

***“Der Eehimmel begann schon früh sich zu trüben”:* Interdenominational Comparison of Divorce Proceedings**

by

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Introduction

The following paper is based on the first provisional results of my doctoral dissertation. For about two years I have been working on an interdenominational comparison of legal records of divorce proceedings. I've been comparing resolution records of the civil court in Berne, a Protestant town in a Protestant canton of Switzerland, with the same kind of documents written at the civil court of Freiburg, a Catholic town in a Catholic canton.

Courts are places of social negotiation, where norms are discussed and socially accepted gender-specific behavior is constructed. Divorce cases, in particular, reveal a lot about the relationship between the sexes and about the historical ideas of what a man is and what a woman is.¹ This approach, close to historical anthropological research, begins with the couple and the balance of power in daily life, from whence I try to expand my knowledge to cover a macro-historical level.² I want to know more about the increasing state influence on private institutions such as marriage and family by means of laws and norms and about concepts of gender in this period. These concepts not only concern the couples I look at, but they also have an influence on society in general and its structures.

The interdenominational comparison is a new point of view as far as divorce records are concerned. It is an important aspect when one works with documents of the 19th century in the field of Swiss legal History. In 1848, the modern Swiss Confederation was founded after a short war between the supporters of a political centralization, mostly the liberal, Protestant cantons, and the opponents of the new political system, the conservative, Catholic cantons. During the last third of the 19th century this conflict, *Kulturkampf*, arose again, but only on a political and mental level. The Protestants accused the Catholics of being guided by the Pope and tried to hold them back wherever they could. The Catholics felt suppressed and felt that their traditional values were given away.³

¹ Brigitte Studer, 'Kodifizierung, Rechtsbruch und Justizpraxis im Blickwinkel der Geschlechterverhältnisse, 15.-19. Jahrhundert,' Brigitte Studer and Rudolf Jaun, eds., *weiblich – männlich. Geschlechterverhältnisse in der Schweiz: Rechtssprechung, Diskurs, Praktiken*, Zürich, Chronos, 1995, 11-15

² Gert Dressel, *Historische Anthropologie*, Wien, Böhlau, 1996, 190-192

³ Peter Stadler, *Der Kulturkampf in der Schweiz*, Zürich, Huber, 1996

Sources

I'm looking at the period from 1874 to 1912. In December 1874, the Swiss Parliament voted for a new law concerning marriage affairs. Based on the articles 53 and 54 of the new constitution (existing since 1848), the law transferred all competence in marriage affairs to civil authority. Religious marriage ceremonies would not be valid anymore without a prior civil registration. Moreover, marriage was now under federal protection and no longer in the responsibility of the cantons.⁴ As a consequence, the Catholic cantons had to introduce divorce as a legal form of dissolving marriage, which was new to them. Until then, there had been no possibility for Catholic men and women to dissolve their marriage definitively, but only for a certain period and without the right to get married to someone else in meantime.⁵ In 1912 finally, the first civil code in Swiss history was passed and marriage law changed again.⁶

Between 1874 and 1912 two kinds of grounds for divorce existed: a list of definite grounds, and one indefinite general clause. Definite grounds for divorce were: adultery, mental illness, willful desertion, impotence, dishonoring punishment and severe cruelty. Such behavior should, once proved, immediately lead to divorce proceedings. The general clause says that the marriage must be dissolved when it isn't in accordance with the moral essence of marriage anymore. The judges must declare that the marriage is in such a shattered state that there is no hope of saving it.⁷

My sample contains 144 cases in Freiburg where I have included the cases of every fifth year in my research, and 280 cases in Berne where it was even enough to include every tenth year.

Theory

In my work I examine relations of power between the court, men and women. I'm analyzing these relationships and the pictures of men and women, they reflect, by asking questions as for example: which sex, male or female, files more often a petition for divorce? What are the most frequent reasons to do so? Who is most successful in court? What do the stories of these broken-down marriages tell us about the various kinds of relationships, their difficulties and the positions of men and women in contemporary marriage? The historical and socially constructed idea of a man and a woman is called "gender". According to Joan W.

⁴ Schweizerisches Bundesarchiv (BAR), E 1301(-), 1960/51, volume 55 and volume 56

⁵ Ferdinand Buomberger, *Die schweizerische Ehegesetzgebung im Lichte der Statistik*, Freiburg, Universität Freiburg, 1901, 3

⁶ Pio Caroni, *Privatrecht. Eine sozialhistorische Einführung*, Basel und Frankfurt am Main, Helbig und Lichtenhahn, 1988, 25

⁷ Caroline Arni, *Ehe, Paare. Krisen der Geschlechterbeziehung um 1900*, Berne, Universität Bern 2002, 42-43

Scott's definition the relation between individuals and institutions, laws and norms, symbolic descriptions of men and women, and subjectivity contribute to the gender version of a certain historical period.⁸

As relationships of power and the gender pictures are not visible as such, I focus on norms which should reveal the relationship between men and women, and the tribunal should reveal how laws and the dispensation of law influence the gender pictures, how men and women fight with gender-specific symbolic arguments and how subjective experiences are important. Gender is constructed in court.

I differentiate three levels of norms by means of which specific ideas of what a man is and what a woman is are constructed and reconstructed. The norms themselves are mostly re-ensured or slightly modified by the persons that are involved in the interactions during the divorce proceedings.

There are the legal codes, primarily the written laws, secondly the dispensation of justice, that is, the way the divorce judges make use of the law in their decisions, and finally, there are the social norms which are reflected in the actions and speech of plaintiffs and defendants. I start from the assumption that what is going on in court, is not a top-down situation or a one-way social disciplining, but all protagonists participate in the construction and reconstruction of norms. Nevertheless there are protagonists with more and others with less powerful influence on the norms. Those who construct norms also decide about who is in and who is out. It becomes possible to compare and measure the grade of normality of individuals and to sanction abnormal behavior referring to these norms. This is what happens in court, especially in divorce proceedings.⁹

Today, I'd like to focus on discoveries that struck me first when I read the records in a historical neo-hermeneutical way, searching for indications of more or less favoured subjects. The neo-hermeneutical approach is one of the methods of historical anthropological research: The human being is in the center of interest. His/her personal way of giving sense to his/her environment and according to what s/he lives has to be worked out. These historical meanings, combined with given legal or social structures, are the key to macro-historical knowledge about the gender relations and the social system.¹⁰

⁸ Joan W. Scott, 'Gender: Eine nützliche Kategorie der historischen Analyse,' ed. Nancy Kaiser, *Selbst Bewusst, Frauen in den USA*, Leipzig, Reclam, 1994, 27-75

⁹ François Ewald, *Michel Foucault philosophe. Rencontre internationale*, Paris, Seuil, 1989, 200

¹⁰ Gert Dressel, *Historische Anthropologie*, Wien, Böhlau, 1996, 186

I will mainly talk about women. My choice is a matter of work in progress. I've first focused on women's side of the story; the research on the men of the story is still waiting its turn.

First results

When women dare to defy norms by spending the nights on the dance-floor, by drinking in the pub or by committing adultery, when they have to leave their home in order to bring in some money, when they pay the court fees instead of their husbands, then their behavior shows a surprising degree of independence. Independence of their husband, but also of all those norms that were imposed during the 19th century and that were based on the so-called *Geschlechtscharakteren* (gender characteristics).¹¹ Women are supposed to be emotional, passive, care for their husbands and children, stay at home and welcome the stressed man coming home from unhealthy and demanding public life. Men are active, rational and represent their families in public. They incorporate the thinking and understand life scientifically.

There are two sorts of independence in my sources: I call the first one material independence, this kind of independence is often due to a neglect of duties by the men. Instead of earning money, they remain, for example, drinking in the pub, so that the woman resumes the responsibility for the maintenance of the family.

In the case of Mister and Mrs Konrad-Burla the judges write:

“Die Erwerbsverhältnisse des Beklagten waren leider nicht derart, dass er der Frau und seinen fünf Kindern eine auskömmliche Existenz hätte bieten können. Wenn die Klägerin daher mitverdienen half, so tat sie nur, was jede andere Ehefrau bei gleichen Verhältnissen auch tun muss und gerne tat.”¹²

(The defendant unfortunately didn't earn enough to offer his wife and his children a comfortable life. By helping to earn money, the plaintiff only did what every wife in such circumstances must do and loves to do.)

These women partly leave the house for the day or even for the week and so construct certain social norms. While they mend or compensate for failed male behaviors, they weaken the socially constructed pictures of femininity and the constructing process of the “Geschlechtscharaktere”.

¹¹ Karin Hausen, 'Die Polarisierung der „Geschlechtscharaktere“: Eine Spiegelung der Dissoziation von Erwerbs- und Familienleben', ed. Werner Conze, *Sozialgeschichte der Familie in der Neuzeit Europas*, Neue Forschungen, Stuttgart, Klett, 1976, 363-393

¹² For example the case of Mister and Mrs Konrad-Burla, 25th of April 1896, Staatsarchiv Bern, Bezirk Bern B 2555, 544

The second kind of independence is called “ideational independence”. Here I not only concentrate on women but particularly on those who don’t live up to contemporary picture of womanhood and to the expectations of women at that time. Consequently, the women I’d like to talk about appear in the records as the defendant.

This sort of independence is closely linked with a female norm-flouting behavior: Women spend their nights drinking, dancing or going for a walk in the public recreation area, *Gurten*, accompanied by strangers, women squander money for their own private amusements and for going out with friends. Here, the social norms get modified not in court but in daily life. But because this fact is literally mentioned by the judges, social and legal norms begin to interfere and to define the expectations of men and women.

So “ideational independence” always means transgression. Transgression in three possible dimensions: spatial transgression, when women go to places where they shouldn’t be (pub, restaurant) or when they are alone at the station or travel alone on trains; temporal transgression (when they are not at home in the evening, stay out overnight or have several meetings with the same person) and social-net-transgression (when they are in contact with men that do not belong to the family or with women of bad reputation).

It’s interesting to see that many women, accused by their husbands of breaking social norms, are aware of what they are doing and even defend their action. Some of them express the wish of freedom, the longing for another man and even demand to go out, as does Mrs Zoss-Rüedi, of whom her husband claims:

“Die Ehefrau hat einen zänkischen Charakter und war mit dem Mann grob und insultierte ihn auf arge Weise; als er am Nervenfieber krank lag, wurde er von ihr gar nicht gehörig gepflegt. Seitdem die Eheleute Zoss nicht mehr zusammen leben, ging die Ehefrau öfters auf die öffentlichen Tanzböden, tanzte bis Mitternacht und ging dann mit einem Tänzer nach Hause und hielt solchen über Nacht, dass bei solchen Anlässen fleischlicher Umgang gepflegt wurde, liegt auf der Hand. Seit letzten Sommer unterhielt Frau Zoss ein intimes Verhältnis mit einem anderen Mann, welcher sie öfters kiltgangsweise besuchte und letzten Herbst auf einmal von dem Meister der Klägerin und dessen Knecht im Bett angetroffen wurde.”¹³

(The wife has a quarrelsome character and was rude and insulted him in a bad way; when he was suffering from the nervous disease, she didn’t look after him properly. After the couple Zoss ceased living together, she has been going to public dances more often, dancing until

¹³ For example the case of Mister and Mrs Zoss-Rüedi, 26th of October 1886, Staatsarchiv Bern, Bezirk Bern B 2547, 192-193

midnight and then has been going home with one of the dancers, keeping him overnight. It's obvious that in such moments, they have made love. Since last summer, Mrs Zoss has been having an intimate relationship with another man who still comes to see her as a lover. Last autumn, the accuser's master and his domestic surprised them in bed.)

Interdenominational comparison of the judgments (second level) concerning female independence

At first sight, the Protestant judges from Berne seem to be more likely to support independent behavior of women compared with the Catholic ones from Freiburg. (Here, I already know that it will be the same for the men). While in Freiburg the court often quotes articles of the divorce law, which should work towards a stabilization of the marriage and therefore a reconstruction of damaged norms, in Berne, the judges rarely refer to these paragraphs. These quotations of legal norms in Freiburg emphasize the authority of the court and stress the legally and socially defined normal relationship between men and women, while in Berne divorce proceedings seem to be treated in a quite pragmatic way. The Bernese records are normally shorter and about 89% of the demanded divorces (men and women) are granted. Moreover, no records of reconciliation acts can be found. In Freiburg, however, every case starts by a session during which the judges try to reconcile the couple. So it does not astonish that only a third of all petitions for divorce are successful. In Berne as well as in Freiburg obvious religious or denominational arguments are missing.

Here two examples of legal resolutions, one from Berne, the other from Freiburg:

Berne:

“Wie bereits hievore ausgeführt, können bestimmte Scheidungsgründe nicht als vorhanden angenommen werden, weder auf Seite des Klägers noch auf derjenigen der Beklagten; auf Grund des Artikels 46 B.G. könnte demnach die Trennung der Ehe nicht ausgesprochen werden. Dagegen liegt eine ganze Menge unbestimmter Scheidungsgründe vor, welche eine Trennung der Ehe voll und ganz als geboten erscheinen lassen; die von den Parteien als bestimmte Scheidungsgründe geltend gemachten Tatsachen sind nach feststehender Praxis auch vom Gesichtspunkt von unbestimmten Gründen aus zu würdigen.”¹⁴

(As we already have shown, no definite grounds for divorce can be proved, neither on the plaintiffs part nor on the defendants part. On the basis of article 46 the divorce can't be pronounced. On the other hand, there are lots of indefinite grounds, which absolutely demand

the dissolution of the marriage. The facts that they tried to assert as definite grounds for divorce have to be honored as indefinite reasons also from the point of view of the administering of justice.)

Freiburg :

“Que si l’entente entre les époux Gendre est quelquefois rompue; que si les sentiments d’affection paraissent, parfois s’affaiblir à la suite de querelles de ménage, l’on ne saurait en conclure que le lien conjugal qui unit les époux Gendre soit profondément atteint; que la cause des rapports parfois difficiles entre ces époux parait résider dans leur éducation plutôt que dans des faits indiquant que la continuation de la vie commune est incompatible avec la nature du mariage”.¹⁵

(Even if the sympathy between the spouses sometimes seems to be destroyed; even if the affective feelings seem to weaken in consequence of marital arguments, one cannot draw the conclusion that the marital tie, which unifies the couple Gendre is severely endangered. It seems that the marital difficulties are caused by different ways of education and are not the consequence of facts that indicate that the continuation of marital life is incompatible with the essence of marriage.)

These quotations show that the judges in Berne are more likely to dissolve marriages than the judges in Freiburg. Whereas the Bernese justice sees enough reason to declare that the marital life of the couple isn’t compatible with the “essence of marriage” anymore, the tribunal in Freiburg still considers that there could be reconciliation between the spouses.

But when one looks at it again, a paradox arises: The records show clearly that the judges in Freiburg always try to save the marriage by demonstrating that the evoked accusations are not true or not so bad that a reconciliation wouldn’t be possible. They intend to avert the crises of the marriage caused by despised social norms and to fight against the loosening of moral principles. In many cases, the petitions of divorce are rejected. But doing so, unusual behavior patterns, which would normally justify a divorce, don’t have this expected effect only because the judges intend to save the marriage. As a consequence, actions of independence are not sanctioned but, on the contrary, the judges tend to tone down the seriousness of the arguments mentioned by the accusers. So, the judges, willing to

¹⁴ The case of Mister and Mrs Bühler-Nussbaumer, 12th of February 1896, Staatsarchiv Bern, Bezirk Bern B 2556, 194-205

¹⁵ The case of Mister and Mrs Gendre-Roche, 4th of January 1896, Archives de l’Etat Fribourg, TSa Affaires civiles, volume 99, 108

reconstruct and tighten the social norms, suddenly use very liberal and generous arguments to do so and are even neglecting legal norms.

On the other hand, Bernese judges do not really support independent behavior of women. When they allow the men who accuse their wives of flouting norms and of being independent in order to get the divorce, they fulfill the male desire and throw their wives into a very difficult situation.

Interdenominational comparisons of independence in the action and speech of plaintiff and defendant (third level)

On the level of the discursive practice, there are no clear differences between women from Berne and women from Freiburg. Both of them conquer and defend their spaces, time and social circles of independence using similar terms (other language, though) when they accuse or comment on the accusations brought against them, although one mustn't ignore the influence of the clerk and the standardized language of those records.

Here another paradox appears: Women taking their problems of the family home to court seem to be quite emancipated at first sight: they leave their own social circle and their working area in order to stand up against their husbands, the "housefathers", thus acting against social norms. But if we look a bit closer, we see that these women only have a chance to be successful when they use arguments known to be accepted legally. These emancipated women who risk being alone, with economic difficulties and ostracized by society after the divorce, turn out to be upholders of the norms which are part of the common discourse and written down in the legal norms as in laws, articles and paragraphs.

This paradox must be specified according to the category of social classes. In the upper class where men and women have enough financial resources to live up to the principle that the husband should be the only one to go out and earn money, it seems more normal that women respect the bourgeois norms. Corresponding to the fact that these upper and a part of the middle class women don't work and often stay at home, those who nevertheless leave their female space and go to court to ask for divorce, really do take a definitive step.

Among the lower classes, it's common and even part of the way the couples see themselves that women work, too.¹⁶ That's why it's not so astonishing to see them bring up petitions for divorce. They don't have to be as afraid of the economic consequences as upper middle class and upper class women have to and they are used to acting in public

spheres. But at the same time, going to court they refer to the bourgeois norms and the current marriage law in order to impose their will during the divorce proceedings. Historical literature says that the *Geschlechtercharakteren* were theorized and then introduced into the upper class first, but always with the aim to let it leak down to the working class. My sources, the legal records, reveal one way in which these social norms were socially transferred by the fact that lower class women exploited bourgeois norms in order to fulfill their desire for independence.

Conclusion

Comparison of the dispensation of justice to the discursive practice

Differences arise when we now compare the two practice levels we have reviewed, such as the court decisions and the discursive practice:

As far as the discursive practice is concerned, women in Berne and Freiburg resemble each other. Using almost identical words, they stand up for their rights. Catholic and Protestant women express their desire to have pleasure in life ignoring contemporary social norms and images of masculinity and femininity or they explain why they have to bring in money.

The Catholic and Protestant judges, however, decide differently. The Catholic judges are much more severe and try mostly to save the marriage, while the Protestant judges support the divorce petitions of both men and women by referring to legal norms. The dispensation of justice seems to be denominationally marked.

Consequently, it seems as if the decisions and the legal policy of the authorities have no influence on the behavior of men and women. But one mustn't forget that in Berne 280 couples appear in court in a sample of 4 years while in Freiburg there are 144 couples in a sample of 15 years. So the decisions have an indirect impact on the practice of the couples. While Catholic and Protestant men and women in court speak more or less the same way and have similar desires, much fewer people after all go to court in Freiburg.

Which is now the most powerful party in this struggle for power by the means of norms?

- The women who ignore social norms, live up to their own principles, but then collide with the legal norms, the law and the denomination of the judge?
- The men in Freiburg who accuse their wives of flouting social norms, who go to court in order to apply legal norms to their case, but then are let down because the judges do not want to promote divorces?

¹⁶ Regina Wecker, *Zwischen Ökonomie und Ideologie. Arbeit im Lebenszusammenhang von Frauen im Kanton*

- The women in Berne who cannot bear their cruel husbands anymore, who don't care about social norms and therefore go to court, but then have to use the common legal discourse in order to correspond to the legal norms and get what they want?

These are the essential questions which have to be looked at if we want to know more about the relationship between man, woman and the court, about the pictures of gender and the social system of the period.

Zusammenfassung

Geschlechterbeziehungen und Machtverhältnisse in Scheidungsprozessen zwischen 1876 und 1906. Ein interkonfessioneller Vergleich. (Einblick in mein Dissertationsprojekt)

Gerichte sind Orte der gesellschaftlichen Auseinandersetzungen und der Konstruktion von sozial anerkannten geschlechtsspezifischen Verhaltensweisen. Insbesondere Scheidungen thematisieren in der diskursiven Praxis der Betroffenen als auch in der Rechtspraxis der Richter das Verhältnis zwischen den Geschlechtern, indem Mann und Frau in der Dynamik des Verfahrens verschiedene privilegierte oder benachteiligte Positionen einnehmen. Indirekt werden so auch die jeweiligen Vorstellungen von männlich und weiblich in Frage gestellt oder gefestigt.

Als Grundlage meiner historisch anthropologisch orientierten Forschung dienen die Scheidungsprozessprotokolle aus den Amtsbezirken Bern und Saane zwischen 1876 und 1906. Die zeitliche Begrenzung ergibt sich aus der Entwicklung der Gesetzesgrundlagen: 1876 trat das erste nationale, also auch für die katholischen Kantone verbindliche Scheidungsrecht im Rahmen des Gesetzes „betreffend den Civilstand und Ehe“ in Kraft.

Aus diesen Quellen versuche ich auf drei Ebenen den vor Gericht konstruierten Normen nachzugehen: Auf der gerichtlichen Ebene untersuche ich zum einen die gesetzlichen Grundlagen, zum andern die Rechtspraxis der richterlichen Behörden. Drittens betrachte ich auf der Seite der ‚Gerichtsklientel‘ den Aspekt der diskursiven Praxis: Durch eine Typisierung der Art und Weise, wie von Klagenden und Angeklagten vor Gericht gesprochen wurde, ermittle ich die Geschlechtsspezifität der Argumentationen und Klagen und frage in einem zweiten Schritt nach so formulierten Erwartungen an Mann und Frau, welche Rückschlüsse auf gesellschaftliche Normen zulassen.

In der Konfrontation und dem Zusammenwirken dieser drei Aspekte entsteht ein sich wandelndes Macht-Wechselspiel vor Gericht, das sich in den Stellungnahmen der scheidungswilligen oder –unwilligen Personen und den Urteilen äussert. Klagende und Beklagte kollidieren mit juristischen und gesellschaftlichen Normen, welche darüber entscheiden, wer sich in welchem Mass normkonform verhält und dafür belohnt bzw. bestraft werden soll.¹⁷ Betroffene finden sich als more favoured oder less favoured wieder und in der gleichen Dynamik wird das soziale Geschlecht von Mann und Frau in den Konflikten im Alltag und in den Prozessen vor Gericht stets neu verhandelt. Nach Joan W. Scott entsteht das jeweils zeitgenös-

¹⁷ François, Ewald, *Michel Foucault philosophe. Rencontre internationale*, Paris, Seuil, 1989, 200

sische Geschlecht im Verhältnis von Mann und Frau zu Institutionen, im Zusammenwirken von Gesetzen, symbolischen Geschlechtskonnotationen und subjektivem Empfinden.¹⁸

Es fragt sich nun, ob sich die Aufteilung nach privilegierten und benachteiligten Positionen mit jener nach Geschlechtern deckt.

Betrachtet man nun persönliche Sinngebungen betroffener Männer und Frauen in deren Wechselwirkung mit gegebenen juristischen Strukturen, lassen sich davon in einer historisch anthropologischen Zugang makrohistorisch soziale Gesellschaftsmuster ableiten.¹⁹

Zusätzlich basieren meine Überlegungen auf der Gegenüberstellung eines protestantischen mit einem katholischen Amtsbezirk. Der interkonfessionell vergleichende Blickwinkel ist in der Scheidungsforschung neu und bietet sich für meine Untersuchungsperiode deshalb speziell an, weil die Dynamik des damaligen Rechtsvereinheitlichungsprozesses den Rechtsalltag veränderte und bisherige konfessionell bedingte Unterschiede modifizierte.

Erste Resultate

In Bern und in Freiburg klagen die Frauen deutlich häufiger als ihre Männer. Im Verhältnis von Zweidrittel zu einem Drittel treten sie vor Gericht, um gegen die in ihren Augen von gesellschaftlichen Normen abweichenden Verhaltensweisen ihrer Männer zu protestieren. Dieser auf den ersten Blick unabhängige Schritt bringt aber die Notwendigkeit mit sich, dass sich Frauen auf den offiziellen von traditionellen „geschlechtscharakterlichen“ Überlegungen geprägten juristischen Diskurs der Richter einlassen, wenn sie die Erfolgchancen ihres Scheidungsbegehrens erhöhen wollen. Die emanzipierte Praxis wird in die juristischen Normen zurückgedrängt. Da eine Mehrheit der klagenden Frauen aus der Mittel- und Unterschicht stammt, bietet das oben beschriebene Phänomen dem Gericht die Möglichkeit, den bürgerlichen Diskurs der geschlechtsspezifischen Arbeitsteilung in die unteren Schichten fließen zu lassen. Diese bemühen sich der Argumente der Oberschicht, um in den Augen der Richter Recht zu bekommen.

Aber auch Männer fallen durch Unabhängigkeitsbestreben auf. Entgegen der Annahme, dass ihnen im Unterschied zur Frau eh alles erlaubt sei, sind sie in ein enges „Erwartungskorsett“ eingebunden und müssen als Hausväter Verantwortung tragen, welche sie in ihrer Handlungsfreiheit einschränkt.

¹⁸ Joan W. Scott, ‚Gender. Eine nützliche Kategorie der historischen Analyse‘, ed. Nancy Kaiser, *Selbst Bewusst, Frauen in den USA*, Leipzig, Reclam, 1994, 27-75

¹⁹ Gert Dressel, *Historische Anthropologie. Eine Einführung*, Wien, Böhlau, 1996, 186

Während sich die Inhalte der Klagen von Freiburger Männern und Frauen von denjenigen von Bernerinnen und Bernern nur geringfügig unterscheiden, bestehen in der Rechtsprechung grosse Differenzen. Freiburger Richter lassen die Scheidung nur bei einem Drittel aller Anträge zu. Sie winden sich, argumentieren und legitimieren gesellschaftlich, aber manchmal selbst juristisch normabweichendes Verhalten, nur um die Ehe zu retten. Berner Richter hingegen reagieren pragmatisch und lassen 89% aller Scheidungen zu. Dies zeitigt die paradoxe Folge, dass die Freiburger Richter, die sich um die Bewahrung der traditionellen Ehe und der damit verbundenen Geschlechterrollen bemühen, diejenigen sind, die normverletzendes Benehmen entschuldigen und darin noch keinen Grund zur Scheidung sehen.