“WHAT ARE THE REASONS WHY SO MANY MARRIED PEOPLE ARE SO UNHAPPY?”

This question was asked in a marriage guidebook published in Vienna in 1805. The author of this book answered this question with a “Top Ten List“:

> *1) The lack of a good Christian upbringing. 2) Neglecting to pray daily. 3) Lack of virtue and patience and of pleasing, gentle affection. 4) The excessive, and through this, disgusting pleasure in marital sex. 5) The resulting dominating lust for diversion. 6) Idleness. 7) The insatiable inclination to constantly indulge in wearing extravagant clothing, to everlasting entertainment, gambling and any other way of wasting money, time and virtue. 8) The incurring of debts or the bitter question: “How will we be able to satisfy the claims of our debtors? Where should we get the money for bread, clothing, etc. for our children?” 9) Lack of great worldly wisdom: Being the master over one’s own desires and knowing how to willingly do without the things which one cannot afford. 10) Incorrect views of what it means to be married and what the duties of marriage are.*

From: „Guter Rat über die wichtigsten Punkte des Ehestandes so wohl in moralischer als physischer Rücksicht. Ein nützliches Geschenk für Brautleute, welche im Ehestande wahrhaft glücklich zu leben wünschen” (Good advice on the most important aspects in marriage, in both the moral as well as the physical sense. A useful present for newly married couples who wished to be truly happy in marriage), Vienna 1805, 104–105.

PREPARATIONS FOR THE DIVORCE

In December 1809 Johann and Rosa Kroy got an uncontested divorce from bed and board. At the time of the divorce the 35 year old Johann Kroy worked as a property accountant at the accounts department of the Aulic War Council. Rosa Kroy, maiden name Haan, was nine years younger than her husband. The marriage produced a daughter. In the divorce contract they promised

> *“that after the separation from bed and board had been carried out both parties would*

> *not to tell anyone about the reasons for the divorce from bed and board and would treat each other with mutual respect under all circumstances".*

The amount of maintenance agreed upon by the couple was not the usual third of the husband's income, but rather two fifths of his income plus the maintenance for the daughter. Johann Kroy earned 700 gulden per year as a civil servant. He also earned an additional 750 gulden from interest on capital transactions. Rosa Kroy received 800 gulden per year for herself and her daughter. In the case that Johann Kroy should earn less or more in the future the maintenance was to be proportionately increased or decreased.

Johann Kroy, in the meantime promoted to the position of an accounts councilor at the Aulic War Council, remarried in 1825. This time he stipulated the amounts for maintenance claims in case of a divorce already in the marriage agreement. In the marriage agreement from September 1825 the bride signed a contract stating that she would "be content with" receiving a sixth of his income.

> *The bride declares that if there should be a circumstance in the course of their marriage which results in the divorce of the marriage, she would be content with receiving a sixth of the 1200 gulden salary of the husband, and that if this income for some reason should decrease, that she would make do with a sixth of this decreased amount, and finally, when in the future he should receive a pension, that she would be prepared to be satisfied with one sixth of this pension.*

That in the marriage contracts of Catholic couples there were arrangements for maintenance related matters or proprietary rights was unknown until this time. However, historians know such precautionary measures very well from Jewish marriage contracts.

FORGIVE AND FORGET

According to the lawyer Thomas Dolliner, the husband or wife who was cheated on did not have the right to demand a divorce if he or she had "explicitly expressed and completely forgiven the partner of the insult inflicted upon them".

In order to prove that she had not forgiven and forgotten that her husband had cheated on her with another woman, Katharina Popp made the following statement under oath in front of the divorce court of the Magistrate's office of Vienna in 1810:

> *I, Katharina Popp, swear to God the Almighty a pure, corporal and genuine oath without any intent of hiding anything or using any ambiguous meanings, that is, that I do not speak differently than I think, and I do not think differently than I speak, but rather so as I dare to answer when standing before the strict and all-knowing judgement seat of God:*
>
> *That I, after Juliana Reisinger's imprisonment in the diocesan Abbey in March 1808, did not state to have entirely forgiven or forgotten the offense which the defendant committed with said Reisinger or to have expressed the wish to reassume cohabitation with the defendant. So help me God.*
>
> *Katharina Popp*

A "COOK BOOK" AS EVIDENCE

In most of the divorce proceedings carried out in the Vienna magistrate's office official documents or oral statements from witnesses served as proof to substantiate a reason for divorce. Cäcilia Swoboda submitted a cook book from October 1814 as evidence when she, after only three years of marriage, submitted her petition for divorce in 1816. She accused her husband of having written "for the sow" instead of "for the wife" in the cook book when this edition came for her. Her husband did not deny the truth of the accusation and responded to the accusation by stating the following:

> *This is true, that in his own cook book he wrote for the sow instead of the wife. This happened because the respective edition was made about brandy, and that he therefore wrote "for the sow" instead of "for the wife".*

The Viennese City Magistrate's Office accepted Cäcilia Swoboda's petition for divorce. Along with other legally acceptable reasons for divorce the magistrate considered the mortification as proven. The magistrate's office conformed therewith to the regulations of the General Civil Law Code of 1811. Paragraph 109 of the General Civil Law Code recognized „that depending on the individual's circumstances, very severe, repeated mortification" were legal grounds for divorce.

REASON FOR DIVORCE: ADULTERY

The General Civil Law Code from 1811 recognises adultery as legal grounds for divorce from bed and board. The defendant, however, still needs to be declared guilty of adultery by a court. The fact that in such divorce proceedings the starting point for the plaintiff was not at all an easy one can be seen in a four volume collection of laws, regulations and requirements for police administration in the Empire of Austria compiled and published by Chrysostomus Faulller in 1827:

> Adultery, with the exception of acts of fornication carried out by a married person as a source of income, cannot be investigated or punished ex officio, but rather only when the injured party requests it. Even this person is not entitled to make such a request if she or he explicitly forgave or tacitly accepted the situation by remaining silent for more than six weeks although the adultery was known to him or her. Also the already imposed sentence is repealed as soon as the injured party declares her/himself ready to reassume cohabitation with the guilty party. However, such a declaration does not repeal an already imposed punishment on the accomplice. *(§. 248. 2. Thl. St. Ges. B.)*

From: Faulller, Chrysostomus: Gesetze, Verordnungen und Vorschriften für die Polizei=Verwaltung im Kaiserthume Oesterreich. Erschienen in den Jahren 1740 bis Ende 1825, und in alphabetisch=chronologischer Ordnung zusammengestellt, mit vorzüglicher Rücksicht auf Nieder=Oesterreich, Bd. 1, (Laws, regulations and requirements for police administration in the Empire of Austria. Published in the years 1740 to the end of 1825, and compiled in alphabetical and chronological order, with special attention to Lower Austria, Volume 1) Vienna 1827, 316.

A SKIN AS A CONTRACEPTIVE

In August 1830 Magdalena Kaubarek carried out a contested divorce proceeding against her husband. She and her husband, a cooper from the district Leopoldstadt, were both 42 years old at this time. We find out the following from the court protocol recorded during the hearing: The husband said that

> *His wife once told him in bed, that her best friend, who was divorced from her husband, had once told her that her husband had used certain precautions in order to prevent the conception of a child while having sexual intercourse.*
>
> *On the part of the commission there was objection to recording these literal expressions in the protocol, but he insisted on it, and said the following, in his own words, for the record:*
>
> *His wife had said that her best friend had convinced her husband that she had the right to have a child; then she told him that he (the husband of the friend) always put a skin on when he used his wife; he, Kaubarek responded to his wife, that he had been in foreign places over the course of 30 years and had seen a lot, but such a thing he has never seen, and if his wife has such a friend, then she couldn't be an honest woman, that isn't something a well-raised maiden would do.*

On the website of the Museum of Contraception and Abortion one can see a picture of such a *skin.* A condom with a string made from sheep intestine is listed under the inventory number 2053 in the inventory of the museum's collection.

"WORDS OF WISDOM WHICH SHOULD BE CONSIDERED WHEN BOTH MARRIED PARTIES COME TO STAND BEFORE THE COURT"

In the late 1820s the lawyer Thomas Dolliner published several articles on certain aspects of divorce proceedings in the "Magazine for Austrian Law" ("Zeitschrift für österreichische Rechtsgelehrsamkeit"). In 1848, at this time he was already a "professor emeritus of Roman Civil and Canon Law at the University of Vienna", he collected these articles and published

them all together in the “Handbook of Austrian Marriage Law”.

After the marriage court judge had heard the two married parties separately, Thomas Dolliner advised the judge to have “both married parties come together before him”. For this shared hearing of the husband and the wife Thomas Dolliner formulated the following “words of wisdom”:

> *1. The judge must attempt to nip every outburst of emotion in the bud, if he does not do this the married parties, who are usually in a very emotional state of mind, will most likely tire his ears with their alternating accusations. They will bury each other in mounds of allegations and finally end up involved in indecent bickering and a state of such bitterness that they will no longer be capable of listening to sensible ideas or to properly defend their rights. The entire hearing can therewith become fruitless.*
>
> *2. He should not tolerate any indecent behavior, and he should forbid, in all seriousness and urgency, the disputing parties to indulge in such nonsense, and if this does not help, the hearing should be continued on a subsequent day.*
>
> *3. He himself should treat the parties considerately, not make any unnecessary accusations, not indulge in making any insulting comments or improper jokes, not chide them with rude words, but should instead ask his questions calmly and listen, if need also instruct them, and assist them in their often unclear and incoherent pleadings or their ineptness in presenting evidence by providing them with proper instruction.*

From: *Dolliner, Thomas: Handbuch des österreichischen Eherechtes (Handbook of Austrian Marriage Law), Vol. 3: Der österreichische Eheproceß (Austrian Marriage Proceedings), Vienna 1848, 120.*

DISGUST AS GROUNDS FOR DIVORCE

On 3 April 1850 the 64 year old master tailor Johann Duschek defended himself against accusations made against him by his wife, Rosalia Duschek, who was 33 years younger than

him. He said:

> *In regard to the second reason for divorce, namely that he is afflicted with dreadful smelling breath and body odor, he has to object as this situation is not true… He has to call upon the perception of the court commission, since if this allegation made by the plaintiff was actually true to the degree which she claimed in her complaint, then this unsatisfactory state would be perceivable also by those present at the court.*

Rosalia Duschek responded to this in the same hearing, as was the term for trial date at court, by saying that for her

> *the smell of her husband is a plague, and that for her it as if she is next to a corpse, for this reason she is also unable to eat at home.*

The court commission reacted to the suggestion made by the husband and gave its opinion on the *unsatisfactory state*. The court clerk noted the following in the protocol of the hearing:

> *On the part of the commission the comment let notice be made that Johann Duschek was standing very close to the commission, and that notwithstanding this, it did not notice any unpleasant smells claimed, and that the plaintiff was also standing very closely beside the defendant without being bothered by any such odors.*

Georg Tschannett, translation Jennifer Blaak, 2016

Next: Insights (1857–1867)

Citation: Georg Tschannett, Insights (1783–1850) » Start » Page, in: Webportal. Marriage at Court 3.0, 2026, <http://ehenvorgericht.univie.ac.at/?page_id=4373&lang=en&pdf=4373>. [Date of access: 2026-10-17]