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Title:	Police Ordinances, Customary Statutes and Normativity Regimes: Regulating Agriculture and Forest in a Rural District of the Electorate of Mainz between the late Middle Ages and the Early Modern Period
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Key-words:	Legal History, Police Ordinances, Customary Law, Forest Law, Normativity Regimes, Rural Society, Electorate of Mainz, Jurisdiction, Database, Taxonomy
Abstract:	<p>The article studies the importance of early modern police ordinances for rural society and their relationship to local customary statutes in rural jurisdictions. To compare the interdependences between local customary statutes and police ordinances and to investigate general trends and changes between the late Middle Ages and the Early Modern Period the study uses the database of early modern police ordinances and digital methods as quantitative analysis and the indexing with the taxonomy/classification schema of police ordinances. The detailed analysis and the comparison of the normativity of local customary statutes and police ordinances is treated within the framework of a case study on the district and jurisdiction Starkenburg of the Electorate of Mainz. To also investigate transterritorial normative influences, the analyses is extended to specific forest police ordinances of two neighboring territories (Landgraviate of Hesse-Darmstadt, Electorate of Palatinate). The results of the study shows that order and administration in local rural communities was based on two different normativity regimes: the regime of the customary statutes and the regime of police ordinances. The comparative quantitative analysis and the indexing with the classification schema yielded similarities of the normativity of both regimes, but also evinces the general shift to gute Policey. Police ordinances regulated similar issues, conflicts and wrongdoings and thus adopted and finally substituted customary local normativity and increasingly regulated specific matters and areas of rural society. This can be interpreted as an expansion of the administration, social control and criminalization of rural societies through police ordinances which were also influenced by the normativity of neighboring territories. But the normativity regime of the police ordinances kept the basic concept of agricultural and forestal wrongdoings and to some extent was still based on the organizational framework of the</p>



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	customary normativity regime to establish order in a local rural society.
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Police Ordinances, Customary Statutes and Normativity Regimes: Regulating Agriculture and Forest in a Rural District of the Electorate of Mainz between the late Middle Ages and the Early Modern Period

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1. Introduction

1.1. *Policeforschung* and rural normativity/jurisdiction

The focus of current research on early modern *gute Policey* and police ordinances (*Policeyordnungen*) is still on urban spaces – particularly late medieval/imperial towns and municipal ordinances – and on administrative law of the early modern state covering a wide range of police matters (*Policeysachen*).¹ Little research has been conducted on police ordinances in local communities and rural regions,² although this might contribute to the discussion on *gute Policey* and/or state formation.³ Only recently, Regional History (*Landesgeschichte*) has studied in more detail the interrelation of rural legal sources (*ländliche Rechtsquellen*) and police ordinances regulating typical matters of rural society.⁴ Wolfgang Wüst has extended the edition of police ordinances to local ordinances and statutes, thus complementing older editions of rural legal sources and customary statutes.⁵ This article continues this research, and provides a case study on the importance of police ordinances for rural society and their relationship to local customary normativity in rural jurisdictions. It also uses the database of early modern police ordinances (*Policeyordnungen der Frühen Neuzeit*) [<https://doi.org/10.1080/0268117X.2022.2111339>] and digital methods as quantitative analysis and the application of the taxonomy/classification schema of police

¹ On the state of research see, for example, Karl Härter, Art. Polizei, in: Enzyklopädie der Neuzeit, Bd. 10, Stuttgart 2009, pp. 170–180; Karl Härter, Art. ‚Policey‘ und ‚Policeyordnungen‘, in: Handwörterbuch zur deutschen Rechtsgeschichte (henceforth HRG), 27. Lieferung, Berlin 2018, pp. 645–646 and 646–652; Andrea Iseli, Gute Policey. Öffentliche Ordnung in der Frühen Neuzeit, Stuttgart 2009.

² Examples are: André Holenstein/Frank Konersmann/Josef Pauser/Gerhard Sälter (eds.), Policey in lokalen Räumen. Ordnungskräfte und Sicherheitspersonal in Gemeinden und Territorien vom Spätmittelalter bis zum frühen 19. Jahrhundert, Frankfurt am Main 2002; André Holenstein, „Gute Policey“ und lokale Gesellschaft im Staat des Ancien Régime. Das Fallbeispiel Baden(-Durlach), 2 vols., Tübingen 2003; Karl Härter, Die Policey der Hamster, Sperlinge, Raupen und Heuschrecken: „schädliche Tiere“ und „Ungeziefer“ in der preußischen Policeygesetzgebung der Frühen Neuzeit, in: Gerald Kohl et al. (eds.), Festschrift für Thomas Simons zum 65. Geburtstag: Land, Policey, Verfassung, Wien 2020, pp. 73–92.

³ C. A. Romein, Early modern state formation or gute Policey? The good order of the community, in: The Seventeenth Century 37 (2022), pp. 1031–1056, online: <https://doi.org/10.1080/0268117X.2022.2111339>.

⁴ See the contribution of Wolfgang Wüst in this special issue of the Journal for Digital Legal History, and the recent case study: Wolfgang Wüst, Frankens Policey: Alltag, Recht und Ordnung in der Frühen Neuzeit – Analysen und Texte, Darmstadt 2021, pp. 221–254 (Dorfpolicy). On rural society in general cf. Thomas Robisheaux, Rural Society and the Search for Order in Early Modern Germany, Cambridge 1989; Werner Trossbach, Ländliche Gesellschaft, in: Enzyklopädie der Neuzeit, vol. 7, Stuttgart 2008, pp. 504–531.

⁵ Wolfgang Wüst (ed.) with David Petry/Carina Unthelm/Marina Heller), Die „gute“ Policey im Reichskreis. Zur frühmodernen Normensetzung in den Kernregionen des Alten Reiches, vol. 4: Die lokale Policey. Normensetzung und Ordnungspolitik auf dem Lande. Ein Quellenwerk, Berlin 2008.

ordinances to compare the normativity of local customary statutes and police ordinances and to analyze general trends and changes between the late Middle Ages and the Early Modern Period.⁶

The database of early modern police ordinances already demonstrates the importance of *gute Policey* for rural spaces and jurisdictions. Police ordinances and administrative law (*Ordnungsgesetze*) regulated many local rural matters, such as serfdom, feudal duties, agriculture, forest and land use as well as jurisdiction and administration of lower courts in rural areas. A quantitative analysis of a sample of the respective regulatory areas and subject matters of the classification schema (*Index Policymaterien*) shows that serfdom (1.2 *Leibeigenschaft*), feudal duties (1.2 *Frondienste/Dienstpflichten*), agriculture (4.1 *Landwirtschaft*), forest and land use (4.2 *Forst- und Bodennutzung*) amounts to 12.713 provisions, which make nearly nine percent of the total of the subjects matters of the police ordinances (142.317) indexed in the database for the period between 1400 and 1799.⁷

⁶ Online: <https://policey.lhlt.mpg.de/web/>; see also Karl Härter, A Database of Early Modern Police Ordinances, in: Journal for Digital Legal History 1/1 (2022), doi: <https://doi.org/10.21825/dlh.85516>; C. A. Romein/A. Wagner/J. J. van Zundert, Building and Deploying a Classification Schema using Open Standards and Technology, in this special issue of the Journal for Digital Legal History.

⁷ Data of 8 imperial cities and 21 territorial states generated from Karl Härter/Michael Stolleis (eds.), Repertorium der Policeyordnungen der Frühen Neuzeit, 12 vols., Frankfurt am Main 1996-2017, online as database: <https://policey.lhlt.mpg.de/web/>. Counted are the subject matters of the provisions indexed with the classification schema that provides 25 regulatory areas and 200 subject matters (*Policymaterien*). Here not included is the data of Denmark and Sweden. For the methodology see Karl Härter, Strafrechts- und Kriminalitätsgeschichte der Frühen Neuzeit, Berlin and Boston 2018, pp. 82-87. In the following, police ordinances covered by the repertory are merely referenced as „RepPo“ with the number of the volume, name of the territory/city, number of the repertory, form and date.

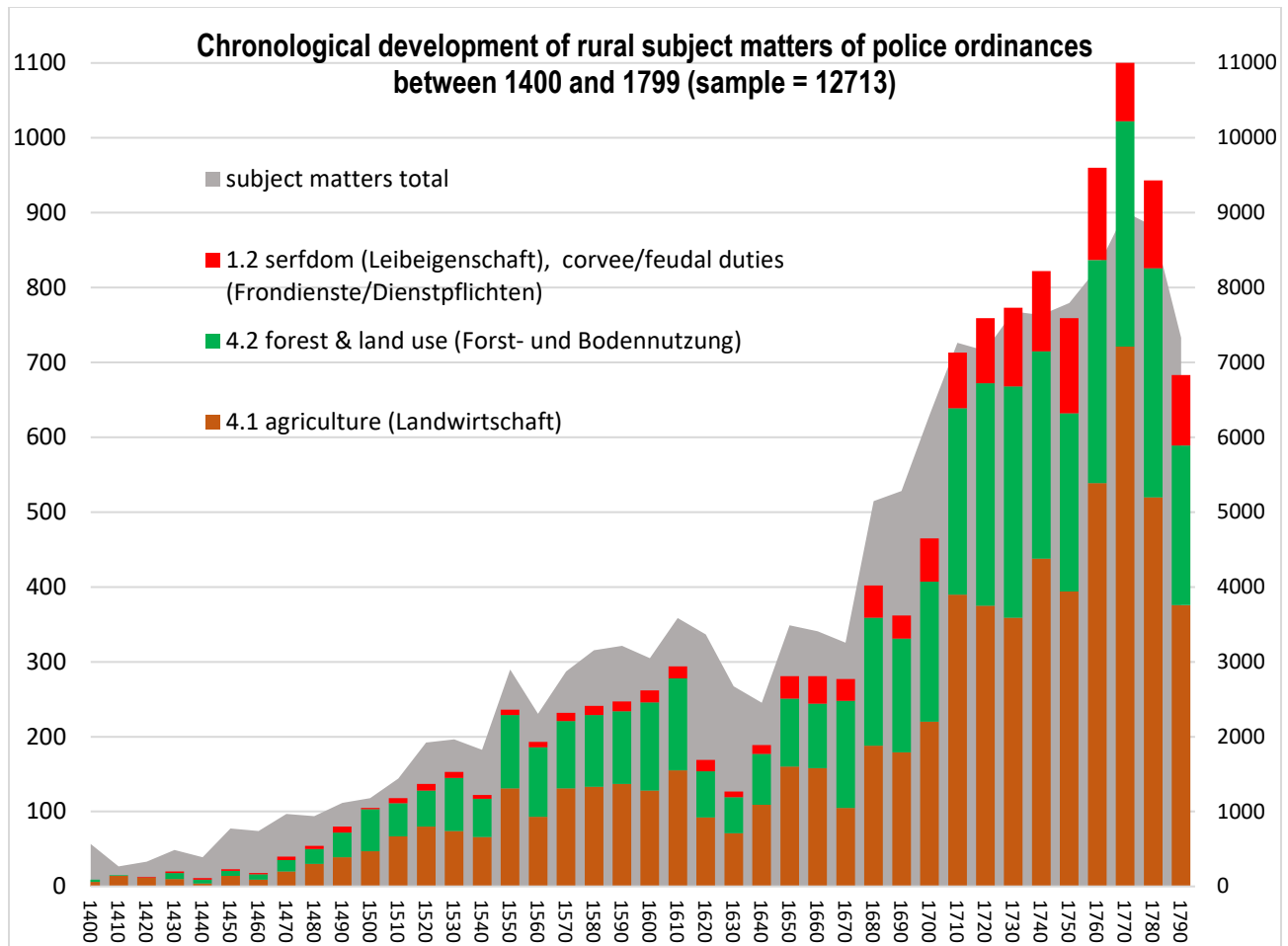


Figure 1: excel chart ‘chronological development of rural subject matters of police ordinances between 1400 and 1799 (sample = 12713)’⁸

The chronological analysis (see figure 1) evinces that the regulatory areas and subject matters of ‘serfdom, corvée/feudal duties’, ‘agriculture’ as well as ‘forest and land use’ increased since the late fifteenth century and reached a first peak (or rather platform) between the 1550s and 1610s. This was nearly in parallel to the subjects matters in total of which the sample formed by the four rural regulatory areas/subject matters make up a total of nine percent over the whole period. Particularly after the imperial police ordinances of 1530 and 1548 had permitted the imperial estates to enact police ordinances in domestic matters of order,⁹ the territorial authorities started to more intensely regulate rural matters previously subject of customary law. This mainly concerns ‘agriculture’ and ‘forest and land use’, whereas the subject matters of ‘serfdom’ and ‘feudal duties’ (including ‘estates/manors’ and ‘peasants/countrymen’) only make up a small portion. Until the second half of the seventeenth century police ordinances only scarcely regulated these typical matters of feudal rural society, which – we might

⁸ All subject matters of the regulatory area 4.1 are included, whereas the regulatory area ‘4.2 forest and land use’ does not include the subject matters ‘mining/mines’, ‘mineral resources’ and ‘quarry’.

⁹ Karl Härter, *Entwicklung und Funktion der Policegesetzgebung des Heiligen Römischen Reiches Deutscher Nation im 16. Jahrhundert*, in: *Ius Commune* 20 (1993), pp. 61-141, here pp. 78 s.

assume – still remained a matter of local customary statutes and law. In the eighteenth century the regulatory areas and subject matters of ‘agriculture’, ‘serfdom’ and ‘feudal duties’ showed a significant increase that was surpassing the total of all subject matters of the police ordinances. The respective police ordinances mainly dealt with reforms regarding serfdom and feudal duties (and their abolition), common land/forests (*Allmende*), improvement of agriculture and other matters of rural society such as animal farming, pest control and the expansion and cultivation of land and fields for the purposes of the early modern fiscal state.¹⁰ This increasing number of ordinances demonstrates the intensification of governmental control of agriculture, natural resources and forests.

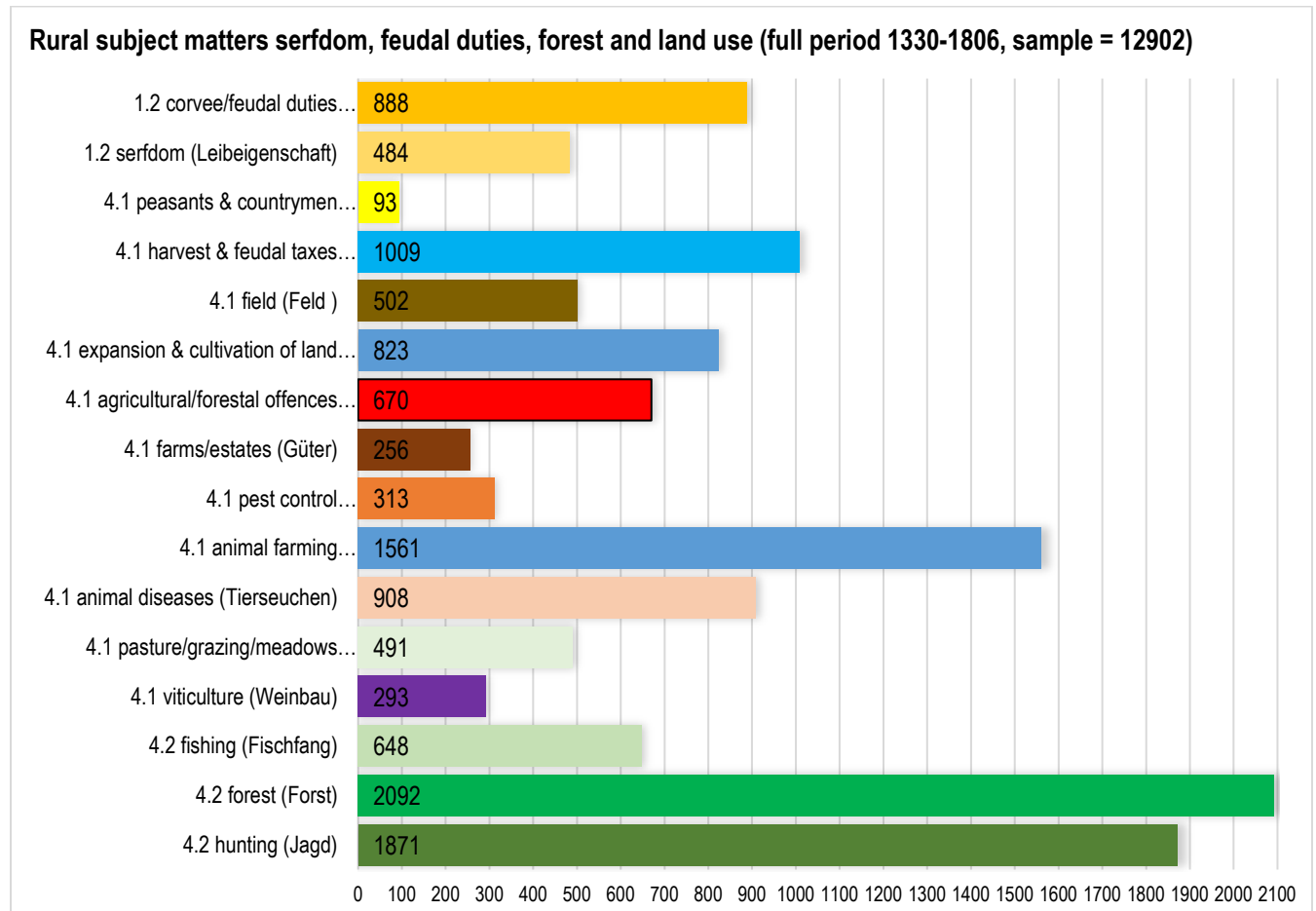


Figure 2: excel chart ‘rural subject matters serfdom, feudal duties, forest and land use (1330-1806, sample = 12902)’

Over the whole period, particularly forests, hunting and fishing are intensely regulated, as a more detailed quantitative analysis of the subjects matters of the four regulatory areas shows (see figure 2). This particularly concerns forests (16 %), hunting (15 %) and fishing (5 %) and the related agricultural and forestal offences, the so-called *Forst- und Flurfrevel* (5 %). The regulatory scope of the latter also included the issue of sanctions and sanctioning powers, and thus, the scope of the jurisdiction of lower rural courts. Since the seventeenth century, forests, hunting and fishing and the corresponding *Forst- und Flurfrevel*

¹⁰ For a general account see Stefan Brakensiek/Gunter Mahlerwein: Agrarreformen, in: Enzyklopädie der Neuzeit, vol. 1, Stuttgart 2005, pp. 122-131; as a case study Holenstein, „Gute Policy“, vol. 2, pp. 605-695.

were increasingly regulated by comprehensive forest and hunting ordinances (*Forst- und Jagdordnungen*), issued by the territorial governments to establish the so-called *Wald- und Forstpolicey*.¹¹ A more detailed observation of this specific type of forest and hunting ordinances also shows that several territorial states issued such ordinances with largely similar regulations/provisions in a matching period. Thus, it can be presumed that there had been some cross-influences or exchange of normativity between different territorial states, as the following study will demonstrate for the example of the neighboring territories of the Electorate of Mainz, the Landgraviate of Hesse-Darmstadt and the Electoral Palatinate.

Overall, it can be concluded that police ordinances took up and – in the eighteenth century – substituted norms and regulations of local customary statutes and increasingly regulated specific matters and areas of rural society. The growth of provisions can be interpreted as an expansion of the administration, social control and criminalization of rural areas and societies through *gute Policey*.¹²

However, the quantitative analysis of police ordinances has its limits. The database/*Repertorium der Policeyordnungen* did not include local statutes/ordinances issued by intermediary powers such as country towns, cooperative courts, landlords and local nobility and ordinances with an ambit limited to only one district or town. Moreover, the classification schema and the indexing are based on the relevance/validity of the provisions/regulations for the scope of *gute Policey*, thus excluding all forms of normativity that could be Repertories classified as traditional customary statutes.¹³

Consequently, a qualitative analysis of exemplary ordinances and statutes is required, to investigate the forms and changes of normativity dealing with local rural matters, the interdependences between the normativity of local customary statutes and police ordinances and the transterritorial influences. Moreover, in the fragmented jurisdictional spaces of the Holy Roman Empire of the German Nation rural areas were not confined to one territorial ruler/government and intersected with neighboring territories. As a result, the regulation of agriculture and forest and the provisions of police ordinances could be influenced by ‘external’ normativity. Therefore, in a second step, transterritorial influences and interrelations of normativity will be analyzed by applying the taxonomy/classification schema to specific forest police ordinances (*Forst- und Jagdordnungen*) of three neighboring territories (Electorate of Mainz, Landgraviate of Hesse-Darmstadt, Electorate of Palatinate), which were issued between the Peace of Westphalia and the midst of the eighteenth century (1650 to 1750).

¹¹ On the growing importance of regulating forest/forstry through police ordinances since the sixteenth century see Kurt Mantel, *Forstgeschichte des 16. Jahrhunderts unter dem Einfluß der Forstordnungen und Noe Meurers*, Hamburg 1980, pp. 68-73; Thorsten Franz, *Geschichte der deutschen Forstverwaltung*, Wiesbaden 2020, pp. 71-96.

¹² For the general concept see Karl Härter, Security and “gute Policey” in Early Modern Europe: Concepts, Laws and Instruments, in: *Historical Social Research* 35 (2010), Special Issue: The Production of Human Security in Premodern and Contemporary History, ed. by Cornel Zwierlein/Rüdiger Graf/Magnus Ressel, pp. 41-65.

¹³ Cf. Karl Härter/Michael Stolleis, Einleitung, in: Härter/Stolleis (eds.), *Repertorium der Policeyordnungen*, vol. 1: Deutsches Reich und geistliche Kurfürsten (Kurmainz, Kurtrier, Kurköln), ed. by Karl Härter, Frankfurt am Main 1996, pp. 1-36.

1.2. Customary local statutes, police ordinances and normativity regimes

The regulation of agriculture and forestry in rural spaces by customary local statutes as well as through police ordinances can be analyzed by using the research concept of historical normativity regimes.¹⁴ Normativity, administration and jurisdiction of agriculture and forest in local rural areas formed a specific regime of norms, practices and discourses comparable with other historical normativity regimes.¹⁵ It evolved from traditional local normativity and jurisdictions with a variety of local actors, ranging from the representatives of the ruler/government and the local administration over local nobility and other intermediary powers to jurisdictional communities. These legal actors negotiated, agreed upon and transmitted norms and normative knowledge that manifested in local statutes, customary regulations/law, local and manorial ordinances. Hence, the normativity of such local rural regimes was not only based on laws and ordinances enacted by states, rulers, landlords or governments, but did also comprise traditional customary normativity local actors had agreed upon as particularly local customary statutes (*Weistümer*) and court ordinances (*Gerichtsordnungen*).¹⁶ As a result, such regimes are characterized by multinormativity and constitute an example of law without the state. Furthermore, the local actors and communities exercised jurisdictional powers or participated in different functions in lower and often cooperative courts as *Nieder-, Forst-, Wald-, Märker-, Hain, Frevel- and Rügegerichte*.¹⁷ The jurisdiction of such local courts was a constituting element of rural normativity regimes and also acquired crucial functions regarding the implementation of police ordinances and the development of early modern administrative justice (*Policeygerichtsbarkeit*).¹⁸

The purposes and functions of local rural normativity regimes were as varied as their actors. They included access to and use of land, forest and natural resources, regulating local conflicts related to agriculture and forest, sanctioning of wrongdoings and offences – the *Forst- und Flurfrevel* – and overall

¹⁴ On the concept of historical normativity regimes see: Theory Working Group: Historical Regimes of Normativity, Part 1-4, 28.06.2021, 10.09.2021, 23.09.2021, 04.11.2021, legalhistoryinsights.com: <https://doi.org/10.17176/20210705-141843-0>, <https://doi.org/10.17176/20210910-154144-0>, <https://doi.org/10.17176/20210923-163541-0>, <https://doi.org/10.17176/20211105-162431-0>.

¹⁵ See as examples: Karl Härter, *Policeyliche Migrationsregime: Die Regulierung der Auswanderung nach Ungarn und der grenzübergreifenden Migration im Alten Reich im 18. Jahrhundert*, in: Martá Fata (Hg.), *Das ungarische Einwanderungsgesetz von 1722/23 im Kontext seiner Zeit und seiner Rezept* (forthcoming); Karl Härter, *Security and Cross-border Political Crime: The Formation of Transnational Security Regimes in 18th and 19th Century Europe*, in: *Historical Social Research* 38 (2013), Special Issue: *Security and Conspiracy in History, 16th to 21st Century*, ed. by Cornel Zwierlein/Beatrice de Graaf, pp. 96-106.

¹⁶ Dieter Werkmüller, *Über Aufkommen und Verbreitung der Weistümer*. Nach der Sammlung von Jacob Grimm, Berlin 1972; Christiane Birr, *Ordnung im Dorf. Eine Skizze zur Normgenese in Weistümern und Dorfordnungen*, in: Gisela Drossbach (ed.), *Von der Ordnung zur Norm: Statuten in Mittelalter und Früher Neuzeit*, Paderborn et al. 2010, pp. 153-165; Sigrid Hirbodian, *Recht und Ordnung im Dorf. Zur Bedeutung von Weistümern und Dorfordnungen in Spätmittelalter und Frühneuzeit*, in: Kurt Andermann/Oliver Auge (eds.), *Dorf und Gemeinde. Grundstrukturen der ländlichen Gesellschaft in Spätmittelalter und Frühneuzeit*, Epfendorf 2012, pp. 45-63.

¹⁷ For an overview on the variety of such lower courts in rural areas see Alexander Krey, *Niedergericht, Niedergerichtsbarkeit*, in: HRG, 2. edition, vol. 3, Berlin 2016, pp. 1909-1914; Götz Landwehr, *Gogericht und Rügegericht*, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 83 (1966), pp. 127-143.

¹⁸ See Stefan Brakensiek, *Erfahrungen mit der hessischen Policey- und Niedergerichtsbarkeit des 18. Jahrhunderts*. Zugleich ein Plädoyer für eine Geschichte des Gerichtspersonals, in: Paul Münch (ed.), „Erfahrung“ als Kategorie der Frühneuzeitgeschichte, München 2001, pp. 349-368; André Holenstein, *Gesetzgebung und administrative Praxis im Staat des Ancien Régime*. Beobachtungen an den badischen Vogt- und Rügegerichten des 18. Jahrhunderts, in: Barbara Dölemeyer/Diethelm Klippel (eds.), *Gesetz und Gesetzgebung im Europa der Frühen Neuzeit*, Berlin 1998, pp. 171-197; André Holenstein, *Ordnung und Unordnung im Dorf. Ordnungsdiskurse, Ordnungspraktiken und Konfliktregelungen vor den badischen Frevelgerichten des 18. Jahrhunderts*, in: Mark Häberlein (ed.), *Devianz, Widerstand und Herrschaftspraxis in der Vormoderne*, Konstanz 1999, pp. 165-196.

maintaining peace and order in rural societies and communities.¹⁹ As a result, local rural normativity regimes were characterized by partly contradictory interests of local communities and governmental actors also causing collisions and conflicts about the establishment and maintenance of *gute Ordnung und Policey* through customary statutes and/or police ordinances.

With the onset of *gute Policey* from the sixteenth century onwards, these local regimes evolved into rural ‘police regimes’ in which police ordinances issued by rulers and governments changed the normativity as well as jurisdiction and administrative practices. The developments from traditional local normativity to police ordinances and the interdependences of both formations of rural regimes which regulated agriculture and forestry in rural jurisdictions have been researched only little up to now. As a consequence, the following case study on rural normativity, jurisdiction and police ordinances of the Electorate of Mainz²⁰ firstly explores the development from local normativity that manifested in customary statutes (*Weistümer*) of cooperative local communities to authoritarian police ordinances enacted by the territorial ruler/government also paying attention to the interdependences between the two different types of normativity. The basic assumption is that provisions of early modern police ordinances can be traced back to local customary normativity. A leading research question is, if and to which extent police ordinances were influenced by and adopted customary local normativity or replaced it with new provisions that matched the intentions and purposes of early modern *gute Policey*.²¹

2. The administrative district Starkenburg of the Electorate of Mainz as a rural normativity regime

2.1. The structure of the local jurisdiction and administration

The county of Starkenburg (*Amt Starkenburg*) – an administrative district within the Electorate of Mainz – provides a relevant example to study a rural normativity regime and the changes from local traditional normativity to police ordinances. Around 1265, the Elector of Mainz had established the administrative district from the former territory of the imperial abbey of Lorsch as the *Amt Starkenburg* (the name stems from the castle near the town of Heppenheim), forming nowadays the largest part of the *Landkreis Bergstraße* located in south Hesse. The Elector of Mainz established a local administration lead by the *Burghauptmann/Amtmann* (bailiff) and also comprising a fiscal officer (*Amtskeller*), a clerk (*Amtsschreiber*) and a mayor (*Schultheiß*) in both towns, Bensheim and Heppenheim. The officers of the electoral administration were also members of the local courts and often acted as presiding judges and representing the elector. With the onset of *gute Policey* in the early modern period, the local administration also extended its jurisdictional powers (*Amtsgerichtsbarkeit*) in civil matters and the so-called *Policeysachen* (matters of police), the latter mainly concerning the violation of police ordinances and the sanctioning of the related offences/wrongdoings.²²

¹⁹ Cf. Bernd Kannowski, Konfliktlösung in ländlichen Gemeinschaften, in: David von Mayenburg (ed.), *Handbuch zur Geschichte der Konfliktlösung in Europa*, vol. 2: Konfliktlösung im Mittelalter, ed. by David von Mayenburg, Berlin et al. 2021, pp. 263-271.

²⁰ As an overview see Karl Härter, *Policey und Strafjustiz in Kurmainz. Gesetzgebung, Normdurchsetzung und Sozialkontrolle im frühneuzeitlichen Territorialstaat*, Frankfurt am Main 2005.

²¹ Thomas Simon, “Gute Policey”: Ordnungsleitbilder und Zielvorstellungen politischen Handelns in der Frühen Neuzeit, Frankfurt am Main 2004.

²² Karl Härter, Die Verwaltung der „guten Policey“: Verrechtlichung, soziale Kontrolle und Disziplinierung, in: Michael Hochedlinger/Thomas Winkelbauer (eds.), *Herrschaftsverdichtung, Staatsbildung, Bürokratisierung. Verfassungs-, Verwaltungs- und Behördengeschichte der Frühen Neuzeit*, Wien et al. 2010, pp. 243-270.

The administrative district of Starkenburg had two towns (Bensheim and Heppenheim) and nearly 40 villages, and with very few exceptions, all inhabitants were subjects of the Elector and Archbishop of Mainz. In the early modern period, the inhabitants accounted for ten- to twenty thousand people, with about between 1000 and 2000 households. Nearly half of them were living in the two towns and had the legal status of burghers, whereas the inhabitants of the villages were serfs of the elector/archbishop or the chapter (see table 1).²³

Table 1: settlements and households in the administrative district of Starkenburg

Towns and villages	1626	1654 (without villages)	1668	1680	1725
Heppenheim town (and 6 villages)	471	125	253	322	524
Bensheim town (and 1 village)	436	189	247	361	(550)
Lorsch, village (with Klein-Hausen)	81		89	103	107
Birstadt, village	121		36	43	61
Eblis, village	177		55	74	152
Viernheim village	138		52	69	84
Cent Fürth (11 settlements/villages)	163		65	96	177
Cent Mirlenbach (7 settlements/villages)	96		57	55	94
Cent Abtsteinach (8 settlements/villages)	133		96	99	273
Total	1816		950	1222	2022

Already around 1300, the towns of Heppenheim and Bensheim had received city rights and administrative and jurisdictional autonomy that manifested in a town council and court with 14 aldermen (*Schöffen*) and two elected municipal burgomasters. The municipal jurisdiction was limited to civil matters/conflicts and minor offences of the lower jurisdiction, comprising agricultural and forestal wrongdoings and offences. The town councils could form limited cooperative lower courts (*Märker-, Hain-, Huben-, Forstgerichte*) that included several adjunct villages and were competent for agricultural and forestal matters, conflicts and offences. Connected with the lower jurisdiction was the right of the town councils to issue statutes which regulated municipal as well as rural matters which concerned common forests, land, and properties. Besides the two towns in the district were several villages and settlements with own village councils of which members also participated in cooperative forest courts (*Märker-, Hain-, Huben-, Forstgerichte*). The jurisdictional autonomy and competences of the villages were rather limited

²³ For an overview see: Ferdinand Koob, Die Gerichte in der Zent Heppenheim und im Bereich des Oberamts Starkenburg vom Mittelalter bis Ende des 18. Jahrhunderts, in: Magistrat der Kreisstadt Heppenheim an der Bergstraße (ed.), 900 Jahre Starkenburg, Heppenheim 1965, pp. 165-252; Walter Fabricius, Verfassung, Verwaltung und Gerichtsbarkeit in den Kurmainzer Ämtern an der Bergstraße bis zum 19. Jahrhundert, Mannheim 1971. A comprehensive source that recorded most of the respective statutes and ordinances is the Kurmainzer Jurisdiktionbuch of 1668, preserved in: Bayerisches Staatsarchiv Würzburg (henceforth BStAW), Mainzer Jurisdiktionbücher 9 (original); Hessisches Staatsarchiv Darmstadt (henceforth HStAD), C3 126/1.

since the inhabitants were serfs of the elector or the few noble families, who had limited patrimonial rights in their estates.

Each adult male head of a household was a member of the respective judicial cooperative community (*Gerichtsgemeinde*) and had various administrative and judicial duties as for instance participating in the periodical public sessions of courts, acting as ‘reprimander/rebucker’ (*Rüger*), jurors (*Schöffe*), supervisor/warden (*Wächter, Schütze*) and paying a fiscal share for the maintenance of the courts.²⁴ Within the district existed several regional, cooperative and municipal courts that were competent in matters, conflicts and offences related to forest and agriculture and had their own customary statute or court ordinance (see table 2). Most of these local customary statutes and ordinances and the police ordinances of the Electorate of Mainz are recorded, edited or listed in repertories.²⁵

Table 2: courts and customary statutes within the administrative district/jurisdiction of Starkenburg

Court	Jurisdiction	Statutes/Ordinances
Centgericht auf dem Landberg	cooperative district court with higher and lower criminal jurisdiction	Weistum 1430, Centgerichtsordnungen 1668
Centgericht auf dem Landberg, subdistricts Cent Fürth & Mörtenbach	cooperative district court with lower criminal jurisdiction	Weistum Fürth 1545/47, Weistum Mörtenbach 1470/80 & Weistumsbericht 1654, Weistumsbericht Abtsteinach 1649
Territorial district administration	Lower jurisdiction in civil and police matters (<i>Amtsgerichtsbarkeit</i>)	police ordinances
Municipal courts/councils of the towns of Bensheim and Heppenheim	lower jurisdiction in civil and municipal matters including forestal and agricultural offences (<i>Forst- und Flurfrevel</i>) in the legal space of the town	municipal law/ordinances (<i>Stadtrecht</i>), Stadtordnung Bensheim 1514, Renovation Heppenheim 1655

²⁴ On the towns see Günter Haberer, Verwaltungsvorschriften in den älteren Rechten südhessischer Landstädte. Dargestellt unter besonderer Berücksichtigung der Stadtrechte von Zwingenberg, Bensheim und Gernsheim, Frankfurt am Main 1981, pp. 61-127; Karl Härter, Entwicklung, Verwaltung und Kultur der Landstadt Heppenheim von der ersten urkundlichen Erwähnung (755) bis zum Ende des Alten Reiches (1803/06), in: Karl Härter/Harald E. Jost/Fritz Kuhn (eds.), 1250 Jahre Heppenheim, Weinheim 2005, pp. 9-66.

²⁵ Konrad Dahl, Historisch - topographisch - statistische Beschreibung des Fürstenthums Lorsch, oder Kirchengeschichte des Oberrheingaus [...]. Mit einem Urkundenbuche, Kupferstichen und Steinabdrücken [...], Darmstadt 1812; Jacob Grimm (ed.), Weistümer, gesammelt von Jacob Grimm, Tl. 1, Göttingen 1840; Eberhard Lohmann (ed.), Weistümer und Dorfordnungen aus den kurmainzischen Ämtern in der Region Starkenburg, Darmstadt 2004. Many Weistümer and ordinances are listed in: Friedrich Battenberg, Bestand C 2 Salbücher, Weistümer und Dorfordnungen (Repertorien des Hessischen Staatsarchivs), Darmstadt 1988/2006 (online https://digitalisate-he.arcinsys.de/hstad/c_2/findbuch.pdf); Friedrich Battenberg, Bestand C 3 Weistümer und Dorfordnungen (Repertorien des Hessischen Staatsarchivs), Darmstadt 1988/2006 (online: https://digitalisate-he.arcinsys.de/hstad/c_3/findbuch.pdf); Friedrich Battenberg, Bestand C 4 Gerichtsbücher (Repertorien des Hessischen Staatsarchivs), Darmstadt 1994/2006 (online https://digitalisate-he.arcinsys.de/hstad/c_4/findbuch.pdf). The police ordinances are listed in: Karl Härter, Kurmainz, in: Härter/Stolleis, Repertorium der Policeordnungen der Frühen Neuzeit, vol. 1, pp. 107-421.

Cooperative courts (<i>Märker-, Hir-, Hubengerichte</i>) for specific forests/rural districts (mostly named <i>Mark</i>) of Bensheim and several villages (some of other territories) and the villages of Lorsch, Bürstadt, Eblis and Vernheim	lower jurisdiction in forestal and agricultural matters and related offences (<i>Forst-, Jagd- und Fischfrevel</i>)	Wäldordnung Bensheim 1409, Weistum Märkergericht Bensheim 1417, 1421/1474, Kundschaft 1440 & 1537, Wäld- und Märkergerichtsordnung Bensheim 1615, Weistum Wildbann/Hubengericht Lorsch 1423, Weistumsbericht Bürstadt ca. 1508, Wäldordnung Lorsch und Bürstadt 1620, Weistum Eblis 1568, Weistum Vernheim 1562
Five dominions of local nobility	patrimonial jurisdiction	Unknown

Districts and jurisdictions of neighboring territories surrounded the administrative district of *Starkenburg*: the *Amt/Centgericht* of *Auerbach/Zwingenberg* of the Landgraviate of Hesse-Darmstadt, the County of *Erbach-Schönberg*, the *Amt/Centgericht Lindenfels* of the Palatinate and the *Amt Lampertheim* of the Prince-Bishopric of Worms, some of them overlapping with the administrative district of *Starkenburg* (see image 1). The jurisdiction of the *Centgericht Starkenburg* included villages and settlements of neighbouring districts as the County of *Erbach-Schönberg* (13), the Electorate Palatinate (7), the hessian district of *Auerbach/Zwingenberg*, and the local nobility (2). The inhabitants of these villages were subjected as serfs to the count of *Erbach-Schönberg*, the Elector of the Palatinate and the Landgrave of Hesse-Darmstadt. Some of these villages were also members of cooperative district forest courts (as the *Märkergericht Bensheim*).



Image 1: the administrative district of Starkenburg shown in a unique hand painted map named *Ohngefährliche Delineation des Amts Starkenburg mit denen angehörigen Centen und angränzenden Herrschaften*. The map is oriented to the East; the borders of the district of Starkenburg with the towns of Bensheim and Heppenheim in the center are outlined in green; colored yellow in the West is the administrative district of Lampertheim of the Prince-Bishopric of Worms; colored light red in the North the administrative district of Auerbach/Zwingenberg of the Landgraviate of Hesse-Darmstadt; colored dark red in the East the administrative district of the County of Erbach-Schönberg; white with borders outlined in blue in the East and the South mark the territory of the Electoral Palatinate with the administrative districts of Lindenfels and Weinheim; in-between in the East (with the numbers 1-5) are five further small areas/jurisdictions of the local nobility (*Ritterkanton Odenwald*).²⁶

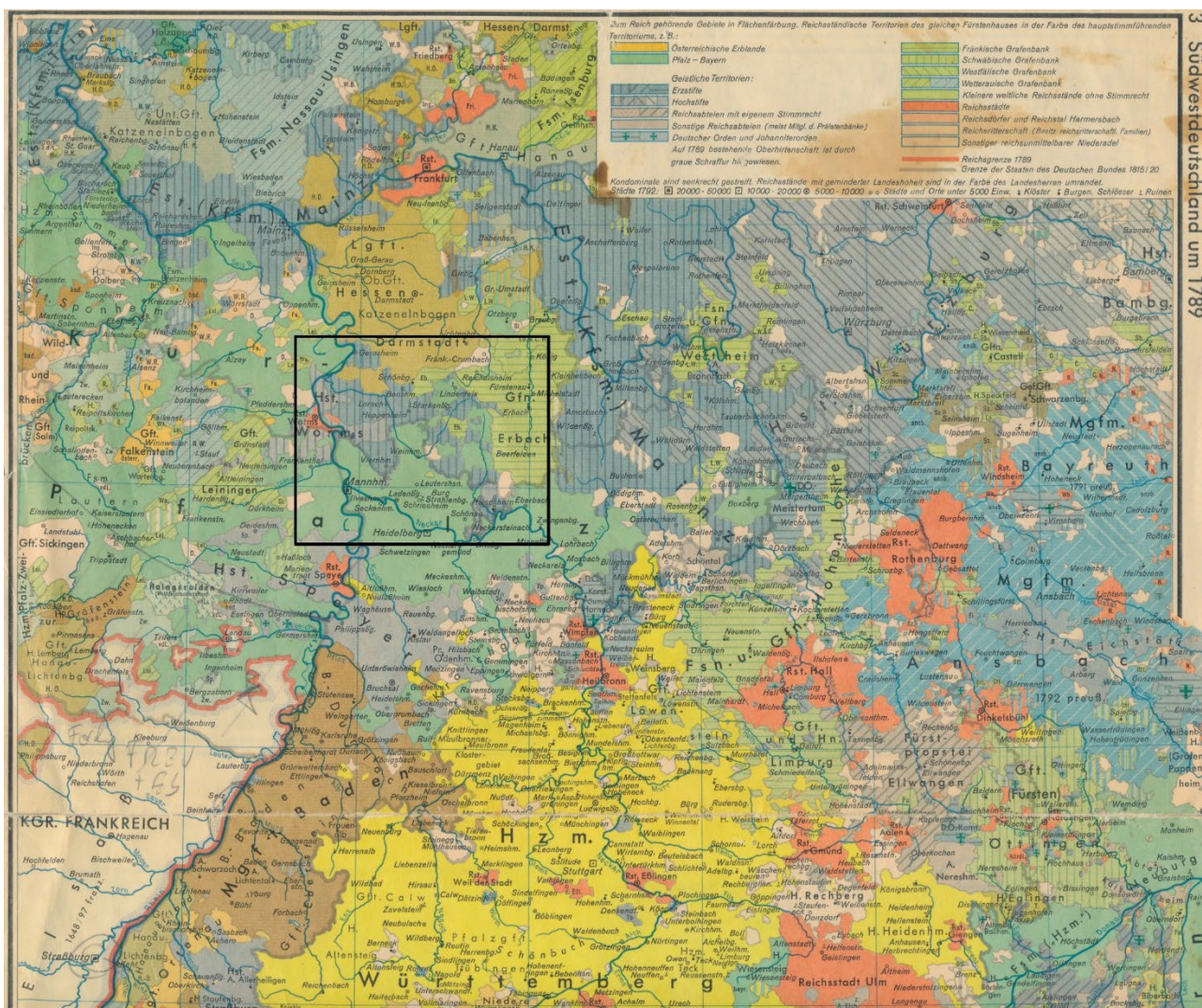


Image 2: Detail of the map „Südwestdeutschland um 1789“ (from F.W. Putzger, Historischer Weltatlas, Berlin: Cornelsen-Velhagen & Klasing 1974), showing the intersection and fragmentation of territories and

²⁶ The map is on the last page of the original Jurisdiktionalbuch des Amtes Starkenburg 1668, BStAW, Mainzer Jurisdiktionalbücher 9.

imperial cities in the South-West of the Holy Roman Empire of the German Nation. The black frame indicates the region that is depicted in the map *Ohngefährliche Delineation des Ampts Starkenburg* (image 1), however, in this map oriented to the North. The administrative district of Starkenburg and the territory of the Electorate of Mainz is colored blue with stripes; colored brown in the North is the Landgraviate of Hesse-Darmstadt; colored light green in the East the administrative district of the County of Erbach-Schönberg; colored green the territory of the Electoral Palatinate.

The administrative district had its own regional jurisdiction and ‘high court’, the *Centgericht auf dem Landberg* near the town of Heppenheim.²⁷ This cooperative district court (*Landgericht*) had higher and lower criminal jurisdiction for all crimes, minor offences, and related conflicts. The administrative space of the court – the so-called *Cent* – had three adjunct districts, the *Centen* Fürth, Mörlenbach and Abtsteinach. They were located in the eastern hills (the *Odenwald*) and had lower criminal jurisdiction in their districts with the more serious crimes mostly prosecuted by the *Centgericht auf dem Landberg*. The latter functioned as central criminal court of the whole administrative district, since the seat of the electoral administration, which was involved in the administration of criminal justice, was located in the town of Heppenheim. The *Centgericht auf dem Landberg* also acted as lower regional court (*Frevel- und Rügegericht*), which was competent for offences concerning forest and agriculture outside the towns and the jurisdiction of cooperative forest courts. The court was made up by 14 *Schöffen* (jurors), who were aldermen stemming equally of the town councils of Bensheim and Heppenheim. They had the right of decision-making and were also the ‘creators’ of the courts normativity, the statute (*Weistum*) of 1430.

The bailiff (*Burggraf/Amtmann*) or another member of the electoral district administration acted as presiding judge, who represented the elector as the lord of the court (*Gerichtsherr*). However, the local gentry could also participate in the court meetings as well as the whole judicial community. The latter assembled at the public court place located at the *Landberg*, a court hill near the town of Heppenheim with typical lime trees (see image 2). The court had its own typical local statute, the *Weistum des Centgerichts auf dem Landberg*, recorded in 1430, mainly regulating court proceedings and offences. Hence, the *Centgericht auf dem Landberg* constitutes a typical example of local jurisdiction in rural areas of the German Southwest administered by *Centgerichte* since the Middle Ages.²⁸

²⁷ On the *Centgerichte* Starkenburg, Abtsteinach, Fürth and Mörlenbach see: Koob, *Gerichte*, pp. 218-243; and as a more recent study Karl Härter, *Regionale Strukturen und Entwicklungslinien frühneuzeitlicher Strafjustiz in einem geistlichen Territorium: die Kurmainzer Cent Starkenburg*, in: *Archiv für Hessische Geschichte und Altertumskunde* 54 (1996), pp. 111-163.

²⁸ Karl Kroeschell, *Die Zentgerichte in Hessen und die fränkische Centene*, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 73 (1956), pp. 300-360; Meinrad Schaab, *Die Zent in Franken von der Karolingerzeit bis ins 19. Jahrhundert: Kontinuität und Wandel einer aus dem Frühmittelalter stammenden Organisationsform*, in: Werner Paravicini/Karl Ferdinand Werner (eds.), *Histoire comparée de l'administration (IVe - XVIIIe siècles) [...]*, München et al. 1980, pp. 345-362, here pp. 356-361.



Image 3: the *Landberg*, the court hill of the *Centgericht Starkenburg* near Heppenheim with two court limes; hand-drawing by Karl von Amira in 1888 (rechtsarchäologische Sammlung Karls von Amira, Leopold-Wenger-Institut München, Mappe 22 a)

Between 1461/1463 and 1623/48 the Elector of Mainz pledged the administrative district of *Starkenburger Land* to the Electorate of Palatinate, which kept the administrative and jurisdictional structures of the district, but in 1576 and 1607 concluded agreements with the County of Erbach-Schönberg about the higher criminal jurisdiction of the *Centgericht auf dem Landberg*.²⁹ Furthermore, five small dominions of the local nobility (of the *Ritterkanton Odenwald*) with an autonomous lower patrimonial jurisdiction were located in the district, but the inhabitants were also subjected to the *Centgericht Starkenburg* in which the local nobility participated until the seventeenth century. In 1648 the Peace of Westphalia confirmed the territorial rule of the Elector of Mainz in the district and jurisdiction of Starkenburg, and the subjects of the Palatinate and Erbach-Schönberg stopped participating in the meetings of the *Centgericht auf dem Landberg*; around 1500 Hesse-Darmstadt had already removed his villages from the jurisdiction of Starkenburg and established an own *Centgericht* in the town of Zwingenberg with a customary statute.³⁰

Since the second half of the seventeenth century, administrative district, jurisdiction and electoral rule finally formed a coinciding space in the rural area of Starkenburg. This was accompanied by the completed shift of adjudicative and penal powers from the local *Centgericht* to the central government (*Hofrat/Landesregierung*) that acted as criminal high court, decided all crimes and was responsible for the administration and legislation in all police matters. The government particularly used police ordinances to substitute local customary normativity and to centralize and homogenize local judicial powers.

²⁹ Artikel der Zent auf dem Landberg in Observanz zwischen der Pfalz und der Grafschaft Erbach, in: Lohmann, Weistümer und Dorfordnungen, no. 54, p. 215; Jurisdiktionbuch des Amtes Starkenburg 1668, BStAW, Mainzer Jurisdiktionbücher 9.

³⁰ Cf. Rudolf Kunz, Die Zent Zwingenberg, in: Geschichtsblätter für den Kreis Bergstraße 6 (1973), pp. 105-159; Härter, Regionale Strukturen, p. 116 s.

However, the adjudication and sanctioning of minor offences and wrongdoings related to agriculture and forest, the participation in local criminal prosecution and the organizational structures of the local courts in the administrative district of Starkenburg existed until the end of the Electorate of Mainz in 1803.³¹

The variety and hybridity of actors, jurisdictions, institutions and normativity within this administrative and judicial district of the Electorate of Mainz may well be characterized as a regime in which different forms and modes of normativity and judicial practices in a rural area developed and changed during the pre-modern period. This normativity regime was characterized by the diversity and hybridity of jurisdictional powers and actors, ranging from the elector as the highest judicial power - the *Gerichtsherr* - and the *Amts- und Policeygerichtsbarkeit* of the local administration over patrimonial jurisdiction of the local nobility to cooperative and municipal courts that were competent in a broad variety of rural, agricultural and forestal matters, conflicts and offences. In the late Middle Ages, most of these courts had own local statutes (*Weistümer*) or acted on the base of customary law.

2.2. Local customary statutes from the fifteenth to early seventeenth century

2.2.1. The *Centgerichte* and their statutes

For the district of Starkenburg about twenty local customary statutes can be determined that contain provisions regulating jurisdiction, organization and procedure of the respective courts, the use of common land, agricultural and forestal matters and related offences as well as conflict, order and deviant behavior in a rural society.³² For the whole jurisdiction of the administrative district of Starkenburg, the most important customary statute was the *Weistum des Centgerichts auf dem Landberg* (1430) that was complemented by court ordinances recorded in 1668 and statutes of the adjunct jurisdictional districts, the *Centen* of Fürth (*Weistum* 1545/47), Mörlenbach (*Weistum* 1470/80 and 1654) and Abtsteinach (*Weistum* 1649).³³ Whereas the *Centgericht Mörlenbach* was plainly subjected to the *Centgericht Starkenburg* in all criminal cases, the *Centgericht Abtsteinach* and the *Centgericht Fürth* exercised higher and lower criminal jurisdiction, albeit the electoral administration of the district Starkenburg was involved and actually occupied the office of the presiding judge. Moreover, the *Centgericht auf dem Landberg*, from which the other courts had originally been partitioned off, functioned as central criminal court for serious crimes.

The *Weistum* of the *Centgericht auf dem Landberg*, which was recorded on 13 November 1430, is an excellent example to highlight the differences between local customary statutes and police ordinances and the shift from the consensual creation of normativity to authoritarian legislation.³⁴ The Elector of Mainz attempted to change norms and practices of the *Centgericht Starkenburg* by introducing a new norm with aggravated punishments in matrimonial cases (actually raised fines) that also allowed the local

³¹ Härter, *Regionale Strukturen*, pp. 119-123; and generally for the Electorate of Mainz: Härter, *Policey und Strafjustiz*, pp. 124-140 and 250-255.

³² Cf. Lohmann, *Weistümer und Dorfordnungen*, pp. XXIII-XXXI and the numbers 3, 10, 12-14, 16, 27, 39, 53-57, 70-72, 74-77, 131.

³³ Most of them recorded in *Jurisdiktionbuch des Amtes Starkenburg 1668*, BStAW, *Mainzer Jurisdiktionbücher* 9.

³⁴ In this regard see already Dietmar Willoweit, *Gebot und Verbot im Spätmittelalter - Vornehmlich nach südhessischen und mainfränkischen Weistümern*, in: *Hessisches Jahrbuch für Landesgeschichte* 30 (1980) pp. 94-130, here p. 107 s.; Dietmar Willoweit, *Gesetzgebung und Recht im Übergang vom Spätmittelalter zum frühneuzeitlichen Obrigkeitsstaat*, in: Okko Behrends/Christoph Link (eds.), *Zum römischen und neuzeitlichen Gesetzesbegriff. 1. Symposium der Kommission „Funktion des Gesetzes in Geschichte und Gegenwart“ vom 26. und 27. April 1985, Göttingen 1987*, pp. 123-146, here p. 123 s.

administration to report and punish offences. Hence, he was extending his legislative and penal powers in a local rural area. This was questioned by the court and the Elector of the Palatinate, since the new electoral norms and practices collided with customary normativity and practices of the court. On 13 November 1430, the 14 jurors (*Schöffen*) of the court, the *Burggraf der Starkenburg* as representative of the Elector of Mainz and presiding judge, a clerk and a notary as well as the court community comprised of about 40 ‘elder heads of households’ and several members of the local nobility with three of them acting as representatives of the Electors of Mainz and the Palatinate assembled on the court hill (the *Landberg*).³⁵

The creation or determination of the local customary normativity took place in a complex ritualized communication procedure: the new electoral norm was brought into question and the representatives of both electors and the nobility consulted the *Schöffen* about the existing normativity and confirmed to accept their ‘findings’. The *Schöffen* separated and deliberated to ‘find’/‘draw’ the appropriate norms from tradition and knowledge and to create and read the true and proper customary statute (*Weistum*).³⁶ Within this procedure all the norms of the court and the respective jurisdiction were ‘drawn’ from traditional knowledge, recorded by the clerk and confirmed by the whole assembly and a notary who certified the statute as a public legal instrument of local customary law. The *Weistum* stated: “what is since time immemorial tradition and indicated by the juror as law thereby should remain” (*was von alters herkommen ist und der schöpf für recht weisent, dabey solle es bleiben*) and that the new penal norm of the Elector of Mainz was “not a right but a law” (*nit ein recht, sonder ein gebott*). The electoral bailiff and his officers “must not reprimand on the Landberg but only the jurors or sworn members of the judicial community” had the right to do so (*nit uff dem Landberg ruegen sollen, sondern der centhschöpf und der geschwohrn centhmann sollen da ruegen*).³⁷ Hence, the *Schöffen* distinguished between local customary law (*Herkommen, Recht*) and the authoritarian legislation of the elector (*Gebot*) and claimed that only they and sworn members of the judicial community had the customary right to reprimand (*rügen*).³⁸

The provisions of the *Weistum* (22 articles) and the additional court ordinances, which were recorded in 1668 and regulated the ritual opening and the oaths (*Hegung*), costs and expenses and the fines (*Centstrafen*), covered a wide range of judicial, procedural and penal matters of the court.³⁹ The *Weistum* criminalized offences ranging from unspecified wrongdoings (*Frevel*) to the serious crimes of homicide/murder, arson, robbery/theft, rape and heresy and including further offences such as boundary stone crime (*Grenzsteinfrevel*), perjury, manslaughter, falsa alarm, false accusation, verbal injury, bloody and unbloody assault and battery. The statute was not precisely indicating the punishments but determining jurisdiction, penal powers and distribution of penalties (fines). In the case of the six serious

³⁵ The original document is not preserved but was inscribed into the first volume of the *Gerichtsbuch des Centgerichts Starkenburg 1502-1549*, HStAD, C 3 126/1, and the *Jurisdiktionbuch des Amtes Starkenburg 1668*, BStAW, Mainzer Jurisdiktionbücher 9. Based on these versions are the editions by Grimm (ed.), *Weistümer*, pp. 469-475; Lohmann, *Weistümer und Dorfordnungen*, pp. 207-214 (thereafter the quotations).

³⁶ The German words ‘Schöffen’ or ‘Schöpfen’ and ‘Weistum’ already indicate the function of the court jurors to ‘draw’ and ‘create’ the norms: *das Recht schöpfen und weisen*; cf. Friedrich Battenberg, *Schöffen, Schöffengerichte*, in: HRG, vol. 4, Berlin 1990, pp. 1463-1469.

³⁷ Quoted after the edited version in Lohmann, *Weistümer und Dorfordnungen*, pp. 207-214.

³⁸ The historical notion of the German words *Rüger* and *rügen* is that a sworn person or member of a court (*Schöffe*) has the function to report (reprimand/rebuke) offences to a court (*Rüegericht*) in a ritualised verbal procedure; cf. Wolfgang Sellert, *Art. Rüegericht, Rügeverfahren*, in: HRG, vol. 4, Berlin 1990, pp. 1201-1205.

³⁹ *Weistum 1430 and additional court ordinances*, in: Lohmann, *Weistümer und Dorfordnungen*, no. 53, 56, 57, pp. 207-214, 219-221.

crimes, which could be punished with the death penalty, the court's jurisdiction extended to all towns and villages. Regarding all other offences, the court could only decide crimes and wrongdoings committed outside the legal space of the two towns and punish them with fines up to ten pound 'Heller'. The court received the main share of the fines except for manslaughter and assault and battery in which cases the elector received a greater share. As a consequence, the judicial community (*Gerichtsgemeinde*) had the obligation to bear all costs and expenses of the court, the prosecution, the punishments, the involved personal and the executor. The accusatorial and verbal procedure of the court in minor and serious cases was based on the *Schöffen* and the participation of the judicial community. The latter had the right to report/rebuke wrongdoings and crimes during the periodical public sessions of the court what the *Weistum* also stated an obligation for the *Schöffen* and sworn members of the court.⁴⁰ Although apart from boundary stone crimes, the *Weistum* did not explicitly regulate agricultural and forestal matters, the court had the respective jurisdiction and penal power insofar the conflicts and cases did not fall within the jurisdiction of the municipal and the cooperative lower courts and the penalties did not exceed 10 pound *Heller*.

Besides the *Centgericht auf dem Landberg* as the main court, the administrative district of Starkenburg comprised three further adjunct jurisdictions of the Centen Abtsteinach, Fürth and Mörlenbach, which had own customary statutes. In comparison, they were not as comprehensive as the *Weistum* of the *Centgericht Starkenburg* and more focused on fiscal matters, the lower jurisdiction, agricultural/forestal offences and rural matters. The *Weistum* of the Cent Mörlenbach that was recorded in 1470/80 primarily stressed that all offences and crimes had to be adjudicated by the *Centgericht Starkenburg*. The few other provisions dealt with matters such as the payment and distribution of court fees, the delivery of tithing, and the leasing of agricultural land. A later version of the *Weistum* that was recorded in 1654 stated that in all matters of higher jurisdiction the court was subordinated to the *Centgericht Starkenburg* and that all matters, offences and penalties of the lower jurisdiction were within the competence of the district administration. Hence, the court merely operated as an organizational framework whereas all legislative, administrative and judicial powers had been shifted to the electoral district administration which since 1622/48 was again that of the Electorate of Mainz.

The most comprehensive is the *Weistum* of the *Cent Fürth*, recorded in 1545/47.⁴¹ The complete version of 1547 had 24 distinct articles with provisions that covered a variety of jurisdictional, administrative and rural matters as well as related offences. In several provisions the *Weistum* emphasized that the elector (at this time of the Palatinate) possessed all jurisdictional powers as well as the territorial supremacy about water, pasture, birds, fishes/fishing and venison/hunting, whereas the subjects had only the right to work the land. The local communities were only mentioned as recipients of the *Weistum* who had to comply with the provisions. The *Schöffen* or the court were not mentioned at all and the judge of the *Centgericht* only acted as the representative of the elector and was competent for the application and adjudication of all provisions. This concerned the use of forests and wood, logging and distribution of wood, hunting and venison; the use of watercourses and fishing; the distribution and use of marked pasture and fields; serfdom, feudal and military duties of the subjects and the delivery of the tithing and other taxes and customs. The focus of the provisions was clearly and the prosecution and punishment of corresponding offences. This was the main duty of the *Centrichter*, who should adjudicate

⁴⁰ *Weistum* 1430, art. 13: "in verbottenen dingen fürzubringen und zue rügen, waß dan ruegbahr wehre"; art.: 17: "der gemein centhmann ... daß da ruegbahr whre ahn dem gericht uff dem Landberg gehörig, öffentlich rüegen solte".

⁴¹ *Weistum* 1545 August 31 and 1547, in: Lohmann, *Weistümer und Dorfordnungen*, no. 40 and 41, pp. 155-158.

the cases and impose fines. The only serious crimes the *Weistum* mentioned were homicide committed on country roads which only the elector (or rather the Palatinate government) had the right to punish.

The *Weistum* of the *Cent Fürth* clearly shows the change from the local judicial community as the creator of rural normativity to the judge as the governmental officers of the elector who was the only holder of legislation and adjudication. Although “Policey” was not mentioned and the *Weistum* still appeared as a local statute, its function was that of a governmental ordinance demonstrating the change that had taken place in the sixteenth century. However, the change from customary statutes to the electoral administration only partially affected the lower cooperative courts and the related customary statutes.

2.2.2. Cooperative courts and their statutes/ordinances

As already mentioned, within the administrative district of Starkenburg several lower communal/cooperative courts existed which had own customary statutes that were primarily dealing with agricultural and forestal matters, the related offences (*Frevel*) and sanctions (*Bußsen*) and the jurisdiction of the courts. The oldest dates from 1409, the forestal statute of the town Bensheim, entitled agreement how noble burgesses and burghers manage forest administration/jurisdiction and confiscation (*Feraynigung, wie sich Burgman und Bürger mit der Waldt eynung und Pfendung halten sollen*).⁴² The aldermen of the council and court of Bensheim, the *Schultheiß* as the electoral municipal officer and the local noble burgesses (*adlige Burgmannen*) had negotiated (*einmütiglich zu rathe*) and agreed upon (*eynung*) a forestal statute that was issued as a public notarial document (*briefff*). The purpose was to prevent damage and abuse in the common forest and to define forestal jurisdiction, offences and sanctions. The nine provisions (*artikel ... unndt andere geboden*) stated that only the town officials may issue executive orders and prohibitions based on the forest statute. The forest supervisors (*Waldschützen*) employed by the court (*Haingericht*) were to reprimand all wrongdoings in court every two weeks, and additionally also all noble burgesses and burghers were obliged by oath to report all offences such as cutting and burning logs, felling and damaging of trees, the grazing of cattle and picking up fruit and acorns. Only collecting useless dry wood was not punished, and people could obtain permission to cut firewood or timber in fixed quantities. The sanctions – fines and confiscation – were to be executed immediately, but the nobility was exempted from confiscation inside their mansions. The statute stressed that all members of the judicial community were obliged to comply and that all other forests not mentioned were also ruled by customary law.

The town of Bensheim shared common forest districts and jurisdiction with other villages, of which some belonged to the County of Erbach-Schönberg and the Landgraviate of Hesse-Darmstadt. A cooperative forest court – the *Märkergericht Bensheim* – governed the shared forests (*Märkerwald*) that had own statutes and related declarations (*Kundschaften*) of 1440, 1537 and 1615.⁴³ The first dated back to 1417 and was an agreement of the villages of the neighbouring administrative district of Auerbach/Zwingenberg belonging to the Landgraviate of Hesse-Darmstadt. It was negotiated and agreed

⁴² Stadtarchiv Bensheim, U 1, modern edition: Rudolf Kunz, Benheimer Waldordnung von 1409, in: Geschichtsblätter Kreis Bergstraße 6 (1973), pp. 97-104; cf. Haberer Verwaltungsvorschriften, pp. 64-67.

⁴³ The *Kundschaften* of 1440 September 8 and 1537 and the Wald- und Märkergerichtsordnung Bensheim 1615, September 22, are edited in Lohmann, *Weistümer und Dorfordnungen*, no. 10, 13 and 14, pp. 30-33, 37 and 38-46.

upon by the members of the *Märkergericht* in a court assembly held in 1417 but only later recorded in the declaration of 1537. It was primarily marking the administrative and jurisdictional spaces thus defining the rights and jurisdictions of the neighbouring villages/towns of Auerbach and Zwingenberg in relation to the *Märkergericht*.⁴⁴

In 1440 a further declaration (*Kundschaft*) was mutually agreed upon in a court assembly in which the aldermen of the council of Bensheim, the *Schultheiß* and the local noble burgesses as well as representatives of the villages of the county of Erbach-Schönberg (all of them older than 40 years and members of the respective village councils) participated. The latter functioned as ‘witnesses’, who were questioned under oath what they did know about norms, practices and customs of the *Märkergericht*. They stated that Bensheim had the highest authority in the forest and the court, that the villages had the customary right to use assigned forest districts, and that a court book (*märckherbuche*) would exist. The proceedings show that the normativity of forest use and forest jurisdiction was based on the traditional normative knowledge of local actors and agreed in court and notarially recorded and certified as a public ‘legal’ document (*offen instrument und kundtschaft*).⁴⁵

Regarding the offences and sanctions, the court acted on customary norms which were based on knowledge and tradition and not recorded until 1615. After disputes and issues (*streitt und irrungen*) between Bensheim and some villages that had led to a lawsuit at the electoral court of the Palatinate (*Kurpfälzisches Hofgericht*), elector Friedrich V requested that the *Märkergericht* had to submit an accorded and agreed statute which he confirmed and issued “*in authentica forma*” as forest court ordinance (*Märkergerichtsordnung*). In 22 comprehensive articles the *Märkergerichtsordnung* describes the individual forest districts and their use through the town and the villages and regulated in great detail the composition and procedure of the court and the obligations and duties of the *Schöffen*, the judge and the sworn forest supervisors (*Waldschützen*). The ordinance particularly stipulated the supervision of forests and fields and the prosecution of offences: the *Schöffen* and the *Waldschützen* had the obligation to periodically conduct patrols and visitations (*Umgang und Augenschein*) and to report all wrongdoings to the court without reprieving or keeping secret any perpetrator. The obligation to reprimand (*Rügeflicht*) wrongdoings and trespasser was even extended to all members of the judicial community and forest users creating a general duty of disclosure comparable to many police ordinances.⁴⁶

The *Märkergerichtsordnung* specified several offences such as thieving of wood and the collecting and cutting of trunks and logs without permission, outside the permitted dates or by overrunning the assigned quantities, the devastation and curtailing of the woods, the grazing of farm animals and the causing of wildfire. The court had the obligation to equally punish such offences with fines and arbitrary sanctions without sparing nobody and to record all trespassers, wrongdoings and penalties in public court registers (*Rügerregister*).⁴⁷

⁴⁴ Kundschaft 1537, in: Lohmann, Weistümer und Dorfordnungen, no. 13, p. 37.

⁴⁵ Kundschaft 1440 September 8, in: Lohmann, Weistümer und Dorfordnungen, no. 10, pp. 30-33.

⁴⁶ See Achim Landwehr, „... das ein nachbar uff den andern heimblich achtung gebe.“ „Denuntiatio“, Rüge und „gute Policey“ im frühneuzeitlichen Württemberg, in: Friso Ross / Achim Landwehr (eds.), Denunziation und Justiz. Historische Dimensionen eines sozialen Phänomens, Tübingen 2000, pp. 25-53.

⁴⁷ Wald- und Märkergerichtsordnung Bensheim 1615, September 22, in: Lohmann, Weistümer und Dorfordnungen, no. 14, pp. 38-46. Examples of such public court registers are the Rügzentprotokoll Centgericht Starkenburg (1701-1753), Stadtarchiv Heppenheim; Zentrügenregister der Centen Jugenheim (1748-1817) und Zwingenberg (1755-1813), Stadtarchiv Bensheim, T 71-89 and HStAD, E 9 Nr. 2027-2132; Verzeichnis der Bußen der Zent Zwingenberg (1677), HStAD, E 9 Nr. 662.

In conclusion, the *Märkergerichtsordnung* of 1615 exemplarily demonstrates the shift from customary normativity to an authoritarian (police) ordinance. The elector (or rather the electoral court) did not enact a completely new law but demanded a written statute that was transformed into an ordinance without changing the core of the customary normativity and stating that all old agreements and practices (*alte uffgerichte verträg undt handlungen*) would still be respected and changes would only be made by unanimous mutual consensus (*einhelligleich mit allerseiths consens*). On the other hand, the ordinance stressed the legislative, jurisdictional and territorial rights and powers of the ruler (*Oberhoheit*) justifying them with the necessity to settle disputes, establish peace and order and prevent damage and misuse. These were typical arguments to be found in many contemporary police ordinances and specific agricultural, forest and hunting ordinances territorial rulers started to issue from the second half of the sixteenth century onwards.⁴⁸

The statutes and ordinances of the forest districts and courts of the villages of Lorsch und Bürstadt evince similar developments. The customary statute of the banned forest district of the Abbey of Lorsch (*Weistum des Lorsch Wildbanns*), in which also hunters and tenants (*Hübner*) from other territories obtained rights, was recorded in a court meeting in 1423. The meeting was attended by 24 *Hübner* running a farm in the district, local nobility that had hunting rights, the abbot of Lorsch and several friars and the officers of the electoral district administration (*Burggraf der Starkenburg, Amtskeller, Schultheiß*) who represented the Elector of Mainz as the territorial supremacy. In a ritualized procedure the electoral officers consulted the court members about their knowledge of norms, practices and customs, read some of them out and the whole court agreed upon the valid provisions. Most of them were dealing with the spatial scope of the forest district and the jurisdiction, the permission to hunt venison and the prosecution of poaching, various forestal offences (cutting/stealing trunks/logs) causing wildfires or arson and other forms of devastation and damages in the forest. For the more serious crimes (poaching and arson) even corporal punishment was threatened. Furthermore, the rights and property of *Hübner* and holders of hunting rights could be withdrawn to punish wrongdoings and the violation of the statute. The statute was recorded by a clerk and certified by an imperial notary, and some of the participants acted as legal witnesses.⁴⁹

The neighbouring village of Bürstadt possessed an individual forest district with two further villages and the lower jurisdiction for agricultural and forestal offences regulated in a customary forest statute (*Weistum*), which was also agreed and recorded in the sixteenth century (after 1508). The *Weistum* was based on the knowledge of the aldermen of the local court and had comparable provisions about the spatial scope of district and jurisdiction, the supervision of the forests, the supervision of forestal/agricultural offences and the punishments (fines). However, it also shows a stronger influence of the ruler (at this time the Elector of the Palatinate) and the electoral district administration of

⁴⁸ Cf. Mantel, *Forstgeschichte*, pp. 230-265; Rolf Roosen, *Jagdsprachlicher Sachwortschatz in gedruckten Landes-, Polizei-, Jagd- und Forstverordnungen des 15. und 16. Jahrhunderts. Eine bibliographische, philologische und jagdhistorische Studie*, Frankfurt am Main 1995; Christoph Ernst, *Forstgesetze in der Frühen Neuzeit. Zielvorgaben und Normierungsinstrumente für die Waldentwicklung in Kurtrier, dem Kröver Reich und der Hinteren Grafschaft Sponheim (Hunsrück und Eifel)*, in: Karl Härter (ed.), *Policy und frühneuzeitliche Gesellschaft*, Frankfurt am Main 2000, pp. 341-381.

⁴⁹ *Weistum Lorsch Wildbann, 1423, März 17, HStAD, A 1, Lorsch, Nr. 146/7*; edition (used here): Lohmann, *Weistümer und Dorfordnungen*, no. 70, pp. 257-263. About the Lorsch Wildbann see Clemens Dasler, *Forst und Wildbann im frühen deutschen Reich. Die königlichen Privilegien für die Reichskirche vom 9. bis zum 12. Jahrhundert*, Köln et al. 2001, pp. 130-132.

Starkenbourg; the latter was competent for all offences that belonged to the jurisdiction of the Centgericht Starkenbourg, and the elector possessed the territorial supremacy.⁵⁰

The change to electoral legislation and *gute Policey* finally manifested in the forest ordinance of 1620, which Elector Friedrich V issued in 1620 for the district of Lorsch and Bürstadt, thus starting to homogenize local customary normativity. The ordinance was passed in the elector's name only; whether the local courts nor the *Schöffren* were mentioned as 'creators' of the provisions. This was justified with typical arguments of *gute Policey*: disorder, abuse, decline, damages and wrongdoings that should be prevented through the electoral ordinance all subjects should comply with to finally establish the good order of the forest. The electoral district and forest administration (a forest master with several foresters) was competent for all tasks: the allocation and distribution of firewood and timber the subjects had to apply and partly to pay for; the supervision and visitation of the woods; the conducting of meetings (*Waldtage*) that substituted the former court sessions; the prosecution and punishment of wrongdoings and forestal offences that were inscribed in a register. In great detail, the ordinance regulated in 19 comprehensive articles the use of the forest and criminalized a broad variety of forestal wrongdoings (stealing wood, cutting logs/trunks, damaging trees, collecting wood, exceeding the assigned quantities, selling wood to other territories). The provisions mostly threatened the confiscation of wood and high fines which only the forest administration was to impose and to collect. To prevent the decline of the forest, the ordinance stipulated the annual reforestation of the forests and limited the use of timber for building houses that was to be substituted as far as possible by stones.⁵¹ In consequence, the ordinance of 1620 did abrogate the old customary statute, the cooperative usufruct and the jurisdiction of the cooperative forest court shifting all powers and duties to the electoral forest district administration.

2.2.3. Police regulations and subjects matters of local customary statutes

The previous analysis has already indicated that the normativity of local customary statutes shows some similarities with the provisions of police ordinances and a gradual shift to *gute Policey* in the sixteenth and seventeenth century, also manifesting in specific forest/agricultural ordinances the Electorate of the Palatinate started to issue around 1580.⁵² This can be further substantiated through an application of the taxonomy of the police regulations, indexing the normativity of selected examples of customary statutes with the subject matters and the keywords of the classification schema.⁵³ Table 3 shows the results:

⁵⁰ Bericht über das Bürstatter Weisthumb, nach 1508, HStAD, C 3, Nr. 126/1, edition (used here): Lohmann, Weistümer und Dorfordnungen, no. 27, pp.96-101.

⁵¹ Waldordnung Kurfürst Friedrichs V. von der Pfalz für Lorsch und Bürstadt, 1620, Juni 6, HStAD, C 1 B, Nr. 13, edition (used here): Lohmann, Weistümer und Dorfordnungen, no. 72, pp. 268-274.

⁵² Forst- unndt Waldordnung der Pfaltzgraveschafft bey Rhein, wie es allendhalbenn In, Uff, und mit den Wälden, und gehöltzern, mit dem gebrauch verhawung, und wieder hayunngge dess Holtzes, unnd dann auch unnserrn Wioldbann, Fischereyen unnd was demselben anlanggt, fürohin zun hallten [von 1580]. Veröffentlicht nach einer im General-Landesarchiv zu Karlsruhe befindlichen Abschrift unter Weglassung der auf die Fischerei bezüglichen Artikel von C.E. Ney, Forst- und Jagdzeitung 1883, Supplement Bd. XII, H.1, pp. 12-29.

⁵³ Online with translations (to be chosen with the buttons left above): <https://rhonda-org.github.io/vocabspolmat/w3id.org/rhonda/polmat/n0.en.html>. It should be noted that the classificaton scheme does not cover all the norms of the older customary statutes. I have attempted to apply the classificaton scheme really carefully so that the subjects matters and keywords actually cover the essence of the concerned provisions.

Table 3: police regulations in local customary statutes

Regulatory areas & subject matters (<i>Policematerien</i>)	Weistum Cent Starckenburg 1430	Wäldordnung Bensheim 1409	Kundschaften Märkergericht Bensheim 1417/1440	Wäld- & Märkergerichtsordnung Bensheim 1615	Weistum Wildbann Lorsch 1423	Wäldordnung Lorsch & Eirstadt 1620
'Legislator'	court	Court	court	Elector	court	elector
1.2 communal constitution (<i>Gemeindeverfassung</i>)		town council, municipal court, communal offices, aldermen, jurors, judge, mayor, wardens, jurisdiction	administration, jurisdiction, district, boundaries	Jurisdiction	district, boundaries, estates	
1.2 dominion/governance (<i>Herrschaftsverfassung</i>)		common rights, common land	common rights, common land, boundaries	elector, territorial supremacy	abbot, nobility, elector, common rights	elector, territorial supremacy
2.2 homeland security (<i>Landessicherheit</i>)	country roads, alarm, hot pursuit					
2.2 property protection / crime (<i>Eigentumsschutz</i>)	robbery, thieving			wood theft	wood theft, poaching	wood theft
2.2 violent crimes (<i>Gewalttaten</i>)	murder, homicide, assault and battery, arson	arson		arson	arson	
2.4 court system (<i>Gerichtsorganisation</i>) / procedure (<i>Verfahren</i>) / jurisdiction (<i>Zuständigkeiten Gerichte</i>)	criminal court, lower court, jurisdiction, judge, jurors, aldermen, oath, crimes, litigation, legal action, perjury, obligation to report	municipal court, lower court, forest court, jurisdiction, sessions, judge, jurors, oath	cooperative forest court, lower court, jurisdiction, district, sessions, oath	cooperative forest court, lower court, jurisdiction, judge, jurors, sessions, oath, fees, accounting	cooperative forest court, lower court, jurisdiction, district, judge, sessions	
2.4 execution of punishments (<i>Strafvollstreckung</i>)	fines, confiscation, executioner	fines, confiscation	fines, confiscation	fines, confiscation, payment, accounting, registers	fines, confiscation, corporal punishment, accounting	fines, confiscation, accounting, registers
2.4 obligation to report / reprimand (<i>Anzeigespflicht, Rügepflicht</i>)	local officers, alderman, jurors, people, crimes	local officers, alderman, jurors, agricultural offences, forestal offences		local officers, alderman, jurors, people, wardens, agricultural offences, forestal offences	tenants, farmer	forest master, foresters

24 supervisory obligation (Aufsichtspflicht)		local officers, alderman/jurors, people, wardens		local officers, alderman/jurors, people, wardens, patrols, visitations	tenants, farmer	forest master, foresters, forest administration
41 agricultural and forestal offences (Frevel)	boundary stone crime, agricultural offences, obligation to reprimand	agricultural offences, forestal offences, obligation to reprimand	forestal offences	agricultural offences, forestal offences, obligation to reprimand	agricultural offences, forestal offences, collecting logs, collecting acorns, collecting dry wood, cutting logs/trunks, wildfire, sale of wood, export of wood, grazing	forestal offences, cutting logs/trunks, damaging trees, collecting wood, exceeding assigned quantities, selling wood
41 field (Feld) / farms/estates (Güter)		supervision, wardens, field, gardens, fruit trees		supervision	farms, estates, tenants, farmer, rights	tree planting
41 pasture/grazing (Weide)		grazing, supervision, offences, rights, usufruct		grazing, rights, usufruct		
42 forest/forestry (Forst)		district, allocation, rights, communitarian use, usufruct, logging, supervision, offences, cutting logs/trunks, damages, fruit trees, forest pasture, collecting logs, collecting acorns, collecting fruits, wildfire	district, allocation, common rights, communitarian use, usufruct, supervision,	district, allocation, rights, usufruct, permissions, distribution, restrictions, closing times, administration, foresters, forest supervisor, wardens, supervision, patrols, visitations, forest management, logging, firewood, timber, timber usage, damages, collecting logs, collecting acorns, collecting dry wood, cutting logs/trunks, wildfire, sale of wood, export of wood, grazing, deforestation, reforestation	district, allocation, rights, communitarian use, logging, permissions, damages, deforestation	forest administration, forest master, foresters, forest management, supervision, permissions, distribution, payment, wood tax, charges, closing times, logging, firewood, timber, timber usage, storage, transport, restrictions, damages, collecting logs, collecting dry wood, sale of wood, export of wood, deforestation, reforestation
42 hunting (Jagd)					district, allocation, rights, permissions, poaching	

5.4 building trade (Bauwesen)						houses, baking ovens, building regulations, building material, timber, stones
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The indexing in table 3 evinces typical provisions and main issues of local customary statutes in rural areas, first of all, the normativity of the communal constitution and the common shared land based on the common rights of the rural society. This is complemented by the cooperative administration of common land and forests through cooperative lower courts in which the local actors and lay people participate in various offices and functions. Hence, a further focus of the normativity is on jurisdiction and the offices, organization and procedure of the courts. The scope of the courts is not only limited to prosecution, adjudication and punishment but includes various administrative tasks such as supervision, reporting and the communitarian use of forests which are also regulated in detail. Already the customary statutes of the fifteenth century criminalized a broad variety of agricultural and forestal wrongdoings and a few serious offences threatening various punishments ranging from the fines and confiscation – which are dominating – to more serious penalties. With one exception, the local customary statutes are stipulating an obligation to reprimand/report wrongdoings which in two cases also included all members of the local communities. However, the elements and types of offences and the types and amounts of punishments are not regulated in detail and exactly defined, which is also typical for many police ordinances. Table 3 also demonstrates that the normativity of the local statutes and ordinances of the district Starkenburg exhibits typical subject matters of police ordinances. Thus, it can be concluded that police ordinances covered similar issues of rural society and partly adopted specific customary subject matters and regulations. They mostly concern the administration of the forest and the wrongdoings, whereas the norms dealing with jurisdiction, allocation of districts, courts, procedure and usufruct of woods were not adopted. However, the ordinances differentiated provisions and extended the criminalization of wrongdoings.

The analysis of the normativity regime of the district Starkenburg evinces, that at the beginning of the seventeenth century the nature of customary statutes had changed from norms which local courts had agreed upon to authoritarian ordinances the elector had confirmed or issued claiming also the jurisdiction and penal power to impose punishments. The ordinances of 1615 and 1620 were overriding the common rights of the communities and cooperative courts with the territorial supremacy of the ruler. However, these ordinances were still addressing local rural communities and jurisdictions and integrated them into the maintenance of order in local rural areas. This would change over the course of the seventeenth century in which the Electors of Mainz and the Palatinate as well as the Landgraviate of Hesse-Darmstadt issued comprehensive police ordinances dealing with agricultural and forestal matters which had an ambit for the whole territory.

3. The rural normativity regime of the police ordinances

3.1. The police ordinances of the Electorate of Mainz, the Electorate of the Palatinate and the Landgraviate of Hesse-Darmstadt in the Early Modern Period

As already mentioned, the Electorates of Mainz and the Palatinate at different times (Mainz 1265-1461/63 and 1623/48 to 1803, Palatinate: 1463 to 1622) governed the administrative district of Starkenburg to whose jurisdiction also a few villages of the Landgraviate of Hesse-Darmstadt and the County of Erbach-Schönberg belonged. The Electorate of Mainz, the Electorate of Palatinate and the Landgraviate of Hesse-Darmstadt were neighbouring territorial states with a comparable area and population whose territories and jurisdiction were overlapping and intersecting. This enables a comparative analysis of the ‘police legislation’ (*Policeygesetzgebung*) in rural matters, using quantitative and qualitative methods to demonstrate the shift from local customary statutes to police ordinances resulting in a new normativity regime of rural society.⁵⁴

In the sixteenth century, the imperial police ordinances of 1530 and 1548 had granted all imperial estates the right to enact territorial ordinances to regulate specific domestic and all matters which the imperial law had not dealt with. This led to an overall increase of the police legislation in nearly all territorial states and imperial cities, particularly in regulatory areas – such as agriculture and forest and all matters of customary local law – which imperial law had not covered.⁵⁵ Whereas the Elector of Mainz set the imperial police ordinances entirely into force, the Palatinate (protestant since 1556) enacted several police ordinances and the *Landesordnung* (land ordinance) that taken together covered nearly all areas of penal law and *gute Policey*. After having issued ordinances only for specific towns and regions of the Palatinate that dealt with various rural matters, the first comprehensive police ordinance of 1549 (*Ordnung Ettlicher Pollicey artickel, inn die Churfürstlich Pfallencz bey Rheine*) started to regulate forest administration.⁵⁶ Subsequent edicts and mandates regulated specific matters and particularly criminalized agricultural and forestal offences and poaching.⁵⁷ In 1565 and 1572 the elector enacted two comprehensive forest police ordinances that contained a broad variety of subject matters, regulations and offences related to forest and agriculture.⁵⁸ The *Landesordnung* of 1582 integrated the most relevant provisions into the territorial law also referencing the imperial police ordinance.⁵⁹ This clearly demonstrates the claim of the elector to legislate in all matters of *gute Policey* and customary statutes and to substitute the latter through regulations of police ordinances that were valid for the whole territory (and not only local jurisdictions).

A similar development can be shown for the Electorate of Mainz. In the second half of the sixteenth century the government started issuing police ordinances that partly adopted the normativity of local customary statutes. The police ordinance for the electoral district of the *Vizedomamt Rheingau* issued in

⁵⁴ For the police ordinances see: Karl Härter, Kurmainz, in: Härter/Stolleis (eds.), *Repertorium der Policeyordnungen*, vol 1: Deutsches Reich und geistliche Kurfürsten (Kurmainz, Kurtrier, Kurköln), ed. by Karl Härter, Frankfurt am Main 1996, pp. 107-421; Dorothe Mussgnung, Kurpfalz, in: Härter/Stolleis (eds.), *Repertorium der Policeyordnungen*, vol. 3: Wittelsbachische Territorien (Kurpfalz, Bayern, Pfalz-Neuburg, Pfalz-Sulzbach, Jülich-Berg, Pfalz-Zweibrücken), ed. by Lothar Schilling/Gerhard Schuck, Frankfurt am Main 1999, pp. 1-594; the data for Hesse-Darmstadt, edited by Christina Wagner, have not yet been published but will be soon implemented into the online-database ‚Repertorium der Policeyordnungen‘.

⁵⁵ See figure 1.

⁵⁶ RepPo 3 Kurpfalz 182 Policeyordnung 29.06.1549, online: <https://digi.ub.uni-heidelberg.de/diglit/friedrich1549>.

⁵⁷ RepPo 3: Kurpfalz 195 Mandat 09.03.1552; Kurpfalz 207 Ausschreiben 28.12.1554; Kurpfalz 208 Mandat 10.01.1555; Kurpfalz 233 Ordnung 21.04.1557.

⁵⁸ RepPo 3: Kurpfalz 274 Ordnung 06.05.1565: Der Oberrn Churfürstlichen Pfalz inn Bayern WaldOrdnung auffgericht Anno 1565, online: <https://www.digitale-sammlungen.de/de/details/bsb11083417>; Kurpfalz 304 Ordnung 00.00.1572: Forst- unndt Waldordnung der Pfaltzgraveschafft bey Rhein, wie es allendhalben In, Uff, und mit den Wäldern, und gehöltzern, mit dem gebrauch verhawung, und wieder hayunng dess Holtzes, unnd dann auch unnserrn Wieldbann, Fischereyen unnd was demselben anlantt fühohin zun hallten.

⁵⁹ RepPo 3 Kurpfalz 351 Landesordnung 04.04.1582, online: <https://www.digitale-sammlungen.de/de/details/bsb10144846>.

1579 integrated subject matters of the imperial police ordinances of 1530 and 1548 and additionally comprised provisions on agriculture/fields, manorial estates, viticulture, hunting and poaching.⁶⁰ In 1594 the government issued a comprehensive penal ordinance (*Straffordnung an des ganzen Ertzstiffts Nachbarn und Unterthanen*) dealing with agricultural, forestal and other minor ‘police offences’.⁶¹ The main purpose of the ordinance was to uniformly list offences and fines for the whole of the Electorate. The ordinance stressed that the jurisdictional power to adjudicate the cases and to impose the arbitrary fines up to a maximum of ten florin only belonged to the electoral district administrations. Most of the 29 provisions gave detailed descriptions of specific wrongdoings such as cheating with the tithe, lingering late-night in the fields (arousing suspicion of thieving), violating the order of the harvest, damaging fences, trenches and tracks as well as heavy drinking, cursing and swearing or assault and battery, also stipulating a general punishable obligation to report/reprimand. The ordinance was published in the local administrative districts and courts, and a very few handwritten versions have survived demonstrating that they were implemented and applied in the local lower courts as *Rügeordnung*.⁶²

For the Landgraviate of Hesse-Darmstadt we can observe similar developments. In 1559 Landgrave Philipp der Ältere enacted the first comprehensive forest and wood ordinance which was issued again in 1567 and 1586 without changing the provisions.⁶³ Based on these general provisions, in 1650 the Landgrave issued a local forest ordinance for the residential city Darmstadt and a neighbouring town, demonstrating that local district ordinances were still in use, albeit this was the last local one that was enacted.⁶⁴ Hence, in the second half of the sixteenth century all three territorial states initiated a police legislation that increasingly dealt with agriculture and forest, as the quantitative analysis of the respective subject matters in the subsequent charts further substantiate.

⁶⁰ RepPo 1 Kurmainz 130 Policey- & Landesordnung 25.05.1579.

⁶¹ RepPo 1 Kurmainz 136 Straffordnung 06.03.1594, renewed 06.03.1603. The Straffordnung is printed in: Franz Joseph Karl Scheppler (ed.), *Codex ecclesiasticus Moguntinus novissimus oder Sammlung der Erzbischöflich-Mainzischen in kirchlichen und geistlichen Gegenständen ergangenen Constitutionen und Verordnungen auch vieler der wichtigsten in das Mainzische Staatskirchenrecht und die erbstiftische Kirchengeschichte einschlagenden anderen Urkunden [...]*, Bd. 1, 1. Abtl. Aschaffenburg 1802, pp. 94 s., online: <https://www.digitale-sammlungen.de/de/details/bsb11442456>.

⁶² See the versions for the districts of Rheingau and Höchst: Hessisches Hauptstaatsarchiv Wiesbaden, 106/186, 106/786 and 106/788 (a later version of the seventeenth century).

⁶³ In: HStAD, E 3 A Nr. 2/41.

⁶⁴ Neue ausführliche Darmstädter und Bessunger Wald- und Holzordnung, 1650 November 16, HStAD E 3 A Nr. 2/41, online: <https://arcinsys.hessen.de/arcinsys/detailAction.action?detailid=v4154987&icomefrom=search>.

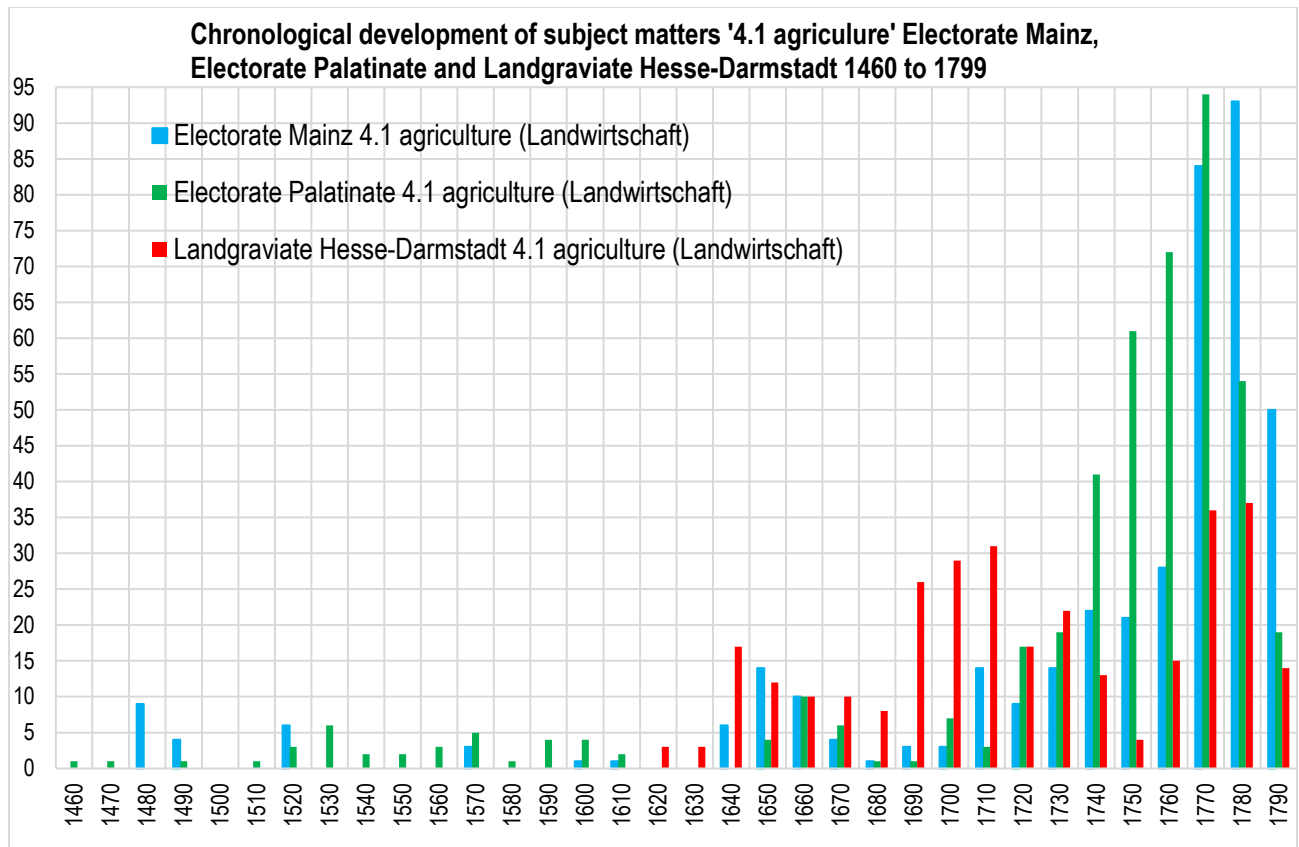


Figure 3: excel chart 'chronological development of subject matters '4.1 agriculture' Electorate Mainz, Electorate Palatinate and Landgraviate Hesse-Darmstadt 1460 to 1799'

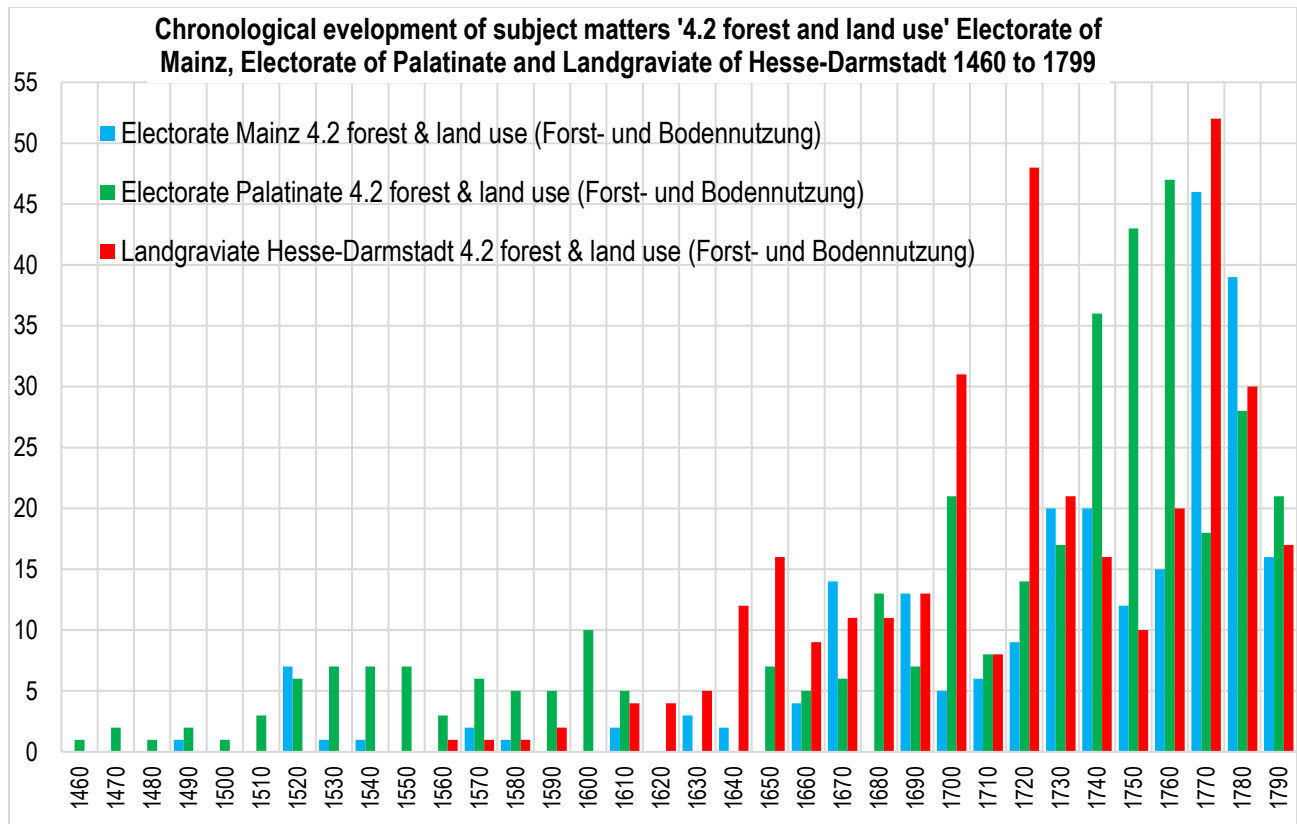


Figure 4: excel chart 'chronological development of subject matters '4.2 forest and land use' Electorate of Mainz, Electorate of Palatinate and Landgraviate of Hesse-Darmstadt 1460 to 1799'

As already shown for the overall development of rural subject matters, the time course and frequency of the respective police legislation of the Electorate of Mainz, the Electorate of Palatinate and the Landgraviate of Hesse-Darmstadt can be roughly divided in three phases with corresponding peaks. Up to the middle of the sixteenth century, the subject matter '4.1 agriculture' only plays a minor role in all three territorial states. Between the 1520s and the 1610s '4.2 forest and land use' gained in importance in the Electorates of Mainz and Palatinate. This might be initially triggered by the peasant's revolt in 1525 but also demonstrates that the governments adopted customary normativity and started to implement it into or substitute it through police legislation. Forest and land use particularly gained in importance because of the growing population and several hunger crises to which the governments responded with police ordinances to maintain *gute Policey*.

After the gap of the Thirty Years' War, which particularly devastated the three territorial states and reduced all legislative activities, in the five decades of the second half of the seventeenth century all three governments issued comparable average numbers of ordinances regulating 'agriculture' and 'forest and land use'. Hesse-Darmstadt was the most active legislator with 66 and 60 provisions for '4.1 agriculture' and '4.2 forest and land use' respectively, and the Electorates of Mainz and the Palatinate still came up with 32 and 22 and 31 and 38 provisions respectively. The treaty of Westphalia had renewed and enhanced the right of the imperial estates to legislate in all matters of *gute Policey*. The need for economic and population growth as well as for administrative reform further triggered the police legislation of the

three territorial states. This tendency continued in the first half of the eighteenth century, whereas in the second half, we can observe a strong increase in the regulation of rural matters. This was triggered – as explained beforehand – by the reforms of enlightened absolutism concerning serfdom and feudal duties and the increasing attempts to improve the performance of rural economy and to establish the predominance of the modern state in the administration of forest and land use. The increase was also caused by a change in the form of the police legislation from comprehensive ordinances with many provisions that covered nearly every issue of agriculture and forest and land use to ‘single-leaf print laws’ (mandates, edicts, rescripts) that only dealt with specific issues and regulations.⁶⁵

Although the three territorial states show somewhat diverging developments in the intensity of regulation over time, the overall quantitative comparison of the specific subject matters show a nearly similar proportional distribution, as the subsequent table 4 and chart (figure 5) demonstrate.

Table 4: percentage distribution of the subjects matters ‘serfdom, feudal duties, forest and land use’ Electorate Mainz, Electorate Palatinate, Landgraviate Hesse-Darmstadt 1460-1799 (sample = 2437)

Subject matters	Mainz	%	Palatinate	%	Hesse-Darmstadt	%
1.2 corvée/feudal duties (Frondienste/Dienstpflichten)	36	6	89	9	29	4
1.2 serfdom (Leibeigenschaft)	53	8	67	7	18	2
4.1 agricultural/forestral offences (Frevel)	19	3	22	2	41	5
4.1 animal diseases (Tierseuchen)	62	10	40	4	32	4
4.1 animal farming (Tierhaltung/Tiernutzung)	46	7	100	10	60	7
4.1 expansion & cultivation of land (Flächenausbau/Landeskultur)	57	9	88	9	108	13
4.1 farms/estates (Güter)	25	4	0	0	25	3
4.1 field (Feld)	16	2	18	2	41	5
4.1 harvest & feudal taxes (Ernteordnung/Feudalabgaben)	33	5	84	9	44	5
4.1 pasture/grazing/meadows (Weide/Wesen)	14	2	28	3	31	4
4.1 pest control (Schädlingsbekämpfung)	29	4	29	3	28	3
4.1 viticulture (Weinbau)	14	2	34	4	13	2
4.2 fishing (Fischfang)	24	4	27	3	34	4
4.2 forest (Forst)	151	23	246	26	234	28
4.2 hunting (Jagd)	68	11	86	9	94	11

⁶⁵ For this general trend see Härter, Security and “gute Polickey”, pp. 46-49.

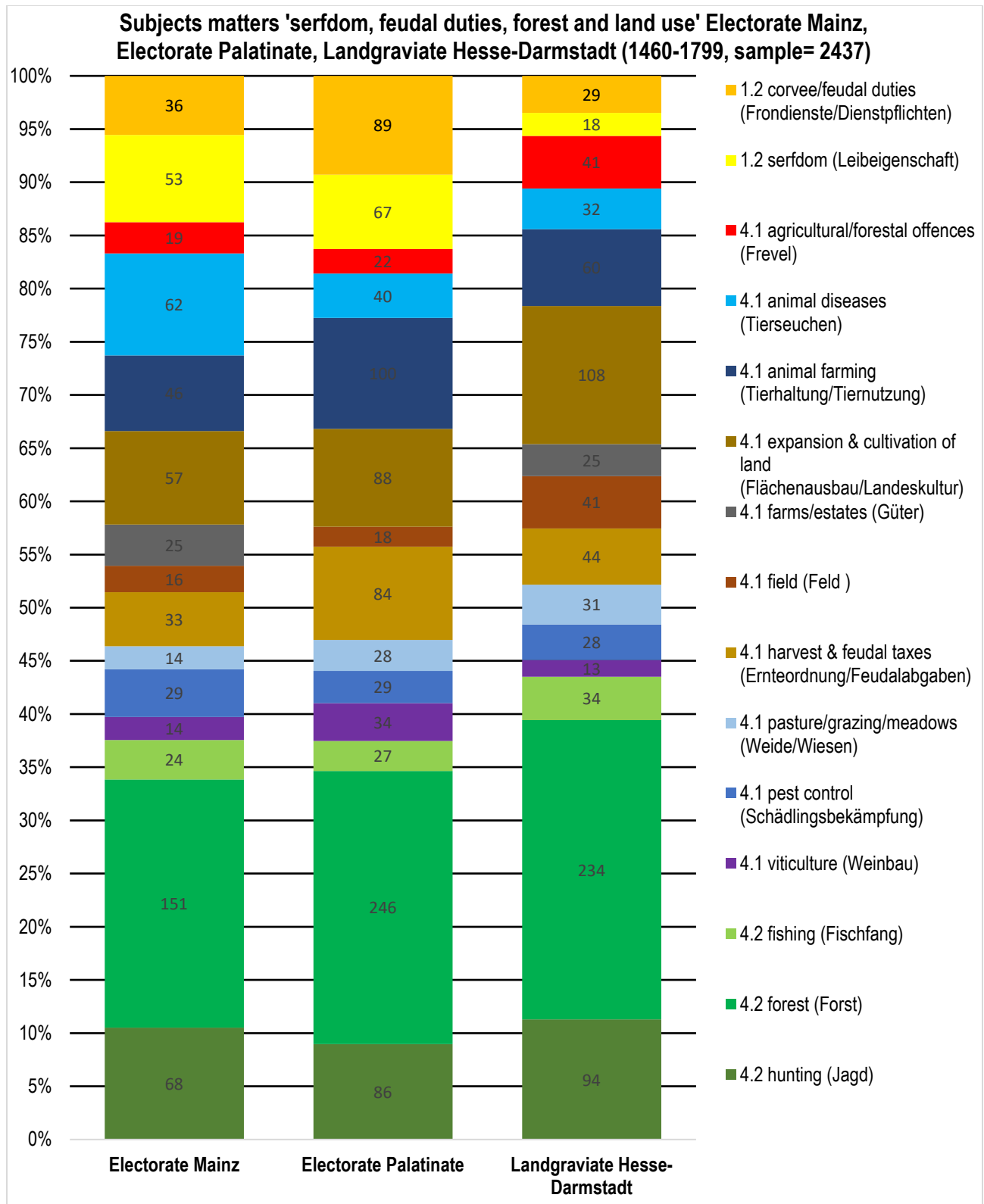


Figure 5: excel chart 'subject matters 'serfdom, feudal duties, forest and land use' Electorate Mainz, Electorate Palatinate, Landgraviate Hesse-Darmstadt 1460 – 1799 (sample = 2437)

Particularly the regulation of '4.2 forest' and '4.2 hunting' show similar high percentages between 23 up to 28 % and 9 up to 11 %. In all three territorial states, forestry and hunting are the issues of rural society that police ordinances regulated most intensively. A detailed quantitative analysis of the chronological development of the regulation of the subject matter '4.2 forest and hunting' evinces further similarities in the legislative frequency of the three territorial states as the subsequent chart shows.

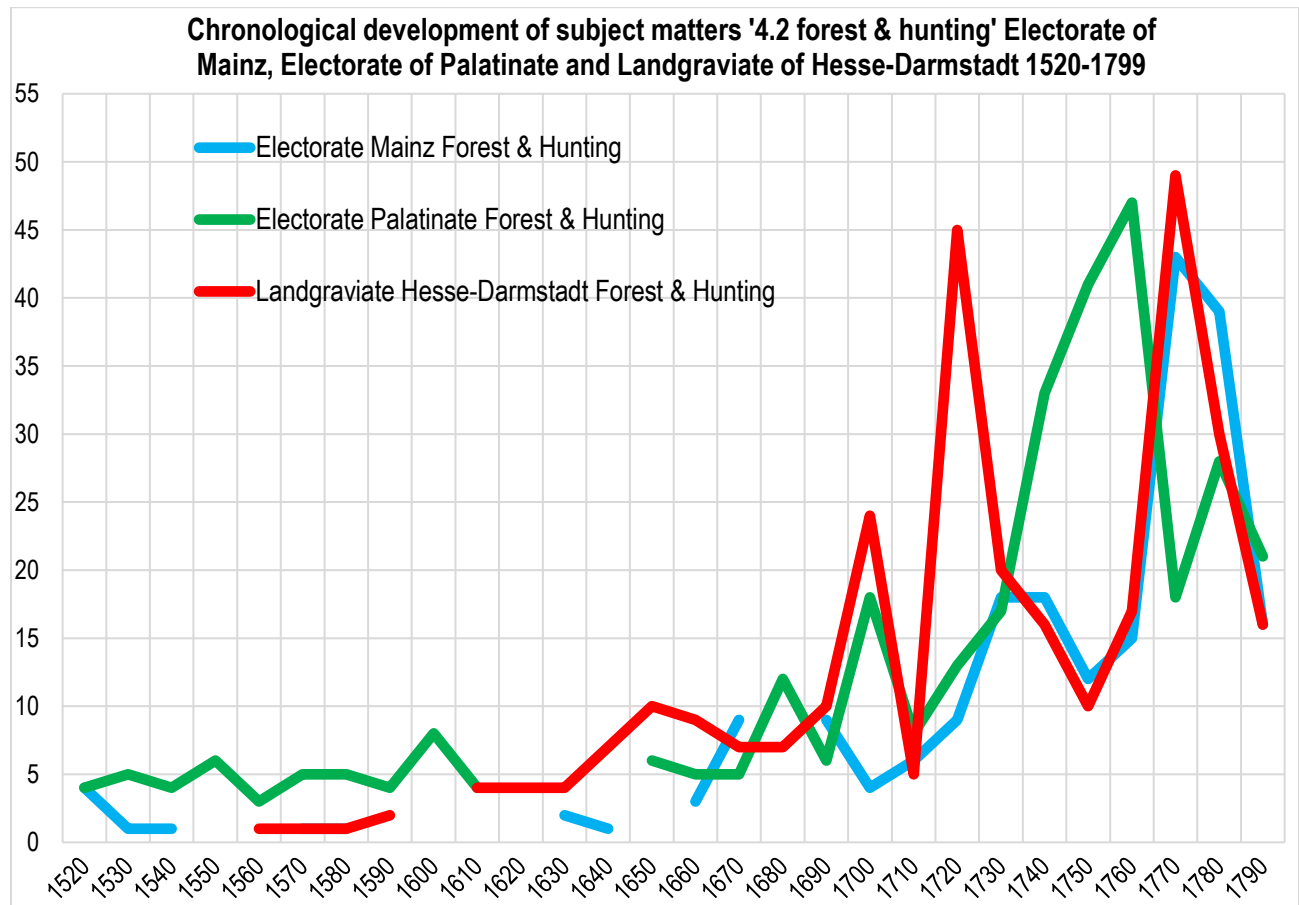


Figure 6: excel chart 6 ‘chronological development of subject matters '4.2 forest & hunting' Electorate of Mainz, Electorate of Palatinate and Landgraviate of Hesse-Darmstadt 1520-1799’

The respective peaks in the quantitative development of the police legislation in forestal matters were related and culminating in several comprehensive ordinances, which the Electorate of Mainz, the Electorate of Palatinate and the Landgraviate of Hesse-Darmstadt enacted between the 1660s and the 1740s.

Table 5: comprehensive forest police ordinances enacted by the Electorate of Mainz, the Electorate of Palatinate and the Landgraviate of Hesse-Darmstadt 1666-1744

Year	Territory	Title	Legislator	Version	Online
1666	Mainz	Deß Hchwürdigsten Fürsten und Herren/ Herm Johann Philipsen/ Deß Heiligen Stuhls zu Mayntz Ertzbischoffen/ deß Heiligen Römischen Reichs durch Germanien ErtzCantzlers/ und Churfürsten/ Bischoffen zu Würtzburg/ und Wörmbts/ und Hertzogen zu Francken Wäld-Forst- Jagt-Wild-Weyd-Wercks- und Fischerey-Ordnung : auffgerichtet/ und publicirt im Jahr 1666	Elector Johann Philipp von Schönborn (1647-1673)		https://vdl17.gbv.de/de/services/gLink/vdl17/547:683227M_001,800,600
1679	Mainz	Wäld-, Forst-, Jagd- und Fischereiordnung mit Bußordnung. Deß Hchwürdigsten Fürsten und Herrn, Herm Anselm Frantz, deß Heiligen Stuhls zu Mayntz Ertz-Bischoffen, ... Wäld-, Forst-, Jagt-, Wild-, Weyd-, Wercks- und Fischerey-Ordnung, Mainz 1679	Elector Anselm Franz von Ingelheim (1679-1695)	reissue ordinance 1666	
1687	Palatinate	Chur Fürstlicher Pfaltz Forst- und Wäld- auch Weyd-Wercks und Fischerey-Ordnung, Heidelberg Bergmann 1687	Elector Philipp Wilhelm von der Pfalz (1685-1690)		https://www.digitale-sammlungen.de/de/view/bsb10490832?page=1
1692	Darmstadt	Fürstliche Hessen-Darmstattische Forst- und Wäld- auch Weydwercks- und Fischerey-Ordnung, Darmstadt : Gribel, 1692	Landgrave Ernst Ludwig (1678-1739)	copy of ordinance Palatinate 1687	http://diglib.hab.de/drucke/xb-7450/start.htm
1692	Mainz	Dess Hchwuerdigsten Fuersten und Herrn, Herm Anselm Frantzen, dess Heiligen Stuhls zu Mayntz Ertz-Bischoffen, ... Wäld-, Forst-, Jagd-, Wild-, Weyd-, Wercks- und Fischerey-Ordnung. Von neuem publicirt im Jahr 1692, Mainz 1692	Elector Anselm Franz von Ingelheim (1679-1695)	reissue ordinances 1666 & 1679	
1711	Palatinate	Chur-Fürstlicher Pfaltz Forst- und Wäld- Auch Wäld-Wercks- Jagd- und Fischerey-Ordnung. Gedruckt zu Heydelberg : durch Johann Mayer, Chur-Pfaltz Hbf- und Universitäts-Buchdrucker, Heidelberg 1711	Elector Johann Wilhelm von der Pfalz (1690-1716)	modified adaption ordinance 1687	https://www.digitale-sammlungen.de/de/view/bsb11012083?page=1
1717	Mainz	Des Hchwürdigsten Fürsten und Herrn ... Anselm Frantzen, des heil. Stuhls zu Mayntz Ertz-Bischoffen ... Wäld-Forst-Jagd-Wild-Weyd-Wercks- und Fischerey-Ordnung, Erfurth den 5. Junii 1717	Elector Lothar Franz von Schönborn (1695-1729)	publication ordinance 1692 in Erfurt	
1718	Mainz	Erneuerte Churfürstlich-Mayntzische Special-Wäldt-Forst-Jagd-Tax-Buß- und Pfand-Ordnung Über Das Ober-Amt Starckenburg De Anno 1718	Elector Lothar Franz von Schönborn (1695-1729)	adapted version of ordinance 1692 for Starckenburg	

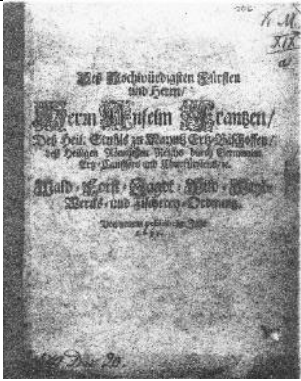

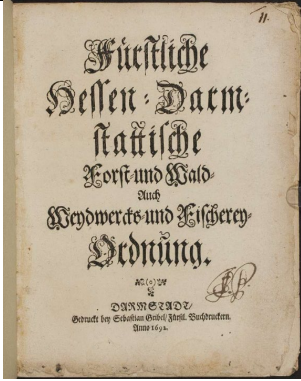
1724	Darmstadt	Fürstlich Hessen-Darmstädtische Forst- und Wald- auch Weidwercks- und Fischerey-Ordnung, gedruckt bey Caspar Klug, Fürstl. Hof- und Cantzley-Buchdrucker, Darmstadt 1724	Landgrave Ernst Ludwig (1678-1739)		https://gdz.sub.uni-goettingen.de/id/PPN695426935
1729	Mainz	Churfürstlich-Mayntzische respectue kurtz verfaßt und erneuerte Wald-Ordnung de Anno 1729	Elector Franz Ludwig von Pfalz-Neuburg (1729-1732)		https://arcinsys.hessen.de/arcinsys/detailAction.action?detailid=1564378&comefrom=search
1744	Mainz	Churfürstlich Mayntzische erneuert und verbesserte Wald- Forst- und Jagd- auch Fischerey-Ordnung. Wie solche aus gnädigstem Befehl des Hochwürdigsten Fürsten und Herrn, Herrn Johann Friderich Carl, des Heil. Stuhls zu Mayntz Ertz-Bischoffen, des Heil. Röm Reichs durch Germanien Ertz-Cantzlern und Churfürsten [et]c. [et]c. Zu besserm Nutzen und Auffnahm Dero hohen Ertz-Stiffts publiciret worden den 5. Nvembr. 1744	Elector Johann Friedrich Karl von Ostein (1743-1763)		https://digital.staatsbibliothek-berlin.de/werkansicht/?PPN=PPN662038657

Table 5 also shows, that the three neighbouring territorial states issued comprehensive forest police ordinances in a comparable sequence and frequency. Particularly the ordinances of 1687 and 1692 were enacted almost at the same time. In this respect, the assumption seems plausible that the governments had some knowledge of the ordinances their neighbors issued.

3.2. The forest police ordinances of the Electorate of Mainz, the Electorate of Palatinate and the Landgraviate of Hesse-Darmstadt in transterritorial context

To further investigate similarities and transterritorial influences of the rural normativity regimes that police ordinances established, a comparative analysis of three exemplary and comparable comprehensive forest ordinances of the Electorate of Mainz of 1692 (1666 & 1679), the Electorate of Palatinate of 1687 and the Landgraviate of Hesse-Darmstadt of 1692 will be carried out, applying the taxonomy of the police regulations again, indexing the normativity of the three ordinances with the subject matters and the keywords of the classification schema. This will also reveal that the police ordinances to some extent adopted subject matters of local customary statutes as presented in table 3. The three forest police ordinances are typical for the normative regulation of a prime sector of rural society and the related conflicts and wrongdoings: they were issued by the ruler as comprehensive printed ordinances with many pages and provisions that covered nearly every issue of the regulation and ordering of wood, forest, hunting, venison, pasture and fishing, as expressed in the titles of the ordinances: *Wald-, Forst-, Jagd-, Wild-, Weyd-, Wercks- und Fischerey-Ordnung*. Already the formal features of the three ordinances reveal similarities as the table 6 demonstrates:

Table 6: formal features of the forest ordinances of Mainz, Palatinate and Darmstadt

Feature	Electorate of Mainz	Electorate of Palatinate	Landgraviate of Hesse-Darmstadt
Title	Hochwuerdigsten Fuersten und Herrn, Herrn Anselm Frantzen, dess Heiligen Stuhls zu Mayntz Ertz-Bischoffen, ... Wäld-, Forst-, Jagd-, Wild-, Weyd-, Wërcks- und Fischerey-Ordnung. Von neuempubicirt im Jahr 1692	Chur Fürstlicher Pfaltz Forst- und Wäld- auch Weyd-Wercks und Fischerey-Ordnung 1687	Fürstliche Hessen-Darmstattische Forst- und Wäld- auch Weydwercks- und Fischerey-Ordnung 1692
Image			
Legislator	Elector Anselm Franz von Ingelheim (1679-1695)	Elector Philipp Wilhelm von der Pfalz (1685-1690)	Landgrave Ernst Ludwig (1678-1739)
Print	Mainz, brochure 4°	Heidelberg, Bergmann, brochure 4°	Darmstadt : Gribel, brochure 4°
Year	1692 (reissue ordinances 1666 & 1679)	1687	1692
Pages	75	84	94
Chapters	17	4	4
Articles/provisions	156	114	112
Preamble	territorial supremacy, disorder, non-compliance, obeying provisions	territorial supremacy, disorder, non-compliance, obeying provisions	territorial supremacy, disorder, non-compliance, obeying provisions
Appendix	catalogue of offences (Bußordnung)	Generalverordnung	Generalverordnung, Specification Accidentien (additional charges)

In the preambles of the ordinances, the respective ruler stressed his territorial supremacy (*Landesherrschaft*) and his right to enact ordinances the subjects had to comply with (what they allegedly had not done before). They further justified the ordinances with typical arguments of *gute Policy*: disorder, decline, non-compliance and wrongdoings and the necessity of governance, administration and establishing order. The ordinance of Mainz is almost identical with the versions of 1666 and 1679, which are explicitly mentioned, and can be characterized as a reissue. It might be possible that older printed copies had run out and the government wanted to use the opportunity to remind the local administrations of the ordinance and to inculcate the norms. It is also likely that the government in Mainz responded with the reissue to the enactment of the new ordinances of the Electorate of Palatinate in 1687 and the Landgraviate of Hesse-Darmstadt on 1 April 1692, since they were neighbouring territories with

overlapping jurisdictions and lands as in the region of the district of Starkenburg. Moreover, the ordinance of Hesse-Darmstadt is a verbatim copy of the provisions of the Palatinate ordinance, substituting 'Palatinate' with 'Hesse-Darmstadt' (and related official names), changing the formulas of intitulation, inscriptio, promulgatio, the preamble and the eschatocoll, abbreviating some provisions and omitting two paragraphs.⁶⁶ The reason to merely copy the Palatinate ordinance cannot be discerned due to lack of sources, but in other cases the government of Darmstadt collected and took notice of the ordinances of neighbouring territories and made excerpts for drafting their own ordinances.⁶⁷

Table 7: excerpts from the tables of contents of the forest ordinances of the Palatinate 1687 (left) and Hesse-Darmstadt 1692 (right), demonstrating the literally matching titles of the provisions

Electorate of Palatinate	Landgraviate of Hesse-Darmstadt
Chur Fürstlicher Pfaltz Forst- und Wald- auch Weyd-Wercks und Fischerey-Ordnung 1687	Fürstliche Hessen-Darmstättische Forst- und Wald- auch Weydwercks- und Fischerey-Ordnung 1692
 	 
 	 

⁶⁶ Hessen-Darmstädtische Forst- und Wald-, auch Waidwerks- und Fischereiordnung, Darmstadt, 1692 April 1, HStAD, E 3 A Nr. 53/25.

⁶⁷ See Erläuterung und Begründung zur Herausgabe der Forst- und Wald-, auch Waidwerks- und Fischereiordnung für Hessen-Darmstadt, HStAD, E 3 A Nr. 42/8; the volume based on a survey that started in 1699 in: HStAD, E 3 A Nr. 2/41; Erneuerung der Hessen-Darmstädtischen Forst- und Wald-, auch Waidwerks- und Fischerei-Ordnung vom 1. Mai 1692, HStAD, E 3 A 53/25; Übermittlung der Kurmainzischen Wald-Forst-Jagd-Ordnung von 1718 an die Gernalorganisationskommission (transmission of the electoral ordinance for the district of Starkenburg of 1718), HStAD, E 14 E Nr. 258/3.

As the indexing with the classification schema evinces (see table 8), the ordinances’ provisions dealt with similar issues and subject matters. The ordinances of the Palatinate and Hesse-Darmstadt are somewhat more systematically structured, more detailed and with a stronger focus on the sorts of trees and related specific issues forest management. The ordinance of Mainz has a stronger focus on jurisdiction and penal powers, abolishing the respective competences of the cooperative forest courts and stressing the duties of the forest and district administration to prosecute and punish all wrongdoings within the limits the ordinances had established. But although the ordinances have variations in details, overall, the regulations show many similarities in general and are highly comparable as table 8 demonstrates

Table 8: comparison of subject matters of forest police ordinances: Electorate of Mainz 1692 (1666 & 1679), Electorate of Palatinate 1687 / Landgraviate of Hesse-Darmstadt 1692

Regulatory areas & subject matters police ordinances	Ordinance Mainz 1692	Ordinance Palatinate 1687 / Darmstadt 1692
1.2 dominion / governance	elector, territorial supremacy, boundaries, boundary stones, neighbouring territories, conflicts	elector, territorial supremacy, forest district, description, boundaries, boundary stones, neighbouring territories
1.2 corvée/feudal duties	hunting, transportation, battue	hunting, transportation, fences, battue
1.2 communal constitution	shepherds	communal forests, usufruct, shepherds
2.2 property protection / crime	wood theft, poaching, thievery, bribery, corruption, embezzlement, fraud	wood theft, thievery, bribery, corruption, poaching, illegal fishing
2.2 violent crimes	arson	arson
2.4 administration	forest administration, district administration, forest master, foresters, qualifications, recruitment, appointment, tasks, functions, reporting obligation, charges, fees, abuse of office, corruption, dismissal from office, jurisdiction, penal powers, mutual assistance	forest administration, forest master, foresters, tasks, functions, reporting obligation, charges, fees, abuse of office, corruption, dismissal from office, jurisdiction, penal powers, promulgation ordinance
2.4 court system / procedure / jurisdiction	cooperative forest courts, abolition, forest administration, district administration, jurisdiction, assemblies, sessions, penal powers, prosecution, arrest, interrogation, sentences, mutual assistance	forest administration, district administration, jurisdiction, sessions, penal powers
2.4 execution of punishments	fines, confiscation, corporal punishment, punitive damages, forest administration, district administration, assemblies, sessions, registers, payment, accounting, catalogue of penalties	fines, punitive damages, confiscation, corporal punishment, forest administration, district administration, assemblies, sessions, registers, payment, accounting
2.4 obligation to report / reprimand	forest master, foresters, local officers, subjects, people, agricultural offences, forestal offences, boundary stone crimes	forest master, foresters, local officers, agricultural offences, forestal offences, boundary stone crimes, shepherds, executioner
2.4 supervisory obligation	forest master, foresters, forest administration, local officers, boundaries, boundary stones, visitations, periodical	forest master, foresters, forest administration,
4.1 agricultural and forestal offences	boundary stone crime, agricultural offences, forestal offences, cutting logs/trunks, damaging trees, collecting wood, exceeding assigned quantities, selling wood, collecting wood, peeling bark, deforestation, raiding bird	boundary stone crimes, agricultural offences, forestal offences, cutting logs/trunks, damaging trees, collecting wood, selling wood, collecting wood, forest roads, damages, burning meadows, peeling bark, carrying firearms, collecting berries, raiding beehives

	nests, burning meadows, obligation to reprimand, catalogue of offences	
41 field/farms/estates	fruit trees	fields, gardens, clearings, fences, hedges
41 pasture/grazing	meadows, forest pasture, grazing, cattle, horses, goats, hog feeding, acorn, shepherds, burning, searing	meadows, burning, searing, cattle, goats, sheeps, shepherds, hog feeding
42 forest/forestry	forest utilization, permissions, assignation, usufruct, abolition, utilization periods, seasons, closing times, distribution, charges, fees, paupers, emergencies, sale of wood, export of wood, restrictions, forest administration, foresters, supervision, forest management, logging, lumbering, timber transport, drift, rafting, tree trunks, marking, measures, firewood, timber, timber usage, damages, brushwood, groves, collecting logs, collecting acorns, collecting dry wood, cutting logs/trunks, wildfire, grazing, charcoal burning, forest clearing, deforestation, maintenance, reforestation	forest administration, forest master, foresters, supervision, forest utilization, forest management, permissions, utilization periods, seasons, usufruct, abolition, distribution, charges, fees, paupers, emergencies, logging, lumbering, forest roads, transport, drift, rafting, sale of wood, export of wood, restrictions, cutting logs/trunks, wildfire, oaks, birches, ashes, pines, beeches, fruit trees, arcon, resin, bark, wild fruit, berries, hops, timber, timber usage, firewood, tree trunks, marking, measures, grazing, windfalls, groves, brushwood, charcoal burning, forest clearing, deforestation, maintenance, reforestation
42 hunting	administration, huntsmen, hunting master, battue, feudal duties, hunting seasons, permission, licenses, dogs, rabbits, small game, birds, venison, badgers, martens, wolves, traps, poaching, poachers, wildlife protection	administration, hunting master, battue, feudal duties, permission, wolves, foxes, rabbits, badgers, martens, venison, firearms, traps, poaching, poachers, dogs, prohibition of entry, skins, birds, catching birds, selling birds, wildlife protection, livestock protection
42 fishing	trouts, graylings, protection	permission, illegal fishing, fish stocks, protection, maintenance, fishes, crabs
42 mines		forests
45 craft and trade	wood supply, carpenters, charcoal burner, glassmakers, carters, rafter, miller, tanners, dyer, fire arms	wood supply, carpenters, rafter, wainwrights, charcoal burner, butcher
51 water	creeks, streams, fish waters, pollution, rafting, ducks	creeks, streams, fish waters, mills
5.4 building trade	houses, building regulations, building material, timber, stones, bricks	
5.4 fire prevention	forests, wildfire, firefighting, obligation, damages	forests, wildfire, supervision

Concurring regulations, first of all, concern the abolition of administrative and jurisdictional functions of local cooperative forest courts in favor of the governmental forest administration. The ordinances contain detailed regulations of a broad variety of administrative tasks and functions in forest management that extent to jurisdictional and penal powers. As a consequence, the forest administration received the functions to report, prosecute and punish all forestal and agricultural wrongdoings and offences originally held by the cooperative lower courts. However, the ordinances limited the jurisdictional and penal powers of the forest administration to the stipulated offences and penalties (fines and confiscation), whereas more serious crimes as arson and poaching were to be reported to the district administration or the government. Furthermore, the ordinances also criminalized malpractice, abuse of office and corruption

of forest officers, thus establishing a kind of administrative discipline that should ensure the integration of agricultural and forestal offices into the governmental administration of the territorial state.⁶⁸

The overall expansion of criminalization can be emphasized as a second common feature. Instead of the more general *Frevel* of the customary local statutes the ordinances define in many provisions the respective violations sometimes giving detailed descriptions of the specific forms of the commitment of the offences. This is accompanied by the expansion of punishment, and in the case of Mainz is manifesting in a comprehensive catalogue of offences and penalties listing 53 offences with the respective penalties. Although in comparison to the customary statutes the fines are considerably raised, the forms are still the same: agricultural and forestal wrongdoings are still to be punished with fines and confiscation.

An essential purpose of the ordinances was to realize the economic and fiscal interests of the state in agriculture and forestry and to protect the interest of rulers and nobility in hunting. However, in the context of *gute Policey* this also included supplying subjects, craft and trade with firewood and timber wood, the maintenance of woods and reforestation, the principle of sustainability and the protection of environment and waters. Furthermore, the rural society constituted not merely an object of *gute Policey* and governmental administration, but local actors, communities and courts were still to some extent participating in the practices of the rural normativity regime through functions and feudal duties that include supervision and reporting wrongdoings.

⁶⁸ On the function of police ordinances regarding the disciplining of the administration see Härter, *Verwaltung der „guten Policey“*, pp. 261-265.

3.3. Local ordinances in the Electorate of Mainz and the district Starkenburg in the eighteenth century

In the first half of the eighteenth century, the Electorates of Mainz and the Palatinate as well as the Landgraviate of Hesse-Darmstadt continued to issue comprehensive forest ordinances. They were heavily based on the normativity of the older ordinances, sometimes only slightly modifying and updating them. Only the Electorate of Mainz enacted largely renewed ordinances in 1729 and 1744 (see table 5); the first was a significantly shorter version which was issued with the intention that the subjects could better comprehend the essential provisions. After another renewed and improved version of 1744, the government dispensed with comprehensive ordinances and regulated forest matters (as well as agricultural and rural matters) in much briefer single-leaf laws, edicts, mandates, regulations or rescripts that enabled a more flexible, timely, direct and specific legislation. The Electoral Palatinate and Hesse-Darmstadt had already shifted their police legislation to these forms in the first half of the eighteenth century.

This also had an impact at the local level of the administrative district of Starkenburg. Since the comprehensive forest ordinance of 1692 could not cover all differing local customs and practices and specific local problems of ordering occurred, the government in Mainz issued specific local versions of forest police ordinances for the districts of Erfurt (1717), Starkenburg (1718) and Rheingau (1737).⁶⁹ The ordinance for Starkenburg (see image 3) was a mix of the most relevant provisions of the comprehensive forest ordinance of 1692, but adapted provisions and particularly damages, wrongdoings and punishments to local circumstances of acute disorder, scarcity of timber and lack of firewood allegedly caused by overexploitation. The ordinance included an annex with a detailed taxation of damages and a specification of 61 offences and related sanctions (fines and confiscations), thus intensifying the criminalization as well as the level of penalties on the local level of the rural district of Starkenburg.



Image 3: Erneuerte Churfürstlich-Mayntzische Special-Waldt-Forst-Jagdt-Tax-Buß- und Pfand-Ordnung Über Das Ober-Ambt Starckenburg De Anno 1718

⁶⁹ Des Hochwürdigsten Fürsten und Herrn ... Anselm Frantzen, des heil. Stuhls zu Mayntz Ertz-Bischoffen ... Wald-Forst-Jagdt-Wild-Weyd-Wercks- und Fischerey-Ordnung, Erffurth den 5. Junii 1717; RepPo 1 Kurmainz 514, Forstordnung, 02.10.1718; Jagdt- und Fischerey-Ordnung für das Land Rheingau, Mayntz, den 29. Jan. 1737.

However, one reason to enact a local ordinance for Starkenburg was that the district's subjects had complained about the forest ordinance of 1692, arguing with traditional norms and practices that reached back to the older customary statutes.⁷⁰ In this regard, the normativity regime of the customary statutes still played a role, caused conflicts and complaints and responses by the government who could not fully dispense with local police ordinances to adjust the normativity regime of the territorial police ordinances to the challenges and needs of the local rural society.

4. Conclusions: from customary statutes to police ordinances - changes in rural normativity regimes

The case study on the district and jurisdiction Starkenburg of the Electorate of Mainz showed that order and administration in local rural communities was based on two different normativity regimes:

- the regime of the customary statutes that was based on the normative knowledge of local actors and the practices of cooperative lower courts in which the lay people were creating the norms as customary statutes that should regulate the common use of land and forest, the jurisdiction of local cooperative courts and the punishment of wrongdoings;
- the regime of police ordinances adopted issues and regulations of customary normativity and added administrative knowledge of *gute Policey* as well as normativity influenced by a transterritorial context to establish the territorial supremacy of the rulers and the governmental administration of rural areas.

The comparative quantitative analysis and indexing with the taxonomy/classification schema of police ordinances yielded comparable results and general trends for the structure and development of both normativity regimes. The subject matters of the customary statutes of the district Starkenburg showed similarities with the provisions of police ordinances which regulated similar issues, conflicts and wrongdoings of rural society and thus adopted customary local normativity to some extent. However, the analysis also evinces the shift to *gute Policey*: the nature of customary local normativity changed from statutes, which local courts had agreed upon, to governmental ordinances. This long-term trend could be demonstrated for the chronological development of rural subject matters in the police legislation of the Electorate of Mainz, the Electorate of Palatinate and the Landgraviate of Hesse-Darmstadt and for the example of comprehensive forest police ordinances the three territorial states issued in the seventeenth century and which showed many similarities. With such ordinances the early modern state claimed to establish good order and *gute Policey* in agricultural, forestal and rural matters establishing a normativity regime that was based on the territorial supremacy over land, forest and jurisdiction. As a result, police ordinances did not only establish order and administration in rural societies but also substituted customary local normativity and cooperative local jurisdiction as well as common rights and practices in favour of governmental administration and the economic/fiscal interest of the early modern territorial state.

The most significant change police ordinances brought about was that local judicial communities could no longer act as 'legislators', who agreed upon local law, and as cooperative courts, which regulated the communitarian use of forest and land, local conflicts and corresponding wrongdoings. In this regard, the normativity regime of the police ordinances contributed to the centralization of justice and state

⁷⁰ HStAD, E 14 E Nr. 2/2, 1728-1730, Klage der Gemeinden Lorsch, Klein-Hausen, Bürstadt und Viernheim gegen die Forstordnung; BStAW, Mainzer Regierungsarchiv, Forst 045.

formation.⁷¹ Ordinances and authorities justified this shift of jurisdiction from local cooperative courts to governmental district and forest administration with typical arguments of early modern *gute Policey* such as disorder, abuse, decline, damages, non-compliance and offences, and therefore expanded regulation, criminalization and punishment. This included the further differentiation of the elements of offences and a more detailed description of the variations and forms of the commitment of wrongdoings.

However, from the customary statutes the police ordinances still kept '*Frevel und Buße*' as the basic concept of agricultural and forestal wrongdoings to be punished with fines and in some cases with confiscation. This was complemented by the adoption of practices of the customary local regime such as *Rüge und Rügepflicht* - the obligation to reprimand/report wrongdoings - the participation in supervision and control of rural spaces that were still based on feudal duties. Hence, some measures of the administrative practices of *gute Policey* and the enforcement of the provisions of the ordinances were still based on the organizational framework of the customary normativity regime: the local cooperative courts and judicial communities which were only completely abolished towards the end of the eighteenth century.⁷² Moreover, the police legislation could not fully dispense with local ordinances, and in the eighteenth century the Electorate of Mainz still issued local ordinances to flexibly respond to specific threats and developments of rural society. In this regard, the normativity regime of police ordinances was still characterized to some extent by hybridity and multinormativity to establish order in a local rural society.

⁷¹ Karin Nehlsen-von Stryk, *The Centralization of Justice and the Formation of a Judicial Hierarchy in the Early Modern State: The Principality of Hesse*, in: Antonio Padoa-Schioppa (ed.), *Legislation and justice*, Oxford 1997, pp. 131-157, online: <http://www.freidok.uni-freiburg.de/volltexte/2283>.

⁷² Härter, *Policey und Strafjustiz*, pp. 285-312.