

# ENACTING THE LAW: PLAUTUS' USE OF THE DIVORCE FORMULA ON STAGE

PATRICIA A. ROSENMEYER

This paper explores the dramatic context of references to divorce in three Plautine comedies: the *Amphitruo*, *Casina*, and *Trinummus*. I will suggest that for Plautus, the mimetic construct of the stage alone was not enough of a barrier to disrupt or cancel the legal implications of the divorce formula, a phrase which actually enacted the law at the moment of its utterance. Although my argument necessarily entails a consideration of the legal and social conventions of divorce in the late third and early second century B.C. at Rome, my goal here is primarily literary rather than historical, linguistic rather than legal. It is Plautus' presentation of language in the theater, specifically the formulaic language used to dissolve a marriage, that will be the subject of the following pages.

## I. DIVORCE ROMAN-STYLE

Much of the evidence for the legal status of married women in the Republic comes, for lack of more trustworthy sources, from Roman Comedy. Although Terence offers his share of insights into bourgeois married life in, for example, the *Hecyra*, Plautus in particular takes great pleasure in playing with the institution of marriage, presenting stereotypes of shrewish wives and errant husbands, and frequently having his characters flirt with the threat of divorce as a resolution to their marital disagreements. At the beginning of this century, Otto Fredershausen<sup>1</sup> conveniently listed all the references to divorce in the extant Plautine corpus, and scholars since then have mined the source materials for social and legal data. Thus in recent scholarship, Alan Watson<sup>2</sup> quotes seven Plautine plays for information on

The following works are cited by author's name or author's name and abbreviated title: Shoshana Felman, *The Literary Speech Act*, tr. C. Porter (Ithaca, N.Y. 1983); Ernst Levy, *Der Hergang der römischen Ehescheidung* (Weimar 1925); Myles McDonnell, "Divorce Initiated by Women in Rome," *AJAH* 8 (1983) 54-80; Elisabeth Schuhmann, "Der Typ der 'uxor dotata' in den Komödien des Plautus," *Philologus* 121 (1977) 45-65; Susan Treggiari, *Roman Marriage* (Oxford 1991); Alan Watson, *The Law of Persons in the Later Roman Republic* (Oxford 1967) = *The Law of Persons*; id., *Roman Private Law around 200 B.C.* (Edinburgh 1971) = *Roman Private Law*; Netta Zagagi, *Tradition and Originality in Plautus* (Göttingen 1980).

<sup>1</sup>Otto Fredershausen, "Weitere Studien über das Recht bei Plautus und Terenz," *Hermes* 47 (1912) 199-249, esp. 234-235.

<sup>2</sup>Watson, *Roman Private Law* 23-24. See also his chapter on divorce in Watson, *The Law of Persons* 48-56; and his *Rome of the XII Tables* (Princeton 1975) 31-39.

divorce laws affecting marriages both *cum manu* and *sine manu*, Elisabeth Schuhmann<sup>3</sup> focuses on the role of the *uxor dotata* both on stage and off, and Myles McDonnell<sup>4</sup> argues from the comedies about the evidence in real life for a Roman woman's power independently to initiate a divorce.<sup>5</sup>

Most of these studies show an acute awareness of the two-fold problem of 1) using evidence from comedy as a direct source for legal history, and 2) determining in each instance whether specific references allude to customs inherited from Greek models in New Comedy, or to Roman practices.<sup>6</sup> But none yet has fully explored the specifically performative and dramatic contexts of Plautine references to divorce. I am not speaking of the numerous threats and blusters in the plays, which never amount to any action taken,<sup>7</sup> but rather of the much rarer use of the actual divorce formula on stage.

It has been argued that in Plautus' time, a marriage defined by modern scholars as *sine manu* (i.e., one in which the wife had not officially entered her husband's family, but remained under the power of her original *pater-*

<sup>3</sup>Schuhmann 45–65; see also her "Ehescheidungen in den Komödien des Plautus," *ZRG* 93 (1976) 19–32.

<sup>4</sup>McDonnell 54–80.

<sup>5</sup>A full bibliography of works on Roman marriage and divorce law published before 1977 may be found in Joseph Huber, *Der Ehekonsens im römischen Recht* (Rome 1977) 7–12. The reader may wish to consult in particular R. Leonhard, "Divortium," *RE* 1.9 (1903) 1242–45; E. Klingmüller, "Repudium," *RE* 2.1 (1914) 614–615; Levy; S. Solazzi, "Il divorzio della 'filiafamilias'," *BIDR* 34 (1925) 1–28. Recent bibliography on the subject of divorce in Rome at the time of Plautus includes A. d'Ors and X. d'Ors, "Socer nuntium mittens," in *Mélanges offerts à Jean Dauvillier* (Toulouse 1979) 605–615; Zagagi; O. Robleda, "Il divorzio a Roma prima di Costantino," *ANRW* II.14 (1982) 347–390; J. F. Gardner, *Women in Roman Law and Society* (Bloomington, Ind. 1986) 81–95; Beryl Rawson, "The Roman Family," in B. Rawson (ed.), *The Family in Ancient Rome* (Ithaca, N.Y. 1986) 1–57, and *Marriage, Divorce, and Children in Ancient Rome* (Oxford 1991); and Treggiari.

<sup>6</sup>Although the evidence from Greek drama is fragmentary, we know that some Attic Middle and New comedies dealt with the subject of divorce. At least five apparently had the title *Apole(i)pousa*, i.e., *The Woman Seeking a Divorce*: Aminias (Testimonium 2\* K-A), Apollodorus of Carystus (fr. 4 K-A), Apollodorus of Gela (fr. 1 K-A), Crobylus (frs. 3–4 K-A), and Diphilus (frs. 17–19 K-A). In addition, a fragment of Anaxandrides (fr. 57 K-A), quoted by Stobaeus (*Anth.* 4.23.1), survives without its title, but the content of the piece suggests another divorce story. Menander alluded to divorce in his *Dyskolos* (Knemon is already divorced) and *Epitrepontes* (a father wishes to arrange a divorce for his daughter). It is also possible, of course, that Plautus could reflect Athenian legal and social customs without alluding to a specific Greek literary model.

<sup>7</sup>E.g., women calling on their fathers, presumably to initiate procedures (*Men.* 725–738; *Merc.* 784–788); men warning their wives to behave or else (*Men.* 112–113); women wondering whether to remain with errant or missing husbands (*Men.* 559–561; *Stichus* 29–46); or men kicked out of the house temporarily by their angry wives (*Men.* 668, 963–965; *Rud.* 1046–47). At *Mil.* 1164–67, a courtesan pretends that she has divorced her "husband" out of passion for a soldier, who is then lured into her home thinking that it is part of her original dowry which has now been returned to her.

*familias* or, if her father had died, under the guardianship of her tutor) could be dissolved without written formalities of any kind, but that certain words traditionally signifying divorce were often used to indicate the deed, namely *res tuas tibi habeto* ("take your own things [i.e., belongings, property] for yourself"), or (less certain) *i foras* ("get out!").<sup>8</sup> Although this formulation was by no means prescribed or essential for the act of divorce, it was consecrated by tradition and remained functional well into the second century A.D.<sup>9</sup> The words presumably could be spoken by either side.<sup>10</sup>

We do not have to rely on Plautus alone for evidence of the first phrase, as it appears later, in unchanged form, in numerous Latin authors. Cicero (*Phil.* 2.69), mocking Mark Antony for his pretense at moral reform, writes that the man has "divorced" his courtesan, the actress Cytheris: *illam suam suas res sibi habere iussit, ex duodecim tabulis clavis ademit, exegit* ("he ordered that woman of his to take her own belongings for herself, and according to the law of the Twelve Tables, he took away her keys and drove her out").<sup>11</sup> The Elder Seneca (*Suas.* 1.6) describes a lampoon on the base

<sup>8</sup>The phrase is recorded in the second century A.D. as an official formula for divorce by Gaius (*Dig.* 24.2.2.1): *In repudiis autem, id est renuntiatione, comprobata sunt haec verba: tuas res tibi habeto, item haec tuas res tibi agito*. The first formulation appears to be the more common, according to our literary sources. For discussion, see Levy 19, 77–81; Watson, *Roman Private Law* 23–24; Gardner (above, n. 5) 84–86; and Treggiari 440, 446–458. In the case of a marriage *cum manu*, however, which involved greater legal complexity in that the wife officially entered the household of her husband, the divorce required a formal ceremony of reversal to remove the *manus*.

<sup>9</sup>Treggiari (447) is sceptical of the use of the formula in later times ("it is hard to imagine Cicero . . . going through this rigmarole"), and she warns against relying on literature to demonstrate the use of the formula in the real world. While I do not mean to imply that the literary examples cited in the following pages correspond to specific social and legal practices, I think the quotations do argue for the unbroken tradition of a conventional phrase signifying divorce.

<sup>10</sup>There is great scholarly debate as to whether or not wives in Plautus' time could independently initiate a divorce. After an examination of five Plautine examples of women appearing to initiate divorce proceedings, McDonnell argues that in reality there is "no evidence that a Roman woman could independently initiate a divorce during the period of the middle Republic" (66). I refer the reader to the arguments for and against in McDonnell 54–80. I agree, however, with the conclusions of Watson, *Roman Private Law* 23, who argues that in a marriage *sine manu*, the wife could initiate divorce if she were *sui iuris*, and that her father could do so on her behalf if she were *in patria potestate*. For a more detailed discussion, see the chapter on divorce in Treggiari 435–482, esp. 441–446: "Historical Development: Capacity to Divorce."

<sup>11</sup>There is some question about the punctuation of this sentence: does the reference to the XII Tables control both parts of the phrase (i.e., ordering the woman to take her things as well as the reference to the removal of the household keys and her departure from the home) or just the latter part? See Schuhmann ("Ehescheidungen in den Komödien des Plautus" [above, n. 3]) 24 with notes *ad loc.*, and Alan Watson, "The Divorce of Carvilius Ruga," *RHD* 33 (1965) 38–50, esp. 42–43. Watson (*Rome of the XII Tables* [above, n. 2] 33–34) concludes that "the *ex duodecim tabulis* must be taken

of a statue ridiculing Antony's pseudo-marriage to Athena with an offer of divorce from both Octavia and Athena to Antony: *res tuas tibi habe* ("take your own things for yourself");<sup>12</sup> Quintilian (*Minor Declamations* 262.30) chides a man who has attempted to divorce his wife in order to marry the girl he has abducted: *tunc repudiatam tu credis uxorem, cum res suas sibi habere iussa est? cum egredi de domo?—uxorem tunc repudiasti, cum rapuisti* ("do you think then that your wife was divorced when she was ordered to take her own things for herself and leave the home?—no, you divorced your wife when you abducted that girl").<sup>13</sup>

The same formula also crops up in fictional works, further evidence of the unchanging nature of the verbal ritual. An epigram of Martial (10.41.1–2) depicts an old woman who has just ordered her husband to accept a divorce:

*Mense novo Iani veterem, Proculeia, maritum  
deseris atque iubes res sibi habere suas . . .*

In the early month of January, Proculeia, you abandon your old  
husband, and order him to take his own things for himself . . .

The poem concludes that she is simply doing good business: her husband was a praetor, and would therefore have been responsible for too many expensive festivals in the coming year. In my final example of this phrase, Apuleius (*Met.* 5.26) shows Psyche misleading both her wicked sisters into believing that Cupid, angry at the revelation of his secret identity, has divorced her by pronouncing the familiar words: *ob istud tam dirum facinus confestim toro meo divorte tibi que res tuas habeto* ("because of this terrible crime, begone from my bed immediately, and take your own things for yourself").

The other phrase which may have been used traditionally to signify divorce, although scholars disagree more on this phrase than on the previous one, is a form of *i foras* or a variation on this. The command for the wife to leave the house, implicit in the command for her to take her things for herself, occurs in Varro's definition of the verb *baetere*, *id est ire*; the

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with *clavis ademit* for the balance of the sentence and for the rhetoric of the situation." The consensus appears to be that the comma belongs after *iussit*, which implies that the clause *res suas sibi habeto* did not exist formally as a requirement for divorce according to the XII Tables, but was commonly accepted as a convention in the procedure. See further discussion in Treggiari.

<sup>12</sup>The effect is even funnier because of the bilingual nature of the whole quotation, as the Athenians accepted Antony's assumed divinity and offered him Athena in marriage, but balked at his demand for a dowry of a thousand talents for the goddess: "Ὀκταονία καὶ Ἀθηνᾶ Ἀντονίῳ: *res tuas tibi habe*." The shift from Greek to Latin for the divorce formula emphasizes its legal nature. The story is also given by Dio 48.39.2.

<sup>13</sup>On abduction marriage, see J. Evans-Grubbs, "Abduction Marriage in Antiquity: A Law of Constantine (*CTh* IX.24.1) and Its Social Context," *JRS* 79 (1989) 59–83, esp. 69 on the situation as described in the Quintilianic declamations.

quotation, preserved by Nonius Marcellus, is based on the perception that infertility on the part of the woman is a valid (but not necessarily socially condoned) reason for divorce: *annos multos quod parere ea non poterat, mulierem foras baetere iussit* ("because over a period of many years she had been unable to bear a child, he ordered the woman to leave the house").<sup>14</sup> While this phrase seems less specifically formulaic in nature, since synonymous verbs for going may be used interchangeably, it does remain fairly consistent in its effect: consider its use in the satirists. Martial (11.104.1) opens his poem with the words

*uxor, vade foras aut moribus utere nostris . . .*<sup>15</sup>

wife, begone from my house, or conform to my customs . . .

In a witty reversal of the usual male tirade against female sluttishness, the speaker seeks a less puritanical, more sexually generous partner. Juvenal (6.146–148) in turn combines a humorous variation on "take your things and leave" with a patently ridiculous charge against a wife, namely that she has grown bothersome because of her perpetual cold; he will find another who does not snifle as much:

*collige sarcinulas, dixit libertus, et exi.  
iam gravis es nobis, et saepe emungeris. exi  
ocius et propera, sicco venit altera naso.*

collect your baggage, said the freedman,<sup>16</sup> and get out.

You are a nuisance to me now, and you are constantly sniffing. Leave as soon as possible, and be quick, another wife is coming, one with a dry nose.

These passages from rhetoric, drama, narrative fiction, and satire agree on the basic details of the divorce formula: its precise wording (in the case of *res tuas tibi habere*), and its impact. The words are "performative" in that their utterance enacts the law: the moment of speaking simultaneously defines the action and puts it into effect. Any details of returned dowries or formal legal requirements are secondary to the immediacy of the

<sup>14</sup>Varro-Non. 77 = Varro *Sat. Men.* 553. No grounds were required by law for the divorce to proceed, although social censure often motivated the bringing forward of a charge to justify the action. Spouses who misbehaved or divorced frivolously could lose certain rights with respect to the dowry. For further discussion, see Watson, *Roman Private Law* 24; *id.*, *The Law of Persons* 54–55; and Treggiari 352.

<sup>15</sup>On the Roman ideal of wifely obedience and the specific terms *morem gerere*, *morigera*, and *morigerari*, see Gordon Williams, "Some Aspects of Roman Marriage Ceremonies and Ideals," *JRS* 48 (1958) 16–29.

<sup>16</sup>From the late Republic onwards, divorce was often formally announced by a messenger, frequently the freedman of the husband who was taking the initiative to divorce. See Levy 53–66, esp. 59, and Treggiari 451.

declaration.<sup>17</sup> In this they resemble numerous other actions in Roman law, for example the freeing of slaves (*manumissio*) and the making of a formal promise or agreement between two parties (*stipulatio*). In such cases, the words themselves carry an enormous weight: they are at the same time a linguistic manifestation (or signifier) and a real fact (or signified); here the act of divorce is created by and identical to the utterance of the act.<sup>18</sup> Plautus uses the divorce formula only three times in his extant plays, and each time, I would argue, by undermining the conditions in which the performance of the speech act could properly be carried out, he shows a remarkable awareness of the seriousness and the extra-dramatic legal power of the formula. If the words constitute their own realization in non-fictional experience, Plautus must make sure that the words will not be allowed to fulfil themselves. He does this not by reminding his audience of the dramatic illusion—that what they are watching is just a play, and that if characters get married or divorced in a play it has no bearing on the real world; he does it rather by manipulating the dramatic roles within the plays in such a way as to avoid an effective fulfilment of that speech act. In what follows, I will consider more closely the uses of the divorce formula on the Plautine stage.

## II. THREE CASE STUDIES: *CASINA*, *TRINUMMUS*, AND *AMPHITRUO*.

In *Casina* (168 ff.), two matrons, Myrrhina and Cleostrata, begin to talk about their marital troubles, and the latter complains openly and loudly about her husband's current infatuation with her maid (193 ff.). Myrrhina anxiously begs her to be quiet, but Cleostrata claims that she can say whatever she wishes since they are alone. Myrrhina, spouting conventional wisdom about wifely obedience and respect, advises her friend that a modest wife should not own any private property, or keep anything secret from her husband. In the eyes of the law, then, her maid is also his maid, to do with as he pleases. Myrrhina counters her friend's further objections by suggesting that the beleaguered husband might threaten divorce as a cure for her complaints (*Cas.* 207–211):

Myrr.

*Insipiens,*

*semper tu huic verbo vitato abs tuo viro.*

<sup>17</sup>It may be argued that the performative nature of the divorce formula is undercut by the requirement of an appropriate response on the part of the party addressed, and that the performance of the utterance is actually a process of two stages: word and subsequent action. According to this interpretation, the speaker may utter a phrase which takes for granted that he/she is divorcing the spouse, but it is the spouse who puts the words into action, and not necessarily simultaneously. I address the problem in greater detail below.

<sup>18</sup>Felman 21.

Cleost.	<i>Cui verbo?</i>	
Myrr.		<i>Ei foras, mulier.</i>
Myrr.		Foolish woman,
	you should always avoid these words from your husband's	mouth.
Cleost.	What words?	
Myrr.		"Get out, woman."

Cleostrata then in turn begs the other woman to be quiet, but not in embarrassment or shame about the idea of divorce—rather because her husband is about to enter, and she does not wish to be overheard. This certainly fools the audience, who expect her to try to cancel out such unpropitious speech, or at least be intimidated by the threat. But Cleostrata is not a woman to be toyed with, and she promptly creates a scheme whereby her philandering husband is deprived of his maid and his dignity to boot. Instead of her fearing rejection at the hands of her husband, he is the one who must eventually plead to be accepted back into the marital fold.

In *Trinummus* (223–276), a young man called Lysiteles struggles with himself about his goals in life: should he indulge in love affairs or spend his time attending to business? Which of the two approaches would offer him a firmer footing in life, and which would offer a better basis for the enjoyment of life into old age (227–232)? He decides to put both lifestyles on trial, and act himself as both lawyer for the prosecution and judge in this matter. The explicitly legal situation of the "trial" alerts us to the potential use of specifically legal language or formulas, while its mock status simultaneously stands as a warning not to take anything too seriously.<sup>19</sup> Lysiteles begins with an attack on love, and the case against it appears so obvious that he dispenses with any defense. Meditating at some length on love's dangers, he concludes in favor of business, and with a rhetorical flourish divorces himself from his "marriage" to the god of Love (*Trin.* 257–259; 267–268):

*apage te, Amor, non places nil te utor;  
 quamquam illud est dulce, esse et bibere,  
 Amor amara dat tamen, satis quod aegre sit . . .  
 apage te, Amor, tuas res tibi habeto,  
 Amor, mihi amicus ne fuas umquam . . .*

Go away, Love, you do not please me, nor do I want anything  
 to do with you,  
 although it is certainly sweet, to eat and drink,  
 but Love still offers bitterness, certain unpleasantnesses . . .  
 Go away, Love, take your things for yourself,  
 Love, and may you be a friend of mine no longer . . .

<sup>19</sup>Zagagi (100) interprets the use of juridical language here as a clue to the passage's originality: "the juridical joke is unmistakably Plautine."

In this context, the "things" or belongings that the divorced Amor is ordered to take away consist of all the unpleasantnesses and embarrassments suffered by the former lover, listed in Lysiteles' prosecution, e.g., fortunes lost on love gifts, ruined friendships, unreciprocated feelings, and so forth. Lysiteles plays on the words *Amor* and *amarus* (259) to highlight the close connection of love and misery. In divorcing Love rather than a particular beloved, the young man effectively and metonymically rejects all love affairs (although perhaps not the general custom of marriage, which has more to do with the procreation of citizen children than with anything erotic). While the entire scenario of trial and divorce exists only in the hero's imagination, and is presented on stage as a vocalized thought process, and while no member of the audience would believe that a person could really marry or divorce the divinity of love him/herself,<sup>20</sup> the crucial utterance of the divorce formula surely is to be taken seriously as the conventional legal phrase to be used under the (albeit unusual) circumstances.

My third example of divorce on the Plautine stage stems from the complicated relationship between husband(s) and wife in *Amphitruo*. While Amphitruo campaigned abroad, Jupiter has been visiting Alcumena's bedroom; upon the real husband's return, certain details of his wife's behavior make him suspect that she may have been unfaithful to him, particularly when she insists that they slept together the previous night, although he knows very well that he was still on board his ship early that morning. The deluded and desperate Amphitruo first brings up the subject of divorce at line 852, asking Alcumena if she can give him any reason why he should not divorce her if he can find someone to act as his alibi for the previous night; she answers that she has no objection to his course of action if he can prove that she has indeed stained her reputation with another man (*Amph.* 852-853):

Amph. *numquid causam dicis, quin te hoc multem matrimonio?*<sup>21</sup>

Alc. *Si deliqui, nulla causa est.*

Amph. Do you agree that there is no reason why I should not  
divorce you?

Alc. If I have done wrong, there is no reason not to.

<sup>20</sup>Apuleius, of course, did just this in his Cupid and Psyche story (*Met.* 5), but there it could be argued that the characters function primarily as allegories for love and the human soul. If we take Lysiteles' case too seriously, we would be forced to regard his union with Amor as an example of same-sex marriage between a mortal and a divinity.

<sup>21</sup>It has been suggested to me by Susan Treggiari that the latter part of this line may allude to specific deductions to be made from the dowry in the process of divorcing a woman being accused of adultery. See Treggiari 350-353.



Neither one realizes, of course, that Jupiter is fooling them both. In the next act, after mulling it all over, Alcmena decides that the current situation is unbearable; she cannot remain in a house where she is insulted and disgraced by her own husband for reasons that she finds entirely unjustified. Either he must apologize, swear he is sorry, and withdraw the charges, or she will abandon him (882–890). In the presence of Jupiter disguised as Amphitruo, she claims that she is guiltless of unchaste behavior and wishes no longer to be submitted to unchaste language. As the god in vain tries to defuse the tension of the moment, she utters the divorce formula with an added request for her own belongings and servants to be returned to her (925–930):

Alc. *Ego istaec feci verba virtute irrita;  
nunc, quando factis me impudicis abstineï,  
ab impudicis dictis avorti volo.  
valeas, tibi habeas res tuas, reddas meas.  
iuben mi ire comites*

Jup. *sanan es?*

Alc. *Si non iubes,  
ibo egomet; comitem mihi Pudicitiam duxero.*

Alc. I have proven these charges false by my virtue;  
now, since I am guiltless of unchaste deeds,  
I wish also to turn away from unchaste words.  
Farewell, may you keep your own things and return mine.  
Please order my servants to follow me . . .

Jup. Have you gone mad?

Alc. If you refuse,  
I will go on my own, taking Chastity along for company.

Jupiter begs her to remain (*mane* ["stay!"], 931), perhaps even physically restraining her from walking away from him, swears that he believes her, and apologizes for all the earlier charges of infidelity (made, of course, by Amphitruo). Alcmena is convinced for the time being, and returns to the house, in obedient wifely fashion, to prepare the sacred vessels for a sacrifice. Thus the act of divorce, although threatened and actually uttered in the presence of the man she believes to be her husband, is almost immediately repealed by Alcmena's own retraction (945): *verum eadem si isdem purgas mi, patiunda sunt* ("but if you apologize to me for those same [accusations] with these same [nice words], I can forgive you").

The fact that Alcmena is able to revoke the divorce, which she, at least, thought was accomplished at the moment she uttered the conventional phrases, should give us pause. I have been arguing that the performative utterance itself enacts the divorce, yet in this case the divorce appears to

be thwarted by Jupiter's pleas that his "wife" forgive him and remain in their marital home.<sup>22</sup> They obviously do not feel the need to remarry, as Alcumena goes in immediately to perform a wife's religious duties, so the words alone, *valeas, tibi habeas res tuas, reddas meas*, cannot have been enough, from Alcumena's perspective, to break her original marriage vows to the man she thinks is her husband. On the other hand, it seems clear from the situation on stage that if Alcumena had abandoned her marital home as she planned, the divorce would have been enacted and thus no longer revocable.

The requirements for a valid divorce were disputed by legal experts in antiquity, and the issue was often complicated by a second marriage to another party, or an exchange of gifts during a period of reconciliation which then ultimately degenerated into divorce.<sup>23</sup> The evidence suggests, however, that if the words signifying divorce were spoken in anger and not followed by appropriate action (i.e., the permanent separation of the couple), the verbal act was interpreted retroactively as a quarrel rather than a legally binding divorce: "perseverance of intention was required to make it a divorce."<sup>24</sup> Similarly, if one partner used some form of the conventional phrase to divorce the other and then maintained his or her intention—the man by facilitating his wife's departure, the woman by leaving on the spot and staying away—then the divorce dated from the utterance of the words themselves.<sup>25</sup> How do these refinements affect the interpretation of Alcumena's situation?

If we divide the act of divorce into two parts, namely the utterance of the repudiation and the act of abandonment, then Alcumena clearly intended her words to signify divorce. She precedes her utterance of the formula with a desire to "turn away" from Jupiter's insults (*avorti volo*), and follows it with a statement that she will leave, even if accompanied only by her own virtue.<sup>26</sup> If we reconsider the examples listed earlier from

<sup>22</sup>If Alcumena had insisted on divorcing, and we presume that Plautus presents her here as a wife *sui iuris* with the capacity independently to divorce (see Treggiari 444), her husband could not legally have stood in her way.

<sup>23</sup>See the discussion in Treggiari 446–458.

<sup>24</sup>Levy (67) stresses the importance of physical presence for a divorce to be effected. He cites the *Amphitruo* passage as an example of a quarrel (*iurgium*) in which the standard words of divorce (*repudium*) are uttered without the necessary separation following to validate it. See also Treggiari 449, with references in n. 65.

<sup>25</sup>Other options for the woman included leaving her husband and then sending an announcement, often through a letter or a messenger, that she was divorcing him. Treggiari (451) discusses examples.

<sup>26</sup>The Latin allows for a humorous ambiguity here: Alcumena will be accompanied by either her own virtue, or the goddess Chastity (*Pudicitia*). Susan Treggiari notes that Alcumena's use of *virtus* at 925, a word not usually used of women, seems highly significant in a context where she is about to annex the male divorce formula.

literary sources, we will discover that almost all similarly contain both verbal repudiation and the immediate departure of the divorced spouse. The verbs of abandonment or expulsion may vary (*exigere, egredi, deserere, toro divertere, vadere foras, exire*),<sup>27</sup> but some physical act of dismissal is required to fulfil the divorce formula. Alcumena fully intends to fulfil her words with immediate action, and attempts to leave, with or without her maid as a suitable chaperone outside the home. When Jupiter interferes, preventing her departure, he blocks her utterance from finding fulfilment in the next step required for the act of divorce. Instead, she forgives him and gives up her plans for leaving. Her return to the house marks the point at which her words lose their performative nature; her utterance is cancelled out by contradictory action. Until that point, the affair could have been resolved either way, by reconciliation or by permanent separation. If Alcumena had left the stage (by an exit which indicated departure from rather than return to the house), the divorce, dated from the utterance of the formula, would have been irrevocable. As it is, Jupiter just barely manages to avoid disaster by convincing Alcumena to relent at the last possible moment.<sup>28</sup>

### III. THE POWER OF THE FORMULA: DIVORCE BY SPEECH ACT

As we have seen above, the formula for divorce is uttered three times on the Plautine stage, yet it does not function "properly" in any of them. I would like to explore this problem briefly using the concept of a "speech act" originally developed in the 1960s by J. L. Austin.<sup>29</sup> In the act of divorce,

<sup>27</sup>Treggiari (438) lists more picturesque verbs used of husbands throwing wives out of doors.

<sup>28</sup>It is worth remembering that, although to the omniscient external audience the whole affair is a joke, the character Alcumena really believes that she has been dishonored by accusations of infidelity, and sees divorce as her only option. Her "seriousness" is emphasized by the tragic meters which regulate much of her speech, and confirmed by the scholarly discomfort felt over the play's tragicomic nature. The fact that the *Amphitruo* comes closer than any other extant Plautine play to portraying divorce on stage further highlights the fine line it treads between two dramatic genres.

<sup>29</sup>J. L. Austin, *How To Do Things with Words* (Cambridge 1962). I must acknowledge here that Austin never intended his theories to be applied to dramatic performances. He claims that "a performative utterance will, for example, be in a peculiar way hollow or void if said by an actor on stage . . . because language in such circumstances is in special ways—intelligibly—used not seriously, but in ways *parasitic* upon its normal use" (22, author's italics). Austin's theories, and in particular the special qualities of specifically literary speech acts, have been debated or adapted by many others, including J. R. Searle, *Speech Acts* (Cambridge 1969) and "The Logical Status of Fictional Discourse," *New Literary History* 6 (1975) 319–332; R. Ohmann, "Speech Acts and the Definition of Literature," *Philosophy and Rhetoric* 4 (1971) 1–19; E. Traugott, "Generative Semantics and the Concept of Literary Discourse," *Journal of Literary Semantics* 2 (1973) 5–22; Searle's and Derrida's debate on speech acts in the first issue of *Glyph*: Jacques Derrida,

as in the modern act of marriage, by speaking the words "I do," or *res tuas tibi habeto*, and following through on the intention by living together as husband and wife in the case of marriage, or by separating permanently in the case of divorce, the speaker produces the event that the words designate. The performance of such words cannot be judged to be true or false, it can only be successful or unsuccessful, or in Austin's words, "felicitous" or "infelicitous." Austin offers two major categories of infelicity: misfires and abuses. Misfires occur when the intended outcome of the performative utterance does not occur owing to inappropriate circumstances: the act is null and void, not accomplished. Abuse occurs when words are uttered without any intention of keeping the promise, or in full knowledge of an inability to follow through: the act itself succeeds, but is executed in bad faith and the interlocutor is deceived.<sup>30</sup>

In all of the Plautine instances, the message of divorce comes across undistorted, and the audience (both internal and external) comprehends precisely what is intended by the declaration. The verbal convention for such an utterance is in each case scrupulously followed, as any ritual act must be in order to function properly, but inevitably something about the context or environment is skewed, just enough to cancel the force of the utterance and cause a slippage in the formula's legality. The irregularities may be different in each of the three examples, but the effect, i.e., of undermining the act of divorce, is always the same.

In the example from *Casina*, several issues combine to defuse the power of the formula. Most obviously, the two characters involved are both women, not married to one another; the one who utters the formula does so in the voice of a man, to "rehearse" for her friend what such an utterance might sound like coming from her husband, and to encourage her to think about the consequences of such an event. Myrrhina pretends to speak in Lysidamus' persona to his wife, and the crucial phrase thus collapses into levels of

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"Signature Event Context," *Glyph* 1 (1977) 172-197, and J. R. Searle, "Reiterating the Differences: A Reply to Derrida," *Glyph* 1 (1977) 198-208; M. L. Pratt, *Toward a Speech Act Theory of Literary Discourse* (Bloomington, Ind. 1977); Felman; F. Recanatì, *Meaning and Force: The Pragmatics of Performative Utterances* (Cambridge 1987). For examples of speech act theory applied to classical literature, see R. P. Martin, *The Language of Heroes* (Ithaca, N.Y. 1989), Johanna Prins, "The Power of the Speech Act: Aeschylus' Furies and their Binding Song," *Arethusa* 24 (1991) 177-195, and R. V. Munson, "Herodotus' Use of Prospective Sentences and the Story of Rhampsinitus and the Thief in the Histories," *AJP* 114 (1993) 27-44.

<sup>30</sup>Austin (above, n. 29) 15-17; Felman 16. See also Emil Benveniste, *Problems in General Linguistics*, tr. M. E. Meek (Coral Gables, Fl. 1971) chapter 22, who modifies Austin's theories to exclude the possibility of failure or infelicity. He claims that for an utterance to be performative, it must be backed by the requisite authority and capability: "otherwise such an utterance is no more than words, futile clamor, lunacy" (236). This argument is discussed in Felman 19-21.

dramatic mimesis that cleverly undermine its effect without diminishing its humor. This would fit into Austin's category of "misfire," as the speaker's identity is inappropriate to the command, and she obviously never intended the formula to be taken "seriously."

In the second example, *Trinummus*, the genders involved are both male—Amor, like his Greek model Eros, is conventionally portrayed as a young boy. But although Lysiteles uses masculine adjectival forms throughout to modify the god of love, he eventually feminizes Amor by asking "her" to take back her dowry and leave him alone. As stated above, the situation is wholly imaginary, but in its fictive playfulness it reveals precisely the same anxiety about the "real" formulaic words. As in the case of the *Casina*, the speaker of the declaration or the addressee is problematized, and we can categorize Lysiteles' words as an intentional "misfire" of the utterance. There is no deception involved, and the utterance as act remains unaccomplished, although a metaphorical divorce from an amorous lifestyle has indeed come about for Lysiteles.

Finally, in *Amphitruo*, we see a woman using the words against her husband in what seems to be a genuinely "intentional" act of "real" divorce.<sup>31</sup> But the conditions are completely inappropriate (or infelicitous) on several counts. Alcumena, about to march out the door, uses the formula appropriate for the person who stays behind; this does not contradict her stated intention to leave, but suggests that the formula was intended for use primarily by husbands, who can send their divorced wives straight back home to their fathers.<sup>32</sup> Alcumena does not have the option of staying in the home, but neither is she willing to wait until Amphitruo decides to divorce her. Her active rather than passive response demands that she usurp the right originally claimed by her husband when he first mentioned the possibility of divorce.

Alcumena's language at this crucial moment reveals her extreme discomfort with the entire situation. She is torn between the perception of others

<sup>31</sup>The tone of this scene has been hotly debated. Watson (*The Law of Persons* 52) claims that the scene requires "that Alcumena should behave seriously and rationally in the circumstances as she sees them," and interprets her actions as in accordance with the rights of a wife *sui iuris* to initiate a divorce. Schuhmann ("Ehescheidungen in den Komödien des Plautus" [above, n. 3] 24), in contrast, finds humor in the scene based on Alcumena's unlikely and masculine behavior; she speaks words reserved normally for men. McDonnell (61–66) offers a more elaborate version of the latter interpretation, arguing from evidence in the rest of the play that it is in a general "context of transferred characteristics and mirror-like shifts of perspective and judgment that indications of a sexual reversal between Amphitruo and Alcumena are found" (62).

<sup>32</sup>Levy (4–5) distinguishes between the act of ordering a spouse to leave—done usually by the husband who owns the home—and choosing oneself to leave—done by the woman who would then return to her original family home. On the vocabulary of divorce as determined by the sex of the divorcing party, see Treggiari 436–439.

that she is unfit as a wife and therefore unentitled to respect or protection from her husband, and her own belief in her innocence and mistreatment, which prompts her to take such drastic action. As she utters the words of divorce, she makes two slight adjustments in the conventional phrasing, just enough to expose her anxiety about such unusual behavior; she is quite unused to "ordering" her husband to obey her. First, she adds to the standard "take your things" a request that Amphitruo return her belongings and tell her own servants to accompany her; even in her active role, she depends on her husband's cooperation in the return of her property. More difficult to interpret is the second adjustment: she abandons the familiar imperative form (present or future) for a series of subjunctives: *valeas, tibi habeas res tuas, reddas meas* (*Amph.* 928). In most cases, particularly in passages from early Latin, the second person imperative is interchangeable with the jussive subjunctive; there appears to be no difference in meaning or emphasis between the two.<sup>33</sup> In this case, however, because we are dealing with a legal formula, the shift should alert us to something more.

I would like to offer two interpretations, not necessarily mutually exclusive, of Alcumena's grammatical delicacy here. She begins her series of subjunctives with the good wishes conventionally expressed at a time of parting, whether face-to-face or in the closing lines of a letter: *valeas*. That she should utter this kind word of goodwill in the current recriminatory atmosphere is odd in itself, and ties in to my larger point about her use of language. But my first suggestion for the grammatical shift that follows is that the use of *valeas* contaminates the subsequent verb forms with its politeness; once started in a volitive mood, the speaker finds the transition to plain imperative too harsh. The second and larger point is a speculative one. Alcumena is "borrowing" this divorce formula from a male source, and it is phrased according to a male perspective. She anticipates Amphitruo's enunciation of the words, as we saw above, and his words do not perfectly match her situation, so she adapts them to her own purposes, by accretion (*reddas meas*) and by a shift into a different mood. If there is a difference in nuance between the imperative and the subjunctive, it is that

<sup>33</sup>I have been unable to find a commentary that addresses this question at line 928, nor does the article by E. P. Morris, "The Subjunctive in Independent Sentences in Plautus," *AJP* 18 (1897) 133-167, esp. 146-150, mention the passage. The jussive subjunctive is discussed by, among others, C. E. Bennett, *Syntax of Early Latin* 1 (Hildesheim 1966) 162-163, who suggests that the force of the subjunctive may be weaker than that of the imperative, and A. Ernout and F. Thomas, *Syntaxe Latine* (Paris 1964) 230-232. R. Kühner and C. Stegman, *Ausführliche Grammatik der Lateinische Sprache* 2.1 (Hannover 1966) 184-187, actually quote *Amph.* 928 as an example of the second person singular jussive subjunctive, used instead of the imperative "ohne merkbaren Unterschied" (186). W. M. Lindsay, *Syntax of Plautus* (Oxford 1907; repr. New York 1936) 71, admits that "a different signification in Imperatives like *vale* and Subjunctives like *valeas* (e.g., *Truc.* 433 A. *valeas* B. *vale*) is hard to prove."

the latter is slightly weaker, closer to a request than an order. As a chaste and obedient wife, Alcumena finds it difficult even to imagine ordering her husband about. Thus even in these extreme circumstances, as she declares her intent to divorce, she begins with a wish for her husband's good health, and then utters what may be grammatically closer to a request than a demand. Her speech is unmistakably marked by her gender and status; her words are accordingly polite and subservient in form, even if in content they shock her interlocutor into doubting her sanity.<sup>34</sup> That Jupiter reacts as he does shows that the subjunctives have not disturbed the formulaic power of the divorce formula. The content of the phrase seems to effect what the speaker desires, but the form in which it is said is no longer entirely traditional; rather, I would suggest, it is uniquely feminized, an example of gendered language.<sup>35</sup>

The second and ultimately critical infelicity undermining Alcumena's speech act is that she has just unwittingly divorced not her husband, but rather an imposter: Jupiter playing the role of Amphitruo. The speaker, by taking the initiative in the proceedings, is thus constrained linguistically to invert the normal directional flow of abandoner and abandoned, and then is thwarted further by inadvertently addressing the wrong addressee—she cannot divorce someone whom she has never married in the first place. Alcumena's words also fit neatly into Austin's category of "misfires." In all three cases discussed above, either the speaker is inappropriate (Myrrha uttering the husband's words) or the addressee (Amor as wife, Jupiter playing the role of the mortal husband Amphitruo). Levels of confused identity cloud the issue, preventing the words from accomplishing what is expected of them in performance, with the inevitable consequence that the act of divorce is made null and void.

<sup>34</sup>The question of "gendered" speech has been interestingly addressed by J. N. Adams, "Female Speech in Latin Comedy," *Antichthon* 18 (1984) 43–77, and M. E. Gilleland, "Female Speech in Greek and Latin," *AJP* 101 (1980) 180–183. Adams deals primarily with oaths, exclamations, polite modifiers, and intimate forms of address; he does not discuss the passage under consideration.

<sup>35</sup>Two additional points could complicate my argument here. First, a comparison of Alcumena's speech with that of other Plautine female characters could illustrate the role, if any, of gendered speech patterns; on the other hand, Alcumena, on many levels, is an anomaly on the Plautine stage, so that comparative material would not necessarily enlighten us further on the general subject of female speech. Second, we might consider whether male characters are equally prone to polite circumlocutions in particular circumstances, so that the language could be read not as gendered, but as appropriate to the delicate situation at hand. The anonymous reader for *Phoenix* points out to me that Cicero, in his letters to his wife (*Fam.* 14), does not altogether avoid the imperative form, but shows a preference for periphrases using subjunctive forms, including the courteous second person subjunctive. But I would still consider Alcumena's words marked in that she deviates from a formula, which defines itself by the traditional form of its constituent parts.

One last example of performative language in *Amphitruo* that I would like to cite is Jupiter's own manipulation of words in his response to Alcumena's attempt at divorce. In order to regain her trust, he claims to be willing to attest under oath that he believes her to be faithful, and to call down a curse on himself if he is deceiving her. By carefully wording his oaths, however, Jupiter escapes the hold of the truth as Alcumena wishes to perceive it, and seduces her instead with promises that have no reference to the two of them at all. He swears convincingly that his wife is virtuous—but Alcumena is not his wife. He calls for a curse on Amphitruo's head if he lies—but he is not Amphitruo (931–934). The performative utterance of swearing an oath works as a rhetoric of seduction because Alcumena believes in the force of the act even more than in its meaning; in fact, the dialogue between the two characters is in reality not even an act of communication. There is no extra-linguistic commitment enacted here, because the speaker takes great care to create a gap between act and meaning as his addressee perceives it. He uses the ambiguity of language to take advantage of performative oaths and curses; the speech acts work on one level (i.e., Juno may very well be virtuous) but not on another (we are left with a very complex moral question—did Alcumena commit adultery if she thought she was sleeping with her own husband?). Jupiter's seduction is based on Austin's other category of infelicity, the abuse of performative utterances; Jupiter repeatedly deceives his interlocutor, while Alcumena is fated to continue to believe in the promise of meaning, yet fail utterly in her own misfired communications.<sup>36</sup>

But behind Jupiter's apparent abuse of language lies an awareness of and respect for its power.<sup>37</sup> He is presented as twisting his meanings rather

<sup>36</sup>Felman's (30–35) discussion of Don Juan could be applied with minimal alteration to this scene with Jupiter: "the trap of seduction consists in producing a referential illusion through an utterance that is by its very nature self-referential—the illusion of a real or extra-linguistic act of commitment created by an utterance that refers only to itself" (35). Other Plautine scenes may be studied along these same lines. Zagagi (109–110) discusses the legal aspects of *tibi me emancupo* spoken by a lover to a *meretrix* (*Bacch.* 92 ff.), a speech act which, if enacted off-stage by the appropriate persons, would constitute a formal act of sale into (amatory) slavery; the metaphor of *servitium amoris* is taken literally for comic effect. Further possibilities for study include the speech acts of swearing an oath, particularly in the case of *lenones* who freely abandon their oaths when they prove inconvenient, and the emancipation of slaves on stage—a doubly fascinating category when one considers that the actors of Plautine comedy were themselves slaves.

<sup>37</sup>Although I agree with Zsuzsanna Hoffmann, "Gebetsparodien in Plautus' Komödien," *Helikon* 20–21 (1980–1981) 207–218, esp. 214–215, that Jupiter's words at lines 931–934 constitute a parody of the normal convention of swearing by the gods, I wholly disagree with her interpretation of this particular use of parody (218): "der breite Publikumserfolg seiner Stücke lässt ... darauf folgern, dass die strengen Vorschriften und steifen Bindungen der offiziellen Religion damals schon sich aufzulösen begannen



than forswearing himself—after all, if the ruler of the gods were to violate an oath, how could anyone thereafter swear or promise anything at all? This respect for the power of language, combined with a comic impulse to push the bounds of decency as far as they will go, is what inspires Plautus to motivate and then undermine his characters' use of the divorce formula on stage, as if even in that "parasitic" context, the language had a legally sanctified impact. Thus Plautus, that gleeful inverter of social norms, plays with yet ultimately acknowledges the seriousness of the legal formula of divorce, the performative nature of which is undimmed even by the construct of the stage. Divorce itself may be too grim a social reality to be allowed center stage within the genre of comedy (and too bourgeois for tragedy), but Plautus eagerly takes advantage of it as a temporary threat to the inevitable happy ending. He makes fun not of the utterance but of those who dare to utter it, and in each instance he deprives the formula of its full resonance by using dramatic means to deflect the power of the words.<sup>38</sup>

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bzw. dass das Publikum von Plautus diese Riten ähnlich aufgefasst und beurteilt haben muss und sie ebensowenig schätzte, ihre Wirkung und Kraft für nichtig hielt wie Plautus selbst."

<sup>38</sup>The ideas in this article were first presented as a talk at the 1992 meeting of the American Philological Association in Chicago. I am grateful to J. O'Hara and J. E. G. Zetzel for their helpful criticisms of a first draft of the article, and to D. Konstan, A. Scafuro, and S. Treggiari for their supportive readings of a later version. The comments of an anonymous reader for *Phoenix* assisted me in the final stages of writing.