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Shaking the foundation: Reform and extension of the laws of divorce in England, 1850–1937

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SHAKING THE FOUNDATION:
REFORM AND EXTENSION
OF THE LAWS OF DIVORCE IN ENGLAND, 1850-1937

by

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A THESIS SUBMITTED
IN PARTIAL FULFILLMENT OF THE
REQUIREMENT FOR THE DEGREE

MASTER OF ARTS

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SHAKING THE FOUNDATION:  
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of Divorce in England, 1850-1937  

Arvelle Brannon Oliver  

ABSTRACT  

The Royal Commissions on the Laws of Marriage and Divorce, 1850-1853 and 1909-1912, are the foundation of this survey of changing public and parliamentary attitudes toward marriage and divorce in England.  

Religious opinion carried great authority in the 1853 Commission and the parliamentary debates which produced the Matrimonial Causes Act of 1857. This Act formalized the traditional Parliamentary procedure for divorce, and also legitimized the double standard of sexual behavior.  

After 1857, religious objectors to reform steadily lost ground, so that in 1912 they carried no weight with the Commissioners and did not, in the end, prevent further extension of the laws of divorce.  

The public was always divided over the issue, but the evidence shows a growing majority in support of equal grounds for women as well as extended grounds for both sexes as the century progressed. Changes in other areas of law, especially property law, made the double standard ever more contradictory to the advancing status of women in English society.
ACKNOWLEDGEMENTS

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INTRODUCTION

Some Characteristics of the Victorian Family

If one had to select for some time capsule just one photograph with which to evoke both the essential fabric of Victorian society and its self-image, there could surely be no better choice than a snapshot of the family...¹

It is difficult to overemphasize the Victorian obsession with the family. The Victorians believed that the family was the foundation and center of their society and that the welfare of England depended on its continuing stability. The peaceful, well-ordered home was crucial to Victorian self-confidence² and bolstered their sense of superiority. The Victorians described themselves as a domestic people and plainly considered this their greatest virtue.³ It should not surprise us that forming a family was expected of every Victorian, especially women, and was sometimes regarded as a duty to the State.

The ideal Victorian family was organized around the "natural" authority of the husband.⁴ Paternalism, the "dominant social outlook", permeated English society from the House of Lords to the lowest hearth.⁵ The heads of households
were viewed as parties to the social contract, which formed the State.6

Victorian patriarchy meant that men were responsible for forming and supporting families,7 and women were responsible for caring for the home and keeping the family together.8 For women, getting married meant "the acquisition of an 'establishment'" for which she was responsible and in which she had some freedom, perhaps more than she had had in her parents' home. Marriage gave men a respectable sex life, freedom from certain worries such as provision of food and other comforts, "a decorative symbol of achievement, and, perhaps most important, a solidity and status which society approved."9

Men described the ideal home, especially before the 1870's, in treatises like John Ruskin's Sesame and Lilies and Of Queens' Gardens. Victorian women were then expected to make these ideals a reality. The home should be a place of refuge, filled with calm certainty, "reliable values, and unchangeable solidity".10 It was the wife's responsibility to make her home as attractive and comfortable as possible, so that her husband would enjoy being at home and would be proud to have guests.11 The wife and the home reflected the husband's social and economic status, and the wife's purpose and duty was to assist her husband in his social image, keep
his home as a refuge for him, and raise his children as excellent citizens of the State.

The home was the first and most important school, where English children learned respect for authority along with the skills, behavior and expectations appropriate to their social and economic status. At home the English taught their children what it meant to be English: that is, respectful of tradition and order.

The Victorian family displays some of the contradictions that, as some historians have noted, typified Victorian society. The Victorians believed, on the one hand, that the family was a natural structure that existed before any political forms like the State. They believed that men and women desired marriage and children. On the other hand, the Victorians also believed that unless the family was surrounded by walls of tradition and law it would simply unravel. Nowhere is this more clearly demonstrated than in the history of the laws of marriage and divorce.

The Catholic Church had assumed authority over marriage as Christianity spread across Europe. Marriage became one of

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* See Wohl, p. 14: "...it has now almost become a truism to talk of Victorian society as an amalgam of contradictory forces...", and G.M. Young, in Wohl, p. 11: the rushing advance of Victorian society was a movement outwards from "a stable and fortified center"--that is, the home.
the seven Sacraments. Catholic doctrine absolutely forbade divorce, although it was not impossible to obtain a decree of nullity due to the long list of forbidden degrees of affinity. The Protestant Reformation inspired new attitudes toward marriage, restored its regulation to the civil authorities and created laws for divorce in all the participating countries except England, which had not fully accepted the idea of marriage as a civil contract and thus had not created civil laws for divorce. However, the English had rejected the Catholic loophole of nullity that had made the Catholic doctrine of indissolubility merely doctrine rather than reality. In England, unlike Protestant countries on the Continent, the Church retained a large amount of control over marriage. The Ecclesiastical Courts in England, largely untouched by the Reformation, granted separations from bed and board, but no absolute divorce. Even after the privilege of Parliamentary divorce was well established, every person seeking divorce had to go the church courts first, with those who could afford the fees involved in a Parliamentary divorce obtaining the privilege of marrying again. Lord Roos’ divorce will illustrate.

In 1666 Lord Roos obtained a separation in the ecclesiastical courts on grounds of his wife’s adultery. He then petitioned Parliament for a special Act which would
declare Lady Roos' children illegitimate and allow him to marry again. He argued that he could not be sure of the paternity of her children and that he needed a legitimate male heir to inherit his titles and land. Parliament allowed the exception on the grounds that it was very important that property be passed on to an heir whose parentage was above question. The Roos case set a precedent that quickly became the established procedure for what historians later called the three-step process of Parliamentary divorce.

In 1753 the Lord Chancellor sponsored legislation that reduced the authority of the Church in matrimonial cases. Lord Hardwicke's Marriage Act, as it was called, set down rules to define a binding marriage. It invalidated many forms of clandestine and irregular marriages\(^b\) that the Catholic Church, and its heir, the Church of England, had long recognized. The end result was that marriage now had a definite civil character and became a public contract defined by the State.\(^a\) One result of the Act was that some marriages were annulled if shown void according to the Act, thus

\(^b\) According to the doctrines of the Catholic Church, all that was necessary for a legitimate marriage was the exchange of vows between two people of age: 12 for girls and 14 for boys. Neither witnesses nor written evidence was necessary. The upper classes resented the fact that their children could contract these secret marriages (hence the term 'clandestine'). Irregular marriages were the period equivalent of our common law marriage.
allowing both partners to marry again. The very severity of the Act gave some people an escape from their marriages.\textsuperscript{15} \footnote{Stone, p. 77: "The landed classes had brought upon themselves the deep tensions that surrounded clandestine marriages. On repeated occasions, the House of Lords had promoted bills to render them insufficient for all purposes; but the Commons [where the younger sons were placed (p. 43)] had as regularly refused to accede."}

This step toward judicial control of marriage was the first move in England toward full State control of marriage and divorce. Parliament continued to grant divorces, and gradually for reasons other than "legitimate descent of property". While adultery remained the only ground for divorce, people came to believe that marriage was more than a system to determine patrimony; it should also provide happiness and home comfort. Adultery threatened that happiness and comfort, and a man could obtain a divorce whether or not the couple had any children.\textsuperscript{16}

The quickening pace of industrialization meant that English society was changing with equal speed. The increasingly successful and respected middle class married for different reasons than the aristocracy. For the middle class, property was becoming less important than individual choice, since their wealth was in easily transferable capital rather than land attached to titles.
Within marriage, however, women had no legal or political power. Prior to 1870, the date of the first Married Women's Property Act, married women could not vote or hold any property and they had no rights to their children. Nor did they share the privilege of divorce: of the over 300 Parliamentary divorces before 1857, only four were granted at the request of a wife. By 1820, the number of petitions before Parliament was large enough that members began to complain about the time it cost to deal with them. To some citizens the numbers had become an embarrassment. These people made divorce a subject of public debate because they felt that divorce was becoming too popular, and was contributing to immoral behavior. There was some evidence to support their attitude: in the thirty years between 1770 and 1800 there were twice as many divorces granted by Parliament than in the seventy years prior to 1770.

Divorce was one of the most controversial topics in England in the entire 19th century, because it so directly affected the foundation of society. It was seen as a direct threat to the family, which was also threatened by increasing economic and political changes.

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*Stone, p. 52. Stone writes that economics determined people's marriage patterns; people married only when they could set up a house worthy of their social status, which (continued...)*
The Victorians never cowered from reform. They wanted to make their society as good as it could be, which they believed involved reform. However, the very existence of divorce seemed to indicate to them that their entire society was failing. The debate began because people felt the need for reform; the problems began when they discovered that they had no "conservative substitute" for the Parliamentary system. Their dedication to preserving the family can be seen in this passage from Sir Alexander Patterson's *Across the Bridges of Life by the South London Riverside*:

...So strong is the belief in this family life as the key to true English happiness, so intense the desire to retain it throughout the land, that it has become usual to test each social or economic reform that is advanced by calculating its effect upon this national characteristic.

This was certainly the test for divorce reform, "...a subject of so much importance, coming home, as it were, to everyone's fireside..."
CHAPTER ONE:

The Royal Commission on the Laws of Divorce, 1850-1853

Late in 1850, seven men received a Commission from Queen Victoria to investigate the workings of the divorce laws of England. Of these seven men, six have entries in the Dictionary of National Biography; they were important, influential men, and this indicates the importance attached to this debate then raging in England.

Five of the Commissioners were lawyers, three of these were Queen’s Counselors. Three had served or were then serving as judges. Five were members of Parliament; two were raised to the peerage and thus served in both houses of Parliament. Four are described as "liberal", and seemed to have been more closely connected to that group than to any other. Two eventually served as Lord Chancellor.²³

Five of the seven were married, and four had children. It is interesting to note that Lord Redesdale, the one Commissioner who did not sign the report, never married and was firmly against reform of any kind; in fact, he recommended
in his dissenting opinion that Parliament stop granting divorce bills altogether.

The purpose of the Commission, which sat for two years, was to review the laws of England concerning divorce and matrimonial causes, particularly the methods of obtaining a divorce a vinculo matrimonii, that is, divorce with permission to remarry. The Commission heard only a few new witnesses, and the bulk of the evidence is reprinted from testimony given before a Select Committee of the House of Lords in 1844 by Stephen Lushington, then a judge in the Probate and Admiralty Court. His testimony concerned procedures of divorce.

The Commissioners sought to determine the difference between divorce a mensa et thoro (divorce from bed and board, or, a judicial separation,) which they called "partial divorce", and divorce a vinculo matrimonii (divorce with right of remarriage), which they called "total divorce". The Commissioners regarded partial divorce, or a separation, as a temporary arrangement provoked by unacceptable behavior by one spouse. A separation meant that the aggrieved spouse was not required to live with or have other marital relations with the offending spouse. Reconciliation was considered a foregone conclusion, because the offended spouse was supposed
to be forgiving, and because English tradition viewed marriage as indissoluble except in the case of the wife's adultery. A separation affected only the moral obligations of the parties; it did not alter any arrangements regarding property, (more evidence that it was considered temporary). Wives as well as husbands could obtain a separation, and the grounds for separation--adultery, cruelty, and incest--were the same for both sexes. In 1850, however, fewer women than men were applying for separations, because in reality wives rarely sued successfully on grounds of cruelty, since English law allowed husbands to physically punish their wives. A statement by the husband that the wife "deserved it" was often defense enough for treatment that today we consider inhuman. Wives suing for a separation on grounds of adultery were asked to forgive their husbands rather than separate from them due to the double standard applied to sexual behavior, which did not consider male adultery a threat to marriage.

"Total divorce" was of greater concern to the Commissioners. In this debate they were careful to point out that the common law of England agreed with the canon law of the Anglican Church. The reasons for divorce were "purposefully limited to a few extreme and specific provocations". The preservation of marriage should be the
first goal of any law, since this was "manifestly essential to the best interest of society".  

Strictly speaking, there was no law to grant divorce in England in 1850, but it was generally agreed that when a wife committed adultery it was "consonant to reason and religion" that the marriage be dissolved, "...so Parliament has stepped into the gap left in the general law, and will pass 'a particular law in favour of those who can make out a case which will warrant its interference.'"  

The procedure to obtain this Parliamentary relief was formalized in 1798 by Lord Chancellor Loughborough Resolutions, which set up the three-part procedure for divorce in place at the time of the Commission. It followed the steps Lord Roos and other members of the aristocracy had used in successful cases: (1) divorce a mensa et thoro obtained in an Ecclesiastical court, (2) a criminal conversation suit won in Consistory Court, and (3) the bill for divorce a vinculo matrimonii in Parliament. Also, instead of the entire House hearing each case, a committee was organized to take care of divorce bills.  

Two witnesses were required in the ecclesiastical court, and proof was required that there was "no contrivance by which the parties are endeavoring to escape their solemn obligations to themselves and their children." Absolute proof of
misconduct was required in a trial of divorce. Mere confession of guilt was not enough—"the law will not suffer it [divorce] to be obtained on the sole confession of the parties themselves"—because to the Victorians it reeked of collusion, an agreement between both spouses to end the marriage without defense or challenge. The final, and for some spouses, the fatal, block to obtaining a divorce was mutual guilt. If the complaining spouse was guilty of adultery and this was proven in court, the case was immediately thrown out.\textsuperscript{31}

In this light it seems that divorce in the Victorian era was seen more as a punishment for the guilty spouse rather than a relief for the injured, although in one of the biggest debates in the years following the Reformation, whether divorced people should be allowed to remarry, the House of Commons always threw out the clause forbidding the guilty spouse’s remarriage that the Lords always included in divorce bills. Commons said that to forbid women (who were guilty in all cases save four) to remarry denied them the only possible rehabilitation, and could even force the women into living with their lovers anyway.\textsuperscript{32} The innocent husband was allowed to remarry, and most often the stated reason was so that he could have a legitimate heir.\textsuperscript{33}
The Commissioners next turned to their four main points of concern: (1) causes for divorce, and on what grounds a separation or a total divorce should be granted; (2) grounds for defense; (3) terms of divorce, legal consequences of divorce, and (4) courts and procedures for hearing the cases.\footnote{William Scott Lord Stowell (1745-1836), was a very influential and excellent judge whose decisions in Admiralty were the first ever published. He was not bound by precedent and "for a generation he was rather a lawgiver than a judge in the ordinary sense..." [DNB, v. 1835, pp. 1046-1050.]}

The Commissioners felt that both men and women should continue to be able to sue for separations, and that the grounds should remain adultery and cruelty. Adultery was accepted as a ground because it all agreed that it was "a gross violation" of marriage,\footnote{William Scott Lord Stowell (1745-1836), was a very influential and excellent judge whose decisions in Admiralty were the first ever published. He was not bound by precedent and "for a generation he was rather a lawgiver than a judge in the ordinary sense..." [DNB, v. 1835, pp. 1046-1050.]} and cruelty was defined as "a reasonable apprehension of danger to life, limb, or health", because this made it impossible for a spouse to fulfill marital duties.\footnote{William Scott Lord Stowell (1745-1836), was a very influential and excellent judge whose decisions in Admiralty were the first ever published. He was not bound by precedent and "for a generation he was rather a lawgiver than a judge in the ordinary sense..." [DNB, v. 1835, pp. 1046-1050.]} Unlike adultery, however, cruelty was not such a simple discussion, nor was it easy to prove. The Commissioners saw fit to quote from Lord Stowell's Evans vs. Evans that "people must relieve themselves as well as they can [of cruelty] by prudent resistance, by calling in the succours of religion, and the consolation of friends,"\footnote{William Scott Lord Stowell (1745-1836), was a very influential and excellent judge whose decisions in Admiralty were the first ever published. He was not bound by precedent and "for a generation he was rather a lawgiver than a judge in the ordinary sense..." [DNB, v. 1835, pp. 1046-1050.]} rather, we can assume, than calling in the Courts. In other words, spouses, especially wives, because of a social acceptance of the
husband's "right" to physically chastise his wife, were discouraged from bringing charges of cruelty. The Commissioners felt that a strict and narrow interpretation of cruelty was warranted to keep divorces to a minimum. This could be related to the four Parliamentary divorces won by women prior to 1850; in two of the cases, the wife proved her husband guilty of excessive cruelty. Discouraging wives from bringing charges of cruelty would make it even more unlikely that they would win divorce. Regardless of the word "apprehension" in the Commissioners' definition of cruelty, the courts did not operate in a preventive mode, even though Judge Stowell had written, "...I say an apprehension, because assuredly the Court is not to wait till the hurt is actually done; but the apprehension must be a reasonable one..."38 This seems to be yet another Victorian contradiction; the Commissioners paid lip service to preventing cruelty, but did not encourage its prosecution. It is almost certain that the Commissioners, as well as the judges, were more concerned about accusing an innocent man that in surrendering a wife to beatings.

Divorce a vinculo matrimonii was granted only on the ground of adultery. To allow any other grounds would, the Commissioners believed, encourage collusion between spouses and threaten marriages that would otherwise have been
preserved by a sort of coercion; people who would have learned compromise and tolerance out of necessity would become enemies because they hoped to get a divorce.\textsuperscript{39}

This Parliamentary divorce was reserved for husbands, both in practice and in the opinion of the Commissioners despite the four successful suits by wives. Those four suits had been granted since 1800,\textsuperscript{40} and perhaps the Commissioners saw the beginning of a trend of which they could not approve. Only in theory could a wife petition for divorce on grounds of adultery plus cruelty, incest or bigamy. The Commissioners agreed that giving divorce to a wife would encourage adultery by a husband who would otherwise be faithful. Husbands, the Commissioners reasoned, would be tempted to commit adultery, perhaps flagrantly, for the sole purpose of goading the wife into the suit, knowing that her character could be spared while his own could hardly suffer, considering Victorian attitudes toward male sexual behavior. The Commissioners agreed with common opinion that for a husband to commit adultery was a much less grievous wrong, "socially speaking", than a wife's unfaithfulness.\textsuperscript{41}

The Commissioners argued against extended grounds for divorce because any such extension would encourage spouses to try to escape their marriages. The possibility of "easy" divorce through extended grounds would create "a separation
of interests" within a marriage, and "destroy the necessity of mutual compliance". Little quarrels would become full-blown hates. Divorce made parental duties almost impossible and usually separated mother and children, since in all but four cases the mother was guilty, and it is not surprising that the Victorians considered an adulteress an unfit mother. Custody was always given to the father, and even though under the Infant Child Custody Act of 1837 some mothers could obtain custody of children under the age of seven, this applied mainly to separations. Guilty wives were shunned by the husband's family which cared for the children, with the result that the mother was often denied access to her children.

The final recommendations of the Commissioners were:

1. Both a mensa et thoro and a vinculo a matrimonii divorce should be allowed.

2. Grounds for partial divorce should be extended to include "wilfull desertion", defined as complete absence of the missing spouse for three years. A search by the deserted spouse would help in obtaining a separation. However, if the deserter returned at any time, a reconciliation would be urged.

3. Wives could obtain a Parliamentary divorce only for adultery together with "aggravated enormity" of incest, bigamy, or "gross cruelty". The exact meaning of "gross cruelty" was left up to the individual judges.

4. Mutual guilt, condonation or collusion would invalidate the suit.
The Commissioners also recommended that a new Divorce Court be created to hear all divorce cases, partial and total. The recommendations concerning the new court can be traced in large part to the testimony given by Stephen Lushington before the Select Committee in 1844. Judge Lushington was not a fan of divorce. He said that it was shameful and unpleasant, but he also believed that it was often better than preserving the marriage, especially for the innocent spouse. He testified that common feeling about divorce (in 1844) was that it was a relatively simple procedure for men, not an extraordinary thing at all; and that in fact, men felt entitled to a divorce if they could prove the wife's adultery. The phrase "ex debito justitiae" (loosely, a debt of justice,) is used several times in the testimony.\textsuperscript{45}

Lushington also spoke about the procedures of taking evidence during divorce cases. Primary evidence was taken as a deposition prompted by a list of questions prepared by the attorney, who hoped to use the witness to the advantage of his party, and read to the witness in private by the examiner, an employee of the court. The examiner could not deviate from the list of questions. The examiner wrote down the responses and gave the witness' answers to the judge. Then the attorney for the opposing party conducted a cross-examination. The first attorney had no chance to add any questions, and as the
opposing attorney did not see the original deposition, but was "left to grope in the dark as to what answers may have been given...", his questions did not constitute a cross-examination in the modern legal sense.

The judge relied entirely on this system of questioning. He could ask no questions of his own, nor could he demand certain witnesses. There was no system to subpoena witnesses or to protect those who might be intimidated into lying or refusing to appear. Apparently it was not considered unethical for witnesses to be paid for their troubles—in fact, the expenses for witnesses were included in many records.

Lushington felt that this was an imperfect way of discovering the truth, and as a judge he felt that he could come closer to the real truth of any case if he had more control of proceedings—that is, if he could call witnesses and question them himself, rather than depend on information extracted by lawyers hampered by lack of complete access to all testimony. Lushington was certain he would have more confidence in his judgements if he could operate in this way.

The recommendations of the Commission for the new Court:

1. Cases should be heard by three judges: a Vice Chancellor, an ecclesiastical judge, and a judge from Consistory or a common law court.
2. All matrimonial cases should be heard in a civil court, thus removing them from the jurisdiction of the ecclesiastical court.

3. Overall Court procedures should resemble those of Chancery Court, thus putting aside ecclesiastical procedures, most importantly the requirement of two witnesses. Civil court required only one.

4. All evidence should be taken orally, and the judges should be given power to subpoena, examine, and cross-examine not only witnesses but the spouses as well.

5. Complaining spouse must swear on oath that there has been no collusion or condonation.

6. The Court should have "large discretion" over wife's provision and should share custody of the children in cases of total divorce.

7. The only appeal of a decision of the Divorce Court should be to the House of Lords. Appeals should be based only on procedure.

Lushington sought to dispute several common attitudes about marriage during his 1844 testimony:

Many Englishmen, like Lord Redesdale, author of the dissenting opinion, felt that if divorce were impossible it would prevent adultery, because wives and husbands would know that it was impossible for them to marry a lover. Lushington said that this was not true; rather, it was "a balanced state of circumstances" and depended on each individual case. For example, it would not prevent a husband who did not intend to leave his wife from committing adultery, while some wives would be encouraged to commit adultery if they knew their
husbands could not cast them off. Then their husbands, knowing they could not be rid of an unfaithful wife, would themselves commit adultery out of despair or cynicism. The denial of divorce, especially when both spouses were guilty, would not prevent their continued adultery and would deny rehabilitation through remarriage.⁴⁹

Another common opinion was that separations were better than divorces because separations allowed reconciliation. The people who most strongly believed this wanted to outlaw divorce and allow only separations. Lushington’s response was that separated spouses would not live celibate lives, particularly the first offender. To deny a divorce would not enforce moral behavior.⁵⁰

That the Commissioners felt obliged to reprint this evidence indicates that they agreed with Lushington, and that he had these same opinions in 1853. Nonetheless, the Commissioners did not offer substantive reform of the law. They focused instead on cleaning up procedure and getting divorce out of Parliament.

The Commissioners stated their basic satisfaction with the law on the first page of their report:

These rules are all of them founded on the soundest wisdom; and though they may require some little modification,...we conceive that in substance they ought to be maintained.⁵¹
This attitude seems to be at odds with the debates, both public and Parliamentary, that indicated requests for reform and inspired the appointment of the Royal Commission. In fact, it follows closely the belief that indissolubility was the key to good marriage.
CHAPTER TWO:


The House of Lords debated a Divorce and Matrimonial Causes Bill in 1854 to no conclusion; it was withdrawn after the second reading, and the subject was kept from Parliament's attention because of the Crimean War until 1856. That year a very similar bill was passed and sent down to Commons, where it was allowed to die with the Session, having been read only once.\(^5^2\)

The next year saw the debate as heated as ever in Lords, and the bill that finally passed was equally disruptive to the House of Commons.

The debates focused on several issues, the first of which was whether or not divorce should be allowed in England;\(^5^3\) the

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\(^5^2\) Parliamentary Debates, 134, p. 1, 1440. The Lord Chancellor withdrew the Bill after three days of debate because the government had abandoned his Testamentary Jurisdiction Bill, which he considered necessary to the success of the Matrimonial Causes Bill because it transferred jurisdiction over testamentary and matrimonial cases from the ecclesiastical courts to Chancery (pp. 1436, 1437; 1439-1440).
clergy were divided on this point,⁹ but those who spoke in Lords (the Bishops of Oxford and Exeter being most vocal) felt that the majority of the clergy did not sanction divorce. The Bishop of Oxford, supported by Lord Redesdale, conceded that divorce was not strictly forbidden by the Scripture, but both were adamant that wives not be allowed to sue for divorce.⁵⁴ These men also insisted that divorce was not part of the law of England,⁵⁵ and that the mere fact should be authority enough to defeat the bill.⁵⁶ They argued that divorce as a legal remedy, a judicial remedy, rather than a privilege from Parliament, would create severe moral problems and would eventually destroy the sanctity of marriage in England.⁵⁷ People who would had never dreamed of divorce would flock to the new court, and they would complain if it were expensive. Because the new Court would centralize all matrimonial jurisdiction in London,⁵⁸ people who had previously been able to obtain a separation in their local court would have to travel to London, which, because of the cost of food, travel

⁹ The Bishop of Oxford stated that he had never said whether Scripture allowed divorce, or whether Church law allowed divorce; nor had he said that marriage was not a civil contract. This is representative of the indecision of most clergy. (Parliamentary Debates, v.143, p. 247.) In Commons, the Attorney General described the Scriptures as "an insuperable impediment to the passing of this bill" because no two people seemed to agree what the verses meant, or even which translation was authoritative.
and lodging, would put separations and divorce out of reach of the poor, thus retaining one of the major criticisms of Parliamentary divorce: one law for the rich, another for the poor. The Bishop of Oxford feared that the Bill "would tend to set class against class", and other opponents of the bill feared that those shut out of the Court would protest, and Parliament would be forced to amend the law. The end result would be that the County Courts would finally be given authority to grant divorces, and opponents insisted that county courts were unfit to hear such cases. Parliament and the courts would then lose control over procedure, and people would be divorced for the most frivolous reasons imaginable.

Those members on the other side of the argument insisted that the tradition, contrary to the bishop's and Redesdale's opinion, was to give divorces to husbands who could prove their wives' adultery and at once show their own innocence. This bill, the Lord Chancellor said (every time he spoke) did not propose to introduce new and untried legislation; it merely sought to make the law fit the practice, so that Parliament would be freed from the embarrassing duty and so that the process of divorce would be cheaper and more efficient.

Redesdale's response was to insist that the public did not want the bill--did not want to be able to get a divorce.
As things now stood, he said, the poor understood that divorce was a privilege of the rich, because divorce cost money; but only give it to a common court, and the people would expect it, like all other laws, to be available to every man in England. Another member believed that the poor should not be allowed to divorce, because it would cause "fearful" immorality among the lower classes. Lord Campbell disagreed— he had heard many poor people "complain bitterly of the injustice of the present law".

Here was the second point of conflict: one group opposed to the bill said that the new court would not make divorce available to the poor. The proposed reform would not solve the problem of having one law for the rich and another for the poor, and to create the court would thus give the people unreasonable expectations. The response of the Lord Chancellor was that this excuse could be held up against every law they debated; and that unfortunately, the rich always had an advantage in the courts over the poor, and that it was due to the very nature of the courts, and could not be corrected and could not be used as a legitimate opposition to this bill.

Those opposed to the reform had as evidence several petitions in opposition to the bill, especially after the bill reached Commons in 1857. Those in support of the bill
claimed that the petitions were the result of misunderstanding,\textsuperscript{75} while the lack of petitions in favor of the reform showed confidence in its ultimate passage.

The second major debate focused on the grounds for divorce. Should there be grounds other than adultery? Should wives have equal rights in divorce court? The Royal Commission had recommended that wives be granted divorce for adultery aggravated by incest, bigamy and desertion, while husbands could sue for adultery alone.\textsuperscript{76} There were several passionate speeches made for the injustice of the double standard,\textsuperscript{h} but the Lords and the Commons decided that the social dangers of allowing wives to sue for divorce on adultery alone far outweighed the unhappiness of wives aggrieved only by adultery. The Bishop of Oxford and Lord Redesdale insisted that the Scriptures gave wives no right to divorce under any circumstances,\textsuperscript{77} and they reminded the members that there was a great difference between the adultery of wives and husbands, socially, at least. Lord Campbell said that the adultery of wives destroyed all the best and "highest purposes of marriage",\textsuperscript{78} because an unfaithful wife could bring another man's child into her husband's home, to enjoy

\textsuperscript{h} Parl. Deb. v. 142, pp. 408-410, 412-418. Lord Lyndhurst was a champion of equal rights in divorce for women from the beginning, in 1854; he also supported property and child custody rights.
privileges and inherit property to which the child, particularly if it were male, had no claim.

Late in the debates, a new discussion about the conflict between ecclesiastical law and the common law arose. The clergy in Lords insisted that if the bill were passed it would make it impossible for the clergy to keep their oaths, and would make "the holy offices the merest instruments of State policy." The Bishop of Oxford asked repeatedly for an amendment to allow divorced persons to remarry outside the church so that clergymen would not have to perform ceremonies for people they considered forbidden to marry by the law of God. Lord Redesdale did not support the Bishop in this point; he said that he would not feel himself married unless the ceremony was performed by a priest. He believed that any innocent husband would feel the same, and would consider marriage outside the church "profane and degrading." Obviously the majority of the members agreed, because the amendment was not part of the final bill. In Commons, however, several members were upset by the priests' objections against remarriage. The Attorney General said that he could think of nothing more dangerous than for the clergy to be excused from upholding the law. On the other hand, there seems to have been no attempt to force priests to perform ceremonies for divorced people.
Connected with, and sometimes preceding this discussion about the personal feelings of priests was the debate over whether or not divorced persons should be allowed to remarry at all. The church generally felt that there should be no remarriages, and the Bishop of Oxford felt that adulterous wives should be specifically forbidden to marry. Most members felt that this would create an irreconcilable hardship for women, and would more importantly allow the adulterous man to easily sidestep what honor required: that he marry the woman he had ruined and separated from her husband. It seems that the members felt that a woman’s being separated from her husband and her society and friends was punishment enough without also separating her from her only chance of rehabilitation: marriage with her lover. A law forbidding the remarriage of guilty spouses would encourage men to seduce married women because there would be no risk in it.

The most complicated debate concerned the structure and procedures of the proposed divorce court/tribunal (the terms were often used interchangeably, so that sometimes it is hard to tell where certain members stood in this debate). The Lord

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1 In 1856, Lords had passed an amendment to prevent a guilty wife from marrying her lover. In 1857 the Lord Chancellor reminded the Lords that Commons had never approved such a restriction, and if they included it again the bill would be in danger of not passing the lower House. Parl. Deb. v. 143, p. 251.
Chancellor originally proposed that the new court handle only divorces _a vinculo_, and that divorces _a mensa_ be handled in Chancery. Immediately Lord Campbell wanted to know why two courts should handle such similar cases? and what would happen when the new court found that there was not enough evidence to grant a divorce _a vinculo_, but there was evidence for a divorce _a mensa_? The couple would have to go to Chancery and start all over again; the result could be a great expense, which this bill and its court were supposed to eliminate.

The Chancellor responded that the court would not be a new, independent one, but would operate as a bench in Chancery, or perhaps Probate and Admiralty; he believed that there would not be enough cases to justify creating an entirely new and separate court (especially since he intended it to deal only with _a vinculo_ divorces). Those who expected a sharp increase in the number of cases to follow the bill as law protested that unless a separate court was organized, it would not be able to handle its business, and like Chancery, would soon be plagued with backlogs and complaints. By the time the 1857 bill passed Commons, it organized an entirely separate court, and instead of the three to five judges

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1 Chancery was famous for its backlog, and several members said that it would be ridiculous to grant it further jurisdiction.
recommended by Lords, one man was given the responsibility to decide in cases of divorce a *mensa et thoro*, divorce a *vinculo matrimonii*, and child custody.

A rather minor debate, comparatively speaking, was over the property of women separated from their husbands, or deserted for 2 or more years. Very early in the debates the suggestion was made that it was unfair for an abandoned wife, who had worked hard to support herself respectably, to have no control over her earnings or property; that her husband could reappear after any number of years and seize all she had. An amendment was proposed giving abandoned and separated wives control over their property for the duration of the separation or abandonment. It also upheld the practice of granting support for the separated wife if the husband were capable of it. Several members protested that this had nothing to do with the reform, and should be considered separately, but it was included in the bills of 1856 and 1857, held over from the dropped bill of 1854.

The question of married women’s property figured more prominently in the Ecclesiastical Jurisdictions Act, the first of several bills that eventually abolished the ecclesiastical courts in England. This legislation was connected to the

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There had been a Royal Commission to review the
(continued...
Matrimonial Causes Bill because it removed matrimonial suits of all kinds from the jurisdiction of the ecclesiastical courts. In introducing the Ecclesiastical Jurisdictions Bill, the Lord Chancellor said that the ecclesiastical courts had, over the years, obtained jurisdiction over matters that were not at all spiritual in nature; in fact, only "a small portion" of their business was spiritual. The result was a long history of abuses, especially in matrimonial and testamentary cases.\(^9\)

The Ecclesiastical Jurisdictions Bill passed easily through Commons and Lords and received the Royal Assent in March.\(^1\) It contained provisions granting separate property to any deserted woman after three years, and allowing her to write a settlement of the property she had obtained during the desertion if the husband returned and they were reconciled.

Another debate, which Lord Lyndhurst and his fellows connected with the unfair status of women under divorce law, focused on the criminal conversation suit. There was a lot

\(^{9}(...continued)\)

jurisdiction of the ecclesiastical courts that reported circa 1838, which recommended that the courts be abolished. The Report was reprinted in 1844.

\(^{1}\) In fact, it passed all readings in both Houses without a single division. It passed the first reading on March 9, 1857, and received the Assent on March 21, 12 days later.
of support for abolishing this proceeding, but their arguments did not carry the weight of the Lord Chancellor's. He said that a poor man whose wife was seduced suffered the loss of valuable services in the management of his finances and household, the nurturing of his children, and his wife's wages. The members agreed that he was entitled to pecuniary compensation, and they were unwilling to abolish the criminal conversation suit without leaving some mechanism for recovering damages, even in the face of Lyndhurst's description of the criminal conversation suit as petty revenge on the part of the husband. He believed that criminal conversation suits offered some husbands an irresistible and easy way to get rid of their wives: they could simply make a deal with some unscrupulous man, and the damages awarded to the husband were afterwards given back to the partner in the woman's ruin. He himself knew of a case in which an innocent woman was in just this manner ruined. Nonetheless the members were more worried about the poor man's compensation than the possibility of this sort of collusion. In the end they combined claims for damages with the suit in such a way that allowed the judge, if he saw fit, to grant compensation and direct it to be used for the maintenance of the wife and children. The Lord Chancellor also pointed out that the new court would not require evidence from a criminal conversation
suit, and he believed that this would make the suits "very rare"."

These questions, and the way in which they were expressed and discussed, can be seen as a clash between tradition and justice. The double standard was upheld as a tradition supported by Scripture, social morality, and the security of the nation, and outweighed justice for women. The needs of women were not completely neglected, though it can be said that the members were motivated by the belief that marriage, no matter how dysfunctional, was better than no marriage at all for women, and thus voted down amendments that would prevent what they considered the only path to rehabilitation: marriage. They also felt that they were protecting women from unprincipled men who, excused by law from doing what honor required, would have no other check on their behavior. But they feared an enormous number of petitions if women were given equal consideration under the new law and they could not be convinced that women were entitled to such equality. The security and happiness of individual women were sacrificed to the perceived needs of society as a whole.

This can be seen in the final debate in Parliament, which voted down an amendment that would have made adultery in the conjugal residence a ground for divorce for the wife."
supporter of the amendment said that without it, a man could turn his house into a brothel, as long as he did not commit incest or bigamy, and his wife would have no recourse. The members opposed to the amendment said that the phrase "adultery in the conjugal residence" was entirely too vague, and would cause many problems in the courts, especially collusion; also, only extremely profligate men would do such a thing." They pointed out that the amendment would give a wife the power to divorce her husband simply because he had, while intoxicated (or in some other way not in full self-control), slept with a maid. The suggestion that the word "habitual" be added to the amendment was also voted down as vague; did it mean adultery several times with one servant, or adultery once with each of several servants? Either way, it would allow the wife to petition for what was only "accidental" adultery." Some members in Lords feared that the clause would allow wife "to entrap her husband by hiring a

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* Parl. Deb. v. 147, p. 2086. This indicates that the members thought "extremely profligate" men constituted a very small group.

* Parl. Deb. v. 147, p. 2088. This curious phrase, "accidental adultery", rests on the Victorian assumption that men tended to commit adultery on the spur of the moment, and could not be held responsible, especially if it was only once with a particular woman. Women, we can assume, committed "premeditated adultery", since they had to make plans, write letters, arrange meetings, etc.
pretty maid and observing the consequences." Stone points out that the seduction of maids seemed to be a very frequent occurrence in upper class houses, and that the Lords "were exercising prudent self-interest" in defeating the clause.  

The one most obvious point of opinion in the debates is that adultery was perfectly allowable for husbands, but not for wives. Wives were allowed to sue if the husband committed incest or bigamy, but adultery alone, no matter where or how often committed, was of no consequence to the marriage.

The 1853 Commission and the 1857 Act were not inspired by humanitarian issues of equality; in fact, Mary Shanley writes that

The proposal for divorce law reform originated quite independently of women's rights advocates and initially manifested a striking indifference to women's needs and concerns.  

The 1857 Act created the divorce court, and gave it sole jurisdiction over all matrimonial cases, with the exception of a clause allowing a deserted wife to apply to the local magistrate for an order giving her control over her wages.  

The Act also removed the ecclesiastical courts and the Church from this aspect of people's personal lives.

The result of the first reform of the divorce law in England was to legitimize the double standard of sexual
behavior, but it also allowed more women to obtain divorces. In fact, the increase in the number of divorces seems largely due to the increase in successful suits by women. Stone notes that forty to forty-five percent of divorces granted by the Court were to women: "a number of very unhappy wives were at last free to obtain full divorces and to remarry, which by law they could not do before the passage of the act." Why this is true is not easy to explain; after all, the Act did not grant women new grounds, nor did it represent new attitudes toward women. The most plausible explanation seems to be a financial one. The Court had greatly decreased the time, and thus the expense, of getting a divorce, which would have made it accessible to more people.
CHAPTER THREE

Reform and Opposition
in the Periodical Press, 1860-1910

Most Victorian periodicals were founded with a specific political agenda in mind. The magazines that published articles about controversial issues like divorce reform were all described by their publishers and editors as progressive and reform-minded, while periodicals that professed a conservative agenda tended to avoid the discussion of sensitive subjects like divorce. Few, if any, Victorian periodicals were concerned with objectivity, and the public did not expect them to be; the magazines that tried to assume a neutral posture inspired mainly confusion among readers, who were used to "violently partisan" publications.¹⁰⁹ The Fortnightly Review was one such periodical, and like others of its type, had the strange fate of becoming liberal in tone because conservative writers would not contribute the neutral articles the editors wanted to publish.¹¹⁰

On the other hand, openly radical periodicals were not financially successful; most failed to attract a readership
large enough to cover printing costs. The Westminster Review, for example, was originally supported by the Mills and Jeremy Bentham, then was sold several times at the cost of whole fortunes, not to mention friendships. 111

On the whole, the periodicals which discussed topics like divorce were not conservative. The information the researchers can glean from them is necessarily one-sided and cannot be taken as "public opinion." Neither can the contemporary reader speculate that the editors knew the public mind and chose the articles they published accordingly, because most of the magazines were not founded on the hopes of financial gain, but in order to spread a particular political philosophy.

Nonetheless, a considerable opposition to the reforms of the Divorce and Matrimonial Causes Act of 1857 found its way into the liberal periodicals, mainly in a second-hand fashion through reform-minded contributors who enumerated the opposition to their own views. They often referred to this dissent as "public opinion," which can be interpreted as a mere literary convenience on the authors' part, or it can be seen as truly indicative of the majority opinion regarding divorce in England.

The second interpretation is supported by the fact that the contributors almost always qualified their own reform
programs with arguments in favor of permanence in marriage and rarely failed to insist that their reforms were not intended to allow "easy" divorce. Indissolubility, most writers felt, had made great contributions to purity and happiness in marriage and family life. They also conceded that the divorce laws had not been entirely harmless to this domestic security. This was doubly convenient for them, because it made them less controversial while strengthening their case for further reform.

There was general agreement that the "common view" was that marriage was "properly and naturally indissoluble" and that to allow divorce was a moral crime. The writers also witnessed a loud, if not large, group who believed that divorce should be a technical crime as well. The "public" seemed to be of the opinion that the Act of 1857 had damaged the institution of marriage: one author referred to "recent articles", most likely in the many religious periodicals, which showed that Christians were concerned that the Act of 1857 was responsible for a growing disrespect for marriage and the "lax views" about divorce. The Act had created a "miasma" that was poisoning the "moral atmosphere" of England.

Protests seemed to be largely based on the belief that divorce was contrary to Scripture, or at least, this was the defense used most often by the opposition. It was also a
common theme in many articles whose authors were writing in support of the contrary interpretation of scripture that allowed divorce. The interpretations were the same ones that had muddied the debate from the religious standpoint for the entire century. The articles contained intricate discussions about the Greek and Hebrew texts, and the various interpretations of the Bible in use in Victorian England. The opinions of churchmen and Christians generally was reported to be that marriage should be dissolved only by death, even though they could present no unchallenged scripture.115

The Divorce Court was the focus of attacks by the disapproving public reported by the authors. The court offered daily, seemingly irrefutable evidence of the ruin of English family life. The newspapers published detailed accounts of the testimony that shocked and titillated many, and made people doubt that the traditional picture of domestic bliss was a reality. It discouraged young people, especially young men, the writers believed, from seeking marriage. One contributor compared the Divorce Court to Cadmus’ field of dragons’ teeth, "too scandalous to be tolerated", a place

115 In this Greek myth, a young prince searching for his sister slays a dragon, and then is ordered by a bodiless voice to hack out the dragon’s teeth and sow them in the field. At moonrise the teeth sprout an army of fierce warriors, who battle among themselves until only three are left alive. Like Cadmus, the supporters of the 1857 Act have reaped horror.
where men came to trade their wives. Soon after the Divorce Court began hearing cases, some of the Act's most ardent supporters began to wonder if they had indeed made a mistake. Lord Campbell is quoted in one article:

I have been sitting two days in the Divorce Court, and, like Frankenstein, I am afraid of the monster I have called into existence....I understand that there are now 300 cases....and there seems to be some reason to dread that the prophecies of those who opposed the change may be fulfilled... All those who wrote in favor of permanence did not use religion as the foundation, however. Some put forth simple logic, writing that "true marriage", made of spirituality, comradeship, and equality, was impossible without persistence and permanence. These writers claimed that divorce undermined the perception of marriage as a permanent institution, thus weakening unions even as they were formed.

The second point of opposition against the Act and the Court was based in the issue of equality for men and women in marriage, and was related to the idea of separate spheres. These authors believed that divorce, by making marriage impermanent, had made marriage and motherhood less than desirable, thus destabilizing English domestic life and upsetting the "proper position" of women in the family. The reforms that had given women of most classes rights enjoyed only by the nobility before 1857 had cost England an enormous
price in domestic peace. The supporters of the bill had forgotten, some writers said, that marriage, not education or independence, made the superior woman.\textsuperscript{119}

One article referred to "many hundreds of letters printed by the \textit{Daily Telegraph}" which, though written in support of an extension of grounds for divorce, adhered to "the pious tenet of the subjection of women."\textsuperscript{120}

These letters indicated that the English middle class in particular was opposed to equality between men and women, while realizing that the double standard was unfair and the law failed to relieve the problems the double standard caused. The letter-writers had no suggestions for reform because relief for men and women trapped in bad marriages could not be had without divorce, but the disruption divorce caused to their society had the Victorians at a moral impasse. The Victorians had an enormous emotional and material investment in patriarchy and patriarchal descent of property and titles that depended on the tight control of female sexual behavior. Because of this the Victorians believed that the superiority of the English race depended on the superiority of its mothers. Most of the writers seemed to feel that if women would only concentrate on being good housewives, the trouble of divorce would quickly go away.
There was a small group of contributors, Elizabeth Rachel Chapman and Alice Bodington in particular,\(^p\) who opposed divorce in any form. They supported the tradition of separate spheres and spoke against divorce by asserting that "the immense majority of women...pass into that happy land [i.e., marriage,] where the woman is queen and the man is her willing worshipper", according to "the wholesome provision of nature."\(^{121}\) It is important to note, despite this romantic language, that these women regarded marriage and motherhood as a duty, the purpose of which was to create good in the world, to teach children to be good citizens, and to create order and permanence for the security of the State.\(^{122}\) Divorce created disorder and impermanence, so they could not support it; indeed, Chapman wrote that Mill's utilitarianism was flawed because he had failed to realize the utter necessity of permanence in marriage.\(^{123}\)

It is possible that Chapman believed the reforms were the result, not the cause, of the troubles with divorce. She wrote that people were no longer willing to "endure private misfortune in the interest of the community."\(^{124}\) She believed that people did not seek divorce because of cruelty or infidelity, but simply because they had found someone they

\(^p\) I have been unable to find anything about either of these women outside of the articles they wrote.
preferred to their spouse, and she for this reason supported a law forbidding remarriage, because she believed that this would greatly reduce the numbers of divorces, and eventually eliminate divorce altogether.\textsuperscript{125} Bodington went further in believing that female chastity was a duty to the state because an unfaithful wife was incapable of creating the stable, secure home that was the foundation of peace and security in England. She also recommended that unfaithful wives be punished as criminals, but unlike Chapman, Bodington fully supported the double standard, saying that male sexual behavior was inconsequential.\textsuperscript{126}

The solution these women and others who agreed with them offered was a long-term one: "only the gradual education of the race to nobler concept of its sex-relations" would free marriage from the current social atmosphere, which they blamed for the ill-considered and loveless marriages that ended in the Divorce Court. They believed that the number of people who truly deserved to be freed from their marriages was so small that their relief did not justify the threat divorce presented to the society as a whole: divorce was "the relief of the few at the expense of the well-being of the many--the sacrifice of the State to the personal comforts of individuals."\textsuperscript{127}
The great fault of the 1857 Act, another group of critics wrote, was that it had tried to create "social law". They disapproved of its definition of divorce as a "misdemeanor" and adultery as the only real matrimonial offense. They also criticized its approval of the double standard, saying that the Act had been written for the benefit of husbands without even attempting to give women equal claim to the fidelity of husbands. Further, the Court was a theater where "every species of horrors" was displayed, often without any relief being obtained in cases that before the Act would have ended in a divorce or at least a separation. The Act was the painful result of the English propensity to turn away from a question that involved a shameful lack of national morality. These contributors wanted a new law that gave equal grounds to women, extended grounds for divorce, and gave judges power to override the letter of the law in order to uphold its spirit.

There were some voices in support of the Act, whose approval was religious in nature. They felt that the Act had done exactly what was needed—that is, it had created laws which were in agreement with a liberal interpretation of Scripture that allowed divorce. They believed that public opinion regarding marriage stemmed from Church teachings, and that further grounds for divorce, or equal grounds for women,
could not be enacted unless they could be justified by Scripture.\textsuperscript{129} The 1857 Act followed the example of Christ, in that like him, it had not repealed the tradition allowing divorce, but still contained a "weighty admonition" against it.\textsuperscript{130} Another article approved of the Divorce Court as the instrument of the law. Marriage laws, and divorce laws, were necessary, this author believed, to uphold marriage as a social institution, rather than a merely personal arrangement.\textsuperscript{131} These authors saw nothing of reproach in the double standard and indicated that the law was now in agreement with Scripture.

A new topic in the divorce debates appeared in the 1880's and became a major argument in favor of extended grounds. The interests of children caught in their parents' bad marriages sparked sympathy on all sides. The critics insisted that children raised in homes torn by violence would become anti-social, irrational adults prone to ill-considered marriages, or even incapable of forming a home of any kind. Bad marriages were "nurseries and forcing-houses for every unwholesome social weed."\textsuperscript{132} In fact, this issue was the only new one to appear between passage of the Act and the appointment of the second Royal Commission on marriage in 1909.
Most of the articles called for further reform, and especially for equal grounds. The writers usually regarded the 1857 Act as simply the first step in the direction of the final goal of the companionate marriage. Reformers expressed their disappointment on the inadequacy of the 1857 legislation in strong language:

...the liberal and progressive thought of this country, the moment it is brought to bear on this one social question, becomes doggedly false to every one of its boasted principles...\textsuperscript{133}

The humanitarianism which we preach is false to the core...\textsuperscript{134}

Englishmen are much too prone to turn their heads when a social problem which involves shame on the morals of our civilisation calls for their just and equitable decision...\textsuperscript{135}

Every other social problem had been approached with a liberal and progressive attitude, these authors wrote, except divorce. This is a disturbing anomaly in the history of Victorian reform when compared to the many reform bills passed during the years 1850-1900, like the [male] suffrage bills, poor housing bills, and factory acts.

The laws regulating marriage and divorce should have been written to strengthen marriage and bring greater happiness to husbands and wives. They should have been clear and simple so that every person could understand and fulfill them, because marriage belonged to everyone, regardless of their
wealth, education or social station. The 1857 Act was, contrarily, very complicated and had led to unwittingly illegal marriages and separations.¹³⁶

Most of these liberal critics seemed to blame religious attitudes against divorce for both the lack of working reforms and the inequality of women in marriage and the Divorce Court. It seems that the Protestant Reformation had worked its way into existing English religious institutions without creating any real disturbance to the general social and religious structures, as witnessed by what one writer called "latent Catholicism" that left the ecclesiastical courts as well as most High Church structures and rituals generally the same as before the Reformation. A part of this easy transition was that the divorce codes that the Reformation had brought to other Protestant countries like Germany and Scotland never gained acceptance in England, which stubbornly clung to the belief that marriage was indissoluble.⁹ The English people, however, were hostile to things Catholic, the author continued, and so redirected their Christianity-based belief in indissolubility into a sort of "instinctive utilitarianism"

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that linked permanence in marriage to the security of the State.\textsuperscript{137}

The most intolerable flaw in the 1857 Act for the liberal critics was that it legalized the double standard. For decades after the Act was passed, its critics continued to call for the reforms left out of it: equality for women, property rights, and child custody. The 1857 Act had created an "artificial barrier between men and women, so a to make moral sympathy between them impossible."\textsuperscript{138} This can be seen in the still popular opinion that a wife’s adultery was a greater offense than the husband’s, and in that it was as widely supported by women as by men.\textsuperscript{139} However, this was no longer considered a defense for the double standard in divorce. It was no longer acceptable that because a wife’s adultery merited greater punishment that the husband’s infidelity should never be considered as grounds for divorce.

The liberal critics believed that nothing was gained by forcing two people whose relationship failed to fulfill the purposes of marriage to remain married. In fact, some believed that in forcibly continuing marriages, the State overstepped its simple duty of protecting its citizens.\textsuperscript{140}

They suggested reforms similar to those offered during the debates in 1853-1857. Besides allowing wives to plead for divorce on grounds of simple adultery, the majority of
the reformers also wanted habitual drunkedness, insanity, long imprisonment, and desertion to be grounds. They also wanted "actual cruelty" as well as life-threatening cruelty to allow wives to plead for relief. Other more radical requests were for "hopeless inability to agree" when there were no children of the marriage, and "...a single, short, sweeping enactment that...no woman henceforth shall by marriage change her legal status or lose any part of her rights over property."

The chronological progress of the questions discussed by the periodicals is limited to the attacks on the Divorce Court, which tapered off by the late 1860's, and the late appearance of the concern for children. The disappearance of criticism of the Court indicates that people gradually became accustomed to the sharp increase in the number of cases, most likely because the number of English marriages that ended in divorce rose much more slowly than had been anticipated. In 1857, before the Act was passed, Parliament had granted four divorces. In 1861, the Court granted 141 divorces, an alarming increase, true, but thereafter the number of divorces increased by an average of less than .01 per 1000 until the First World War.\footnote{Stone, p. 435. The 1857 rate was .0001 per 1000; the 1861 rate was .04 per 1000. After this large increase between 1857 and 1861, the rate slowed to an average of .01 per 1000 per year until the First World War.}
The call for equality for women in marriage and divorce, the persistent belief in the greater social evil of women's adultery, and the religious questions remained constant, as did the belief that marriage was essential to the well-being of the English nation.

The responsibility for making a marriage work was never removed from the wife's shoulders, not by the most radical contributor. The debates and disagreements over the proper role of the woman in marriage, in the State, and the proper role of the State in marriage had not been solved by the legislation of 1857. The discussion continued along the same lines as before 1857.

Even more important was that more people, especially women, joined the debate as the century drew to a close. The bulk of articles discussed here were written after 1880, indicating that concern for the issue grew stronger after the reforms had had time to take effect and those effects could be studied in court records over a period of years to determine trends. The number of divorces was not perceived as a dangerous trend by most contributors, but the continued

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5 Five of the articles were written in the 1860's, three in the 1870's, and fourteen after 1885. Twenty-two articles were directly related to divorce; many others not quoted were about other women's issues, especially property law, suffrage, and child custody.
discrimination, and evidence that children fared badly in bad homes, brought new voices and new theories into the discussion.
CHAPTER FOUR

Royal Commission on Divorce, 1909-1912: Influences for its Appointment

"All the divorce Commissions had their origin in attacks on age-old norms."\textsuperscript{144}

The Matrimonial Causes Act of 1857 had satisfied few people; the criticisms of the system at century’s end sound similar to those advanced prior to the Divorce Commission of 1850-1853 because the Act of 1857 had not effected any substantive change in the law. The demand for reform of the divorce laws was hardly interrupted by the passage and implementation of the Act of 1857; those who had agitated for substantial reform felt that the Act had changed only the method of divorce, and they continued their criticisms. The arguments against the system at mid-century were still valid at its end. A Dr. Phillimore’s motion in 1830 that the Royal Commission on Ecclesiastical Courts then sitting consider a civil procedure for divorce was the first serious discussion in the House of Commons; it was defeated,\textsuperscript{145} but the debate was to continue and in 1850 resulted in the first Royal Commission on Marriage and Divorce; another fifty-odd years of continuing
criticism forced the appointment of the second Commission in 1909.

Demand for further change in the divorce law increased after 1885. It is possible that the escalation in reform voices was connected to the passage of the Married Women's Property Act in 1882. Those who had spent their energies on property reform prior to 1882 could now turn to divorce reform. Also, the new property law had widened the crack in the doctrine of coverture, and compared to the new rights women had gained in property, the double standard of sexual behavior enforced by the Marriage Act of 1857 seemed more and more out of touch with reality.

The 1857 Act had in fact provided the first attack against coverture by including the provision that divorced or separated women had control over their wages and other incomes. There was, in this light, precedent for the women's property law of 1882. After the 1882 Act, a new seriousness pervaded discussions about marriage and divorce and the related topic of women's rights. Traditional attitudes regarding the proper place of women in the home and sexual behavior still prevailed, however, and this perhaps explains the relative silence on the subject following the sensational trials of Oscar Wilde for sodomy in 1895. The trials reminded
the Victorians that sexual deviance was not confined to the lower classes, which surely made them uncomfortable.

The death of Queen Victoria in 1901 must surely have inspired sentimental re-approval of the classic Victorian attitudes toward home and family. It certainly inspired an enormous number of articles in the periodicals and newspapers written in praise of the late Queen's virtues as mother, devoted wife, and grieving widow. This theory can be supported by reaction to bills to reform marriage laws introduced by Lord Russell in 1902 and 1903.

The bills would have extended divorce equally to women and added grounds of cruelty, lunacy, desertion and separation of three years, but in 1902 the Lord Chancellor called for the bill to be rejected, an unusual procedure. The Chancellor's response to Lord Russell's introductory speech was very emotional and rude—he accused Russell of trying to abolish marriage for his own personal advantage, and hoped that the House would not be forced to listen to these proposals "over and over again". While it was true that Russell had petitioned for divorce, the fact that it took ten years for him to obtain that divorce is an indication of the how the

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^ Russell said that the Lord Chancellor "danced with rage" in response to his speech, and called the divorce bill an insult to a Christian assembly. Russell, p. 324.
1857 Act could fail to simplify the divorce procedure. His long (and scandalous) case re-opened public debate after a seven year silence.

Lord Russell was married in 1890 and his wife sued for divorce the next year on grounds of cruelty and "heinous crimes", but lost. In 1894 she sued for restitution of conjugal rights but lost; the next year Russell sued for separation and won, but lost on appeal; in 1900, during divorce proceedings, Russell married an American divorcee. He was tried for bigamy by the House of Lords and was sentenced to three months in jail and a fine of £1500. Shortly after he was released from jail, his first marriage was dissolved and the second legalized. In his memoirs Russell asserts that his first wife and her mother trapped him into marriage, tried to withhold £4000 pounds from the marriage settlement, did not tell him about their £9000 debts, and that the marriage settlement contained provisions for a divorce. They lived together only three months, and immediately after their separation mother and daughter "began a relentless persecution of me which continued without intermission for six years,...what they chiefly desired to get out of me was money." The various suits were always

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" From beginning to end Russell estimates his divorce cost him £30,000. Russell, p. 290."
widely publicized—Lord Russell quotes extensively from three newspapers—and it seems that public sentiment was on Russell's side, which may have done much to forward the cause of divorce reform, when people realized that men as well as women could be victims of the law.

In 1906 the Divorce Law Reform Union was founded.\footnote{Mrs. M.L. Seaton-Tiedemann, Gilbert Murray and Thomas Hardy, with several lawyers, formed this "small interest group dedicated to increasing public awareness and pressuring Parliament." They elected Sir Arthur Conan Doyle as president, a post he held for the next ten years.}

Doyle was not a unqualified advocate of women's rights; he made no secret of his contempt for the suffragettes, and felt that only women who paid taxes should be considered as voters. But he felt it was uncivilized that women did not have equality in divorce, and threw himself into the cause with an enthusiasm that sometimes embarrassed his colleagues in the DLRU. His pamphlet, "Divorce Law Reform", "a cogent well-reasoned homily", published shortly after he became President of the DLRU, encouraged the appointment of the Royal Commission.\footnote{The information on the DLRU is very scanty. I have included every scrap I could find.}
The DLRU recommended extended grounds of insanity, cruelty, desertion, drunkedness, and penal servitude\textsuperscript{157} and immediately called for the appointment of a Royal Commission.\textsuperscript{158} Doyle's private crusade was against drunkedness, which he saw as the greatest threat to marriage, calling it "the foulest of all insanities". Doyle's father was an alcoholic, which probably shows why this particular disfunction was so painful to him.\textsuperscript{159} He also spoke against judicial separation, calling it "a wretched compromise attempt"\textsuperscript{160} that had "a subversive effect upon public morals".\textsuperscript{161}

In the House of Commons, members debated reform possibilities while Lord Russell continued to speak out in the House of Lords. The DLRU raised funds for propagandizing and kept the issue continuously in the public eye. A change of opinion had occurred in England over a very short time, and Lord Russell's divorce case can be seen as a sympathetic case the public could focus on, a place for the public discussion to begin.\textsuperscript{162}

Three social factors had begun to lessen opposition to reform of all sorts, not just divorce. First, there had been, as Lawrence Stone has noted, a "progressive secularization of society and the consequent weakening of the power of the
church of England and a division of opinions within it.\textsuperscript{163} The Church of England had failed to grasp the extent of the family problems caused by industrialization and so did not, perhaps could not, offer effective support to troubled families. The Church had not adapted to the new society and found itself open to attacks that "exposed its corruptness...and its irrelevance to modern problems." As a result more and more Englishmen and women, especially those of the working and lower middle classes, had turned to the Dissenting churches; as early as 1851 the census showed that less that a third of the English population were active members of the established Church of England.\textsuperscript{164} This trend continued, as shown by the Report of the 1912 Commission; whereas in 1857 the opposition had had a strongly religious character, especially when voiced by members like Gladstone, the 1912 Report described Gladstone's belief in the indissolubility of marriage as "corrupting" and saw judicial separation, much supported by Gladstone, as "this ill-begotten monster...made up of pious doctrine and worldly stupidity".\textsuperscript{165}

Individualism, which had more force in the Dissenting churches, had begun to overcome old religious and political norms of absolute, unqualified duty to family and spouse. Industrialization had taken the family out of the home during
the day; husbands and wives were often more dependent on the factory owner for a living than on each other.\textsuperscript{166} Lifelong monogamy, especially for women, was no longer inseparably connected to economic security as it had been in the agrarian/cottage industry economy of pre-industrialization. Around the turn of the century, as more women began to work outside the home,\textsuperscript{167} divorce and remarriage began to be seen as problems needing a practical solution, not merely a question of theology. The failure of the Church to offer even a consensus opinion, much less a workable solution, helped prepare the grounds from which the Royal Commission could consider reform from a secular, practical viewpoint.

Secondly, the failure of the laws to prevent collusion was disturbing to many people, especially the judges. In fact, many judges felt that the very nature of the divorce laws forced people to bring collusive suits and they were sick of it, not because they were against this sort of agreeable divorce, but rather that the laws enforced hypocrisy and failed to reflect social attitudes and morals. Reform of any sort would be better, many Law Lords felt, than the current system of collusion inspired by the law.\textsuperscript{168}

Collusion was a sore point for the Victorians because it displayed the inadequacies of the law. Many judges felt it was impossible to prevent the success of a collusive divorce
if the couple was careful. Collusion also meant that many couples were not blaming each other, or at least, were not trying to punish each other, for the failure of their marriage; in this they were circumventing the Victorian belief that divorce should be an adversarial procedure of assigning guilt and innocence.

The moral repugnance toward collusion was rooted in the late 1700's and is connected to the criminal conversation suit. "A very experienced barrister who specialized in crim. con. cases said in 1789 that this [collusion between a husband and a lover] was 'a common trick'". The very nature of the criminal conversation suit --the complete exclusion of the wife as a party to the suit-- made collusion relatively simple.\(^{169}\) Collusion was the reason for the majority of criminal conversation suits at the end of the 1700's, when common opinion held that husbands threatened wives against contesting the suits in order to make divorce easier and cheaper.

By 1800, some suspected that ninety percent of all suits were collusive, and called the law "a farce and a mockery". There is no evidence that this had changed by 1850; in fact, these same accusations were repeated. Damages granted in criminal conversation suits were either not received, or were secretly paid back, and a witness to the House of Lords in
1852 stated that there was no way to prevent this abuse of the law. Collusion was described as a cancer in the system.\(^{170}\)

By the late 1800's, however, public sentiment regarding collusion had changed and the pre-1857 language, though still used by those opposed to divorce reform, did not reflect the new sympathetic attitude towards collusion. Many people, including the judges, felt that people were forced to commit collusion because the laws were so strict that this was the only method of divorce. Thus at century's turn the judges publicly voiced their support for reform, with the object of making sure it more closely reflected public opinion and moral opinion.

Lastly, the movement for reform included a growing support for female equality, especially in property law and child custody, and the Victorians and Edwardians rarely separated the property question from the divorce question.\(^ {171}\) That was a great problem; the troubles of women "could not be kept separate and distinct, but kept getting mixed up with each other and with other social issues" like property law reform, suffrage, child custody, and contraception, "so even the most moderate move toward liberation seemed a rush toward chaos."\(^ {172}\) Nonetheless, considerable progress had been made in the status of women, most notably the Married Women's Property Act of 1882.
The Married Women's Property Act of 1870 had been a restatement of the Parliamentary policy of creating legislation that protected the most vulnerable women, while refusing to give women the resources to protect themselves.\textsuperscript{173} The 1882 Act, while much closer to the spousal equality sought by reformers, did not completely erase coverture, but it did extend the property rights granted to divorced and separated women in the 1857 Act to their married sisters. When the 1882 Act and its steps toward equality in marriage were compared with the provisions of the 1857 Act that enforced the double standard in divorce, the 1857 Act seemed too contradictory to be upheld even by English dedication to tradition.

Divorce law reform did not have the large support of the group of women which could have given it great impetus: the middle class. Many women's groups supported property law reform, which they saw as a way to improve women's position within marriage, but they were suspicious of any reforms that could increase divorce. (It is indicative of this attitude that the most visible working members of the DLRU were men, while the founders of the Married Women's Property Committee were women.\textsuperscript{174}) Women spent their energy in trying to improve the woman's position within marriage; they were not eager to make marriages easier to dissolve, not even by women.\textsuperscript{175}
It was in the middle class, particularly the upper middle class, that the "cults" of Respectability and Domesticity were strongest." The women in this socio-economic group believed that marriage was the best place for a woman and they were very likely disturbed by the growing number of women in the work force. They, of all Victorian women, believed that the foundation and security of England was the family, and that divorce made marriage, and by association the State, a temporary arrangement rather than the permanent institution necessary to their lifestyle of home-making, child-rearing, charity, and entertaining. Middle class women did not want to join the world outside their doors—they did not want to join the women who earned their own way—because to them it indicated failure: failure to find a husband, or, failure to chose a husband who could adequately provide a respectable life. Divorce was also a failure, and since Victorian society insisted that a good marriage was entirely the responsibility of the wife, any of these failures was hers alone. These women also believed that the tiny number of truly aggrieved spouses was too small to risk upsetting the order of their society by divorce."

* Wohl's entire book, *Victorian Divorce*, is tied to these cults, particularly that of Respectability.

* See previous chapter.
Even more important is that a great number of middle class women were not satisfied to simply remain apart from the debate, but joined organizations that actively opposed to any extension of the grounds for divorce. The best known is probably the Mother's Union, a large group of Anglican Church women which did not allow any divorced members. Some women's organizations were torn apart by infighting on the related subjects of the vote, family allowances, women's right to work, and birth control. The National Union of Societies for Equal Citizenship (NUSEC) was formed from the remnant of the National Union of Women's Social and Political Unions (NUWSS), which was in turn the remnant of the feminist movements begun in the 1860's. Eventually NUSEC was forced to divide the campaign into two parts, after conflicts between the "old feminists" and the "new feminists" reached the breaking point. The "old feminists" wanted absolute legal equality, while the "new feminists" argued that men and women had different needs, and that simple legal equality was not the answer. The result was that the "old feminists", led by

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* In 1912 they claimed 278,000 members (Stetson, p. 103).

* Family allowances were "payments from the state to mothers to aid in support of children" that sought recognition of the social value of homemaking and childrearing. Stetson, pp. 112-113.
Millicent Fawcett, left the organization altogether. The remaining members first pursued equality for women in divorce, something all members supported, while trying to formulate an agenda for the other issues listed above. These groups illustrate the complexity and interrelations of the issues. Opponents of divorce law reform continuously noted the lack of consensus and the confusion evident in these groups. The disagreements between and within the women's groups, together with the still-influential opposition of the clergy and the lack of full support by any political party, kept the debate off center stage until 1906.

In that year, the president of the Probate, Admiralty and Divorce Court "publicly denounced the divorce laws as administered by his court as full of inconsistencies, anomalies, and inequalities, almost amounting to absurdities." This judge, and others who heard divorce cases, were more qualified than anyone to discuss the workings of the 1857 Act, and had quietly supported reform for years, but now felt that the situation was so bad that they broke the tradition of silence regarding politics and openly, professionally, with the authority of their posts, called for reform. They knew from experience "the anomalies, injustices, and absurdities" of the system, and spoke out publicly and sharply. In the end it seems plain that it was the changing
attitudes of influential men like these judges, rather than feminists, that instigated change. The feminists were hampered by their inability to present a united front and so failed to have continuous, effective political clout, while the judges spoke from positions of intimate knowledge of the workings and failings of the law. It is also believable that the public looked more readily to men, traditionally viewed as objective and logical, than to women, traditionally viewed as emotional and impulsive, for guidance in such a difficult subject.

Three years later, the liberal Asquith government (elected the same year that the DLRU was founded) appointed the second Royal Commission on marriage and divorce. The appointment of the Royal Commission shows that the debate had reached a critical point, and that the government felt pressure from the public to review the laws. That a Royal Commission was the method of review indicates that the government was at least favorable to some kind of reform, because the very nature of the Royal Commission demanded that a "sufficient number" of the recommendations be implemented, sooner or later; if they were not the Commission would be reduced to a sort of "debating society or a research bureau". Royal Commissions were powerful bodies in that Parliament felt it was necessary to create laws according to
their recommendations. Royal Commissions were highly respected in England, and when one was appointed it indicated great seriousness on the part of the government in dealing with the subject under investigation. In appointing Royal Commissions on divorce, the government hoped for the following accomplishments: to obtain facts, assess conflicting interests, formulate policy recommendations, and inform the public about the debate. The government also appointed Commissioners representative of all the social interests, and hoped they would reach a truly objective compromise which would be more acceptable to the dissatisfied parties, who would see the Commission as more trustworthy than the government.184

The 1909 Royal Commissioners included two women: Lady Frances Balfour, a suffragist who was also an ardent churchwoman and noted author. Her father was the Eighth Duke of Argyll, and she was the sister-in-law of A.J. Balfour, who had been Prime Minister. She was described as "a mistress of invective in the cause of women's suffrage". Her intimates included Millicent Fawcett and Gladstone, and she received honorary degrees from Durham and Edinburgh.185 Her sister Commissioner, Margaret Mary Edith Tennant, had moved to London at age 18 and had immediately become involved with women's trade unions, and had served as treasurer of the Women's Trade
Union League. As the first woman appointed factory inspector, she influenced the Factory and Workshop Act of 1895. After her marriage she served as chair of the Industrial Law Committee before being appointed to the Royal Commission on Divorce, 1909.186

The chairman of the Commission, John Gorell Barnes, began practicing law in 1876 and was soon familiar in the Court of Appeal, House of Lords, and the Privy Council. In 1892 he was appointed judge of the Probate, Divorce and Admiralty, and it was in this post that he had the experiences that led to his public disapproval of the divorce laws.187 Another noteworthy member was Cosmo Gordon Lang, who, on the eve of being called to the bar, decided to become a priest. He had served as chair of the Church of England Men’s Society, and was made Archbishop of York shortly before the Commission was appointed. His was the main voice of the opposition and the minority report.188

Other Commissioners were John Alfred Spender, the "most influential political journalist" and editor of the Liberal Westminster Gazette;189 Rufus Daniel Isaacs, lawyer for King George V and prosecutor in several cases against militant suffragists, including Emily Pankhurst;190 Sir George Stuart White, distinguished military man and former Governor of Gibraltar;191 Sir Lewis Tonna Dibdin, Dean of the Arches;192 Sir
William Reynell Anson, Warden of All Souls College; and Thomas Burt, an active reformer, Liberal, and member of the Privy Council.

When the Commission began hearing evidence in 1910, the militant suffragists had created severe disturbances, (including some vandalism directed at Sir Arthur Conan Doyle), and had been involved in a few sensational trials. There were also some groups of women who spoke openly about their hatred for men as a group. Many people felt they were witnessing deterioration, rather than progress, in relations between men and women. This was used by both advocates and opponents of reform: the advocates said that women could endure no more and had been driven to extremes because reform was long overdue, while the opponents said that such women had demonstrated their lack of social responsibility and could not be trusted with equality.

Though the 1857 Act had been passed when most everyone believed in some degree of the double standard, the debates 1850-1857 began the process of changing attitudes that would carry into the next century. Though the Act had not created new grounds for divorce, it had removed the air of aristocratic privilege from divorce and also lessened the grip of religious doctrine on marriage, opening the way for new opinions about marriage that by 1909 had progressed to the
point that the new Commission could consider the question of divorce on purely "secular utilitarian grounds".\textsuperscript{198}

While conservative attitudes prevailed in public and in Parliament, (for example, King Edward reacted badly to the appointment of two women to the Commission\textsuperscript{199}), the Commissioners of 1909-1912 were willing to discuss reform openly and fairly. The trouble with their recommendations was that they were more liberal than what any of the influential groups would accept. Nonetheless the report of a Royal Commission was an important weapon in reform. It became part of the public climate of debate and supported reform efforts,\textsuperscript{200} even though the reformers had to wait until 1923 for equal grounds for women, and 1937 for extended grounds. The final change reflected the public view that divorce should no longer have the aura of a criminal proceeding; divorce should be a remedy, a civil procedure in spirit as well as form, not a system of assigning guilt and innocence.\textsuperscript{201}
CHAPTER FIVE

The Royal Commission on Divorce
1909-1912

When the second Royal Commission on Divorce was decreed in 1909 under the chairmanship of Lord Gorell, its list of objectives was similar to those of the Commission of 1853: a review of the laws of England regarding marriage and divorce, with special attention to separation orders and the needs of the lower classes. The Gorell Commission, like its predecessor, was to formulate recommendations that could be used as a guide by Parliament to reform this area of the law.

Like the Campbell Commission, the new Commissioners were to consider reforms with the purpose of preserving respect for the institution of marriage, the best interests of married people and their children, social morality, and the best interests of the state and society as a whole.

But unlike the Campbell Commission, the 1909 Commissioners were instructed to pay particular attention to achieving the equality of women before the law and there was a real attempt to include the concerns of women. Two of the Commissioners were women, and the Committee heard evidence
from women's groups, most notably the Women's Cooperative Guild.

The Commission heard evidence for two years, and heard witnesses of many political, professional and ideological persuasions, and received written evidence in the forms of letters, petitions, and resolutions.

The Commissioners split, and published two reports. The Majority report, signed by Gorell and eight other Commissioners, including the two female Commissioners, was placed against the Minority report, signed by Archbishop Lang and two others. For purposes of analysis, it is simplest to refer to the reports in pointing out the various opinions of the Commissioners.

The Gorell Commissioners were nearly all convinced that some reform was needed, but they were not sure the public wanted it, and one of their first formal discussions as a Commission was on this question. The Majority felt that there was great public demand for reform, and cited the testimony of judges, law societies, and policemen.202 The Minority said that policemen and judges hardly constituted the public, and cited two petitions against reform signed by 85,491 members of the Mother's Union and 29,067 members of the Church of England Men's Society.203 The Minority accused the Majority of skewing and ignoring evidence, mentioning specifically the
Majority practice of discounting evidence from people who believed marriage to be completely indissoluble.\textsuperscript{204} It is true that the Majority did not discuss the two petitions from the Mother’s Union and the Church of England Men’s Society.

The Minority further argued that if the public wanted reform, the Commission would have been flooded with letters expressing their needs. Only around 350 letters had been received, said Lang, and this did not indicate a public cry for reform.\textsuperscript{205} Lang also tried to discredit the testimony that was the Majority’s strongest case for public support for reform, calling the evidence from the Women’s Cooperative Guild the "extreme opinions of a comparatively few individuals selected by a witness who shares those opinions"\textsuperscript{206}

The "witness" in question was Anna Martin, an officer of the Women’s Cooperative Guild, who brought to the Commission a stack of petitions and personal, though anonymous, histories from women who wanted to get out of their marriages. Her stories of cruelty and stolen savings, reprinted in the Evidence, portray strong sentiment among the Guild’s 27,000 members.

Ms. Martin admitted that in this debate it was not easy to gain evidence, but held up the members of the Guild as the best examples of English citizens, the best representatives of the working class, "thrifty", "intelligent", "self-
respecting", "ordinary hard-working people". She also pointed out that most married members did not work outside the home, because they had "the strict tradition of an old civilization in their view of the duty of a housewife and mother." She was determined to convey to the Commission the need among women like those in the Guild for reform in the divorce laws:

"The enquiry [of the Royal Commission] has brought out in a striking way an overwhelming demand amongst married women belonging to the artisan class for drastic reform in the divorce laws....Great satisfaction was expressed when it was known that evidence on their behalf was to be given before the Divorce Commission, and the hope is strong that reform will come." Ms. Martin's statements supported the Majority opinion that the people who most needed reform were in domestic situations that they would be ashamed to speak about. As one Commissioner said, "the sufferers do not air their grievances on the housetops"

A second discussion, also preliminary to any discussion about specific reforms, was whether or not divorced people should be allowed to remarry. This debate had been constant in England for over one hundred years, first appearing before Parliament in 1771. In that year the House of Lords first passed a bill to prevent the remarriage of the guilty spouse (at that time, always the wife). Commons rejected that bill
and others of the same sort in 1779, 1800, 1856 and 1857.\textsuperscript{211} The Minority Commissioners said that remarriage rewarded adultery and encouraged wives to sin, whereas forbidding wives to remarry would decrease adultery and make marriages more secure. Their arguments were based on scripture, and Lang quoted the same verses from Matthew that had confused the debate since the beginning.\textsuperscript{212}

The Majority Commissioners felt that a law forbidding remarriage would have no effect on the behavior of the lower classes, while it would prevent women of the upper classes from salvaging any sort of respectable life for themselves; in fact, some women might be forced into prostitution in order to feed themselves.\textsuperscript{213}

This discussion led to the problem of access to divorce for the poor. Writers in the periodical press had long been saying that the 1857 Act had not given divorce to the poor, because it had given sole jurisdiction to the Court in London, thus necessitating travel, food, and lodging for the spouses and their witnesses. It was a major point of discussion for the 1909 Commission, though during the last years of the 1800’s jurisdiction had been increased to a few courts outside London. Evidence heard by the Commissioners suggested to them that the poor habitually ignored the marriage and divorce laws because these laws were "beyond the reach of the poor"\textsuperscript{214} One
explanation of their behavior was that the poor, unlike the rich, did not have the ability to live in separate wings of their house, or in separate houses. Wealth made a bad marriage more tolerable, but the poor had no way of escape outside separation or divorce, and so were driven outside the law in order to ease their troubles. Because of their economic situation, a witness said, the poor have more need of the law than the rich.\textsuperscript{215}

The Minority Commissioners were concerned about extending divorce to the poor, saying that it would make them even more immoral, and describing them as "classes of people who now don't, and never should, consider divorce".\textsuperscript{216}

When the discussion turned to the needs of the poor, this opinion that the poor should not have access to divorce was a fairly common one among those who took the theological approach to divorce, both during Commissions and in Parliamentary debate. The Majority Commissioners did not agree; in fact, the Majority report states that the Commissioners could find no consensus opinion among the religious leaders, whether they were Established Church or Dissenters; and because there was no general agreement among churchmen, the Majority decided to consider the question of divorce reform from a practical view of the needs of society
and state, whether or not they agreed with any particular theological view.\textsuperscript{217}\textsuperscript{aa}

The Minority Commissioners tried to turn the practical view against the Majority by saying that the State should be viewed as a third party in a marriage, because the State depends on marriage as a source of authority, good citizens, and peace. "The making and breaking of marriage contracts should be treated as matters of public importance touching the Commonwealth itself",\textsuperscript{218} wrote Lang. The different interpretations of the role of the State in marriage shows the intractable differences between the Majority and the Minority. While both parties agreed that the interests of state and society were the only correct view from which to consider the reforms, their different interpretations of the role of the State placed them in conflict.

The Majority held the view that the State should not force people to remain in bad marriages for the purpose of upholding some ideal of State security, while the Minority Commissioners seemed to want the State to fill the place the Church had lost in marriage. Lang wanted to transfer the moral authority of the Church to the State, at least in regard to marriage.

\textsuperscript{aa} See Stone, in my chapter four, p. 5.
The Minority Commissioners expressed a lack of faith in the ability of people to have a successful marriage without the supervision of a higher moral authority, and since the Church had lost much influence in everyday life over the preceding century, Lang perceived a vacuum that could best be filled by the State. To justify this, Lang pointed out that married people owed the existence of their marriages to the State, which recognized them and thus made them real. The State also supported and enforced the authority of parents. Married couples thus had an obligation to the State to persist in their marriages because divorce destroyed the family and disturbed the peace.²¹⁹

This led to discussions of the possible effects of reforms advocated by the Majority. Gorell and his supporters wanted to expand the grounds for divorce in order to provide greater relief. They did not believe that freeing people from failed marriages was a threat to social stability; rather, they were of the opinion that a dysfunctional home created greater harm than a divorce. They also argued that countries with strict laws against divorce did not have less bigamy, adultery, or domestic violence than countries that allowed divorce. They pointed out that laws against divorce were an anomaly in that they were the only set of laws that refused redress to the victim.²²⁰
The Majority listed the advantages of divorce: it would allow people to form better marriages, thus increasing social stability; it would in effect prevent continued matrimonial offenses that people continued to commit out of unhappiness, despair, or cynicism because they could not get a divorce. The only wrong being committed, the Majority wrote, was that divorce was too expensive for those who needed it most. Further, divorce laws had not, and would not in the future, create the domestic violence and shame witnessed in the Divorce Court; those things happened before the people ever came to court. Divorce was the remedy for a failed marriage, not the reason for its failure.

The Minority insisted that increased grounds for divorce would encourage people to seek divorce rather than compromise. They argued that extended grounds would multiply methods of collusion and tempt people to "take advantage of the law". Extended grounds would encourage sin and destroy respect for marriage. The additional grounds would make divorce too easy; people would go to court while angry over a trifle, and after the divorce realize it had been a mistake. Divorce always had a negative effect, and it was guaranteed that extended grounds would increase the negatives. In response to the Majority belief that divorce allowed people to make better marriages, the Minority said that in order to
accomplish this two things were necessary: a new husband or wife who was a better spouse than the first, and who was willing to accept responsibility for the children of his or her predecessor. Lang wrote that the chance of achieving these was too remote to make the risk worthwhile.\textsuperscript{226}

If divorce were to be allowed at all, Lang continued, it should be allowed only when "it is clear that the parties have irreparable lost affection for each other" or when "one is permanently alienated from the other."\textsuperscript{227} Lang and his supporters felt that only adultery would produce this kind of alienation, and thus adultery should be the only grounds for divorce. To solve the problem of bad marriages, the Minority wrote that better living conditions, education, and preparation for marriage was necessary, as well as more restrictions on getting married. This is a surprisingly progressive opinion considering the source—as is the only official recommendation of the Minority opinion: that if the law must be amended, amend it only to give women equal grounds for divorce.\textsuperscript{228}

Judicial separations were a specific subject for the Commissioners to debate. It had been suggested several times, even prior to 1857, that they be abolished. The Majority Commissioners offered evidence that outright divorce was better in certain cases, such as adultery, cruelty, desertion,
and habitual drunkenness, but the main criticism was that separations punished the victim of marital offense by enforcing the form of the marriage while the separation recognized that the marriage existed only in form. Separations forced the innocent spouse into celibacy or sin, while failing to control the behavior of the guilty spouse. It did not punish the offender.  

The Minority report quoted evidence showing that separation orders were rarely enforced -- the complaining spouse often never picked up the signed Order-- and those Orders taken up were soon abandoned. Some witnesses on this subject asserted that seventy to eighty percent of separated spouses were soon reunited. To abolish separation orders would mean that all these couples would be denied the possibility of reconciliation.  

All the Commissioners agreed that the publication of details heard in Divorce Court testimony was offensive and a threat to public morality, especially young people. They believed that witnesses could be prevented from testifying by fear of public exposure and in this manner publication could impede justice. But bills to restrict publication of divorce court testimony had been rejected by Parliament in 1859, 1887, and 1896, so the Commissioners had to find a
different approach. Most felt that Divorce Court judges already had the authority to close the court at their discretion and hear unsavory testimony in private, and all recommended that this authority be backed up by legislation.\textsuperscript{234} They also recommended legislation to prevent publication of any facts until the trial was over, and to strictly forbid pictures of any kind.\textsuperscript{235}

The Majority wanted to extend jurisdiction over divorce cases to the courts of eighty-nine towns outside London in order to better serve the lower classes. The Minority objected on the grounds that the poor should not have access to divorce. The Minority also pointed out that increased jurisdiction would increase the number of courtrooms open to newspaper and magazine reporters, thus making publication more difficult to control.\textsuperscript{236}

The final recommendations by the Majority were as follows:\textsuperscript{237}

1. limited decentralization to 24 towns

2. equal grounds for women

3. extended grounds for divorce:
   a. adultery, with bigamy as proof, not separate offense
   b. wilfull desertion for three years, or life imprisonment
   c. cruelty, definition up to the judge\textbackslash

d. incurable insanity for five years
e. habitual drunkenness of two years, failed cure

4. extended ground for nullity: refusal to perform conjugal duties.

Grounds rejected by the Majority:

1. imprisonment, because divorce could make rehabilitation of the prisoner impossible.

2. sexual diseases should be proof of adultery, not a separate ground.

3. mutual consent was regarded as too lax.

The final recommendation of the Minority was, that if Parliament could not be persuaded to outlaw divorce altogether, the only reform that could be supported by Scripture was to allow wives to sue for divorce on grounds of adultery alone.
CHAPTER SIX
Matrimonial Causes Act, 1923: Equal Grounds for Women

On March 2, 1923, Major Entwistle\textsuperscript{bb} moved the second reading of a bill that would give equal grounds for divorce to women for the first time in English history.\textsuperscript{238} Supporters of divorce reform had been trying for several years to pass some kind of reform. They had begun with a bill including the recommendations of the Gorell Commission, and with each rejection in Parliament had whittled one more clause from each bill, until in 1923 the bill contained only two clauses. As Major Entwistle said:

The sole object of this Bill is to give equality to the sexes in the matter of divorce, and it has no other purpose whatsoever....the main clause reads as follows: "It shall be lawful for any wife to present a petition to the court praying that her marriage may be dissolved on the ground that her

\textsuperscript{bb} Sir Cyril Fullard Entwistle (1887-1974) became a solicitor in 1910, served as 1st Commander of the RGA in WWI, Barrister in 1919. He was elected as a Liberal for Southwest Hull in 1918 and served until 1924. He was re-elected for Bolton in 1931 and served until his retirement in 1945. He was made a Knight Bachelor in 1937 and was married in 1940. \textit{Who's Who among British Members of Parliament,} vol. III, p. 108.
husband has since the celebration thereof been guilty of adultery."^{239}

The second clause repealed the phrases concerning incestuous adultery, bigamy, or adultery with cruelty or desertion that had entitled a wife to divorce under the Matrimonial Causes Act of 1857.

The bill had been written by the executive committee of the National Union of Societies for Equal Citizenship (NUSEC), and its parliamentary secretary had persuaded Entwistle to sponsor the bill.^{240} The NUSEC had authored successful legislation before 1923 and its leaders were well experienced in the process of presenting bills to Parliament through personal friends and family.^{241} They were involved in the writing and passage of the Parliament (Qualification of Women) Act of 1918, which made women eligible to serve in Parliament; the Sex Disqualification (Removal) Act of 1919, which gave women the right to practice law and hold certain related civil service posts;^{242} and the Law of Property Act of 1922, which gave women and men equal rights of inheritance in cases of intestacy.^{243}

The Parliament (Qualification of Women) Act meant that there were women speaking for women in Parliament for the first time. Lady Nancy Astor was elected in 1919 and Margaret
Wintringham joined her in 1921. These two women were co-sponsors of the bill.  

Entwistle thought the bill would pass because it was "a simple matter of justice and equity", an attitude generally supported by Commons, and "it is practically universally demanded by the women of this country."  

In spite of this confidence, Entwistle emphasized that the bill was not a reform measure. Divorce law reform, the major said, was "far too wide and far too contentious to be brought forward in a private member's bill." His bill, he asserted, was merely complementary to legislation passed since 1882 for women's rights: Married Women’s Property Act of 1882, the Child Custody Act of 1886, and the Women’s Suffrage Act of 1913. In fact, the major pointed out, the law was such that a woman could be a judge under the Sex Disqualification (Removal) Act of 1919, but she could not get a divorce for her husband’s adultery. The major believed that this was a strange contradiction in the law. "I think it is high time that this House put an end to such anomalies and anachronisms."  

Entwistle went on to say that he saw no difference in granting women separations for their husbands' adultery and in giving them divorces for the same reason. Society itself, he said, had decided that there was no social threat to
granting women equal grounds for separations, so society should not be able to justify denying women equal grounds for divorce by saying that it would threaten society.\(^{248}\) He also tried to forestall religious objections by invoking Gladstone, reminding the Members that Gladstone had been against inequality and had argued that Scripture supported sexual equality.\(^{249}\) He reminded the Members that the Bishops had supported the Minority Commissioners of the 1913 Commission,\(^{250}\) whose only recommendation was that women be given equal grounds in divorce, and finished by stating that sexual equality in divorce would strengthen morality by forcing husbands to be faithful to their wives, while the current state of the law allowed men to commit adultery with impunity, "which is rather scandalous."\(^{251}\)

The opposition was led by Major Brown and Dennis Herbert.\(^{252}\) Brown opposed the bill because he believed its passage would prevent further reforms for extended grounds. He did not explain how an act giving men and women equal grounds could impede further reform; perhaps he believed that the opposition would be greatly strengthened by passage of this bill, which Brown viewed as incidental. The opposition

would state in future debates that since men and women were equal in marriage and in divorce as a result of this bill, there was no reason to extend the grounds for divorce. Herbert agreed with Brown that passage of the bill would hamper further reform. His reasoning was that the bill as it stood would so greatly increase collusion that people would be unwilling to extend grounds for any reason. This would make it impossible for people who really needed a divorce to get one, and used as an example people married to insane partners.²⁵²

Herbert's other arguments were based on the well-rehearsed ideal of social morality. He insisted that this bill was in direct conflict with social views of marriage and adultery. Society still believed, he said, that a husband's adultery alone was not grounds for divorce. He further stated that society viewed the sexual behavior of unmarried men as unimportant. He sought to illustrate this by asking the members if they would be as critical of sexual misconduct by a son as that by a daughter. When another member asked if Herbert taught this philosophy to his own children, Herbert was greatly insulted and insisted that he was not trying to advocate "in the very slightest degree" the teaching of low morality, and then defended himself, saying that the question did not apply to him because he had no daughters.²⁵³
He continued this theme by saying that the reason why society viewed male and female adultery differently was not the issue; the fact that society had these opinions, and that they were centuries old, made them legitimate. ²⁵⁴

Herbert also opposed the bill as it stood because it would make "hotel divorce", ²⁵⁵ (the current common phrase for collusion,) even easier since the wife would not have to prove bigamy, desertion or cruelty. Herbert said that the "strong spirit of chivalry still existing in the men of this country" would lead many men, at the request of their wives, to supply proof of a single act of adultery in order to give the wife a divorce. ²⁵⁵ His theory indicates that he believed most divorces were instigated by the wife, especially collusive divorces. He also seemed to believe that most husbands were not adulterous. Herbert did not believe that giving wives the right to divorce their husbands because of one indiscretion would make the sexes equal in marriage. Equality between the sexes could best be accomplished by amending the bill to make habitual or repeated adultery, not one-time adultery, grounds

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²⁵⁴ In order to get a "hotel divorce", a husband arranged to be seen in bed with another woman at a hotel. The bill was sent to his home, where the wife read it, then wrote at letter to her husband who was still at the hotel, asking him to return home. The husband replied that he would not. The letters and the testimony of the witness provided enough evidence to prove adultery plus desertion, and the wife would be granted a divorce.
for divorce for both husband and wife.\textsuperscript{256} Herbert could afford to make this suggestion, because despite the fact that on its surface this amendment would allow women the same sexual freedom as men, Herbert knew society would never tolerate incidental adultery on the part of wives the way it tolerated it in husbands.

He insisted that the bill as it stood would lessen what little social condemnation existed for adulterous husbands, thus lowering standards of morality rather than raising them as Entwistle believed. Herbert believed that if the bill were explained in this light, those women who supported it would withdraw. He said that these same women would, however, support a bill based on his amendment for habitual adultery, because it would strengthen the family.\textsuperscript{257} He feared that people would come to regard all adulterous husbands as magnanimous men who had performed a favor for a wife who wanted out of the marriage.

When the Bill was reported out of committee, there were several amendments attached that, if passed by the full House, would prevent the passage of the bill and defeat Entwistle’s purpose. One of the most dangerous was an amendment to make incurable insanity a ground for divorce, but the speaker declared it beyond the scope of the bill and therefore out of order. He also ruled that an amendment seeking to forbid the
Book of Common Prayer in marriage ceremonies for divorced people was out of order.²⁵⁸ This last amendment indicates that the clergy were still disgruntled at being forced to perform ceremonies for divorced people, because this amendment could have been used as a loophole for priests, who would claim that they could not perform a ceremony without the Prayer Book.

Two amendments were discussed on the floor. The most important regarded the custody of children.²⁵⁹ The amendment was a response to the tradition of giving custody to the innocent spouse, and it stated that a husband should not automatically lose custody of his children if his wife won a divorce on grounds of simple adultery. The wife should show other reasons why the husband was an unfit parent. The member who introduced the amendment said that for a man to be deprived of both wife and children as punishment for a single act of adultery was far too harsh. The tradition of taking children away from the guilty spouse would make husbands "unequal victims" of the new law.²⁶⁰

He also believed that without this amendment, the law would cause great suffering for children, especially boys, who would be deprived of their "natural protector."²⁶¹ He also reminded the members that common wisdom said that boys needed to be raised by their father.²⁶²
Dennis Herbert supported the amendment, saying that it was needed to ensure the best for children, especially male children. He suggested a system of shared custody, in which boys were given to the father and girls to the mother. Another member insisted that it was necessary that their first object should be the best interests of the children, "and above all the upbringing of boys. It is necessary that boys shall be brought up in a proper way." There seems to be a shadow of the double standard evident in the opinions of members who spoke in support of this amendment—they believed that the welfare of the father and the male children should override the tradition of giving custody to the innocent spouse; that fathers shouldn't be punished for adultery by having their children taken away.

Entwistle protested that the amendment was unnecessary because the Court already had complete discretion and could make special rulings for situations that would arise under the bill. He feared that the amendment would backfire, and "destroy the absolute discretion of the Court" by interfering when it was unnecessary.

Other members agreed with Entwistle, and pointed out that the amendment would discourage women from suing for divorce because it would say to them: "If you take successful action against your husband for a single act of adultery, your
children are to be taken from you." The movers of the amendment, Entwistle's supporters accused, were asking for discretion in favor of the guilty husband, which would be in effect a punishment of the innocent wife, and contrary to the tradition of giving custody of children to the innocent spouse.  

But the final blow against the amendment was given by a member who pointed out that while the main clause of the bill would increase collusive divorces since the wife need prove only adultery, the proposed amendment would cause even more collusion, because fathers need not fear losing their children. The amendment was voted down, 172 to 25.  

The second clause discussed would have given the Court authority to grant alimony to husbands, which Herbert insisted was in line with "modern ideas of freedom and independence of women and the rights of women to their own property." Another member pointed out that the law at present made no provision for the support of the children when the father was guilty. The supporters of this clause were concerned about those few cases in which the wife, because of the recent changes in the property laws, was more wealthy than the husband, who could be penniless after the divorce. They feared that such husbands would lose income, wife, and children, perhaps even social standing. Another member wanted
to know why "as far as worldly goods are concerned...all these ideas of sex equality are forgotten"?271

Entwistle declared that it was ridiculous to force the wife to give the husband money after divorcing him for his adultery, and especially futile when the wife had no property. The tradition of granting alimony to the wife even when she was guilty had developed before the changes in the property laws, when women had no way to support themselves. 272 This amendment was also voted down by the House, 148 to 65. 273

The most fierce debate arose when Herbert moved to insert language into the main clause that would prevent wives from suing for divorce for adultery committed before the bill was passed. 274 He believed a retroactive bill, even if it covered only the day before passage, would unfairly punish men an act that had not been a crime at the time it was committed --that is, before the bill was passed.274

Entwistle said that this would frustrate the purpose of the bill, which was not to punish husbands, but to provide

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271 Whether to make legislation retroactive always provoked strong emotions in Parliament. For example, opponents of the Married Women's Property Acts insisted that retroactive laws would rob husbands of property they believed rightfully theirs; some wanted engaged couples exempted from these laws, because the fact that the bride would not surrender any property to the groom might make many men change their minds about marriage. See Times of London, 7-23-1870, column 6a, and Parliamentary debates on these laws.
relief for wives. If the bill were not retroactive, many wives would be denied relief, especially those whose husbands had very recently committed adultery, though he believed that even wives whose husbands had committed adultery twenty years before passage deserved relief. 275 Other members pointed out that the bill was not unfair; it merely placed husbands, finally, in the same position as their wives: being punished for adultery. 276 These members expressed a complete lack of sympathy for husbands who did not consider fidelity a marital responsibility. 277

This amendment demonstrates the basic way the subject of divorce sometimes divided Parliament. If a member perceived a bill like this one to be primarily a punishment for the husband, he nearly always opposed it. If a member interpreted the bill as granting relief to the wife, he generally supported it. Many of the statements made by opponents of divorce reform legislation, before and during these debates, are connected to the double standard, in the belief that men should not be forced to follow the same standards of morality that they demanded of women. It seems, however, that in this debate the opponents realized that the bill had a large majority of support, and with this language against retroactive legislation they were trying to protect men who, like themselves, did not want to be bound to the same
standards of morality as were their wives. This debate lasted over an hour, with members trading insults, until Entwistle forced a division. This amendment, like all the others, was also voted down.278

When the amendments had all been disposed of, Entwistle formally moved the third reading. Mr. Blundell, a Catholic, rose to oppose the bill, saying that it was impossible to legislate equality between the sexes, because they were "essentially different". His tried to prove this by referring to recent newspaper articles that indicated that people were more interested in what women MPs wore than in what they said (Lady Astor was incensed).279 Blundell also stated that the public did not support absolute equality. He offered as evidence the recent debate regarding the proper punishment for mothers found guilty of killing their babies. "A very great number of people" did not support the death penalty for these women, but they had never suggested that a father be forgiven if he committed the same crime.280 Blundell's comments demonstrate how religious objections usually failed to offer serious objections truly related to the issues.

The bill had been sold as a compromise, Blundell continued, when it was no such thing. It was "an entirely new principle" that would greatly increase the number of collusive divorces. It would make the suit easier because
the couple need provide false evidence on only one count: adultery. As a final point, Blundell said that members should not vote for the bill simply on orders from the women in their constituencies.\textsuperscript{281}

Another opponent of the bill echoed Herbert in believing that equality would be better achieved by making it as difficult for husbands to divorce their wives as it now was for wives to divorce their husbands. He believed that giving women equal grounds would encourage the working class to marry and divorce without thinking, when they were too young, and had no idea what marriage was about or how to compromise.\textsuperscript{282}

The double standard received one last disturbing defense, a witness to the continuing minority that placed all responsibility for marital happiness and childbirth on the woman:

There cannot be equality between the sexes, because God has made them different. A woman commits adultery. What is the result? She may produce a child which is not the child of the husband....On that ground alone, I think, it is right that the woman should be divorced if she commits an act of adultery. Take the case of the man. He commits adultery, and nothing happens. [An Hon. Member: "It may happen to somebody else." ] That is the fault of the woman, not the fault of the man....if a man commits an act of adultery with...a prostitute, no result follows. Therefore my argument is perfectly correct.\textsuperscript{283}

The debate ended when Entwistle again interrupted and forced a division, and the bill passed the third reading 257 to 26.\textsuperscript{284}
Lord Buckmaster sponsored the bill in the House of Lords. There was a short discussion before the bill was sent to committee there, but there was no opposition other than repetitious speeches by Catholic members predicting enormous increases in collusion and immorality. In fact, the bill came out of committee without any amendments and passed the third reading without a division. It received the Royal Assent in July, 1923.285

When Parliament, in this debate, discussed the issue of equal grounds for women apart from the issue of extended grounds, certain attitudes were revealed behind the words of opposing members. Behind their fear that hundreds of wives were waiting for the law to be passed so they could file for divorce was the assumption that hundreds of husbands were unfaithful. Behind the belief that these wives wanted a divorce from unfaithful husbands was the assumption that women were not the long-suffering, forgiving creatures men wanted them to be. Behind the fear that these women would not forgive was the fear that men would be forced to adhere to the moral standards they enforced on women. Behind the unwillingness to adhere to a higher moral standard was the belief in and support of the double standard. In fact, the behavior of women was not the issue; it was the behavior of
men. If men refused to control their sexual behavior, regardless of the law, it could indicate that women really were the moral and spiritual superiors of men, and for all the speeches, men had never really accepted that. If they had truly believed it, women would have been sharing authority and power long before the 20th century. Members of Parliament were forced to face their defense of the double standard in the simplest way during these 1923 debates, and the fears we can see through their speeches indicate a shaking, finally, not only of ancient male domination, but in men’s belief in its justice. The large majorities in support of the bill in both Houses demonstrates a wide acceptance of women’s claim to political and legal equality.
CHAPTER SEVEN
Matrimonial Causes Act, 1937

In 1930 Mr. Knight" made his first attempt to introduce a bill to reform the marriage and divorce laws. His bill sought only one new ground, incurable insanity. In February Knight asked to introduce the bill and quoted from letters he had received from people whose spouses were confined in asylums.266 He was opposed by Mr. Lang, who said that the insane could not defend themselves, and that a working definition of incurable insanity could not be written or agreed upon. He further stated that the bill would increase the anxiety of people under observation for insanity and would hinder their treatment. The family was a "magnet" to draw the insane back to sanity, and the Bill would take that away.267

" George Wiefird Holford Knight (1877-1936) served in London municipal government from 1893 to 1903, when he was called to the bar; was a Freeman of the City of London; served in Criminal Court 1911-1930, when he was elected to Parliament in the National Labour party, for South Nottingham. He served until 1935, and then retired. (Who’s Who of British Members of Parliament, vol. III, p. 200.)
Mr. Lang finished by offering an argument against any extension of the grounds for divorce:

I understand that the principle of married life is that two people have each other on trust for better or for worse, but little by little every bit of the worse is being ruled out.\textsuperscript{288}

The House of Commons voted to allow the introduction, but no further progress was made that session.\textsuperscript{289} In 1931 Knight moved to introduce a similar bill, but was refused. He tried again a month later and succeeded in having the bill read and printed, but again, it did not receive a second reading.\textsuperscript{290} Knight repeated this same scenario in 1932\textsuperscript{291} and in 1933. Finally in 1933 Mr. Knight was able to move for a second reading.

Knight opened by reminding the Members that this reform had been supported for 20 years by "countless" members of "women's labour",\textsuperscript{99} as well as Liberal women; however, in the early 1930's only the DLRU actively sought Parliamentary attention to divorce reform. The leader of the DLRU, Mrs. Seaton-Tiedemann, was personally responsible for the six bills brought before Parliament from 1924 to 1934 by convincing members with whom she had a personal acquaintance to sponsor the bills.\textsuperscript{292}

\textsuperscript{99} Knight was probably referring to organizations like the Women's Trade Union League. See above, p. 65.
Knight noted that the bill would not force anyone to divorce an insane spouse, and that the courts were capable of determining the insanity of the respondent. The only opposition, he continued, was on religious grounds, and said that he did not understand how "the cause of religion" could be aided by forcing people to remain married to insane spouses. He asked that members pass the second reading and send the bill to Committee, where the difficult discussions it would raise could be more properly handled.293

Knight was opposed by Dr. O’Donovan, Conservative for Mile End, who insisted that his objections were not merely religious but were part of his British citizenship. Knight’s request that the bill be discussed in Committee angered O’Donovan, who accused Knight of belittling religious objections. He also described the bill as "bolshevist" because it denied the "inescapable status" of marriage. He finished by stating, as had Mr. Lang in 1930, that the bill would victimize the insane by punishing them for something over which they had no control. The sane spouse asking for a divorce would be guilty of violating the marriage contract.294

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Dr. William James O’Donovan (1886-1955) specialized in dermatology and served as Coroner’s Pathologist, East London. He served in Parliament from 1931 to 1935. (Who’s Who, III, p. 268.)
O'Donovan had other objections, notably against the involvement of the medical profession in the courtroom proof of incurable insanity. He said that some doctors might be bribed or intimidated into offering false proofs and thereby contribute to the already obscene number of collusive cases brought before the court. He suggested that many people would wish to divorce insane spouses in order to avoid paying their support. If proved incurably insane, a husband or wife would become a permanent resident of either a state or private asylum, giving the impression that marriage was a "terminable contract of no responsibility and that the State [could] shoulder all the troubles that [might] ensue." The result would be higher taxes: "another burden put upon the back of the public".

Dr. O'Donovan continued to speak until 4 p.m., at which time he stopped midsentence, having succeeded in preventing a division from being called. The debate was adjourned until May 15. It never resumed; Dr. O'Donovan had successfully "talked the bill out."

Perhaps Mr. Knight's single-ground bills had been inspired by the success of the Matrimonial Causes Act of 1923, which had succeeded where more complete bills before it had failed. But in 1934 Knight tried a different approach. The year before Dr. O'Donovan had asked why Knight's bill
contained only one of the Gorell Commission's recommendations, so his 1934 bill was much more substantial, marking a return to the complete agenda of the Gorell Commission's recommended grounds of adultery, desertion for three years, cruelty, incurable insanity, incurable drunkenness, and imprisonment under a commuted death sentence. He reminded the Members that the bill was not the agenda of a private Member, but rather the opinions of "the most influential source to which Parliament can turn, namely, the considered and prolonged activity of a Royal Commission."}

Knight again asked that the bill be passed to Committee without debate, saying that some aspects of the bill should not be discussed on the Floor. He was referring to religious objections, and warned that "any intervention (by a religious group) is wrong which will have the effect of limiting or seeking to limit the supremacy of Parliament." He reminded the Members that Parliament had already set aside the ground on which religious opposition was based, that is, indissolubility.

This time Knight was supported by Sir Arnold Wilson, Conservative for Hertfordshire, who advocated a new approach to the question of divorce reform. "...the first thing we have to get out of our minds is the idea that divorce is a
crime....Divorce merely means that some particular union has become impossible and has been terminated."304 "The word 'guilty' has no real relation to civil actions of this sort".305

Wilson pointed out that the recommendations of the bill in fact were older than the Gorell Commission, because they had been discussed by Lord Lyndhurst in 1857. Wilson said that the bill would strengthen marriage and make it healthier because the State would be able to terminate unions that were an insult to the ideal of marriage.306 He finished his speech as Knight had, with a plea that the bill be sent to the Committee for discussion.

But Dr. O'Donovan was still committed to defeating Knight, and he again "talked out" the bill, repeating his arguments of 1933. The debate was to have continued two weeks later, but there were not enough members present and it was dropped.307

Mr. Knight retired in 1935, and the general elections held in the fall of that year changed the character of the House of Commons, returning an enormous government majority of 432 Conservatives, together with 158 "Labourites", 21 Liberals, and 4 Independents.308 Stanley Baldwin became Prime Minister, and his "tentative leadership style" meant that the government avoided taking sides on controversial topics like
divorce.\textsuperscript{309} Such matters were delegated to private members and "appropriate ministers". For divorce, that meant Donald Somervell, the Conservative Attorney General.\textsuperscript{310} O'Donovan and Lord Hugh Cecil, another opponent of divorce reform,\textsuperscript{311} were voted out, and the spirit of the debates also indicates that members who voted from a religious viewpoint had lost an outspoken leader in the Catholic O'Donovan,\textsuperscript{312} as demonstrated by the long-sought success of a bill to amend the divorce laws.

Two new members were largely responsible for the success. Alan P. Herbert, new Independent Member from Oxford University,\textsuperscript{11} had long been interested in divorce reform and had followed Knight's efforts for years. His devotion to the reform was apparent on his second day in the House, when he made his maiden speech, and vowed to see a matrimonial causes bill passed before the end of the session. He had with him a copy of the 1934 bill, with some rough notes in the margins. After the House was adjourned for the day, Herbert, still amazed at his own temerity, was congratulated by Winston

\footnote{11 Herbert (1890-1971), "author and wit", was a regular contributor to \textit{Punch} and also wrote poetry, novels, and musical revues. He served in the Royal Navy, and was called to the bar in 1918 but did not practice. He served for Oxford until 1950, when abolition of the university franchises took his seat. He was given a knighthood in Sir Winston Churchill's resignation honors list in 1945. (Who's Who IV, p. 164, and DNB 1971-1980, pp. 399-400.)}
Churchill with the following words: "Call that a maiden speech? It was a brazen hussy of a speech." The battle, Herbert wrote, had been joined. 313

Private members' bills such as Herbert's faced tremendous problems. There was an average of six private Fridays in each session, any or all of which the government could seize. 314 The order of presentation of bills was assigned by a draw, and if the bill won a good place, it was necessary that the debate and vote be accomplished before 4 p.m. or the bill would die for that session. In order to keep control of a bill, the sponsor needed at least 100 other members voting in its favor. This was very difficult on Fridays, when absenteeism was particularly high. If the bill passed a second reading, opponents could try to append amendments in committee that would prove fatal during the Report to the full House and defeat the third reading. If the bill survived this, it usually needed government time, or at least a promise that the government would not confiscate any Fridays. 315 In order to make good on his vow, Herbert needed a place from 1 to 6 on the order, help from pressure groups to gather the 100 supporting members and raise public support, and government cooperation. 316
Herbert had the assistance of another new member, Rupert De la Bere,\textsuperscript{11} conservative member for Evesham, who had the luck to draw place number 2 in the order to introduce private member's bills. He had signed up for the draw by mistake and had no bill of his own. De la Bere gave his whole heart to the effort once Herbert convinced him to use his good luck for a good cause.\textsuperscript{317} Herbert's other supporters included Sir Arnold Wilson, who had supported Knight in his last attempt, Sir John Withers, a solicitor who handled divorce cases, Elizabeth Rathbone, Independent Member for Combined English Universities,\textsuperscript{318} and Mavis Tate, National Conservative.\textsuperscript{kk} They were all effective speakers, but none more so, according to Herbert, than Tate.\textsuperscript{319} Outside Parliament, the bill received qualified approval from most women's rights groups, especially the National Council for Equal Citizenship and NUSEC. The DLRU, however, thought the bill was too liberal.\textsuperscript{320}

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\textsuperscript{11} De la Bere (1893-1978) was the director of Hayes Warf and an Alderman of London and Ward of the Tower before his Parliamentary service. He also served in WWI. He served for Evesham from 1935 to 1950 and for Worcestershire from 1950 to 1955. He was Lord Mayor of London in 1952 and was made Baronet in 1953, also made a Knight of the Order of St. John of Jerusalem. (Who's Who IV, p. 91.)

\textsuperscript{kk} Tate (1893-1947) had been divorced prior to her election in 1931; she remarried in 1925 and was divorced a second time in 1944. In the 1945 elections, she was defeated. Did her constituents disapprove of her second divorce? Who's Who III, p. 350.
\end{flushright}
The bill, which Herbert called the Marriage Bill in order to convey his belief that the reforms would "bring benefit to the institution of marriage",\textsuperscript{321} was introduced by De la Bere in November 1936,\textsuperscript{322} and the second reading was moved three weeks later. Herbert said that those most violently opposed to his bill were "life-long bachelors", and implied that they knew nothing about marriage, while he himself had been married for 23 years, with children and grandchildren.\textsuperscript{323}

Herbert wanted his bill to "secure more humane and honest divorce in the genuine hard cases, without making it too easy for the merely irresponsible or foolish".\textsuperscript{324} He pointed out that the current laws were "mocked" by collusion and perjury, with the result that often "the wrong people get what they want, and the right people cannot."\textsuperscript{325} Tate agreed. The great number of collusive cases before the courts made the judges extremely suspicious, so that often people who had a genuine case but no money for witnesses could not escape their marriages.\textsuperscript{326} England was becoming weary of the "out-of-date" divorce laws and would soon reach a stage where "no stigma whatever" was attached to a confession of adultery.\textsuperscript{327}

Herbert's bill was based on the Gorell Report, but included several new clauses that provoked debate, especially the first clause, which required that a couple be married for five years before either could file for divorce, though either
spouse could file for a separation order at any time.\textsuperscript{328} Church leaders supported this clause,\textsuperscript{329} as well as the clause that allowed clergymen to refuse to marry people who had been divorced. Herbert defended the latter by saying that the church "ought to be master in its own household", and that people who had failed to live up to the first set of vows had no cause to complain if the clergy considered them unfit to try again.\textsuperscript{330} Sir John Withers opposed the clause on the grounds that the clergy were the representatives of the State in the celebration of marriage, and it was "illogical" that they, in this capacity, should be able to choose who should be married and who should not.\textsuperscript{331}

Other speakers pointed out that religious opinion was no longer acceptable as a block to reforms.\textsuperscript{332} Acland echoed Knight's last speech in saying that religious convictions should not be "the deciding factor in a matter which vitally affects the State and so many thousands of lives."\textsuperscript{333} Tate stated that no matter what members' religious opinions were, they could not support a system that led to as much abuse as the current divorce laws.\textsuperscript{334}

Parliament should legislate for people who did not follow the Church of England, or any other religion, said Mr. Agnew.\textsuperscript{335} Another member said that it was considered improper for Parliament to meddle in spiritual affairs, and it was
likewise improper for the Church of England to interfere in civil matters and try to force its "extreme view" on people outside the Church. Mr. Sorenson cautioned against "intimidation by any ecclesiastical body" and offered the strongest metaphor for reform when he compared marriage law in England to a sepulchre: "The dead bones are still there, and no amount of ecclesiastical or ethical or other whitewash will remove the fact that rottenness is within....[and] In the end the rottenness eats its way out...."

The only speech in opposition to the bill was made by W.P. Spens, Conservative for Ashford in Kent, who argued that the bill would sacrifice the future generation to the irresponsibility of their parents. He believed that parents could hide their mutual hatred from their children and provide them with a good home, while divorce destroyed homes and made it impossible for the children of those homes to form their own as adults. He objected to the first clause because he believed it would give the couple more time to have children who be ruined.

The Attorney General, Sir Donald Somervell, closed the debate by noting that the House obviously desired a second reading, and offered Government assistance in drafting and redrafting for Committee. A division was called, the bill passed by vote of 78 to 12, and was sent to Standing Committee
A. Herbert's plan in Committee was to "reduce the area of controversy, in the certain knowledge that we should be pressed for time" for the third reading and Lords. The bill's supporters were willing to drop the most controversial clauses, and in fact lost the grounds of habitual drunkenness and commuted death sentence. Nonetheless the committee stage went better than Herbert had hoped, and the bill was reported out on February 9. There were only three Fridays left for private member's bills, and time became the enemy.

The amendments were not all discussed on April 16, the first available Friday; the following Thursday the House sat so late that the next day's sitting was canceled. The last private Friday was entirely taken up in discussion of a bill to allow sharing of taxi fare.

There was no time left, so Mr. De la Bere asked for Government time. On May 28, the government gave time. The most verbal opponent, Spens, was absent during the initial discussion of the amendments, and the rest were discussed in a half hour. The third reading was opposed, "but it was now a rearguard action. There was resignation in the speeches and

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11 "The government's refusal to assist in the consideration of such a controversial issue had stymied the considerable efforts at change for nearly 25 years", but for the first time, the government gave time for a divorce bill. Stetson, p. 115.
generous compliments to the promoters", and with Tate, Herbert counted the division: Ayes, 190, Noes, 37.\textsuperscript{346}

Lord Eltisley offered to introduce the bill in Lords. He was supported by Lord Gorell, son of the late Royal Commission Chair, and Lord Drogheda, a practicing divorce barrister, along with several others who had long favored the reform.\textsuperscript{347} The Lords worked quickly. In two days of debate they carried the second reading without a division.\textsuperscript{348} Clause One had raised no objections after Committee in Commons; but in the Committee stage of Lords, however, "... here were their Lordships fermenting with dislike of it."\textsuperscript{349} There were two separate debates and divisions over the clause, but it remained in the end, amended from five years to three.\textsuperscript{350}

There were religious objections to the bill in Lords by members who insisted that divorce was contrary to Divine law, and that the bill was an insult to Christians everywhere.\textsuperscript{351} These members also objected that the bill would increase the number of divorces and especially collusive divorces, and would also be a great danger to the well-being of children in England.\textsuperscript{352} Other members disregarded these old fears, and the next question was whether or not the House should return to the debate after supper, or adjourn until the next day.\textsuperscript{353} That the average member seems to have been more worried about having to come back after supper than about the prospect of
social disaster described by the objecting members indicates that the Church was finally losing its power to block divorce reform.

On July 15, and the title of the bill was amended to Matrimonial Causes Bill, which disappointed Herbert. The third reading passed Lords 79 to 28, and was returned to Commons for the approval of the Lords' amendments. The only one that caused concern to the promoters in Commons was to Clause One, but on July 23, Herbert moved "That this House doth agree with the Lords in the said amendment" and there was no division. The other amendments were agreed to as well, without division. The bill was given the Royal Assent on July 30, 1937.

It is difficult to tell what the result would have been in 1934 if a division could have been forced; O'Donovan's "talking out" could indicate that he feared it would have passed the second reading. However, it is plain to see that there had been a larger change of opinion in Commons between Knight's last attempt in 1934 and Herbert's success in 1937. The general elections of 1935 had removed Dr. O'Donovan, the most vocal religious objector. The willingness of the Baldwin government to give time to the 1937 bill indicates that the changes went further than the Floor of Commons. Perhaps this
excerpt from the Parliamentary Debates illuminates the change in attitudes toward marriage and divorce:

These laws of ours are unique in Protestant countries....They cannot be defended by reference to divine sanction, nor on the grounds of human reason. They are based in the main on historical accident, on antique prejudice, and upon the strange and almost bestial notion that the one thing which matters in married life is the sexual act and that the only breach of the marriage obligation which really matters is a breach of sexual fidelity....\textsuperscript{357}

The 1937 Act showed that many people had in fact supported extended grounds. After its passage, over half the new petitions submitted by women were on grounds of desertion or cruelty, with no mention of adultery. The act seems to have ended the practice of "hotel divorce", fulfilling one prediction cited in its favor by supporters in Parliament, but Stone says that it could not have reduced collusion because ninety percent of all cases were still undefended.\textsuperscript{358}
CONCLUSION

The Reports of the two Royal Commissions discussed in this work display obvious changes in attitudes toward women and individual rights in England from 1850 to 1937. The 1853 Report, and the Matrimonial Causes Act of 1857, defined divorce as the right of the husband, and are almost completely devoid of concern for women forced to live with abusive husbands. They upheld the double standard of sexual behavior and the absolute right of fathers to their children.

The 1853 Commissioners made their recommendations based on what they believed to be the best interests of the State and society. The Commissioners believed it was not the duty of the Courts to find solutions to human miseries, but rather to punish dereelection of duty and other crimes. Religous opinion and the scriptures were a strong force in the debates that resulted in the 1857 Act and the Divorce Court; in fact, the 1853 Commissioners held marriage and divorce to be a matter as much spiritual in nature as civil.

\[\text{\textsuperscript{mm}} \text{ Lord Stowell's wisdom, in RC 1853, pp. 13-14.}\]
The 1853 Report and the members of Parliament in the years following were more concerned with the evils that could result from "easy" divorce than with the relief of men and women whose marriages had failed. They believed that if women were granted equal grounds, collusion would be greatly increased. The Minority Commissioners believed that people could learn to be good spouses through necessity if divorce were denied.

The Minority Report of the 1912 Commission shows strong similarities to the Report of 1853, and in the debates of 1923 and 1937, there were still men who advocated the double standard of sexual behavior, although they were a small minority. The Majority Report of 1912 strongly condemned the double standard and especially the criminal conversation suit, and all the Commissioners, Majority and Minority, agreed that women were entitled to equal grounds in divorce. The Church and all other religious groups had ceased to exercise telling influence, and even useful council, so that the Commissioners believed it was best to not consider religious arguments. For the second Commission, marriage and divorce were questions that should be discussed in a civil context.

That resistance to divorce reform gradually lessened over the years I have studied does not indicate that the Victorians, or the Edwardians, ceased to believe that the
family was the foundation of society, but rather that they realized that divorce was not the fatal threat they had feared. Once they saw that divorce was not going to destroy marriage, they could focus on relieving people suffering in bad marriages. Parliamentary action always lagged behind public opinion, with the gap widening as the century continued, so that while the 1857 Act had been government-sponsored, no government after the 1912 Report was published was willing to take sides on the issues. Private members bucked government distaste for divorce reform in 1923, when divorce was extended first to women on equal grounds, and in 1937, when extended grounds were finally approved.

Why did it take twenty-five years for Parliament to pass a bill based on the recommendations of the 1912 Commission, especially when it had acted quickly, despite the Crimean War, on the report of 1853?

There are several reasons. The 1857 Act was written and sponsored by the government, and Stone says that the Prime Minister, Palmerston, "pursued it relentlessly... forcing members to endure the burden of debating from noon to two in the morning every day in the broiling heat..." and that the bill "was very substantially different" than when it was introduced and that it had little support. 35 Also, the 1853 Commission had not recommended any substantive change, merely
judicial reform. The bill as introduced was likewise free of
the sticky issues of equality and property rights for women.
Stone writes that the bill ran into difficulties when it was
"hijacked by the reformers", who added the property
clauses and aggravated grounds for women. The Parliamentary
discussions in 1854-1857 were not so much about the bill
itself, but rather, displays of overactive imagination.

The recommendations of the 1912 Commission, however, were
of an entirely different character. This report tackled the
sensitive issues of equal and extended grounds for divorce,
and the Parliamentary debates were over real issues, not
worst-case scenarios. Governments were generally hostile to
divorce reforms after the 1912 Commission, and as a result all
reform bills were introduced by private members. There was
much less time for the bills to be discussed than had been
available to the 1857 Act. The Baldwin government, under
which the 1937 Act was passed, can best be described as
studiously neutral, a far cry from the extremely active role
of the government 1854-1857.

The World Wars were a much more significant interruption
than the Crimean War. During the World Wars the government
had confiscated entire years of private Fridays, thus making
it impossible for divorce reform bills, or any other private
members' bills, to be introduced.
In the end, however, the majority of members in both houses voted in support of divorce reform that first removed the double standard and later enacted most of the recommendations of the 1912 Commission. Several factors for this have been discussed at length in the thesis, but perhaps the most compelling was that the double standard seems to have outlasted its justifications, and when it was challenged apart from other considerations it could not be defended. The debates prior to passage of the 1937 Act show that religious objections were the only ones left against extended grounds, and these had likewise lost their authority.
APPENDIX

The Scriptures Referring to Marriage and Divorce

These verses are taken from the King James Version of the Holy Bible, which I assume was a familiar version of the scripture in use, especially during the years when religious objections were strongest and most effective.

Matthew 19:3-9. The Pharisees also came unto him, tempting him, and saying unto him, Is it lawful for a man to put away his wife for every cause?
And he answered and said unto them, have ye not read, that he which madw them at the beginning made them male and female,
And said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh?
Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.
They say unto him, why did Moses then command to give a writing of divorcement, and to put her away?
He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so.
And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery: and whoso marrieth she which is put away doth commit adultery.

Mark 10:2-12 convey the same message.
And the Pharisees came to him, and asked him, Is it lawful for a man to put away his wife? tempting him.
And he answered and said unto them, What did Moses command you?
And they said, Moses suffered to write a bill of divorcement, and to put her away.
And Jesus answered and said unto them, For the hardness of your hearts he wrote you this precept.
But from the beginning of the creation God made them male and female.
For this cause shall a man leave his father and mother, and cleave to his wife;
And they twain shall be one flesh: so then they are no more twain, but one flesh.
What therefore God hath joined together, let no man put asunder.

And he saith unto them, Whosoever shall put away his wife, and marry another, committeth adultery against her.
And if a woman shall put away her husband, and be married to another, she committeth adultery.


Romans 7:2-3. For the woman which hath an husband is bound by the law to her husband so long as he liveth; but if the husband be dead, she is loosed from the law of her husband.
So then if, while her husband liveth, she be married to another man, she shall be called an adulteress: but if her husband be dead, she is free from that law; so that she is no adulteress, though she be married to another man.
NOTES


3. Wohl, p. 14, quoting from *The Art Journal*, 1850: "We English are unquestionably a domestic people; everything that partakes of home comforts and enjoyments is dear to us".


5. Wohl, pp. 75-76.


7. Shanley, p. 12.

8. Calder, p. 44.


11. Calder, p. 44.


25. RC 1853, 3, X.

26. RC 1853, 1, IV.

27. RC 1853, 1, IV.

28. RC 1853, 1, IV.

29. RC 1853, 3, X.

30. RC 1853, v and 19.

31. RC 1853, 1, IV.

32. Shanley, p. 42.

33. RC 1853, 9, XXIV.

34. RC 1853, 12, XXXIV.

35. RC 1853, 12, XXXV.

36. RC 1853, 13, XXXV.
37. RC 1853, 13, footnote 1.
38. RC 1853, 13, footnote 1.
39. RC 1853, 13, XXXVI.
41. RC 1853, 16, XL.
42. RC 1853 14, XXXVII.
43. RC 1853, 14.
44. RC 1853, 21-22, LI.
45. RC 1853, 38.
46. RC 1853, 40-41.
47. RC 1853, 46-47.
48. RC 1853, 22, LI.
49. RC 1853, 37.
50. RC 1853, 37.
51. RC 1853, i, IV.
54. PD, v. 146, pp. 405-406.
55. PD, v. 146, p. 204.
56. PD, v. 146, pp. 204-205, 215.
57. PD, v. 147, pp. 741-742.
58. PD, v. 147, pp. 378-390.
60. PD, v. 142, p. 1986; v. 147, pp. 741-742.
63. PD, v. 146, p. 201.
64. PD, v. 146, p. 206.
65. PD, v. 134, p. 15.
72. PD, v. 142, p. 412.
73. PD, v. 143, pp. 235-236.
74. PD, v. 146, p. 201; v. 147, p. 380, 388.
75. PD, v. 146, p. 201.
76. RC 1853, 15, XL.
77. PD, v. 143, p. 231, 234.
80. PD, v. 146, p. 225.
81. PD, v. 146, p. 223.
82. PD, v. 146, pp. 222-223.
83. PD, v. 146, p. 226.
84. PD, v. 144, p. 1687.
85. PD, v. 144, p. 1687.
86. PD, v. 134, p. 11.
88. PD, 142, p. 405.
89. PD, v. 134, p. 945.
90. PD, v. 142, p. 1968; v. 144, p. 1686.
91. PD, v. 147, p. 734.
92. PD, v. 146, p. 204.
95. PD, v. 147, pp. 732-733.
97. PD, v. 146, pp. 208-209.
99. PD, v. 147, p. 2084.
100. PD, v. 147, p. 2086.
101. PD, v. 147, p. 2085.
102. PD, v. 147, p. 2086.
103. PD, v. 147, p. 2087.
104. PD, v. 147, p. 2088.
106. Shanley, p. 35.
107. Shanley, p. 45.
108. Stone, p. 385, and see his table, p. 386.


114. Little, p. 256, 257.

115. Little, p. 259.


117. Little, p. 256. No date given for the statement.


130. Davies, p. 192.


133. Mallock, p. 265.

134. Lewis, p. 651.

135. Lewis, p. 650.


137. Mallock, p. 264. See page 7, above, for Bodington’s and Chapman’s comments on "duty".


139. See Chapman and Bodington, for example.

140. James Muirhead, John Fraser McQueen, and Campbell Smith, "The Laws of Marriage and Divorce", (Westminster Review 82, October 1864), p. 469. These men wrote two oddly similar articles, this first published in 1864 and the second in 1868. They were Advocates and barristers.

142. Postlethwaite, p. 401.

143. Newman, p. 188.


146. Stetson, p. 18.


149. Hynes, p. 191.


151. Earl Russell, p. 158.


156. Pearsall, pp. 124, 126.


158. Hynes, p. 192.


162. Hynes, pp. 192.


164. Stetson, pp. 21-22.

165. Stone, p. 390.

166. Stetson, p. 21.


168. Stone, p. 20.

169. Stone, p. 279.


172. Hynes, pp. 210-211.

173. Shanley, p. 77.

174. Shanley, pp. 53, 56.

175. Stone, pp. 353, 362-'63, 387.

176. Stetson, p. 103, 123.

177. Stetson, p. 113.


179. Stetson, pp. 112-113.

180. Stone, p. 392.


182. Hynes, p. 196. "...Royal Commissions follow public opinion."

183. Hanser, p. 207.
184. Hanser, p. 143.
185. DNB II, v. 1931-40, p. 34.
193. DNB, v. 1912-21, p. 16.
194. DNB, v. 1922-30, pp. 143-144.

195. In the DNB article for Rufus Daniel Isaacs, Emily Pankhurst and other suffragettes were accused of "conspiring to commit injury and damage"; see note 43.

197. Stone, pp. 388-'89.
198. Hanser, p. 90.
199. Hynes, p. 186.
201. Hanser, p. 91.
202. RC 1912, p. 49.
203. RC 1912, p. 48.
204. RC 1912, pp. 176-177.
205. RC 1912, p. 179.
206. RC 12912, p. 177.

208. Martin, p. 2

209. Martin, p. 4

210. RC 1912, p. 47.

211. RC 1912, p. 138.

212. RC 1912, p. 138.

213. RC 1912, pp. 141-142.

214. RC 1912, p. 46.


216. RC 1912, p. 190.


218. RC 1912, p. 172.


221. RC 1912, pp. 40, 42.

222. RC 1912, p. 40.

223. RC 1912, pp. 181-182.

224. RC 1912, p. 182.


226. RC 1912, p. 188.


228. RC 1912, pp. 188-189.

229. RC 1912, pp. 91-94.
231. RC 1912, pp. 147, 151.
232. RC 1912, p. 150.
234. RC 1912, p. 156.
236. RC 1912, p. 145.
237. RC 1912, pp. 95-96.
238. PD, v.160, p. 2355.
239. PD, p. 2355.
242. Stetson, p. 112,
244. Stetson, pp. 110-111.
245. PD, (C) v. 164, p. 2356.
246. PD, (C) v. 164, p. 2356.
247. PD, (C) v. 164, pp. 2356-2357.
248. PD, (C) v. 164, p. 2357.
249. PD, (C) v. 164, p. 2358.
250. PD, (C) v. 164, p. 2359.
251. PD, (C) v. 164, pp. 2359-2360.
252. PD, (C) v. 164, p. 2368.
253. PD, (C) v. 164, pp. 2366-2367.
254. PD, (C) v. 164, p. 2367.
255. PD, (C) v. 164, p. 2368.
256. PD, (C) v. 164, p. 2368.
257. PD, (C) v. 164, pp. 2368-2370.
258. PD, (C) v. 164, pp. 2583-2586.
259. PD, (C) v. 164, pp. 2591-2592.
260. PD, (C) v. 164, p. 2593.
261. PD, (C) v. 164, p. 2594.
262. PD, (C) v. 164, p. 2593.
263. PD, (C) v. 164, p. 2598, 2600.
264. PD, (C) v. 164, p. 2602.
265. PD, (C) v. 164, p. 2595.
266. PD, (C) v. 164, p. 2596.
267. PD, (C) v. 164, p. 2597.
268. PD, (C) v. 164, p. 2603-2604.
269. PD, (C) v. 164, p. 2609.
270. PD, (C) v. 164, p. 2610.
271. PD, (C) v. 164, p. 2612.
272. PD, (C) v. 164, p. 2611.
273. PD, (C) v. 164, p. 2616.
274. PD, (C) v. 164, p. 2617-2618.
275. PD, (C) v. 164, pp. 2619-2621.
276. PD, (C) v. 164, p. 2626.
277. PD, (C) v. 164, p. 2627.
278. PD, (C) v. 164, pp. 2637-2638.
279. PD, (C) v. 164, pp. 2643-2644.
280. PD, (C) v. 164, pp. 2643-2644.
281. PD, (C) v. 164, pp. 2646-2647.
282. PD, (C) v. 164, p. 2647-2648, 2650-2651.
283. PD, (C) v. 164, p. 2651.
284. PD, (C) v. 164, p. 2658.
286. PD, (C) v. 235, p. 2263.
287. PD, (C) v. 235, p. 2266.
288. PD, (C) v. 235, p. 2267.
289. PD, (C) v. 235, p. 2270.
290. PD, (C) v. 247, pp. 975-978.
291. PD, (C) v. 272, pp. 823-826.
293. PD, (C) v. 277, p. 1195.
294. PD, (C) v. 277, pp. 1195-1197.
295. PD, (C) v. 277, p. 1198-1199.
296. PD, (C) v. 277, p. 1875.
297. PD, (C) v. 277, p. 1874.
298. PD, (C) v. 277, p. 1878.
299. PD, (C) v. 277, p. 1878.
300. PD, (C) v. 285, p. 479.
301. PD, (C) v. 285, pp. 748-749.
302. PD, (C) v. 285, p. 752.
304. PD, (C) v. 285, p. 757.
305. PD, (C) v. 285, p. 758.
306. PD, (C) v. 285, pp. 755-756.
307. PD, (C) v. 285, pp. 760-772, 806.
308. Stetson, p. 118.
309. Stetson, p. 118.
310. Stetson, p. 119.
311. Alan Herbert, The Ayes Have It, (New York, 1945?) p. 94.
312. Herbert, p. 95.
314. Stetson, p. 117.
315. Stetson, p. 118.
316. Stetson, p. 118.
317. Herbert, pp. 84-87.
319. Herbert, pp. 89-91.
320. Stetson, p. 117.
321. Herbert, pp. 67-68.
322. PD, (C) v. 317, p. 389.
323. PD, (C) v. 317, p. 2082; Herbert, p. 96.
324. Herbert, p. 66.
325. PD, (C) v. 317, p. 2082.
326. PD, (C) v. 317, p. 2107.
327. PD, (C) v. 317, p. 2082-2083.
328. PD, (C) v. 317, pp. 2085-2086.
329. Herbert, p. 100.
330. PD, (C) v. 317, p. 2091.
331. PD, (C) v. 317, pp 2123-2124.
332. PD, (C) v. 317, p. 2102.
333. PD, (C) v. 317, p.2103.
334. PD, (C) v. 317, p.2108.
335. PD, (C) v. 317, p.2112.
336. PD, (C) v. 317, pp 2116-2117.
337. PD, (C) v. 317, p.2105.
338. PD, (C) v. 317, p.2106.
339. PD, (C) v. 317, p.2095-2096.
341. Herbert, p. 128.
342. Herbert, p. 129.
343. Herbert, p. 142.
346. Herbert, pp. 162, 163-164.
348. Herbert, pp. 171, 172, 175.
351. PD, (L) v. 105, pp. 738-739.
352. PD, (L) v. 105, pp. 740-741.
353. PD, (L) v. 105, pp. 742-743.
354. Herbert, p. 185.
357. PD, (C) v. 317, p. 2093.
358. Stone, p. 401.
360. Stone, p. 382.
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