Research Note

THE OBLIGATION TO PROVIDE MAINTENANCE BETWEEN DIVORCED HUSBAND AND WIFE IN BELGIUM

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This research note summarizes some of our work on the allocation of maintenance (alimony payments) in Belgium,[1] specifically the obligation of a husband to provide maintenance and the entitlement of his former wife to receive it following a divorce grounded in fault. The converse situation of a maintenance-obliged wife and a maintenance-entitled husband occurs only rarely, and it is excluded from our study. So too, we do not consider the obligations of either or both divorced parents to provide maintenance for their children.

We were primarily concerned with two problems which have been the subject of considerable discussion: the efficiency of maintenance payments, and the correspondence between legal and normative criteria involved in the award of such payments. Thus we focused on the roles of fault and need in determining whether maintenance should be awarded, and how long such an award should extend. Our research consisted of three parallel lines of inquiry. First, we systematically observed divorce proceedings in three district courts in Belgium. Second, we conducted a public opinion survey to determine the correspondence between opinion and the law. Third, we interviewed primary participants in divorce proceedings—plaintiffs, defendants, magistrates, and attorneys—and consulted other official participants in the divorce process and experts on the subject of maintenance payments and divorce reform.

[1] Complete results of the study can be found in De Vocht, Van Houtte, and Verhoeven (1978).

LAW & SOCIETY REVIEW, Volume 16, Number 2 (1981-82)

https://doi.org/10.2307/3053363 Published online by Cambridge University Press

I. DIVORCE LEGISLATION IN BELGIUM

Belgian divorce legislation dates back to the Code Napoléon of 1804. Divorce was originally granted on two grounds. First, it was granted on the grounds of "specific facts," and only to the innocent spouse. In such cases, maintenance was determined by need, but could not exceed one third of the income of the party at fault. The Code Napoléon and Belgian law also provided for divorce by mutual consent. Consensual divorce bypassed the fault criterion. The parties were free to regulate the payment and amount of maintenance according to their mutual wishes. In this respect, Belgian law was more "liberal" than the law in many European countries.[2]

"Specific facts" and mutual consent are still grounds for divorce in Belgium, but the linkage between fault and divorce, and particularly between fault and subsequent alimony provisions, has increasingly come under attack (Van Look, 1974). In 1974 a new reform law provided an additional ground for divorce: disruption of marriage usually evidenced by a long-term separation of ten years (although this is a refutable presumption). But under the law—and under similar reform provisions in France, Austria, and Switzerland—the granting of alimony is still coupled with the question of fault. In contrast, other countries such as the Federal Republic of Germany, Great Britain, the Netherlands, Hungary, and Czechoslovakia, have converted completely to no-fault divorce. In these countries alimony is not dependent on the concept of fault, at least not in principle. In fact, in Great Britain and the Netherlands, judges may still probe the behavior of the spouses in determining alimony payments; and in West Germany, one finds in the law a number of cases in which a spouse has lost his or her right to alimony.

The most radical divorce reforms have occurred in the Scandinavian countries. In Sweden either spouse has the unconditional right to petition for divorce, and need is the only criterion for alimony. In Denmark, either spouse is entitled to a divorce after a year of factual separation, and alimony is

[2] The Netherlands, for example, accepted divorce only on grounds of "specific facts"; fault was the only criterion for divorce and the award of alimony. To escape from these limits, the plaintiff would often claim under oath that "the defendant has committed adultery during the marriage." When the defendant failed to appear in court, the divorce was proclaimed without further investigation. In this manner, the claimant would be eligible for alimony, and the defendant would not have to undergo the embarrassment of a public recounting of his alleged (and sometimes nonexistent) misdeeds.

https://doi.org/10.2307/3053363 Published online by Cambridge University Press

independent of any fault question. This wave of divorce reform in Europe has thus left Belgium, once among the more liberal jurisdictions, with a system which retains important ties to more traditional concepts (Chloros, 1978; Rheinstein, 1972; 1974).

II. THE SOCIAL PROBLEM OF MAINTENANCE

During the last century and a half, the divorce rate in Belgium has increased substantially. Debates about divorce and divorce reform have raised fundamental questions concerning maintenance obligations (see International Research Group on Divorce, 1975; 1977; 1978). The present legal system, advocating traditional marriage (and community) stability, supports the marital relationship. The partner responsible for the marital disruption is sanctioned by losing the right to alimony. One usually calls this the "divorce as sanction" approach. New ideas concerning the individualization of marriage question the dependency of alimony on the concept of fault. The married couple is emancipated from the power of the state; disrupting a marriage is no longer regarded as threatening community stability and thus need not be sanctioned. A faultless "divorce as remedial" with faultless alimony regulations fits into this context.

Moreover, the development towards equal marital partnership offers another argument for the discussion on alimony provisions. Under the traditional role differentiation within the family, the husband was the head of the family and the chief economic provider (Dahlstrom, 1967; Grønseth, 1971). The wife's more expressive role, her "caring" function, granted her certain privileges: economic security, the right to maintenance during marriage, and the right to alimony in case of divorce. But in a situation of equality the alimony obligation loses its meaning; indeed it is seen by some feminists as a contradiction to the goal of women's emancipation, confining the woman to a humbling position rather than encouraging her to become independent. But there is also the question of whether the man should have to bear such a heavy burden for the rest of his life. Thus, the traditional regulation of the obligation to provide maintenance clashes with a new set of sociocultural values.

Our study addresses two fundamental questions concerning maintenance obligations. The first is the extent to which the award of maintenance is the most *efficient* way to

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Table 1. Divorce Trends in Belgium

Year	Annual Number of Divorces	Number of Divorces Per 100 Marriages
1830	4	0.02
1880	214	0.55
1900	690	1.10
1925	2,503	3.35
1950	5,100	7.08
1960	4,589	7.04
1970	6,403	8.75
1975	10,977	15.30
1976	12,665	17.80
1977	12,867	18.63
1978	13,528	20.15
1979	(13,499)*	(20.62)*

* Estimates.

Source: Statistisch Tijdschrift, NIS, Brussel, 1972, 6, 282-301. Bevolkingsstatistieken, NIS, Brussel, 1980, 2, 37. Statistisch Zakjaarboek, NIS, Brussel, 1980, 50.

meet the financial needs of divorced women. The second concerns the correspondence between legal and normative criteria in the award of alimony. Under present Belgian law, absent a divorce by mutual consent, alimony is determined by both fault and need. The ex-partner must be both the innocent party *and* in need of assistance. Consequently he or she has a right to alimony grants until his or her financial situation changes substantially.

Changes in the structural and cultural setting of marriage and divorce could also affect the alimony regulations. Our aim was thus to find out if such changes have occurred. Divergence between the legal and the cultural and structural system may indicate potential—and perhaps necessary—areas for further legislative reform.

III. METHODS OF INQUIRY

No single approach is appropriate to investigate all these issues. We chose, therefore, to rely on a diversity of methods which are nonetheless complementary to each other.[3] The observation of court proceedings made it possible to gain insights into the role and effectiveness of courts. We examined how often alimony was awarded, the extent of client participation in the proceedings, and the criteria which judges applied in determining the amount of the award. We were able

[3] Court records in Belgium are a poor source of information about alimony awards. Our efforts to do a content analysis of primary documents and court judgments were thwarted by the Minister of Justice, who refused to give us access to relevant registry documents.

https://doi.org/10.2307/3053363 Published online by Cambridge University Press

to follow the proceedings in three district courts whose sessions were open to the public and therefore accessible to the observer.[4] In contrast with other studies of divorce, the legal system was explicitly considered as an object of research. We did not accept Goode's (1965: 139) argument that juridical procedure is irrelevant because it is subject to juridical rationality and thus not sufficiently sensitive to the social action rationality of the divorce.

The second method we employed was a public opinion study. This made it possible to compare today's regulation of fault-connected alimony payments with the views of the average Belgian citizen. We surveyed a random sample of 1,569 persons which we believe is representative of the population as a whole.[5]

The lack of general acquaintance with the legal requirements for divorce and alimony required us to structure questions so as to include information on the law. We formulated the following statement as a preamble to the interview: "In Belgium the man or the woman, who is proclaimed the party at fault in a divorce case, must pay a fixed sum to the innocent party, whenever he/she has only a small income or none at all. This is known as the obligation to provide maintenance after divorce or the alimony obligation."

After conveying this information, the interviewer presented the subject with five cases. These were constructed so that it was possible to trace the degree to which the respondents' ideas conformed to current law. Under the present laws, fault, need, and social class are of great importance in determining whether and how much alimony is awarded. Therefore they are used as the criteria in our case examples.

Each hypothetical case dealt with a childless couple, 35 years old. The absence of children was deliberate, in order to avoid confusion with the obligation of maintenance for children. The age of the partners was set at 35 because, on the one hand the marriage can be assumed to be of some duration, and on the other hand the woman may still be able to begin or resume a career. The claimant in each case is the wife, since a

[4] The proceedings we observed were lawsuits for provisional maintenance awards introduced before the presiding judge of each district court. It is generally accepted that provisional awards are customarily accepted by the district courts; this was confirmed through inquiry of privileged witnesses. Our observations took place in May, 1973. Eighty-eight warrants were recorded in court A, 7 in court B, and 24 in court C, for a total of 120. We observed a total of 62 court sessions.

[5] A number of communities were selected randomly, and within each of these communities a random list of households was selected and interviewed.

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pilot study made clear that in Belgium husbands are rarely awarded alimony.

The concepts of need and fault are central to our study. We identified need in our cases through the difference in resources between a working woman and a non-working woman. We assumed that the non-working woman is in the weaker financial position. We then combined the characteristics of need and fault (as determined by the judge), providing us with four possible variations:

needy/woman is innocent (case 1)	needy/woman is at fault (case 3)
not needy/woman is innocent (case 2)	not needy/woman is at fault (case 4)

We excluded case 4 from our study, since it fell completely outside the legal categories for alimony.

In *case 1*, the appropriation of alimony conformed with current legal regulations. The woman is not employed and therefore needy, and the man is the party at fault:

> Ian and Mia are 35 years old and have no children. Mia does not have a job. They divorce. Ian is proclaimed the party at fault by the judge in their divorce case.

In *case 2* need is not demonstrable because the woman is working. But she is not at fault in the divorce. Because of her lack of need, the appropriation of alimony cannot be justified under current legal regulations.

> Ian and Mia are 35 years old and have no children. They divorce. Ian is proclaimed the faulty party by the judge. But in this instance Mia works.

In *case 3* the woman is needy but also at fault. Because of her lack of "innocence" the present legal regulation cannot justify the appropriation of alimony.

> Ian and Mia are 35 years old and have no children. Mia does not have a job. Mia is proclaimed the party at fault in their divorce.

According to the current law, social class must play a role in the determination of need and in fixing the amount of alimony payments. To test the effect of social class, two subcases (1a and 1b) were constructed, varying the man's occupation (physician or welder) as indicators of social class.

These cases were formulated as follows:

> Case 1a: Peter and Rita are 35 years old and have no children. Peter is a doctor. Rita does not work. They divorce. Peter was pronounced the party at fault in their divorce by the judge.

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Case 1b: Peter and Rita are 35 years old and have no children. Rita does not work. They divorce. Peter is pronounced the party at fault in their divorce by the judge. But in this case Peter is a welder.

Each of our respondents was asked to determine the proper alimony obligation for each of these five cases. Four choices were given: no alimony; alimony for a maximum of five years; alimony until the woman remarries or cohabits; and continuous alimony.

To complete our study and obtain an understanding of the divorce process that was as realistic as possible, we interviewed a number of participants. We were not permitted to interview the subjects of our court observations, and divorced persons are a heterogeneous group difficult to trace. A truly random sample was impossible. But in order to avoid the other extreme—a biased sample—we obtained names and addresses of divorced persons through other channels: action groups, welfare offices, and municipal registers. A total of 49 divorced persons were interviewed. We also interviewed 44 lawyers who were involved in the maintenance allocation process; among them were 23 magistrates, 5 legal authors, and 6 members of parliamentary commissions. Care was taken to have all points of view, and all aspects of the problem, represented.

IV. RESULTS

The "Efficiency" of Alimony

Is the present arrangement of alimony efficient for the entitled woman? Does it provide adequate maintenance for her? From our study of the alimony awards of the presiding judge of the district court, it appears that adequate maintenance is not provided. In 32 percent of the cases (39 out of 120) we observed, no alimony was awarded at all. In those cases where alimony was awarded, the amount tended to be low, averaging 3,399 Belgian francs. The median award, as shown in Table 2, was 2,875 Belgian francs (to convert to current monetary values, multiply by 1.5). Sixty-eight percent of the awards fell below the legislatively designated minimum standard of 4,029Bf. If one substitutes the minimum living standard proposed by the Centre for Social Policy at the University of Antwerp, of nearly 11,000Bf, then only 2 percent of the women received adequate maintenance payments. In short, one may assume that alimony awards alone are insufficient to provide the minimal necessities of life. A typical comment from our interviews is that "alimony is merely pocket

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money. The woman must earn a lot in order to make it beneficial." But if the woman's other income is not sufficient to make ends meet, then she must call on the local welfare office for relief payments. Thus alimony awards are not only inadequate for the divorced woman, but inefficient from society's and the government's point of view as well.

Table 2. The Awarded Alimony for the Spouse

Awarded alimony Bf	Number	%	Minimum standard of living
1 - 1.000	5	6	
1.001 - 2.000	18	22	
2.001 - 3.000	20	25	
3.001 - 4.000	12	15	
4.001 - 5.000	9	11	4.029 Bf (legal minimum)
5.001 - 10.000	15	19	
10.001 and over	2	2	10.755 Bf (Centrum Sociaal Beleid)
	81	100	

$\bar{x}$ = 3999 = 2950 Me = 2875 1 S = ± 40 BF

So far we have spoken only of the inadequacy of alimony *awards*. But the problem is compounded by the apparent likelihood of irregular payments. The guarantees of alimony were widely regarded as unsatisfactory. One respondent characterized the situation as follows: "Every month waiting; will he pay or not? In July he did not pay because he had the care of the children. This is surely bondage for the woman. She can only ask for legal intervention after two months of nonpayment." Magistrates whom we interviewed also emphasized the problem of irregular payments, attributing it in large part to residual feelings of hostility toward the ex-partner and referring to nonpayment of alimony as a form of revenge. But it is not only this. Delinquent husbands were often economically marginal persons for whom the specified payment represented a financial sacrifice which they were often unwilling or unable to make.[6]

[6] One obvious solution to this problem is prepayment of maintenance stipends to a public agency which will, in turn, assure distribution to the claimant spouses. It would also have the authority to disburse government funds to the alimony entitled spouse and recover those funds from the alimony obligated spouse. Thus the risk of nonpayment would be borne by the community and not the entitled spouse. Prepayment systems of this kind exist for alimony in favor of children in the Netherlands, Sweden, Denmark, Czechoslovakia, the city of Hamburg, Federal Republic of Germany, and the Swiss canton of Zurich. In England, overdue alimony for entitled spouses can be collected through the courts. And in France, since 1975, the alimony entitled spouse who has seriously tried but failed to collect the amount due, can enlist the aid of the tax collector (Department of Health and Social Security, 1976; Lindon, 1975).

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Public Opinion and the Maintenance Obligation System

Our public opinion study was designed to estimate the fit between current divorce law and the values of Belgian citizens. First, we sought to determine to what extent the criteria of fault and need, central to the law, were also important to citizens at large. Respondents were asked whether they agreed with the current policy which permitted alimony only for women who were needy and not at fault. Alternatively, they could choose one of three alternatives to current policy: any innocent woman, needy or not, has a right to alimony; any needy woman, at fault or not, has a right to alimony; and alimony should not be awarded at all.

Table 3. Citizen's Agreement with Current Divorce Law

	Number	Percent
Conformity to the present law	591	45.8
Should focus on fault	498	38.6
Should focus on need	91	7.0
Opposed to alimony	111	8.6
	1,291	100.0

No response: 278

The largest number of respondents, 45.8 percent, agreed with the current law which requires a showing of both need and innocence before alimony can be awarded. These respondents supported the philosophy of "divorce as sanction" and the traditional view of marriage as an indissoluble union between unequal partners. Additional support for this more traditional view of marriage comes from the large number of respondents, 38.8 percent, who supported an even more conservative position: alimony should depend only on fault. Thus, over 80 percent of our respondents endorse the reliance on fault, in whole or in part, in awarding alimony. Only 7 percent accept the more liberal position of divorce as "remedial." To them, it is solely a question of the economic needs of the woman. This perception conforms to the framework of the modern "individualized" marriage, but recognizes the likely economic inequality between marriage partners. The remaining group of respondents, constituting 8.6 percent of the total, opposes any form of alimony. Such views are in total harmony with the individualized views of marriage.

A second question concerns the duration and terms of alimony awards. Under current law, alimony is granted without a specified termination date. Until the reform law of

https://doi.org/10.2307/3053363 Published online by Cambridge University Press

1975, the amount awarded was not (at least not in principle) subject to adjustment except that it could be terminated upon request of the alimony provider when the claimant remarried or began living with someone else. Respondents were asked to choose among three options with respect to each of the three hypothetical cases described earlier in this article: alimony limited to a maximum of five years; alimony paid until the wife remarries or cohabits; alimony extending indefinitely. Table 4 reports the choices of our respondents. When the awarded alimony conforms with the law (case 1), the majority wants alimony continued until the woman remarries or lives with someone. An additional 18 percent would extend alimony indefinitely to an innocent and needy woman. Thus about three quarters of the respondents seem to support the present or former rules regarding alimony where both need and innocence are present. However, in cases 2 and 3, where the woman claimant would not be eligible for any award under the present law, support for extensive alimony decreases, with fault being the major factor. The shortest duration for alimony payments is supported where the woman is needy but also faulty (case 3); less than half the respondents would support extended alimony for such a woman. Thus dissociation from the formal legal criteria parallels dissociation from legal practice with regard to the duration of alimony.

Table 4. Duration of the Awarded Alimony (°)

	case 1		case 2		case 3	
	Innocent and needy woman		Innocent and not-needy woman		Faulty and needy woman	
Limited to 5 years	342	26.6	296	36.9	195	64.4
Until remarriage or cohabitation	705	55.0	369	46.0	85	28.0
Continuous	236	18.4	137	17.1	23	7.6
	1283	100.0	802	100.0	303	100.0

(°) This table contains only the positive answers.

The alimony system in Belgium assumes the existence of social class distinctions. To the extent possible—at least in theory—alimony should maintain the standard of living of the claimant prior to divorce. To what extent does the public agree with this goal? We employ two variations of case 1; as previously mentioned, case 1a was restated to identify the occupational status of the husband as a physician and case 1b

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Table 5. Willingness to Grant Alimony, by Social Class—in Percentages

Husband is a Physician	Husband is a Welder: No Alimony	Alimony Limited to 5 Years	Alimony Until Re-Marriage or Cohabitation	Alimony for an Indefinite Period	Row Totals
No Alimony	—	.2% (2)	.3% (4)	.1% (1)	.6% (7)
Alimony Limited to 5 Years	.7% (9)	*15.7% (198)	1.0% (13)	.2% (3)	17.7% (223)
Alimony Until Re-Marriage or Cohabitation	1.4% (18)	7.9% (100)	*42.8% (540)	.5% (6)	52.7% (664)
Alimony for an Indefinite Period	1.0% (13)	4.5% (57)	8.5% (107)	*15.1% (190)	29.1% (367)
Column Totals	3.2% (40)	28.3% (357)	52.7% (664)	15.9% (200)	100.0% (1261)

tau_c = .44556 (signif. at .0000)

* No difference between physician and welder.

identified the husband as a welder. All other variables were held constant.

In contrast to legal practice, a large majority of our respondents seemed unwilling to deal with social class factors. As shown in Table 5, 928 of the 1,261 respondents to these questions, 71 percent, saw no reason to distinguish between the physician and the welder regardless of their preference for the duration of alimony. When distinctions are drawn, the ex-spouse of the physician fares better. Of the 333 respondents who did not opt for equal treatment, 304 or 91.3 percent, would grant alimony to the physician's wife on more favored terms—e.g., for a longer duration. It would appear that the financial capacity of the ex-spouse is a critical factor. A physician is thought to better afford the burden of alimony; furthermore, the need for his ex-spouse to work may be interpreted as a shift in status. In the case of a welder, however, alimony may be an immediate threat to *his* standard of living, while the necessity for his ex-spouse to work is not viewed as a downward shift in *her* status. Thus a temporary allowance of five years duration is viewed as sufficient to support her for a transition period; after that she should be able to manage on her own.

As a final note on the relationship between legal criteria and popular perceptions, we report briefly the opinions of participants. Our interviews revealed that many women find the link between alimony and fault to be problematic, but this view seems to be based on the circumstances of their own cases. Women who divorced on grounds of specific facts and received alimony on the basis of fault generally agreed with the principles embodied in the law. Magistrates generally believed in, or at least conformed to, the legal requirements of fault and need. Non-magistrates favored payment of alimony according to need; for them, the principle of fault was a relative matter.

V. CONCLUSION

We have tried to assess the practice and culture of alimony payments in Belgium in the context of efficiency and the concordance of the law with social norms. From the point of view of efficiency, it seems clear enough that the institution of alimony functions badly. Alimony awards are too low to sustain the woman claimant, and the irregularity of payment merely accentuates her financial difficulties. It is unrealistic to expect higher alimony, however, because the ex-husband's income is also limited, especially so if he also has financial

https://doi.org/10.2307/3053363 Published online by Cambridge University Press

obligations toward his children. The difficulty is only compounded when the husband remarries and thus incurs the responsibility to support a second household. Support for alimony based on need must therefore be seen as symbolic compensation for moral damages, as *reparations* rather than as a serious attempt to deal with the subsistence requirements of the divorced woman.

If alimony is thus inefficient for the purpose of maintaining some economic parity between ex-husband and wife, it can also be interpreted as being out of touch with current norms, but in a very complex way. The emphasis on fault as the basis for alimony conflicts with modern concepts of an "individualized marriage" between equal partners. Moreover, since the wife has increasing opportunities to hold a job during marriage, an alimony system based on the traditional division of labor within marriage loses considerable validity. There is a substantial gap between it and emerging progressive views about marriage and the rights of the partners during and after the marriage.

However, our research suggests that Belgian public opinion is in some respects *more* traditional than current law. A very large number of respondents (84 percent) believe that fault should be the predominant or exclusive basis for alimony. Forty-six percent of these believe that fault should be maintained along with need as criteria for alimony. But the remaining 38 percent believe that fault should be the exclusive basis for alimony. Thus, even though about half of these respondents concede that need is a factor to be considered, the overall picture is that the primary purpose of alimony is to sanction improper marital conduct.

The existence of both more progressive views toward marriage and still very traditional views emphasizing fault as the basis for alimony could be explained by the different publics who adhere to each of the views. The traditional role segregation and the traditional marriage conceptions are common to a good deal of the Belgian population, whereas family sociologists and juridical authors share more progressive ideas on the matter.

Just how traditional Belgian opinion is can be gauged by a brief comparison with the attitudes of French citizens on the same subject. A French study using nearly identical questions was undertaken by the Institute of Opinion Research, INED (Roussel, 1974: 194). However, French respondents were given only two possible responses to each case: alimony or no

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alimony. By collapsing our responses to those same two categories, a direct comparison can be made. Belgians favor alimony in both cases, regardless of the woman's subsequent employment, although support for alimony dwindles considerably when the woman is employed (case 2). For our Belgian respondents, the fault of the husband is the dominant consideration. This is not so for the French, however. Even when the fault of the husband remains, they oppose alimony by nearly a 2-1 margin when the woman is employed. For them, it appears, alimony should be grounded more on need and less as a moral sanction.

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