Legal or Just? Law, Ethics, and the Double Standard in the Nineteenth-Century Divorce Court

JOSEPHINE HOEGAERTS

On January 24, 1885, at 9:30 in the morning, a woman from the small rural village of Saint Laurent in East Flanders entered the Palace of Justice of Ghent. Pregnant with her eighth child, she had fled from her husband and was filing for a divorce. That morning, she was led to a small room—the office of the judge of the Regional Court[1]—and was standing alone with four men whom she barely knew and did not understand because they spoke French. Her husband had only sent a lawyer to represent him. As the woman's "avoué"[2] presented her complaints—abuse, threats, and finally her fear for the life of her unborn child that had forced her to leave the marital home—she could only hope he had correctly recorded her story and was representing it convincingly enough to take her case to the next level. Until then, her divorce had been a game between jurists in which she was not much more than a prop. After this reading of her complaints, however, the whole neighborhood was alerted to her failing marriage. Some

1. The Regional Court (Cour de Première Instance / Rechtbank van Eerste Aanleg) was (and is) the courtroom where civil and criminal cases of a certain significance (such as divorces or felonies that could result in imprisonment of over five days) were brought forward for the first time and part of a second "layer" in the hierarchical Belgian judicial system.

2. "Avoués" were officials of the ministry who acted as representatives of parties in legal conflicts unable to pay an actual lawyer. Gerard Cornu, *Vocabulaire juridique* (Paris: Presses Universitaires de France, 1987).

Josephine Hoegaerts is a Ph.D. student at the University of Leuven <josephine.hoegaerts@arts.kuleuven.be>. She would like to thank M. Carol Matheson and Monica Mattfeld for reading earlier drafts of the text and the anonymous reviewers for *Law and History Review* for their helpful comments.

Law and History Review Summer 2008, Vol. 26, No. 2

neighbors even entered the courtroom with her to act as witnesses. Not only the judge, but the whole local community took up the task to decide if she had been the victim of a derailed husband, or had failed as a wife. And accordingly, it was decided if she was to become a "divorced woman," with all the social stigmatization attached to that notion, or if she would be forced to return to her abusive husband again.

Neither of those scenarios was particularly attractive. Why, then, did this woman turn to the court to solve her marital problems? Two months after the "exposé de motifs" (account of the various reasons to file for a divorce),[3] her sister gave a glimpse of the explanation in her testimony: "I believe my sister's life is in danger," she declared, "and that she is obliged to seek a divorce."[4] What is important here is not so much that a wife might have been killed at the hands of an abusive husband—there were alternatives to escape those: simple desertion would have sufficed—but the fact that a divorce was the logical (and inevitable) way to proceed in such a dangerous situation. The witness's choice of the word "obliged" implied that filing for a divorce was a step one did not want to take but was the only acceptable thing to do, despite the negative connotations that were associated with divorce in nineteenth-century Catholic Flanders.

As this testimony suggests, the courtroom could fulfill an important role in the settlement of private conflicts, such as those between husband and wife, and citizens used legal suits to settle their disputes and obtain "justice." However, the courtroom was also a site of power. Despite the relative freedom that was granted to witnesses to tell their story, they were forced to conform to the legal protocol, to play the vulnerable part of "intruders" in an unknown space and, most importantly, the judge decided on their case, leaving litigants at the mercy of the legal system. But how powerless were citizens in the courtroom? More specifically, did they always act according to its rules? Did they simply agree to the regulations set by the law, or did they oppose them? And if discrepancies between the legal

3. During the "exposé de motifs," the original text of the request for a divorce was read to the accused and the judge in the courtroom. During this part of the procedure, the "facts" that were considered crucial as grounds for the divorce were declared "in camera," and names of witnesses were brought forward. The actual, public, trial with the testimonies would follow later. Jean Servais and Edouard Mechelynck, *Les codes et les lois spéciales en vigueur en Belgique,* (Brussels : Emile Bruylant, 1907), Titre VI, Chapitre II. The exposé de motifs and the testimonies were two important steps in the divorce procedure. According to Meulders and Matthijs, this shift from a semi-private to a public space is an important part of the actual breaking up of the marriage. Carine Meulders and Koen Matthijs, "On ne se jouera pas du divorce! Echtscheiding in de negentiende eeuw in het licht van de echtscheidingspraktijk te Brugge, 1865–1914," *Belgisch tijdschrift voor nieuwste geschiedenis* 3–4 (1996): 64–103.

4. *Amelie Constance Herpelinck vs. Brunon Haverbeke,* March 21, 1885. Testimony of Philomene Herpelinck.

code and the values of local communities did exist, how did litigants and witnesses still manage to use the courtroom as an appropriate space to settle their conflicts? Obviously, finding an unambiguous answer to all of these questions would be an impossible task. No matter how empathic we are toward this pregnant and abused woman, trapped in a foreign world of French and legal robes, we will never be able to reconstruct what went through her head as she heard family, friends, and neighbors comment on her marriage. Similarly, we may not understand why she decided to enter the courtroom in the first place. However, a comparison of the different forms of speech that were used during divorce proceedings can shed some light on the discrepancies between the rules of law and the rules of community regarding marital behavior.

The following study seeks to show how different layers of speech contributed to the creation of a notion of "acceptable marital behavior." Taking into account the power relations and imbalances between jurists and non-jurists on the one hand and among non-jurists on the other, the reciprocal impact of the moral discourses on the legal ones will be examined. The creation of a gendered "double standard" to judge spouses' actions and complaints will serve as an example of the ways in which jurists and lay-participants in divorce proceedings contributed to a hybrid and often paradoxical code of expected and accepted marital behavior. To understand this study, it is important to know that the legal discourse employed in the courtrooms of late nineteenth-century Ghent was cemented in the "Code Civil Belge";[5] at the founding of the Belgian state in 1830, this code was kept as a relic from the Napoleonic era. In 1804, the French Civil Code (or "Code Napoléon") was imposed on the southern Low Countries and remained extant, undergoing only minor changes before the beginning of the twentieth century. The regulations on marriage and divorce remained unchanged until 1905.[6]

Community values regarding marriage and divorce are less easy to trace, since apart from some upper-class diaries and memoirs, people hardly left any descriptions or assessments of their experience of marriage. As long as couples were happily married, their behavior was hidden under the large blanket of "normality" and remained unrecorded. In order to uncover ideas on marital life, then, one has to turn to the "abnormal" or the failed mar-

5. Servais and Mechelynck, *Les codes et les lois spéciales.*

6. Unlike the French Civil Code, which underwent significant changes in 1848, one of which was the disappearance of divorce "par consentement mutuelle." For an exhaustive summary of European divorce law, see Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (New York: Cambridge University Press, 1988). For a history of the Code Civil in Belgium, see John Gilissen, *Historische inleiding tot het recht* (Antwerpen: Kluwer, 1981) and Raoul Charles Van Caenegem, *Geschiedkundige inleiding tot het recht. Deel I: privaatrecht* (Deurne: Kluwer, 1996).

riage that was discussed during its dissolution.[7] Paraphrasing Arlette Farge, divorce proceedings and the documents that came out of those "provide what never would have been pronounced if an event of social disturbance had not occurred."[8] They offer a unique view into what is usually hidden, because "everything is focused on some single moments in the life of ordinary people who are but rarely visited by history."[9]

Used here are the motivational accounts and testimonies of the divorce proceedings brought before the Regional Court in the Flemish city of Ghent between 1885 and 1890.[10] The documents represent ca. 180 divorce cases and have been held at the National Archive in Beveren-Waas since 1998. The archive, brought over from the archive of the Palace of Justice of Ghent, is anything but complete: all final judgments appear to have been lost in a fire during the Second World War,[11] and a large part of the accounts do not have a matching document recording the testimonies (and vice versa). However, the documents that were retained contain numerous, and often long, narratives by litigants and witnesses. And although they can be hardly considered an "unpolluted" or pure representation of community values, they give an insight into the way people tried to come to terms with the conflicting rules of law and community, and how they juggled both in an attempt to use the legal framework for their own ends.

Legal and Moral Codes

The debate on the relation between law and moral values has been strongly influenced by the Kantian distinction between law and ethics. Emile Durkheim and Max Weber adopted this distinction in their sociological studies on the relation between law and society and set the tone for a long-lasting debate between two "schools of thought."[12] Throughout this text

7. Lynn Abrams, studying the history of divorce in West Germany, uses a similar approach, stating that "Sources of this kind offer the rare possibility to gain deeper insights into the relations between spouses, into their expectations, disappointments, and finally into the conflicts that led the marriage to collapsing." Lynn Abrams, "Restabilisierung der Geschlechterverhältnisse: die Konstruktion von Männlichkeit und Weiblichkeit in Scheidungsprozessen des 19. Jahrhunderts," *Westfälische Forschungen* 45 (1995): 13.

8. Arlette Farge, *Le goût de l'archive* (Paris: Gallimard, 1989), 13.

9. Ibid., 14.

10. Archival documents: Rijksarchief, *Archief van de rechtbank van eerste aanleg van Gent.* R 39 EA Gent B 1998, nr. 216–18, 245–46 and 250–52.

11. I am very grateful to Paul Drossens for guiding me through the archives.

12. Durkheim's theories on law are scattered throughout various publications. I rely most heavily on Emile Durkheim, *De la division du travail social: étude sur l'organisation des sociétés supérieures* (Paris: Presses Universitaires de France, 1893) and Emile Durkheim,"Essai sur l'origine de l'idée de droit," in *Revue Philosophique* 35 (1893): 290–96. For a synthesis

I will focus on sociological work that tries to reconcile—and is therefore indebted to—Durkheimian and Weberian positions. In particular, I will rely on Steven Vago's *Law and Society.*[13] His loosely chronological division between small "primitive" communities and large, complex societies echoes Durkheim's thesis, but rather than focusing on "the law" and "ethics" as two separate entities, Vago dwells on the notion of "formal and informal social control."

Although methods of "informal social control," such as gossip, are very powerful means to defend social values, Vago observes that their power diminishes as societies become more complex. In a heterogeneous society, with its confusing multiplicity of norms, the individual is not only challenged by the diverging (and possibly conflicting) norms that can be applied to judge her or his behavior, but is also likely to be unwilling to conform to a set of values she/he does not consider valid. And as methods of informal social control lose their force, methods of formal social control (a legal system) are put in place to regulate social behavior. Although this is still a form of social control, and thus a way to perpetuate certain norms and values, it does not presuppose unanimous agreement with the ethics it defends, and takes the multiplicity of moral codes within its society into account. Its purpose is not so much to convince people of the "truth" of its conception of good and evil, but rather to augment the predictability of the behavior of every member of the community.

This analysis of documents will be partly based on Vago's understanding of legal practice as a way to uphold social values, but will simultaneously try to reconstruct the way in which people who did not agree with the values the law was trying to uphold opposed legal regulations. Without presupposing a rigid divide between legal and moral discourse, one cannot help but see discrepancies between what the law prescribed and what litigants and witnesses wanted the law to do. Obviously, the sources emerging from divorce proceedings only allow a very limited view on how both jurists and non-jurists perceived the law and offer no opportunity to compare a "legal" to a "moral" set of norms. What these proceedings do show, however, is through which vocabulary litigants and witnesses recreated themselves and each other in front of a judge and their peers. "What one might reconstruct from these sources" is, as Kuehn states in the analysis of a similar case, "the narrative of a trial."[14] By understanding the sources

---

of Durkheim's views on legal theory, see Roger Cotterrell, *Emile Durkheim: Law in a Moral Domain* (Stanford: Stanford University Press, 1999). See also Max Weber, *Wirtschaft und Gesellschaft. Grundriss der Sozialökonomik III* (Tübingen: Mohr Siebeck, 1922) (especially chap. 3, sec. 3). Available on-line: http://www.textlog.de/weber wirtschaft.html

13. Steven Vago, *Law and Society,* 7th ed. (New Jersey: Englewood Cliffs, 2003).

14. Thomas Kuehn, "Reading Microhistory: The Example of Giovanni and Lusanna," *The Journal of Modern History* 61.3 (1989): 512–34, 533.

as scripts for semi-rehearsed theatrical performances, the complex web of different narrative strategies that not only constituted the proceedings in itself, but also "refashioned reality"[15] and contributed to a common-sense understanding of marital life, can be untangled.

The main question is therefore not what the exact differences were between legal rules and moral norms, or in which discourse the "double standard" would have originated, but rather the interplay between both discourses. Throughout the last three decades, social and legal historians have called for a closer attention to both the impact of the social context in which the law is phrased on its rules and language,[16] and, conversely, to the "explanatory role of the law in the interpretation of practice and mentality."[17] This text privileges a more pragmatic take on normative discourses. As Thomas Gallant, among others, has shown, by the second half of the nineteenth century men and women started to realize that "the courts could provide a vehicle for disputing reputations."[18] Although jurists invariably acted as directors in the theatre of divorce, litigants and witnesses were conscious actors in these plays. Rather than passively undergoing the proceedings, they managed to stage themselves in more or less effective ways in order to utilize the court as a "vehicle."

The paradoxical way in which litigants tried to use the law for their own purposes, such as obtaining a divorce, even though they did not necessarily subscribe to the values the legal system was trying to defend, was reflected in the strategies they adopted to oppose certain elements of the law's content by conforming to formal stipulations. Most notably, litigants and witnesses constructed an image of themselves as trustworthy and competent citizens, in order to obtain the authority and legal credibility they needed, to bring their own values into the courtroom. When giving their accounts of a number of "facts," they attempted to anticipate the judge's reaction and crafted their story in such a way that he would be convinced of their reliability as

15. Thomas Kuehn, "Reading Microhistory," 518.

16. Historians of the Annales school in particular have been privileging a "social" reading of judicial sources. More recently, a more "linguistic" approach is favored for the analysis of court proceedings. More specifically for divorce documents, James Hammerton and Caroline Arni provide examples of effective use of discourse analysis for this type of documents. See A. James Hammerton, *Cruelty and Companionship. Conflict in Nineteenth-Century Married Life* (London and New York: Routledge, 1992), and Caroline Arni, *Entzweiungen. Die Krise der Ehe um 1900* (Cologne and Vienna: Böhlau, 2004).

17. Antonio Manuel Hespanha, "Une 'nouvelle histoire' du droit?" in *Storia sociale e dimensione giuridica. Strumenti d'indagine e ipotesi di lavoro,* ed. Paolo Grossi (Milan: Giuffrè, 1986), 315–40, 325.

18. Thomas W. Gallant, "Honor, Masculinity, and Ritual Knife Fighting in Nineteenth-Century Greece," *The American Historical Review* 105.2 (2000): 359–82, 380.

a witness and—by extension—of the truth of their account and the value of their assessment of the events.

But how could a witness impress a jurist with her/his competence as a "good citizen"? As witnesses were largely unacquainted with specific legal conventions, they could only anticipate the reaction of their peers and would structure their accounts accordingly. The testimonies were an attempt to conform to legal notions of credibility and truth, but ultimately turned out to be examples of stories that would have been considered credible in the witnesses' own communities. Due to a general lack of research on witness behavior in historical studies, the reconstruction of the standards that witnesses aimed to attain is rather difficult. What can be reconstructed is the field of expectations witnesses both could expect and anticipate while telling their story. In *The Citizen in Court,*[19] Delmar Karlen defines the criteria used by juries to assess testimonies in proceedings held at the criminal court. The process of thought of members of a jury—based on only non-legal experiences, but aiming to uphold the norms of the courtroom—is probably closest to the type of assessment witnesses were expecting. Besides neutrality (or objectivity), consistency (within one story and among different witnesses), and "body language," jurors appear to base their judgments on the amount of (verifiable) detail. We can expect that other non-jurists in the courtroom (witnesses and litigants) adopted similar criteria of trustworthiness while crafting their own story. For witnesses, providing details proved their ability to remember the events exactly as they were, while for litigants "their exact memory of the incident was a testimony to the rationality of their behavior."[20] Finally, the inherent plausibility of a story heightened its credibility.

A look at a few of the proceedings in Ghent shows that witnesses and litigants were indeed aware of these criteria and incorporated them into their general strategy of self-representation. To prove their neutrality, witnesses made clear that they were not affiliated with the litigants, for example by implying that their contact with them was entirely coincidental. One witness only seems to remember one encounter with an accused husband, stating to have heard him talk "[i]n the tavern The Friendship."[21] Another explicitly stated that she did not really know the divorcing couple. "The family Rausschaeurt-Burmans lived in my neighborhood," she admitted, "but I did not have much contact with them."[22] The amount of detail in some of the stories is overwhelming, often providing exact dates and places, and

19. Delmar Karlen, *The Citizen in Court: Litigant, Witness, Juror, Judge* (New York: Holt, Rinehart and Winston, 1964), 119–35.

20. Laura Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford: Oxford University Press, 1999), 220.

21. *Suoille vs. Bouckaert,* June 25, 1887, testimony of Colette Joket.

22. *Burmans vs. Rausschaert,* February 17, 1887, testimony of Rosalie Lootens.

although it was impossible for witnesses to match their stories to those of others, they often referred to "what everybody knew" or even named other authorities, such as the local doctor or pub-owner. A witness in a case of adultery pointed out that "it was generally known that Pattyn lived with another woman,"[23] while in a case of marital abuse, another woman stated that "Doctor Geselle has often said that the disease of Mathilde de Rouck was a consequence of the mistreatments by her husband."[24]

The question of internal probability deserves specific attention. The role of witnesses in the proceeding was merely to provide factual information from which the judge could draw his conclusions. They were not supposed to demonstrate the logic or causality of the course of the events, but apparently, most of them seem to have felt the urge to do just that. From their daily social interactions, they knew how structure and internal logic influenced the credibility of a story and its narrator.[25] For the analysis of these documents, the status of the stories as constructed narratives is of major importance. If testimonies and divorce requests are not just chronicles of events but real narratives,[26] the people and facts that figure in the story have a double identity: they are real individuals/objects/events that were present in the courtroom or in life, but they are at the same time characters/props/scenes in a story. In the narratives, we find a description of an observed reality, but at the same time the narrative is a constructed reality in itself that tells us more about its narrator than about the events she or he was describing.

The example of the testimony of Victor Haenen illustrates the narrative character of the accounts in the documents. Informing the judge about the marriage of his employers, he recounted: "Two or three years ago, on a Sunday afternoon I had to protect Ms Burmans from her husband. He had come home a bit late, in the afternoon. The woman had given him a remark on that, and therefore he angrily attacked her. My intervention has calmed everything down."[27] The testimony contains a series of events: Mr. Burmans came home late, his wife complained about it, he got aggressive, their employee entered the house, and finally the situation calmed down. Those are all more or less objectively observable facts. However, the transformation of this series of events into one logical scheme of development is the construction of the narrator. The links that are established between

23. *Jacobs vs. Pattyn,* March 27, 1886, testimony of Adelaide Huysman.

24. *Rouck vs. Billiet,* June 11, 1887.

25. Charlotte Linde, *Life Stories: The Creation of Coherence* (New York: Oxford University Press, 1993), 16.

26. For an analysis of the distinction between chronicle and narrative, see Linde, *Life Stories,* 72.

27. *Burmans vs. Rausschaert,* February 17, 1887, testimony of Victor Haenen.

the facts are what Noel Carroll calls "narrative connections."[28] The occurrence of an event in the narrative is dependent on the previous event, but not its necessary consequence.

Linguistic Codes

The narrative structures and models used by litigants and witnesses in the courtroom were part of a broad non-legal discourse and allowed narrators to establish themselves in a relatively foreign space, creating a sense of homogeneity in the courtroom through the recounting of recognizable stories. At the same time, however, the speech that witnesses used also reflected multiplicity. First, not all participants in the divorce proceedings spoke the same language. Due to a long history of francophonization, the Flemish upper classes were mainly French-speaking, and legal procedures were mostly carried out in French.[29] However, the lower classes only spoke their local dialect and brought those languages into the courtroom when they acted as witnesses. Because of the lack of a written form of these dialects, the documents are a mix of procedural French and an (at times very clumsy) attempt to force dialect testimonies into the mold of written Dutch. Second, unlike the unambiguous group of legal practitioners who were all educated and upper class, the other participants in the proceedings formed a colorful amalgam of different professions, ages, genders, and classes, socialized to use a specific form of speech that they could not leave at the door when they entered the Palace of Justice. Although witnesses and litigants did try to adapt to the legal environment, the basic features of their daily speech inevitably influenced the way they structured their accounts.

28. Noel Carroll, "On the Narrative Connection," in *New Perspectives on Narrative Perspective,* ed. Willie Van Peer and Seymour Chatman (Albany: State University of New York Press, 2001), 21–41.

29. Although the Belgian constitution stated that "The use of custom languages in Belgium is optional; it can only be regulated by law, and only for the actions of public authorities and judicial affairs" (art. 23), most legal proceedings were carried out in French and an official translation of legal text into Dutch was only issued in the 1960s. However, recent linguistic research shows that the supposedly francophone bourgeoisie of nineteenth-century Flanders was often bilingual and open to the usage of Flemish dialects, resulting in a situation in which every participant of a proceeding simply used her/his language of preference and only fixed formula's were put in French (as is the case in the documents used here). See Jan Clement, *Taalvrijheid en bestuurstaal in België. Een constitutionele zoektocht naar de oorsprong van het territorialiteitsbeginsel en de minderheidsrechten in de bestuurstaalwetgeving* (Leuven: doctoral dissertation, 2002). For an extensive overview of the use of French, Dutch, and Flemish in Flemish courts, see Herman Van Goethem, *De taaltoestanden in het Vlaams-Belgisch gerecht, 1795–1935* (Brussel: Paleis der Academieën, 1990).

One factor that influenced the speech of a witness or a litigant was her/his gender.[30] Political and social privileges associated with masculinity easily translated into linguistic privileges. In most (Western) cultures, masculinity was based on the freedom of speech, and learning how to talk in public was an important part of boys' education and "becoming a man." Men were expected to embody the power patriarchy assigned to them through their speech.[31] Femininity, by contrast, was defined by silence. In the courtroom and elsewhere, the trope of the eloquent man and his silent wife had important consequences for the concrete use of language by women and men.[32]

First, language itself was—as feminist linguists argue—to a large extent "masculine." The mere act of using language as a way of expression, then, inevitably implied the expression of a masculine view of reality. Even when making an apparently gender-neutral statement, grammatical convention forced the speaker to imply that masculine equaled normal: when talking about a person whose gender was unknown, the masculine pronoun was used.[33] The formulas used in divorce proceedings went even further: the formulaic handbook for jurists explicitly stated that "Everywhere where it is possible to do so without causing inconvenience, the parties shall be referred to as masculine."[34]

Secondly, the ideal of the silent woman led to the general impression that women talked too much. As women's talk was measured to the norm of silence (and not in comparison to men's talk), every word seemed "one too many," leading to the belief that women spoke more often than men and too often in general.[35] Despite the fact that women's "nagging" was resented, the idea of the ever-talking woman also empowered women. Although women were essentially not supposed (or even allowed) to speak in public, the idea that they had more practice at conversation than men, and were therefore better at it, created a space for female public speech.[36]

30. The work of Robin Lakoff has been particularly influential for research on gender, power, and language. Robin Tolmach Lakoff, *Language and a Woman's Place* (New York: Oxford University Press, 1975).

31. Jane Kamensky, "Talk like a Man: Speech, Power and Masculinity in Early New England," *Gender and History* 8.1 (1996): 22–47, 28 and Scott Fabius Kiesling, "Power and the Language of Men," in *Language and Masculinity,* ed. Sally Johnson and Ulrike Hanna Meinhof (Oxford: Blackwell Publishing, 1997), 64–66.

32. Jennifer Coates, *Women, Men and Language,* 2nd ed. (London: Longman, 1993), 31.

33. Suzanne Romaine, *Communicating Gender* (New Jersey: Lawrence Erlbaum Associates, 1999), 2 and Coates, *Women, Men and Language,* 22–27. Romaine bases her observations on the English language, but the same was (and is) true for French and Dutch/Flemish.

34. J. H. Zwendelaar, *Code formulaire du divorce et de la separation de corps contenant le texte de la loi et un receuil complet de formulas* (Brussels: Larcier, 1878), 29.

35. Coates, *Women, Men and Language,* 31 and Romaine, *Communicating Gender,* 5.

36. Melanie Tebbutt, *Women's Talk?: A Social History of 'Gossip' in Working-Class Neighbourhoods, 1880–1960* (Aldershot: Ashgate Publishing Group, 1995), 60.

Third, the dominant position of men in the use of language led to the supposition that women only talked about trivial subjects. Because the primary concerns of women (family, children, neighbors) were of minor importance to men, women's talk in general was considered trivial, regardless of what they said. The strong link between femininity and gossip was exceptionally strong, causing every form of female talk to be interpreted as mere gossip and a priori irrelevant.[37] A somewhat paradoxical consequence of women's lack of power over language was their development of complex verbal strategies: because women were used to participating in conversations as the powerless element, they had an experience in manipulating speech from a powerless position that men lacked.[38] Therefore, the transition from daily speech to that in the courtroom was less harsh, despite the usual prohibition on female speech in public.

As witnesses in the divorce proceedings, women would typically make more efforts to provide a context for events and to describe their precise relation to the people they were observing. A number of women established their status as a friend of the "victim" by telling the court that they "saw the black marks on [their] arms and legs"[39] or specified that they "knew [her] since her childhood."[40] Their reliance on "gossip" was indeed great, with numerous female witnesses starting their account stating that they had "heard," "it was known in the neighborhood," or "it was of common knowledge" that a marriage was falling apart. Men, on the contrary, were more likely to rely on their own observations and to make powerful, unambiguous claims, usually initiating their account with phrases like "I know" or "I have witnessed." Male witnesses were heard to state that "she [the defendant] is a public scandal when drunk,"[41] or, even more unequivocal, that they "know that the defendant did not misbehave,"[42] without any attempt to retrace the sources of that knowledge.

Another power-divide among speakers was based on their "class."[43] Al-

37. Ibid., 1–5.

38. Romaine, *Communicating Gender,* 165–68.

39. *D'Hondt vs. Segaert,* May 14, 1887, testimony of Jeanette Moers.

40. *Trantesaux vs. Donterluigne,* November 4, 1885, testimony of Luise Verbrugghe.

41. *Dauwe vs. Eekhout,* Oktober 30, 1886, testimony of Gustaaf de Gaeve.

42. *Dammekens vs. Hoste,* December 11, 1886, testimony of Emile Lamberts.

43. Socio-linguistic research on the influence of social position on speech is heavily indebted to Marxist work, such as that of Voloshinov (Valentin Nikolaevich Voloshinov, *Marxism and the Philosophy of Language* [New York: Seminar Press, 1973]) and continues to use "class" as a term, attaching various meanings to it. (Moreover, the focus on socio-economic differences as a basis for differences in speech seems to be disregarded by more recent socio-linguists.) I will use the term here in its widest sense, as a shorthand for any kind of social group that distinguishes itself from other groups on the basis of certain socio-economical and educational differences, following Frans Gregersen, "Class and Language" in *Concise Encyclopedia of Sociolinguistics,* ed. Rajend Mesthrie (Amsterdam: Elsevier, 2001), 307–9.

though the working class and the middle class of a region were likely to speak the same language or dialect, they could adopt a different kind of speech. And because this class-specific speech was part of the very early education of children, it was hard to undo later. In *Class, Codes and Control,*[44] Basil Bernstein identifies two "codes" (one "restrictive," the other "extended") that are the basis of speech-potential or "functions of different forms of social relations or more generally qualities of different social structures."[45] These are the social interactions through which one makes sense of the world and which thus offer the basic structure for speech. The individual speaker can exploit that basic structure more or less depending on her/his intelligence or amount of practice, but the contours cannot be changed once drawn.

This basic structure—the "code"—is largely dependent on the social group to which she/he belongs. Lower-class speech is therefore primarily built as a series of shared identifications. Within a carefully protected "we," the audience is supposed to be familiar with what the speaker says and is expected to agree to his general views. This "restrictive code" is characterized by a preference for terms like "we" and "they" and primarily aimed at speaking in a familiar environment. Although speakers of the higher classes can use this restrictive code on occasion, they are not confined to it. The "expanded code" that is also available to them reflects a more individualistic sense of identity (the term "I" is much more prevalent in speech of this type) and enables them to express individual experience and intention and speak about abstract notions.[46]

In the documents, both classes were represented and both "codes" were used. The motivational accounts were written down by jurists and clearly relied on an expanded code. However, because they were not really part of a spoken account and figured instead in a more formulaic stage of the proceedings, they were hardly indicative of the social status of the litigants. The testimonies are an example of the "spoken word" and therefore less manipulated, showing more clearly how the basic "codes" influenced speech. Two examples, one of restricted and one of expanded code, show how the accounts of lower and higher class witnesses differed—and, more importantly—how higher class accounts answered more of the criteria that would have marked it as a trustworthy testimony.

The testimony of a farmer's helper reads: "This summer I was on the new avenue. The daughter of De Rouville was walking there with a man. De Rouville made her come into the house where he was living, he has reprimanded her on her behavior, but he has not beaten her."[47] Of course,

44. Basil Bernstein, *Class, Codes and Control* (London: Routledge, 1971).
45. Ibid., 108.
46. Ibid., 61–66, 108–17.
47. *Van Gelder vs. De Rouville,* January 31, 1885, testimony of Florimond Rousseau.

the audience could easily deduce that the witness had observed the events described, but there is no explicit mention of how he did that, what had possibly escaped his attention, or the amount of hearsay guiding his story. In contrast, a doctor—called upon as a witness for marital abuse—was very specific about his own place in the events he described: "*I have determined* that she had a black mark on the chest," he recounted, and then went on: "*I think* there were also black marks on the face, *but cannot uphold that. She has declared* to me in the presence of her husband that he has abused her."[48]

The consequence of these divergent codes was not only that the testimonies of the lower class lacked authority, but also that members of the lower classes needed to make considerable changes to their speech to adapt it to the expectations in the courtroom. Because the judge could hardly be expected to share working-class experiences and beliefs, or be familiar with the knowledge that members of the small rural community had, witnesses had to make explicit much of what would have been presupposed in normal conversation. Witness Louise Billiet, a housewife commenting on her neighbor's behavior, was not the only one who referred to common knowledge, talking about "Madam Bouque who, as everybody knew, was his [the defendant's] mistress."[49]

A final distinction marked by power imbalances is the loss of authority that all non-jurists experienced when they entered the courtroom. In this foreign space, judges and lawyers decided who got to speak and when, and to a certain extent they also forced witnesses and litigants to adopt an unusual form of speech. The normal structure of conversation, in which people "take turns" talking, was corrupted in the courtroom, which prevented speakers from telling their own story.[50] And what they finally said was recorded by a jurist who translated their accounts into Dutch and possibly adapted them further to meet legal standards. The competence of a witness to adapt to this foreign space thus influenced her/his credibility in court.

Le Code Civil

The power divides between different participants in the divorce proceedings, and the influence of these hierarchies on their speech, have important consequences for a discourse analysis of the documents used here. As different litigants and witnesses adopted different narrative strategies

48. *Vermandel vs. Vyncke,* January 15, 1885, testimony of Adolf van Botegem. (Emphasis added.)

49. *Hoor vs. Chaudon,* November 30, 1889, testimony of Louise Billiet.

50. J. Maxwell Atkinson and Paul Drew, *Order in Court. The Organization of Verbal Interaction in Judicial Settings* (London: McMillan, 1979), 34–65.

when entering the courtroom, the accounts of witnesses and litigants of the lower classes or female participants in the proceedings (examples of "powerless speech") show a greater distance from what was expected in the courtroom than the accounts of, for example, doctors or policemen. As a consequence, the stories of these "powerless" speakers show more explicitly which community values were actively brought into the courtroom, whereas "powerful" attempts to integrate non-legal categories in a testimony or motivational account were very subtle and often an effective "misuse" of the vague categories of the Code Civil.

But despite the heterogeneity among the non-jurists who participated in the proceedings, some general traits may be observed in citizens' interpretations of (and sometimes opposition to) the legal regulations concerning divorce. The articles of the Code Civil that figured most prominently in divorce proceedings, as part of the closing formula of divorce requests, were the "causes de divorce" of Title VI, Chapter I and identified adultery, abuse, and insult as legal grounds for divorce.[51] Litigants drew on these three grounds to make their case, but throughout the proceedings, they and their witnesses reinterpreted the articles within their own discourse and added moral grounds for divorce that were not recognized by the Code. In the analysis by legal and gender historians, the late nineteenth century has become infamous for the strong impact of a "double standard" in legal practice, and the following paragraphs will show that in divorce law, the double standard was indeed prominently present.[52]

However, by looking deeper into the legal formula and through a comparative analysis of the two discourses that were present in divorce practice, this study seeks to show that the "double standard" was not so much a legal invention of the patriarchal state, but rather a semi-legal notion, constructed through the interaction between legal and social values (and by both jurists and citizens). Moreover, it will be argued that the impact of the double standard on actual divorce proceedings was far smaller than

51. *Les codes et les lois spéciales en vigueur en Belgique.* Article 229: "a husband has the right to file for divorce on the ground of his wife's adultery"; article 230: "a wife has the right to file for a divorce on the ground of her husband's adultery, if he houses his concubine under the marital roof; and article 231: "both spouses have the mutual right to file for a divorce on the grounds of excesses, cruelties or severe insults of one spouse towards the other."

52. The term "double standard" was introduced into the scholarly debate on marital law by Keith Thomas. "Stated simply," Thomas writes, "it is the view that unchastity in the sense of sexual relations before marriage or outside marriage, is for a man, if an offense, none the less a mild and pardonable one, but for a woman a matter of the utmost gravity. This view is popularly known as the double standard." From these different standards on extra-marital sexuality, two gender-related codes of behavior emerge. Keith Thomas, "The Double Standard," *Journal of the History of Ideas* 20 (1959): 195–216.

what one would expect based on historical studies of nineteenth-century marital law and their constant reference to the "right to correct" as a symbol of that double standard in regions where the Napoleonic code provided the basis for legal practice.[53]

The existence of a double set of norms depending on gender immediately becomes clear in the articles of the Code Civil identifying adultery as a legal ground for divorce. Article 229 stated that "a husband has the right to file for divorce on the ground of his wife's adultery," leaving the task of precisely defining adultery to the judge. The following article, however, was much more detailed: "a wife has the right to file for a divorce on the ground of her husband's adultery, if he houses his concubine under the marital roof." Adultery, then, had different meanings for different genders. Only if a man fed, clothed, and housed a concubine in his (and his wife's) house, could his behavior be considered adulterous, whereas "female adultery" pointed merely to sexual behavior.[54] In concrete motivational accounts this was exemplified by the frequent mentioning of illegitimate children not only as a proof for adultery, but also as a way to point to the seriousness of the offense and its implicit dangers. One of the men filing for divorce on the ground of adultery referred to the children he used to consider being his as "the fruits of adultery."[55]

Interestingly, this seems to be the only occasion in which the term "adultery" could actually be used by non-jurists. Some litigants complained about their partners' false accusations of adultery, as in this sentence in an unusually elaborate account: "Mr. Ernest Hooghstoel falsely accused the plaintiff of adultery and of having contracted a syphilitic disease because of these illicit relations."[56] But if the use of the word "adultery" could not be ascribed to the accused partner (and then "quoted"), litigants and wit-

53. It is important to note the difference between "marital authority" and this "right to correct." Although the latter could be derived from the former, a husband's right to physically hurt his wife was not regarded as a necessary consequence of his function of head of the family and enjoyed far less acceptance. In his treatise on marital authority, Charles Morizot-Thibault states that "marital authority does not constitute an absolute power, but a force to protect" and, more explicitly: "The wife is physically protected, for a husband is no longer permitted to beat her." Charles Morizot-Thibault, *De l'autorité maritale. Étude critique du code civil* (Paris: Chevalier-Maresa, 1899).

54. This very fundamental difference in the understanding of adultery depending on gender is not an invention of the nineteenth century. In "La répression de l'adultère," Régine Beauthier observes that already in the early eighteenth century, "masculinity" and "guilty of adultery" was considered an oxymoron. Régine Beauthier, *La repression de l'adultère en France du XVIième au XVIIIième siècle. De quelques lectures de l'histoire* (Brussels: Emile Bruylant, 1990), 229.

55. *Vervaet vs. Callaert,* March 10, 1884, exposé de motifs.

56. *Van Lancker vs. Hooghstoel,* February 1, 1883, exposé de motifs.

nesses shied away from using the term,[57] leaving its occurrence limited to the end-formula: "that according to art 230 of the Code Civil, a wife has the right to file for a divorce on the ground of her husband's adultery, if he houses his concubine under the marital roof."[58]

The absence of the term "adultery," however, does not indicate the actual amount of attention the subject received in the courtroom. Witnesses were somewhat reluctant to openly talk about their friend's/neighbor's sexual relations in court, but the vivid accounts of gossip over romantic encounters, based on creative methods of spying, demonstrate that within the community, adulterous relationships were a popular subject of conversation. When adulterous relations were discussed in the courtroom, the double standard of the legal code was only partly mirrored. Indeed, male adultery was considered less dangerous than its female form, and "discreet libertinism" was regarded as "a sign of manliness,"[59] but the idea of a man's "need" for sexual activity was mostly interpreted as an intra-marital right, based on the duties of the married woman,[60] and was not simply extended to extra-marital relationships. Litigants referred to male adultery as "culpable relations"[61] or "immoral acts"[62] and witnesses employed equally pejorative terms, saying for example that they knew the accused "went with other shrews."[63]

The moral code, then, appreciated differences in the possible consequences of adultery, but did not understand those as a reasonable base for two separate definitions of adultery according to gender. As Laura Gowing points out, female adultery was feared because "adultery involved a certain assertion of female autonomy. At the very least, it meant the privileging of female sexual desire over marital stability."[64] But witnesses did not regard simple female adultery as a legal ground for divorce, nor did they dismiss the extramarital sexual relationships of men as normal masculine behavior that could not be termed adultery.

57. Besides the reluctance of witnesses and litigants, most judges are not open to elaborate discussions of sexuality or even affection, Régine Beauthier, "Le juge et le lit conjugal au XIXième siècle," in *Corps de femmes. Sexualité et contrôle social,* ed. Marie-Thérèse Coenen (Brussels: De Boeck, 2002), 39–63, 43.

58. Zwendelaar, *Code formulaire,* 30.

59. Robert Ireland, "Frenzied and Fallen Females: Women and Sexual Dishonor in the Nineteenth-Century United States," *Journal of Women's History* 3.3 (1992): 95–117, 96.

60. Jesse F. Battan, "The 'Rights' of Husbands and the 'Duties' of Wives: Power and Desire in the American Bedroom, 1850–1910," *Journal of Family History* 21 (1999): 165–86, 166.

61. *D'hondt vs. Segaert,* March 19, 1889, exposé de motifs.

62. *Aubertin vs. Rottiers,* June 5, 1888, exposé de motifs.

63. *De Loof vs. Ghijsbrecht,* January 30, 1886, testimony of Francois Degieter: "dat hij met ander vrouwvolk liep."

64. Gowing, *Domestic Dangers,* 195.

The subtle distinction between legal and moral interpretation and sanctioning of adultery indicates that the legal norms were not a mere copy of moral values by the institution tasked with the enforcement of social rules. Rather, the strict rules of the Code Civil, originating at the beginning of the century, were efficiently reinterpreted in a new climate of naturalized gender-divides.[65] Although witnesses regarded—for both women and men—only the active formation of a new family as a sufficient ground for divorce, simple adultery was often used as part of a more general picture of the amorality of the defendant. Within this framework, female adultery did figure as the more unnatural form. Adulterous women were not only accused of lascivious sexual behavior, but were also presented as foul-mouthed failures in matters of the household, and as bad mothers. Rather than mentioning adultery as the reason for a divorce, then, it was presented as a proof of a woman's general lack of maternal instinct and femininity.

On the subject of marital abuse, the Code Civil provided only one, gender-neutral, article: "Both spouses have the mutual right to file for a divorce on the grounds of excesses or cruelties [. . .] of one spouse towards the other" (Article 231). "Excès" (abuse that endangers the victim's life) and "sévices" (abuse that renders her/his life unbearable) figure as terms only in the final formula of the divorce request. The term "abuse," however, was used regularly by both litigants and witnesses next to other pejorative terms pointing to abuse (such as "torture"[66] and "brutalities"[67]). Almost every request based on the ground of abuse contains a sentence like "her husband abuses her almost daily"[68] or "her husband incessantly mistreats her in every possible way."[69] Whereas adultery was thoroughly discussed in local gossip groups, but only reluctantly opened to the scrutiny of the judge, litigants and witnesses apparently saw "abuse" as the concern of specialists. Instead of referring to "what everybody knows," witnesses of marital violence invoked the authority of the local police or doctor.

Studies of marital violence often observe that the gender-neutral regulations on abuse covered a practice of easily excused violence against women. In *Domestic Dangers,* Laura Gowing shows how male violence was legitimized through a depiction of "scolding wives" as a provocation, and justification, of marital abuse, and how the language used by abusive husbands in court often implied that their wives "wounded themselves" in

65. Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge: Harvard University Press, 1990).

66. *De Vreese vs. De Clercq,* April 8, 1890, exposé de motifs.

67. *Castien vs. Dossche,* July 31, 1889, exposé de motifs.

68. Ibid.

69. *Denys vs. Vandermeulen,* November 13, 1888, exposé de motifs.

their attempts to oppose their husbands' authority.[70] In the Flemish context, Nathalie Ferket's study of the abuse of women in the nineteenth century shows that in the criminal court, male violence was often excused by referring to marital authority and the right to correct a wife's behavior.[71] Although these criminal proceedings were aimed at the regulation and punishment of violence, "in practice, it was left to a husband to decide if the abuse was appropriate or not. Within his marriage he combined the positions of accuser, judge and executioner."[72] And not only in practice was the double standard at work: "the penal code," Ferket boldly states, "shows that marital violence against women was fully legal. Indeed, it is not exaggerated to state that the legal regulations on marriage and divorce encouraged this form of violence."[73]

However, the Code Penal stated that any form of physical violence would be punished with fines and imprisonment. The only codified exception to this rule was physical violence directed at a partner and her/his lover if caught in the act of adultery. If the marital abuse of women was considered legal, it was a consequence of conventions in legal practice and not codified in the penal (or civil) code.[74] And indeed, college notes taken at the catholic university of Leuven in the 1880s show that jurists were taught that "excesses" and "cruelties" could only be considered as such, and thus were only punishable, if the abuser's ill-intention could be established . . . implying that it was possible for a man to hurt his wife out of "good" intention and silently acknowledging the existence of a "right to correct," even though neither the term nor the notion figured in any legal code.[75]

The *Pandectes Belges,* an encyclopedia of legal terms and practices published between 1880 and 1910, allows us to track down the origin of this "right to correct."[76] Some articles in the Code Civil's chapter on marriage were non-reciprocal, stating that a wife had the duty to follow her husband, whereas he was obliged to protect her, and that a husband had to provide

70. Gowing, *Domestic Dangers,* 208–10.

71. Nathalie Ferket, "Zwijgen als vermoord. Vrouwenmishandeling en de juridische positie van de gehuwde vrouw in België in de negentiende eeuw," *Belgisch Tijdschrift voor de Nieuwste Geschiedenis/Revue Belge d'Histoire Contemporaine* 15.3 (1999): 285–304.

72. Ferket, "Zwijgen als vermoord," 289.

73. Ibid., 287.

74. Pierre August Florent Gerard, *Code pénale expliqué par les rapports et les discussions des deux chambres législatives, la comparaison avec les dispositions correspondantes du code pénal de 1810 et la jurisprudence qui s'y rapporte* (Brussels, 1967), 141. Arts. 398 and 413.

75. J. Evers, *Cours de droit civil* (Leuven, 1883); Dejaer, *Cours de droit civil* (Leuven, 1882–1883) ; Decoster, *Cours de droit français* (Leuven: s.d.).

76. Edmond Picard, and N. d'Hoffschmidt, *Pandectes Belges. Encyclopédie de legislation, de doctrine et de jurisprudence belges,* Tome 82 (Brussels: Larcier, 1902), 131.

for his wife. This statute of a husband as provider and protector granted him "marital authority," and from this authority, his right to "discipline" other members of the family was derived. However, the *Pandectes* did not fully support the notion of a "right to correct" and, more importantly, clearly stated that this right did not encompass the use of physical violence. In 1844 already, an article in *La Belgique Judiciare* declared that the only reason for the constant reappearance of the "right to correct" in legal practice was that non-jurists were influenced by old and/or English legal systems and tried to invoke rights that did not exist in Flanders.[77]

The official legal discourse as expressed in the Civil Code and legal encyclopedias and journals, then, "blamed" non-jurists for the role of the double standard in cases of marital abuse (or, more specifically, abusive husbands who illegitimately tried to defend themselves). But did litigants and witnesses actually invoke the "right to correct"? Of the very few husbands who defended themselves against their wives' allegations, none tried to explain or excuse their behavior as an act of discipline, but rather accused their wives of various "crimes," ignoring their own actions altogether. Witnesses either expressed their disgust about any kind of physical violence if sympathizing with the victim, or denied the occurrence of abuse in defense of the accused. The only place where ideas of "ill-intentioned" violence, and therefore implicitly the "right to correct," appeared was in the divorce requests of abused women. In their motivational accounts they went to great lengths to prove that their husband's violence could (and should) be termed abuse and was not merely a matter of exercising marital authority.

Wives pointed to their own exemplary behavior with phrases like "the plaintiff, whose conduct has always been irreproachable."[78] They drew attention to the seriousness of the abuse through frequency of episodes and possible injuries.They explained the dangers of the violent marital situation, claiming that neighbors had to intervene and rescue them, and the more elaborate accounts contain long, sensational stories of reoccurring terror. One plaintiff narrates that "having fled into her room and lying on the bed, her husband has followed her there and has violently pulled her out of the bed; that the plaintiff has saved herself by going into her sister's room who was staying with her; that her husband has followed her, mistreated her again and has forced her outside pulling her along by her hair."[79] But even these obvious attempts to avoid dismissal of the complaints as a case of legitimized discipline did not simply accept the notion of a "right to

77. *La Belgique judiciaire. Gazette des tribunaux belges et étrangers,* Brussels. The journal was published between 1842 and 1939 and contained articles about legal problems or specific cases in Belgium and other Western nations.

78. *D'Hondt vs. Impens,* February 28, 1890, exposé de motifs.

79. *Castien vs. Dossche,* July 31, 1889, exposé de motifs.

correct." They rather anticipated a possible interpretation of the law (by the judge) that was not supported by the accuser herself.

The third legal ground for divorce in the Code Civil was "insult." Article 231 not only identified abuse as a reason to break up a marriage, but also stated that "both spouses have the mutual right to file for a divorce on the grounds of severe insults [. . .] of one spouse towards the other." The term "injury" appears in the documents in its most strict sense, as a denominator for invectives: "the most severe and humiliating insults, such as trollop, whore, tramp, tart, slut etc.,"[80] and was used as an adjective, linked to all kinds of behavior that a spouse considered insulting. One litigant, for example, deemed her husband's jealousy "a highly humiliating insult to the plaintiff."[81] Next to the very precise terminology of abuse, the term "injury" seems illogically vague. However, when placed in its early nineteenth-century context, the adoption of insults as a legal ground for divorce makes more sense. In a largely oral society, the act of insulting (or gossiping) could have an important impact on a person's reputation and on her/his social status.[82] Within the tradition of the criminal prosecution of defamation, the acceptance of insults as a reason for breaking up marriage was perfectly normal.[83]

However, the insults that were brought up in court to support divorce requests did not necessarily conform to the original meaning in which the term was inserted in the Code. As Evelyne Largueche argues in her discussion of different (French) terms for "insult," the French language—unlike Dutch or Flemish, the language spoken by most litigants and witnesses—makes a subtle distinction between "injuries" and "insults."[84] The latter refers to the act of insulting people and is closely affiliated to the term "outrage" (which also often figures in the documents) meaning the use of an immoral, inappropriate vocabulary. The word "injury," however, refers to the consequences of such acts, the damage to the victim's social and moral position within the community because of "insult" or "outrage."[85] If the law is taken literally, then, many of the insults that were brought up in the documents were mere "outrage." They could not be considered real "injuries" and, thus, could not serve as a ground for divorce.

But it is highly unlikely that this literal interpretation of the article was

80. *Denys vs. Vandermeulen,* November 13, 1888, exposé de motifs.

81. *Ruffranck vs. Andelhof,* April 8 1889, exposé de motifs.

82. Tebbutt, *Women's Talk,* 2–8.

83. Laura Gowing, "Gender and the Language of Insult in Early Modern London," *History Workshop Journal* 35 (1993): 1–21, 18–19.

84. Evelyne Largueche, *Injure et sexualité: le corps du délit* (Paris : Presses Universitaires de France, 1997).

85. Ibid., 18–22.

still en vogue almost a century later. In the course of the nineteenth century, the growing importance of affection in the new and allegedly "companionate"[86] marriage provoked a shift away from the interpretations of "insult" as a way to injure someone's identity as a part of a collective (or in this case: as part of a kinship-line, guarding a shared patrimony). Instead, the terms "insults" and "injuries" got conflated into one notion, referring to damaging an individual's social status or even broader "hurting her/his feelings." And that is the meaning most litigants and witnesses seem to have attached to the different words they used to refer to insults. In accounts and testimonies alike, insults never figured as the only reason to file for divorce. The occurrence of insulting acts or behavior was rather invoked as part of a more general sketch of the moral character of the accused and functioned as a way of supporting other complaints; for example, if a wife or husband was known to be foul-mouthed, it was considered more likely that she/he was also abusive or adulterous.

The vague category of "injures graves" was also used as a way to "smuggle" reasons for divorce that were not accepted by the law into the courtroom. Simple male adultery, drunkenness, the failure to provide, bad housekeeping . . . all could be portrayed as a way to insult the victim. One of the female litigants noted "that her husband succumbed to his inclination to inebriety"[87] and then referred to the legal ground of insult, while one of the male litigants complained that "his wife often made a scandal of herself in the village," resulting in his neighbors "mocking him."[88] Even though these reasons were unlikely to be considered important enough to be the basis of a divorce request, they could help the case by providing a more convincing portrayal of the complaining spouse as a victim and contribute to a favorable perception by the judge.

Women and men used their spouses' insulting vocabulary and behavior in court to attain very similar goals, but apparently had to walk different paths to reach them. Women were less often described as insulting in their behavior, and if they were, they were mostly pictured as the "nagging" wife who failed to meet the requirements of a good housewife and mother. Insulting language by a woman figured as a part of a more general tendency to talk too much and to challenge her husband's authority. The wife refusing to tell her husband where she spent her evenings, for example, screaming that such was "none of his business,"[89] was not so much remembered for

86. On "companionate marriage," see John Tosh, *A Man's Place: Masculinity and the Middle-Class Home in Victorian England* (New Haven and London: Yale University Press, 1998), 27–28.

87. *Van Heuverswijn vs. Haerens,* October 7, 1890, exposé de motifs.

88. *Myny vs. Catrysse,* May 10, 1887, exposé de motifs.

89. *Hooghstoel vs. Van Lancker*, May 23, 1885, testimony of Charles Delbeke.

her invectives, but rather for her public attempts to control the home and the family business. Her male counterparts were not so much described as bad providers or fathers, but rather as suspicious men, falsely accusing their wives of adultery, thereby severely damaging their social identity as wives and mothers—and even their femininity. One husband drew on the popular image of the temptations of the uniform by accusing his wife of "sleeping with soldiers,"[90] others were even more explicit when referring to their wives' lack of femininity. A particularly blunt public argument ended with the husband raging at his wife, stating that "she had been street-walking with the children and was unworthy of being a mother."[91]

This portrayal of inappropriately possessive men originated in the type of insult that men usually used: the most common term of abuse in the documents is "whore."[92] In some cases, the term indeed seems to have indicated a very specific reproach: the husband who told his wife "that she is the worst whore of the Brughschepoort [an infamous quarter on the north-side of the city]"[93] probably did accuse her of adultery (or even prostitution). But mostly, "whore" was used as a rather meaningless way of scolding. Precisely because of this ambiguous meaning of the word, men's insulting vocabulary could turn into a powerful weapon when used by women in court. Because the most general invective available to men could also be interpreted as a false accusation, an impressive number of women could produce at least one witness who had heard her husband calling her a "whore" during a fight. The wife then had an additional ground on which to base her case. The double standard that was applied to men's and women's sexual behavior proves to have been very effective as a tool to inflate a husband's part in a marital conflict to considerable proportions. Merely proving his use of this one specific term could be used as a way to establish his foul intentions, not only to deny his wife her role as housewife and mother, but also to damage her reputation.

Power, Marital Authority, and Marital Rights in the Courtroom

Regardless of the specific legal articles on which a divorce request was based, litigants and witnesses alike used a number of narrative strategies to posi-

90. *D'hondt vs. Impens,* February 28, 1890, exposé de motifs.

91. *Denys vs. Vandermeulen,* November 13, 1888, exposé de motifs.

92. See also Gowing, "Gender and the Language of Insult," 3, and Lynn Abrams, "Whores, Whore-Chaser and Swine: The Regulations of Sexuality and the Restoration of Order in the Nineteenth-Century German Divorce Court," *Journal of Family History* 21.3 (1996): 267–80, 277.

93. *Castien vs. Dossche,* March 8, 1890, testimony of Louis van Lerberge.

tion themselves in the foreign atmosphere of the court and to influence its proceedings. The specific strategies that were used were attempts to create an image of the "trustworthy" speaker and citizen, aimed to convince the judge but molded to the model of daily narrative credibility. Because the large majority of litigants and witnesses were unacquainted with legal expectations and categories, they crafted their stories to match their peers' expectations of neutrality, consistency, detail, and plausibility. As a consequence, the social barriers that divided different speakers in the local community—the power divisions between genders and classes—were reflected in the stories told during the procedure. More "powerless" speakers (women, laborers), who lacked the education or authority to speak in public, employed the same verbal strategies they used in daily interaction, such as the use of "empty" adjectives, providing a broad context or the construction of narrative connections. The neighbor of a badly abused woman told the judge that the latter had "a very bad life with her husband, caused by his behavior towards her. One night she took refuge in my house."[94] Her account barely provided any factual information, but did sketch a very broad picture of a marriage gone awry, built up a causal connection between the husband's doings and his wife's "very bad" life, and emphasized the witness's acquaintance with the victim.

More "powerful" speakers, in contrast, had the advantage of a correct grammar and the experience of, first, speaking in public, and second, talking as an individual (rather than as a member of a collective). This enabled them to provide the precision the court expected from witnesses by making their own observational "actions" as witnesses explicit. The narrative strategies used by male, upper-class litigants and witnesses, then, were more likely to be an effective tool to convince the judge—and ultimately to bring communal values into the courtroom. But precisely because these strategies were aimed at subtler influence through formal conformity, the documents recounting these "powerful" stories reflect community values in a much less explicit way than the stories of "powerless" speakers.

However, litigants of different classes and genders cooperated in their attempts to use the courtroom as a tool to obtain justice for themselves or their peers. Although the legal and moral regulations concerning marriage and divorce were not radically oppositional, non-jurists did use the verbal strategies they had acquired in other social situations to resist the enforcement of some legal rules upon themselves or members of their community and tried to reinterpret legal categories while speaking to jurists. All three legal grounds for divorce were generally accepted by non-jurists, but the strict judicial definition of the terms was often reiterated with a different

94. *Douwe vs. Eeckhaut,* January 29, 1887, testimony of Mathilde De Paepe.

interpretation of the categories and a different assessment of facts as a consequence.

In cases of adultery, witnesses appreciated the different weight of female and male adultery, but refused to translate that into completely gender-segregated notions and regarded female as well as male adultery only as a ground for divorce if the adulterous spouse had formed a new household. In cases of marital abuse, the subtle difference between "excesses" and "cruelties" was completely disregarded by non-jurists. Instead, they focused on the "seriousness" of the offense in general, basing their assessment on the degree of violence as well as on the degree of publicity. When insults were brought forward in the proceedings, litigants and witnesses mostly ignored the precise meaning of that notion in a legal context. Instead, they used the vague term as an over-arching category, covering all forms of inappropriate behavior they deemed important for the case, despite the absence of adequate categories in the Code Civil.

The consistent resistance of non-jurists to some elements of the legal regulations shows that these regulations were not simple adaptations of social values to fit the form of a legal institution and to become effective tools for the management of large, complex societies. On the other hand, the notion that legal regulations derive their legitimacy merely from their form can also be dismissed, because legal practice (and the enforcement of the Code) was actively used as a way to obtain moral justice and was, despite some conflicts, considered an appropriate tool to do so. The function of the law in the regulation of marital life and in the arbitration of marital conflict, then, was to provide the methods for social control if informal methods failed. The recurring mention of town gossip and intervening neighbors demonstrates that informal social control on marital life was far from obsolete in late nineteenth-century Ghent and simultaneously shows how citizens hoped the law would enforce rules similar to those of their own. What the Code and the courtroom provided were not so much a set of fixed rules and values (the community had its own ethics), but a structural framework in which the policing of moral values could be perpetuated. The silent conflicts that arose when witnesses and litigants opposed parts of the legal regulation were a consequence of the attempts of jurists to treat the law as a source of ethics instead of a tool for legal practice.

The construction and use of a "double standard" to evaluate the behavior of wives and husbands, then, was part of such an interpretation of the role of the law. One sentence, uttered by a female witness in a case of male adultery, provides an example of this function of the "double standard." In recounting a conflict situation between the spouses, she recalled the husband telling his wife that he would "leave her to perish, in order to live

with his mistress."[95] In choosing exactly that phrase, the witness positioned herself not only as a very reliable witness according to judicial standards, but also effectively accused a husband of adultery without even uttering the word. The phrase offered the exact information the court would have been looking for (an eye-witness account of "proof" of the husband's adultery) without any superfluous information or apparent interpretations on the part of the witness. And, more importantly, the description of male adultery neatly matched that of the Code Civil: as a failure or refusal to provide rather than a sexual escapade. In structuring her account in this way, this witness was very likely to strike a judge as reliable and therefore to empress her own judgment onto that of the court. Her use of the "standard" of the legal codes should not simply be read as an adoption but rather as the subtle use of legal norms to uphold community values.

Rather than being an abstract notion invented by patriarchal jurists, or a form of popular practice rejected by objective legal minds, the double standard functioned as a tool to protect the existing social structure. By supporting the authoritarian status of husbands, the double standard in the Code heightened the predictability of social interaction and therefore cemented the stability of the (patriarchal) society. The gender-related hierarchy that existed in (and structured) late nineteenth-century Flemish society could only be reproduced in legal practice through complex and abstract constructions. Articles 212, 213, and 214[96]—which were, indeed, very explicitly composed to stabilize the preferred family structure—could be imagined as the legal confirmation of a husband's marital authority. And, if needed, that authority could (and would) be translated into a right to "discipline" his wife and children.

But neither "marital authority" nor the "right to correct" were literally present or inevitably anchored in legal texts, and in divorce proceedings, the notions were rarely invoked. In exemplifying the ambiguous role of legal and moral norms and the interplay between both in the continuous (re)construction of a notion of "acceptable marital behavior," the different forms of speech in divorce proceedings in general, and the various allusions to the abstract idea of a "double standard" in particular, urge us to reconsider the concept of the emergence of a "companionate marriage" at

95. *Blart vs. Bourlay,* November 27, 1886, testimony of Stéphanie Vande Sompele.

96. *Les codes et les lois spéciales en vigueur en Belgique,* article 212: "both spouses owe each other fidelity, help and assistance"; article 213: "a husband owes his wife protection, a wife her husband obedience"; and article 214: "a wife is obliged to live with her husband, and to follow him to wherever he decides to reside; a husband is obliged to receive her, and to furnish her with all that is necessary, according to his possibilities and standing."

the end of the nineteenth century.[97] It seems indeed that, as James Hammerton suggests, "patriarchal and companionate marriage were never stark opposites,"[98] and that what appear as challenges to patriarchal authority might well have been a way to uphold the values in which it was rooted.

Conversely, the institution that is often seen as a bulwark of patriarchal authority—the (Napoleonic) judicial system—was, much more than contemporary theorists such as Durkheim and Weber anticipated, woven into the fabric of "common" sense and society. Despite obvious attempts to discourage citizens from seeking a divorce,[99] and a strong support of female chastity and submissiveness, jurists and citizens seem to have agreed that divorce was appropriate as a final resort, "an evil that has to serve as a remedy to an even larger evil."[100] If a woman felt that her life was in danger—and her environment could support her claims—the double standard would not be invoked and she was right to feel "obliged to seek a divorce."

97. See, e.g., John Tosh, *A Man's Place.* More specifically on companionate marriage in the history of divorce: Elaine Tyler May, *Great Expectations: Marriage and Divorce in Post-Victorian America* (Chicago and London: University of Chicago Press, 1980).

98. Hammerton, *Cruelty and Companionship.*

99. The divorce procedure of the Code Napoleon was notoriously long.

100. Victor Thiry, *Cours de droit civil* (Liège: Vaillant-Carmanne, 1892), 317.