PART A

CRIMINALISATION OF SEXUAL ACTS

The claim that sexual acts were more and more criminalised after the Reformation has been made especially with regard to fornication, adultery, and prostitution. The discussion is linked to the question of individual criminal responsibility. Many historians would argue that these phenomena are a product of the post-Reformation state. Individual liability to prosecution has also been linked to the understanding of sin, which in the Christian tradition is what separates people from God. It has been claimed that after the Reformation, acts which went against the teachings of the Bible were defined as sinful, and therefore criminalised. Otherwise, if the sin went unpunished, God’s punishment might hit society as a whole.\(^1\) It has also been proposed that before the Reformation, fornication and adultery merely resulted in civil law consequences. These cases would have been characterised as private disagreements. They were to be solved by the involved parties and the main question would have concerned the compensation to be paid to the insulted party. The fact that these cases also involved the ecclesiastical jurisdiction, in other words, fines were also paid to the Church, is frequently not mentioned. Another common view is that Church and Crown tacitly accepted prostitution during the Middle Ages. Early Modern scholars propose that these types of extramarital sexual relations were criminalised after the Reformation firstly, because of a need to protect marriage—and the patriarchal household which the Lutheran authorities considered the very linchpin of society—and secondly, due to the desire to expand the state’s monopoly on criminal prosecution.\(^2\)

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The following two chapters discuss the relationship between tradition and innovation in legislation against sexual crimes during the period 1537–1687. It is my hypothesis that this legislation, to a great extent, continues to apply medieval principles when deciding which sexual acts should be criminalised. Furthermore, individual liability to prosecution was recognised long before the Reformation; it already appears in our oldest Christian laws, possibly codified in the eleventh century, and it is closely linked to the concept of sin.