' wives contributed actively to teaching, as reflected in legislation of 1654 and 1744 forbidding schoolmasters from leaving their pupils 'solely to their wives' while they themselves worked as clerks or tavern-keepers.[113] In 1764, the Wildberg church court appointed the sexton's wife over the heads of four male applicants as *Collaboratorin* to teach the mixed beginners' class in the town school, on the grounds that she 'desired no increase in the salary, and possesses sufficient capability for the vacant *Collaboratur* or teaching of the smallest children'.[114] Within five months, the ducal consistory was objecting to the appointment, but the sexton's wife declared that 'she would not step down voluntarily from the *Collaboratur* which she has been taking care of hitherto'.[115] It was not her lack of the requisite skills, but her not having pursued the formal professional training (something she could not do since Latin schooling was legally reserved for males) that ultimately prevented her from continuing to work as a schoolteacher.

A similar pattern can be observed in the healing professions. The only type of medical activity legally permitted to women was that of official midwife (*Hebamme* or *Wehemutter*) and her assistant 'sworn women'. This work was recognized to be skilled, but the occupation of midwife was also a formal office, requiring ratification by the community church court and the taking of an oath, and had regulatory as well as medical functions, here as elsewhere in early modern Germany.[116] Midwives and sworn women were expected to report signs of attempted abortion or infanticide,[117] testify to whether a birth was premature or indicated premarital 'fornication',[118] physically examine girls suspected of illegitimate pregnancies,[119] interrogate unmarried mothers during labour about the identity of the father,[120] and report superstitious practices surrounding childbirth.[121] Appointments of midwives and sworn women generated tension between communal religious authorities who emphasized moral stature, and expectant mothers who preferred medical skill. Even when the views of married women in the community were consulted, as in Ebhausen in 1710, they 'were warned beforehand to have an eye to piety'; ultimately they were only permitted to determine a field of four candidates, from which the members of the community court – all males – chose the most morally suitable (the schoolmaster's wife).[122] The implication was that, left to themselves, childbearing women would consider other traits than piety – perhaps not surprisingly, considering that they were choosing the woman on whose medical skills their lives might depend.

In practice, childbearing married women rejected the services of official midwives they did not trust, and sought to employ illegal midwives whose medical skills (or discretion) they preferred. Thus in 1603 the communal authorities fined and gaoled a Wildberg rope-maker's wife, who had 'driven out a premature child

105 PAW, KKP, vol. V, fol. 308r, 18.5.1714.
106 HStAS A228 Bü. 713, #8, fol. 2r, 15.9.171.
107 HStAS A228 Bü. 713, #11, fol. 6v, 14.9.1711.
108 HStAS A228 Bü. 713, #10, 7.10.1711.
109 HStAS A573 Bü. 95, fol. 6v, 25.1.1742.
110 HStAS A573 Bü. 100, fol. 37r, 1793.
111 PAE KKP, Vol. III, fol. 92r, 21.12.1720.
112 E.g. PAE KKP, Vol. III, fol. 96r, 26.10.1721.
113 'Cynosura Oeconomiae ecclesiasticae Wirtembergicae', in Reyscher, *Sammlung*, vol. 11, part 1, pp. 12–17, here p. 14; 'Gen. Syn. Reskript an die Gen. Superintendenten, betr. die Einführung eines ausführlichen Modus visitandi' (9.10.1744), in Reyscher, *Sammlung*, vol. 11, part 1, pp. 25–30, here p. 26.
114 PAW KKP Vol. VI, fol. 142v–143r, 26.10.1764.
115 PAW KKP Vol. VI, fol. 146v–147r, 29.3.1765.
116 As discussed, e.g., in Vanja, 'Auf Geheiß', p. 82; Ulbrich, *Shulamit*, pp. 69–72.
117 E.g. PAW KKP Vol. III, p. 591, 25.9.1673. See also M. E. Wiesner, 'The Midwives of South Germany and the Public/Private Dichotomy', *The Art of Midwifery: Early Modern Midwives in Europe and North America*, ed. H. Marland (London, 1993), pp. 77–94, here p. 87.
118 E.g. PAW KKP Vol. IV, fol. 68v, 1.8.1676. See also Wiesner, 'Midwives', p. 87.
119 E.g. PAE KKP, Vol. III, fol. 214r, 17.9.1738. See also Wiesner, 'Midwives', p. 87.
120 E.g. HStAS A573 Bü. 15, fol. 16v, 19.7.1610; PAW KKP Vol. IV, fol. 4v, 17.9.1675. See also Wiesner, 'Midwives', p. 86.
121 E.g. PAE KKP Vol. I, fol. 69r–69v, 22.3.1696.
122 PAE KKP Vol. II, fol. 69v–70r, 5.12.1710, here 69v.

for Young Hans Göltling's wife'.[123] In 1654, Gültlingen was described as being 'ill-equipped with midwives, [since] the old one cannot properly be used any more on account of great age, and no-one else will take on this service', yet a baker's wife was reported to the communal church court for having helped another woman give birth, allegedly using superstitious practices.[124] In 1675 the Wildberg church court agreed to formalize the position of a worsted-weaver's wife who had 'stepped into the place of the deceased ... previous midwife'; her father had been a physician, which may have led expectant mothers to turn to her.[125] In 1691 a worsted-weaver's wife was gaoled because she 'allowed herself to be used as a midwife' despite not holding the office.[126] In 1723 a baker's wife was fined 'because she committed encroachment [*Eintrag*] upon the midwife'.[127] In 1773 the childbearing women of Wildberg and their husbands were threatened with fines if they continued to avoid the legally appointed new midwife and insist on employing the illegal old one.[128] The explicit use of the guild terminology, *Eintrag* ('encroachment'), to refer to unlicensed midwives illustrates how community authorities manipulated the corporate craft ethos against unlicensed female healers, concerned both to maintain monopoly rents for licensed midwives (by which the authorities secured midwives' loyalty as reproductive 'spies'), and to ensure that all sex-related activities were subject to official surveillance. It was not that unofficial midwives lacked skill or could not attract willing customers, but rather that the rationing of legal licences prevented them from practising more widely.

Married women were thus active in the service sector, but their ability to pursue these activities depended on the legal privileges of the guilds and professional associations that dominated service occupations, and on the legal powers of local communal institutions concerned to regulate the economy in the interests of their – male – citizens. Young females were legally excluded from apprenticeship and advanced schooling, but this did not mean that adult women were incapable of successfully working in skilled crafts and educated professions in later life – as long as they were legally entitled to do so. A married woman was legally permitted to practise a guilded occupation if she had married a man with the relevant guild licence, irrespective of her father's occupation or the length of her marriage, and qualitative evidence shows wives engaging in a wide array of skilled craft activities. Likewise, some married women managed to learn musical, pedagogical, and medical skills that they were allowed to practise, as long as they did so under the aegis of the legal entitlement of a pastor or sexton husband, or as official midwives licensed by the community. But these skills were in higher supply among married women than were the requisite official licences, suggesting that the binding constraint on married women's activity in these sectors was not lack of skills but legal barriers governing whether they were to be permitted to put those skills to practical use.

[123] HStAS A573 Bü. 24, fol. 27v, 31.3.1603.
[124] HStAS A281 Bü. 1585, fol. 4v–5r, 25.5.1654.
[125] PAW KKP Vol. III, p. 740, 30.4.1675
[126] PAW KKP Vol. V, fol. 100v, 24.3.1691.
[127] PAW KKP Vol. V, fol. 391v, 26.11.1723.
[128] PAW KKP Vol. VI, fol. 266r-v, 5.3.1773.

Conclusion

In pre-industrial Germany, as in most other societies in northwest Europe, married women participated in a wide range of economic activities. But their production decisions were comprehensively constrained by the operation of the law. Gender guardianship in theory protected married women from exploitative husbands, but in practice also exposed them to exploitation by guardians and limited their ability to conduct independent businesses as farmers, craftswomen, or shopkeepers because they were not legally entitled to enter autonomously into the requisite contracts. Guilds limited married women's work in manufacturing and commerce unless this work was carried out in the workshop of a husband with a licence to operate as a master in that specific occupation – whether it was a locally-oriented craft, an export-oriented proto-industry, or a retail business. Local communities limited married women's work when it threatened marital harmony or was carried out without the requisite legal licence. Exclusion from full legal rights in these fundamental social networks of pre-industrial German societies not only excluded married women from full enjoyment of any social capital such networks may have generated, but also enabled this social capital to be manipulated by male members of these networks to constrain married women's production and consumption decisions.

Despite these legal restrictions imposed by gender guardianship, community regulations, and guild privileges, married women enjoyed much wider economic opportunities in most early modern German economies than did unmarried or widowed females. But these opportunities were dependent on the approval of their husbands, who alone enjoyed full membership of the fundamental social networks which governed so many aspects of economic life in pre-industrial society. These social networks, particularly the guild and the local community, compelled wives to submit to husbands' decisions, however ill-judged, about how they should allocate their time and what they should produce. It seems likely that this led both to deprivation for many married women and to inefficient allocation of resources for the economy as a whole.

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ISSN 1742-870X

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MARRIED WOMEN AND THE LAW IN PREMODERN NORTHWEST EUROPE

edited by

Cordelia Beattie and Matthew Frank Stevens

THE BOYDELL PRESS

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First published 2013
The Boydell Press, Woodbridge

ISBN 978-1-84383-833-3

The Boydell Press is an imprint of Boydell & Brewer Ltd
PO Box 9, Woodbridge, Suffolk IP12 3DF, UK
and of Boydell & Brewer Inc.
668 Mt Hope Avenue, Rochester, NY 14620-2731, USA
website: www.boydellandbrewer.co.uk

A CIP catalogue record for this book is available from the British Library

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Printed and bound by
CPI Group (UK) Ltd, Croydon, CR0 4YY

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