

streitpaar - Verfahren in Ehesachen

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Teil 3 der Vorschau präsentiert die Beiträge von Andrea Griesebner und Susanne Hehenberger:

Ausweg und Sackgasse zugleich

Eheverfahren vor katholischen Konsistorien von der Mitte des 16. bis ins ausgehende 18. Jahrhundert

Andrea Griesebner

(in German language)

Following a brief explanation of canon law the first section provides an outline of the sources for marriage litigations in the archduchy Austria below the Enns. It will highlight the possibilities and limitations the protocols of the consistories offer. The second section provides insights into the variety of marriage litigations made possible at early modern ecclesiastical courts, as well as quantitative trends. Based on a case study the third section provides deepened insight into the various contexts motivating women and men to sue their spouse. Between 1765 and 1781 Magdalena Pürckin and Peter Pürck conducted 13 proceedings, some initiated by the wife, some by the husband. The analytical focus is directed to the particular interest of the plaintiff and the defendant respectively as well as their discursive strategies to get a verdict in his or her own favor. The summary argues that the catholic marriage politics generates the various proceedings the ecclesiastical courts are dealing with. Nevertheless the persistence Peter Pürck in suing his wife for cohabitation and Magdalena Pürckin's resistance is exceptional.

The article is based on long standing research on churchly marriage jurisdiction in the archduchy Austria below the Enns, financed by the Austria Research Fund and backed by the University of Vienna between October 2011 and October 2015.

**Das fehlende fleischliche Band
Sexuelles Unvermögen als Scheidungsargument vor dem Passauer und
Wiener Konsistorium (1560-1783)**

Susanne Hehenberger

(in German language)

Many Catholic spouses filed for divorce or separation by bed and board in the early modern period. Only a few of them argued that their inability to execute the marital duty was the main cause. In this article, I focus on a small sample of 51 couples who used the argument of male or female impotence in the course of marriage litigations in the consistories in Vienna. After exploring the meaning of impotence and *divortium* in these sources, the article analyses the different interests of claimants (e.g. escape from an unhappy union or the desire for a new marriage) as well as the response of defendants to these allegations (denial, confession, counter-claim or negotiation). As canon law allowed the annulment of marriages only in cases of premarital, enduring and incurable impotence, consistories had to search for clear evidence before they rendered judgement. The appellate court – the nunciature in Vienna – then had to confirm the annulment before it would become effective. In theory, the evidence of one spouse confirmed by an oath *cum septima manu* (testimony of seven reliable men or women) would suffice as proof. In early modern practice, either the litigant or the consistory often demanded additional medical evidence, which was regularly provided by the medical faculty of the university in Vienna. In cases of female impotence, however, midwives were consulted. Even if evidence seemed clear and the carnal bond was missing, it became increasingly difficult to enforce a *divortium quoad vinculum* from the sixteenth to the eighteenth century. This situation was exacerbated after Pope Benedict XIV created the position of *defensor matrimonii* in November 1741, a figure who acted *ex officio* to protect marriage in the first instance.