

Evaluating marital stability in late-Victorian Camberwell

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It has long been common for scholars interested in the ending of marriages to highlight the gap between formal divorce and actual marital breakdown. There is ample evidence of the resort to separation, bigamy, desertion, and even wife-sale before the widening of the grounds for divorce and the lowering of the costs of obtaining one enabled more or less any marriage to be ended sooner or later.¹ In the trenchant words of Colin Gibson, '[o]nly a combination of statistical ignorance, historical incomprehension and legal disregard could set the 600 divorce petitions of 1900 against some 192,000 petitions of 1990 as evidence of Victorian family permanency'.² As this indicates, even after 1858, when a divorce could finally be obtained from a court³ the numbers granted remained low.

The literature discussing the resort to divorce in the second half of the nineteenth century has tended to focus on the barriers to divorce in this period. Considerable attention has been paid to fact that there was just one ground for divorce, that of adultery, and to the double standard that required a wife to have to prove that her husband 'been guilty 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.'⁴ Much has also been written on the costs of obtaining a divorce.⁵ In the wake of the 1857 Act the cost of a divorce had been reduced from hundreds to tens of pounds – at least where it was undefended. To the court fees and cost of legal advice had to be added the expense of

¹ See e.g. Roderick Phillips, *Untying the knot* (Cambridge: Cambridge University Press, 1991); Lawrence Stone, *Road to Divorce: A History of the Making and Breaking of Marriage in England* (Oxford: Oxford University Press, 1995), Ginger Frost, *Living in Sin: Cohabiting as Husband and Wife in Nineteenth-Century England* (Manchester: Manchester University Press, 2008).

² Colin Gibson, *Dissolving Wedlock* (London: Routledge, 1994), 3.

³ Prior to 1858 divorces could only be granted by private Act of Parliament, and the number was correspondingly very small: see Sybil Wolfram, "Divorce in England 1700-1857" *Oxford Journal of Legal Studies* 5 (May 1985), 155-186; Douglas James, "Parliamentary Divorce, 1700-1857" *Parliamentary History* 31 (June 2012), 169-189. The Divorce and Matrimonial Causes Act 1857, which conferred jurisdiction upon a new court to grant divorces, came into force in 1858.

⁴ Divorce and Matrimonial Causes Act 1857, s. 27. For discussion see Mary Lyndon Shanley, *Feminism, Marriage and the Law in Victorian England, 1850-1895* (Princeton UP, 1989); Gail Savage, "'Intended Only for the Husband?': Gender, Class and the Provision for Divorce in England, 1858-1868," ch 1 in Kristine Ottesen Garrigan (ed) *Victorian Scandals: Representations of Gender and Class* (Ohio UP, 1992).

⁵ Gail Savage "The Operation of the 1857 Divorce Act, 1860-1910," *Journal of Social History* 16 (Summer 1983), 103-110; Gail Savage, "They Would if They Could: Class, Gender, and Popular Representation of English Divorce Litigation, 1858-1908," *Journal of Family History* 36 (April 2011), 173-190.

travelling to the court in London, and more complicated cases could still cost up to £500.⁶ The *in forma pauperis* procedure offered limited financial assistance but was little used: many of those who were eligible – i.e. who owned property worth less than £25 – would still have struggled to pay the associated costs of obtaining a divorce.⁷

Against this rich literature on the barriers to divorce, far less attention has been given to the extent of the demand for divorce.⁸ Yet we cannot simply assume a constant rate of marital breakdown in earlier decades and centuries, or that breakdown necessarily resulted in a need or desire for a divorce. Divorce, after all, is not simply the ending of a relationship. It is also permission to enter into a new relationship that will be recognised by the law. If a relationship had broken down but neither spouse had any wish to repartner, there would not have been the same incentive to seek a divorce. Yet estimating the extent of marital breakdown and the demand for divorce in a non-divorcing society poses a challenge. Prosecutions for bigamy, or the documentation generated by the poor law to deal with desertion, are open to the same objection as the divorce statistics, i.e. that they do not necessarily reflect the full extent of the problem. Nor was bigamy in itself evidence of the end of a marriage: a surprising proportion of bigamists actually returned to their first spouse after facing prosecution.⁹ Conversely, focusing only on those whose marriages have broken down may lead to a skewed perspective as to how common this was.

In order to try to cast some light on the extent of the demand for divorce – both in terms of whether marriages ended in separation and whether the spouses thereafter formed new relationships – we investigated the duration of the marriages of a sample of parents living in Camberwell in the final decades of the nineteenth century. The reason for focusing on this particular period is two-fold: while we do not have the advantage of the surveys and empirical studies that began to be carried out to investigate families in the twentieth century,¹⁰ we do have the ability to trace couples through successive censuses, and ascertain

⁶ See Griselda Rowntree and Norman Carrier “The Resort to Divorce in England and Wales,” *Population Studies* 11 (1958), 188-233, 192.

⁷ Gibson, *Dissolving Wedlock*, 68.

⁸ There are plenty of studies of individual unhappy marriages (see e.g. Allen Horstman, *Victorian Divorce* (London: Croom Helm, 1985), but the intensity of demand in such cases does not tell us anything about the extent of demand more broadly.

⁹ Rebecca Probert, “Double Trouble: the Rise and Fall of the Crime of Bigamy,” (London: Selden Society, 2015).

¹⁰ In particular by Mass Observation, founded in 1937, and the Institute of Community Studies, established in 1953. See also Eliot Slater and Moya Woodside, *Patterns of Marriage: A Study of Marriage Relationships in Urban Working Classes* (London: Cassell & Co Ltd, 1951); James Spence *et al*, *A Thousand Families in Newcastle upon Tyne* (Oxford: Oxford University Press, 1954).

whether they were living together or apart. Camberwell was chosen as a case-study largely on account of the richness of the data available, but the fact that it was a parish of considerable economic diversity gives us a rare cross-section of marriages from the poorest to the (at least once) well-to-do. This is particularly important given the widespread assumption that the marriages of the poor were more fragile.

Understanding the role of spousal death and separation on those families that sent their children to poor law institutions during the late-nineteenth century also deserves investigation because most scholarship on this area focuses on other aspects of the poor's lived experiences. Recent contributions such as Price's work on the 'crusade against out-relief',¹¹ Murdoch's examination of Barnardo's *précis* books¹² and Swain's assessment of the child rescue movement¹³ all help advance our understanding of how working class families navigated their misfortune during this period. But none of them engage empirically with questions of marital stability or its relationship with the poor law.

After setting out how the sample was drawn up and describing the characteristics of the parents, we analyse their marital status and the duration of their marriages. We then focus on the small number whose relationships ended in separation and consider the extra-legal options to which a number resorted when beginning a new relationship. We conclude by drawing some necessarily tentative inferences about the extent of separation and repartnering more broadly, and the avenues of enquiry that might prove fruitful for future work in this area.

The sample of parents

The sample of 100 parents was drawn from the first author's PhD project, which focuses on the efforts of the poor law authorities to 'de-pauperise' the children admitted to their care. While many of the children looked after by the poor law authorities were orphans, most of the children who were sent to district schools had at least one living parent at the time they were handed over to the poor law authorities, and these were the children whose parents were selected to form the sample for this study. Modern commentators have started to explore this

¹¹ Kim Price, *Medical Negligence in Victorian Britain: The Crisis of Care Under the English Poor Law, 1834-1900* (London: Bloomsbury, 2015), 103-122.

¹² Lydia Murdoch, *Imagined Orphans: Poor Families, Child Welfare, and Contested Citizenship in London 1870-1914* (New Brunswick: Rutgers University Press 2006)

¹³ Shurlee Swain, "Child Rescue: The Emigration of an Idea" in Jon Lawrence and Pat Starkey (eds), *Child Welfare and Social Action in the Nineteenth and Twentieth Centuries* (Liverpool: Liverpool University Press 2001)

group and have argued that children with known parents were in fact the most common inmates in welfare institutions during this period. Murdoch, for example, claims the children of the casually poor outnumbered the parentless inmates in public and private institutions and were in fact ‘imagined orphans’, because by presenting them this way they could be reclaimed without appearing to disrupt familial ties.¹⁴ Despite the emergence of this area of scholarship, very little is known about the parents who agreed to admit their children or their reasons for doing so within the context of the poor law.¹⁵

The original source data was the records of children sent from Camberwell poor law union to the South Metropolitan School District between 1870 and 1890.¹⁶ These particular archives were initially selected because this school district housed more chargeable children than any other in England and Wales, with the union contributing substantial numbers of juvenile paupers to its care.¹⁷ It was then discovered that the paperwork dealing with the admission of the children also gave an unexpected insight into their parents’ lives. In giving the reasons for the children’s admission, it revealed whether parental death, incarceration, separation or other factors were the trigger. It thus needs to be emphasised that these were families in difficulty, and that some of them were experiencing such difficulty because the marriage had broken down. At the same time, the fact that children were admitted for a variety of reasons does mean that we can gauge the extent to which separation contributed to family crises of this kind, and from this make some inferences as to the likely extent of separation within the population as a whole. The sample of parents was created by capturing identifying information from the admissions books about individual children and using it to trace them back to their birth families. Once the parents were located, other records were used to ascertain their marital arrangements and possible causes for the intervention of the poor law authorities in cases where children were not deserted or orphaned. Census data and death records were then explored to ascertain the longevity of the parents’ marriage. For ease of access, these sources were accessed via the commercial provider Ancestry, but for those without access to this source the original sources of the data is identified in the notes.

¹⁴ See Murdoch, *Imagined Orphans*.

¹⁵ For discussion of those whose children were looked after by charitable organizations, see Murdoch, *Imagined Orphans*, 156-179; Harriet Ward, *The charitable relationship: parents, children and the Waifs and Strays Society* (PhD thesis, University of Bristol, 1990), 191-227.

¹⁶ Poor Law and Board of Guardian Records, 1430-1930 (hereafter PLBG), Register of Children Sent to the South Metropolitan School District, 1870-1890, Reference Numbers: CABG/202/001; CABG/202/002.

¹⁷ Anthony John Mundella, *Report of the Departmental Committee Appointed by the Local Government Board to Inquire into the Existing Systems for the Maintenance and Education of Children Under the Charge of the Board of Guardians* (C (1897, 2nd Series).

In the final decades of the nineteenth century, Camberwell was an area of considerable economic diversity. In 1891, Booth concluded that 33.2 per cent of Camberwell's inhabitants were living below the poverty line.¹⁸ This meant that it was by no means the poorest area of Victorian London, since in areas closer to the docks, such as Southwark, the percentage of those living below the poverty line was upwards of 65 per cent. Camberwell housed numerous middle-class families and artisan labourers who would not typically be associated with requiring relief from the poor law. The occupations of the husbands' in the sample mirror the diversity described by Booth and show that people outside the working classes might also need help following a family crisis. A number were employed in white-collar and professional occupations. Three husbands worked in the law, one as a barrister, one as a law writer, and the third as a clerk. There was also an accountant and a professor of music and calisthenics. A further seven worked as clerks for local businesses. By comparison, seventeen worked as porters, lightermen, labourers, or carmen, presumably at the docks, transporting goods for minimal wages and considerable risks to their health on a daily basis. As Schneer has shown, almost every week a dock-worker was crushed to death by heavy cargo and considerably more received non-fatal injuries that incapacitated them from future work.¹⁹ Between the white-collar workers and the unskilled labourers were a plethora of skilled and semi-skilled workers, including carpenters and joiners, box makers and brass finishers, bricklayers and brickmakers, book binders, tanners, and painters. There were also a number involved in trade: a butcher, two bakers, a greengrocer, an ironmonger, and a couple of general dealers. The range of social classes observed within this small sample thus fits within contemporary assessments indicating that 58 per cent of Camberwell could be described as falling within the working classes and the remaining 42 per cent as middle-class households.²⁰ It also shows how complex the causes of poverty were during this period and that far fewer people were immune from the possibility of poor law intervention than implied by contemporary sources. For present purposes, its key significance lies in the range of marriages that were encompassed within the sample.

Marital status and stability

¹⁸ Charles Booth, *Life and Labour of the People of London* (London: Macmillan, 1902), 30.

¹⁹ Jonathan Schneer, *London 1900* (New Haven: Yale University Press, 1999), 43.

²⁰ Booth, *Life and Labour*.

In the light of claims that many of the poor never bothered to marry at all,²¹ it is worth noting that the vast majority of the couples in this sample had gone through a formal ceremony of marriage. Setting aside the two single mothers whose desertion led to their children being admitted, there are only three couples for whom no marriage certificate has been traced. There may however be a very simple explanation as to why this is the case for John and Jane Nares and George Beilby and Catherine Lynch, since the eldest child of each couple was born outside England and Wales – Caroline Beilby in Jersey,²² and James Nares in France.²³ It is thus entirely plausible that both couples married outside England and Wales and that a record of their marriage has either not survived, has not yet been digitised, or that the names of the parties have been translated or transcribed in such a way as to elude detection. In the third case, that of Francis Kibble, there may have been an obstacle to the marriage. After the death of his first wife in 1868, the 1871 census lists him as living with three children, aged 14, 13, and 11, his niece Elizabeth Merrick, and Elizabeth's daughter Annie.²⁴ According to the baptismal registers, Annie was in fact Francis' daughter too. Ten years later, Francis and Elizabeth were listed as married, with a long string of children.²⁵ But if Elizabeth was Francis' niece they would have been barred from marrying, being within the prohibited degrees of marriage. In other words, if couples cannot be shown to have gone through a legally binding ceremony of marriage there is generally a good reason.

Nor do the marriages of the parents in this sample seem to have been marked by any significant degree of fragility or instability. Spousal death or misfortune, rather than marital breakdown, was the primary reason for a parent to send a child to the poor law authorities. The death of a spouse accounted for 45 per cent of cases, and the death of both parents for a further 4 per cent. The admission of one or both spouses to a workhouse, infirmary, or prison accounted for a further 17 per cent.²⁶ By contrast, parental separation accounted for only 17

²¹ See the literature reviewed in Rebecca Probert, *The Legal Regulation of Cohabitation: From Fornicators to Family* (Cambridge: Cambridge University Press, 2012), ch 3.

²² TNA: RG11/688, fol. 54, p. 13.

²³ TNA: RG10/303, fol. 33, p. 57.

²⁴ RG10; Piece: 738; Folio: 74; Page: 40; GSU roll: 824715.

²⁵ RG11; Piece: 688; Folio: 39; Page: 72; GSU roll: 1341160.

²⁶ PLBG, Reference Numbers: CABG/202/001; CABG/202/002; UK Census Collections for England & Wales 1881; England & Wales Civil Death Registration 1837-1915.

per cent of admissions,²⁷ while in a further 19 per cent of cases the trigger for the child's admission was unknown but does not seem to have been the result of marital breakdown.

Gender played a significant role in this context: in 75 per cent of spousal death cases, and 63 per cent of institutional admission cases, the deceased or inmate was the husband. More wives from the sample sent a child to the poor law authorities within 12 months of a husband's death than for any other reason. By contrast, the class of the couple seems to have had less of an impact on the reasons for admission: across the social spectrum, the death of, or separation from, a spouse might trigger the children's admission to the poor law authorities. Of the seven husbands whose occupation was recorded as 'clerk', two separated, two died, one was bereaved, one was admitted to the workhouse, and in the final case the cause of admission is unknown. In the case of the 17 husbands working as porters, lightermen, labourers, or carmen, their death, or that of their spouse, was the trigger for admission in five cases, and entry into the workhouse or infirmary the reason for admission in a further five. Three separated from their spouses, and in four cases the trigger for admission is unknown. In other words, the unskilled workers do not seem to have had any greater propensity to separate than the skilled or white-collar workers: those who separated included an accountant, a corn merchant, and a law writer alongside two bricklayers and a rag and bone man

In determining the longevity of these couples' marriages, duration was counted in terms of completed years of marriage – so a marriage that ended within a year would be recorded as 0. Four separate categories were considered: those where the death of one of the spouses was the trigger for admission, those where there was evidence of a permanent separation either before or as the trigger for admission, those in which one or both spouses were sent to the workhouse, infirmary or prison, and those where the reasons for the child's admission were unknown. Both mean and median durations were calculated and proved almost identical, although within each group there were always extremes.

The marriages with the shortest duration were those where it was the death of one of the spouses that had triggered the children's admission. The mean duration of these marriages was just under 14 years, with the shortest being that of William and Eleanor Deverell, terminated by her death within a year of their marriage, and the longest (at 26 years) that of Henry and Elizabeth Conway. In the longer marriages within the sample, some of the

²⁷ PLBG, Reference Numbers: CABG/202/001; CABG/202/002; UK Census Collections for England & Wales 1881-1901

children born earlier in the marriage would have grown up and either become independent or be able to contribute to the family economy but in an era in which childbearing might span a couple of decades there were still young children at home to be cared for. After Henry's death the family seem to have struggled on for a couple of years before the two youngest children were sent to the district school, with the older girls remaining at home with their widowed mother. Marriages terminated by the death of the husband tended to have lasted for a slightly longer time (a little under 14 and a half years) than those terminated by the death of the wife (just over 12 years), perhaps reflecting the early death in childhood of some of the wives in the sample.

Where the separation of the parents was the trigger for the children being admitted to the care of the poor law, the *de facto* duration of the marriage was calculated by reference to the date of admission, save where there is other evidence to indicate that the separation occurred at an earlier date. The father of Ada Lagdon, for example, had gone through a bigamous ceremony of marriage four years before her admission to the poor law, and so in this case it was assumed that this marked the end of his first marriage, no other evidence as to their date of separation being available. For this group, the mean duration of marriages was just under 15 years, with durations ranging from 9 to 25 years. Again, in these longer marriages not all of the children were admitted. The eight children of John and Annie Morgan, for example, ranged from 14 years old to just a year at the time of the 1881 census,²⁸ but only the younger ones were admitted to the care of the poor law when the family ran into difficulties in the mid-1880s.

In the smaller number of cases in which one or both spouses were sent to the workhouse, infirmary or prison, some parents were reunited after their enforced separation, some died, and some separated permanently. In the first two cases, the duration of the marriage was calculated as the time between the marriage and the death of the first spouse, which in some cases occurred some considerable date after the child had been admitted. In the latter it was calculated to the time of admission as a proxy for separation, since any post-admission cohabitation cannot be evidenced unless it coincided with the taking of the census. The marriages within this group as a whole were of significantly longer overall duration, the mean being 26 years and 6 months, but those involving death and separation were, as one would expect, shorter than those that continued after admission. A few examples will help to illustrate this. The child of Henry and Mary Ann Ball, for example, was admitted to the

²⁸ *RG11*; Piece: 564; Folio: 58; Page: 38; GSU roll: 1341128.

District School in 1887 after Henry went into the workhouse. The family was subsequently reunited and the parents remained together until Henry's death in 1927, 53 years after their marriage. By contrast, George and Emma Belville had only been together for just 10 years when he was admitted to the workhouse, and subsequently died, in 1881. Joseph and Ann Brown had been together for 14 years when he was convicted of larceny and sent to prison, which seems to have triggered the breakdown of their relationship.²⁹

The findings as to the reasons for admission highlight the precarious nature of the lives of working-class families at this time, particularly for mothers of school-aged children. The reasons parents resorted to the guardians of the union to care for their children were more complex than mere casual pauperism. Most parents not only continued to live outside the workhouse, but were also occupied in employment and led independent households.³⁰ Contemporary and modern commentators have noted that children played an important role in the domestic economies of poor families in the nineteenth century. Young children were a burden on time and finances, which school-aged children could help alleviate through casual work and childcare assistance. This familial dynamic was substantially disrupted during the 1870s by reforms such as the introduction of compulsory elementary education as a result of the Elementary Education Acts between 1870 and 1880, requirements for parental contributions, and the 'crusade against out-relief' which saw huge numbers of families lose access to welfare provision.³¹ School-aged children ceased to be earners or carers, which placed additional burdens on poor families, especially those led by widows or the wives of inmates. The disproportionate number of women who agreed to admit their children to the poor law authorities after the death of their husband illustrates the gendered impact of some of these reforms and implies that men whose wives were dead or institutionalised were more able to resist such measures and support their family.

There were a number of cases where the cause for admission was unknown, there being no evidence to indicate marital separation, parental death, or institutionalisation. In 19 per cent of cases both parents remained alive, together, and free of institutional care, with many of

²⁹ See further below.

³⁰ PLBG, Reference Numbers: CABG/202/001; CABG/202/002; UK Census Collections for England & Wales 1881.

³¹ Mary Mackinnon, "English Poor Law Policy and the Crusade Against Outrelief," *The Journal of Economic History* 47 (September 1987), 603-625.

their other children – generally those under or over school age – in the home.³² In the absence of direct evidence as to the reasons for admission some inferences may be drawn from the reasons given by parents agreeing to send their children to charitable agencies such as Barnardo's and the Waifs and Strays Society during this period. The most common reasons were usually insufficient earnings due to loss of employment or housing crises.³³ Shortages in adequate and sanitary housing were a real problem for many families in London during this period and may easily have contributed to the decision of some parents to send their children to poor law schools, which provided more safety and stability. Where it has not been possible to trace the parents after the date of the children's admission or where they were traced but were living separately, the duration of these parents' marriages has been calculated by reference to the time between the marriage and the admission of the children. Where the parents can be shown to be living together in subsequent censuses, the duration has been calculated by reference to the time between the marriage and the death of the first spouse. Significantly, the marriages of these parents were the longest lasting within the sample, with a mean duration of 32 years. This is almost identical to the average duration of 33 years of marriage estimated for a woman born in 1860 and marrying in 1886.³⁴ Some, of course were significantly longer: two couples lived to celebrate their golden wedding anniversary and several more were only a couple of years short of this milestone.

Life after separation

Tellingly, but not surprisingly, none of the couples in this sample were formally divorced. Our sources do not disclose whether the couples in our sample had attempted to legitimate their separation by less formal means, such as the new separation orders that were available in the magistrates' courts, or an agreed separation. But we can trace what happened to a number of them after their separation. In five cases, one or both of the spouses went on to marry while the other was still alive. In three cases it was the wife who remarried. After John and Marion Clampitt separated, John went back to his birthplace in Devon and Marion went through a second marriage ceremony with Henry Bates in 1891. Elizabeth Carlo similarly married again in 1886, while her husband was recorded as being an inmate of the workhouse

³² PLBG, Reference Numbers: CABG/202/001; CABG/202/002; UK Census Collections for England & Wales 1881-1901; England & Wales Civil Death Registration 1837-1915; PLBG, Camberwell and Woolwich Workhouse Admission Records.

³³ See Murdoch, *Imagined Orphans*; Ward, *The charitable relationship*.

³⁴ Gibson, *Dissolving Wedlock*, 117.

in the subsequent census. And Annie Morgan, the wife of a carman, went through a ceremony of marriage with Thomas Dodwell in 1891, after her children were admitted to the district school in the mid-1880s. All three women used their first husband's surname when they married, and the marriage registers that have been traced for Elizabeth and Annie show that they described themselves as widows.³⁵ By contrast, when George Lagdon married Emma Rutland in 1885, he described himself as a bachelor. The last of the remarriages was that of James Solly, who went through a second ceremony in 1901, thirteen years after his son had been admitted to the poor law. He was the only one out of the five to be prosecuted for bigamy, being tried at the Old Bailey in 1903 and acquitted on the ground that he had no reason to believe that his wife was alive in the seven years prior to his second marriage.

While the sample is small, it does raise a number of interesting questions as to which cases of bigamy were detected and prosecuted, and why. Women formed only a small minority of those prosecuted for bigamy at the Old Bailey in this period, and an even smaller minority of those convicted. In the last two decades of the nineteenth century women accounted for just 16 per cent of those accused of bigamy, but they accounted for 31 per cent of those acquitted in the 1880s, rising to 37 per cent in the 1890s. Yet it needs to be asked whether this was because women were less likely to remarry bigamously, or less likely to be prosecuted for the offence.

All of the five had chosen a location for their second marriage that was at some distance from their first, and Elizabeth Carlo was the only one who celebrated both marriage ceremonies on the same side of the river. The distance between their first and second marriages, and even their possibly strategic use of London's north-south divide, was very similar to that of those who were detected and prosecuted at the Old Bailey.³⁶ The marriage certificates that are available indicate that those second marriages were preceded by the publicity of having the banns called, rather than by the more expensive but private licence, or giving notice to the Superintendent Registrar. The efficacy of banns as a means of publicising the marriage and enabling any objections to be voiced did of course depend on those attending the church on the three Sundays when the banns were called being acquainted with the spouses-to-be, being aware of their previous marital history, and being willing to voice an objection to the

³⁵ LMA, Church of England Parish Registers, 1754-1931; *Reference Number*: p73/emm/020.

³⁶ Probert, "Double Trouble".

marriage. And while the banns were meant to be called in the parish or parishes where the parties resided, having the banns called in a more distant parish did not invalidate the marriage. Contemporary commentators complained about this misuse of the law, but as long as there were clergymen willing to marry couples without checking exactly where they were resident this remained a relatively easy means of marrying without attracting too much notice. In any case, short of the clergy visiting the addresses given to them by the bride and groom, it was impossible for them to know whether either was actually resident in the parish: many couples simply gave a fictitious address when they wished to be married in a particular parish.

In considering why some individuals were prosecuted for bigamy and others not, the defences to the offence also need to be considered. James Solly's case underlines the fact that although a second marriage during the lifetime of one's first spouse is always void, it is not always bigamous. Under the Offences Against the Person Act 1861, it was a defence to show that the accused had neither seen nor heard of their spouse during the seven years before the second marriage and had no reason to believe that they were alive. It was up to the prosecution to prove that the first spouse was alive at the time of the second marriage, and that the accused positively knew that they were alive during the previous seven years. The cautious response to marital separation was therefore simply to wait and to marry once there was no risk of prosecution. It seems, however, that none of the three women in this sample had waited that long, unless their husbands had left them some years before the children were admitted to the district school.

A further defence was added in the case of *R v Tolson* in 1889.³⁷ Mary Tolson's first husband had been bound for America, and it was reported that he had been on a ship that went down with all hands. After a decent interval Mary remarried, only to find that her first husband was still alive. The court felt that she had remarried in good faith and it was accordingly held that someone who reasonably believed their first spouse to be dead could not be convicted of bigamy if they remarried within the seven-year period, since they lacked the *mens rea* to commit the crime. If Marion, Elizabeth, and Annie genuinely believed their husbands to be dead at the time of their second marriages then they would have had a good defence to any charge of bigamy even if the statutory seven years had not passed.

³⁷ (1889) 23 Q.B.D. 168.

Even if they had no such defence, the risk they were running was not a particularly great one. While the Offences Against the Person Act stated that bigamists could be imprisoned for up to seven years, in practice it was only the most egregious cases of multiple bigamies, deception and fraud that resulted in sentences of this length. None of the 27 women convicted of bigamy at the Old Bailey in the 1880s received a sentence of more than six months, and almost half of them were sentenced to less than a week. The more lenient treatment of women was even more marked in the 1890s, when only 22 women received any prison sentence at all, 19 of them (86 per cent) for less than a week. A further 18 were convicted but simply bound over.

Given this combination of the increasing burden on the prosecution, the new defence to bigamy, and minimal sentences, individuals would have had to have had good reason to prosecute. In the case of James Solly, it was his second wife who prosecuted. Her evidence suggests that she did so at least in part to free herself from an unhappy union, referring to quarrels and ill-treatment and telling him under cross-examination, 'it was starvation to live with you, you called it misfortune, and I had to go out to work to keep the place together.'³⁸ By contrast, the poor law officials who pursued men for desertion and uncovered their bigamy as a result may well have been willing to turn a blind eye to second marriages that kept women and their children out of the workhouse. In this context it may be significant that all three of the women in the sample who remarried had at least some of the children from their first marriages living with them and their second husbands. By contrast, neither of the two men had any children from their first marriage living with them. Indeed, George went on to have four children in swift succession with his second wife Emma.³⁹ The children from George's and James's first marriages remained with their mothers. In such cases, if the women fell on hard times and claimed relief from the parish, officials would have had an incentive to pursue the husband for desertion and failure to maintain, which could lead to a bigamous relationship being uncovered.

In any case, the very fact that these individuals chose to go through a formal ceremony of marriage is significant, suggesting that they wished to have some sanction for their

³⁸ Old Bailey, 22 June 1903.

³⁹ TNA; *Census Returns of England and Wales, 1891*; RG12/1081; Folio: 144; Page: 27.

relationship.⁴⁰ By contrast, only two of the separated parents are known to have lived with a new partner without going through any ceremony of marriage. Julia Stillwell began living with James Wakeley and had three children with him by the 1891 census; ten years later he was recorded as James Stilwell and this name was duly recorded on his children's marriage certificates. Hannah Bland, meanwhile, went into domestic service and her husband began a relationship with first Mary Ann and then Elizabeth. No marriage records have been traced for any of these unions, and the fact that Elizabeth was described as a 'housekeeper' in the 1911 census – the first to ask specifically about the length of time a couple had been married – suggests that there was no ceremony in this case at least.⁴¹

In the remaining six cases where it is known that the parents' separation was the trigger for the child's admission to the workplace, the evidence as to their life post-separation is less conclusive. Richard and Elizabeth Docker were each traced to separate addresses in the censuses after their separation, as were Charles and Etheldred Connell, the latter having the care of their children and describing herself as 'married' while Charles claimed to be single. Two further couples, Stephen and Mathilda Corbett and Edward and Frances Herbert, do not seem to have repartnered either but the gaps in the record mean that it is possible that there were other relationships that have not been traced. In the final cases it was only possible to trace the spouse with care of the children: Alice Draper and Sarah Ann Glover both took their children to live with their own mothers and continued to describe themselves as married, but the whereabouts of their husbands cannot be verified. It is possible that they changed their names to begin a new life with less risk of being detected.

In four further cases it is unclear whether it was separation or the death of a spouse that triggered the children's admission to the district school, since one spouse simply disappears from the records. In none of these cases was there any evidence of the remaining spouse repartnering. Alongside these cases of marital breakdown there were a number of cases of enforced separation where one spouse was admitted to the infirmary or workhouse or sent to prison. As noted above, the marriage of Joseph and Ann Brown broke down after he was convicted of larceny in 1890. She was described as a widow in the 1901 census, but Joseph

⁴⁰ On the relative rarity of long-term cohabitation in Victorian England, see further Probert, *The Legal Regulation of Cohabitation*.

⁴¹ Although 'housekeeper' did not always denote a cohabiting relationship: see Rebecca Probert, "A Banbury Story: cohabitation and marriage among the Victorian poor in 'notorious Neithrop'," *Cake & Cockhorse*, 19(1) (2012), 2-17.

was still alive and went through a ceremony of marriage with his second wife in 1902. This apart, enforced separations were rarely permanent. In a couple of cases the husband died, but in the rest the families were reunited. In other words, in only a minority of cases of voluntary separation did couples repartner, and in the majority of cases of enforced separation the couples were reunited.

Conclusion

Tracing the lives of these parents has provided an insight into informal separations in late-Victorian London. Within this particular sample of families in crisis, only a minority of admissions to the poor law were occasioned by the separation of the child's parents. Moreover, the profile of those separating was rather different from those divorcing today: the mean duration of marriages ending in separation was longer than the mean duration of marriages ending in divorce today. This is not to deny that many more marriages broke down than were ended by divorce, but the level of breakdown even in this sample was considerably lower than the 42 per cent of marriages that break down today. Moreover, given that this sample was specifically selected as involving parents who had undergone some kind of family crisis, the true levels of marital breakdown across Victorian society more generally are likely to be even lower. The fact that the parents in the sample – and in particular those who separated – were drawn from such a range of occupations also raises questions about the common assumption that the poor were more likely to separate. It is also significant that those who repartnered generally tried to ensure at least the appearance of legitimacy by going through a second, if bigamous, ceremony of marriage: clearly, marriage did matter to the Victorian poor.

It has also provided an insight into the extent to which spousal death or separation prompted the admission of children to poor law institutions, in contrast to the usual narrative about neglectful or inadequate parenting. The findings of our study illustrate how even formerly comfortable families might be plunged into crises by the death of the main breadwinner, and help us to understand how voluntary and forced spousal separations affected parental decisions to institutionalise children, particularly for mothers. These types of decisions provide additional examples of the 'economy of makeshifts' concept used by modern historians to help explain poverty and mechanisms of relief as on-going processes rather than

static events.⁴² Children were often admitted to poor law schools following marital crises at the request of a parent because it was the best coping strategy in the face of amendments to the law such as intense welfare restrictions and compulsory education measures.

Of course, given the small size of our sample, any conclusions can only be tentative. Nonetheless, the methodology we have employed does illustrate the rich possibilities that have been opened up by the greater accessibility of census data and marriage records through genealogical websites. Undertaking longitudinal studies whereby cohorts of married couples are followed through successive censuses enables us to replace speculation about the extent of marital breakdown with data. It is through piecing together small-scale studies of this kind, that we can start to build up a picture of the true levels of marital breakdown within Victorian society. Only then can we evaluate the impact of the other constraints on obtaining a divorce in this period.

⁴² Stephen King and Alannah Tompkins (eds), *The Poor in England 1700-1850: An Economy of Makeshifts* (Manchester: Manchester University Press 2003), 1-38.