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'A perfect farce': the practice of claiming damages for adultery in the late-Victorian divorce court

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ABSTRACT

For nearly three hundred years it was a British husband's right to claim damages for the trespass of his wife. By the mid-nineteenth century the practice was considered morally questionable, yet still it entered the statute books under the Matrimonial Causes Act 1857 where it remained something of an embarrassment until 1969. Very few studies have considered what this meant in practice. This article offers a comprehensive examination of compensatory awards by analysing data from a sample of petitions filed with the divorce court between 1881 and 1900. It asks, who were the men who put a pecuniary value on their wife's 'ruin' and considers why damages were more pertinent to middle-class petitioners than those above or beneath them. It explores the practical implications of how damages were calculated and applied and suggests reasons why juries frequently awarded lower sums than claimed. Finally, it considers the moral implications of a system that treated wives as chattel and continued to do so well into the twentieth century.

KEYWORDS

Victorian divorce; family law; legal practice; sexual double-standard; damages

> The theory is that the British wife is no longer a chattel of a husband, but a free citizen, independent of all conjugal control. Special Acts of Parliament have been passed to establish the security of her separate estate; yet we retain a law and custom which conflict directly with the theory of the wife's independence, the law providing that a husband may demand compensation for the loss of a faithless wife. (Henry Edwin Fenn, *Thirty-Five Years in the Divorce Court*, 1910)

The right of a cuckolded husband to claim damages for his wife's trespass existed in British law for nearly three hundred years. From the late seventeenth century it took the form of a common law action for what was then politely termed 'criminal conversation' or *crim. con*. A wife had no part in such proceedings and no similar recourse against any paramour of her errant husband. Yet for a husband wishing to divorce an adulterous wife, suing for damages was the first necessary step in what was then a complicated, costly and time-consuming process involving three tribunals: the assizes where actions for damages were heard; the ecclesiastical courts, from whom a legal separation might be sought; and finally the House of Lords who could dissolve a marriage by Act of Parliament. This whole process was estimated to take up to three years and cost a minimum of £700-£800, or considerably more if well defended.[1] The passing of the Matrimonial

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Causes Act 1857, which legislated divorce in England and Wales and moved jurisdiction to a new secular court, never intended to do more than rationalise proceedings.[2] Its terms were furiously debated in both Houses, not least in relation to whether or not a provision for damages should be retained. On one hand, compensation was deemed necessary for the pecuniary loss to a husband of a wife of property; but on the other were strong moral objections. Attorney General Sir Richard Bethel, for example, described the continued existence of *crim. con.* as a matter for 'great reproach to this country', while former Lord Chancellor, Baron St Leonards, considered its perpetuation 'monstrous', positing that most men 'would rather touch a scorpion' than any money awarded in compensation for their dishonour.[3] Tradition prevailed: after much debate the Act passed with section 33 allowing claims for statutory damages which 'shall be heard and tried on the same principles, in the same manner, and subject to the same or the like rules and regulations as actions for criminal conversation'.[4] As such, statutory damages inherited what William Cornish *et al* described as *crim. con*'s 'curious amalgam of compensation, consolation and condemnation'.[5] All suits with claims were to be heard by a jury. By way of concession, to counter their 'unseemly' nature and make them 'more palatable', they became voluntary where *crim. con*. had been requisite.[6] In addition, the court was given the discretion to order that any award, instead of going to the husband *in toto*, could be put into trust for the maintenance of any children of the marriage or settled on the guilty wife for her upkeep. Still, not all moral objections were assuaged. John Fraser Macqueen, erstwhile secretary to the 1852 Divorce Commission, in his treatise on the resultant Act, hoped and predicted that section 33 would become something of a 'dead letter'; that the court, established 'to guard and advance the morals of the country', would chose not to 'render the wife's shame a source of permanent subsistence for her children and herself', but would actively discourage husbands from making claims.[7]

The issue of an adulterous wife's 'shame' in comparison with a husband's has been extensively discussed in literature concerning the Act's 'double-standard' which allowed a husband to divorce his wife for a single act of adultery but insisted that a wronged wife must prove *aggravated* adultery—that is, adultery compounded by a second marital offence such as cruelty or desertion.[8] Few studies acknowledged, however, that the double-standard extended to damages,[9] perhaps because the issue was more nuanced (wives could not claim damages but might benefit from a husband's claim if the court decided to allocate her a portion) and affected fewer women (because the clause was voluntary).

In the 1850s, allowing women access to divorce at all was considered a significant advancement in their rights (only four women had ever been granted a parliamentary divorce[10]) which they embraced to the tune of filing 40% of all petitions in the first ten years.[11] Beyond significant criticisms raised during the 1857 debates and despite campaigns for women's rights (1869 saw the publication of John Stuart Mill's *The Subjection of Women*), Rebecca Probert submits that there remained a general ambivalence towards reform of the double-standard once enacted. Occasional denunciations appeared in journals such as *Fortnightly Review*, but early reform campaigns were 'fragmented' at best; and only towards the latter part of the century was there any 'sustained denunciation' of the double-standard in literature—that is, only after the Married Women's Property Acts of 1870 and 1882.[12] These 'special acts of parliament' (as Fenn termed them) that gave married women the right to retain their own property were brought about by considerable

agitation—agitation that James Hammerton suggests was fed by the 'private protests' of abused wives coming under 'persistent public gaze' in the divorce court.[13] There was no such agitation to revoke the damages clause, however morally questionable it appeared to critics in the 1850s or ethically objectionable today. By 1910, when the Royal Commission on Divorce and Matrimonial Causes heard evidence, attitudes had changed sufficiently so that of the ninety-four witness called, seventy-six responded favourably to the question of equal grounds for divorce between the sexes (and in 1923 the double-standard was finally abolished with 'overwhelming support').[14] Yet only two unequivocally favoured revoking the right to claim damages: Earl Russell, who was well-known for holding radical views on divorce reform and who described the practice as 'somewhat barbarous'; and the suffragist Millicent Fawcett, who termed it 'medieval'.[15] Others who expressed an opinion tended to uphold the principle, but differed in how awards should be applied. Between the three barristers asked—all stalwarts of the divorce court—there was a consensus that the system needed reform, but only for the benefit of the husband whom, they considered, it failed to sufficiently compensate. Mr Priestley KC said a greater proportion should go to the husband to cover his costs; Sir Edward Clarke KC said the practice of giving anything to the guilty wife should cease as it lessened the moral judgment of the court; and Mr Carson KC ridiculed the compensatory element by commenting that as things stood a man would get more for a John Singer Sargent portrait of his wife slashed through with a knife by a vandal than he would for the wife herself! Of all those with broad experience of the court only its permanent judge Sir Henry Bargrave Deane favoured widespread reform and put the wife's interests first. The entire system of handling damages, he said, was 'a perfect farce'. Counsel piled up the injury done to the husband—his reputation, his feelings, his loss of profit, etc.—the jury found in his favour, set the sum and then the judge took it away and applied it to other purposes. Deane favoured doing away with damages entirely and giving power to the court to make the co-respondent settle a sum on the wife and children for their provision. The judge could then decide the proper provision and the jury be dispensed with.[16]

Farce or not, these comments collectively reveal tensions in the law created by changing attitudes to marriage and property. Yet the practical application of section 33 has drawn little interest from historians. The perception is that the provision was rarely utilised. 'Damages are not often asked for,' wrote Nevill Geary in his 1892 practical manual for laymen and professionals, yet provided no data to substantiate the statement.[17] Neither did the Royal Commission produce statistics on damages claims, despite thirty-three witnesses being asked to comment on the practice and the Majority Report recommending the reforms proposed by Bargrave Deane.[18] A second commission sitting a hundred years later heard similar evidence and recommended keeping the provision but extending it to wives.[19] They, too, provided no supporting data. This dearth, alongside a recognised deficiency of scholars to have undertaken extensive examinations of divorce petitions held at The National Archives under catalogue reference J 77, has inhibited a broad understanding of the practical application of section 33.[20]

This article offers a first comprehensive step towards such understanding. Thus far, the only scholar to have analysed data on damages is legal historian Danaya Wright. Her research, however, published in 2004, only ever intended to offer 'an initial analysis' of petitions filed within the court's first three years and, in terms of damages, went no further than to analyse instance, size of awards and percentage settled on the wife or

children.[21] Research questions for this study went deeper, to ask: Who were the men who made use of this provision; what motivated them and how successful were they? Was there any pattern to the level of damages awarded across time and the various stratas of society; and what are the moral implication thereof?

The answers to these questions will be of interest to legal and social historians by addressing a hitherto under-researched aspect of divorce law that may enhance overall understanding of the manner in which couples navigated the system. They will add to scholarship in gender studies by illuminating the implication of the prolonged treatment of women as chattel by the damages provision; and interest economic historians in the tangential role that awards for damages played in the redistribution of marital wealth.

I. Methodology

New and exciting advances in this growing field were announced by Jennifer Aston in 2022 through the creation of a relational database that combines data from a variety of digitised and non-digitised sources which promises to be of immense value to historians for future 'wide-scale quantitative analysis and careful prosopological study of petitions' to the divorce court.[22] This more modest study is based on a systematic sample of court files (J 77) augmented with information gleaned from the vast array of national and provincial newspapers readily available at the British Newspaper Archive.[23]

The sample included every 20th file in the Ancestry database 'England & Wales, Civil Divorce Records, 1858–1918' created between 1881 and 1900.[24] Where a file contained consolidated cross-petitions, both petitions were counted. The period chosen reflects a time of stability in the court, when divorce practice had settled down and legal professionals had gained experience and expertise within the field. It is acknowledged that the period chosen being short will to some degree limit meaningful analysis, but as a preliminary to further research it was considered sufficient to determine patterns of practice and to complement Wright's earlier research into the court's first three-years. It should be noted that the J 77 files contain no evidence used in proceedings, limiting their scope and leaving gaps in information that can only partially be filled by newspaper reports. They do, however, record decisions made by the court at each stage of proceedings with supporting documentation—petitions, affidavits, answers, etc. As such, as Aston points out, the researcher that gives credence to the observation that the files 'only "rarely [include] anything of earth-shattering importance" … grossly underestimates their value'.[25] Moreover, where early commentary on divorce practice was based on reports of cases of legal significance, and newspapers habitually prioritised causes involving parties in the upper echelons of society or the sensational, analysis of case files offers the possibility of 'rescuing smaller, seemingly insignificant, cases from obscurity' and determining, therefore, a more accurate overview of court practice.[26]

II. Findings

i. A 'dead letter'?

The final sample consisted of 726 petitions. As Table 1 shows, the vast majority were for dissolution of marriage, either by divorce or annulment, or for judicial separation. The

Table 1. Sample of petitions filed with divorce court, 1881–1900 by type. Source: 'Petitions', Court Files (J 77).

Petitions	1881–1885	1886–1890	1891–1895	1896–1900	Totals
Filed by Husbands					
Divorce	73	89	81	97	340
[*No. with damages claims*]	[15]	[23]	[24]	[26]	[88]
Nullity	1	1	2	9	13
Judicial Separation	1	1	0	0	2
	75	91	83	106	355
Filed by Wives					
Divorce	51	57	51	70	229
Nullity	3	4	4	4	15
Judicial Separation	26	31	31	19	107
	80	92	86	93	351

remainder concerned other areas of family litigation over which the court had jurisdiction—applications for restitution orders or legitimacy declarations. It also shows that women petitioned the court as often as men but that nearly a third of their petitions were for judicial separation only, most likely due to the difficulty of proving aggravated adultery for a full divorce.[27]

By the terms of the 1857 Act, a husband could sue for damages either as part of a petition for divorce or for judicial separation, or in a separate petition for damages only. In this sample, there were no separate damages petitions, and as neither of the husband's petitions for judicial separation involved allegations of adultery, only the 340 divorce petitions qualified for claims. The 88 that involved such a claim represent a quarter of these. Though small, this proportion might be larger than expected given Geary's statement that 'Damages are not often asked for' and Dayana Wright's reference to the 'rapid disappearance' of claims when they ceased to be compulsory.[28] Conclusions as to whether the figure represents an increase on the period immediately following the Act is hindered by Wright not recording claims in relation to petitions, but only awards.[29] Yet it may be confidently concluded that section 33 was not quite the 'dead letter'

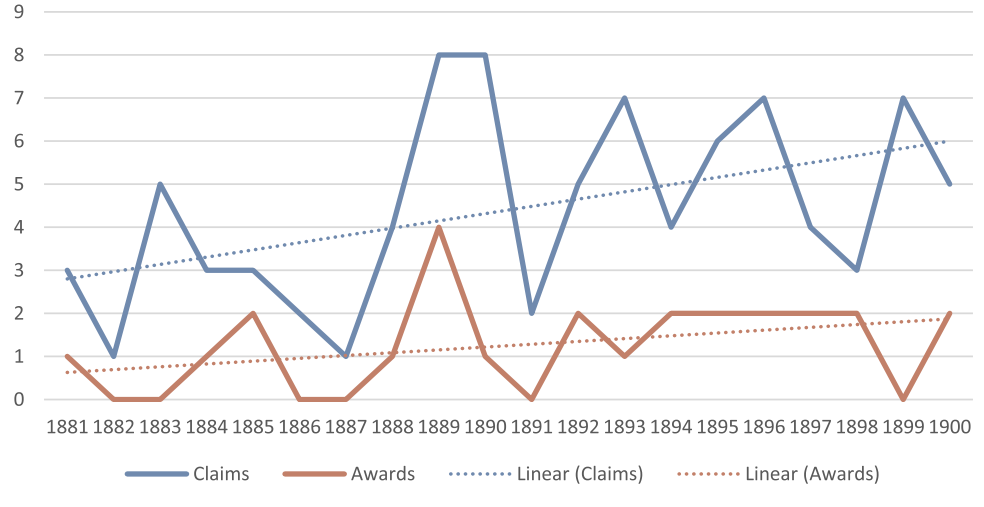

Figure 1. Number of claims and awards per year. Source: 'Petitions', Court Files (J 77).

McQueen had hoped for. Indeed, Figure 1 shows that the number of claims and awards marginally rose across this period; a finding that contradicts the earlier perception.

Of course, filing a petition was only the first step in a long road to securing a divorce. For various reasons many petitions failed. Of the 340 filed by husbands in this sample, just under 70% were successful. The remainder were either allowed to lapse or were dismissed either before or as a result of being tried. Those that came before the court had a high success rate (93%), but it is interesting to note that the claiming of damages appears to have had an impact on outcome. The success rate drops by 10% when only those claiming damages are considered. This reduction is most likely due to the fact that suits involving damages were more frequently defended (53% as opposed to only 28% of all husband's petitions) but may also suggest an unwillingness of the part of juries to condemn co-respondents to potentially crippling damages.[30] Moreover, with such high stakes it behoved a 'guilty' co-respondent to enter into negotiations to settle out of court. The data shows that 10% fewer suits with claims made it to court than all husbands' suits taken together. Suits were abandoned for multiple reasons—Rowntree cites procedural bottlenecks and inability to produce evidence,[31] in addition to which, given the exponential rise in costs for defended suits, is the increased likelihood of the petitioner running out of funds during proceedings (his costs were only recouped in the event of a successful outcome). Out of court compromises were also a recognised factor. In this sample two private agreements were documented: Edwin Charles Kruger, a commission merchant married 11 years with 3 children, entered into a deed of arrangement rather than bankrupt his co-respondent with a claim for £5000; and Alfred Conyers Champney, a solicitor, agreed terms with a local esquire for a private settlement for the upkeep of his wife of 16 years and their 4 children rather than pursuing his £2000 claim.[32] These negotiations were documented because they involved the court. Private agreements between solicitors remain invisible. Moreover, in the majority of instances when a case was abandoned no reason is given to enable an evaluation of the direct impact of damage claims. What can be ascertained is that of the 88 petitions with a claim only 26 resulted in an award (29.54%).

ii. Who claimed damages?

Before 1857, under the parliamentary divorce system, the cost of an action made divorce prohibitive for all but the well-to-do. Giving jurisdiction to the secular court made divorce more affordable and widened access. Still, critics of the system in 1910 told the Royal Commission that divorce remained exclusive. As a result, when court files became accessible, there was notable surprise at the speed with which working-class spouses petitioned the court after 1857,[33] especially as the minimum cost of an undefended suit in the late-nineteenth century was estimated at around £40, rising incrementally in relation to how far the petitioner lived from London, where all cases were heard. For defended suits, costs rose sharply to anything from £70 to £500 or more.[34] This at a time when an agricultural labourer might earn £42 per annum, a general labourer £62 and a skilled workman in manufacturing between £87 and £107.[35]

'Class' for the purposes of this study was calculated on the basis of the stated occupation of the petitioner, a method employed by other researchers in the field. It revealed that though working-class petitioners remained under-represented in relation to their

Table 2. Social class of all male petitioners as compared to petitioners claiming and being awarded damages. Source: 'Petitions', Court Files (J 77); Classifications as per Banks, 'Social Structure of Nineteenth Century England', 177–223.

	Total Petitions		Petitions with claims		Damages awarded	
Class	#	%	#	%	#	%
Upper class	19	5.6	7	8.0	1	3.8
Upper-middle	83	24.4	28	31.8	6	23.1
Lower-middle	108	31.7	36	40.9	11	42.3
Working class	104	30.6	15	17.0	8	30.8
Lower-working	25	7.4	2	2.3	0	0
Unknown	1	0.3	0	0	0	0
Totals	340		88		26	

share of the population at large,[36] they still filed over 37% of all husbands' petitions in this sample, a marked increase on a decade earlier (Table 2).[37]

Of those involving damages, by far the majority were filed by middle-class men—nearly three-quarters—though they account for just over half of all male petitioners in the sample. There are a number of plausible reasons for this. Middle-class men were less likely to be intimidated by the potential cost of the co-respondent defending the suit than their working-class counterparts. But more importantly, criteria on which damages were decided were arguably more applicable to them. Damages were never intended to punish the co-respondent *per se*, but rather to compensate the husband for the pecuniary loss of his wife, for any injury to his feelings and hurt to his family life. They were of real value to middle and working-class families and calculated on such factors as the loss of a wife's property or income, her assistance in her husband's business, her capacity for housekeeping, her ability in the home and her general character and conduct.[38] Holmes points out that the co-respondent's conduct was also a factor because 'the ease with which he effected his purpose may show that the wife was of small value'.[39] The combination of these financial and moral considerations translated into vastly different valuations of a wife's worth. The loss of Georgiana, for example, after 8 years of marriage to Gloucestershire farmer John Samuel Sivell, following her seduction by a pork butcher, was considered great. Mrs Sivell had been apt to help in the management of her husband's farm and had lived on good terms with him until her elopement in 1886. The letter she left behind when she absconded told him she had never been cut out to be a farmer's wife but that she had been faithful (until recently) and had tried her best. She proved as much by directing him in a few household matters she had left unattended before telling him not to try and find her. On enquiry, Mrs Sivell was found lodging with the butcher in London, for which her husband secured his divorce and £300 damages.[40] Conversely, when commercial traveller Philip Edward Waddell sued for divorce alleging his wife's adultery with three co-respondents and claiming £2000 damages from each, the men all claimed they had never known she was married. During the trial it transpired that while Waddell was away on business his wife had 'conducted herself in a loose fashion' and admitted it had been going on 'for years'. Waddell got his divorce but no compensation.[41] Such a wife was considered no great loss.

Comparing the size of claims with eventual awards is complex when imponderables such as a wife's morality or the depth of a husband's hurt were taken into account.

Figure 2. Size of claim by class. Source: 'Petitions', Court Files (J 77).

The problem is compounded by limited information concerning a wife's pecuniary value: there are details in the court file if disputes arose over marriage settlements that involved the court; or in newspapers if her financial position was alluded to during the trial and reported.[42] Figure 2 shows a general trend of claims broadly decreasing in size by class, as might be expected. But class alone, as shall be seen, did not necessarily determine the value a man put on his wife.

That said, no upper-class claims were less than £1000. The largest was £10,000. The largest overall was an eyewatering £20,000—a claim made by upper-middle class newspaper proprietor Harding Edward de Fonblanque Cox and split between two co-respondents. Guilt was proved with one of them, but the claim dropped at the last minute—the explanation being that the co-respondent had gone abroad and any claim was unlikely to be recovered.[43] The issue of collection and disposal of damages is discussed in section iv.

Middle-class claims varied substantially, reflecting the huge diversity of wealth within this group, their perceived respectability, the practical usefulness of their wives and the value they placed on their own reputation within their community. Moral respectability was to the middle classes what birthright was to the aristocracy. The most puritanical avoided any association with the divorce court whatever, fearful of the stigma attached to scandal.[44] Yet for middle-class men wishing to divorce, it was possible to see moral vindication in the public shaming of their wife and her seducer. Taken in this light, the attaching of damages to a petition, far from being a reprehensible act, may be viewed as judicious if proportionate to the wronged husband's social standing. Perhaps, therefore, it was incumbent on a petitioner to reflect, not only the value of his wife in his claim, but also his perceived self-worth in the social hierarchy, leading to such disparate claims as those of Mr Essery, a medical practitioner, who claimed £5000 for the loss of his wife as compared to that of Mr Stokes, an elementary schoolmaster—a status once described as 'honorary bourgeois'—who claimed only £100 for his.[45]

The majority of working-class claims were under £500—still an enormous sum representing, in some instances, five times the petitioner's anticipated annual income. Some

were frankly audacious. Take, for example, the two working-class men—one a joiner, the other a farrier—who both valued the loss of their wives at £2000. The joiner abandoned his case, but the farrier—Mr Escott—saw his through. During the trial it transpired that he and his wife had not lived happily together. Mrs Escott counter-alleged cruelty, claiming that her husband had assaulted her when he found her with her lover, forcing her head between his knees and attempting 'to thrust her eyes out'—an assault for which she had him summoned to Clerkenwell police court. She further claimed that prior to her adultery he had struck her 'a violent blow on the back with a hammer' on one occasion, and on another 'kicked her violently'. She failed to convince the jury; but neither did she deny the adultery. The jury found for her husband but sent a strong message on the audacity of his claim by awarding him only £100.[46]

This sum represents the greatest disparity between claim and award at only 5%. Mr Sivell, who was awarded £300 for his good wife, had originally claimed more than six times that much: £2000. Figure 3 shows a clear pattern of juries habitually awarding damages considerably lower than the petitioner's claim. This is most marked at the upper end of the scale where six claims of over £2000 resulted in only one award. It went to Mr Herschel, a wholesale paper manufacturer, who had claimed £10,000 split between two co-respondents and was awarded £2500 against one of them. The guilty co-respondent was a French nobleman, Count Sapia de Lentia, who failed to appear to defend himself (interpreted as a sure sign of guilt). Mrs Herschel, who originally refuted her husband's suspicions, had eventually confessed. This combination seems to have emboldened the jury to award the 'substantial damages' Herschel's barrister claimed his client deserved, though still only half the original claim.[47] Of the fourteen cases in which damages awarded were less than the claim but not nil the average award was proportionally less still: only a third. And whereas more than half the claims in the sample were greater than £500, 69% of awards were less than that sum. Figure 3 further shows that only six awards were equal to, and five greater than, the petitioner's original claim.

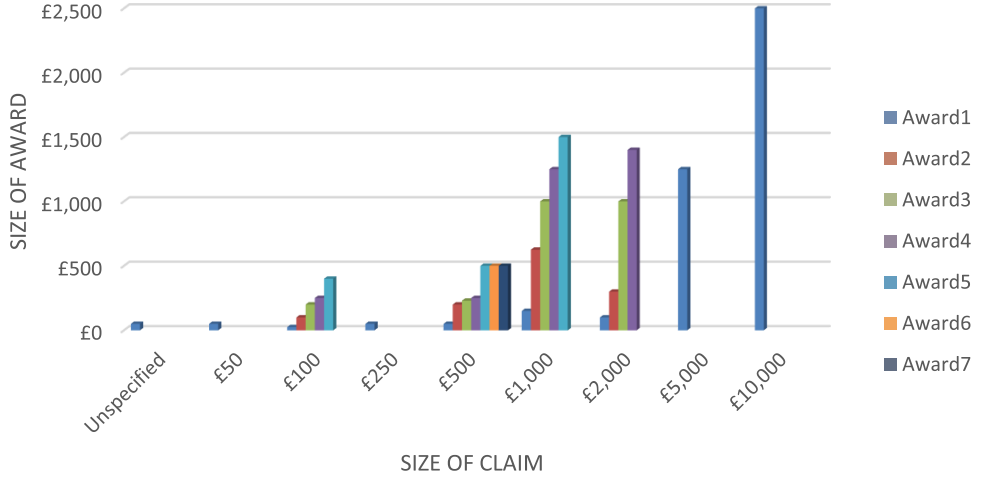

Figure 3. Trends in size of awards by size of claim. Source: 'Petitions', Court Files (J 77).

iii. How were damages set?

Such findings invite questions about the manner in which claims were calculated and awards set. With regard to claiming one might ask, what practical advice was there to petitioners beyond the factors already stated? Oakley's *Divorce Practice*, published in 1885 as a manual for solicitors, offers nothing beyond the simple statement that whatever the claim, the amount must be stated in the petition; and Geary's manual adds only that damages claims were affected both by the extent to which the husband's loss can be traced directly to the co-respondent (the greater the connection the greater the claim) and the extent to which the husband sought to reclaim his wife (if he did not actively try to find or reform her, his loss was considered less).[48] A husband's loss was also less if it was deemed he failed to protect her.[49] All such information had to be interpreted by solicitors more or less experienced in the field. The author Arnold Bennett, whose father was a solicitor and who began his own career as a solicitor's clerk, exploited this fact to great effect in his 1906 novel *Whom God Hath Joined*. 'There are over sixteen thousand solicitors in England and only a few hundred divorce cases a year', he wrote.[50] In this period those 'few hundred' averaged 574 per year.[51]

Limited experience, particularly among provincial solicitors, may explain anomalies in some petitions—such as the eight that did not state the size of the claim, only the fact of it[52]—and the apparent audacity of the claims in others. George Frederick Hockey, a childless builder from Somerset, claimed £1000 from a local painter and decorator for adultery with his wife of seven years. Reports of the trial give the distinct impression that Hockey's counsel had to work hard to justify it. Mrs Hockey is described as 'a lady of culture' and the working-class co-respondent's other sources of income as a music teacher and 'a bit of an artist' were stressed. The gambit did not pay off—Hockey's final award was £150 (15% of his claim)—and the question of whether Hockey was simply chancing his luck, was poorly advised or vindictive remains open.[53]

Of course the painter's earning capacity should have been irrelevant according to the letter of the law. Henry Edwin Fenn, thirty-five years a court reporter, suggests this was difficult for juries to fathom: 'almost invariably' at the end of the judge's summing-up they would ask to know the co-respondent's means before setting damages, only to be told it was not a question of what he *could* pay, but what he *ought* to pay.[54] Fenn continues, 'no small wonder, then, that juries sometimes get fogged and at times assess incomprehensible amounts, for what is to guide them?' This is a good question. The size of a claim was not announced in open court so, beyond the facts of the case, juries had only the social status of the parties, any direct reference to property owned by the wife during the trial or guidance from the judge's summing-up on which to base their judgment. The case of Herbert Gorringe illustrates the collective effect. In 1889 Gorringe managed Hailsham brewery, a business that had recently passed from sole proprietor Daniel Norris Olney to his 26-year-old son, Barton. Gorringe was in his mid-thirties, had been married six years and fathered two children with his wife before she absconded with Barton Olney. Mrs Gorringe owned property worth £800. Gorringe left the brewery, took a position elsewhere with a salary £20 per annum less and sued for divorce claiming £5000 damages. The size of the claim was no doubt determined by the combination of Gorringe being forced to take a lower paid position, the cumulative effect of his loss of earnings, the loss of his wife's property and by Gorringe

attaching an exceedingly high value to his humiliation. In summing-up, the judge said it was a 'very bad' case given that Gorringe's injury had been caused by his master. The jury set damages at the more realistic, yet not unsubstantial, figure of £1250.[55]

Findings like these demonstrate that, far from getting 'fogged', juries imposed restraint on claims. This finding is at variance with Kha's assertion that 'juries often awarded a higher sum than the amount sought'.[56] Only five petitioners in this sample were awarded more than they sought (19%). Whether in part this was due to the relative social standing of jurists to petitioners is indeterminate but interesting to contemplate. To qualify for jury duty, jurists had to occupy premises assessed at over £20 a year for a common jury and £100 for a special jury. Common jurymen could, therefore, be anything from shopkeepers to labourers; whereas special jurymen might be merchants or esquires but were rarely industrialists who evaded service by describing themselves as gentlemen.[57] They were solely responsible for setting damages, though in certain circumstances the judge could order that damages should not be assessed. Mrs Maskell, for example, was proved to have been 'acting like a prostitute' during the trial in which her husband claimed £200 from a 17-year-old co-respondent. The judge ruled it was 'not a case for damages' (though the co-respondent was still ordered to pay costs as punishment for giving into temptation with a married woman).[58] Otherwise, as Table 3 shows, juries were much more comfortable setting low to mid-range awards. A full 50% fell between £51 and £500 as compared to only 20% in the period 1858–1861. And while the data seems to suggest that the practice of awarding nominal damages may have fallen out of use (the lowest award in the £2–£50 category in the later period was £25 and all awards under £100 went to lower-middle or lower class petitioners), so too had the very extravagant awards which had been a relic of the old parliamentary system.[59]

One issue that is hard to reconcile is the notion that damages were not punitive. This point was voiced in no uncertain terms by barrister Arthur Underhill in 1873:

> It is obvious that it is impossible to assess damages in the case of adultery according to any scale calculated on the ground of giving compensation. It is in fact a wrong for which no adequate compensation can be given. The damages are therefore more properly regarded as in their nature penal, and accordingly vary very much according to the more or less heinous circumstances of each case.[60]

The common jury's verdict in favour of hotelier Thomas Edward Pratt is a case in point. The Pratts had married in 1884 and had five children living. In his petition Pratt alleged

Table 3. Comparison of damages awarded 1858–1861 and 1881–1900. Source: Wright, 'Untying the Knot', 1007; 'Petitions', Court Files (J 77).

	1858–1861			1881–1900		
Damages in £s	#	%		#	%	
1	7	29.1		0	0	
2–50	6	25.0		5	19.2	
51–100	0	0	20.8%	2	7.7	50%
101–200	3	12.5		3	11.5	
201–500	2	8.3		8	30.8	
501–1000	3	12.5		3	11.5	
1000–2000	1	4.2		4	15.4	
2001–3000	1	4.2		1	3.9	
10,000	1	4.2		0	0	
Totals	24			26		

that in 1885 his wife had committed adultery with a man named Johnson in an empty house on Johnson's estate and various other locations. Pratt also alleged that since 1887 his wife had committed adultery with four other men, whom he named. He prayed for £1000 damages from the five men collectively. The jury found against Johnson and two others—both travelling salesmen who had stayed at the Pratts' hotel—and set damages at £450 against Johnson, £150 against the second man and £25 against the third. Johnson was the richer man and his crime more heinous because he was deemed to have begun Mrs Pratt's descent into immorality—with his wealth, it was supposed, as much as any personal charms he might possess.[61] The third man's crime was considerably lessened by the extent to which Mrs Pratt had already 'fallen' before their liaison and the size of the damages correspondingly set both a punitive judgment against the men and a moral one against her. This was the court acting in accordance with the morals Sir Edward Clarke espoused to the Royal Commission. To emphasise the point, the judge ordered that after reimbursing Pratt's taxed costs and other expenses (amounting to £179), the remainder of the damages should be placed in trust for the children's benefit. Mrs Pratt got nothing.[62]

Similar condemnation can be seen in damages assessed against those who had abused a position of trust. The Revd Finlayson—a curate and secretary of the Colonial and Continental Church Society—was condemned to pay a hemp manufacturer £1000 on being found guilty of adultery with his wife after a 'major deception' in which Finlayson posed as a mediator between the couple.[63] And two shoemakers were awarded far in excess of their claims against business associates. The first, George Mines, ran two shops selling his wares. The co-respondent was a salesman employed by him. The jury decided that the loss of Mrs Mines, who had been tempted away from a relationship in which she was both a loving wife and significant asset to the business, was worth four times the £100 her husband claimed.[64] Correspondingly, Frank Burridge, a shoemaker in significantly more straightened circumstances (he had petitioned *in forma pauperis*[65]) also claimed £100 but was awarded £250 for the loss of his wife to the manager of a shoe shop he supplied.[66]

Of little influence—on juries or seemingly on petitioners when deciding how much to claim—were the children of the family. Though harm to a man's family life was a recognised factor in claims, it appears property, class and reputation were of much greater significance than, say, the duration of his marriage or the number of children. This is demonstrated by the fact that upper and upper-middle-class petitioners claimed, on average, in excess of £3000 for marriages averaging eight years with 1.2 children, the remainder of the middle-class claimed £1500 for those of approximately eleven years with 2.3 children and the lower-classes £500 for marriages also of eleven years but with an average of 1.7 children per divorcing couple. Moreover, childless petitioners—a group that contains proportionally fewer working-class litigants—took away three times greater sums than fathers (on average £1800 each). Though damages could be allocated to the care or education of children and, in court, petitioners' advocates were keen to emphasis the cost to a petitioner of having to replace a mother with a nanny or governess, children appear to have had no material effect on awards and the court's primary consideration concerning them was who got custody after the divorce—usually, but not always, the petitioner.[67]

Finally, a few words must be said about out-of-court agreements. The court welcomed amicable arrangements between parties so long as it was satisfied they were not collusive. The moral climate of an age which upheld the sanctity of marriage demanded that

divorce only be considered a remedy for wronged spouses who were themselves innocent of any marital wrongdoing.[68] Divorce by mutual consent was absolutely forbidden and collusion implied mutual consent. As such, whereas it was perfectly okay (if not preferable) for Mr MacLean to withdraw his claim of £5000 before his case came to court, after the co-respondent admitted his guilt and agreed to make a provision for Mrs MacLean, it was absolutely not okay for Mr and Mrs Churchward to agree together firstly, that he would divorce her to allow her to marry the co-respondent, and secondly, that he would not claim damages in exchange for her settling a sum on their child and covering all costs.[69] Such a scenario, though amicably arranged for the benefit of all concerned, would excite the interest of and often result in an intervention by the Queen's Proctor, whose role it was to police proceedings.[70] That there *were* private arrangements that sailed very close to infringement of the rules is undoubted. In this sample there were five clear instances of defended suits being allowed to pass undefended at the last moment after damage claims had been withdrawn, highly suggestive of behind-the-scenes bargaining. There was also one example of an amicable arrangement being reached after a decree *nisi* had been granted. Walter Samuel Green, a gentleman of private means, had claimed £1000 damages but been awarded half as much again by the jury for the indignity of catching his friend *in flagrante* with his wife. With the court's approval and Green's consent the sum was reduced to £500 after the guilty co-respondent filed an affidavit saying he would marry and support Mrs Green after the decree was made absolute and adopt the child of the marriage who was thought to be his anyway. Such arrangements were deemed not only judicious to all concerned, but to uphold the family values the court espoused.[71]

iv. Payment of damages and the lot of the wife

One vital aspect of awarding damages that is poorly documented, in both court files and newspaper reports, concerns their allocation once awarded. Usual practice was that damages should be paid into court within fourteen days. This carries with it the implication that the court would direct how the funds were to be used. Geary states, 'This power is often, nay, usually exercised'; and Kha adds that payment into court was a requirement for the sum 'to be held under a constructive trust'.[72] Yet information in the files throws some doubt on the firmness of both assertions.

The ratio of payments made into court versus those made directly to the petitioner was 18:8. Of the 18 awards directed to be paid into court, what happened to them thereafter was specified in only four instances. In two cases a proportion (60% and 70% respectively) was put into trust for the benefit of the children with the balance going to the petitioner. But in the other two, the sum was paid out in its entirety to the petitioner giving him complete control of funds—just as he had in the eight instances in which damages were ordered to be paid to him directly. In none of these eight was there any explanation as to why the sum was not ordered to be paid into court. Childlessness cannot explain it, as only one of these men was childless. In only one instance is it documented that the petitioner undertook to make any provision for his wife, and this in a suit in which the likelihood of collecting damages was slight and the provision for the wife depended upon it.

Absence of information regarding *collection* of damages made directly to the petitioner is not, in itself, extraordinary: anything that did not directly involve the court would not be recorded. But each time an order was made by judge or registrar it was religiously recorded in the file, making the absence of the registrar's direction for *allocation* of funds in the fourteen cases in which damages were paid into court but nothing further specified suspicious. Was the court providing for the errant wife or apportioning funds to the care and education of the children as much as the law allowed? The outcome of the one and only reported instance of a direct request for a provision for a wife by her barrister during a trial might suggest not. When Mr Hassall, a chemical manufacturer and father of four, was awarded £1400 damages, the judge responded to Mrs Hassall's barrister's request that a portion might be set aside to provide her with an allowance, simply, 'that must be left entirely to the petitioner'.[73] Clearly, then, the assumption that *all* sums collected were allocated away from the petitioner by the court after all his costs had been met must be taken with caution.

Having said that, in only four cases was there a record of damages actually being recovered. While it would be misleading to assume that no record meant no payment, the presence of three cases in which *fieri facias* had to be issued to recover costs (let alone damages) from co-respondents, and the involvement in a further two cases of receivers, strongly suggest either an inability or unwillingness to pay. In one, the co-respondent presented himself to the official receiver within a fortnight of being condemned to £1000 damages.[74] In another, the petitioner—Mr Gorringe, again—applied to the court for assistance when young Barton Olney tried to avoid paying the £1250 damages he owed by selling his interests in property to his father for £100. The court blocked the sale, gave Gorringe consent to prosecute the offenders through the Queen's Bench and brought in a receiver to manage Olney's financial affairs. Ultimately, some five years later, Olney was given permission to sell his property for £1700, by which time Gorringe's litigation costs had spiralled from £267 for the divorce proceedings to some £713. The whole of the proceeds of the property sale was paid into court and, after further costs and expenses were deducted, Gorringe finally received £898.[75]

Taking difficulty of collection into account, along with the possibility that any award may be allocated away from a petitioner, or that he could still be out of pocket through hidden costs of litigation or legal expenses incurred in enforcing an award, it is unsurprising that even advocates of the system were dissatisfied with it in practice. The co-respondent was not pitied: he had done wrong and (though few acknowledged it as a punishment) must suffer the consequences, even if that meant bankruptcy. Neither, in general, was any sympathy metered out to the unfaithful wife until the early part of the twentieth century when divorce reform societies began to emerge. Divorce law may have pre-empted changes to property law by protecting women's income from deserting husbands,[76] but in damages it lagged behind, and the unfaithful wife was often solely dependent on the actions and goodwill of the men concerned for her provision. If the husband chose not to claim damages or make a private arrangement for her benefit; if the co-respondent abandoned her, was himself married or without means; if the court decided not to direct funds her way and she had no family to turn to, she could, as a result of a single indiscretion, be left destitute. Such 'economic subordination' of women, wrote Havelock Ellis in 1910, was inherent in a system that did not acknowledge the shared responsibility of marriage breakdown and ordained that 'a man should actually

be indemnified because he has shown himself incapable of winning a woman's love'—something he viewed as only possible in a society 'twisted by inherent prejudices'.[77]

III. Conclusion

What conclusions, then, may be drawn? Clearly the practice of claiming damages was not a 'dead letter' before the end of the nineteenth century. The limited comparison possible with Wright's earlier study suggests a marginal and continuous increase in damages actions in this period over 1858–1861. Further research is required to verify this and ascertain whether and how it then came about that the practice of claiming damages declined by the 1920s.[78]

Class affected claims in a number of ways. Collectively upper- and middle-class petitioners claimed most frequently, but middle- and working-class petitioners were more likely to see their claims result in awards. The particular relevance to middle-class petitioners of the criteria on which claims were assessed has been described. The lower success rate of upper-class petitioners may be explained by the increased likelihood of behind-the-scenes negotiations and private arrangements.

Class also affected the general pattern of awards, with larger awards broadly going to higher-class petitioners. But this finding is confused by the complex nature of financial and moral considerations that resulted in a diverse range of awards that compensated property loss and reputational injury and condemned immoral behaviour. Firm conclusions about the extent to which property directly affected awards is hindered by the limited information contained in court files and newspaper reports. Court-reporter Fenn opined that money was the driving force in litigation and in 1920 Justice McCardie insisted that property came before all other considerations.[79] A broader brush-stroke, such as that proposed by Aston, may be able to determine the extent to which the Married Women's Property Acts directly impacted awards or the extent to which they may account for the marginal increase in claims and awards seen across this period.

The study does illustrate, however, that assumptions about the law in practice must be taken with caution; and highlights an uneasy legal transition from viewing the wife as a husband's chattel to treating marriage as an equal partnership. It offers additional insight into how couples navigated a system determinedly focused on finding fault in marriage breakdown.

Statutory damages for adultery survived well into the twentieth century. In 1912, the Royal Commission even recommended broadening the provision: to *compel* co-respondents *in all cases* to compensate a husband's pecuniary loss *and* provide for his wife and children; and by giving wronged wives the equal right to claim against women who stole their husbands.[80] Neither recommendation was enacted. Despite the removal of the double-standard in 1923 and the widening of grounds for divorce in 1937, this 'perfect farce' remained on the statute books until the Law Commission recommended in September 1969 that it should be abolished or made equal. Feminists favoured abolition, which was finally realised in 1970 alongside the introduction of divorce by mutual consent, marking the end of the whole controversial system of Victorian divorce.[81]

Notes

1. For detailed analysis of parliamentary divorces see Lawrence Stone, *Road to Divorce: A History of the Making and Breaking of Marriage in England* (Oxford: Oxford University

Press, 1995); and Henry Kha, *A History of Divorce Law: Reform in England from the Victorian to Interwar Years* (Abingdon: Routledge, 2021).

2. For detailed commentary on intentions and debates see Mary Lyndon Shanley, '"One Must Ride Behind": Married Women's Rights and the Divorce Act of 1857', *Victorian Studies* 25, no. 3 (Spring 1982): 355–76; Stephen Cretney, *Family Law in the Twentieth Century* (Oxford: Oxford University Press, 2003), 161–6 and Kha, *History of Divorce*, chapter 3.
3. HC Deb 30 Jul 1857, vol. 147, col 723; HL Debate 24 Aug 1857, vol 147, col 2031.
4. Matrimonial Causes Act 1857, 20 & 21 Vict c.85, s.33.
5. William Cornish et al., *Law and Society in England, 1750–1950* (Oxford: Hart, 2019), 357.
6. Ann Sumner Holmes, 'The Double Standard in the English Divorce Laws, 1857–1923', *Law & Social Inquiry* 20 (Spring 1995): 601–20, 605; Danaya C. Wright, 'Untying the Knot: An Analysis of the English Divorce and Matrimonial Causes Records, 1858–1866', *University of Richmond Law Review* 38 (2004): 903–1010, 971.
7. Macqueen, *A Practical Treatise on Divorce and Matrimonial Jurisdiction Under the Act of 1857 and New Orders* (London: Maxwell Sweet Stevens & Norton, 1858), 70.
8. Shanley, 'One Must Ride'; Gail Savage, '"The Wilful Communication of a Loathsome Disease": Marital Conflict and Venereal Disease in Victorian England', *Victorian Studies* 34 (Autumn 1990): 35–54; Ann Sumner Holmes, 'The Double Standard'; Rebecca Probert, 'The Double Standard of Morality in the Divorce and Matrimonial Causes Act 1857', *Anglo-American Law Review* 28 (1999): 73; and Ann Sumner Holmes, 'The Controversy of Equality and the Matrimonial Causes Act 1923', *Child and Family Law Quarterly* 11, no. 1 (1999): 33–42.
9. Holmes does. She argues that the retention of a husband's right to claim damages after grounds for divorce were equalised in 1923 demonstrates that the double-standard 'continued to exist as a cultural assumption' ('The Double Standard', 620). Shanley refers only to *crim. con.*; Probert and Savage mention neither.
10. These were granted on the grounds of incestuous adultery or adultery with bigamy (Holmes, 'The Double Standard', 604).
11. Royal Commission on Divorce and Matrimonial Causes, *Appendices* (London: HMSO, 1912), 27.
12. See, for example, J. Campbell Smith, 'The Marriage Law of Scotland', *Fortnightly Review* 8 (Jul–Dec 1867): 673–87. Probert, 'The Double Standard', 86, 83. Probert cites the limited success of The Moral Reform Union (1882–1897) which 'attracted few members'. Thereafter, Earl Russell's Society For Promoting Reforms in the Marriage and Divorce Laws of England (1902), which was absorbed into the Divorce Law Reform Union in 1906, is considered the first organisation to specifically and actively seek divorce reform (Cretney, *Family Law*, 205). For more on this see Ruth Derham, *Bertrand's Brother: The Marriages, Morals and Misdemeanours of Frank, 2nd Earl Russell* (Stroud: Amberley), 241–3.
13. A. James Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London: Routledge, 1992), 6; See also Cornish et al., *Law and Society*, 376–80.
14. Holmes, 'The Double Standard', 602.
15. Royal Commission, *Minutes of Evidence* (London: HMSO, 1912), 3:451, 2:378.
16. Ibid., Mr Carson: 3:422; Mr Priestley: 1:88; Sir Edward Clarke, 3:443; Mr Justice Deane, 1:52 & 58.
17. William Nevill Montgomerie Geary, *The Law of Marriage and Family Relations* (London: Adam & Charles Black, 1892), 260.
18. See Royal Commission, *Minutes of Evidence* (3 vols) and *Report* (London: HMSO, 1912), 126. The recommendation was ignored.
19. Royal Commission on Marriage and Divorce, *Report 1951–1955* (London: HMSO, 1956), 120–1. Recommendation also ignored.
20. Observation regarding the lack of extensive examination of petitions is made by Jennifer Aston in 'Petitions to the Court for Divorce and Matrimonial Causes: A New Methodological Approach to the History of Divorce, 1857–1923', *Journal of Legal History* 43, no. 2 (2022): 161–86, 164. Aston found only two scholars who have made a broad study of J

77: legal historian Danaya C. Wright and social historian Gail Savage. An early paper by Savage based solely on Royal Commission data—'The Operation of the 1857 Divorce Act, 1860–1910, a Research Note', *Journal of Social History* 16 (1983): 103–10—was unable to comment on the practice of claiming damages.

21. Wright, 'Untying the Knot', 908, 971–4, 1007.
22. Aston, 'Petitions to the Court', 184.
23. Available at https://www.britishnewspaperarchive.co.uk/.
24. Available at https://www.ancestry.co.uk/search/collections/2465/. The database can be browsed to view files by case number. Every 20th file in each sequence was taken for consistency with Savage, 'Wilful Communication'.
25. Aston, 'Petitions to the Court', 164–5.
26. Ibid., 166. In Gail Savage, 'They Would if They Could: Class, Gender, and Popular Representation of English Divorce Litigation, 1858–1908', *Journal of Family History* 36, no. 2 (2011): 173–90, it is noted that cases involving aristocrats and theatrical performers were 'substantially over-represented' in the press (176).
27. For explanation see articles cited at n.8 and also John M. Biggs, *The Concept of Matrimonial Cruelty* (London: Althone Press, 1962). It is noteworthy that in this sample cruelty was the most common aggravating factor, featuring in 70% of all women's petitions; and that in 19 of the judicial separations (17.8%) the single marital offence alleged was adultery which would have entitled a man to a full divorce if proved.
28. Geary, *Law of Marriage*, 260; Wright, 'Tying the Knot', 973. Wright's observation is disputed by Kha who states that claims only went into decline by the 1920s ('History of Divorce', 159).
29. Though Wright does not quote claims figures she does note that awards were granted in 24 out of the 441 petitions in her sample (5.4%) ('Untying the Knot', 1007). Applying the same analysis to the data in this sample shows 26 awards from 340 petitions (7.6%)—an increase of 2.2% on the earlier period—suggesting a marginal increase in popularity of claims in this later period.
30. Ginger Frost observed both the pattern of stouter defence for cases with damage claims and the difficulty of getting co-respondents to pay in '"Vindictiveness on Account of Colour"?: Race, Gender, and Class at the English Divorce Court, 1872–1939', *Genealogy* 4, no. 3 (2020): 82.
31. Grisela Rowntree and Norman Carrier, 'The Resort to Divorce in England and Wales, 1858–1957', *Population Studies: A Journal of Demography* 21 (March 1958): 188–233, 189.
32. Court Files J 77/424/2927; J 77/622/18990.
33. Gail Savage makes this point in 'Wilful Communication', 45; and examines the issue further in 'They Would If'.
34. Royal Commission, *Majority Report* (London: HMSO, 1912), 44.
35. Jeffry G. Williamson, 'The Structure of Pay in Britain, 1710–1911', *Research in Economic History* 7 (1982): 1–54.
36. Classification system used is *Classification of Occupations* (HMSO, 1960) in J.A. Banks, 'The Social Structure of Nineteenth Century England As Seen Through the Census', in *The Census and Social Structure: An Interpretative Guide to Nineteenth Century Censuses for England and Wales*, ed. Richard Lawton (London: Frank Cass, 1978), 179–223. This system was used by Savage in 'Wilful Communication'. By its reckoning, the working class accounted for 55.8% of the population in 1891 and the upper-middle class only 12.1% (197). Banks acknowledges the arbitrary nature of classifying groups according to occupation but justifies it on the basis that a proportional amount may slip into either a higher or lower group. Savage describes the working classes as 'greatly underrepresented' among divorce court clientele ('They Would If', 175).
37. Rowntree analysed all petitions in 1871 and categorised petitioners as 41.4% upper- and upper-middle class; 12.7% lower-middle class; and 23.1% working-class. The remainder she was unable to classify due to occupations not being specified but inferred they were most likely to be gentry ('Resort to Divorce', 222). Even without this inference, the data in this sample [Table 2] represents a significant shift in the social class of petitioners.

38. Cretney, *Family Law*, 155.
39. Holmes quoting Justice McCardie, 'The Double Standard', 618.
40. J 77/363/956; *Times*, January 18, 1887.
41. J 77/442/3467; *Daily News*, December 18, 1890.
42. Some information in court files infers a wife's wealth. A wife was only granted alimony pending the suit if she could not support herself. Such wives, therefore, must have been without property. This applies to wives of 7 husbands awarded damages in this sample (27%) with average awards of £429.
43. J 77/614/18769; *Times*, November 23, 1894.
44. Middle-class respectability in relation to divorce is extensively discussed in Allen Horstman, *Victorian Divorce* (Abingdon: Routledge, 2016).
45. Hugh McLeod, *Class and Religion in the Late Victorian City* (London: Croom Helm, 1974), 13; J 77/678/627; J 77/506/15432.
46. J 77/331/9961; *Lloyd's Weekly News*, December 13, 1885.
47. J 77/522/158951; *Evening Standard*, March 20, 1894. Extant records do not indicate whether Mrs Herschel had any property to account for the size of the claim.
48. T.W.H. Oakley, *Divorce Practice* (London: W.P. Griffith, 1885), 12; Geary, *Law of Marriage*, 257–8.
49. F.O. Arnold, *The Law of Damages and Compensation* (London: Butterworth, 1913), 211.
50. Bennett, *Whom God Hath Joined* (Stroud: Alan Sutton, 1985, 1906), 49–50.
51. Royal Commission, *Appendices* (1912), 27.
52. It seems unlikely Oakley was wrong in saying the size of claim must be stated—he was a registrar of long-standing in the division. But as these petitions passed scrutiny, either solicitors new to the field were being shown a certain latitude by the court or Oakley was simply promoting best practice.
53. J 77/641/19545; *Pall Mall Gazette*, November 30, 1898.
54. Henry Edwin Fenn, *Thirty-Five Years in the Divorce Court* (London: Werner Laurie, 1910), 224. In *Keyse* v. *Keyse* & *Maxwell* (1886) the court's president, James Hannen, told the jury that the only consideration was the injury sustained by the petitioner which would be the same if the co-respondent was rich or poor (*Law Reports*, 26 Jun 1886 11 PD 100). Kha points out that this directly contradicted the earlier position of Justice Cresswell (*History of Divorce*, 105).
55. J 77/425/2967; *Morning Post*, January 14, 1890.
56. Kha, *History of Divorce*, 105.
57. Cornish et al., *Law and Society*, 35. Issues of recruitment and evasion discussed in Michael Lobban, 'The Strange Life of the English Civil Jury, 1837–1914', in *"The Dearest Birthright of the People of England": The Jury in the History of Common Law*, eds. John Cairns and Grant McLeod (Oxford, Hart, 2002), 173–216.
58. J 77/353/656; *Times*, June 28, 1886.
59. Under the old system, between 1770 and 1850, half the 143 damages actions resulted in awards of £1000 or more, with seven being between £10,000 and £20,000 (Wright, 'Untying the Knot', 973). Any suggestion that employing a special jury (at a guinea a day per man) necessarily increased the likelihood of a higher award is diminished by the fact that in this sample 3 of the 7 awards of over £1000 were set by common juries and by it being a special jury that awarded the over-ambitious farrier, Mr Escott, his relatively paltry £100.
60. Underhill, *A Summary of the Law Torts* (London: Butterworths, 1873), 106.
61. Cretney cites *Evans* v. *Evans* and *Platts* (1899) as demonstrating that the jury sometimes took into account 'the resentment of a poor man whose wife has been seduced by means of the adulterer's wealth' in respect of the manner in which he 'used his wealth in gaining his end' (*Family Law*, 155).
62. J 77/401/2206; *Times*, March 28, 1899.
63. J 77/349/520; *Times*, August 7, 1886.
64. J 77/698/1228; *Evening Standard*, December 5, 1900.

65. Those with property less than £25 could petition *in forma pauperis*. Representation was free, though applicants were expected to cover their solicitor's out-of-pocket expenses—often between £10 and £20 ('Resort to Divorce', 193). Pauper cases were few (less than 15 a year according to the 1912 Commission). While Horstman comments that damages were difficult for paupers to get, citing *Richardson* v. *Richardson* in which a pauper was denied damages on the grounds that it would go straight to his solicitor and would encourage litigation (*Victorian Divorce*, 162), of the four pauper litigants in this sample, two were awarded damages and two not, suggesting no greater difficulty than for other men.
66. J 77/553/16880.
67. Data concerning custody is difficult to analyse as the court only concerned itself in this matter on direct application. For discussion of the complexities see Wright, 'Untying the Knot', 947–53.
68. Matrimonial Causes Act 1857, s.29–31.
69. J 77/456/3889; Cretney, *Family Law*, 187–8.
70. For detailed analysis of the role of the Queen's Proctor in policing divorce cases see Wendie Ellen Schneider, *Engines of Truth: Producing Veracity in the Victorian Courtroom* (New Haven, CT: Yale University Press, 2015).
71. J 77/428/3067; *Times*, November 23, 1889.
72. Geary, *Law of Marriage*, 260; Kha, *History of Divorce*, 74.
73. J 77/427/3027; *Morning Post*, January 16, 1890.
74. J 77/589/17994.
75. J 77/425/2967.
76. Matrimonial Causes Act 1857, s.21.
77. Havelock Ellis, *Studies in the Psychology of Sex: Sex in Relation to Society* (Philadelphia, A. Davis, 1911), 450–1.
78. Ascribed to decreasing sums awarded and increasing moral objections to the practice by Kha, *History of Divorce*, 159.
79. Fenn, *Thirty-Five Years*, 107; Holmes, 'The Double Standard', 617.
80. Royal Commission, *Majority Report*, 126–7.
81. Law Reform (Miscellaneous Provisions) Act 1970 c.33, s.4; Divorce Reform Act 1969 c.55.

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