

## Couples in Conflict

### Form and Content in Marital Separations from Bed and Board in Eighteenth-Century Vienna\*

BY GEORG TSCHANNETT (VIENNA)

On September 22, 1790 Lorenz Altinger, priest of the parish *Heiliger Joseph ob der Laimgrube* in Vienna, handed over an attestation to Regina and Melchior Falck, in which he confirmed that his attempts to reconcile the married couple had failed. Regarding the dispute between Regina Falckin and her husband, a velvet factory owner, the priest considered it to be reasonable “that the spouses be separated legally for a certain period of time”.<sup>1</sup> He also noted that both husband and wife agreed with this decision and demanded an indefinite separation.

One week after the priest issued the attestation, Regina Falckin submitted it together with a complaint to the *Magistrat der Stadt Wien* (the municipal council of Vienna). Thus, she initiated litigation against her husband just three years and four months after exchanging their wedding vows before the altar. Regina Falckin asked the *Magistrat* to approve the separation from bed and board and demanded 360 *Gulden* of alimony a year from her husband.<sup>2</sup> The *Magistrat* entrusted judge Seynagl with the separation proceedings, setting the first date of the hearing as October 13, 1790. On this day at nine o’clock in the morning, the plaintiff, her lawyer Dr Wolf and the defendant arrived at the city hall of Vienna. The judge requested that the spouses, Regina and Melchior Falck, confirm their mutual consent to the separation from bed and board, which they stated before the municipal council. The award of alimony, Regina Falckin explained, was the only obstacle in the way of separation. Regarding the alimony, judge Seynagl succeeded in reaching a settlement in the first hearing, approving the separation, and noted that Melchior Falck should pay 100 *Gulden* of alimony a year to his wife. If his income increased, Melchior ought to pay 150 *Gulden* a year to his spouse.

This marriage dispute is recorded in detail in a document of considerable length, the complaint signed by Regina Falckin and her lawyer that extends over twelve pages. It is written from the perspective of the plaintiff and describes the grounds for the breakdown of her marriage. In her complaint Regina Falckin explained that she had married Melchior Falck, a widower, in 1787, a union that she describes as full

of misfortune and distress. She told the *Magistrat* that Melchior Falck had forbidden her to visit her parental home, that her husband had insulted her parents as “bad people” (*schlechte Leute*) and had even insulted her in front of the domestic staff and strangers. The plaintiff furthermore complained about her housekeeping tasks, which she deemed excessive since her husband had not employed any domestic servants for the last two years. Thus, she was forced to perform “all kinds of contemptible tasks, like carrying the water to the second floor and the wood to the third floor”.<sup>3</sup>

Regina Falckin spared no ink in describing herself a blameless party. She explained that she had cared for Melchior Falck during his illness, and had not provoked her husband’s anger by demanding expensive clothes. Three enclosed references, attesting to her willingness to work and to her proper manners, demonstrate how important it was for her to depict herself as a good wife.

To emphasize her husband’s “tyranny” (*Tyrannay*) and “inhumanity” (*Unmenschlichkeit*), Regina Falckin described two experiences in detail, both of which involved physical violence and verbal abuse, as well as unjustified and excessive reactions by her husband. First, she recounted how one day her husband’s dog had died, for which Melchior Falck blamed her and proceeded to insult her, assaulted her, and ordered her “to throw the dead dog into the river *Wien* in broad daylight – an act that is legally prohibited”.<sup>4</sup> Her husband followed behind her and insulted her with names to such an extent that onlookers had stopped to observe the encounter. Second, Regina Falckin cited an event that occurred during work in the velvet factory. She informed the *Magistrat* that one day, enraged to such a degree by her “carelessness” in processing the clothes, her husband had proceeded to punch her in the face. As the complaint notes Regina Falckin sought refuge from her husband in her parents’ house, in order to escape the possibility of further acts of violence. After her parents had notified the parish priest of the marital quarrel, the priest summoned the married couple for the purpose of reconciliation.

Historians can find hundreds of comparable cases in the archives that detail marital quarrels and the points of friction in everyday marital affairs. These documents chart how spouses met or failed to meet their responsibilities and duties, normative gender roles and spouse's expectations. These suits reveal the various courses of action that were available to estranged couples, and indicate the way in which the authorities responded to spouses' claims. Over which subjects did spouses bring suit, and how did couples narrate the breakdown of marriages? Although records of separations allow historians a limited insight into marital quarrels, we have virtually no access to the defendants' point of view. Nor is it evident whether spouses tried solutions outside the courts to resolve marital conflict, whilst the role played by lawyers in the proceedings remains unknown. The records of separations thus represent distilled version of events reported out of the plaintiffs' perspective as well as the judges' and priests' decisions. Examining the documents, historians should bear in mind the constructed nature of these legal accounts.

The questions which this article addresses are concerned less with the nature of marital conflict itself than with the formal, judicial and procedural elements of separation records. This study will explore how these documents were produced in separations from bed and board during the first ten years after the introduction of the *Josephinische Ehepatent* (Marriage Ordinance) in 1783.<sup>5</sup> The form and composition of these texts will be analysed from their genesis and content to the details included in or omitted from these records. To what extent might the path of separation records be traced prior to the conclusion of court proceedings? What was the relationship between form and content in these documents, and how can we approach these records in a methodological sense?

Before considering these documents in detail, the legal framework of separations from bed and board will be elucidated in the context of Vienna during the late eighteenth century.

## I. Legal framework

In the Habsburg Monarchy the Catholic Church maintained authority over marital affairs until the end of the eighteenth century. The Marriage Ordinance, enacted by Emperor Joseph II in January 1783, transferred jurisdiction over marriage from the *Konsistorialgerichte* (diocesan courts) to the civil courts.<sup>6</sup> The stipulations of the Ordinance were not valid in all territories of the Habsburg Monarchy, but were limited to the Austrian and Bohemian lands as well as to Galicia. With the promulgation of this marriage law, the municipal councils in the cities, as well as the *Herrschafts-*

*gerichte* (manorial courts) in the countryside, were entrusted with treating disputes between husbands and wives.

In Vienna, the *Magistratsreform* (reform of the municipal authorities) in 1783, awarded jurisdiction over marital affairs to the *Magistrat*.<sup>7</sup> All men and women living in the city and its suburbs were subject to this judicial authority. The decisions of the *Magistrat* could be challenged in the newly established *Niederösterreichische Appellationsgericht*, an appellate court, while the court of last instance was the *Oberste Justizstelle*; both of these higher courts met in the city of Vienna.

On the one hand, the Marriage Ordinance defined the marriage union as a civil contract, while simultaneously upholding the indissolubility of the conjugal bond.<sup>8</sup> The Marriage Ordinance affirmed denominational differences by stipulating different rulings on marriage and divorce for Catholic and non-Catholic couples. Non-Catholic spouses could secure a divorce that allowed them a subsequent marriage to occur while the previous partner was still alive. For Catholic married couples the Marriage Ordinance, following canon law, stipulated that a marriage could not be dissolved. Besides the annulment of a marriage, Catholic spouses could only file a petition for separation from bed and board which, if permitted, released the couple from the duty to cohabit.<sup>9</sup> Marital separation from bed and board also released spouses from their obligation to give mutual support as well as invalidating the 'marriage debt' which bound couples to the mutual obligation to have conjugal sex. However, couples who were separated from bed and board were not released from their duty to be faithful to each other and were still obliged to treat each other with respect. Separated spouses were still regarded as married persons who were unable to remarry in their spouse's lifetime. Matthäus Christian Schili, a contemporary writer and priest, noted that: "[s]eparation from bed and board is the only salvation to escape from a cruel or immoral spouse for Catholic couples."<sup>10</sup> In Austria, Catholic married couples were unable to secure a divorce until the introduction of civil marriage in 1938.<sup>11</sup>

Compared to canon law, the Marriage Ordinance introduced two main legal changes. Firstly, separations were granted only by mutual consent. The Marriage Ordinance prescribed that civil courts alone could approve a separation from bed and board provided the married couple had already reached mutual agreement on issues of property.<sup>12</sup> Some commentators on the Marriage Ordinance argued that separations based on mutual consent would have the advantage of making it easier for separated couples to be reunited. Commentators explained that, in contrast to ecclesiastical proceedings, uncontested civil actions would not require the accounts of spiteful remarks and bitter reproaches that were common in marriage disputes in the church courts.<sup>13</sup>

The civil law-maker adhered to the requirement of mutual consent for three years until the law was amended allowing contested separations. In October 1786 an Imperial decree stated that separations could be permitted in cases that were contested if the defendant refused the separation “out of spite” (*aus vorsetzlicher Bosheit*), and if the court considered the grounds for separation to be legitimate.<sup>14</sup>

The Marriage Ordinance did not initially list any grounds for separations amongst Catholic spouses since contested separations from bed and board were not permitted. The reasons for the judgements handed down from the *Magistrat* however show that after October 1786, the court allowed two grounds for separation from bed and board, namely, “severe mistreatment” (*gröblich mißhandelt*) and “temptation to vice or to corrupt practices” (*Verführung zu Lastern und verderbten Sitten*). The judges derived these two grounds from another section of the Marriage Ordinance which had listed them as general reasons to seek legal help and recourse.<sup>15</sup> Because they were seen as much more important, the judges added the following actions to the two above mentioned grounds for separation: grievous bodily harm, adultery and malicious desertion.<sup>16</sup>

The second legal change introduced by the Marriage Ordinance was that the civil courts should grant separations from bed and board without a time limit, unlike the diocesan courts which usually granted these only for one year. Unlimited separations were permitted in the diocesan courts only in cases that were judged to be severe.

In 1786 the Marriage Ordinance was included in the *Josephinische Gesetzbuch* (Josephine Code of Law) verbatim, and, in 1811 with several amendments, it was included in the General Civil Code of Austria, the *Allgemeines Bürgerliches Gesetzbuch* (ABGB). Like the Marriage Ordinance the ABGB affirmed denominational differences and allowed Catholic spouses only to be separated from bed and board. The ABGB however broadened the grounds for contested separations from bed and board. The following grounds for separation were available to claimants and had to be accepted by the judges: adultery, criminal conviction, malicious desertion, and a dissolute lifestyle that exposed the plaintiff to the danger of losing a considerable part of his property or that endangered the good reputation of the family. Claimants could also seek separation on the grounds of violence that jeopardized life and health, severe mistreatment, repeated and severe humiliations, and finally, on account of their spouse having a contagious disease.<sup>17</sup> In addition, the plaintiff was allowed to ask the court for a separate place of residence before the litigation had been ended.<sup>18</sup>

## II. Form and content: The drafting of documents

From the outset of the research process the documents drawn up in connection with proceedings on separations from bed and board have fascinated me. The various hand-writings, seals and different kinds of paper caught my interest during work in the archives.<sup>19</sup> Beside the materiality of the sources, their content was especially fascinating to me: what do we learn by reading court records of historical subjects, and their modes of perception, thought and action? Which types of conflicts did they narrate? What patterns of argument and narration did spouses use to make themselves heard on trial? Did the husbands and wives refer to gendered, bodily or emotional categories in their argumentation?

What also fascinated me were the traces of emotion that marked these documents despite the fact that they were produced in a judicial and procedural context. For example, amongst these records survived bits of paper forming the remains of what appeared to have been a marriage contract that was torn to pieces in the heat of the moment. To recover the content of the marriage contract the individual pieces were sewn together with a fine thread into an almost complete sheet of paper.

Despite this fascination with the documents, one should not forget that they do not speak for themselves. On the one hand, according to Arlette Farge the documents “ne sont que des traces brutes, qui ne renvoient qu’à elles-mêmes”.<sup>20</sup> The history of the records, Farge states, “n’existe qu’au moment où on leur pose un certain type de questions et non au moment où on les recueille”. On the other hand, David Warren Sabean and Ulrike Gleixner, amongst others, note that documents produced by legal and administration authorities hardly reflect the actual experience of early modern life; rather they inform historians of methods of power and control.<sup>21</sup> Furthermore Gleixner argues that these official documents should be regarded as the starting point for investigation, and as the outcome of a process that should be analyzed.<sup>22</sup>

In general, most of the following documents were drafted in the context of separation proceedings: attestations from the parish priest, complaints, the minutes of oral hearings, decisions by the court as well as documents narrating the reasons for the judgement. If the defendant contested the argument of the plaintiff, additional pieces of evidence were drawn up, including testimonies of witnesses, medical reports, private letters or letters of references from employers. For the years 1783 to 1793 only some of these documents are preserved in the archive. In storing the records, archivists favoured those records documenting the

decision of the court and the details of the separation. If the litigation ended in an agreement between the married couple, for instance, historians may draw on the attestations from the priests as well as on the complaints, the latter containing a notice about the decision of the court. In cases that ended without an agreement, a court decision had to be declared. The judgement and its reasoning are thus apparent to the historian. From an historian's point of view, it is unfortunate that a broader range of documents are not preserved for the years 1783 to 1793, such as the records of oral hearings and related testimony.

The various types of text found in court proceedings reflect different perspectives on marital conflict, so that each document demands a critical assessment of its own. The final section will focus on this evidence in the order in which it was produced at the proceedings.

Before the shift to the *Magistrat* system, the married couple was obliged to liaise with their parish priest.<sup>23</sup> If the priest was unable to reunite the married couple and prevent them from initiating separation proceedings, he was required to issue an attestation confirming that his attempts to reconcile the couple had failed. The Marriage Ordinance aimed to exclude the clergy from litigation, but not to prevent them from intervening in marital affairs. Asking whether the bishop and his consistory or the priest were more qualified to reconcile the couple, authors who defended the Marriage Ordinance argued that in contrast to the bishop, the priest had more knowledge of his parish and was thus the more suitable mediator.<sup>24</sup> In fact, the law-maker appeared to have wanted to prevent the spouses from starting thoughtless and hasty separation proceedings.<sup>25</sup> According to a commentator on the Marriage Ordinance, the official action by the priest might reduce the numbers of alienated spouses appealing to the court.<sup>26</sup>

Regarding their content and composition, the attestations from the priests were standardised in form.<sup>27</sup> A stamp in the upper left corner of the page indicated that an attestation cost 15 *Kreuzer*. At the bottom of the page the priest affixed his signature next to the parochial seal. The actual text of the attestation was composed of a brief and a standardised letter of confirmation testifying that the priest himself thought wise to separate the spouses from bed and board, or that all efforts to reconcile the spouses had come to nothing. The attestations were drafted with the judges of the *Magistrat* as the projected audience. Only in a handful of cases did the attestation seem to give an indication of the conversation between the priest and the married couple. In these cases the attestation was drafted to give the impression of a complete and consistent narration. In drafting the documents, the priests transformed or even omitted particular statements made by the spouses. For instance, the priests omitted all questions directed to the married couple. The body language of the spouses was left out of the attestations too.<sup>28</sup>

With the attestation from the priest in their hands, the couple or one spouse could file a petition for separation from bed and board. The complaints were drafted on one or several sheets of paper, with the text of the complaints taking up nearly the entire width of the page. Only on the left side of the pages there was some space to write capital letters in the margin. Referring to the enclosed documents, the letters referred to pieces of evidence and other apparatus of legal importance. The authors of the complaints wrote a short text on the reverse side of the first sheet of paper to summarize the complaint. Sending the complaint to the *Magistrat*, the plaintiff folded the sheets of paper, so that their content – except the brief summary – was invisible. The complaints were generally submitted to the *Magistrat* in duplicate: the original was kept by the court, whilst the copy was sent to the defendant. As a rule, the spouses did not draw up the complaints themselves but left it to their lawyers. Nevertheless, the complaints were drafted in the first person and from the plaintiff's perspective.

Regarding the structure of the complaints, the lawyers for the most part followed a set pattern: The complaints were prefaced either with a reference to the duration of the marriage or noted that other authorities had already dealt with the marital fight in the past. In the main part of the complaints the accusations were put forward and were supported with evidence. In addition, the lawyers stressed the plaintiff's innocence and emphasized that the plaintiff expended effort on their marriage but that this was wasted due to the spouses' behaviour. At the end of the complaint, lawyers generally requested reasonable maintenance and asked the *Magistrat* to set a date for the hearing.

In an account constructed by their lawyers, the spouses described their married life, informing the *Magistrat* of the marital conflicts which led to their separation. Certain passages from the text were underlined or emphasised as direct speech to influence the readers of the complaints. In some cases the plaintiffs gave an exhaustive account of particular experiences. Recalling events from the past, the plaintiffs produced meaning and formed images of themselves as well as of their spouses. As Caroline Arni states, the spouses arranged "events from the past along a chronological and logical order".<sup>29</sup>

Women mostly tried to depict their husbands as monsters, brutes, tyrants, despots or tormentors, whereas men depicted their wives as quarrelsome and uncontrollable human beings. Both male and female petitioners described marriage as distressful, unhappy or unfaithful. As Suzanne Desan noted for revolutionary France, a "language of liberty pervaded both male and female pro-divorce rhetoric"; separation was thus depicted "as a form of liberation from loveless or problematic marriages".<sup>30</sup>



The legal handbooks advised the judges to question the spouses separately at the first date of hearing. Since the minutes of hearings for the period from 1783 to 1793 have not survived, the course of a date of hearing can only be reconstructed from the legal norms. If the spouses filed a petition for an uncontested separation, the judge asked both husband and wife to confirm their mutual consent before approving the separation. If the married couple could not agree on the separation and its related issues, the judge had the duty to try to secure an amicable settlement.<sup>31</sup> Unlike the priests who had to reconcile the couple, the conversation between the judges and the spouses was intended to encourage the defendant to agree to the separation. If the judge managed to persuade the defendant, he mentioned the settlement in the court decision. If he failed to persuade the defendant, litigation was initiated, ending with the passing of a judgment that included the reasons for separation. As Thomas Dolliner, a contemporary jurist and expert on marriage law, stated, the aim of the proceeding was to clarify the circumstances of the dispute as quickly and as economically as possible, without tarnishing the reputation of either spouse.<sup>32</sup>

The sentences were passed in the name of the *Magistrat der k. k. Haupt- und Residenzstadt Wien*, with judges summarizing complaints in a standardised form, ruling in favor or against the separation. In either case, the judges attached the reasons for their judgment in the files. Both the text of the judgments and the reasons underpinning the decision covered around half of the page, leaving space for notes and insertions on the left hand margin. In a short preamble, the judges pointed to the legal conditions that had to be fulfilled to secure separation. The judges then compared the legal conditions, in particular the legally approved grounds for separation, with the reasons for it put forward by the plaintiff. Finally, they argued for or against a separation from bed and board. In the concluding paragraph, the judges referred to the consequential matters of a separation. In detail, they decided on issues of maintenance and child custody, and whether the plaintiff, the defendant or both had to pay the court fees. The stipulation to settle and to document the question of guilt in the judgment was only established in 1819.<sup>33</sup>

As the various types of text mentioned above demonstrate, surviving records from this period expose marital conflicts from different perspectives. Whereas the complaints highlighted the hopes and expectations the individual had pinned on a married life, the official documents also reflect the perspective of municipal authorities and reveal the way in which states exercised power and control. As Arni states, it must be noted that texts are the product of separation proceedings and the formal exigencies of procedural regulations.<sup>34</sup> The accusations and counter-accusations that were committed to paper and filed in the archive suggest anything

other than a consistent picture of married life. Spouses appearing in court had an argument with each other, in which each party struggled to secure a favourable judgement. The arguments of husbands and wives were shaped by manifest interests, such as the need to advance a plausible case, and the pragmatic demands of maintenance payments or child custody for instance. So, how might separation records be interpreted in a methodological sense?

In the past most historians interpreted court records rather pessimistically, as strategic documents, or as a unique everyday account of marriage and family affairs. Micro-historians, in particular, along with social and feminist historians, sought to deal with the methodological problems of court records. For example, Natalie Zemon Davis noted that “when I was a student we were ordinarily taught as scientific historians to peel away the fictive elements in our documents so we could get at the real facts”.<sup>35</sup> In contrast to this training, Davis adopted an alternative approach in her study on “Pardon Tales and their Tellers in Sixteenth Century France” published in 1987. Davis notes that “by ‘fictional’”, she does not “mean their feigned elements, but rather using the other and broader sense of the root word *figere*, their forming, shaping, and molding elements: the crafting of a narrative”.<sup>36</sup> In his study on “Early Modern German Protocols”, Sabeen addresses comparable problems, seeking to account for the “narrative aspects” of minutes of court hearings.<sup>37</sup> In a recent study, Sabeen examines court protocols “for issues of emplotment and story line”, pleading both for a “literary analysis” and a “historical reconstruction of context”.

German-speaking historians have devoted similar attention to methodological approaches to court records. In a study of early modern interrogation protocols, Gleixner argued for a textual analysis of judicial sources, turning first to the structure of a text, before considering its narrative content.<sup>38</sup> According to Gleixner, court records are characterized by three elements: firstly, the factual basis is reduced to an amount manageable for court process; secondly, the records focus exclusively on facts relating to the legal suit; and finally, they depend on formal regulations that control elements of its narrative composition.

In her study of verbal and physical violence in rural society in the mid-eighteenth century, Michaela Hohkamp analysed the conversion of the spoken word to written text. She detects a three-staged process of transformation that may be plotted in detail. In the first stage, the memories of the plaintiffs, defendants and witnesses were transformed into language.<sup>39</sup> In the second stage oral statements were then recorded as written text. In the last stage, Hohkamp states, the clerk wove “the numerous plot threads into a consistent whole”, forming a narrative that met the judicial requirements of the court.<sup>40</sup>

The narrative elements of court records remind the historian of the constructed nature of these accounts. While this does not render separation records useless, it compels the historian to confront the omission, accentuation and exaggeration prevalent in these and other legal sources. The narrative aspects of separation records should not be regarded as a problem, but interpreted as constitutive elements of these kinds of documents.

### Annotations

- \* The research is funded by the Austrian Science Fund (FWF) P20157-G08. The research project “Matrimony before the Court. Arenas of Conflict and Courses of Action from the sixteenth to the nineteenth Centuries” began in October 2011 at the Department of History at the University of Vienna. For more information on the research project visit the website: <http://ehenvorgericht.wordpress.com>.
- 1 Attestation from Lorenz Altinger, September 22, 1790, Municipal and Provincial Archives of Vienna (*Wiener Stadt- und Landesarchiv*): WStLA 1.2.3.2.A6, Sch. 1, 20: “daß diese Eheleute gesetzmässig auf eine geraume Zeit voneinander geschieden werden.” All translations into English were made by the author.
- 2 Complaint from Regina Falckin, September 30, 1790, WStLA 1.2.3.2.A6, Sch. 1, 20.
- 3 Ibid.: “alle niederträchtige[n] Arbeiten verrichten, und das Wasser in den 2ten Stock [...], das Holz aber in 3ten Stock tragen [müssen].”
- 4 Ibid.: “den todten Hund beim hellen Tage, welches höchst verboten ist, in die Wienn zu tragen.”
- 5 Thomas Scheffer, a German sociologist, suggests a text analysis of documents drafted in connection with proceedings. In the so-called *Schreibprozeßanalyse*, he follows an ethno-methodological approach analyzing “die Entwicklung eines Textes anhand der vom Autor vorgenommenen Streichungen, Korrekturen und Verschiebungen ‘auf dem Papier’”. See Thomas Scheffer: *Asylgewährung – Eine ethnographische Analyse des deutschen Asylverfahrens*, Stuttgart: Lucius & Lucius 2001, p. 99–138. In my ongoing doctoral thesis I am working on separations from bed and board in Vienna. The thesis has the provisional title “Conflict-torn Marriages. Separations from Bed and Board in Vienna (1783–1850)”.
- 6 Marriage Ordinance from January 16, 1783 (*Ehepatent*). The laws governing jurisdiction in marital affairs were researched via the website *ALEX – Historische Rechts- und Gesetzestexte Online*: <http://alex.onb.ac.at>. *ALEX* is provided by the Austrian National Library.
- 7 On the restructuring of the municipal authorities of Vienna in 1783 (*Magistratsreform*), see Friedrich Hartl: *Das Wiener Kriminalgericht – Strafrechtspflege vom Zeitalter der Aufklärung bis zur österreichischen Revolution*, Wien, Köln, Graz: Böhlau 1973, p. 36–49; Ferdinand Oppl, Karl Vocelka, Peter Csendes (eds.): *Wien. Geschichte einer Stadt*, Bd. 2: *Die frühneuzeitliche Residenz (16. bis 18. Jahrhundert)*, Wien: Böhlau 2003, p. 80–86 and Rudolf Till: *Geschichte der Wiener Stadtverwaltung in den letzten zweihundert Jahren*, Wien: Verl. f. Jugend u. Volk 1957, p. 19–23.
- 8 *Ehepatent*: §§ 1, 36.
- 9 *Ehepatent*: §§ 44–48.
- 10 Matthäus Christian Schili: *Erläuterung des Oesterreichischen Ehepatents*, mit allen bis Januar 1807 darüber ergangenen Verordnungen, neue, verb. Aufl., Grätz: Tusch 1807, p. 181: “Die Sonderung von Tisch, und Bette ist bey katholischen Eheleuten das einzige Rettungsmittel sich von einem grausamen, oder unmoralischen Ehegatten zu befreien.”
- 11 Ursula Floßmann has produced a brief history of the Austrian marriage law, see Ursula Floßmann: *Österreichische Privatrechtsgeschichte*, 6. Aufl., Wien: Springer 2008, p. 72–103.
- 12 *Ehepatent*: § 45.
- 13 On the benefits of uncontested separation proceedings put forward by the commentators on the Marriage Ordinance, see Ist es wahr, daß die k. k. Verordnungen in Ehesachen dem Sakramente entgegen stehen?, Wien: Trattner 1785, p. 353–354 and Betrachtungen über die k. k. Verordnung in Ehesachen. Vom 16. Jänner 1783, Wien, Prag: Schönfeld 1783, p. 78–80.
- 14 Imperial decree (*Hofdekret*) from October 13, 1786, JGS 585.
- 15 *Ehepatent*: § 45: “Wenn ein Ehegatte von dem andern gröblich mißhandelt, oder der Verführung zu Lastern und verderbten Sitten ausgesetzt wird, ist dem beleidigten Theile vorbehalten, durch die gewöhnlichen Rechtswege Hilfe und Sicherheit zu suchen.”
- 16 See Thomas Dolliner, *Handbuch des österreichischen Ehe-rechtes*, Bd. 3: *Der österreichische Eheproceß*, 2. Aufl., Wien: Wilhelm Braumüller 1848, p. 59.
- 17 General Civil Code of Austria (*Allgemeines Bürgerliches Gesetzbuch, ABGB*): § 109: “Wichtige Gründe, aus denen auf die Scheidung erkannt werden kann, sind: Wenn der Geklagte eines Ehebruches oder eines Verbrechens schuldig erklärt worden ist; wenn er den klagenden Ehegatten bößhaft verlassen, oder einen unordentlichen Lebenswandel geführt hat, wodurch ein beträchtlicher Theil des Vermögens des klagenden Ehegatten oder die guten Sitten der Familie in Gefahr gesetzt werden; ferner dem Leben oder der Gesundheit gefährliche Nachstellungen; schwere Mißhandlungen, oder nach dem Verhältnisse der Personen, sehr empfindliche, wiederholte Kränkungen; anhaltende mit Gefahr der Ansteckung verbundene Leibesgebrechen.”

- 18 *ABGB*: § 107.
- 19 Arlette Farge analyses her experiences of working in the archives, see Arlette Farge: *Le goût de l'archive*, Paris: Éd. du Seuil 1989. In her study on capital crimes at the criminal court of Perchtoldsdorf in the eighteenth century, Andrea Griesebner describes a similar fascination with court records, see Andrea Griesebner: *Konkurrierende Wahrheiten. Malefizprozesse vor dem Landgericht Perchtoldsdorf im 18. Jahrhundert*, Wien: Böhlau 2000, p. 107–109.
- 20 Farge: *Le goût de l'archive* (fn. 19), p. 18.
- 21 See David Warren Sabean: *Einleitung – Perspektiven zur Analyse staatlichen Handelns in der frühen Neuzeit*, in David Warren Sabean (ed.): *Das zweischneidige Schwert, Herrschaft und Widerspruch im Württemberg der frühen Neuzeit*, Berlin: Reimer 1986, p. 32–40 and Ulrike Gleixner: *Geschlechterdifferenzen und die Faktizität des Fiktionalen – Zur Dekonstruktion frühneuzeitlicher Verhörprotokolle*, in *WerkstattGeschichte* 11 (1995), p. 65–70.
- 22 See Gleixner: *Geschlechterdifferenzen und die Faktizität des Fiktionalen* (fn. 21), p. 66.
- 23 *Ehepatent*: § 47: “Zu diesem Ende sollen beyde Parteyen, bevor sie sich der Absonderung wegen bey der Obrigkeit oder Gerichtsstelle melden, sich an ihren Pfarrer [...] persönlich wenden; diese[r] aber soll[en] zur Wiedervereinigung solcher Eheleute nachdrückliche Vorstellungen ihrer Gewissenspflicht und sonst alle mögliche Mittel der Ueberredung versuchen, und nur dann, wenn diese Versuche fruchtlos sind, ihnen ein schriftliches Zeugniß ausstellen.”
- 24 See *Ist es wahr, daß die k. k. Verordnungen in Ehesachen dem Sakramente entgegen stehen?* (fn. 13), p. 346.
- 25 On the intention of the law-maker, see *Betrachtungen über die k. k. Verordnung in Ehesachen* (fn. 13), p. 78–83 and Dolliner, *Handbuch des österreichischen Eherechtes* (fn. 16), p. 24.
- 26 See Schili: *Erläuterung des Oesterreichischen Ehepatents* (fn. 10), p. 189.
- 27 A printed form of an attestation can be found in a handbook from 1828, see Johann Schwerdlin: *Was haben die Seelsorger der kaiserlich-oesterreichischen Staaten nach dem allgemeinen bürgerlichen Gesetzbuche vom 1. Juny 1811, und den von diesem Tage an bis 1. Jänner 1828 ergangenen allerhöchsten Verordnungen in Ehesachen zu beobachten?*, 3. Aufl., Linz: Haslinger 1828.
- 28 For a text analysis of protocols of hearings, see Scheffer: *Asylgewährung* (fn. 5), p. 114–123.
- 29 Caroline Arni: *Amor und die Schuhfabrik. Erzählungen der Ehekrise, Erzählung des Ichs*, in *L'Homme. Zeitschrift für feministische Geschichtswissenschaft* 14, 2 (2003), p. 228.
- 30 Suzanne Desan: *The Family on Trial in Revolutionary France*, Berkeley: University of California Press 2004, p. 100.
- 31 According to Thomas Dolliner, the judge had to call both spouses, “um zuvörderst die Stiftung eines Vergleiches zu versuchen”. See Dolliner: *Handbuch des österreichischen Eherechtes* (fn. 16), p. 120.
- 32 See *ibid.* 111.
- 33 *Hofdekret* from August 23, 1819.
- 34 See Caroline Arni: *Entzweigungen – Die Krise der Ehe um 1900*, Köln, Wien, Weimar: Böhlau 2004, p. 14.
- 35 Natalie Zemon Davis: *Fiction in the Archives – Pardon Tales and their Tellers in Sixteenth-Century France*, Stanford: Stanford University Press 1987, p. 3.
- 36 *Ibid.*
- 37 See David Warren Sabean: *Peasant Voices and Bureaucratic Texts: Narrative Structure in Early Modern German Protocols*, in Peter Becker, William Clark (eds.): *Little Tools of Knowledge. Historical Essays on Academic and Bureaucratic Practices*, Ann Arbor: University of Michigan Press 2001, p. 67.
- 38 See Gleixner: *Geschlechterdifferenzen und die Faktizität des Fiktionalen* (fn. 21), p. 66.
- 39 On the transformation process, see Michaela Hohkamp: *Vom Wirtshaus zum Amtshaus*, in *WerkstattGeschichte* 16 (1997) p. 10.
- 40 *Ibid.*