Petitions to the Court for Divorce and Matrimonial Causes: A New Methodological Approach to the History of Divorce, 1857-1923

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ABSTRACT

Although the subject of divorce and the development of divorce legislation in nineteenth-century England and Wales has received some academic attention, much work remains to be done. Existing studies have examined either a small number of cases from a limited period of the newly formed Court for Divorce and Matrimonial Causes' history; answered a specific question over a longer period; or conducted detailed micro-studies of individual and high-profile cases. None have examined the surviving petitions made to the court (held at The National Archives under J 77) holistically over an extended period. This article seeks to revive the field by suggesting a new interdisciplinary methodological approach that will combine historical and legal studies with digital humanities to offer the first panoptic view of J 77 petitions. Far from being dry legal documents, this article argues that they hold a wealth of rich detail about petitioners, respondents, co-respondents, witnesses, children, solicitors, barristers, clerks, and judges, and stand at an exciting intersection of several fields of enquiry. Adopting such an approach will generate important new insights about gender, class, property ownership, intimacy, religion, childhood, and sexuality in nineteenth and early twentieth century England and Wales.

KEY WORDS: divorce court; family law; gender; cost of divorce; legal profession.

I. Introduction

Husbands and wives did not receive equal treatment under the Divorce and Matrimonial Causes Act 1857. Husbands were able to petition the newly formed Court for Divorce and Matrimonial Causes for divorce based solely on their wife's adultery whereas wives had to prove that their husband had not only committed adultery but also an additional offence of 'incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce a *mensa et thoro,* or of adultery coupled with desertion without reasonable excuse for two years or upwards'.[1] The most frequently cited secondary offence was cruelty, and while no definition existed within the statute, there were evolving judicial definitions and case precedent against which the judge ordinary would consider the details of the case before him. Case law indicated that physical violence was not an essential characteristic of cruelty, indeed the judgment given by Lord Stowell in the 1790 case of *Evans* v *Evans* stated that 'The causes must be grave and weighty, and such as shew an absolute impossibility that the duties of married life can be discharged. In a state of personal danger no duties can be discharged; for the duty of self-preservation must take place before the duties of marriage…'.[2] It was not until 1890 and the case of *Russell* v *Russell* where a husband made a counter-accusation, alleging that his wife had committed cruelty against him.[3] Even if these criteria were met, it was still not a certainty that the

[1] Matrimonial Causes Act 1857 (20 & 21 Vict., c 85), s. 28.

[2] *Evans* v *Evans*, EW Misc. J45, 161 ER 466, (1790) 1 Hag. Con. 35.

[3] Lawrence Stone, *Road to Divorce: England 1530-1987*, Oxford, 1990, 295.

marriage would be dissolved. If the court or the Queen's Proctor[4] suspected that the couple had engaged in collusion or condonation, or had connived to bring about adultery, then the petition for divorce could be rejected and the divorce refused.[5] The Court for Divorce and Matrimonial Causes sat only in London, initially with three judges drawn from a panel of the highest judges in England and Wales and a judge ordinary. The unprecedented demand for the divorce court meant that this situation was quickly amended and from 1870, only the judge ordinary heard cases.[6]

Under section 16 of the Divorce and Matrimonial Causes Act 1857, husbands and wives could apply for the alternative option of a judicial separation (the new term for a divorce *a mensa et thoro*) on the 'ground of adultery or cruelty, or desertion without cause for two years and upwards', with any wife thereafter being treated as a *feme sole*.[7] Deserted wives could also seek protection under section 21 of the Act by applying to their local police magistrate or Petty Sessions Court for a protection order. This would effectively ringfence 'any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her

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[4] The term Queen's Proctor and King's Proctor are both used in this article depending on the sex of the monarch on the throne at the time the petition was heard.

[5] The orchestrating of adulterous behaviour became synonymous with 'the hotel divorce' where husbands could be caught *in flagrante* by a chambermaid or other hotel staff, see Henry Kha, 'The Spectacle of Divorce Law in Evelyn Waugh's *A Handful of Dust* and A. P. Herbert's Holy *Deadlock'*, 30 *Law & Literature* (2018), 30, 267. [ampersands retained when part of the formal title]

[6] Henry Kha, *A History of Divorce Law*, Abingdon, 2021, 68.

[7] Matrimonial Causes Act 1857, ss.16, 47-48.

husband or his creditors or any person claiming under him' and also see her treated as a *feme sole* in the eyes of the law.[8] Perhaps not unsurprisingly given these two very specific provisions, the Act deliberately made no alteration to the status of married women under coverture; married women continued to have no right to hold property in their own name, or maintain a legal status independent from that of their husband.[9]

Divorce legislation, and the archival source materials associated with it, encompass the confluence of important and potentially conflicting arguments about gender, property ownership, intimacy, and power. Examination of such records can therefore shine light on diverse areas of historical enquiry including marriage, religion, class, childhood, gender, social attitudes, and the interplay between metropolis and provinces, as well as role of legal professions. Yet legal scholars and social historians alike have been slow to recognize the myriad potential of petitions made to the Court for Divorce and Matrimonial Causes, held as J 77 at The National Archives (hereafter TNA). Legal scholars have tended to follow a 'top down' methodology, focussing on analysis of

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[8] Matrimonial Causes Act 1857, ss.21, 54; Olive Anderson, 'State, Civil Society and Separation in Victorian Marriage', 163, *Past & Present* (1999), 161, at 165; for an example of how important these protection orders could be for married women see the case of Mary Wilcock in Jennifer Aston, *Female Entrepreneurship in Nineteenth Century England: Engagement in the Urban Economy,* London, 2016, 132-134.

[9] For a detailed discussion about this deeply unsatisfactory situation see Mary Lyndon Shanley, 'One Must Ride Behind! Married Women's Rights and the Divorce Act of 1857', 25 *Victorian Studies* (1982), 355.

the legislation, law reports, and Hansard.[10] Social historians, meanwhile, have traditionally adopted a 'bottom up' approach, seeking to add flesh to legislative bones by examining the experiences of the men and women subject to those laws and judgments.[11]

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[10] O. R. McGregor, *Divorce in England*, London, 1957; Kha, *A History of Divorce Law*; Rebecca Probert, *Marriage Law and Practice in the Long Eighteenth Century: A Reassessment*, Cambridge, 2009; Rebecca Probert, *Tying the Knot: The Formation of Marriage 1836–2020*, Cambridge, 2021; Henry Kha and Warren Swain, 'The Enactment of the Matrimonial Causes Act 1857: The Campbell Commission and the Parliamentary Debates', 37 *Journal of Legal History* (2016), 303; Henry Kha, 'John Stuart Mill on Matrimonial Property and Divorce Law Reform', 24 *Fundamina: a Journal of Legal History* (2018), 35; Danaya C. Wright, 'Untying the Knot: An Analysis of the English Divorce and Matrimonial Causes Court Records, 1858-1866,' 38 *University of Richmond Law Review* (2004), 903; Rebecca Probert, 'R v Hall and the Changing Perceptions of the Crime of Bigamy', 39 *Legal Studies* (2019), 1; Rebecca Probert, 'The Controversy of Equality and the Matrimonial Causes Act 1923', 11 *Child and Family Law Quarterly* (1999), 33; Rebecca Probert, 'The Double Standard of Morality in the Divorce and Matrimonial Causes Act 1857', 28 *Anglo-American Law Review* (1999), 73.

[11] Sybil Wolfram, 'Divorce in England 1700-1857', 5 *Oxford Journal of Legal Studies* (1985), 155; Mary Poovey, 'Covered but Not Bound: Caroline Norton and the 1857 Matrimonial Causes Act', 14 *Feminist Studies* (1988), 467; Shanley, 'One Must Ride Behind!'; Gail Savage, 'They Would if They Could: Class, Gender, and Popular Representation of English Divorce Litigation, 1858-1908', 36 *Journal of Family History* (2011), 173; S. Cretney, *Family Law in the Twentieth Century: A*

Divorce was the subject of several monographs in the late 1980s and early 1990s, but since then has been addressed predominately through articles exploring specific issues.[12]

II. The J 77 Petitions

The J 77 collection consists of nearly 69,000 petitions, with the majority recently digitized on www.ancestry.com.[13] Very few scholars of either field have explored the J 77 petitions beyond examining individual case files or, in the case of Laurence Stone, annual judicial reports.[14] One reason for this is that prior to the opening of TNA in 2003, records from

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History, Oxford, 2003; S. Waddams, 'English Matrimonial Law on the Eve of Reform', 21 *Journal of Legal History* (2000), 59; M.K. Woodhouse 'The Marriage and Divorce Bill of 1857', 3 *American Journal of Legal History* (1959), 273; D. M. Stetson, *A Woman's Issue: The Politics of Family Law Reform in England*, Westport CT, 1982.

[12] Stone, *Road to Divorce*; A.J. Hammerton, *Cruelty and Companionship: Conflict in Nineteenth Century Married Life*, Abingdon, 1992; R. Phillips, *Putting Asunder: A History of Divorce in Western Society*, New York, 1988; C. S. Gibson, *Dissolving Wedlock*, Abingdon, 1994.

[13] The J 77 files cited in this article have all been accessed via England and Wales, Civil Divorce Records, 1858-1918 at https://www.ancestry.co.uk/search/collections/2465/. Page references refer to the digital image of each individual document.

[14] To my knowledge only two scholars have made a broader study of the J 77 petitions. The first is legal historian Danaya C. Wright, who reviewed 586 of the 2478 petitions

the Court for Divorce and Matrimonial Causes were held in the Public Record Office. They were stored alphabetically in boxes, under a one-hundred-year embargo, with only a very basic index (held under J 78 at TNA). These factors made compiling a sample group based on any common characteristics extremely difficult, if not impossible.[15]

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made to the court in the first nine years of its existence see: Danaya C. Wright, 'Untying the Knot' and Danaya C. Wright, '"Well-Behaved Women Don't Make History": Rethinking Family, Law, And History Through An Analysis Of The First Nine Years Of The English Divorce And Matrimonial Causes Court (1858-1866)', 19 *Wisconsin Women's Law Journal* (2004), 211. The second is Gail Savage who examined a sample of 1887 petitions made between 1858 and 1908, extracting only the occupational information within to offer a detailed analysis of the socio-economic status of petitioners, see: Gail Savage, 'They Would If They Could'; Gail Savage, 'Divorce and the Law in England and France Prior to the First World War', 21 *Journal of Social History* (1988), 499; and Gail Savage, 'Intended Only for the Husband': Gender, Class, and the Provision for Divorce in England, 1858-1868' in K. Ottesen Garrigen, ed., *Victorian Scandals: Representations of Gender and Class*, Athens OH, 1992, 11.

[15] The limited index is held under J 78 at TNA. Examination of newspapers, particularly *The Times*, have been ~~a~~ vital in helping historians discover further detail about what happened in the courtroom or to identify cohorts in the J 77 petitions in the absence of a comprehensive index. Ginger S. Frost has recently used *The Times* to compile a sample of 116 petitions where one or more of the litigants were people of colour. She was then able to trace their individual J 77 petitions and compare their experiences and outcomes with white petitioners: see Ginger S. Frost, '

Scholars, including Danaya C Wright, Gail Savage and Ginger S Frost, have acknowledged the difficulty of using the records now held as J 77, with Savage publishing a research note detailing the challenges involved in using the files.[16] Using alternative sources of information such as newspaper reports as a 'way in' to the divorce files, carries its own disadvantages, namely that press coverage focuses disproportionately on proceedings of well-known figures, or those with particularly salacious details, thus amplifying particular stories and suppressing others.

The petitions held in J 77 have also been unfairly dismissed as only 'rarely [including] anything of earth-shattering importance', because they were stripped of many documents presented as evidence in proceedings.[17] Therefore, it has been assumed that the rich detail scholars might have hoped to gather about exactly what was said in court has often been lost, but this is a characterization that grossly underestimates their value.[18]

'"Vindictiveness on Account of Colour?" Race, Gender, and Class at the English Divorce Court, 1872–1939', 4 *Genealogy* (2020), 82.

[16] Gail Savage, 'The Operation of the 1857 Divorce Act, 1860-1910 a Research Note', 16 *Journal of Social History* (1983), 103.

[17] Allen Horstman, *Victorian Divorce,* Kent, 1985, 182, quoted in Hammerton, *Cruelty and Companionship,* Appendix 1, at 173. Hammerton argues in this Appendix that quantitative study of the petitions is the most promising avenue for future research, yet nearly thirty years later such analysis has yet to be carried out.

[18] It seems that the records were stripped to preserve the privacy of the participants even though the records were already sealed for one hundred years. This further emphasizes the tension and discomfort felt by the legislature and judiciary at their perceived interference in what were intimate, and ostensibly private, matters.

If approached in the right way, these records have the power to transform our understanding of marriage and divorce in nineteenth and early-twentieth century England and Wales and rediscover the lost connection between the letter of the law and the way it was subsequently experienced. The approach suggested here draws on legal, social, economic and gender history, as well as the digital humanities, to create a new interdisciplinary lens through which to view the largely unexamined J 77 petitions made to the Court for Divorce and Matrimonial Causes between 1857-1923.

The index to the J 77 files (held as J 78 at TNA) is basic, and consists only of the names of petitioner, respondent and co-respondent(s) and type of petition. However, the data can be downloaded as a MS Excel spreadsheet and with some cleaning and re-ordering it has been possible to search the petitions by date, by name of the petitioner and respondents, by sex of the petitioner or respondents, and by the type of petition made, i.e., petition for divorce, judicial separation, protection order, or restitution of conjugal rights. This revised index, combined with record digitization by www.ancestry.com and an innovative relational database, is the first step in examining the J 77 files in a way, and on a scale, not previously possible.

As legal documents, the J 77 petitions themselves are relatively formulaic, something that lends itself to large-scale data collection and quantitative analysis. They contain names and professional information of the solicitors, barristers, clerks, and judges attached to the case: information that situates each case in a distinctive period of the court's evolution.[19] They also contain the names of petitioners, respondents, and co-respondent(s), their occupation, address, details of marriage (including a copy of the marriage certificate), legal grounds on which the petition is being made, details of any

[19] See Kha, *A History of Divorce*, ch.5.

children of the marriage and related custody arrangements, the decision reached by the court and the dates on which each of the stages – petition made, decree nisi and decree absolute – happened, or did not. Obtaining a full legal divorce was by no means guaranteed and in the years 1883-1886 nearly fifteen per cent of husbands' and ten per cent of wives' petitions were unsuccessful.[20] The discrepancy between the success of the sexes in court is most likely because a wife had to meet a higher threshold even to begin proceedings and therefore probably brought a stronger case.

The J 77 petitions are undoubtedly an under-used source, but it is important to recognize that they do not exist in their original form, and they been heavily shaped by political forces, with valuable documents removed leaving gaps in our knowledge. The contents of the J 77 files vary, and it is worth noting that the more acrimonious or litigious a divorce, the more paperwork (and press interest) it generated. Similarly, wealthy couples who were divorcing tended to hold more assets that had been protected using formal legal mechanisms such as trusts or marriage settlements, which required greater correspondence to unpick. One consequence of this is that the higher value, more acrimonious divorces could be given greater attention simply because they created a more substantial paper trail in the court records and other sources, including newspapers. The new methodological approach proposed here will mitigate this by situating these exceptional cases within the wider context of petitions made to the Court for Divorce and Matrimonial Causes and rescuing smaller, seemingly insignificant, cases from obscurity.

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[20] John Macdonell, 'Statistics of Litigation in England and Wales since 1859', 57 *Journal of the Royal Statistical Society* (1894), 452, at 498.

III. Methodology

A new and innovative relational database, designed in collaboration with digital humanities scholars at the Institute of Historical Research, University of London is at the heart of this new methodology. It combines data drawn from digitized and non-digitized sources to create a new dataset which can be interrogated to create both new cohorts and reveal previously unknown data and connections. The database consists of two smaller interlinked databases, with core information contained in the J 77 petitions entered to create an Individual Case Record (ICR) and prosopographical data then used to create Individual Person Records (IPR).

Figure 1: Table Showing Categories of Data Collection

[INSERT FIGURE 1 HERE]

In addition to legal facts of the case, the J 77 petitions provide basic biographical information ~~of~~ about petitioners, respondents, co-respondents, witnesses, solicitors, barristers, clerks, and judges, which forms the basis of the prosopographical data collection. These actors all have an individual IPR that can be attached to several ICR. For example, Judge Cresswell Cresswell would be attached to multiple ICR in his role as judge ordinary, whereas an IPR who appears as a petitioner is likely only to be attached to one ICR. There are however, a small but very interesting number of cases where an IPR outside ~~of~~ the legal professions is attached to multiple ICR, with some also appearing in different roles.

The IPR records act as a starting point to trace the individuals through the archives, gathering as much information about their education, their qualifications, occupation, and professional and civic activities from sources including census returns,

newspapers, advertisements, trade directories, school and university records, professional registers, Birth Marriage and Death Indexes [probably worth spelling out], correspondence, maps, probate records and photographs. This creates a rich dataset that can be interrogated for both quantitative and qualitative data about the people who were involved in and who experienced the Court for Divorce and Matrimonial Causes. The database makes it possible to draw out connections between individuals and institutions that would otherwise be invisible and generate new data on the longitudinal effects of divorce. For instance, Nadine Sophie Charlotte Brinkley was the child of a divorced couple who went on to make four marriages and divorce three times herself.[21]

Understanding the roles played by the individuals within the J 77 files does not only reveal information about the parties involved in the relationship itself. The details contained within the J 77 petitions also enables the professional and personal relationships between individuals and firms of solicitors and barristers to be reconstructed for the first time. In doing so, it is possible to identify firms and legal professionals who dealt with high-profile and high-worth cases and those with links to provincial firms who represented clients from outside London. This information can then be used to chart the professional history of the family law sector from its inception following the demise of the Doctors' Commons, through the admission of female solicitors and barristers in the

[21] Petition of Sir Reginald Beauchamp, J 77/708/1523; Petition of Nadine Sophie Charlotte Brinkley, J 77/1148/4866; Petition of Nadine Sophie Charlotte Brinkley J 77/1168/5483; Petition of Sir George Bettesworth Piggott J 77/1756/4725; div. Maj, Nigel D. Stewart, 1927.

early twentieth century, and its development into the specialist area of family law.[22] These findings will contribute important new knowledge to a small but growing body of work on the networks of legal professionals in nineteenth and twentieth century Britain.[23]

The fifty cases examined in this article were chosen using random number generator from approximately 48,000 divorce petitions held in J 77 by TNA.[24] They were chosen in this way to serve as a rigorous test of the methodology and to demonstrate the potential contribution that such an approach can make to the field. Additional prosopological research then offers further context and situates the divorce case in the wider chronology of the person's life. The fifty cases consist of thirty-one (sixty-two per

[22] The Doctors' Commons was the legal community founded in the sixteenth century that serviced the Ecclesiastical Courts.

[23] For example, Michael Lobban and Ian Williams, eds., *Networks and Connections in Legal History*, Cambridge, 2020; Stephen Cretney, 'Sir John Withers MP: The Solicitor In Private Practice And Public Life In England Between The Wars', 66 *The Cambridge Law Journal* (2007), 200; Helen Rutherford, *The Coroner in an Emerging Industrial Society: John Theodore Hoyle and Newcastle upon Tyne 1857-1885*, thesis submitted for the degree of Doctor of Philosophy, Newcastle University, 2021; ESRC funded project, *The Professions in Nineteenth Century England* (ES/K005138/1).

[24] This pilot study is drawn from cases dating between 1858 and 1918 because petitions dating 1919-1923 are not currently digitized on www.ancestry.com and due to the Covid-19 pandemic it was not possible to access them in person at TNA.

cent) petitions made by husbands and nineteen (thirty-eight per cent) made by wives.[25] Of these, ninety-four per cent were successful, marking this sample as having a slightly higher success rate than the entire J 77 collection.[26] It is a relatively simple process to find a divorce case in contemporary newspaper reports, access the relevant J 77 file and argue that it contains something of note: the more notorious the case, the more column inches it generates and the more chance of a twenty-first century scholar 'discovering' it. By randomly selecting files however, it is possible to test the argument that the J 77 files hold rich and useful data regardless of the notoriety of the case.

IV. Results

The socio-economic structure of the sample is striking. Figure 2 shows the occupations of the men and women who appear as petitioners or respondents in the J 77 petitions. Some, like petitioner Caroline Annie Brown, whose husband Malcolm was the acting Governor of Lagos and West Africa, or Charles Quentin Gregor Craufurd who was Commander in the Navy and Harbour Master of Singapore, are clearly part of the socio-economic elite that we might expect to appear in the divorce courts. Yet these are the

[25] The percentage of all petitions made to the Court for Divorce and Matrimonial Causes is split slightly more evenly, with fifty-nine per cent of petitions made by husbands, compared to forty-one per cent of wives, see: Macdonell, *Statistics of Litigation*, 497.

[26] Macdonell estimates that between 4.5% and 14.7% of petitions were dismissed, putting the 6% of this sample toward the lower end of that scale. Macdonell, *Statistics of Litigation*, 498.

exception in this sample, with most couples drawn from the middle or working classes, or even the labouring poor, echoing the findings of Savage who argued that 'the divorce court did not cater exclusively or even primarily to a disreputable demimonde composed of the aristocratic and the bohemian'.[27]

Figure 2: Table Showing Occupations of Petitioners/Respondents [*denotes a wartime occupation]

[INSERT Figure 2 HERE]

Three of the couples in the sample had their files labelled either '*in forma pauperis'* or simply 'poor person', a scheme which allowed the poor to access the divorce court without paying fees. It is estimated that 1.48 per cent of divorce cases were heard under *in forma pauperis*, though the extent to which this avenue was readily available to petitioners is contested.[28] Examining the files of couples whose petition was funded *in forma pauperis* reveals that all three petitioners were male, two lived outside ~~of~~ London (in Barrow-in-Furness and Sheffield) and all three petitions were heard during the First World War.[29] Wartime has been seen as one of the primary factors in forcing the provision of state funding to pay for divorce cases, and by the outbreak of the Second World War

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[27] Savage, 'They Would if They Could', 185.

[28] Hammerton, *Cruelty and Companionship,* 201

[29] Petition of Daniel Griffiths, J 77/1266/8583 (Barrow-in-Furness, Carriage Examiner); Petition of John Wilfred Pawley, J 77/1352/1389 (Sheffield, Driver in Royal Expeditionary Force); Petition of Albert Thomas Poole, J 77/1375/2177, (London, Stoker Petty Officer in the Royal Navy).

the Law Society was funding a department of pro bono divorce lawyers to service the needs of poor, unhappily married, couples.[30]

Figure 3: Chart Showing the Petitioner's County of Residence
[INSERT Figure 3 HERE]

Figure 3 shows the county of residence given by petitioners in their J 77 file. Although more cases originated from couples living in London and the 'Home Counties' than elsewhere in England, there were still couples accessing the court from outside the south-east. Previous research by Sybil Wolfram and Gail Savage into the occupation of petitioners has indicated that couples living outside ~~of~~ London were able and willing to petition for a divorce.[31] What is less clear is how these relatively poorly paid couples afforded to access the London-based court. Preliminary research carried out here reveals petitions by people such as Frank Willie Jennings, a sick berth steward in the Royal Navy who lived in Woodbury, Devon, and Petronella Strumberg Moir, the wife of a ship painter from Hartlepool, Country Durham, were largely dealt with by local firms of solicitors, who then sent the file to a London-based barristers' chambers, described in the file as an 'agent' of the solicitor.[32] This is also true of many other cases featuring couples living outside ~~of~~ London, including George Thomas Day, a dockyard joiner from Southampton; Hermann Lange, a teacher of languages from Manchester; and Margaret Eleanor Allan,

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[30] Sir Henry Brooke, 'The History of Legal Aid 1945 – 2010', *Bach Commission on Access to Justice: Appendix 6*, London, 2017, 5.

[31] Wolfram, 'Divorce in England 1700-1857' and Savage, 'They Would if They Could'.

[32] Petition of Frank Willie Jennings, J 77/429/3078; Petition of Petronella Strumsburg Moir, J 77/1338/942.

the wife of an artist from Chorlton, Lancashire.[33] All used a solicitor in their home or nearby town to draft their petition and were then represented by a London barrister for the hearing, drastically cutting the potential cost of a divorce. Such research on a larger scale will therefore reveal the practicalities of how unhappily married couples in the provinces, especially those of limited financial means, were able to divorce.

Just under half of the petitions examined here make some mention of the cost of the divorce. Some simply indicate that a wife's barrister has 'filed a petition for alimony', others record the amount of alimony awarded and others still give a breakdown of legal fees and the costs accumulated in court. Of the nine cases that mention alimony, eight also record the amount finally awarded.[34] The highest monthly payment was £25 ~~0s 0d,~~ awarded to Esmerelda Calligari Craufurd and the lowest was £1 19s ~~0d~~, awarded to Margaret Battinson Barrows.

Figure 4: Alimony Payments made to Wives (per calendar month)

[INSERT FIGURE 4 HERE]

[33] Petition of George Thomas Moir J 77/813/4725; Petition of Hermann Lange, J 77/548/16727; Petition of Margaret Eleanor Allan, J 77/1075/2632.

[34] Petition of Charles Quentin Gregor Craufurd, J 77/487/14842; Petition of Elizabeth Ann Sidney, J 77/73/351; Petition of John Hall, J 77/224/6206; Petition of Elizabeth Letitia Allen, J 77/1329/640; Petition of Mary Sarah Rose, J 77/559/17081; Petition of Caroline Annie Brown, J 77/231/6472; Petition of Christina Leonora D. Dening J 77/308/9193; Petition of George Holland Brown, J 77/655/19966; Petition of William Barrows, J 77/405/2337.

The mean average amount of monthly alimony received by the wives in this sample was £11 1s 2d, though it should be noted that the three highest awards are significantly higher than the others, and the median average is the much lower figure of £5 8s 4d. The relatively low sums of either average both support the argument first proposed by Savage and furthered here that divorcing couples were drawn from a far broader cross-section of society than might have been expected, despite the fixed location of the court in London.[35] The alimony payments awarded to Caroline Annie Brown and Christina Leonora Dening look particularly low when one considers the occupation of their husbands, however in both cases their divorce petitions were dismissed, and in Christina's case at least, a judicial separation issued instead. The legal ramification of this for Christina and her estranged husband Edwin, was that they remained legally married and therefore she could expect to be maintained from the family funds.

Although details of alimony provision are not found in all the J 77 petitions sampled, evidence suggests that the Court for Divorce and Matrimonial Causes recognized both the necessity of adequate financial provision for wives, and the occasional reluctance of husbands to provide it. On 25th July 1865, Elizabeth Ann Sidney had already spent more than a year engaged in divorce proceedings against her husband, solicitor Algernon Sidney, on the grounds of his adultery and cruelty. It was on this day however, that Judge Ordinary Sir James Plaisted Wilde, awarded her a permanent alimony payment of £245 ~~0s 0d~~ per year, 'to be paid to the said Elizabeth Ann Sidney by equal quarterly payments…so long as she shall remain chaste and unmarried'.[36] This was a particularly acrimonious case and the court did not appear to doubt the veracity of

[35] Savage, 'They Would If They Could', 185.

[36] Petition of Elizabeth Ann Sidney, J 77/73/351, 5.

Elizabeth's multiple examples of physical and emotional cruelty. On one occasion Algernon appeared before Marylebone Police Court where he was fined £150 and bound over to keep the peace after assaulting Elizabeth in the street.[37] Algernon was not satisfied with the alimony sum awarded and he refused to pay it, while also appealing the court's decision. On 18th January 1866, his appeal was rejected, and Algernon was also ordered to pay for the additional legal costs that Elizabeth had incurred in fighting his appeal. However, on 16th April 1867, Elizabeth and Algernon were back in court because she had still not received any alimony. Algernon was ordered to pay an additional £150 and to deliver a surety in the form of property deeds, possibly as part of a settlement. On 7th May 1867, Judge Ordinary Sir James Plaisted Wilde issued another order for Algernon to pay a further £150 to Elizabeth, but then on the 28th of May, with Algernon still refusing to pay the alimony set out by the court, the judge ruled that he was in contempt and all costs from the case would be assigned to him.[38] Whether Algernon went to prison or finally paid Elizabeth what she was due is unclear, but the court's intent is not.

The Sidney divorce was not the only J 77 file to contain details of disputes over alimony. On 25th November 1898, licensed victualler George Holland Brown entered a petition to divorce his wife, Jane, accusing her of committing adultery with Arthur Chevess in various locations including the 'Conservative Club on Walworth Road, London'.[39] George was asked multiple times to produce details of his financial affairs and finally, on 17th February 1899 he was ordered to present all his books and accounts to the court within four days, so that the court could determine what his income was and set

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[37] Ibid., 14.

[38] Ibid., 8.

[39] Petition of George Holland Brown, J 77/655/19966, 17.

appropriate alimony.[40] Both the Sidney and Brown J 77 files illustrate the court's determination that wives would be provided for, regardless of whether they were considered (morally or legally) at fault. This was an approach that had both pragmatic and principled roots. On a pragmatic level, forcing a husband to financially support his former or estranged wife prevented her from becoming a burden on the state. However, having adequate financial support was also integral to ensuring a woman could maintain herself and any children in a morally acceptable way.

In terms of overall costs, divorce under the Divorce and Matrimonial Causes Act in 1857 was undoubtedly more affordable and accessible than the complicated pre-1857 tripartite system, however there is very little quantitative data about what these costs were.[41] In addition to the basic case data, J 77 petitions frequently contain financial information pertaining to the cost of divorce, including details about payments ordered by the judge for the maintenance of wives and children. Most immediately there were legal fees including solicitor and barrister costs and court fees, and just as today, those fees would vary. Danaya C Wright suggests that the average cost was between £50 and £100 in the first nine years of the Divorce and Matrimonial Causes Act. [42] Around half the files sampled here provide either an indication of costs or say who is liable for payment of an unspecified sum. Under *coverture* (prior to the passing of the Married Women's Property Acts) married women had no legal identity or right to hold separate property. It is therefore the wife's legal fees that are detailed most frequently, primarily

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[40] Ibid., 4.

[41] Kha, *A History of Divorce*, 123

[42] Wright, 'Untying the Knot', Table 24, 1010. These figures are based on 129 cases dating from 1858-1867.

because she would have lacked the financial wherewithal to pay for legal counsel or court costs. To a modern observer, the obvious solution would be to give married women the right to hold property, however the ruling (male) classes who populated government and the courts were reluctant to radically amend a system that had been in place for hundreds of years and had served them well. Instead, they saw an opportunity to both maintain the status quo of married women as legal non-entities, whilst simultaneously giving them (limited) access to the divorce courts: they would make the husband responsible for paying legal costs. This was a neat sidestep around a potentially tricky situation.

The highest divorce costs in this sample are found in the J 77 file of Jane Adelaide Price who petitioned to divorce her husband Spencer Cosby Price, a captain in the army, on 22nd June 1871. Spencer was ordered to pay Jane's legal costs which amounted to £82 3s 6d. [43] This was an unusually high cost within the sample and most cases estimated costs for the female party between £30 and £50, which if doubled to account for the husband's costs, positions these petitions broadly in line with Wright's examination of cases from the first six years of the divorce court.[44] The lack of obvious rise in the cost of divorce across the sixty year period points to the interesting possibility that, in addition to the cost of divorce decreasing as a result of the Divorce and Matrimonial Causes Act 1857, the cost of divorce perhaps also decreased over the course of the long nineteenth century. A systematic examination of the J 77 petitions using the methodology proposed here therefore represents an opportunity to generate totally new empirical data of the legal costs associated with divorce and its relative cost to couples over the period.

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[43] Petition of Jane Adelaide Price, J 77/114/2004, 7.

[44] Wright, 'Untying the Knot', Table 24, 1010.

There were also longer-term financial implications to consider. When Norfolk landowner Sir Reginald Beauchamp petitioned to divorce his adulterous wife Lady Violet, their solicitors had to unpick settlements created at marriage and through probate dating back several generations. The sizeable income that Lady Violet had enjoyed from settlements and trusts created by her father and grandfathers was eventually 'extinguished as if she were now dead', and instead diverted to her two daughters.[45] This both punished Lady Violet for her immoral behaviour and kept her family's fortune safe from the clutches of any future husband. Untangling marital finances could be particularly complicated because generations of middle- and upper-class parents had circumvented the limitations of coverture by protecting the financial future of their female offspring from scoundrel husbands through marriage settlements and trusts.[46] These legal

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[45] Petition of Sir Reginald Beauchamp, J 77/708/1523, 22.

[46] See Eileen Spring, *Law, Land and Family: Aristocratic Inheritance in England, 1300 to 1800*, Chapel Hill, 1993; Amy Erikson, *Women and Property in Early Modern England,* Abingdon, 1993; and Judith Spicksley, 'Spinsters with Land in Early Modern England: Inheritance, Possession and Use', in Amanda Capern, Briony McDonagh and Jennifer Aston, eds., *Women and the Land 1500-1900,* Woodbridge, 2019, 51. For an examination of trusts and their complexities see Chantal Stebbings, *The Private Trustee in Victorian England*, Cambridge, 2002.

The importance of trusts and settlements was recognized by politicians with Mr Richard Gurney MP, speaking at length during the second reading of the 1870 Married Women's Property Bill, commenting that 'there is probably not a Member of this House who, upon the marriage of a daughter, does not pronounce his condemnation of the principle of our common law by securing to her, by means of

arrangements were designed to be watertight and reversing the agreements made in them, particularly in cases of divorce where there was likely to be acrimony on both sides, could be time-consuming, litigious, and multi-generational. The J 77 files therefore represent a unique window through which to view the wealth-management strategies of affluent Victorian and Edwardian families during their lifetimes, rather than the final version that can be observed retrospectively through probate records.[47]

Why couples chose to divorce is obviously a central question. The J 77 files frequently detail the breakdown of the marital relationship from the perspective of each party and, perhaps unsurprisingly, no two sides of the story are the same. The legal arguments that were presented in petitions were however, limited to a fixed number of categories. A small number of cases in the sample reveal a husband accusing their wife

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a settlement, the enjoyment of her property. Now, with these settlements I do not propose to interfere—they will probably continue to be made hereafter much the same as they have been in times past; and, consequently, the Bill, if it should become law, will make very little difference in the position of the richer class. But unfortunately, these marriage settlements are for the benefit of the rich only. In their case the common law is, in fact, abrogated; but it is in their case only. Settlements are not suited to those who possess small fortunes', Bill 16, vol. 201, col. 878, 18th May, 1870 (HC), https://api.parliament.uk/historic-hansard/commons/1870/may/18/bill-16-second-reading [accessed 15th October 2021].

[47] ~~Jennifer~~ Aston, *Female Entrepreneurship*, ch. 6; R J Morris, *Men, Women and Property in England, 1780–1870: A Social and Economic History of Family Strategies amongst the Leeds Middle Classes,* Cambridge, 2005, chs. 4, 5 and 7.

of abandonment in addition to adultery, but this was generally presented in support of their application for custody of any children, and it had no bearing on their qualification for divorce. The additional marital offences (in addition to adultery required by the legislation before the amendment of 1923) cited as legal grounds for divorce in the petitions of wives can be seen in Figure 5.

Figure 5: Chart Showing Legal Arguments of Female Petitioners

[INSERT FIGURE 5 HERE]

Following *Weldon* v *Weldon* 1883, applying to the divorce court for a 'restitution of conjugal rights' became a strategy for wives to either extract an acceptable alimony payment, or to bring about a full divorce. The judgment stated that a husband had to return to the marital home if ordered by the court, this was then augmented the following year by the Matrimonial Causes Act 1884, which made a refusal to do so grounds for statutory desertion. [48] This meant that if a husband refused to return home following his wife's successful petition for the restitution of conjugal rights, he had committed an additional marital offence and his wife would thus have grounds for divorce. This approach was not without risk. The husband could well return home, at which point the presumably incompatible couple would have to live together.

Moving an intimate private relationship into the public arena of the courtroom could also create other problems. The Divorce and Matrimonial Causes Act 1857 was

[48] For a detailed examination of *Weldon* v *Weldon* (1883) see S. M. Cretney, 'The Literature of Family Law', 40 *Irish Jurist* (2005), 17, at 28; Matrimonial Causes Act 1884 (47 & 48 Vict., c. 6) s.5.

specifically designed to preserve the institution of matrimony and to allow divorce only as a last resort, and the legislation was therefore suitably restrictive. Petitioning parties had to be innocent of marital offences: if they had committed adultery themselves then they ~~may~~ might not be legally entitled to seek a divorce based on the alleged immoral behaviour of their spouse.[49] Suspicion of this, as well as condonation or connivance would invite the intense scrutiny of the Queen's Proctor, which not only prolonged and complicated proceedings, but could also jeopardize any prospect of achieving a legal divorce.

Accusations of condonation (but not connivance) between spouses appear in the sample. Naval Commander and Harbour Master of Singapore, Charles Quentin Gregor Craufurd, petitioned to divorce his wife Esmerelda in 1892, having already entered and abandoned a previous divorce petition in 1886. In his second petition, Charles accused Esmerelda of committing adultery on multiple occasions with a man named Henry Stannard, which she denied. In turn, she alleged that Charles had 'committed adultery at diverse places and with diverse women…whose names, with one exception, are unknown to the respondent'.[50] The Queen's Proctor did not formally intervene in this case, but the possibility was perhaps mentioned by the judge ordinary because, after more than a year of litigation, Charles did a sudden about-turn and entered papers admitting to condoning the behaviour of his wife and the divorce petition was subsequently dismissed.[51]

On 7th September 1911, Oxford solicitor Andrew Walsh petitioned the court for divorce from his wife Gertrude and for custody of their two young sons, citing her

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[49] Kha, *A History of Divorce Law*, 52

[50] Petition of Charles Quentin Gregor Craufurd, J 77/487/14842, 29.

[51] Ibid., 16.

adultery with a man identified only as 'Baylis'.[52] The petition does not appear contentious or complicated. According to the details provided by Andrew, his wife Gertrude had left the family home at an unspecified date and moved to Hammersmith, London, where she had committed adultery on several occasions and was presumably now living with Baylis.[53] Neither Gertrude nor the mysterious Baylis chose to contest Andrew's petition, and with no obvious impediments to proceedings, on 20th December 1911 a decree nisi was granted. On 20th June 1912, just before the decree absolute was issued, the King's Proctor entered an appearance. He argued that Andrew was himself an adulterer and had been so throughout most of his marriage with a woman called Venie Rouse. The J 77 file reveals that a special jury was not convinced by the King's Proctor, and the intervention was subsequently dismissed. Moreover, the court ruled that the King's Proctor should pay for the additional costs that it had caused by interfering in the case.[54]

Desertion was the joint most common additional matrimonial offence cited in the sample. To meet the criteria for this offence, husbands had to live apart from their wives for at least two years and not provide toward her upkeep, or that of any children. The offence of 'constructive desertion', whereby a husband or wife behaved so badly that their spouse had no choice but to leave, was also recognized as legitimate grounds for divorce by the court.[55] Of course, wives could also desert their husbands, and two women

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[52] Petition of Andrew Walsh, J 77/1052/1898, 4.

[53] Ibid. The 1911 census return records Gertrude as a visitor at her brother's house in Hungerford, Berkshire, TNA RG14, 1911.?

[54] Petition of Andrew Walsh, J 77/1052/1898, 8.

[55] L. Neville Brown, 'Constructive Desertion and Condonation', 26 *Modern Law Review* (1963), 691.

in the sample took this to extreme lengths by leaving England for Australia. One of these women was Grace Macdonald Lyon, wife of the Rev. Gilbert Lyon, curate for Frome, Somerset, who sailed for Sydney under the alias 'Mrs Biggs', with her lover, Reginald, in 1901. Perhaps because of his religious convictions, Rev. Lyon did not seek a divorce from Grace, but rather petitioned for a judicial separation, and the complicated negotiations that took place through the court in London and depositions taken in Sydney can be seen in the eighty-three pages of the J 77 file that remains.[56]

The act of running off to the colonies was more usually performed by a husband and, depending on the state of the marriage, it could perhaps be a blessing for a wife.[57] Yet it also left her in legal limbo, forcing her into self-sufficiency in a society where, for much of the nineteenth century, she did not exist as an independent legal entity. Similarly, if her husband suddenly reappeared and wished to resume the marriage, he would have every right to take possession of anything she had earned in the meantime. Judicial separation, as seen in the *Lyon* v *Lyon* case, was unusual and almost certainly the result of Rev. Lyon's occupation.[58] Far more common (for wives), were protection orders introduced under section 21 of the Divorce and Matrimonial Causes Act 1857 or, following the Matrimonial Causes Act Amendment of 1878, separation orders. These important legal protections, both of which could be granted by local Petty Sessions Courts, gave wives the right to hold property earned after the desertion of their husband in the first instance, and separation with alimony if the husband had physically beaten

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[56] Petition of Rev. Gilbert Lyon, J 77/782/3793.

[57] Olive Anderson, 'Emigration and Marriage Break-Up in Mid-Victorian England', 50 *Economic History Review* (1997), 104.

[58] Anderson, 'State, Civil Society', 163-164.

them in the latter.[59] Importantly, in addition to ringfencing any assets accumulated since the day of desertion, a protection or separation order would restore a wife's legal status to that of a *feme sole*, albeit without the opportunity to remarry.[60]

Cruelty was also a leading argument cited in petitions examined. It was predominantly described as physical, with women being 'dragged from bed', 'pushed through the door', and 'thrown to the ground'. Several of the women testified that their husband had attempted to choke or strangle them. In addition to detailing physical abuse, petitioner Christina Leonora Dening argued that her husband, surgeon Edwin Dening, had 'wilfully or recklessly communicated a venereal disease to your petitioner', citing this as additional evidence of cruelty.[61] In her petition entered on 20th November 1883 (the day her youngest child, Norah, was born) she detailed three separate occasions where she alleged Edwin had given her gonorrhoea. This line of argument was not without precedent,[62] but her claim was ultimately unsuccessful as she could not provide a sufficient level of medical information about the venereal disease. The court did however grant Christina a separation order, with custody of son Francis awarded to Edwin and custody of daughter Christina Annabel plus the newborn baby Norah to Christina, along with an alimony payment.[63] Census records reveal that the couple never lived together

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[59] Matrimonial Causes Act 1857, s. 21; Matrimonial Causes Acts Amendment 1878, s. 3.

[60] Anderson, 'Emigration', 104-109.

[61] Petition of Christina Leonore Dening, J 77/308/9193, 10.

[62] Wendie Ellen Schneider, *Engines of Truth: Producing Veracity in the Victorian Courtroom*, New Haven CT, 2016, 164.

[63] Petition of Christina Leonore Dening, J 77/308/9193, 7.

again as husband and wife and it was not until after Christina's death in 1902 that Edwin was legally free to remarry, and he did so almost immediately.[64]

Understanding the allegations of cruelty made by wives and later by husbands and wives across the J 77 collection will make it possible to chart the frequency and nature of the abuse, for example, whether it was physical, emotional, sexual, or financial.[65] It will also allow large-scale analysis of historic gender and violence. For example, whether men were more likely to be accused of employing physical or sexual abuse against their wives, ~~? Or~~ or if women tended to use implements, or to engage in more subtle forms of harm such as poisoning.~~?~~ Such analysis will allow some important gendered assumptions about domestic abuse to be better understood, for instance the experience of women and children living with an abusive husband and father, but also challenged, for example the reconsideration of men as victims of domestic abuse in the nineteenth century.[66]

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[64] TNA RG12 1891; Gloucestershire Church of England Parish Registers P317.

[65] It is acknowledged that using these labels is in some ways placing contemporary interpretation onto historic events. However, although the terms of description may have changed, the behaviours they describe were frequently recognized as problematic in the nineteenth and twentieth centuries. Therefore, considering these behaviours as physical, emotional, sexual, or financial abuse facilitates closer examination of circumstances previously examined under the broad umbrella of 'cruelty'.

[66] One of the few works to examine this is Jo Turner, 'A Shocking State of Domestic Unhappiness': Male Victims of Female Violence and the Courts in Late Nineteenth Century Stafford', 9 *Societies* (2019), 40.

While English law was generally hostile to married women, the laws governing infant custody were slightly fairer. This was largely due to the Infant Custody Act ~~in~~ 1839, which was passed after intensive campaigning by Lady Caroline Norton, whose young children were removed from her care by their father as part of their marital dispute in the 1830s.[67] The Infant Custody Act 1839 gave mothers the right to petition for custody of children under the age of seven, and access to those over seven but under sixteen. This was followed by the Infant Custody Act ~~of~~ 1873, which put the needs of the child, rather than the desires of the parent(s) at the heart of decisions about custody and gave mothers the right to apply for custody of children aged up to sixteen. It also made married mothers financially responsible for their children for the first time, a change that should be read alongside the development of married women's rights in law, for example under the Married Women's Property Acts of 1870, 1882 and 1893. The new legal rights of mothers afforded by the Infant Custody Acts should not be confused with a desire on the part of Parliament to make women's position equal under the law, or in society. It was imperative that a married mother had an unimpeachable moral character: women who were divorced for their adultery would automatically lose the right to raise or even see their children.[68] A father, in contrast, would not be prevented from petitioning for custody of his child if

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[67] For a detailed biography of Caroline Sheridan Norton see Diane Atkinson, *The Criminal Conversation of Mrs Norton*, Chicago, 2013.

[68] For an examination of the development of paternal custody arrangements, see Sarah Abramowicz, 'English Child Custody Law, 1660-1839: The Origins of Judicial Intervention in Paternal Custody,' 99 *Columbia Law Review* (1999), 1344, and Danaya C. Wright, 'The Crisis of Child Custody: A History of the Birth of Family Law in England', 11 *Columbia Journal of Gender and Law* (2002), 175.

he had committed adultery, unless he made a point of introducing his children to his mistress. Similarly, physical violence (unless extreme) toward his children was not sufficient reason to deny a father custody.[69]

Like finances, custody was an issue that had to be decided during the divorce or separation process and some J 77 files document these discussions, together with the court's final decision as to which parent was most suitable. Estimates place the number of divorce petitions involving couples with children at approximately sixty per cent.[70] Sixty-four per cent of the couples in this pilot sample had one or more children, and of those only four per cent were over sixteen, meaning that most children experiencing the breakdown of their parents' relationship were minors and likely to be living at home. Nineteen of the thirty petitions involving minor children were brought by husbands and of these cases, there were only two where the husband did not retain full custody of the children. One of these was the petition of Charles Quentin Gregor Craufurd, which as detailed above, was dismissed because he admitted to condoning his wife's adultery. Although not divorced, they were judicially separated and, in this case, the Craufurds appear to have shared custody, with the J 77 file detailing the negotiations over where the children should spend their summer holidays.[71]

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[69] Ben Griffin, 'Paternal Rights, Child Welfare and the Law in Nineteenth-Century Britain and Ireland,' 246, *Past & Present* (2020), 109, at 109-110.

[70] Savage, 'The Operation of the 1857 Divorce Act', 106.

[71] Petition of Charles Quentin Gregor Craufurd, J 77/487/14842, 10. Given the socio-economic status of the parents and age of the children, it is likely that children from this relationship would have been enrolled at boarding school in Britain, making custody arrangements a less immediate concern than for many.

The other case where a petitioning husband did not retain full custody of his children despite not being 'at fault' was ~~the petition~~ that of Daniel Griffiths who petitioned for divorce from his wife Edith after she committed adultery. In this case, the court awarded custody of their son to Daniel, but custody of their daughter was awarded to Daniel's former mother-in-law, Mrs Brockbank.[72] This may have been due to financial necessity as the case was heard under *in forma pauperis*, however the judge ordinary also issued an intriguing instruction to Daniel, namely that he was 'not to engage the said child in any way whatsoever in spiritualistic habits or matters'.[73] No further details are given, but this instruction does suggest that there was something unusual about Daniel Griffiths that gave the judge, Sir Maurice Hill, reason to ensure the involvement of another party.

Of the successful petitions for divorce brought by wives with children, all retained custody, with some J 77 files also detailing visitation rights for the fathers. These arrangements were more generous to a non-resident father than to a non-resident mother, with few 'at fault' divorced mothers granted formal visitation rights to see their children: something seen as appropriate and necessary given their perceived moral failings. One of the few 'guilty' mothers who was able to her children was Florence Clara Brown.[74] Her husband, William, a second lieutenant in the Army, petitioned for divorce in 1918 after returning from France to discover that Florence had entered into a long-term affair with a Private Bryan, from the Australian Army. Florence and her children had lived with Private Bryan for several years and Florence argued William had condoned the adultery by coming to visit her and their children at the house she had been staying at with Private

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[72] Petition of Daniel Griffiths, J 77/1266/8583, 7.

[73] Ibid., 11.

[74] Petition of William Henry Brown J 77/1350/1316, 17.

Bryan and inviting her back to the marital home. Unfortunately for Florence, the court believed William's version of events, and sided with him. In the resulting divorce, William was granted custody of their four children, Gladys (eleven), Maurice (nine), Vera (seven) and Rona (five). Florence was given permission to visit them at the National Children's Home and Orphanage in Alverstone (where they were placed following the divorce) for one hour, every three months.[75]

That wives were held to a higher moral standard as mothers than their husbands were as fathers is unsurprising. Women's behaviour has long been policed in myriad ways, both informally through societal gender norms and formally through inherently misogynistic institutions. One of the key advantages to the new methodological direction proposed here is that it enables a detailed examination of exactly how families navigated the law and the short- and long-term effects on the mothers, fathers, and children. Systematic analysis of the J 77 files will allow the stories of those very ordinary families, whose appearance before the Court for Divorce and Matrimonial Causes did not attract the attention of the gossip-mongering press, to be heard. Moreover, such an approach also creates space for the voice of children experiencing the divorce process to be heard and examined for the first time.

V. The Divorce of Andrew and Gertrude Walsh

Earlier in this article we met solicitor Andrew Walsh as he attempted to divorce his wife, Gertrude. His petition, which cited Gertrude's alleged adultery as the grounds for divorce,

[75] Ibid.

was undefended and little other information remains in the J 77 file, except for mention of the King Proctor's unsuccessful intervention.[76] There is much more to this case than meets the eye (or the J 77 file) and taking the time to knit together fragments of information from multiple sources illuminates not just the intricacies of the demise of the Walsh's marriage, but also public opinion about both the King's Proctor and the wider divorce process.

Andrew's J 77 file shows that the King's Proctor accused him of committing adultery with a woman named Venie Rouse but no further details were given. Andrew admitted in court that he was 'attached' to Venie but denied that any improper physical relationship had taken place.[77] The special jury were not expected to pass judgment on the rights or wrongs of Andrew's attachment, this did not matter to the law (although one cannot help but think it might have mattered to Gertrude). The crucial fact for the King's Proctor to prove to the jury was that Andrew's infatuation had also involved sexual intercourse. It is through newspaper reports and census returns that the full story of how the King's Proctor attempted to do this begins to emerge.

On Tuesday 27th May 1913, the *Banbury Advertiser* reported that Venie Rouse's landlady Mrs Dayne, gave evidence on behalf of the King's Proctor. She described Andrew and Venie as a 'loving couple' and shared that he had gifted Venie several pieces of jewellery, including 'a locket marked with the letter 'V' in which she kept two or three photographs of Mr Walsh'.[78] A much longer story in the *Oxfordshire Weekly News* a week later revealed that Mrs Dayne was far from the only servant who came forward to

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[76] Petition of Andrew Walsh, J 77/1052/1898, 9.

[77] 'An Idiotic Letter', *Sheffield Evening Telegraph*, Wednesday 28 May 1913.

[78] 'An Oxford Divorce', *Banbury Advertiser*, Thursday 29 May 1913.

testify for the King's Proctor. A series of landladies and servants emerged, all of whom seemed to concur that whilst they had not seen (and crucially, did not have evidence of) any physical liaisons, something more than an employer-employee relationship did exist. In the words of Andrew's former servant, May Iles, 'I did not think it was altogether right…[but] I don't say that they were committing adultery'.[79] The 1911 census return, which was taken on 2nd April 1911, some five months before Andrew petitioned for divorce and just over a year before the King's Proctor formally entered proceedings, shows Venie Rouse living with Andrew and his sons in Oxford, ostensibly employed as his housekeeper.[80]

Statements by witnesses reported in the press reveal that Andrew and Gertrude had in fact been separated since 12th March 1907, and that their relationship had ended because of her excessive drinking. When she left Andrew and her two small sons, Gertrude moved to London where she gave birth to an illegitimate child under her maiden name, thus giving Andrew the legal opportunity to pursue a divorce.[81] It was the timings of these various relationships that had piqued the interest of the King's Proctor. The original hearing in the Court for Divorce and Matrimonial Causes had no reason to question that Andrew was entitled to a legal divorce, given that his wife had committed adultery and borne another man's child. However, the King's Proctor argued that in 1904 Andrew had begun visiting Venie for hours on end in her lodging houses and bought her a confectioner's business (at a cost of £263), pre-dating not only Gertrude's adultery, but

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[79] 'Oxford Solicitor's Divorce Decree – Intervention by the King's Proctor', *Oxfordshire Weekly News*, Wednesday 4 June 1913.

[80] TNA RG14 1911..

[81] 'Woman Witness's Death', *Globe,* Wednesday 28 May 1913.

also their private separation in 1907. Further questions were raised by the production of a letter, written by Andrew to Venie in 1905, which was described as a 'letter in goo goo', and which he signed off as her 'little boykins'.[82] Addressing the court, Andrew's barrister Edward Marshall Hall KC MP admitted 'it was difficult to understand the frame of mind in which a man could write such an idiotic letter, but the jury should not draw inference from that letter that there was any misconduct'.[83]

Just as in the J 77 file, Gertrude's voice is silent. She did not testify before the special jury, nor did she write to Judge Sir Samuel Evans to give her version of events. Venie too did not have the opportunity to defend herself because she had died of heart disease just a week before the trial.[84] However, when the first accusations came to light in 1912, the unmarried Venie agreed to visit Dr McLachlan of Oxford and Dr Gerald Marsh of Reading for an intimate physical examination that would prove that she could not have committed adultery with Andrew. Both doctors 'expressed their opinions and belief that she had not misconstructed herself', and this, combined with the lack of conclusive evidence from Andrew's servants led to the King's Proctor's case being dismissed.[85]

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[82] 'Love Letter in "Goo-Goo" Talk', *Daily Mirror*, Wednesday 28 May 1913; 'Oxford Solicitor's Divorce Decree'. Reference for second article? Or both in the same issue? The second article has already been referenced in fn 79 so this is the shortened version.

[83] 'An Idiotic Letter'.

[84] 'Tragic Side of Divorce Proceedings', *Yorkshire Evening Post*, Wednesday 28 May 1913.

[85] Ibid.

On Friday 6th June 1913, Andrew and Gertrude's decree absolute was confirmed by the court and the marriage of Andrew and Gertrude Walsh was finally dissolved.[86] Andrew remarried at Oxford Register Office on 12th June 1913, to Miss Winifred Cole, the nineteen-year-old daughter of the Chief Constable of Oxford City. Following the marriage ceremony, the couple travelled to London where they had a church service after securing a 'special faculty from the Archbishop of Canterbury'.[87] They then lived together, along with Andrew's two sons from his first marriage in Oxford and then later in Berkshire.

Most newspaper reports stress the 'pitiful' nature of Andrew and Gertrude's marriage, which came about after they met when Andrew frequented the pub that Gertrude worked in while he was a young student. During the relationship, she became pregnant, and they married. That child died shortly after birth and although they went on to have two further children, Gertrude became 'addicted to drink'.[88] The press coverage of the King's Proctor case against Andrew was overwhelmingly sympathetic. They recognized the humiliation that Andrew faced through the details of his infatuation with Venie and disastrous marriage to Gertrude being laid bare in such a public forum. The role that the King's Proctor played in divorce proceedings is particularly interesting because it was recognized that they could not 'even now find a tenth of the cases in which there had been misconduct by the petitioner' and those that were prosecuted were frequently seen as spiteful interference.[89]

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[86] *Oxford Chronicle and Reading Gazette*, Friday 6 June 1913.

[87] *Reading Standard*, Saturday 21 June 1913.

[88] 'Oxford Solicitor's Divorce Decree'.

[89] 'King's Proctor', *Lancashire Evening Post*, Thursday 2 June 1910.

Wendie Ellen Schneider argues that the office of the King's Proctor, and the cases that they chose to pursue reveal much about how the moods and opinion of wider society.[90] The case of *Walsh* v *Walsh (King's Proctor Intervening),* is situated within a number of other King's Proctor cases that concentrated on proving the adultery of the petitioning party rather than the connivance which had been their original mandate.[91] There was concern that the remit of the King's Proctor was stretching beyond its original scope and solicitors reported that many people withdrew their petitions for fear that the King's Proctor would intervene following the conviction of a petitioning wife for perjury after she did not disclose her own extra-marital affairs.[92] The press coverage of Andrew Walsh's experience with the King's Proctor demonstrates a sympathetic awareness among wider society that relationships between men and women were rarely as sterile and blameless as the letter of the law required them to be. Yet, as with so much legislation, the law took some time to catch up with public opinion.

VI. Conclusion

The new methodology outlined here combines the best of historical and legal scholarship with digital humanities to enable the wide-scale quantitative analysis and careful prosopological study of petitions heard in the first phase of the modern divorce court. A small number of historians and legal scholars including Savage, Stone, Wright, and Frost have used the J 77 files in the past but have either offered a statistical overview of trends

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[90] Schneider, *Engines of Truth*, 144.

[91] Ibid., ~~Schneider, *Engines of Truth*,~~ 162.

[92] 'Fear of King's Proctor', *Aberdeen Press and Journal*, Tuesday 28 Sept. 1920.

in cases, or have focused on particular issues, or periods of time. Others have ~~likely~~ probably been dissuaded from using the files because of the misconception that the J 77 files had been stripped of any useful information and the entirely accurate belief that the J 77 files were also largely inaccessible due to their inadequate index. Most of these studies were carried out ten years ago or even longer, and the time is ripe to revisit the J 77 files and take advantage of developments of digitization and interdisciplinary trends to mine the rich but previously untapped data contained within them.

Carrying out a comprehensive data collection as suggested here would generate new data about the couples themselves, for example their geographic location, occupational background, and the number of children they had. It will illuminate sections of the petitions including (but not limited to): the grounds that were cited and the examples given, the financial settlements reached and the applications for custody made. Moreover, the data presented could also indicate broader trends, for instance the divorce court's attitude to the financial provision made to wives; whether the cost of divorce fluctuated over the nineteenth century; and how provincial solicitors created networks with metropolitan barristers, making divorce accessible to unhappily married couples living outside London. This information about intimate relationships, the law, business, and the economy in the earliest phase of the modern divorce court was previously unknown and is, in many cases, otherwise unknowable, highlighting the potential significance of the findings beyond the field of legal history.

The methodology proposed here represents an entirely new pathway into the J 77 files. It forges a new multidisciplinary approach to the study of nineteenth-century divorce that positions the significantly underused and underappreciated J 77 files at its centre. Systematically examining the J 77 files and analysing data from these unique records using an innovative relational database will create a dataset that can answer

myriad queries. Crucially, the database can also act as a comprehensive index, allowing researchers including human geographers, linguists, criminologists, psychologists, social scientists, historians, and legal scholars to create their own cohorts, thus inspiring new research in multiple fields.

The nineteenth century was a period of marked social, economic, political, and legal change and the perennial problem facing scholars studying the past is how this change can be captured. It is important not to conflate 'change' with 'progress': for many people, particularly married women, much of the legislative developments of the nineteenth century remained firmly rooted in explicit bias. Carrying out further research as outlined above on a wider scale will enable the development of modern divorce legislation to be followed from its establishment in 1858; through the changes to women's ability to hold property in the 1880s; the consolidation of alternate systems for poorer families to seek separation orders in the 1890s; the entry of women into the legal professions; and the effect of the First World War in forcing the provision of legal aid for divorce. Evidence about the occupational background from the J 77 petitions indicates that the participants reflect a broad swathe of society and can therefore act as a lens through which to view the impact of these major socio-legal developments. In short, the holistic and systematic examination the petitions to the Court for Divorce and Matrimonial Causes held in J 77 reveals their whole to be infinitely greater than the sum of their parts.

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