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From Late Medieval City Employees to Early Modern Civil Servants. Employment Relationships as Reflected in the Frankfurt Contract Documents

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Abstract

Using the example of Frankfurt am Main, this article traces the development of the employment relationships of municipal employees between the last quarter of the 14th century and the early 19th century, on the basis of the collection of their contracts, the so-called service letters. The contents of this collection determine the study's chronological range. All sectors of the municipal service are covered. The study also highlights the limitations of the source material regarding the employment of women and socially marginalised groups.

Key aspects studied are fundamental contractual problems such as contract duration and termination, salary, risk distribution and disciplinary measures. Particular attention is paid to the resolution of conflicts between the city and its employees, including the problems of limitations on legal recourse, the settlement of conflicts before the highest courts of the Empire, and the methods and motives of consensual dispute resolution. The study also considers how the findings from Frankfurt relate to the situation in other cities of the Holy Roman Empire. Furthermore, it focuses on the historical context of the changes in contractual practices and clauses. Important events in the city's political and constitutional history, such as the attainment of the status of imperial city, the Reformation, and the 17th- and 18th-century conflicts between the city authorities and its citizens, had considerable influence on Frankfurt's administration and municipal service system.

Finally, the findings will be integrated into a number of early modern research narratives, such as the concept of *gute Policey*, social disciplining, and professionalisation, as well as more recent research questions of exchange fairness and of asymmetric dependence. The various analytical approaches together reveal a co-evolution of municipal administration and employment relationships that led to the emergence of a municipal civil service.

Keywords: history of labour law, service contract, municipal law, civil service law

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From Late Medieval City Employees to Early Modern Civil Servants. Employment Relationships as Reflected in the Frankfurt Contract Documents

That the topic of work has in recent years once again become a focus of legal historical research corresponds to a more general revival of scholarly interest in the history of (primarily dependent) labour, not only but especially in Germany.[1] Although a number of good older – and in some cases more recent – studies exist,[2] the law of labour is comparatively poorly researched, at least for the pre-modern period. Problems regarding the availability of primary sources as well as theoretical objections caused a considerable *Wahrnehmungsbarriere*, a perception barrier.[3] Researchers' preconceived assumptions about the beginning of labour law prevent an engagement with the pre-modern era. However, an important segment of pre-modern employment law, for which sufficient source material is extant, is the public service, particularly the employment relationships of municipal employees. These were based on contracts that, from a modern perspective, can only be categorised as private law. Many cities collected these contractual documents, the *Dienstbriefe* (»service letters«). These originally set out the employee's stipulated rights and obligations in the form of a handwritten letter by the would-be employee to his employer.[4] As the documents also formed the basis for the negotiation of future contracts, their format became largely set over time. The service letters often specified that they were not to be handed back to the employee, which made it possible for municipal employers to compile more or less complete collections. These service letters have hardly been studied, with the exception of those relating to lawyers. Particularly in Germany, there is yet another perception barrier obstructing the study of the pre-modern legal history of public employees due to the existence of an ideal type of professional civil service deriving from the perspective of modern law. German scholars conventionally draw a sharp distinction between civil service law with its so-called traditional principles of the professional civil service (»hergebrachte Grundsätze des Berufsbeamtentums«) and labour law and its development. However, the principles of the professional civil service are essentially a product of the 19th century and have at best limited historical predecessors.[5] The following discussion is essentially based on the in-depth analysis of a large collection of municipal employees' service letters, namely the collection of the free imperial city of Frankfurt am Main, which covers a long time period from the last quarter of the 14th century to the early 19th century.[6] The analysis of this collection enables us to trace how the local employment relationships changed up to the 19th century to such an extent that the transition to a modern municipal civil service becomes tangible as the logical next step.

The long-term perspective for which Frankfurt's collection of service letters provides evidence is fruitful both in terms of legal history and general history, because it conveys and deepens insights in very many different areas. The letters in the collection reflect changes in the municipal administration, its expansion and professionalisation, the increase in the qualification levels of employees,

1 IKG »Arbeit und Lebenslauf in globalgeschichtlicher Perspektive« (re:work, Berlin); Bonn Center for Dependency and Slavery Studies (since 2019); German Labour History Association (since 2017); specifically legal-historical: AK Initiative Arbeitsrechtsgeschichte (since 2015).

2 Schröder (1984); Steindl (Hg.) (1984); Castel (1995); Steinfeld (1991); Keiser (2013).

3 On the formation of perception barriers, e. g. through the destruction of normative commemorative places, Rückert (2018) 514 f.

4 In German, it is disputed whether those who worked for those employed by a city should be called *Bedienstete* or *Beamte*. Every choice of words is also a definition of content. The term »employees« is used in the following to avoid the misconceptions associated with the term »civil servant«. The latter term denotes a very specific employment relationship in German law that only emerged in the course of the 19th century. Similar problems exist with regard to the remuneration of employees, referred to in the following mainly as their »salary«.

5 For an overview, see Krause (2008).

6 Pierson (2020).

the expansion of municipal tasks with the emergence of completely new fields of activity, and finally even the effects of technical progress on the staff (I.). At the same time, the service letters show how people experimented with different solutions to all questions of employment law, how certain solutions to these problems evolved to become dominant, but also what consequences some of them could have and how certain problems shifted over the course of the period (II.). The comparison of Frankfurt's contractual practices with those of other cities shows that, although, at the micro-historical level, developments in Frankfurt's constitutional history shaped both the composition and remuneration of the city's personnel, they did not regularly affect the solutions of the core problems of contract law. The evidence shows that the cities of the Holy Roman Empire formed a supra-regional labour market with not inconsiderable movement of sought-after employees between different public employers. The legal comparison of different cities' contractual documents reveals that these were essentially similar, sharing a common spectrum of variations that could also occur inside one city's municipal service (III.). The records of a number of cases tried before the highest courts of the Holy Roman Empire (the *Reichshofrat* und *Reichskammergericht*) show that this was both true for how the employees of cities or territorial lords proceeded in disputes with their employers and for how the latter defended themselves (IV.). By looking at these developments as a whole, we can trace the emergence of an early modern municipal civil service that clearly differed fundamentally in key legal, social, and conceptual aspects from the medieval city's employees (V.).

I. The service letters as a mirror of local government

1. Municipal employees in Frankfurt am Main

In order to be able to act at all, a city, like any other corporation, must be represented by natural persons. These persons may have different types of relationship with the city. Late medieval and early modern Frankfurt was ruled by a city council whose members were co-opted and provided the administrative leadership for the various administrative offices. Various positions representing the city, above all those involved in the execution of the city's sovereign powers in the area of commerce, were also not exercised within the framework of an employment relationship with a written contract but, for example, conferred as a public office. Nevertheless, even the lease of offices (*Ämterpacht, Admodiation*) only played a subordinate role in Frankfurt. The majority and core of the city's administrative activities was carried out by municipal employees who had signed a service letter. The existence of a letter of employment has traditionally been seen by scholars of German legal history as the main criterion that distinguished a subordinated civil employee (*Bediensteter*) from a higher civil servant (*Beamter*) who signed a service letter.[7] However, this distinction is inappropriate because civil servants in the modern sense did not exist. Oath books and so-called *Rollen*, as well as special *Policeyordnungen* (»police ordinances« that set standards of good public order) provide information on those holders of municipal offices who did not have service letters.[8]

As the city was dependent on its employees to carry out its tasks, the service letters and other documents governing their duties also provide information about the scope and intensity of the city's administrative activities at the time. The contents of the Frankfurt service letters both reacted to specific events in the city's history and reflect general developments that were part of larger historical contexts. Even technological developments are reflected in the creation, abolition, or changing importance of certain offices, as well as in the contents of the relevant service contracts. This is particularly obvious in the military sector. Around 1600, the city replaced its small band of mounted mercenaries armed with crossbows or lances, mostly descended from knightly families, with a large military garrison with completely different armament. The changing requirements of weapons production also led to the creation of new municipal positions, for example for gunsmiths. Other technological changes also had a significant

7 Schubert (1962) 55 f.; more generally also Dilcher (1999) 780.

8 Rolls and ordinances are listed in Halbleib / Worgitzki (2004).

impact: in the 18th century, for example, the introduction of street lighting under French influence required the establishment of a new branch of administration, while the introduction of obstetrical forceps restructured the urban system for birth care, as midwives were placed under the supervision of a university-educated *accoucheur*.

a) The Frankfurt collection of service letters

The oldest service letters in the Frankfurt collection date to the 1370s. Not a single letter was written or signed by a woman. Initially, the types of positions for which the city had formal service letters drawn up were limited. The earliest letters often concern posts in the city's chancellery where, with the growth of correspondence, more and more positions with differentiated tasks were created. The letters reveal that the chancellery employed jurists in higher and by the 18th century, if not earlier, also in middling positions. In the judicial system, service as an intercessor and procurator was rather precarious. The first city advocate known to us, whose service letter dates to 1377, was still a *licentiatus* in canon law. In 1465, this position was taken by a *juris utriusque doctor*.[9] From around 1700, the position of registrar began to be held by university-educated lawyers, some of whom also had doctorates. External security was provided by a small band of mercenaries, whose service letters make up by far the largest part of the collection. In the area of internal security, however, though judges did sign service letters, there were also occupations associated with social stigma. Those who carried them out were either denied a formal service letter (such as executioners, knackers, or the bailiffs for the poor [*Bettelvögte*]) or, in the case of tower watchmen, probably only occasionally managed to gain a contractual document.[10] Before 1650, craftsmen are also among the city employees whose service letters are found most frequently in the Frankfurt collection.[11] They usually worked for the city only some of the time, and also carried out private work. Indeed, in many cases the primary reason for employing them was not the work they did for the city, but to ensure the availability of their products or services for citizens. When city employees competed with craft guilds, tensions could arise. Military craftsmen were a special case, as the town not only demanded their products, especially firearms, but also required them to perform military duty, at least to provide instruction, maintenance and minor repairs of their products during any operation. While there is a continuous transmission of contracts for some individual occupations or professions, especially city doctors, the supervision of the economy was rarely the subject of service contracts. Thus the rights and duties of *Unterkäufer* (compulsory brokers of various goods), customs officers and others were defined solely by police ordinances and service oaths.

b) Frankfurt as a free imperial city

The municipal service as a whole as well as a number of individual city employees played a significant role in the city's constitutional history. Regardless of the difficulties of defining the status, Frankfurt's elevation to the status of a free imperial city is generally associated with the acquisition of the *Reichsschultheißenamt* in 1372/1376.[12] This led to an expansion of the municipal staff, because not only was the *Reichsschultheiß* bound to the city with a letter of service, but the associated court staff was subsequently also transferred to the municipal service, if only very gradually in some cases. Among the first court staff transferred were the so-called »judges« (*Richter*), whose name disguises the fact that their function was mostly that of a court usher or town bailiff.[13] By contrast, court registrars (*Gerichtskanzlisten*) continued to be employed on a private basis by the court clerks – who wrote Frankfurt's service letters from the late 15th century onwards – until the so-called Constitutional Dispute in the first third of the 18th century. The independent hiring, remuneration and supervision of auxiliary staff was often an essential part of the official duties of the respective incumbent. This applied, for example, to the rector of the municipal Latin school, who had to recruit the teachers, the hospital master, who did the same with hospital

9 For a detailed discussion of the advocates, see Pierson (2020) 247–265.

10 On this sector, see Pierson (2020) 280–321.

11 Pierson (2020) 159–198.

12 Köbler (Hg.) (1984) XIV; Bund (1991) 88 ff. The *Reichsschultheiß* was originally the emperor's local deputy and the head of the town with military authority. Later he chaired the court of lay assessors (*Schöffengericht*) and the council meetings.

13 Meinhardt (1957) 36–38.

staff, or the cellarer, who employed the house servants who worked at the Frankfurt city hall, known as the »Römer«. In certain cases, married status or, in the case of widowerhood, remarriage, were required in order for the employee's wife to be able to carry out particular duties assigned to her.[14] Also in 1372/76, the town acquired the so-called *Reichsforst* (parts of the imperial forest »Dreieich«), for the cultivation of which it henceforth employed foresters, for whom, however, contractual documents have survived only very sporadically.

c) The expansion of the city's tasks and the Reformation

The city's take-over of – often previously ecclesiastical – tasks in the areas of health, welfare and education, which accelerated during the Reformation, led to a considerable increase in the number of its staff. The administration of the alms box (»Gemeiner Kasten«) set up in 1531 alone required over a dozen staff – scribes, interest collectors (*Zinsaufheber*), preachers (*Prädikanten*), a *Kornmötter* who had to measure and carry the incoming fruit, bakers, even a separate »box lawyer« (*Kastenadvokat*), and others.[15] The same was true for the hospital. However, information about the employment relationships of such specialised administrative branches is mostly not extant; for example, the collection contains the employment contracts of only some of the hospital masters. In contrast to these permanent additions to the municipal administration, Frankfurt employed city pharmacists only for a brief period. Also in the context of the Reformation, the municipal Latin school was opened in 1520 by Wilhelm Nesen, the well-known friend and pupil of Erasmus. Confessional disputes concerning the public activities of various rectors and the religious education of the pupils were a key focus of the regulations regarding their service during the whole period of investigation. Henricus Petreius, rector of the Latin school from 1576, even had to move to Göttingen after being accused of spreading false doctrines.[16] Almost all the service letters for the municipal Latin school which are preserved concern the rectors. Another addition to the city staff in the educational area was a librarian for the municipal library. Whereas the latter was established in 1668, however, it seems that its first librarian was employed only in 1691.

d) The Citizens' Uprising and the Constitutional Dispute

The key turning points for Frankfurt's system of municipal employees were the major constitutional conflicts of the 17th and 18th centuries, the Citizens' Uprising (1612–1616)[17] and, even more important, the Constitutional Dispute (1705–1732).[18] Key demands of the Citizens' Uprising (known often as the Fettmilch Uprising, after one of its leaders, the radical gingerbread baker Vinzenz Fettmilch), included the public disclosure of the city's imperial privileges in order to enable the citizens to secure their rights under them; administrative reforms, in particular an audit of the municipal finances; an end to the aldermen's jurisdiction, which was perceived as partisan and arbitrary; and also a reform of the foreclosure law. Emperor Matthias appointed an imperial commission to mediate between the parties. With its help, the city authorities and the citizens negotiated a compromise at the turn of 1612/1613, the »Citizens' Treaty« (*Bürgervertrag*), which was confirmed by the emperor. It included, for example, preferential treatment of citizens' applications to join the new garrison, as well as an upper limit for the *Wachtgeld*, the tax that paid for the soldiers' salaries. In 1614, a »visitation ordinance« (*Visitationsordnung*), an agreement which the council and the citizens promised to observe in writing, set the salaries of the city employees, but the city did no adhere to these after the imperial commission's departure.[19] City employees were now also required to fulfil certain reporting obligations regarding their accounts. However, key problems of contract law, such as risk assumption or dismissal, were not affected by these measures, as the citizens' interests lay in limiting the municipal administration's costs and increasing its accountability, not in creating a uniform public service law.

However, the conflict continued to smoulder. In particular, there were daily attacks on Jews, whose

14 Pierson (2020) 364, 397.
15 Still instructive on poor relief is Jütte (1984). For a summary on the alms box staff, see Pierson (2020) 152–155.
16 Pierson (2020) 404.
17 On this, see Meyn (1980).
18 Still indispensable is the classic study by Hohenemser (1920).
19 It also lacked an imperial confirmation. For further detail, see Hohenemser (1920) 67, 265.

complete expulsion was demanded by the guilds.[20] On 27 November 1614, the uprising, in the course of which Fettmilch and his followers looted the »Jewish lane« (*Judengasse*), was crushed when the alderman Johann Martin Baur arrested the ringleaders. Even 150 years later, Goethe was still able to contemplate the impaled head of Fettmilch, as he reports in his work »Dichtung und Wahrheit«. Although the Citizens' Treaty remained in force on paper, it was largely ignored by the city and not implemented. Thus, the protocolists whom the city had agreed to hire for the so-called Mayor's Audiences, an inferior court, were never hired.

Such violations of the Citizens' Treaty and the imperial Visitation Ordinance, in addition to tax increases and the continued non-disclosure of the city's imperial privileges, were among the triggers of the so-called Frankfurt Constitutional Dispute.[21] In 1705, when asked to pay homage to the emperor-elect, Joseph I., the citizens sought confirmation of the privileges and in particular – against the will of the Council – of the Citizens' Treaty.[22] After a long dispute, another imperial commission was appointed in 1712. On examining the city's finances in 1719, it found the city's budget to have been damaged by arbitrary salary increases and extra-ordinary salary components paid to city employees.[23] For example, in the space of a century, the emoluments for council deputies and members of the accounting department (*Rechnei*) had increased almost seventy-fold.[24] Free access to employment had been undermined by kinship networks and a system of corruption in which even minor jobs could only be obtained through bribery.[25] The commission therefore examined all aspects of the city's employment system and initiated far-reaching changes to it. For example, variable income components, such as percentages of fees or fines, were largely abolished in favour of a fixed salary to be determined by the imperial administration in Vienna. Free salary negotiations between employer and employee were thus no longer possible. The city council was also no longer able to choose its staff freely, but had to employ a lottery procedure, known as *Kugelung* after the golden ball used in its draw. Some areas of municipal administration were completely abolished, and the city was instructed to award single work contracts instead of hiring city craftsmen in order to save costs. Other city employees were replaced by the farming out of offices (*Admodiatur*). Disciplinary measures were also strengthened. The Constitutional Conflict formally ended only in 1732, with the last imperial resolutions.[26] Petitions by municipal officials to revise decisions or eliminate ambiguities kept the emperor and the *Reichshofrat* busy for decades. Such attempts by the city's employees met with some success.[27]

However, the connection between these constitutional conflicts and municipal personnel could be much more direct and involve individual employees who had become hate figures amongst the city's population. One of the factors that sparked the Citizens' Uprising was the extreme unpopularity of certain officials. The citizens demanded the dismissal of the »eternal« town clerk Laurentius Pyrander, who as the *éminence grise* behind the mayors, directed the city's fate. The population also called for the removal of a city advocate who was considered to be corrupt, as well as of another town clerk (*Ratsschreiber*).[28] These conflicts draw our attention to the social position of officials and their roles in urban society.

2. *The status of the city's employees*

The role of city employees cannot be separated from the question of the relationship between their work for the city, on the one hand, and for private customers, on the other. Depending on their activities, they interacted with the citizens in different ways, so that their social position and reputation also varied.

a) City service and private work

The regulation of secondary and private employment took place very differently from one individual to another. Although bans on secondary employment were common, occurring in about one third of the contracts examined, private work

20 Meyn (1980) 48.
21 Duchhardt (1991) 263 f.
22 For further discussion, see also Soliday (1974) 13–32.
23 Pierson (2020) 99.
24 Hohenemser (1920) 266.
25 Hohenemser (1920) 190 f.
26 The resolutions and most important sources can be found in printed form in Müller (1776–1779).
27 Pierson (2020) 107 ff.
28 Pierson (2020) 92 f.

was often permitted or even required to cover living expenses. In cases where the city entered into an employment relationship with a craftsman in order to guarantee the availability of his product or services to its inhabitants, the assumption of private work was even the employment's main purpose. In terms of secondary employment the Frankfurt service letter collection shows that – contrary to established scholarly opinion – it was possible for city employees to work for potentially competing public authorities. In such cases, the parties concerned stipulated numerous conditions and derogations, but there was no absolute ban on an employee working in the service of more than one municipality or territory. All in all, prohibitions of secondary employment decreased sharply from the second half of the 16th century onwards, but were partly replaced by other regulations (such as attendance requirements or exit bans).[29]

Regarding the relationship between work for the city and private activity, a distinction must be made between different occupations and professions. The work of employees involved in carrying out the sovereign tasks of the city, for example in the judicial system, had no private equivalent. In other areas, such as the provision of elementary services and necessities, the city hired staff also to make these available to its citizens, as mentioned above. Service letters and police ordinances often specified maximum prices (*Preistaxen*) – for anything from a urine examination by the city doctor to the different shapes and sizes of brickmakers' products. In some cases where the city purchased an employee's manufactured products, its own requirements were not sufficient to fully occupy his work capacity and ensure his livelihood. Part of the production was then released on the open market. A powder- and saltpetre-maker, for example, was supposed to cover the city's needs first and required to produce a certain minimum amount, though the city was not obliged to purchase the prescribed quantity. He was then allowed to sell any surplus production without any further restrictions.[30] Over the course of the centuries, Frankfurt also experimented with monopolies, rights of first refusal and sales guarantees. Service letters for military craftsmen contained special prohibition clauses regarding export to the city's enemies.

In professions where a monopoly position was unthinkable due to the amount of private demand, municipal employees competed with other local suppliers. This could lead to bitter disputes, for example if members of a guild thought that city employees enjoyed unfair competitive advantages. The latter could consist in the city employees being able to operate outside the guilds, leading to vehement demands of compulsory guild membership for them.[31] Such conflicts were exacerbated when city employees were perceived as exercising a supervisory function on behalf of the city council. Municipal employees were therefore not necessarily held in high esteem by their colleagues not working in city service. In general, the social standing of municipal employees varied greatly depending on their occupation. Generalisations should therefore be avoided.

b) The inhabitants' perception of city employees

City service did not necessarily enjoy high social standing; indeed, it initially provided only a minimum of social capital.[32] This is related to the fact that citizens attributed interventions, such as the collection of taxes, to the executive officer personally, because they did not distinguish between office and person. This was not entirely unfounded, because the city's officers drew part – and sometimes even the majority – of their income from the fees collected, and accordingly tried to generate the highest possible revenues. The older historiography talks here of a »commercial trait« (»kaufmännischer Zug«) of early civil service.[33] At that time, the city's staff generated income for Frankfurt rather than being a drain on the city's resources, as it would become later (I.1.c)). Service letters from the 18th century reacted with strict accounting rules. The service letter for scribes who were paid by the page, for example, restricted the number of lines per page in order to prevent the set prices being circumvented. As a result of the Constitutional Dispute, burgher supervsiors (*bürgerliche Gegenschreiber*) had to audit the financial conduct

29 On secondary employment, see Pierson (2020) 479–485, on double service bans also 363, 427.
30 Pierson (2020) 180 ff.
31 Example at Pierson (2020) 139.
32 Levinson (2004) 177.
33 For a classic description, see Bothe (1906) 10.

and charging practices of municipal officials. Probably the most controversial point in this regard was the percentage of fines and penalties retained by the *Reichsschultheiß* and the police and enforcement personnel; a practice that continued in the city despite its prohibition in the Visitation Ordinance of 1614.

Contact with socially marginalised people also reduced the social capital of those working in the pauper police (*Armenpolizei*). Particularly bailiffs for the poor (*Bettelvögte*) were accused of taking bribes and fraternisation, or alternatively of senseless brutality,[34] so that in the search for candidates one had to make concessions regarding their reputation from the outset. Around 1700, the so-called »supreme judges« (*oberste Richter*), bailiffs with penal competence that was double that of ordinary judges, were considered by their contemporaries to be »for the most part unworthy licentious sottish rogues« (»meistentheils nichtswürdige liederliche versoffene Vögel«).[35] Frankfurt craftsmen at the time even refused to accept judges' sons as apprentices.[36] The *oberste Richter* also acted as intermediary between the city council and the executioner or torturer, as the councillors refused direct contact with the latter.[37]

The city also employed people who could not (any longer) earn their living independently, not least as an alternative to maintaining them through the poor fund. However, it only supported those who had fallen on hard times through no fault of their own,[38] for example by having lost their workshop or shop in a fire. For this group of people, gaining income from city service was more honourable than receiving alms. In general, the attractiveness of city employment increased over the course of the period covered by the Frankfurt service letter collection, as access to municipal employment became more difficult and increasingly restricted to citizens of Frankfurt. As already mentioned, bribes were paid even for inferior positions.[39] This also had to do with the (by no means certain, but nevertheless existing) prospect of a career in office. In Frankfurt alone, hundreds of surviving petitions to the city council, requesting admission into the city service or a promotion to a better position, bear witness to this. The opportunities offered by a career as a municipal officer certainly contributed to the fact that city employees were relatively willing to submit themselves to the discipline of the city and, in turn, spread it to the outside world.[40] Of course, their part in implementing social discipline did little to improve their standing among the public.

Whereas their actual social capital could thus differ widely, in the city's order of social hierarchy (*Ständesystem*), highly qualified city personnel – mainly advocates or physicians – enjoyed a slight rank advantage over their colleagues working for private clients. In such cases, gaining a city office could very well be a desirable career goal.

c) A homogeneous group?

The city of Frankfurt's employees thus obviously did not form a homogeneous group. Given the diversity of occupations, social status and income, a common sense of belonging to a distinct group as »city officials« seems inconceivable. This is also confirmed by a further look at Frankfurt's hierarchy of legal and honorific strata (*Ständeordnung*). In the 17th and 18th centuries, this was a five-tiered system, though this changed several times.[41] Nevertheless, it is obvious that municipal officials and employees were found at all levels, from the *Reichsschultheiß* in the top *Stand* down to the carters in the lowest. Some city employees, such as soldiers, also resisted classification.[42]

Given the extreme heterogeneity of the body of city employees, the question arises as to the impact of these differences in status on contract law. Did some officials' higher social status lead to privileges that were reflected in their service letters?

II. Frankfurt's evolving solutions to key problems of contract law

The question of contractual privileges based on social status must be answered in the negative. However, municipal employees of exceptional importance were able to obtain some particularly valuable privileges in the context of contract extensions. Because older contracts were taken as

34 Jütte (1984) 117; Eibach (2003) 82.
35 Quoted after Pierson (2020) 284.
36 Eibach (2003) 83.
37 Meinhardt (1957) 36.
38 Ruppersberg (1932/1982) 69.
39 For examples from the late 17th century, see Hohenemser (1920) 190 f.
40 See Weber (1998) 424.
41 For a summary, including source references, see Pierson (2020) 130 f.
42 See also Eibach (2003) 51.

models for subsequent documents, such individually negotiated privileges could be transmitted to later holders of the same office, giving the appearance that the privilege was associated with the office. In times of shortages of suitable candidates for city employment, prominent or long-serving representatives of their profession were – at least in some sectors – able to negotiate special conditions, like today's sports or film stars. When the pool of qualified personnel grew, the chances of asserting one's demands in contract negotiations with the city declined. Generally, the evidence of the Frankfurt service letters suggests that haggling over contract duration and salaries, as well as some other benefits, could be worth the potential employee's while. By contrast, the city very rarely made concessions regarding risk assumption or the right to terminate the contract. The negotiations had no apparent influence on the rules of discipline.

1. Contract duration and bindingness

The duration of the contract could be freely negotiated,[43] and the Frankfurt collection of service letters shows that this freedom was exploited to the full, with terms ranging from two months to 16 years. However, an analysis of changes in contract duration over the period covered by the Frankfurt service letters reveals continuous development in the direction of first longer and then unlimited contract periods. In the collection's oldest part, one- to three-year fixed-term contracts were the most common. After 1450, most contracts ran for three to six years, extending to 10 years in the first half of the 16th century. Moreover, the percentage of contracts without a fixed term steadily increased. Even the clause explicitly declaring a contract valid for the employee's lifetime fell out of use, and by the 18th century, contract term clauses had virtually disappeared from the service letters.

This finding requires explanation. It is above all related to the function of the fixed terms for contracts. Contrary to the assumption of earlier scholars, the goal of limiting the periods of contracts was not to protect the city. The city's right of termination was sufficient for this purpose. In fact, unilateral rights of termination by the employer are found in a significantly higher number of fixed-term contracts than in those without a contract term clause. The city was much more interested in continuity of office and the preservation of practical knowledge, possibly also of secrecy. Nevertheless, the connection between contract termination and contract duration is important. Whereas the city was usually entitled to terminate the contract unilaterally, the term limit secured the only contractual way for employees to leave the city's service. Furthermore, negotiating the conditions for a contract's extension after its term had ended was the only opportunity for existing city employees to exert pressure and gain more favourable conditions or salary increases. Indeed, examples of comparable employment relationships running concurrently prove that the salaries of those who managed to negotiate shorter contract periods rose faster. The chances for a successful negotiation did not depend on the employee's social status but on market power and individual negotiating skills, irrespective of whether the contracting party was a skilled craftsman, a university-educated scholar or a battle-tested mercenary leader.

The fact that contract periods tended to lengthen until about the mid-16th century, but that thereafter duration clauses disappeared altogether, can be explained by a number of factors. First, there was a shift in negotiating power in favour of the city. When the supply of qualified workers in Frankfurt increased in the early modern era – among other things due to the increasing number of university graduates and literacy – to such an extent that the city could largely limit itself to recruiting its personnel from its own citizens, it was able to demand longer terms of employment. Second, there was also a change in the city employees' interests due to the gradual *de facto* renunciation by the city of age-related dismissal. Open-ended contracts therefore constituted insurance against the risk of unemployment and poverty in old age. If an employee wanted to terminate a contract, he could petition the council in the form of a »supplication« (*Ratssupplikation*). The city often granted such requests subject to certain conditions, such as the provision of a suitable succes-

43 On the problem of contract conclusion and contract duration, see Pierson (2020) 433–446.

sor. Finally, as a result of the Constitutional Dispute, salary levels were set by the imperial administration in Vienna, which meant that both the city and its employees lost the possibility of negotiating remuneration. As a result, the interest in recurring negotiations disappeared.

2. *Types of remuneration*

Before the imperial intervention in the early 18th century, the remuneration of city employees was entirely unregulated. As a result, even the members of the imperial visitation commissions struggled to calculate city employees' total salary by unravelling the mixture of their various income components.[44] However, from the perspective of the development of employment contracts, some interesting observations can be made.

The city set the fees for individual administrative actions. Even for the execution of a banishment, the person being banished had to pay a fee. However, the city did not establish set rates of its employees' salaries, though it could also have changed those if necessary. As a result, before the Constitutional Dispute the city and its potential employee could in principle negotiate payment or the distribution of fee income freely. After all, cash accounting ensured transparency in the fees practice. Charges in kind were the exception in most officials' fee income, although for example the salt measurer received part of the salt levy he collected for the city.[45] Where city craftsmen competed on the free market, the service letters generally tied them to the prices for goods and services as set by the police ordinances, though in a few exceptional cases, contractual clauses explicitly allowed the employee to violate city price regulations.

Until the late 16th century, the basic salary of many services fluctuated strongly, and could even temporarily cease altogether. In such cases, fees (*Akzidentien*) had to make up the vast majority of the employee's income. The modes of payment also varied widely. Salaries could be paid weekly, four-weekly, quarterly or annually, and (by special agreement) also partly in advance. Much of this was a matter for negotiation. In the *Medicinalia* section of the Frankfurt city archive, one can even trace negotiations on relocation allowances for 15th-century city doctors.[46]

In the later Middle Ages, the idea of the self-sustainability of the office, i. e. that an office holder should finance himself largely from the income he generated in fees or fines, spoke against a fixed salary. At the time, a set payment for periods of time worked (mostly per day) was therefore more of a stopgap measure[47] used where the nature of the work did not allow for anything else. However, pay by day differed significantly from salaries for longer time periods, as only the actual days worked were taken into account. Because of the differences in the days' length, the rate of pay for one day's work even varied according to the season. Payment for fixed periods of working time also occurred in various combinations with piecework wages. City employees paid in this way had unpredictable annual incomes, as became evident during the imperial commission's investigations during the Constitutional Dispute. During the period studied, the employees were unable to achieve lasting agreements with the city that would secure their income. Only very few contracts contained sales guarantees, granted a monopoly position or promised a minimum annual income that the city would make up in case of a shortfall.

In addition to the different modes of monetary payment, the remuneration of city employees could also include various benefits in kind and other privileges. As already indicated above, the latter were mostly the result of an individual negotiation process, but could subsequently become established for holders of the same office. They thus differed in detail depending on the office. Examples included a share of certain turnover taxes or property tax (*Bede*), or exemptions from guard duty and/or specific taxes. Mercenary captains, advocates, the rectors of the municipal school, doctors and the *Schultheiß* benefited from these to varying degrees. It is possible that over time, such arrangements may have come to be understood as privileges associated with member-

44 On counter-performance and income components, see Pierson (2020) 485–509.

45 Bücher (1915) 50.

46 Pierson (2020) 35. The documents are now listed in the database of the Institut für Stadtgeschichte Frankfurt am Main (http://www.ifaust.de/isg/dok_start.fau?prj=ifs&dm=isg).

47 Bücher (1915) 50.

ship of a certain social stratum (*Stand*) in the city hierarchy.

For employees, receiving some of their remuneration in kind meant a stabilisation of income. On the one hand, it offered protection against inflation, but, on the other hand, it also precluded the generation of any additional profits in the event of a shortage of money. Remuneration in kind usually consisted of goods for the employees' own use (grain, firewood etc.), so that the later problems associated with *Truck*, i. e. the payment of workers with their own products in order to pass on entrepreneurial risk, did not arise. The provision of official residences, another common benefit in kind, could for employees also result in the less desirable effect of binding them to their workplace. Many of the accommodations associated with city service were located near or even at the workplace, and were accompanied by the requirement for uninterrupted presence there. In some contracts, we also find employees being granted access to workshops for their private work, and occasionally also land to cultivate.

Some importance was also attached to the distribution of »servant cloth« (*Dienertuch*). It is to be distinguished from official attire and insignia, which were not part of the contracts. The analysis of the Frankfurt service letters clearly shows that cloth distribution functioned as remuneration. In the earliest letters, cloth quantity and quality already differed according to office, but in the 15th century, the distribution of actual cloth was replaced by monetary payments that were even more highly differentiated. The assumption of additional tasks could be rewarded with an increase in the quantity of cloth (or monetary equivalent) due to the employee.

Already in the period before 1500, more than 60% of the service letters contained a regular basic salary, rising to 85% after 1700. These figures do not necessarily reflect the basic salary's significance for an employee's overall income, which was much lower at the beginning of the period. Statistically, the growing importance of basic salaries can be seen from the increase in the share of contracts that did not mention any other sources of monetary income in the early modern period. The share of such contracts rose from less than a quarter to a good 40% during the 17th and 18th centuries and finally, after the end of the Constitutional Dispute, reached almost two thirds. Whereas before 1700, 94% of service letters contained benefits in kind on top of the basic salary, after the end of the Constitutional Dispute and the transfer of competence regarding salaries to the imperial administration in Vienna, the vast majority did not. An exception to this, however, was the provision of official residences, which saw no decline. The close association between workplace and residence did not change. As a result of the Constitutional Dispute, Frankfurt moved to a fixed salary system much earlier than other territories.

3. *Clauses for the bearing of risk and disruptions in contract performance*

Contractual rules are intended to anticipate possible future events and, if possible, to provide solutions for the consequences and problems that might arise from such events. This is particularly important in the area of the distribution of possible risks and threats of changes to the agreed mutuality of obligation, and in the case of disruptions to contract performance in general, especially in the absence of legislation on these issues. The clauses relating to these matters in the Frankfurt service letters are on the whole rudimentary, but nevertheless show a high degree of variation and complexity as they obviously were dependent on and (directly or indirectly) affected by other contractual provisions.[48] In practice, however, Frankfurt city council acted much more leniently than its employment contracts stipulated, particular if it was able to obtain some kind of compensatory benefit. The latter often took the form of a more binding commitment of the employee to city service, such as a lifetime commitment with an explicit waiver of the possibility of termination. Employees undertook such commitments in return for study grants, for example. In another case, the city compensated an employee for the loss of his horse, although contractually the employee bore all of the risk.

48 On default and risk distribution, see Pierson (2020) 497–509, and 538–546 on the specific risk of age-related invalidity.

The employee, whose contract obliged him to be mounted, was in a predicament, because such contracts regularly stipulated the loss of any salary claims after one month without a horse. In cases where the city provided the horse, this problem did not arise without the employee's fault. The question of who was to provide materials or even animals therefore clearly affected which contractual solution to the problem of accidental damage was chosen.

a) Basic rule of risk bearing

Where the Frankfurt service letters contain clauses on risk bearing and liability, there is a pronounced tendency to place a one-sided burden on the employee. Up to the end of the 17th century, a set phrase according to which the employee was supposed to work at his »own [risk regarding] damage and loss« (»auf seinen Schaden und Verlust«) was regularly included. Mostly, it was either used in relation to specific potential dangers, usually to official journeys to be undertaken, or hidden in the provisions on the employee's remuneration, specifically the stipulation that the city owed no more than the amount of the agreed-upon salary »for all costs, damage, work and loss«. The employee's liability was generally conceived of very broadly and commonly included comprehensive liability for any damage caused by his assistants. However, this changed when the rights of recruitment, dismissal and discipline of assistants were transferred to the city as a result of the successive incorporation of subordinate services into the municipal administration.

Apart from the problem of sick pay and pensions, to be discussed below, there were hardly any issues concerning risk bearing and liability in which the city was prepared to negotiate. Provisions that diverged from the norm can be found only in exceptional cases, specifically when a concession could not set a precedent because the employment relationship lay outside the ordinary system of municipal administration.[49]

Default clauses were rarely included in contracts. Where they did occur, the issues addressed were the temporary or permanent invalidity of an employee, or material damage. As already mentioned above, in practice the city often went far beyond its contractual obligations and did take over costs of replacements or similar. However, employees usually had to »pay« for such extra-mandatory benefits by undertaking additional commitments. In general, over the course of the period covered by the Frankfurt collection, the boundaries between contractual disciplinary measures and provisions on risk bearing became increasingly blurred.

b) Issues arising from delay in performance in the context of different modes of remuneration and termination

Although the Frankfurt service letters rarely addressed the problem of delay in performance explicitly, the general contract rules did have an impact on delay issues. First, as the city was not obliged to purchase the products of its craftsmen or to make use of the services of those it employed, it could avoid bearing the consequences of delay. Thus, if the city was not obliged to accept a craft product or if a mercenary was only to receive payment when he was sent out to fight, it was not in default of acceptance. Second, in many cases the city was able to terminate the employment relationship without notice, thus avoiding the creation of wage claims in cases where work had not been done on time.

The question of salaries paid for times when the employee was not working was dealt with in a variety of ways, depending on the circumstances. For those paid by the day, the agreements very clearly state that such employees were only to be paid for actual work done. The pay of employees who depended for at least part their income on fees was similarly »performance-related«, as it automatically reduced when they did not perform their contractual duty, without the need for further contractual provisions. The situation was different, however, in the case of salaries calculated on the basis of larger time units or including benefits in kind such as official residences. When the fixed

49 For example, a lawyer who was specifically employed to represent the city in a dispute over a failed mine was able to achieve a reversal of the risk for journeys made on behalf of the city, Pierson (2020) 260 f.; on the background 89 f. Such contractual relationships were not designed to be repeated, but were a response to a specific crisis situation.

salary became the main component of city employees' income, this also meant a change in the distribution of risk. This might also have been why in the 17th and 18th centuries, the city authorities started to consider permanent employment contracts as uneconomical and, at least in certain areas, sought to abolish them in favour of work contracts for individual services (e. g. of a horologist). However, contractual solutions had to be found for dealing with the common problems of illness, wounds received in service of the city, or age-related invalidity, as will be discussed in the following section.

For the employees, delays and refusals by the city to pay salaries were structurally closely associated with issues regarding risk bearing that are now considered to fall within in the area of employee liability. Especially smaller territorial rulers tried to avoid paying or at least to reduce pay arrears after the end of the contract's term, which had sometimes accumulated for years, by offsetting them against alleged claims for damages and liability. The files of the *Reichshofrat* contain quite impressive examples of attempts to delay the payment of wages at the end of service for years on spurious grounds, such as the employee's alleged failure to return the charter of his installation in office (*Bestallungsurkunde*).[50]

c) Continued payment of salary in case of invalidity

Explicit provisions regarding the bearing of risk is above all found in contracts of employees who had to travel as part of their duties. The evidence clearly shows that employees sought but failed to contractually exclude travel obligations.[51] Travel was dangerous not only because the available means of transport were easily damaged by natural events connected to poor road conditions and fragile means of transport, but also due to the significant risk of being attacked by robbers en route. Some service letters expressly exclude a municipal obligation to pay a ransom in the event of the employee being taken hostage. However, in contrast to most journeys undertaken on behalf of the city, the campaigns of its mercenaries (in the event of feuds or other armed conflicts) almost presupposed damage to life and limb. We see from the service letters that some mercenaries managed to negotiate continued payment of wages in the event of injury. However, this remained the exception, and the amount and duration of any such payment varied from contract to contract. Moreover, it is clear that the evidence of the contracts is not exhaustive in this respect. For example, none of the extant service letters mention that city employees could be treated free of charge by the city doctor; we know of this right only indirectly through the latters' contracts. Municipal employees who had acquired citizenship rights in Frankfurt could also benefit from municipal poor relief after the establishment of the city's alms box in 1531.

The Frankfurt contracts do not include any provision regarding long-term sick pay or invalidity benefits. In certain cases, the city made small charitable gifts to former employees who had become unable to work as a result of an occupational accident. The most common issue, however, was how to deal with invalidity due to age. Before the changes during the 16th century, when most contracts were for a fixed term, old employees' contracts were simply not extended. There are some examples of employees with decreasing work capacity accepting a salary reduction in the course of the negotiations for one final extensions of his contract in order for the city to hire others to help him, enabling the contract holder to postpone the end of his own career. Employment contracts of indefinite duration were routinely terminated by the city if the employee was considered to have become incapable of fulfilling his duties. In the files of the *Reichshofrat*, one can find dismissal disputes in which territorial rulers and their employees argued about the latter's continued ability to work.[52] Frankfurt often granted a certain amount of support to former employees out of grace, for example by allowing them to continue using the municipal workshop for private work or

50 Examples in Pierson (2020) 503.
51 Pierson (2020) 249 f. with further references; for an example, see Trumpold (1973) 45 f.
52 See e. g. Pierson (2020) 450.

living in the official residence. We know of such provisions from the contracts of such persons' successors, which state, for example, that the official residence was not yet available. Very rarely, employees with great bargaining power were able to negotiate a contractual pension entitlement for themselves. In all cases that the city provided some form of support to former employees, it made use of their remaining ability to work.

Over the course of the 17th and 18th centuries, the city's support for former employees after their age-related dismissal ceased to be a matter of grace. Instead, municipal employees held their positions until their death. In the Frankfurt collection of service letters, one can therefore find employment histories of municipal officers spanning up to 50 or even 60 years. This meant that an increasing number of substitutes and adjuncts were hired *cum spe succedendi*. These were paid little or not at all, with some being granted extended secondary employment rights. If the potential successor was a close relative, this arrangement generated a kind of family income. However, this practice exacerbated the problem of access to city employment, as it precipitated the emergence of civil service dynasties and at the same time established the salaries of those newly entering the city's service at a low level. Although the introduction of the lottery procedure in 1725 broadened access, it actually increased the income problem because employment as an adjunct no longer offered secure prospects. In particular, it meant that the city was no longer able to guarantee succession to the office, as illustrated by the case of a trumpeter-adjunct who tried to obtain a dispensation from the lottery selection via the *Reichshofsrat*. The change in methods of providing for former municipal officials from a system of grace to life-long employment thus shifted the income risk from the end of life to the beginning of the employee's career.

d) Protection of municipal interests in the event of property damage or inadequate performance

The employees' duty of care in dealing with municipal property is one of the most frequent and extensive regulatory topics of the service letters. The contracts commonly state that the employee was liable for all damage to, deterioration or loss of city property. Only in very isolated cases was the employee's liability limited to a certain amount of money. A few contracts also applied this duty of care to the official residence. For example, a city locksmith was obliged to carry out annual repairs of his residence and was liable for all damage caused by him or his family irrespective of fault. Again, however, no general rule can be derived from these cases, as for certain working materials and assets, such as a powder maker's mill, the city did bear the risk of accidental damage.

Similarly, there were no generally established regulations concerning inadequate performance or the like. However, there were numerous and heavy contractual penalties for activity-specific breaches of duty, the most frequent of which was dismissal. It could take a variety of forms, with *Kassation* (dishonourable dismissal) marking the transition to disciplinary measures. Overall, the Frankfurt service letters contain a comprehensive system of rules to protect the city's property interests. In addition to the omnipresent threat of *Kassation*, employees working in areas involving significant city assets increasingly had to post a deposit at the beginning of their service (including the hospital master, the public auctioneer, and the *Eisenwieger*, who was the official overseeing the trade in iron), provide excessive sureties (e. g., the armourer, again the *Eisenwieger*, and the salt clerk [*Salzschreiber*] who levied the levies for salt in kind and the turnover tax) or pledge the totality of their personal assets (hospital master). In such cases, provisions regulating liability and disciplinary measures begin to overlap, in a similar way to what we observed above regarding employees' acceptance of increasingly tight contractual obligations following the city's extra-mandatory assumption of risk.

4. Disciplining the agents of discipline

In German scholarship on early modern police ordinances and social disciplining, there is a debate about public officials as both »agents« of discipline and »representatives« of willingly lived discipline.[53] Although one may be sceptical about how willingly they lived the discipline required of them, the twofold perspective on municipal employees as simultaneously agents of the city's dis-

53 Weber (1998) 424.

ciplinary efforts and as objects of disciplining is nevertheless productive.[54]

a) Agents of *gute Policey*

As executive organs of the municipal administration, the city's employees played a significant role in creating and maintaining »gute Policey«, the early modern concept of good public order.[55] In addition to their general duty of loyalty to the city, which included the obligation to promote its best interests and to alert the authorities to potential dangers to its well-being, municipal employees were required to implement job-specific precautionary measures. Such tasks included the building inspections carried out by the judges, the knacker's duty to carry out measures to prevent epidemics (for example by removing carcasses and killing street dogs) or the municipal physicians' obligation to inspect the pharmacies and dispose of rotten medicines. Monitoring and supervisory duties were part of many offices, particularly the supervision of trade and commerce (e. g. the city's markets). The service letters also provide detailed evidence regarding the regulation of specific sectors, such as the supervision of private pharmacies by the physicians. We also frequently find prohibitions to hold shares in businesses and obligations of neutrality. For example, physicians were forbidden to own shares in pharmacies. However, there was no provision for public liability or a functional equivalent in external relations with citizens.

Due to the municipal service's hierarchical structure, city employees often also held extensive supervisory and instructional powers vis-à-vis subordinates, sometimes including the authority to punish. However, this varied greatly in different areas of the administration. For example, the stable master was not supposed to chastise the coachmen himself, but to instruct a *Corporal* (the holder of a lower rank in the city garrison) to carry out any physical punishment. If subordinates lived under the same roof as their superior, the latter's duty of control extended to all aspects of their behaviour. There are repeated cases in which for example even the participation in wedding celebrations required the superior's permission. Such a relationship existed, for example, between the town clerk and his subordinates (*Stadtschreibersubstituten*) and the master of the hospital and his staff. The supervisors were, in turn, accountable to the city council.

b) Contractual penalties – disciplinary law – malfeasance in office

Only a certain number of Frankfurt service letters required the employee to provide sureties, pledge their assets or pay a deposit. Instead, the contracts mainly stipulated monetary sanctions for individual breaches of duty. Until 1600, almost half of the contracts contained lists defining a variety of breaches of duty and malfeasance. In the first half of the 18th century, this figure rose to almost three quarters. Initially, they were rarely linked to concrete threats of sanctions, but the latter's incidence rose rapidly throughout the 17th century, until by the time of the Constitutional Dispute almost half of the contracts contained explicit provisions on sanctions. Thereafter, the frequency of such clauses once again declined.

The city's unilateral right to terminate the service contracts without notice was certainly one way in which the authorities tried to ensure their employees' compliance. In the early modern period, in addition to the city's general right of dismissal, the *Kassation* was introduced as a special means of punishment and sanction. However, the threat of dishonourable dismissal was actually a dysfunctional instrument of social discipline. Its application neither functioned to guide the employee's future behaviour nor to enforce the performance of the contractual obligations. At best, the mere threat of *Kassation* might have been suitable for disciplining recalcitrant employees, but an effective threat requires the realistic expectation of its implementation. Consequently, there are several cases in which breaches of duty were indeed punished by dismissal, but the dismissed persons were later reinstated after they had petitioned the council in the form of a *Ratssupplikation*.

Moreover, not only was the effectiveness of the disciplinary measures partly doubtful, but also the ability of the authorities to enforce them was by no

54 On social discipline in service relationships, see Pierson (2020) 509–526.

55 For an introduction, see Iseli (2009).

means a given. As late as the end of the 18th century, a customs officer was engaged in a dispute with the city concerning various breaches of duty, which lasted several years. The city had unsuccessfully tried to discipline him, first with fines and then threats of dismissal, until it actually dismissed him (though he was later reinstated). Enforcement deficits are sometimes attributed to an employee's being in an informal position of power, for example because he knew of misconduct among the aldermen, in this particular case perhaps customs violations.[56] The older historiography interpreted the reports of the imperial Visitation Commissions as evidence of a system of rampant corruption and abuse of authority. The intransparent payment structure preceding the introduction of fixed salaries, in which municipal employees mostly relied on a cut from the fees and levies they collected on behalf of the city, created near-ideal conditions for unscrupulous officers to enrich themselves.

Employees of free cities may have actually enjoyed a little more freedom than their colleagues working for territorial lords, as the latter sometimes regarded actual or alleged breaches of duty as *lèse-majesté* and reacted with severe punishment.[57]

Provisions for the penal sanction of malfeasance in office can be found in various ordinances, but mostly not in the service letters themselves. The Citizens' Treaty and the imperial resolutions issued in 1725/1732 set penalties for particular types of malfeasance, for example for perjury by officials. They also stipulated that the municipal judicial institutions were obliged to prosecute these offences. In addition to such general legal provisions, however, there also existed contractually agreed punitive sanctions, especially in the later Middle Ages and in the military sector. Thus the mercenaries agreed in a public act of *Verwillkürung* (voluntary submission to a set of rules) to pay fines (*poen*) and to accept further punishments. An example of the sanctionable offences mentioned in the mercenaries' service letters was the violation of the ban on contracting with enemies of the city.

Towards the end of the period under review, the service letters stipulate fines as sanctions for numerous breaches of duty, though these still did not have the character of criminal law. The modern distinction between disciplinary measures, contractual penalties and criminal law is in any case not applicable to pre-modern contractual fines, especially since these terms' modern interpretations have also been subject to considerable change over time and remain ambivalent.[58] Apart from fines, the most important disciplinary measure continued to be the threat of dismissal. In general, no consistent system of penalties emerged, and the main problem of the enforceability of employees' duties remained unsolved. Many provisions regarding non-office-specific breaches of duty and threats of sanctions appear only in certain (series of) service letters (for example, of successive holders of the same office). Their inclusion thus seems to have been the result of a specific case of misconduct on the part of an earlier holder of that office. In any case, no disciplinary law was elaborated in late medieval and early modern Frankfurt. Despite the lack of a systematic approach to disciplinary regulation, however, we can identify clear differences between the periods before and after 1600, also in terms of the quantity of disciplinary clauses.

5. *Asymmetry and inequality in the freedom to terminate the contract*

As we have already seen in various sections above, the city's right to termination of the contract[59] was a crucial element in the service letters not only as a disciplinary measure (in terms of the threat of dismissal, as just discussed in II.4. above), but also because it was an important means for the city to manage risk and liability in the employment relationship (II.3.). In addition, there was a close

56 On the dispute with the customs officer Bambach, see Pierson (2020) 523 ff.

57 Drastic examples of such punishments – including the imprisonment of two employees' pregnant wives and the public execution of reproductions of the employees themselves – recorded in the subsequent proceedings at the *Reichshofrat* are discussed in Pierson (2020) 512 f.

58 For the interpretation of the fine as a disciplinary measure instead of a contractual penalty in the context of National Socialist labour law, see e. g. Weber (1938) 23–33.

59 For a detailed discussion of the right of termination in the Frankfurt service letters, see Pierson (2020) 526–538.

connection between the right of termination and fixed-term employment (II.1.). The issue therefore repays closer attention.

a) Contractual termination rights

In the older service letters, the ending of a contract by unilateral declaration of intent is not known by the term »termination« that is so common today. Instead, the city would »Urlaub geben« to an employee, a term which today means »granting a holiday« but at the time was mostly used for a permanent, not merely a temporary, interruption of an employee's work. Where the city had the right of termination, it was almost always, namely in over 90% of cases, unlimited except for the occasional stipulation of a period of notice. Before the middle of the 17th century and again after 1750, more than half of the service letters giving the city authorities the right to terminate did not require any advance notice, and in the period between ca. 1650 and 1750, this was even more common (up to 80%). Over the course of the entire period studied, between the late 14th and early 19th centuries, on average 56% of the municipal termination rights involved no period of notice at all, 33% a quarter of a year and 9% four weeks' notice. Much less common were six months' notice, a week's notice or immediate dismissal or release from work in return for a severance payment equal to the salary of an agreed unit of time (e. g. a quarter of a year). Neither a privileged treatment according to social status nor a problem-related differentiation according to occupational sectors is discernible in the extant evidence.

Although we might expect the right of termination to be considered less important in case of a fixed-term contract, the Frankfurt service letter collection actually shows that it was significantly more frequent in such contracts, occurring in two-thirds to three-quarters of the letters. By contrast, in open-ended contracts the prevalence of the city's right to termination varied more between one quarter and just under half of contracts. Since a kind of probationary period was already known, as shown by a number of extant contracts »auf Probe« (»on a trial basis«), there seems to have been no obvious necessity for such clauses. It may have been expected that the existence of such a right on the city's part had a disciplining effect on those of its employees who were not permanently employed and therefore possibly less committed to the city. Mutual termination rights were very rare, and occur in significant numbers only in the oldest part of the Frankfurt collection. A more detailed analysis also shows that in such cases, one of two conditions applied. Either the termination by the employee gave the city a purely legal advantage, such as by entailing the loss of a pension payment obligation which ended with the employee's departure from the city, or the employee's right to terminate the contract compensated for a particular contractual hardship, namely the employer's unilateral right to amend the contract. An explicit exclusion of the employee's right to terminate the contract was common in the service letters until 1700. With the transition to a *de facto* lifetime employment in the 18th century, the practical need for it probably disappeared.

b) Asymmetrical dependence in the right of termination and alternative modes of ending the contract

The exclusion of the employee's right of termination corresponded to the city's interest in the continuance of the employment relationship. In the early parts of the period under review, the functional equivalent of notice of termination for employees was the fixed-term contract. Short-term contracts not only served the purpose of faster salary increases, as discussed above, they also offered the possibility of taking advantage of opportunities to change jobs at a fixed date. The one-sidedness of the exclusion of termination thus created a strong asymmetrical dependence, which was further reinforced by the fact that the contract periods increased as time went on; after 1650, nearly all contracts were for an unlimited period. As a result, the time limit as a regularly recurring option for ending the employment relationship could no longer compensate for the lack of a right of termination. The employee's interest in termination of contract was completely suppressed, so that contractual parity was fundamentally disturbed.

In practice, these restrictions were acceptable to the employees because the city gradually refrained from dismissing them on grounds of age, thus creating what was *de facto*, albeit not legally, a lifetime job, i. e. a comfortable dependency. However, when employees without the right of termination did want to end a contract, the problem of how they could do so remained. In such cases, the

parties often chose to draw up a termination agreement, which was concluded through the formal *Ratssupplikation* of the employee. A number of such waiver letters, comparable to service letters in form, survive in the Frankfurt collection. A need to move away from Frankfurt was a common motive for leaving the city's service. Religious disputes, marrying into another municipality, or inheritance matters outside the city were amongst the possible reasons for not being able to wait for the contract to expire.

Nevertheless, these termination agreements, too, demonstrate that the city's employment relationships with its staff, with a unilateral and unequal right of termination, were asymmetrical relations of dependence, because the employee, unlike the employer, was dependent on the consent of the other party for ending the contract. The city could refuse to cancel the employment contract. In practice, repeated requests increased the pressure on the city council and, as we saw above, the city's means and ability to enforce discipline on an unwilling employee were limited. The city often demanded various concessions as part of the termination agreement. Apart from the waiver of claims, the Frankfurt waiver letters also contained various means to guarantee its validity, such as a jurisdiction clause, as well as various rights on the city's part, in some cases even the right to call the former employee back into office. Often the city did not want to agree to a resignation without ensuring continuity of office; we therefore sometimes find that the employee was required to provide a successor. The city's unlimited and predominantly even immediate termination right stands in sharp contrast to such restrictions on the employees' ability to end their employment and marks a strong inequality not in the formation but in the execution of the employment relationship.

c) On the validity of the termination clause after 1600

The problem of asymmetrical dependency during the period of employment was recognised by contemporaries and increasingly came to be critically examined in court. Two dismissed Frankfurt advocates challenged the city's termination of their contracts before the imperial courts in the 17th and 18th centuries, respectively. Jakob Schütz, still known today as a writer of pietist hymns, claimed in 1645 before the *Reichskammergericht* that his dismissal was incompatible with the dignity of the office and would indeed damage it; according to the claimant, the city had also violated the required notice period. The city replied that Schütz's dismissal had been an honourable discharge, because, though he was no longer required to work, it had paid his salary until the end of the notice period. The *Reichskammergericht*, however, disagreed and ordered the reinstatement of Schütz because of the breach of the notice period. Indeed, the parties finally agreed that Schütz remain in office.[60]

Between 1764 and 1769, it was the turn of the city advocate Johann Balthasar Gelff to challenge his dismissal by the city of Frankfurt, this time before the *Reichshofrat*. The city had learned from the proceedings against Schütz and complied with the contractual quarterly notice period as a precaution. It also refrained from dismissing Gelff dishonourably, although there would have been grounds for a *Kassation*.[61] Gelff had his agent argue before the *Reichshofrat* that the office of syndic in Frankfurt had become permanent and that the contractual termination clause was therefore invalid because it no longer fitted present practice (»insanis et hodierno statui non accomodabilis«). He also referred to the Schütz case. In his opinion, in the case of an office that had become permanent by custom or by law, dismissal was only possible after judicial proceedings. The *Reichshofrat* requested a large number of samples of Gelff's work and obtained the files of the Schütz case from the *Reichskammergericht*, clearly examining in detail whether grounds for dismissal existed, even though these were not contractually required for the city's termination of Gelff's contract. The proceedings came to focus on the possible reasons for Gelff's dismissal. After several thousand pages of pleadings, the case ended when Gelff no longer complied with his duties to explain. He did not return to office.

60 Pierson (2020) 255 f.
61 For more about the very interesting Gelff case, see Pierson (2020) 50–57.

In 1806, the author of a history of Frankfurt's judicial system, Johann Georg Rössing, wrote regarding the Gelff case that even the city council now assumed that its right of termination only existed when both parties agreed, in the case of substantial causes (such as crimes), or if formal court proceedings had preceded it.[62] Contemporaries were thus aware of the transition of the employment of city officials from a contractual to a status relationship, and they disputed the validity of contractual clauses that belonged to the older, private-law era. The Gelff case illustrates how by the end of the period under review, the employment relationship of municipal staff had substantially changed from one based on the freely negotiated private contracts of the earliest extant Frankfurt service letters.

6. *Interim findings*

The analysis of various branches of municipal employment over the entire period of investigation reveals not only the changes in the preferred solutions to specific regulatory problems[63] and their interdependencies, as well as the influences of the general and constitutional historical developments. It also demonstrates that the solutions to the key problems of contract law that the city chose essentially depended on the regulatory problems specific to the individual occupation. Furthermore, special privileges for particular branches or offices within the city administration did not arise from social status but were the result of individual negotiations. What started out as benefits granted to a particular individual could condense into an office-related privilege through repeated practice.

Apart from that, external developments led to shifts both in the main contractual problems to be solved and in the contracting parties' interests. The most significant adjustments in the contracts' contents, which occurred at the end of the 16th and at the beginning of the 18th century, cumulatively led to a fundamental change in the employment relationship. By the mid-18th century, a fixed-term, in principle freely terminable contractual relationship, in which employees worked quite autonomously and in some cases almost entrepreneurially at their own risk, had turned into a status relationship assumed to be of long duration. This status relationship, however, was legally dubious in terms of termination, forcing the now salaried employees into a disciplining corset of duties reinforced by multiple sanctions. As the example of the customs officer shows, the informal power structures did not necessarily correspond to the formal biased distribution of rights and duties.

III. Frankfurt and other cities

1. *On legal peculiarities in Frankfurt*

Nineteenth-century studies of Frankfurt private law do not discuss the contract law of employment contracts. The Frankfurt *Reformation*[64] and other particular laws contained some regulations concerning municipal offices, but did not regulate the service contract. Nevertheless, the possibility of peculiarities in the development of the Frankfurt employment relationships must be considered. Although Frankfurt's unique political and constitutional history had a considerable impact on the city's employment system, its events had no significant effect on the core aspects of contract law. While the Reformation, the Citizens' Uprising and the Constitutional Dispute affected individual officials' duties, the composition of salaries and the creation or elimination of offices, they did not cause changes in the duration of contracts, termination rules, rights to give instructions, loyalty obligations, working hours or risk assumption. The main effect of these larger historical events was a tightening of discipline for city employees in response to increasing demands by the citizens for consistency and transparency of administrative action. Nevertheless, as we have seen above, there were profound changes in the employment relationship over the period studied, particularly with regard to the duration of contracts and the understanding of the right to terminate a contract, and thus ultimately also in the distribution of risk. But this was due to immanent reasons, namely the fact

62 Rössing (1810), I 76 (first ed. 1806).

63 For further specific problems, such as the right to give instructions, the determination of the type and scope of the employees' duties, working hours and place of work, residence requirements, etc., see Pierson (2020).

64 This is a systematic record of Frankfurt's municipal law, first compiled in 1509. The renewed Frankfurt *Reformation* of 1578/1611 was valid until the introduction of the German civil code, the Bürgerliche Gesetzbuch (BGB), in 1900.

that the services were becoming more permanent, which ultimately led to the creation of civil servants (see V.).

This leads to the question of whether the results on Frankfurt municipal service contract law can be generalized. At this point only a first step of the comparison can be made, namely a comparison with the employment relationships of late medieval and early modern municipal employees in other cities and territories. Investigations into the comparability of these employment relationships with those of the guilds or commercial employees are yet to be undertaken.

2. *Comparison with other cities*

The study of service contracts of other cities has largely been limited to those concerning positions held by employees trained in law, i. e. mainly town clerks and court clerks, city advocates, etc. The differences in terms of contract law between these and Frankfurt's service letters are no greater than the variation between service letters of the same city.[65] This led historians in the 1930s to construct a supposed standard contract for a specific office out of scattered employment contracts from very different regions.[66] However, given that the contractual contents essentially depended on what was negotiated in each individual case, such an attempt was doomed to fail. Nevertheless, it pointed to an important aspect, namely that the labour market for public employees can be understood as having been supra-regional, and clearly offered alternatives to employees whose services were in demand. This finding is supported both by the service letters' contents, which often provide information about the employee's place of origin, and by various cases of disputes between competing cities about the existence of an obligation, in which service letters appeared as evidence. In addition to noting whether an employee was an immigrant and including a wide variety of designations of origin, the Frankfurt service letters and associated personnel files also contain explicit references to individual employees moving from and to Augsburg, Nuremberg, Strasbourg or Cologne. An 18th-century master builder, for example, sent his application from Cleve, had studied in Paris and Strasbourg, and was currently in Prussian service. Frankfurt's contract offer for an advocate in 1538, the later famous Johann Fichard, competed with one from Padua; at the beginning of the 16th century, the city council argued with Maastricht about the existence of a service contract with a particular gunsmith.[67] The city competed with the universities of Heidelberg, Giessen or Marburg for candidates for the rectorship of the municipal Latin school, with territorial lords such as the Hessian landgraves for military craftsmen, and even with the emperor himself for a specialised gunsmith in the 15th century. Applications to the city of Frankfurt from highly qualified persons were supported by letters of recommendation and intercession from high – even the highest – dignitaries of the empire, including the emperor and various imperial electors (*Kurfürsten*). However, among the city employees, it was not only highly trained lawyers and doctors or sought-after specialist craftsmen who were moving between cities or territories. In the Frankfurt collection, we also have evidence of members of specialised professions considered »dishonourable«, such as the executioner, moving between employers. One executioner took work outside Frankfurt in an arrangement that we would now call labour leasing.

Given the existence of this supra-regional labour market with a not inconsiderable degree of mobility, it seems reasonable to assume that the agreements in the employment contracts of different cities and territories converged over time. Put in terms of evolutionary theory, the best solutions to the key contractual problems were selected out of the pool of possibilities more frequently than less suitable ones, and as a result became successively more stable. These solutions were often far removed from the employment law problems discussed in the contemporary scholarly literature on the *ius commune*.[68] What is clear is that the contractual issues regarding municipal employees dealt with by cities were the same, irrespective of whether they were imperial free cities like Frankfurt or part of a larger territory. The comparison of service letters from various cities reveals the existence of a shared spectrum of solutions to the most

65 Overview and literature review at Pierson (2020) 570–575.
66 Schmieder (1939) 90; against it Pierson (2020) 589.
67 See Pierson (2020) 434.
68 For more detailed discussion, see Pierson (2020) 575–583.

common contractual problems that were considered within the range of acceptable and practicable legal consequences. Nevertheless, exceptions in individual cases could, of course, occur.

The competition between employers led to intense disputes in some cases. Attempts to poach employees were apparently not uncommon and occasionally led to court cases. The disputes centred on the question of whether a previous employment relationship existed, with the abandoned employer claiming that the employee was in breach of contract by taking up employment elsewhere. Such disputes could be taken to the highest courts of the empire.

IV. Jurisdiction and conflict resolution

In addition to conflicts resulting from a change of employer, other important subjects of dispute between the city and its employees were dismissal, wage restraint and, in the later part of the period, pension payments. We have already encountered examples of Frankfurt employees appealing to the *Reichshofrat* or the *Reichskammergericht*, with the former being chosen more frequently. The question of recourse to the courts was therefore one of the most frequent contractual subjects of the Frankfurt service letters. The jurisdiction clauses evoke more detailed questions about the way in which conflicts in the employment relationship were settled, since the essential identity of employer and judge resulted in the adversarial procedure being a rather unsuitable instrument for settling disputes, particularly from the employees' perspective.

A large part of the Frankfurt service letters required employees to assert claims exclusively before the Frankfurt courts and explicitly forbade recourse to courts outside the city. This jurisdiction clause appeared in about 90% of contracts until the first half of the 16th century.[69] It largely disappeared in the course of the following decades, but by that time the city employed almost exclusively Frankfurt citizens, who were therefore already subject to Frankfurt's jurisdiction. Citizens' oaths and oaths of office often contained equivalent clauses. In the Frankfurt court system, the court of lay assessors (*Schöffengericht*), consisting of the councillors of the first bench, was responsible for civil cases, either as the first or at least as an appeal instance. Essentially, therefore, the employer also acted as the judge over employment matters, a further characteristic of a highly asymmetrical relationship of dependence. From the employee's point of view, it was therefore not expedient to bring legal proceedings before the Frankfurt courts. Settling any dispute amicably seemed more promising. Petitioning the council in form of a *Ratssupplikation* functioned as an instrument for employees to articulate their demands (on the special case of the termination supplication, see II.5.b) above). The petition had to be read before the city council, which then decided on it. Such supplications were used in particular to obtain the revocation of fines or dismissals, or to obtain reinstatement. If the employee was dissatisfied with the decision, he could repeat the supplication. Disputes with individual employees could keep the city council busy for years. Due to its workload, the council tried to avoid repeated petitions by dissatisfied city employees, and was therefore sometimes prepared to show lenience.

However, employees did not always limit themselves to the options for legal recourse as stipulated in the service letter or oaths, or to petitioning their employer. After his dismissal as a result of the Citizens' Uprising, the first municipal advocate whose contract no longer contained a jurisdiction clause, Caspar Schacher, tried to bring his dismissal case before the *Reichshofrat*. The Frankfurt authorities argued that the case did not fall within imperial jurisdiction by referring to the oaths Schacher had sworn both as a citizen and as a city employee.[70]

Frankfurt was not the only city or territory whose arguments regarding the imperial courts' lack of jurisdiction failed in various cases. The files of the *Reichshofrat* contain a number of similar cases involving various cities and territories. Some territorial rulers considered the employee's appeal to the imperial courts as a breach of contract and reacted by imprisoning him. In the early 18th century, the Duke of Württemberg used this tactic to successfully pressure a high-ranking civil servant into abandoning proceedings before the *Reichs-*

69 Pierson (2020) 546–552.
70 Pierson (2020) 93, 549.

hofrat. The civil servant waived the continuation of the proceedings and was released in return. Already in the late 16th century, a provost from Berchtesgaden faced accusations by various servants before the *Reichshofrat* who alleged that he had countered demands for payment of wages with threats, acts of violence, and imprisonment.[71] If a municipal employee changed employer, the latter could also became involved. In 1616, the city of Hanover joined its syndic in bringing proceedings against the latter's previous employer, the duke of Saxony-Lauenburg, before the *Reichshofrat*. The duke was withholding his former advocate's last annual salary, arguing that he had abandoned his duties prematurely. The city of Hanover intervened in the *Reichshofrat* proceedings in favour of its employee and citizen because it considered the duke's action a violation of its privileges regarding arrest *in personam* and *in rem* against its citizens and their assets.[72]

Generally, initiating judicial proceedings was only a last resort for municipal and territorial employees, as it involved high costs as well as the risk of protracted trials and indeed of violent reactions from the employers. Cheaper and more promising than adversarial proceedings were negotiated solutions, using the *Ratssupplikation* as a formal instrument where necessary.

V. From contract to status

One of the fundamental questions,[73] particularly in the context of labour relations, is whether the employment relationship is based on a free contract and whether the parties are legally equal. In addition, it must also be asked whether social risks such as old age and illness are taken into account. The answer to these questions leads here to a reversal of general legal-historical development: the development of the Frankfurt employment relationships are best described in a reversal of Henry Sumner Maine's influential phrase »from status to contract« in his 1861 work *Ancient Law*. Sumner Maine argued that the evolution of law and society was characterised by a shift from ascribed »status« to voluntary »contract«. The changes in the Frankfurt service letters between the late 14th and early 19th centuries suggest instead that the city's relationship with its employees moved from contract to status. Already the structure and names of the documents themselves point to this change, as the service letters, written from the perspective of the employee, were replaced by *Bestallungsurkunden*, »charters of installation« prepared by the city and directed at the employee.[74] The originally freely negotiated late medieval employment relationship changed into a civil-servant-like status relationship. Three aspects capture this change. First, crucial and previously negotiable features of the contracts were regulated by the imperial resolutions of the 18th century. Second, as a result, the employment relationship could no longer be characterised as one between in principle equal contractual partners, but instead became one of subordination, with a clear power differential between employer and employed. Third, in return for their subordination, the city relieved its employees of social risks, in particular the risk of old-age poverty, by no longer supporting them on a case-by-case basis out of charity, but by customarily refraining from terminating their employment.[75]

1. *In principle equal freedom of contract before 1600*

Before 1600, the key aspects of the employment contract, in particular remuneration and duration, were essentially entirely open to negotiation. One did not simply take over the contract of the predecessor, but negotiated many details. In a number of cases, very individual agreements were made, including, for example, a stable master being granted permission to keep his own cow in the municipal barn.

This freedom was essentially the same for different groups of employees. As we saw above, closer

71 Pierson (2020) 450, 503 with further examples.
72 Pierson (2020) 516.
73 Rückert (2006).
74 This was done successively from the 17th century onwards, but not for all offices. The picture is somewhat confusing, because the terminology in some cases already changed a little earlier, although the structure of the service letter was maintained.
75 Lines of development in Pierson (2020) 552–570.

analysis reveals little evidence of privileges granted according to the social status of the employees. The contracting parties' respective bargaining power shifted continuously, and also varied between different branches of the city's administration. The increasing number of university graduates, for example, improved the city's negotiating position vis-à-vis doctors and lawyers. However, as population size was extremely volatile and at a low overall level compared to today, any crisis caused by epidemics, armed conflicts, migration, etc. could shift market power in favour of the employees. Thus in 1446, a brick-maker was able to obtain tax relief and the provision of a workshop in return for moving to Frankfurt to enter the city's employ. External threats to the city affected negotiating power only in exceptional cases, for example when mercenaries were able to push through their demands for extremely high pay for only a few months of service during the Thirty Years' War.

It may initially seem surprising that the service contracts could be freely negotiated. From the perspective of the principles of private law, however, free contracts can exist also in periods of *gebundenes Privatrecht* – that is, when private law is unfree and unequal because it is dominated by differences of status and legal constraints – though only as exceptions and within specific spheres. The municipal service is an obvious such exception because, whilst the city in its police ordinances set fees and prices for the use of services by its citizens, it did not do so internally for the members of its own administration. The latter would have made little sense, especially since a change in the set prices could have been achieved through negotiation, because the city was both employer and legislator. Very occasionally, city employees were even able to obtain an exemption by contract from the prices set in the police ordinances for their dealings with the citizenry.

That this sphere of free private contracts remained circumscribed is indicated also by the limitations of our source base. The Frankfurt service letter collection provides no information on those who could not enter into such contracts with the city but still worked for it. Also, questions such as the chances of access by strangers have to be included, although we know from studies on the granting of citizenship that these deteriorated over time.[76] Above all, there were a number of groups who worked for the city or held city offices but were nevertheless excluded from the system of service letters. No service letters were written by, or on behalf of, women. As mentioned above, wives could enter city service as part of their husband's contract. Other women were employed as domestic servants, but by a city employee rather than the city directly. Midwives were not entitled to letters of service and fought – largely in vain – to receive at least some remuneration from the city.[77] The socially marginalised members of »dishonourable« professions were also excluded, though the – largely not individualised – instructions regarding their office (*Dienstanweisungen*) differed little from the service letters in key legal issues. In general, the possibilities for free negotiation declined from the late 16th century onwards, at first only gradually, but especially the Citizens' Uprising and subsequently the Constitutional Dispute accelerated the increasing restriction of negotiable objects.

2. *The transition to a status relationship from the late 16th century onwards*

Over the period studied, the traces of negotiation in the contents of service contracts become fewer and fewer. This can be seen by comparing the service letters of city officials with those of their successors and analysing the frequency of changes in content. Before 1600, 81% of the contracts show divergences from the employment contract of the predecessor in office. After 1600, this figure drops to only 33%, and most of these changes resulted primarily from the imperial resolutions, because the now fixed rate of the salary (set by the imperial administration) was included in the service letters as well as, for example, the lottery selection procedure. By the 18th century, almost no traces of individual negotiation remain in the contracts. Incidentally, the importance of the fixed term as a negotiating element can also be seen here, because about three quarters of the contract extensions also led to changes in their content, mainly – but not only – in terms of duration and salary.[78]

76 Most recently Breustedt (2017).

77 On women in the Frankfurt municipal service, see Pierson (2020) 143–146.

78 The calculation is based on data from Pierson (2020) 555.

The imperial interventions restricted the city's opportunities and thus also its contractual freedom of negotiation. Moreover, as we saw above, the legal validity of a key element of the service letters, the termination clause, had become doubtful. The issue of freedom of termination is one of the strongest indicators of the transition to a status relationship. The latter obtains its specific character as a relationship of subordination similar to that of civil servants through the increase in disciplinary measures available to the city, especially the regulation of breaches of duty with threats of sanctions. In the area of accessory obligations, exit bans and civil servants' residence requirements were increasingly included in the contracts, in combination with official housing also as compulsory attendance. The bond between the employee and the city was thus increasingly comprehensive. This was true not only in terms of location, but also in terms of time after the establishment of a kind of lifetime employment principle, the counterpart and consequence of which was the discussion about contract terminability and financial security in old age. As mentioned above, the initial social consequence was the emergence of dynasties of civil servants as a result of the joint intergenerational performance of official duties in order to maintain a family income and in the hope of succession to office. After the introduction of election by lot, the second consequence was a general shifting of burdens and risks to the beginning of a city employee's career.

3. *Contexts and interpretations*

a) Equivalence of rights and obligations and fairness of pay

The concurrence of the increased dependence of city employees and restrictions on the city's freedom of dismissal was not accidental. Contemporaries were well aware of the binding effect of the lifetime principle. It was part of a more comprehensive form of exchange justice, which encompassed many more features than current wage justice discussions do today. For example, employees undertook a lifetime commitment in exchange for a scholarship or the city's covering losses or damages that occurred. As late as the 18th century, the employee's lifetime commitment served as justification for a higher salary. In the previous contract system, employees accepted many risks (not only liability, but also the risks of age-related dismissal or non-renewal of a contract), but also benefited from higher profit opportunities, such as opportunities to change professions and positions, salary increases when they renewed and renegotiated their contract, and remuneration that included a share of the fee income they generated for the city, which can also be interpreted as a performance-related salary. The transition to the status relationship meant that employees waived these opportunities, whereas the city took over (or passed on to third parties) various risks previously borne by the employee.

However, the determination of set salary levels by the imperial administration in Vienna also touched on questions of wage justice. On the one hand, it levelled out differences in pay that had arisen in the early part of the period studied as a result of the regular salary negotiations that accompanied the extension of fixed-term contracts. But salary variations continued also in the period of permanent employment relationships. Contracts contained confidentiality clauses for a reason; if an officer, for example, became aware that other soldiers of the same rank were better-paid, he demanded an adjustment of his salary.[79] On the other hand, and more importantly, the imperial intervention fundamentally changed the city's salary structure. The non-transparent structure of salaries resulting from the combination of a number of different income components had meant that incomes had not been comparable. When the imperial commissioners in the Constitutional Dispute laboriously compiled the total salary of the individual employees, they found that the cellarer, who was responsible for the administration of the town hall, was one of the best-paid town employees, as his total income was ten times his basic salary of 78 guilders.[80] In other cases, by contrast, remuneration was found to be rather insufficient.

79 For an example, see Pierson (2020) 149, 361.

80 A table of his income in Hohenemser (1920) 425–429, see Pierson (2020) 102.

From the employees' point of view, increased disciplinary measures, lifetime contracts and fixed salaries were thus not just the flip-side of a comfortable dependency in the status relationship. They also represented a conscious renunciation of opportunities and freedom in return for the *de facto* status protection similar to that of a permanent official, and a transparent readjustment and harmonisation of salaries.

b) The growth of *Policey* and social disciplining

There is no evidence of a direct connection between the municipal assumption of risks in the form of lifetime employment and fixed salaries, on the one hand, and the increased disciplining of municipal employees, on the other. Nevertheless, if we consider the contractual system as a whole, it seems likely they were not unrelated. Whereas previously the contractual risks (termination clause, time limit) had a disciplining effect, disciplinary measures and threats of sanctions took over this function when municipal employment became more or less guaranteed for life.

However, considering these changes only in the contractual context does not go far enough; rather, the increasing disciplining of city employees was part of the comprehensive concept of »gute Policey«, good public order (see section II.4. above). According to current research, the increasing regulation of all aspects of life through police ordinances was not a one-sided act of norm-setting, but took shape in interaction with petitions or complaints from the population. One of the subjects of such civic complaints concerned the remuneration of judicial and executive staff deriving in part from fines, which obviously encouraged these officers to maximise their income by imposing as many fines as possible. The move towards city employees' income consisting solely of a fixed salary was thus also a reaction to the citizens' demands.[81] As mentioned above, late medieval and early modern Frankfurt saw extensive protests due to financial mismanagement, which led to two imperial interventions. One result of these was the reorganisation of the employment relationships of city employees that can be understood as part of a process of *Verobrigkeitlichung*, the – now already advanced – development of a concept of public authority.

c) The co-evolution of the municipal service and its contractual relationships

On a more abstract level, therefore, two major factors are responsible for the changes in service contract practice in Frankfurt between the 14th and early 19th centuries. On the one hand, from an internal contractual perspective, those drawing up the contracts were continuously experimenting with various solutions to the core legal problems, to the extent that no set pattern of solutions was ever established until the shift from a contractual to a status relationship in the early modern period. Each new solution to one specific contractual issue had an impact on the contract's overall structure and consequently prompted further adjustments. For example, when the rights to recruit, discipline and dismiss subordinate employees were transferred to the city, the regulations governing the liability for damages caused by such assistants also had to change. Competition between cities and the movement of employees between them encouraged communication and thus created a tendency towards uniformity across the Holy Roman Empire. It seems productive to conceive of these developments as evolutionary processes. On a superficial level, the changes in the course of reproduction through various generations appear in the form of copying errors in the contractual code, where unintentional discrepancies can be found in the transcripts of older contracts. In the 17th and 18th centuries, the range of solutions to the common contractual problems used in the Frankfurt collection stabilised because the space for experiments became more limited. The pace of change also slowed as lifelong service meant that new contracts were often not negotiated for many decades. At the same time, essential contents of the contracts were regulated by imperial decree, and certain services were abolished.

On the other hand, external influences of the political, cultural and technical environment triggered major upheavals in employment relation-

81 Landwehr (2008) 214; Blickle (2003); for a summary of the regulation of employment relationships as an expression of »good policey«, see Pierson (2020) 626–630.

ships. Not only did contractual relationships evolve, the municipal service itself changed. The size of Frankfurt's population quadrupled between the beginning and the end of the period analysed here, without concomitant increases in the numbers of city employees. While writing and bureaucratisation led to a significant growth of positions in the city chancellery, the number of jobs in the city's craft trades tended to decline. This also changed the profile of many city jobs. A striking example is provided by the master builders. They progressively became associated less with actual building activity than with the management and supervision of building projects at which the physical labour was carried out by external craftsmen and workers. This was true also in other areas. At the same time, the level of qualifications needed for executive positions increased, with many requiring a university degree. In the 18th century, lawyers had also come to fill the middling positions in Frankfurt's administration. Another example is provided by medical staff. Whereas at the beginning of the period investigated here, simple wound doctors could be employed as city medics, later a college of university-trained physicians led the city health service. These developments can certainly also be understood as part of a process of professionalisation.

The overall view shows that there is no simple explanation for the transition from the late medieval employment contract to the early modern status relationship in Frankfurt. The analysis of the Frankfurt service letter collection reveals certain historical path dependencies through the systematic collection and updating of the traditional service letters, such as the condensation of certain official privileges. Beyond such details, this study has shown that multiple, very different influencing factors were at work, whose impact and interplay took various forms in different contexts, different branches of city administration, and at different times. Together, they created both the forerunners and the preconditions of a modern civil service that would be characterised by completely different solutions to legal problems than those applied by the late medieval administration. This also refutes the old thesis that nothing can be gleaned from the study of early modern employment contracts due to supposedly a far-reaching continuity of employment relationships and labour law as a whole.[82]

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82 Schmieder (1939) 73 f.; cf. Pierson (2020) 5.

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